

THE STATE OF SOUTH CAROLINA

In The Supreme Court

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

Appellate Case Number 2013-002697
(Opinion Number 5455, Filed November 16, 2016)

Appeal from the Administrative Law Court
Deborah Brooks Durden, Administrative Law Judge

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S.C. SUPREME COURT

William J. Montgomery, ... Petitioner

v.

Spartanburg County Assessor, ... Respondent.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

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

William J. Montgomery, ... Respondent,

v.

Spartanburg County Assessor, ... Appellant.

RECORD ON APPEAL

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RECORD 000001

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William J. Montgomery,

Petitioner,

vs.

Spartanburg County Assessor,

Respondent.

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

ORDER

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SC Court of Appeals

APPEARANCES: For Petitioner:

James G. Carpenter, Esquire

L. Warren Clayton, III, Esquire

For Respondent:

John H. Harris, Esquire

STATEMENT OF THE CASE

This matter came before the Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. §12-60-2540(A) for a contested case hearing requested by William J. Montgomery (Petitioner), against the Spartanburg County Assessor (Assessor) contesting the separate valuation of the land and the improvements, buildings or structures located on Petitioner's agricultural real property. The Petitioner exhausted all prehearing remedies with the Assessor and the Spartanburg County Board of Assessment Appeals (Board) and filed a timely request for a contested case hearing before the ALC.

The Petitioner filed a motion for summary judgment which, after notice to the parties, was argued by counsel for the Petitioner and Assessor before this Court on July 31, 2013. At the hearing, the Assessor made a cross-motion for summary judgment which was accepted and argued before the Court on the same day.

ISSUE

Whether structures on a tract of agricultural real property may be assessed at fair market value separately from the property upon which they sit; or whether the value of the structures is already included in, and subsumed by, the tract's fair market value for agricultural purposes (Agricultural Use Value).

FILED

November 19, 2013

SC ADMIN. LAW COURT

RECORD 000002

BACKGROUND

This appeal arises from an ad valorem tax assessment of real estate owned by the Petitioner conducted by the Spartanburg County Assessor. The real estate at issue is identified as TMS #6-68-00-016.00, located at 891 Mount Lebanon Road, Pauline, South Carolina 29374 (Property).

For the tax year 2011, the Assessor assigned an Agricultural Use Value using the soil capability method of valuation for the land of \$12,211, and a fair market value for the improvements of \$28,430. The Assessor then added the assessment of the fair market value of the improvements to the Agricultural Use Value to arrive at the valuation of the Property for tax purposes. Petitioner argues that the plain language of the statutes includes the value of these structures within the statutory calculation of Agricultural Use Valuation and that it is improper to add the fair market value of improvements.

The parties agree that the structures on the Property are related to the agricultural activities and uses of the Property -- they are neither residences nor related to some other business for profit.¹ The parties also agree that the real property in question is properly classified as agricultural use property; that it is owned by an individual; that the values and millage rate are accurate as calculated by the Assessor; and that the proper assessment ratio is four percent.

STANDARD OF REVIEW

Under ALC Rule 68, this Court may apply the South Carolina Rules of Civil Procedure in contested case proceedings where no ALC rule applies and when practicable. Therefore, Rule 56, SCRCPP, applies in determining whether summary judgment is proper in this case. Summary judgment is proper when there is no issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 (2000); Rule 56, SCRCPP. Summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusions or inferences to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000); Fleming v. Rose, 338 S.C. 524, 236 S.E.2d 732 (2000). To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable ambiguities

¹ There are three buildings or improvements on the Property. Two structures serve as barns and storage sheds for farming equipment. The third is a mobile home which serves as an office for the farming operation and an occasional shelter for farm workers.

and inferences in the light most favorable to the non-moving party. Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Trico Surveying, Inc. v. Godley Auction Co., 314 S.C. 542, 431 S.E.2d 565 (1993).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). A party may not rest upon the mere allegations or denials of his pleadings. Rule 56(e) SCRPC. A party opposing summary judgment must come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial. Doe v. Batson, 345 S.C. 316, 321, 548 S.E.2d 854, 856 (2001). One may not create a genuine issue of material fact and, thus, avoid summary judgment by asserting that the trier of fact may disbelieve uncontradicted evidence. Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 694 S.E.2d 1 (S.C. 2010).

In this case, the parties agree that there is no dispute as to the relevant facts. The interpretation of the statutes governing the valuation of agricultural property is an issue of law. Therefore, it is appropriate to resolve that question by summary judgment.

DISCUSSION

The Assessor argues that the value of agricultural real property is determined by the combined value of two sub-classes of property. The first sub-class is the value of the improvements, buildings or structures on the land as determined using the fair market value method set forth in Section 12-37-930 of the South Carolina Code of Laws. The second sub-class is the value of the land based on "the productive earning power based on soil capacity" as determined by South Carolina Code of Laws Section 12-43-220(d)(2)(A). Respondent asserts that the structures on Petitioner's property should be assessed at their fair market value because S.C. Code Ann. § 12-43-220(d)(2)(A) only applies to land and provides no valuation method for structures, leaving that valuation to be calculated under the default provision of Section 12-37-930. Respondent would add

the fair market value of the improvements, buildings and structures located on the Property to the Agricultural Use Value to arrive at the total assessed value of the Property.

In support of its position Respondent points out that its method of calculating the value of agricultural land and improvements separately comports with the Department of Revenue's (DOR) interpretation of Section 12-43-220(d)(2)(A) and the longstanding practice of all the counties in the state. "The 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." Duton v. South Carolina Bd. Of Examiners in Optometry, 291 S.C. 221, 223 (1987). "[W]here the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons." Etiwan Fertilizer Co. v. South Carolina Tax Comm'n, 217 S.C. 354, 359 (1950). This is a situation where the DOR's construction of the statute is entitled to such respectful consideration; the first paragraph of Section 12-43-220(d)(2)(A) at issue here was enacted in 1979 by Act 199 and has been interpreted by the Department and counties to require adding the value of improvements to the Agricultural Use Value for thirty-four years.

Our Supreme Court has held that where "the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578, 581 (2000). "Where a statute is ambiguous, the Court must construe the terms of the statute." Wade v. Berkeley County, 348 SC 224, 229, 559 S.E.2d 586, 588 (2002). In construing a statute, the court looks to the language as a whole in light of its manifest purpose. Adams v. Texfi Industries, 320 S.C. 213, 464 S.E.2d 109 (1995). An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law. State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999). Furthermore, where substantial doubt exists as to the construction and interpretation of a legislative action with respect to the enactment and enforcement of tax statutes, the doubt must be resolved against the government. Columbia Ry., Gas & Elec. Co. v. Carter, 127 S.C. 473, 121 S.E. 377, 380 (1924).

Although courts give great weight to an agency's long-standing construction of a statute, such a construction is not dispositive. Plyler v. Evatt, 313 S.C. 405, 408, 438 S.E.2d 244, 246

(1993). While a court typically defers to an agency's construction of its own regulation, where the plain language of the statute is contrary to the agency's interpretation, the Court will reject its interpretation. Brown v. South Carolina Dept. of Health and Env'tl. Control, 348 S.C. 507, 560 S.E.2d 410 (2002). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 341 S.C. 79, 85 (2000) (citations omitted). The language in Sections 12-37-10(1) and 12-43-220 - 230 is unambiguous. It is clear that the "fair market value for agricultural purposes" includes land used for the growth of agricultural products and the buildings or improvements on that land. South Carolina's statutes, regulations and case law, as well as the DOR's instructional publications, all support the Petitioner's position that structures located on a tract of agricultural real property, which are not used as a "legal residence" or "other business for profit," are classified as agricultural real property and their taxable value is included in the tract's "fair market value for agricultural purposes."

The South Carolina Constitution requires certain properties to be taxed as "agricultural real property." "Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to: (A) four percent of its value for such purposes." S.C. CONST. Art. X, § 1; see also S.C. Code Ann. § 12-43-220(d)(1)(A).

Under South Carolina law, if at least 50% of a tract of real property is used for agricultural purposes, the entire tract must be classified and assessed as "agricultural real property" and the Assessor may not carve out and separately assess a small portion of the tract (such as the structures attached thereto), even if it is not being used strictly for agricultural purposes. There are only two exceptions to this rule: (1) "legal" residences of the taxpayer or his immediate family, and (2) when the real property is being used for some other "business for profit." See S.C. Code Ann. §§ 12-43-230, 12-43-220(c)(1); S.C. Code Regs. 117-1780.1 - 117-1780.3.

S.C. Code Ann. § 12-43-230(a) provides:

[T]he words "agricultural real property" shall mean any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture. In the event at least fifty percent of a real property tract shall qualify as "agricultural real property," the entire tract shall be so classified, provided no other business for profit is being operated thereon. The term "agricultural real property" shall include real property used to provide free housing

for farm laborers provided such housing is located on the tract of land that qualifies as agricultural real property.

S.C. Code Ann. § 12-43-230.

S.C. Code Ann. § 12-43-220(d) provides, in pertinent part:

"Fair market value for agricultural purposes" when applicable to lands used for the growth of ... agricultural products, means the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date.

S.C. Code Ann. § 12-43-220(d)(2)(A).

[F]air market value for agricultural purposes must be determined by adjusting the applicable base year value by an amount equal to the product of multiplying the applicable base year value by a percentage factor obtained through the formula provided in this item. For tax year 1988, the applicable base year is 1981. The fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years.

(ii) The percentage factor provided in this item is derived from the most recent edition of the United States Department of Agriculture publication "AGRICULTURAL LAND VALUES AND MARKETS", specifically, from "Table 1--Farm Real Estate Values: Indexes of the average value per acre of land and buildings ..." as listed for this State.

S.C. Code Ann. § 12-43-220(d)(2)(B) (emphasis added). Thus, the tables used to arrive at the Agricultural Use Value include the value of buildings in the calculation.

Moreover, the definition of "real property" includes the structures and improvements on the land. "Real property" shall mean not only land, city, town and village lots but also all structures and other things therein contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot." S.C. Code Ann. § 12-37-10(1). DOR's publication, *South Carolina Property Tax* § 110.1, states, "'Real property' means not only land, but also all structures and other things therein contained or annexed or attached to the land that pass... by the conveyance of the land." *Id.* (emphasis added).

Finally, I am convinced by the legislative history of the relevant statutes that the General Assembly intended for the value of buildings and improvements to be subsumed within the calculation of Agricultural Use Value. Agricultural Use Values were first enacted in 1975 by Act 208 § 2(d).² Similar to today's § 12-43-220(d), Act 208 provided a tax break for agricultural "real

² 1975 Act 208, § 2(d) stating in part: "(d) Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to four percent of its fair market value for such purposes..."

property." However, things changed between 1976 and 1979 with the enactment of 1976 Act 618. The 1976 Act 618, § 5 amended Act 208, § 2(d) of 1975 – changing the statutory language from "agricultural *real property*" to "agricultural *land*".³ Act 618 also added what is now § 12-43-220(d)(2)(A), but it did not contain references to "land" for growth of timber until three years later. The General Assembly then changed the reference from agricultural "*land*" back to agricultural "*real property*" in 1979 Act 133, § 2.⁴

For a period of three years in 1976-1978, South Carolina's agricultural real property valuation statute (what is now § 12-43-220(d)) specifically applied only to agricultural "land." However, in 1979 the General Assembly amended § 12-43-220(d)(1), so that "fair market value for agricultural purposes" would apply not only to agricultural "*land*," but to agricultural "*real property*" which, by definition, includes both the land and all structures attached thereto. The change from agricultural "land" to "real property" was the only change made to § 12-43-220(d)(1) in Act 133. This portion of (§ 12-43-220(d)(1) has not changed since it was amended by Act 133 of 1979.¹ Therefore, in 2011 the

³ 1976 Act 618, § 5 (underline and 2nd bold added) stated:

SECTION 5. Tax assessment on agricultural land. – Section 2(d) of Act 208 of 1975 is amended to read:

(d)(1) Agricultural land which is actually used for such agricultural purposes shall be taxed on an assessment equal to

(A) Four percent of its fair market value for such agricultural purposes for owners or lessees who are individuals or partnerships and certain corporations which do not:

(2) 'Fair market value for such agricultural purposes' is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of like soil in the locality or a reasonable area of the locality, not including the agricultural products thereon. Soil capability means the capability of the soil to produce typical agricultural products of the area considering any natural deterrents to the potential capability of the soil as of the current assessment date.

⁴ 1979 Act 133 (emphasis added) stated:

No. 133

An Act To Amend Sections 12-43-220 And 12-43-230, Code Of Laws Of South Carolina., 1976, As Amended, Relating To Equalization And Reassessment Program For Real Property, And To The Definition Of The Term "Agricultural Real Property" For Purposes Of Tax Assessment, So As To Change The Reference From Agricultural Land To Agricultural Real Property And To Include Property Used To Provide Free Housing For Farm Laborers In The Definition Of "Agricultural Real Property".

Taxing of real property

SECTION 2. Subitem (1) of item (d) of Section 12-43-220 of the 1976 Code, as last amended by Act 438 of 1978, is further amended by striking the word "land" on line one and inserting "real property". When amended, the subitem shall read:

"(1) Agricultural real property which is actually used for such agricultural purposes shall be taxed on an assessment equal to:

(A) Four percent of its fair market value for such agricultural purposes:"

Agricultural Use Value for Petitioner's Property already included the value of the structures on Petitioner's Property. The Assessor's separate assessment and taxation of the Petitioner's farm buildings was improper and constituted a double taxation.

Finally, Respondent asserts that the multiple references in § 12-43-220(d) to "fair market value for agricultural purposes" applying to "land" used for growth of timber or other agricultural products in supports that the position Agricultural Use Value only applies to land, and does not include the structures thereon. The repeated use of the term "land" in § 12-43-220(d)(2) was added by 1979 Act 199, Part II, § 23. A review of Act 199 shows the General Assembly included an introductory paragraph in Act 199, § A, identifying South Carolina's substantial timber production, and expressing the need to distinguish property used for farming trees versus other crops, and the need to value property used for timber growth differently than property used to produce other agricultural products.⁵ Therefore, references to timber or crop "land" in § 12-43-220(d)(2) were

⁵ 1979 Act 199 states:

A. The General Assembly *finds* that a *substantial part* of the lands used for the growth of agricultural products in this State is in fact *used for the growth of timber*. The remainder of land used for the growth of agricultural products is applied to the growth of many other diverse agricultural products. *Because of this situation* the General Assembly finds that the income from timberlands should be used to determine the use value of such lands and income of lands used to produce other agricultural products should be used to determine the use value of those lands. The General Assembly further finds that a locality may appropriately include more than one county and be designated as a region.

B. The first paragraph of item (2) of subsection (d) of Section 12-43-220 of the 1976 Code, as last amended by Act 438 of 1978, is further amended to read:

'Fair market value for such agricultural purposes' when applicable to land used for the growth of timber is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents of such lands for timber growth or by capitalization of typical net income of similar soil in the region or a reasonable area of the region from the sale of timber, not including the timber growing thereon, and when applicable to land used for the growth of other agricultural products the term is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region or a reasonable area of the region, not including the agricultural products thereon. Soil capability when applicable to lands used for the growth of timber products means the capability of the soil *to produce* such timber products of the region considering any natural deterrents to the potential capability of the soil of the current assessment date. The term when applicable to lands used for the growth of other agricultural products shall mean the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The term 'region' shall mean that geographical part of the State as determined by the Tax Commission to be reasonably similar for the production of such agricultural products.

C. The provisions of Section 12-43-220 of the 1976 Code amended in paragraph B shall apply to the tax year 1979 and thereafter.

attempts to distinguish areas used for growing timber versus other products, and not an expression of the General Assembly's intent for "fair market value for agricultural purposes" to only apply to land.

Based on the foregoing, I find that judgment should be entered in favor of the Petitioner. The statutory classification of "agricultural use value" includes the value of the structures located on Petitioner's property. Therefore, the property that is the subject of this matter should be assessed and taxed based on its "fair market value for agricultural purposes." That value must be calculated using the formula set forth in S.C. Code Ann. § 12-43-220(d)(2). Buildings and improvements located on the property may not be separately valued because their value is included in, and subsumed by, the fair market value for agricultural purposes.

ORDER

IT IS THEREFORE ORDERED that the Petitioner's Motion for Summary Judgment is **GRANTED** and Respondent's Cross Motion for Summary Judgment is **DENIED**.

IT IS FURTHER ORDERED that the Board's final decision in this matter is reversed. The Petitioner's Property identified as TMS #6-68-00-016.00 shall be assessed and taxed based on its agricultural use value alone without adding a separate value for the improvements on the Property.

AND IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

November 19, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin E. Coleman

Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

November 19, 2013
Columbia, South Carolina

FILED

November 19, 2013
SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

William J. Montgomery, Petitioner,	)	Docket No. 2013-ALJ-17-0104-CC
	)	
v.	)	Petitioner's Motion for Summary Judgment and Memorandum of Law
	)	
Spartanburg County Assessor, Respondent.	)	(Contested Case)

The Petitioner, William J. Montgomery ("Montgomery" or "Petitioner"), moves the Court, pursuant to SCRCP 56 for Summary Judgment. In support of this Motion, Petitioner would show the Court that there are no genuine issues of material fact and Petitioner is entitled to judgment as a matter of law. Petitioner incorporates the following Memorandum of Law.

Standard of Review

"[A]lthough a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing." Reliance Ins. Co. v. Smith, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997). See also, Savannah Riverkeeper v. SCDHEC, 400 S.C. 196, 205, 733 S.E.2d 903, 907 (2012).

This case comes to this Court on Petitioner's Motion for Summary Judgment. Summary Judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 SC 440, 452, 548 S.E.2d 868, 874 (2001).

STATEMENT OF THE CASE

This is a case of statutory interpretation. South Carolina's Constitution and statutes require certain properties to be assessed as "agricultural real property." South Carolina statutes require that "agricultural real property" be valued and assessed at its "fair market value for agricultural purposes," which is based on "*the productive earning power based on soil capability*." See S.C. Code Ann. § 12-43-220. The South Carolina Department of Revenue establishes categories of soil and classifications. Counties must use these categories and classifications when assessing the value of agricultural real property.

The issue in this case is whether structures on a tract of agricultural real property may be assessed and taxed at full fair market value, separately from the property on which they sit; or whether the structures are part of the agricultural real property tract, and their taxable value is already included in and subsumed by the tract's "fair market value for agricultural purposes" as used in S.C. Code Ann. § 12-43-220(d).

STATEMENT OF FACTS

The taxpayer William J. Montgomery ("Montgomery" or "Petitioner") owns a farm located in Spartanburg County, South Carolina: TMS#: 6-68-00-016.00, 891 Lebanon Rd. (150.4 acres) in the town of Pauline (hereinafter the "Parcel" "Tract" or "Property"). The Petitioner has appealed the Property's 2011 tax assessment. The Spartanburg County Assessor (the "Assessor") classified Petitioner's Tract as "agricultural real property." The Property has three buildings: two small barns or sheds (the "barn") and a small mobile home that once was as an office for a used car dealership

(the "house"). Petitioner purchased the house for \$6,000.00¹, moved it to the Property, and set it up as the headquarters for farm. It has never been anyone's "legal residence." The day's farming tasks are often planned there. It also serves as a meeting place for contractors and workers, and a shelter for the persons who perform work and maintenance at the farm. The mobile home contains bunk beds and sometimes houses the people who use the tractors, implements, equipment and tools, who spray the herbicides, who plant the seeds and trees, and who spread the lime and fertilizer as a part of farming operations.

The farm's structures are used to store farming equipment, tools, UTV's used in farm operations, spraying equipment, spreaders, tractors, tractor and tractor implement parts and manuals, fertilizer, lime, seed, herbicides, and other supplies used in farming operations. This is where farming equipment is cleaned, repaired, refueled, serviced, and otherwise maintained. The buildings are predominantly used for agriculturally related activities. These structures have *not* been used for some *other business for profit*, but rather serve functions related to the agricultural use of the real estate.²

The Assessor agreed that the vast majority of the Parcel is being used for agricultural purposes—primarily forestry. Initially, the Assessor valued the vast majority of the Tract using its statutory "fair market value for agricultural purposes" or Agricultural Use Value, but the Assessor carved out the structures and one (1) acre surrounding the structures, and separately assessed the structures and acreage at 6% percent of their "fair market value." The Assessor now properly assesses and taxes the Tract's *entire* 150.4 acres at four percent (4%) of its "fair market value for agricultural

¹ Even though Petitioner paid \$6,000 for this building, the Assessor has assessed its "fair market value" at \$33,000.

² See Montgomery Affidavit attached as Exhibit A.

purposes," but he assesses the buildings at four percent (4%) of their "fair market value," and adds this assessment to the statutory "fair market value for agricultural purposes."³

Petitioner contends that the *entire tract* must be assessed as agricultural real property, and the Assessor cannot carve out a small portion of the tract, even if it were not being used strictly for agricultural purposes. *See Jasper County Tax Assessor v. Westvaco Corp.*, 305 S.C. 346, 347-48, 409 S.E.2d 333, 334 (1991). Petitioner contends that the Assessor's carving out and separately assessing the structures is contrary to the plain language of the statutes. Petitioner contends that the value of these structures is subsumed in the statutory calculation of the agricultural real property value. The structures should not be assessed and taxed separately from the rest of the Tract.

ARGUMENT

The statutory definition of "real property" (and likewise "agricultural *real property*") includes all structures attached thereto. See S.C. Code Ann. § 12-37-10; see also South Carolina Department of Revenue's publication, *South Carolina Property Tax* § 110.1 (2010)⁴; and, S.C. CODE REG. 117-1700.1. If *at least 50%* of a tract of real property is used for agricultural purposes, the *entire tract* must be classified and assessed as "agricultural real property." See S.C. CODE ANN. § 12-43-230.

³ Agricultural real property's tax assessment value is its "fair market value for agricultural purposes." *The statutory definition of "fair market value for agricultural purposes" specifically includes a "building" value component.* See S.C. CODE ANN. § 12-43-220(d)(2)(B)(ii) (Stating "The percentage factor provided in this item is derived from the most recent edition of the United States Department of Agriculture publication "AGRICULTURAL LAND VALUES AND MARKETS", specifically, from 'Table 1—Farm Real Estate Values: Indexes of the average value per acre of land and buildings . . .' as listed for this State.") (emphasis added).

⁴ See *infra* Part I, § B.

There are *only two exceptions* to this rule: (1) "legal" residences of the taxpayer or his immediate family, and (2) when the real property is being used for some other "business for profit." See S.C. CODE ANN. §§ 12-43-230, 12-43-220(c)(1); S.C. CODE REGS. 117-1780.1 – 117-1780.3. These two statutory exceptions are the *only* circumstances that allow part of an agricultural real property tract to be assessed and taxed at its full fair market value. Neither exception applied to Petitioner's Property in 2011. The General Assembly has thus determined that the value of sheds, barns, storage facilities, and other structures on agricultural real property are incidental to and are subsumed in the statutory calculation of the tract's agricultural real property assessment value (its "fair market value for agricultural purposes" or "Agricultural Use Value").

The statutory method of classifying and valuing a tract of real property that qualifies as agricultural real property is comprehensive and includes all improvements located on that tract of agricultural real property, excepting only (1) legal residences of the taxpayer or his immediate family, and (2) real property used for some "other business for profit." The Assessor has departed from the statute by carving out, assessing and taxing at "*fair market value*" all structures located on a tract of agricultural real property. This amounts to double taxation.

I. "FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES" ALREADY INCLUDES THE VALUE OF THE STRUCTURES.

South Carolina's statutes, regulations and case law, as well as the Department of Revenue's instructional publications, all support the Petitioner's position that structures located on a tract of agricultural real property, which are not used as a "legal residence" or "other business for profit," are classified as agricultural real property and their taxable value is included in the tract's "fair market value for agricultural purposes." Therefore,

the value of the Petitioner's structures was included in the Parcel's Agricultural Use Value, and it was improper for the Assessor to tax them separately at "fair market value."

A. The South Carolina Constitution requires a separate method of taxation for agricultural purposes.

The South Carolina Constitution requires certain properties to be taxed as "agricultural real property." "*Agricultural real property* which is actually used for such purposes shall be taxed on an assessment equal to: (A) *four percent* of its *value for such purposes*." S.C. CONST. art. X, § 1 (emphasis added); see also S.C. CODE ANN. § 12-43-220(d)(1)(A).

B. The South Carolina Code includes structures in agricultural real property.

Real property (and likewise "*agricultural real property*") specifically includes all structures attached thereto. "*Real property*" shall mean not only land, . . . but also *all structures* and other things therein contained or annexed or *attached thereto* which pass to the vendee by the conveyance of the land." S.C. CODE ANN. § 12-37-10 (1) (emphasis added).

Under South Carolina law, if *at least 50%* of a tract of real property is used for agricultural purposes, the *entire tract* must be classified and assessed as "agricultural real property" and the Assessor may not carve out a portion of the tract even if a small portion is not being used strictly for agricultural purposes. S.C. CODE ANN. § 12-43-230; Jasper County Tax Assessor v. Westvaco Corp., 305 S.C. 346, 347-48, 409 S.E.2d 333, 334 (1991).

South Carolina's statutes require properties classified as "agricultural real property" be valued and assessed at its "fair market value for agricultural purposes," which is a statutory value, based on "*the productive earning power based on soil*"

capability." S.C. CODE ANN. § 12-43-220(d). This statutory formula includes the value of structures on the agricultural real property. See also *infra* Part I, §§ C - E.

The Assessor agrees that the entire Parcel is properly classified as "agricultural real property." By agreeing that the entire Parcel is properly classified as "agricultural real property," and that it shall be taxed at a 4% ratio, the Assessor concedes that he erred in initially carving out the house, the barns and one acre for treatment different from the rest of the Parcel, and in assessing them at 6%.

Section 12-43-230 defines "agricultural real property."

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

S.C. CODE ANN. § 12-43-230 (emphasis added).

Like ordinary real property, agricultural real property includes the improvements and structures. The value of these structures is subsumed in the property's "fair market value for agricultural purposes." Improvements such as a farmhouse, barn or outbuilding, do not change the essential agricultural character of a tract of agricultural real property. Each is part and parcel of a farming enterprise. See Rabbit Point Farm Limited, 1998 WL 85460, at *3. Accordingly, agricultural real property specifically includes:

- (1) structures used to store crops (such as silos or granaries, hay barns, tobacco barns and drying sheds, or other crop storage buildings or structures), S.C. CODE ANN. § 12-43-230(a);
- (2) structures used to raise, store, feed, breed or manage livestock (such as poultry houses, hog sties, stables or barns), Id.;
- (3) structures used in the preparation of farm products – particularly those for dairying (such as milking parlors, and other milk or dairy product production and storage facilities), Id.;
- (4) structures used as free *housing* for farm laborers, Id.; and
- (5) dockside *facilities*, S.C. CODE ANN. § 12-43-220(d)(5).⁶

“In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” Lexington Law Firm v. S.C. Dep’t of Consumer Affairs, 382 S.C. 580, 588, 677 S.E.2d 591, 595 (2009)(citations omitted). “[L]egislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” Id.; see also, Rabbit Point Farm Limited v. Charleston County Assessor, No: 97-ALJ-17-0501-CC, 1998 WL 85460 (S.C. Admin. Law Ct. 1998).

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 a legislature says in the *text of a statute* is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.

⁶ “(5) Any other provision of law to the contrary notwithstanding, a *dockside facility* . . . is considered agricultural real property.” S.C. Code Ann. § 12-43-220(d)(5).

If a statute's terms are clear and unambiguous, they must be taken and understood in their *plain, ordinary and popular sense*, unless it fairly appears from the context that the Legislature intended to use such terms in a technical or peculiar sense. The prime object, of course, in the construction of a statute is to ascertain and give effect to the legislative intent.

Media Gen. Commc'ns, Inc. v. S. Carolina Dep't of Revenue, 388 S.C. 138, 147-48, 694 S.E.2d 525, 529-30 (2010) (citations omitted) (emphasis added).

South Carolina's statutes repeatedly indicate that agricultural real property includes the attached structures. In 2007, the General Assembly enacted S.C. CODE ANN. § 12-43-233, which enumerated specific agritourism activities were not considered an "other business for profit."⁷ Therefore, on those tracts, the structures used in the agritourism activities retain their agricultural real property classification and assessment value, and avoid the "other business for profit" exception. Section 12-43-233 ensured that the assessment value of structures used in agritourism activities such as: roadside stands, wineries, education barns, farm schools, farm stores, on-farm fee fishing and hunting, and dude ranches, would not be carved out and assessed separately at full fair market value, but rather continue being assessed as part of the agricultural real property's "fair market value for agricultural purposes." See S.C. CODE ANN. § 12-43-233.⁸

⁷ "Other business for profit" is one of only two (2) exceptions for property otherwise qualified as agricultural real property. S.C. CODE ANN. § 12-43-230

⁸ S.C. CODE ANN. § 12-43-233 states:

(A) In addition to and incidental to the uses required for real property to be classified as agricultural real property pursuant to Sections 12-43-220(d), 12-43-230(a), and 12-43-232, and applicable regulations, uses of tracts of agricultural real property for "agritourism" purposes is deemed an agricultural use of the property to the extent agritourism is not the primary reason any tract is classified as agricultural real property but is supplemental and incidental to the primary purposes of the tract's use for agriculture, grazing, horticulture, forestry, dairying, and mariculture. These supplemental and incidental agritourism uses are not an "other business for profit" for purposes of Section 12-43-230(a). For purposes of this section, agritourism uses include, but are not limited to: *wineries*, educational tours, education *barns*, on-farm historical reenactments, *farm schools*, *farm stores*, living history farms, on-farm heirloom plants and animals, *roadside stands*, agricultural processing demonstrations, on-farm collections of old farm machinery, agricultural festivals, on-farm theme playgrounds for children, on-farm fee

C. "Fair market value for agricultural purposes" is based on a federal table that includes land and buildings.

The statutory definition of "fair market value for agricultural purposes" incorporates a federal table that values land and buildings together. Section 12-43-220(d)(2)(B)(ii)⁹ prescribes how "fair market value for agricultural purposes" must be calculated, stating "[t]he percentage factor provided in this item is derived from the most recent edition of the United States Department of Agriculture publication 'AGRICULTURAL LAND VALUES AND MARKETS', specifically, from 'Table 1--Farm Real Estate Values: Indexes of the average value per acre of land and buildings . . . ' as listed for this State." S.C. CODE ANN. § 12-43-220(d)(2)(B)(ii) (emphasis added). A copy of the referenced Table 1 from the USDA publication for tax years 1990 and 1991 are attached hereto as **Exhibit B**.

Section 12-43-220(d)(2)(B)(i) states that the "fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years."

fishing and hunting, pick your own, farm *vacations*, on-farm pumpkin patches, farm tours, horseback riding, horseback sporting events and training for horseback sporting events, cross-country trails, on-farm food sales, agricultural regional themes, hayrides, mazes, crop art, harvest theme productions, native ecology preservations, on-farm picnic grounds, *dude ranches*, trail rides, Indian mounds, earthworks art, farm animal exhibits, bird-watching, stargazing, nature-based attractions, and ecological-based attractions. (emphasis added).

⁹ S.C. CODE ANN. § 12-43-220 (d)(2)(B)(i-ii):

(B)(i) For tax year 1988 and subsequent tax years, *fair market value for agricultural purposes must be determined* by adjusting the applicable base year value by an amount equal to the product of multiplying the applicable base year value by a percentage factor obtained *through the formula provided in this item*. For tax year 1988, the applicable base year is 1981. The fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years.

(ii) *The percentage factor provided in this item is derived from* the most recent edition of the United States Department of Agriculture publication "AGRICULTURAL LAND VALUES AND MARKETS", specifically, from "Table 1--Farm Real Estate Values: Indexes of the average value per acre of land and buildings . . . " as listed for this State. The formula to determine the applicable percentage factor is the index of the year of change less the index of the base year with the resulting amount being divided by the index of the base year and rounded to the nearest whole number. For purposes of the formula, the base year is the last year in which values were adjusted under this item. (emphasis added).

Therefore, the values contained in Table 1 of the 1991 USDA publication apply currently, and shall apply from now on.

In addition to Table 1 referenced above, the 1991 USDA publication *Agricultural Land Values and Markets* also contained a nearly identical table, which included the average value per acre of *only* farmland. (See "*Table 5.—Average per acre value of farmland, by State*" included in Exhibit B.) Had the General Assembly intended to tax the buildings separately from the lands in the calculation of "fair market value for agricultural purposes," it could have referenced Table 5 (which excluded building values) instead of Table 1 (which included the values of both land and buildings) in § 12-43-220(d)(2)(B)(i), but the General Assembly referenced Table 1, land *and buildings*.

D. South Carolina Regulations.

The Regulations similarly define real property. The Regulations include land and buildings, including many agricultural buildings, in their definition of real property.

Section 1: Purpose: Section 12-43-230(c) that the Tax Commission shall provide by regulation a definition for real and personal property. This regulation is therefore adopted pursuant to this section so as to provide for a definition to be used by the Tax Commission and other assessing officials in connection with the assessment of property.

Section 2: For the purpose of classifying property for taxation, *land, buildings* and items of property devoted primarily to the general use of the *land and buildings*, and all other property which according to custom has been considered to be real property, *are defined as real property*; and all other items of property are defined as personal property. The following items are hereby *classified as real property for purposes of taxation*:

...

Buildings--Real: Structural and other improvement to buildings, including their foundations, walls, floors, roof, insulation, stairways, partitions, loading and unloading platforms and canopies, areaways, systems for heating and air conditioning, ventilating, sanitation, fixed fire protection, lighting, plumbing, and drinking water, building elevators and escalators.

...

Drying rooms structure—Real

...

Silos--all storage silos—Real

...

Storage facilities permanent, of masonry or wood—Real

S.C. CODE REG. 117-1700.1 (emphasis added).

The Regulations also follow the same statutory scheme for classification and valuation of agricultural real property. See S.C. CODE REG. 117-1700.1 (real property and agricultural real property include the structures attached thereto); S.C. CODE REG. 117-1780.1-1780.2 (defining what real property qualifies as agricultural real property); S.C. CODE REG. 117-1780.2, -1780.3 (if at least 50% of a tract qualifies as "agricultural real property" the entire tract shall be classified as agricultural real property); S.C. CODE REG. 117-1780.2, -1780.3 (any portion of an agricultural real property tract that is used for a legal residence or for some "other business for profit" shall be excluded from the agricultural real property classification); S.C. CODE REG. 117-1840 (providing tables of the values per acre for the fair market value for agricultural purposes of agricultural real property).

The words of the statute control over the words of the regulation. "Although a regulation has the force of law, it must fall when it alters or adds to a statute."

McNickel's Inc. v. South Carolina Dept. of Revenue, 331 S.C. 629, 634, 503 S.E.2d 723, 725 (1998).

An administrative regulation is valid so long as it is reasonably related to the purpose of the enabling legislation. Hunter & Walden Co. v. South Carolina State Licensing Board for Contractors, 272 S.C. 211, 251 S.E.2d 186 (1978). However, although *regulations* have the force of law, they *may not alter or add to the terms of a statute*. Goodman v. City of

Columbia, 318 S.C. 488, 458 S.E.2d 531, (1995); Society of Professional Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984).

U.S. Outdoor Advertising, Inc. v. South Carolina Dept. of Transp., 324 S.C. 1, 3-4, 481 S.E.2d 112, 113 (1997). In this case, the words of the relevant regulations match the words and reasoning of the statutes, and there is no conflict. Both hold that agricultural real property includes attached structures, and that the values of the structures on agricultural real property are subsumed within the "fair market value for agricultural purposes." They are not taxed separately. This Court has ruled in accord with this principle: "The value of the taxpayer's property consists of the whole property, and not of separate items of land and improvements. 84 C.J.S. *Taxation* § 404 (1954)." Barrett v. Georgetown County Assessor, No. 95-ALJ-17-0294-CC, 1995 WL 929813 (S.C. Admin. Law Ct. 1995) (Stevens, J.). "Real estate is assessed in its entirety and is not an assessment of separate portions of the property. . . . A residence consists of a lot and a house as a whole, not as separate parts." Weddle v. Charleston County Assessor, No.: 95-ALJ-17-0525-CC, 1995 WL 930077 (S.C. Admin. Law Ct. 1995) (Stevens, J.).

E. The DOR Guide.

The South Carolina Department of Revenue publishes a guide for South Carolina Assessors entitled *South Carolina Property Tax* (2010) ("the D.O.R. Guide" or the "Guide") attached hereto as Exhibit C. The Guide contains "procedures" or "instructions" that the Department of Revenue is required to issue, and pursuant to S.C. CODE ANN. § 12-60-1720, county assessors' must comply with the procedures and instructions.

Like the regulations, the Guide follows the same statutory scheme for classification and valuation of agricultural real property. See D.O.R. Guide § 110.1

(2010) (real property and agricultural real property include the structures attached thereto); D.O.R. Guide § 212 (real property used for agricultural purposes is classified as agricultural real property); D.O.R. Guide § 222.2 (defining what real property qualifies as agricultural real property); D.O.R. Guide § 212 (agricultural real property shall be assessed and taxed at 4% of its fair market value for agricultural purposes); D.O.R. Guide §§ 212, 222 (“fair market value for agricultural purposes” is a “special valuation” that applies to agricultural real property); D.O.R. Guide § 222.1 (“fair market value for agricultural purposes” is based on the productive earning capacity of the soil); and, D.O.R. Guide § 222.2 (agricultural real property includes dockside facilities and free housing for farm laborers).

South Carolina treats agricultural real property valuation differently from all other real property. The Guide also treats the valuation of agricultural real property different from the valuation of other real property. Ordinary property is to be appraised to determine fair market value. “*Real property (other than agricultural real property . . .) is appraised* to determine fair market value.” D.O.R. Guide, PART I: § 001(C)(1) VALUATION, p. 1 (emphasis added). Agricultural real property is not. Similarly, § 221.4 of the Guide carries the same distinction between ordinary real property and agricultural real property. See D.O.R. Guide § 221.4 (2010)¹⁰. Because agricultural real property is treated differently, S.C. CODE ANN. § 12-37-930 does not apply to agricultural real property. Throughout the 90+ pages of the Guide, there is no directive to county assessors to calculate a tract’s “fair market value for agricultural purposes,” and then add the fair market value of any buildings or structures on the property. If this were the

¹⁰ § 221.4. Valuation of Real Property. Real property, *other than agricultural real property* (see §222 below) . . . is appraised to determine fair market value.” D.O.R. Guide § 221.4 (2010)(emphasis added).

proper statutory construction, surely the Guide would have clear directives to that effect.

F. This Court's Decisions.

On two occasions, taxpayers have presented this same issue to this Court. In two clear cases, this Court ruled that the taxpayer's houses, barns, and other structures located on tracts of agricultural real property should be classified as agricultural real property, and the entire tract, including the structures, should be assessed at the tract's "fair market value for agricultural purposes" or Agricultural Use Value. See Smith et al. v. Clarendon County Assessor, No.: 11-ALJ-17-0191-CC, 2011 WL 7119293 (S.C. Admin. Law Ct. 2011); and Rabbit Point Farm Limited v. Charleston County Assessor, No: 97-ALJ-17-0501-CC, 1998 WL 85460 (S.C. Admin. Law Ct. 1998).

1. Smith et al. v. Clarendon County Assessor.

The Smith case involved the classification and assessment valuation of two houses previously used as residences, multiple barns, sheds and outbuildings. The assessor had assessed all structures at their full fair market value and then added it to the agricultural use value of the Smiths' property. Smith et al. v. Clarendon County Assessor, No.: 11-ALJ-17-0191-CC, 2011 WL 7119293 (S.C. Admin. Law Ct. 2011).

Relying on § 12-43-230, this Court found the majority of the taxpayers' property was used for agricultural purposes and qualified as agricultural real property, and therefore, the entire property "both land and structures" must be classified and assessed as "agricultural real property." Smith, 2011 WL 7119293, at *2-3.

As in our case, the Clarendon County Assessor had claimed that the Smiths' structures must be valued at their "true money value" or "fair market value." However, the Smith court correctly held that the *only* time that "fair market value" should be

applied to agricultural real property is when establishing the property's value for the assessor's own records in case the property became subject to roll-back taxes. Id. at *3.

The Smith court agreed with the taxpayers that property properly classified as agricultural real property must be assessed at its "fair market value for agricultural purposes," which is the property's productive earning power based on soil capability. Id. at *3-4. The Smith court concluded its decision by holding,

The statutory classification of 'agricultural use value' clearly includes the value of the structures located on Petitioners' property, other than the residence of the Petitioners or immediate family. Therefore, the properties that are the subject of this matter should be assessed and taxed based on their "fair market value for agricultural purposes."

Smith, 2011 WL 7119293 at *4. This holding was affirmed in the court's October 31, 2011, Order responding to the Clarendon County Assessor's motion for reconsideration.

2. Rabbit Point Farm Limited v. Charleston County Assessor.

Thirteen years prior to the Smith case, this Court held in Rabbit Point Farm Limited v. Charleston County Assessor, No: 97-ALJ-17-0501-CC, 1998 WL 85460 (S.C. Admin. Law Ct. 1998) that the structures and improvements on a tract of agricultural real property were classified as agricultural real property, and must be assessed and taxed as part of the property's fair market value for agricultural purposes. In Rabbit Point Farm all of the taxpayer's 300.3 acre parcel had been classified and assessed as agricultural real property except for one acre containing a house with an attached wooden ramp leading to a dock and boat house. The assessor had assessed the one acre and the house with its improvements at 6% of their fair market value, and the taxpayer appealed. Id. at *2.

The Assessor asserted the construction of the house and other improvements changed the character of the property, and disqualified it from the agricultural

classification. Rabbit Point Farm, 1998 WL 85460, at *3. This Court disagreed, finding that the house was used in conjunction with the agricultural usage of the property, was used primarily for the maintenance and upkeep of the farm, and served as a farm office. The Court determined that the usage of the house was incidental to the farm business conducted therein. Id.

This Court construed the applicable statutes and regulations by their plain and ordinary meaning without resorting to subtle or forced construction, and found the taxpayer's house, which had not been used as a legal residence, was:

an improvement similar to a barn or outbuilding, which does not change the essential agricultural character of the property. Each is part and parcel of a farming enterprise. . . . Even though the construction of a building or house on a property constitutes an improvement to the real property, unless it changes the character of the property and the usage of the property, . . . the property retains its agricultural classification for tax purposes.

Id.

The Court ordered, "the Taxpayers' property containing 300.3 acres, *specifically including the farm house and attachments* . . . must be classified as agricultural real property" and assessed as such. Rabbit Point Farm, 1998 WL 85460, at *4 (emphasis added).

Petitioner's Parcel is classified as "agricultural real property" in its *entirety*. No part of the Parcel is used as a "legal residence" or for some "other business for profit." Similar to Smith and Rabbit Point Farm, Petitioner's Parcel contains buildings that are used in conjunction with Petitioner's farming operations. (See Montgomery Affidavit attached as Exhibit A). None of the improvements on Petitioner's Parcel has changed the agricultural character of the Property. Indeed, this Court in Smith and Rabbit Point Farm held that even improvements not strictly associated with agriculture did not affect

the character of the property, were classified as agricultural real property and assessed as part of the property's fair market value for agricultural purposes.

In accord with Smith and Rabbit Point Farm, Petitioner's structures are part of the agricultural real property, and are subsumed by and included in the calculation of the Parcel's Agricultural Use Value or "fair market value for agricultural purposes." Therefore, it was improper for Assessor to separately value Petitioner's structures at full fair market value, and then add that value to the Tract's "fair market value for agricultural purposes." The buildings' separate assessment constituted an improper double taxation.

II. ASSESSOR'S TAXATION METHOD IS UNAUTHORIZED.

Assessor cites *no statutory authority* specifically requiring his method of separate assessment on agricultural real property, in which he first assesses the statutory method for agricultural real property, and then separately assesses and adds the full fair market value of any structures on the tract.

A. S.C. CONST. art. X.

The plain meaning of Article X § 1, calls for the assessment and taxation of agricultural real property at 4% of its fair market value "for such purposes." S.C. CONST. art. X, § 1.¹¹

B. South Carolina Code Ann. § 12-43-220.

"Fair market value" and "fair market value *for agricultural purposes*" are two completely different terms. They are not interchangeable. Ordinary real property is taxed at "fair market value." Agricultural real property is not. That kind of taxation would put farmers out of business. Instead, agricultural real property must be taxed using

¹¹ "Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to: (A) *four percent of its value for such purposes*." S.C. CONST. art. X, § 1 (emphasis added).

a “special valuation” that only applies to agricultural real property—its “fair market value for agricultural purposes.” See D.O.R. Guide §§ 212, 222. As stated at the outset, this concept is in the State Constitution. It flows through the statutes and regulations, and it must be applied by this Court.

Section 12-43-220 itself specifically defines “fair market value for agricultural purposes” as the productive earning capacity of the soil and provides the formula for how this value is calculated. This formula specifically includes a building value component.¹³ The statute defines “fair market value” of real property separately from “fair market value *for agricultural purposes*.” These two terms are distinguished throughout the statutes, regulations, and the Guide. The Assessor seeks to impose a “fair market value” standard on agricultural real property, without statutory authorization.

The statutory method of classifying a tract of real property as “agricultural real property,” and valuing the tract at its Agricultural Use Value is comprehensive and includes all improvements located on that tract of agricultural real property, excepting only (1) “legal” residences of the taxpayer or his immediate family, and (2) real property used for some other “business for profit.” Both agricultural real property and other real property include “not only land, . . . but also all structures and other things therein contained or annexed or attached thereto” S.C. CODE ANN. § 12-37-10 (1); see also D.O.R. Guide § 110.1 (2010); and, S.C. CODE REG. 117-1700.1. Agricultural real property must be assessed at its fair market value for such agricultural purposes, S.C. CODE ANN. § 12-43-220(d)(1)(A), which is a statutorily set value based on the productive earning capacity of the soil. S.C. CODE ANN. § 12-43-220(d).

¹³ See S.C. CODE ANN. § 12-43-220(d)(2)(B)(ii) and *supra* Part I, § C.

C. The South Carolina Real Property Valuation Reform Act.

The 2007 South Carolina Real Property Valuation Reform Act (the "Act") – S.C. CODE ANN. § 12-37-3110 et seq. demonstrates that the General Assembly never intended for structures and improvements to be assessed separately from the agricultural property on which they sit.

The Act mandated the fair market value of *improvements and additions* to property be added to the fair market value of the real property. S.C. CODE ANN. § 12-37-3140(A)(2). However, § 12-37-3170 specifically provided that nothing in the Act would affect the statutory provisions which define and apply to "fair market value for agricultural purposes." The Act would apply only to the imposition of rollback taxes when real property is *changed from* agricultural use. See S.C. CODE ANN. §§ 12-37-3170, and 12-37-3150(9). The General Assembly specifically *exempted* from the Act improvements to *agricultural* real property.

Had the General Assembly intended for the value of structures and other improvements located on a tract of agricultural real property to be assessed and taxed separately from the Agricultural Use Value of the agricultural real property on which they sit (as the Assessor contends), they would not have *exempted agricultural real property* from the Act.

III. AMBIGUITIES MUST BE RESOLVED IN FAVOR OF THE TAXPAYER.

If the taxation statutes and regulations are not clear, ambiguities must be construed in the taxpayer's favor. Alltel Commc'ns, Inc. v. SCDOR, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012) (holding an ambiguity in a tax statute must be construed in the taxpayer's favor); S.C. Nat'l Bank v. S.C. Tax Comm'n, 297 S.C. 279, 281, 376

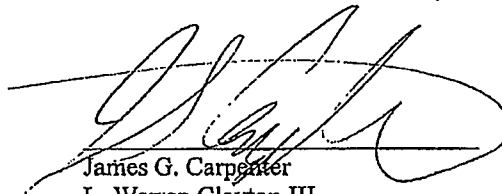
S.E.2d 512, 513 (1989) ("In the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt."); both *cited in* Charleston Cnty. Assessor v. LMP Properties, Inc., Op. No: 5086, 2013 WL 749505 (S.C. Ct. App. Feb. 27, 2013). As stated above, the Petitioner contends that the statutes are clear and should be interpreted to include the value of structures on agricultural real property in its fair market value for agricultural purposes, but should the Court find the statutes ambiguous, those ambiguities must be resolved in favor of Petitioner.

CONCLUSION

Petitioner's interpretation of the law follows the South Carolina Constitution, its statutes, its regulations, and the Department of Revenue's instructional publications. Based on the foregoing authorities, there is no genuine issue of material fact, and this Court should grant Petitioner's Motion for Summary Judgment that the buildings may not be carved out and assessed separately, but rather the structures are part of the agricultural real property tract, and their taxable value is already included in and subsumed by the Tract's "fair market value for agricultural purposes."

July 10, 2013

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.



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L. Warren Clayton III
819 E. North St.
Greenville, SC 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorneys for Petitioner

EXHIBIT A

EXHIBIT A

EXHIBIT A

RECORD 000033

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William J. Montgomery,	)	Docket No. 2013-ALJ-17-0104-CC
Petitioner,	)	
	)	
v.	)	AFFIDAVIT OF WILLIAM J.
	)	MONTGOMERY
	)	
Spartanburg County Assessor,	)	(Contested Case)
Respondent.	)	

Personally appeared before me William J. Montgomery, who first being duly sworn, swears and states as follows:

1. I am over the age of 18 and am legally competent to give this information, which is based upon my own personal knowledge, except as to those things stated upon information and belief, and as to those things, I believe them to be true.
2. I am the owner of a farm partly consisting of 150.4 acres located in Spartanburg County, South Carolina: TMS#: 6-68-00-016.00, 891 Lebanon Rd. in the town of Pauline (hereinafter the "Parcel", "Tract", "Property" or the "Farm").
3. I am currently appealing the Spartanburg County Assessor's (the "Assessor") 2011 real property assessment and taxation of my Farm.
4. The Assessor's original 2011 tax notice included a total assessed value for my Property in the amount of \$3,390.00. Since receiving the initial 2011 tax notice, the Assessor has twice issued a 2011 property value redetermination. My Property's total assessment value was \$1,630.00 (rounded up from \$1,625.00) at the time of my appeal to the Administrative Law Court: (See the Assessor's 2011 assessed values for the Parcel attached hereto as **Exhibit 1**, and incorporated herein by reference).

AFFIDAVIT OF WILLIAM J. MONTGOMERY (MONTGOMERY TAX APPEAL)

Page 1 of 4



RECORD 000034

5. The Property contains three buildings: two small barns or sheds (the "barn") and a small house which is actually a mobile home that was once an office for a used car dealership (the "house" or "farmhouse"). I purchased the house for \$6,000.00¹, moved it to the Property, and established it as the headquarters for my Farm.
6. The Assessor previously carved out one (1) acre, as well as the house and barns from the rest of the Parcel, then assessed and taxed them all at 6% of their full fair market value.
7. Now, the Assessor classifies, assesses and taxes the Tract's *entire* 150.4 acres as agricultural real property, valued at four percent (4%) of its "fair market value for agricultural purposes" or "Agricultural Use Value." The Assessor now applies a four percent (4%) tax ratio to the buildings, but he is assessing the buildings at four percent (4%) of their full "fair market value," which he then adds to the Tract's statutory "fair market value for agricultural purposes."
8. The farmhouse located on the Property has never been used as a legal residence. Also, no portion of the Property was used as a "legal" residence or for some "other business for profit" in 2011.
9. The farmhouse contains and is used as an office for the farm, is the headquarters for my farm operations, and is where the day's farming tasks are often planned. It also serves as a meeting place and shelter for the persons and/or contractors that perform work and maintenance at the farm.
10. Both the house and the barns are used for storage of farming equipment, tools, UTV's used in farm operations, spraying equipment, spreaders, tractors, tractor and tractor implement parts and manuals, fertilizer, lime, seed, herbicides, and other supplies used in

¹ Even though I paid \$6,000 for this building, the Assessor has assessed its full "fair market value" at \$33,000.

farming operations. This is also where farming equipment is cleaned, repaired, refueled, serviced, and otherwise maintained.

11. Also, these structures often house the people who use the tractors, tractor implements, equipment and tools, and who cultivate the soil, who spray the herbicides, who plant the seeds and trees, and who spread the lime and fertilizer while performing farming operations.
12. The house and other structures at the Farm are primarily and almost exclusively used in conjunction with the agricultural usage of the Property. I would estimate that more than 98% of the time I use the house while I am working at the Farm on farming activities.
13. I live close by in Spartanburg, and I own and operate a feed and seed store just a few miles down the road in Pauline. Therefore, there is little need to use the house except for when I am in the midst of farming operations at the Property.
14. The house is rarely used for recreational purposes, and when it is, those times consist of occasional hunting trips by myself or friends.
15. I have not spent the night in the house in probably six or seven years. Furthermore, the house may only be used overnight for one or two nights in a year by friends during hunting season.
16. The house and barns are primarily used for activities which are part of the maintenance and upkeep of the Farm, and are all part of the farming enterprise.
17. I have one full time employee, Bobby Mainville, who assists with my farming operations. Bobby lives next to the Property, and also uses the farmhouse and other buildings for the maintenance and upkeep of the Farm and other farming activities.

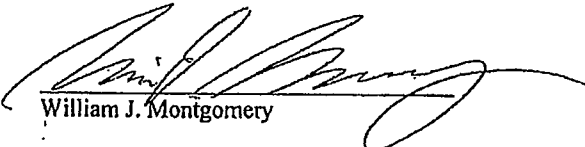
18. The main usage of the Parcel is for pine timber forestry, but I also plant row crops, alfalfa, wheat, and other crops and am currently preparing to install a ten (10) acre apple orchard and a ten (10) acre pecan orchard.

19. The Farm is actively managed for forestry and is part of a forestry management plan. For example, in 2005 I spent over \$18,000 for aerial fertilization of pine trees at the Farm. I also plan on thinning around 150 acres of pine timber this year.

20. Much of my forestry management is performed with the aid of my foresters Steve McMillan and Justin Hilton of Milliken Forestry Company.

I declare that the information provided herein is true and correct to the best of my knowledge, information, and belief.

FURTHER AFFIANT SAYETH NOT.


William J. Montgomery

SWORN to and subscribed before me
this 10th day of July, 2013.


Notary Public for South Carolina
My Commission Expires: 10/7/20

Lewis Warren Clayton III
NOTARY PUBLIC
State of South Carolina
My Commission Expires 10/7/2020

EXHIBIT B

EXHIBIT B

EXHIBIT B

RECORD 000038



United States
Department of
Agriculture

Economic
Research
Service

AR-18
June 1990

Agricultural Resources

Agricultural Land Values and Markets

Situation and Outlook Report

Average Real and Nominal Values
of U.S. Farmland

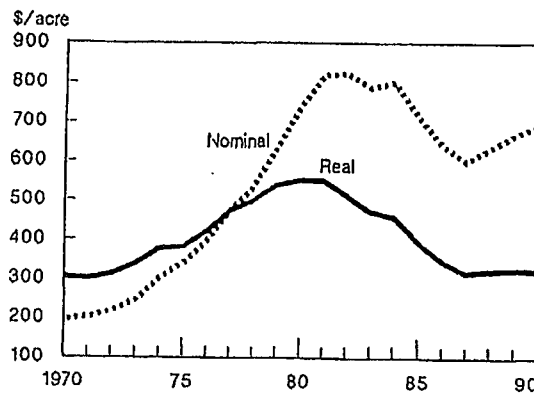


EXHIBIT
B

RECORD 000039

Table 1.--Average per acre value of farmland and buildings, by State, 1983-90 1/

State	As of April 1			As of February 1			As of January 1	Percent change	
	1983	1984	1985	1986	1987	1988	1989	1989-90	
	Dollars							Percent	
Northeast:	1,343	1,391	1,346	1,340	1,491	1,586	1,794	1,802	0
Maine	708	713	774	854	885	962	1,029	1,029	0
New Hampshire	1,174	1,253	1,439	1,682	1,847	2,112	2,260	2,260	0
Vermont	842	862	947	1,060	1,114	1,124	1,203	1,203	0
Massachusetts	1,963	2,083	2,377	2,761	3,012	3,553	3,802	3,802	0
Rhode Island	2,760	2,770	2,990	3,284	3,389	4,748	5,080	5,080	0
Connecticut	2,655	2,723	3,005	3,372	3,557	4,171	4,463	4,463	0
New York	817	848	820	843	960	993	1,053	1,042	-1
New Jersey	3,140	2,959	2,951	2,997	3,729	3,969	4,644	4,737	2
Pennsylvania	1,520	1,596	1,427	1,332	1,540	1,579	1,911	1,911	0
Delaware	1,829	1,840	1,596	1,684	1,677	1,765	2,065	2,334	13
Maryland	2,121	2,236	2,197	2,023	2,009	2,261	2,487	2,512	1
Lake States:	1,160	1,147	952	797	707	788	831	885	6
Michigan	1,223	1,255	1,108	1,012	924	971	1,000	1,060	6
Wisconsin	1,113	1,104	944	836	777	826	867	867	0
Minnesota	1,165	1,131	898	694	587	700	749	831	11
Corn Belt:	1,482	1,449	1,108	972	900	1,003	1,107	1,129	2
Ohio	1,504	1,500	1,215	1,136	1,097	1,199	1,271	1,258	-1
Indiana	1,610	1,647	1,344	1,167	1,061	1,158	1,251	1,288	3
Illinois	1,837	1,845	1,381	1,232	1,149	1,262	1,388	1,416	2
Iowa	1,684	1,518	1,091	873	786	947	1,108	1,130	2
Missouri	856	875	689	648	604	640	678	706	4
Northern Plains:	528	518	412	360	331	368	401	435	8
North Dakota	439	447	373	334	303	319	329	348	6
South Dakota	348	363	289	267	238	269	293	337	15
Nebraska	701	645	485	416	400	457	526	562	7
Kansas	601	597	488	415	373	413	438	473	8
Appalachia:	1,082	1,107	1,035	1,025	1,004	1,037	1,095	1,171	7
Virginia	1,125	1,125	1,112	1,179	1,154	1,198	1,354	1,597	18
West Virginia	688	698	607	616	633	682	716	652	-9
North Carolina	1,314	1,429	1,331	1,254	1,259	1,263	1,339	1,525	-1
Kentucky	1,049	1,034	955	941	878	896	923	1,034	12
Tennessee	1,014	1,024	944	935	936	1,001	1,021	1,052	3
Southeast:	1,092	1,105	1,068	1,038	1,055	1,130	1,202	1,294	8
South Carolina	946	926	898	870	792	871	949	949	0
Georgia	929	921	886	853	889	920	1,003	1,053	5
Florida	1,576	1,645	1,599	1,537	1,605	1,790	1,897	2,125	12
Alabama	826	824	797	803	786	800	832	882	6
Delta States:	1,038	1,074	1,012	880	757	781	803	808	1
Mississippi	894	950	855	778	685	697	718	754	5
Arkansas	972	964	907	779	724	761	784	776	-1
Louisiana	1,351	1,430	1,407	1,191	921	940	959	940	-2
Southern Plains:	574	632	675	579	532	531	518	508	-2
Oklahoma	699	718	597	520	475	480	523	513	-2
Texas	544	612	694	594	546	544	517	506	-2
Mountain:	314	327	300	267	257	257	261	274	5
Montana	259	276	243	233	200	205	209	243	16
Idaho	814	808	739	631	552	572	601	685	14
Wyoming	193	199	181	159	157	147	143	153	7
Colorado	454	469	437	360	368	369	369	369	0
New Mexico	178	194	185	161	156	180	193	200	4
Arizona	289	311	295	271	299	279	276	268	-3
Utah	560	570	513	476	451	425	425	404	-5
Nevada	249	262	244	219	240	227	234	201	-14
Pacific:	1,356	1,399	1,293	1,201	1,084	1,089	1,140	1,208	6
Washington	933	972	943	840	756	739	769	815	6
Oregon	705	719	615	570	541	542	542	602	11
California	1,918	1,981	1,841	1,730	1,554	1,575	1,670	1,753	5
48 States	788	801	713	640	599	632	667	693	4

1/ Current dollars. Revised 1984-89 values based on values from the 1987 Census of Agriculture. Details in special report, "Revisions in the Farmland Value Series."



Economic
Research
Service

AR-22
June 1991

Agricultural Resources

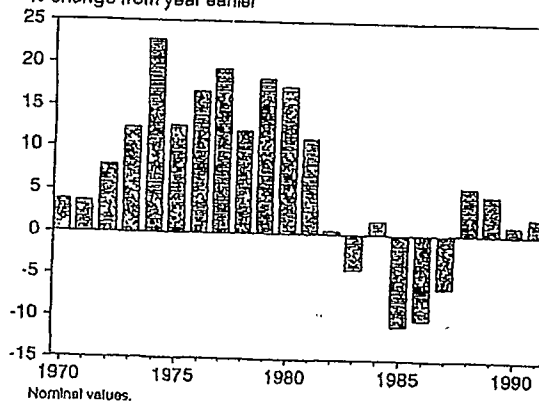
Situation and Outlook Report

ECONOMIC RESEARCH
SERVICE REFERENCE
CENTER

JUN 13 1991

RECEIVED

U. S. Farm Real Estate Values Rise for
Fourth Straight Year
% change from year earlier



RECORD 000041

Table 1...Average per acre value of farmland and buildings, by State, 1984-91 1/

State	As of April 1		As of February 1				As of January 1		Percent change 1990-91
	1984	1985	1986	1987	1988	1989	1990	1991	
Dollars									Percent
Northeast:	1,391	1,346	1,340	1,491	1,586	1,763	1,722	1,699	-1
Maine	713	774	854	885	962	1,019	1,019	978	-4
New Hampshire	1,253	1,439	1,682	1,847	2,112	2,237	2,237	2,148	-4
Vermont	862	947	1,060	1,114	1,124	1,190	1,190	1,142	-4
Massachusetts	2,083	2,377	2,761	3,012	3,553	3,763	3,763	3,612	-4
Rhode Island	2,770	2,990	3,284	3,389	4,748	5,028	5,028	4,827	-4
Connecticut	2,723	3,005	3,372	3,557	4,171	4,417	4,417	4,240	-4
New York	848	820	843	960	993	1,024	974	1,031	6
New Jersey	2,959	2,951	2,997	3,729	3,969	4,543	4,634	4,912	6
Pennsylvania	1,596	1,427	1,332	1,540	1,579	1,874	1,807	1,757	-3
Delaware	1,840	1,596	1,684	1,677	1,765	2,058	2,259	2,248	0
Maryland	2,236	2,197	2,023	2,009	2,261	2,462	2,420	2,196	-9
Lake States:	1,147	952	797	707	788	819	841	906	8
Michigan	1,255	1,108	1,012	924	971	983	1,003	1,085	8
Wisconsin	1,104	944	836	777	826	846	803	853	6
Minnesota	1,131	898	694	587	700	745	805	873	8
Corn Belt:	1,449	1,108	972	900	1,003	1,100	1,096	1,129	3
Ohio	1,500	1,215	1,136	1,097	1,199	1,262	1,204	1,217	1
Indiana	1,647	1,344	1,167	1,061	1,158	1,244	1,244	1,275	2
Illinois	1,845	1,381	1,232	1,149	1,262	1,383	1,389	1,433	3
Iowa	1,518	1,091	873	786	947	1,101	1,102	1,157	5
Missouri	875	689	648	604	640	673	679	689	1
Northern Plains:	518	412	360	331	368	398	425	439	3
North Dakota	447	373	334	303	319	326	340	368	8
South Dakota	363	289	267	238	269	291	328	351	7
Nebraska	645	485	416	400	457	523	550	556	1
Kansas	597	488	415	373	413	435	462	467	1
Appalachia:	1,107	1,035	1,025	1,004	1,037	1,077	1,111	1,060	-5
Virginia	1,125	1,112	1,179	1,154	1,198	1,333	1,516	1,295	-15
West Virginia	698	607	616	633	682	702	613	625	-2
North Carolina	1,429	1,131	1,254	1,239	1,263	1,317	1,263	1,243	-2
Kentucky	1,034	955	941	878	896	911	981	962	-2
Tennessee	1,024	944	935	936	1,001	1,002	996	988	-1
Southeast:	1,105	1,068	1,038	1,055	1,130	1,194	1,253	1,254	0
South Carolina	926	898	870	792	871	939	909	948	4
Georgia	921	886	853	889	920	998	1,012	995	-2
Florida	1,645	1,599	1,537	1,605	1,790	1,887	2,085	2,133	2
Alabama	824	797	803	786	800	822	839	791	-6
Delta States:	1,074	1,012	880	757	781	797	782	797	2
Mississippi	950	855	778	685	697	713	728	754	4
Arkansas	964	907	779	724	761	778	750	770	3
Louisiana	1,430	1,407	1,191	921	940	954	915	905	-1
Southern Plains:	632	675	579	532	531	516	495	482	-3
Oklahoma	718	597	520	475	480	521	497	486	-2
Texas	612	694	594	546	544	515	495	481	-3
Mountains:	327	300	267	257	257	260	267	287	7
Montana	276	243	235	200	205	209	238	243	2
Idaho	808	739	631	552	572	595	661	659	0
Wyoming	199	181	159	157	147	142	149	153	3
Colorado	469	437	360	368	369	367	358	410	15
New Mexico	194	185	161	156	180	191	196	230	17
Arizona	311	295	271	299	279	274	263	285	8
Utah	570	513	476	451	425	421	389	403	4
Nevada	262	244	219	240	227	234	194	219	13
Pacific:	1,399	1,293	1,201	1,084	1,089	1,129	1,163	1,210	4
Washington	972	943	840	756	739	757	779	798	2
Oregon	719	615	570	541	542	535	571	583	2
California	1,981	1,841	1,730	1,554	1,575	1,657	1,704	1,787	5
48 States	801	713	640	599	632	661	668	682	2

1/ Nominal dollars. Values for 1989 and 1990 revised following 1991 adoption of a new procedure for estimating farm building values.

Table 5...Average per acre value of farmland, by State, 1980-91 1/

State	As of Feb. 1		As of April 1			As of February 1					As of January 1		Percent change 1990-91
	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	
Dollars													Percent
Northeast:	919	1,000	1,005	1,001	1,036	968	923	1,010	1,077	1,225	1,236	1,238	0
Maine	393	438	476	511	522	553	525	616	680	765	764	743	-3
New Hampshire	664	736	795	848	917	1,029	1,171	1,285	1,493	1,635	1,678	1,632	-3
Vermont	477	529	571	608	631	677	737	775	795	870	893	868	-3
Massachusetts	1,063	1,197	1,312	1,417	1,525	1,700	1,922	2,096	2,512	2,751	2,822	2,745	-3
Rhode Island	1,668	1,807	1,910	1,993	2,028	2,138	2,286	2,359	3,357	3,675	3,771	3,669	-3
Connecticut	1,578	1,719	1,827	1,917	1,993	2,148	2,347	2,476	2,949	3,229	3,313	3,222	-3
New York	487	530	568	574	596	551	536	598	619	655	649	700	8
New Jersey	2,261	2,377	2,519	2,531	2,403	2,358	2,353	2,924	3,139	3,666	3,805	4,067	7
Pennsylvania	1,058	1,142	1,104	1,120	1,172	1,005	891	1,006	1,026	1,241	1,241	1,228	-1
Delaware	1,466	1,569	1,447	1,481	1,475	1,235	1,244	1,206	1,250	1,463	1,654	1,668	1
Maryland	1,776	2,014	1,889	1,695	1,775	1,689	1,493	1,452	1,621	1,785	1,803	1,658	-8
Lake States:	845	995	994	931	904	713	563	484	536	565	605	664	10
Michigan	860	1,009	1,010	965	975	819	709	631	658	678	719	790	10
Wisconsin	714	833	837	814	790	630	517	463	486	510	511	557	9
Minnesota	920	1,089	1,084	988	946	723	536	442	521	557	619	681	10
Corn Belt:	1,450	1,572	1,457	1,311	1,268	939	794	720	796	879	897	935	4
Ohio	1,452	1,542	1,373	1,262	1,238	957	846	790	848	899	890	916	3
Indiana	1,610	1,761	1,566	1,393	1,403	1,104	916	812	873	943	972	1,010	4
Illinois	1,874	2,013	1,863	1,688	1,683	1,235	1,075	989	1,079	1,187	1,211	1,258	4
Iowa	1,640	1,789	1,694	1,509	1,348	945	735	652	780	913	931	988	6
Missouri	769	848	812	734	740	560	504	458	480	509	529	545	3
Northern Plains:	438	485	497	480	467	364	310	281	311	338	367	383	4
North Dakota	363	394	413	399	404	331	290	261	274	283	299	326	9
South Dakota	260	294	312	311	322	250	224	196	220	240	276	299	8
Nebraska	582	669	671	643	588	433	362	343	389	448	479	480	2
Kansas	528	559	568	544	536	429	355	315	347	368	398	406	2
Appalachia:	791	862	860	859	865	771	724	690	707	746	796	774	-3
Virginia	803	882	871	893	878	826	830	790	812	917	1,082	943	-13
West Virginia	503	520	557	530	529	436	417	416	445	467	425	443	4
North Carolina	960	1,068	1,041	1,056	1,134	1,011	910	894	893	947	937	937	0
Kentucky	766	817	841	831	803	705	654	591	594	612	686	686	0
Tennessee	751	835	818	799	795	700	659	643	684	697	718	725	1
Southeast:	859	966	940	938	943	885	828	826	879	935	1,009	1,023	1
South Carolina	737	799	807	780	757	706	653	579	631	687	687	728	6
Georgia	752	815	775	776	759	701	641	646	657	716	752	751	0
Florida	1,252	1,423	1,381	1,436	1,492	1,426	1,345	1,390	1,545	1,638	1,833	1,888	3
Alabama	624	732	712	666	657	608	581	551	554	576	611	586	-4
Delta States:	835	993	983	899	922	842	706	593	605	622	625	645	3
Mississippi	698	884	839	763	803	698	610	524	527	543	571	599	5
Arkansas	788	909	944	837	823	749	619	562	585	603	596	621	4
Louisiana	1,109	1,285	1,250	1,193	1,253	1,200	984	746	755	770	754	754	0
Southern Plains:	426	461	520	518	566	590	492	443	438	426	417	410	-2
Oklahoma	541	601	639	614	624	503	422	376	374	408	400	396	-1
Texas	397	426	490	494	552	611	509	459	454	431	422	414	-2
Mountain:	254	276	292	282	291	261	225	214	213	216	226	246	9
Montana	215	230	248	236	249	214	199	167	170	173	201	207	3
Idaho	603	673	732	709	698	618	508	435	448	471	537	542	1
Wyoming	146	163	175	175	179	158	135	131	122	118	126	131	4
Colorado	343	386	401	403	412	373	297	297	295	295	295	342	16
New Mexico	167	174	178	163	176	166	142	137	157	168	175	207	18
Arizona	245	265	280	269	289	270	245	269	251	248	240	262	9
Utah	456	490	511	486	489	426	380	353	330	330	314	329	5
Nevada	218	230	234	216	224	200	170	179	165	170	146	168	15
Pacific:	902	1,089	1,185	1,191	1,215	1,088	975	863	861	902	951	1,002	5
Washington	613	738	783	792	815	762	651	574	559	581	616	640	4
Oregon	482	553	587	585	587	478	419	385	381	381	423	441	4
California	1,267	1,548	1,704	1,717	1,755	1,587	1,445	1,275	1,285	1,362	1,430	1,515	6
48 States	635	709	715	684	689	594	513	471	492	519	538	557	3

1/ Nominal dollars.

EXHIBIT C

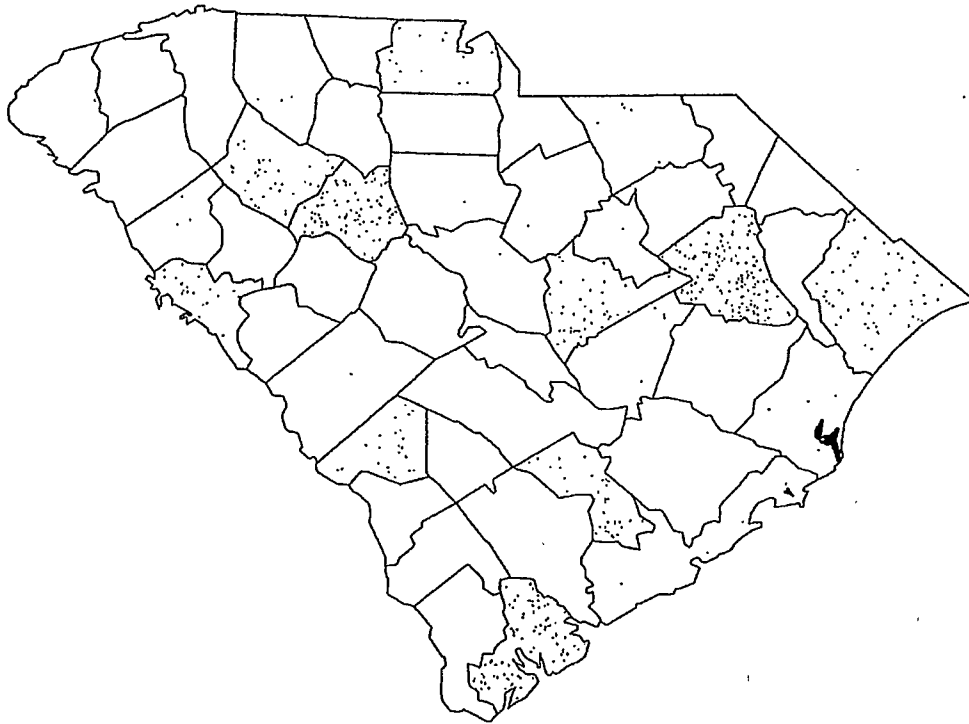
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EXHIBIT C

RECORD 000044

South Carolina Property Tax

2010 Edition



Governor Mark C. Sanford
Ray N. Stevens, Director



SCDOR GUIDE 0001

RECORD 000045

Disclaimer

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RECORD 000052

SOUTH CAROLINA PROPERTY TAX

April 2010

Anne Pearce
Jerilynn VanStory
John von Lehe¹

PART I: § 001. INTRODUCTION.

- A. **Property Subject to Tax:** Property subject to ad valorem tax includes real property, personal property used in business, and certain other personal property such as motor vehicles, boats and airplanes. Property taxes are generally assessed and collected by local governments, but the South Carolina Department of Revenue (the Department) assesses and collects some property taxes and oversees all property tax assessments to ensure equitable and uniform assessment throughout the state. There is no state or local tax on intangible personal property or inventories.
- B. **Liability for Taxes on Real Property:** In general, the person who owns real property on December 31st of the year preceding the tax year in fee simple, for life, or as trustee, as recorded in the public records for deeds, or who has the care of the property as guardian, executor, trustee, or committee is liable for the payment of the taxes on the real property. SC Code §12-37-610. In general, property taxes are due and payable between September 30th and January 15th after their yearly assessment. SC Code §12-45-70; see SC Code §12-38-150. There are special rules fixing liability and due dates for taxpayers that make returns to the Department on a fiscal year basis. See SC Code §12-37-970 and SC Rev. Ruling 05-20.
- C. **Calculation of Tax:** The calculation of property taxes involves the following 3 elements:
1. **Valuation:** Real property (other than agricultural real property and property subject to a negotiated fee in lieu of taxes) is appraised to determine fair market value. Real property is reassessed (revalued) every 5 years, although by ordinance, the county may postpone the implementation of the reassessed values for one year. SC Code, §12-43-217. For property tax years after 2006, any increase in the fair market value of any parcel of real property as a result of a countywide reassessment program will be limited to 15% within a 5 year period. The fair market value of improvements and additions will be added to the fair market value of a parcel after completion. Fair market value will also be adjusted by appraisal after an assessable transfer of interest, resulting in a transfer value. The 15% cap does not apply to the transfer value in the year the transfer value is first subject to property tax, or to the fair market value of improvements and additions in the year they are first subject to property tax. See South Carolina Code §§12-43-217 and 12-37-3120 through 12-37-3170.

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Personal property of manufacturers is valued at cost from which a fixed depreciation percentage is deducted each year until a residual value is reached. Personal property of merchants and other businesses is valued at cost from which income tax depreciation is deducted each year until a residual value is reached. Motor vehicles are valued in accordance with nationally recognized publications of value (except that the value may not exceed 95% of the prior year's value) from which discounts are allowed for high mileage. Utilities are valued using the unit valuation method considering the utilities' operations as a whole.

2. **Assessment Ratio by Classification:** The assessment ratios are established for each class of property in the State Constitution to ensure stability. All manufacturing and utility property is assessed at 10.5%. Commercial personal property is also assessed at 10.5%. A person's primary residence is assessed at 4%; other real property is assessed at 6%. Personal motor vehicles are assessed at 6%.

The fair market value is multiplied by the assessment ratio to produce the "assessed value" of a particular piece of property. Taxes are levied based on this assessed value. New and expanding businesses that invest \$2.5 million or more (\$1 million or more in certain counties and certain environmental clean up sites) can enter into a fee in lieu of property taxes, which can reduce a 10.5% assessment ratio to 6% for 20 years and eliminate inflationary increases in the value of real property for that period. Very large investments can qualify for a fee in lieu of property taxes with a 4% assessment ratio for 30 years with no increase in the value of real property for that period. See §712 below.

3. **Millage:** Each taxing jurisdiction determines its tax rate annually by dividing the cost of its annual budget by the total assessed value within the taxing jurisdiction. This results in a fraction in thousandths (mills), known as the millage rate or millage. The average millage rate in South Carolina, as computed by the Department in 2009, is 297 mills.

The following is an example of the application of the property tax. If a manufacturer owned a piece of property with a value of \$100 and an assessment ratio of 10.5% (the ratio for manufacturing property in the absence of a fee in lieu of property taxes agreement), the assessed value of that property equals \$10.50 (\$100 x 10.5%). If the taxing jurisdiction decided in a particular year to levy a tax of 275 mills, the property tax liability of the owner would be \$2.89 (\$10.50 x .275).

Any increases in a taxing jurisdiction's annual budget are subject to the restrictions set forth in South Carolina Code §§6-1-320 and 12-37-251(E). See *Angus v. City of Myrtle Beach*, 363 S.C. 1, 609 S.E.2d 808 (2005). Generally, a governing body may increase the millage imposed for general operating purposes over the rate charged in the preceding tax year only to the extent of the average increase in the Consumer Price Index (CPI) for the preceding calendar year, plus the percentage increase in population within the taxing jurisdiction. The governing body, by a two-thirds vote, may levy additional millage for certain purposes specified in SC Code §6-1-320(B).

In a year in which a reassessment program is implemented, a special millage rate, referred to as the "rollback millage," is used instead of the previous year's millage rate. The rollback millage is usually lower than the previous year's millage rate to prevent the county from getting a windfall from an increase in the value of the property. The rollback millage is calculated by dividing the prior year's property tax revenues by the adjusted total assessed values applicable in the year the values derived from a countywide equalization and reassessment are implemented. The amount of assessed value is adjusted by deducting assessments added for property or improvements not previously taxed, for new construction, and for renovations of existing structures, so that it reflects only the increase in value attributable to the reassessed property. See SC Code §12-37-251(E) and *Angus v. City of Myrtle Beach*, 363 S.C. 1, 609 S.E. 2d 808 (2005) (additional adjustments to rollback millage, such as adjustments for anticipated appeals and uncollectible tax debts, are not authorized by SC Code §12-37-251(E)).

This publication is current through December 31, 2009.

PART II: § 100. DEFINITIONS AND CITATIONS.

§ 110. Definitions of Terms Used in this Publication.

§ 110.1. Real Property. Real property means not only land, but also all structures and other things therein contained or annexed or attached to the land that pass to the vendee by the conveyance of the land. SC Code §12-37-10(1). It includes fixed wharves and docks on rivers, lakes or tidewaters. For the purpose of determining the property's assessment ratio, all mobile homes, some motor homes and boats, and all improvements to leased real property made by the lessee are considered real property. SC Code §§12-37-224 and 12-43-230(b).

§ 110.2. Personal Property. Personal property means all things, other than real estate, that have any pecuniary value, including money, credits, investments in bonds, stock, and joint-stock companies. SC Code §12-37-10(2). See 27 SC Code Regs. 117-1700.1 (formerly Regulation 117-105) for examples of real and personal property.

§ 110.3. The Department. As used herein and throughout Title 12 of the SC Code, the Department means the South Carolina Department of Revenue. SC Code §12-2-10.

§ 120. Citations to Statutes, Regulations, and Case Law.

- Code of Laws of South Carolina, 1976, as amended (SC Code)
- South Carolina Reports (S.C.)
- Southeastern Reporter (S.E.)
- Southeastern Reporter, 2d Series (S.E.2d)
- South Carolina Property Tax Regulations (27 SC Code Regs.)
- Property tax decisions of the former South Carolina Tax Commission (P.D. or C.D.)

The SC Code, Regulations, Department advisory opinions, and Administrative Law Court decisions may be accessed at, or through, the Department's web site at: [http:// www.sctax.org](http://www.sctax.org).

PART III: § 200. CLASSIFICATION AND VALUATION OF PROPERTY.

§ 210. Classification of Property.

§ 210.1. Purpose of Classification. Classification is used to determine a property's assessment ratio. Classification is also used to determine whether the property will be valued by a county assessor (real property), by a county auditor (personal property), or by the Department (specified real and personal property under SC Code §12-4-540). See §§110.1 and 110.2 above for definitions of real and personal property.

§ 210.2. Classification of Companies. For the purpose of assessing property of *manufacturers*, the Department follows the classifications set out in Sectors 21 and 31-33 of the North American Industry Classification System Manual. SC Code §12-43-335(B). However, establishments that publish newspapers, books and periodicals that do not have facilities for printing or that do not actually print their publications are not classified as manufacturers.

For the purpose of assessing property of *railroads, private carlines, airlines, water, power, telephone, cable television, sewer and pipeline companies*, the Department follows the classifications set out in Sectors 22, 51, 424, 481-483, 485, and 486 of the North American Industry Classification System Manual, with certain exceptions within each sector. SC Code §12-43-335(C).

For the purpose of assessing property of *merchants and related businesses*, the Department follows the following classifications of the North American Industry Classification System Manual: Sectors 22, 23, 42, 44, 45, 48, 51, 56, 71, 81, 453, 481, 483 and 484, with certain exceptions within the sectors. SC Code §12-43-335(A).

For the purpose of appraising and assessing personal property of businesses and other entities under the jurisdiction of the county auditor, the county auditor follows the following classifications of the North American Industry Classification System Manual: Sector 11, subsectors 111-115 unless exempt; Sector 51, subsector 512; Sector 52, subsectors 522-525; Sector 53, subsectors 531 and 533; Sector 54, subsector 541; Sector 55, subsector 551, unless exempt; Sector 61, subsector 611; Sector 62, subsectors 621-624; Sector 71, subsector 712; Sector 72, subsector 721; and Sector 81, subsectors 813-814, unless exempt. See SC Code §12-39-70.

If a business is involved in more than one operation, the major operation determines its classification for purposes of assessing property taxes. 27 SC Code Regs. 117-1760.1.

§ 211. Manufacturers and Utilities. Except as provided below, real and personal property owned by, or leased to, manufacturers and utilities, and used by the manufacturer or utility in the conduct of its business, is taxed on an assessment equal to 10.5% of the fair market value of the property. SC Code §12-43-220(a). 27 SC Code Regs. 117-1700.3 defines utilities to include water companies, power companies, electric cooperatives, and telephone companies. The Property Division of the Department also considers sewer companies and cable television companies to be utilities.

The following types of real property may qualify for a 6% assessment ratio:

- A. Real property owned by, or leased to, a manufacturer and used primarily for *research and development* is not considered used by a manufacturer in the conduct of its manufacturing business for purposes of classification of property. The phrase *research and development* means basic and applied research in the sciences and engineering and the design and development of prototypes and processes. SC Code §12-43-220(a).
- B. Real property owned by, or leased to, a manufacturer and used primarily as an *office building* is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property, if the office building is not located on the premises of, or contiguous to, the plant site of the manufacturer. SC Code §12-43-220(a). A right-of-way for a public road or an easement for a railroad running between a manufacturer's plant site and its office building does not destroy contiguity. *Sunoco v. S.C. Dep't of Revenue*, 378 S.C. 385, 662 S.E.2d 599 (2008).
- C. Real property owned by, or leased to, a manufacturer and used exclusively for *warehousing and wholesale distribution* is not considered used by a manufacturer in its manufacturing business for purposes of classification of property. SC Code §12-43-220(a). This provision is being phased in on a county-by-county basis in the year after implementation of the next countywide reassessment after 2008. Affected owners of existing warehouses that were paying a 10.5% assessment ratio in 2008 must notify the county in writing to receive the 6% assessment ratio.
- D. Real property owned by, or leased to, a manufacturer and used primarily for *warehousing and wholesale distribution of clothing and wearing apparel* is not considered used by a manufacturer in the conduct of its manufacturing business for purposes of classification of property, if the property is not located on the premises of, or contiguous to, the manufacturing site. SC Code §12-43-220(a). This provision is being phased out on a county-by-county basis as the provision summarized in C. above is phased in.

§ 212. Agricultural Real Property. Real property that is actually used for agricultural purposes (and meets the other requirements for agricultural real property discussed in §222 below) is classified as agricultural real property and taxed on an assessment equal to:

- A. 4% of the fair market value for agricultural purposes for owners or lessees who are individuals or partnerships, and for corporations that do *not* have one or more of the following: (1) more than 10 shareholders; (2) a shareholder (other than an estate) that is not an individual; (3) a nonresident alien as a shareholder; and (4) more than 1 class of stock.
- B. 6% of the fair market value for agricultural purposes for corporate owners or lessees, except for certain closely held corporations specified in (a) above. SC Code §12-43-220(d)(1). 27 SC Code Regs. 117-1780.2.

In addition, SC Code §12-43-220(d) grants a special valuation, known as fair market value for agricultural purposes, for real property that is "actually used for agricultural purposes." See §222 below.

§ 212.1. Application for Classification of Property as Agricultural Real Property. Each new owner must apply to the county assessor for classification as agricultural real property on or before the first date taxes are due without penalty. An owner who has obtained such classification must notify the assessor of a change in use within 6 months. SC Code §12-43-220(d)(3).

§ 212.2. Penalty for Falsifying Application. SC Code §12-43-340 provides that it is unlawful for a person to knowingly and willfully make a false statement on the application for agricultural real property. A person making such a false statement is guilty of a misdemeanor and, upon conviction, must be fined not more than \$200.

§ 212.3. Change in Use - Rollback Taxes. When agricultural real property is applied to a use other than agricultural, it is subject to additional taxes, referred to as rollback taxes. The amount of the rollback taxes is equal to the sum of the differences, if any, between the taxes paid or payable on the basis of the fair market value for agricultural purposes and the taxes that would have been paid or payable if the real property had been valued, assessed, and taxed as other real property in the taxing district (except the value of standing timber is excluded), for the current tax year (the year of change in use) and each of the immediately preceding 5 tax years. SC Code §12-43-220(d) and 27 SC Code Regs. 117-1780.3.

Any property that becomes exempt from property taxes under SC Code §12-37-220(A)(1) (property owned by the state or a local taxing authority and used exclusively for public purposes) or SC Code §12-37-220(B)(41) (economic development property during the exemption period as provided in Chapter 44, Title 12 of the SC Code) is not subject to rollback taxes. See SC Code §12-43-220(d)(6) and the discussion at §712 below regarding fees in lieu of property taxes.

§ 213. Transportation for Hire. All real and personal property owned by, or leased to, companies primarily engaged in the transportation for hire of persons or property and used by such companies in the conduct of such business is taxed based on an assessment ratio of 9.5%. The Department applies an equalization factor to real and personal property owned by, or leased to, transportation companies for hire as mandated by federal legislation. SC Code §12-43-220(g). See SC Code §§12-37-2810 through 12-37-2880 regarding the assessment and taxation of motor carriers used in transportation for hire, other than intercity bus services and certain farm vehicles.

§ 214. Personal Motor Vehicles. Personal motor vehicles (passenger motor vehicles, pickup trucks and motorcycles) that must be titled by a state or federal agency are subject to an assessment ratio of 6% in 2007 and thereafter. See S.C. CONST. art. X, §1(8) and SC Revenue Advisory Bulletin 01-9.

§ 215. **Aircraft.** SC Code §12-43-360 allows the governing body of a county, by ordinance, to reduce the assessment ratio of general aviation aircraft subject to property tax in the county from 10.5% to not less than 4%. The ordinance must be applied uniformly to all general aviation aircraft subject to property tax in the county.

§ 216. **Commercial Fishing Boats.** Commercial fishing boats, commercial tugboats, and pilot boats are taxed based on an assessment ratio of 5%. SC Code §12-43-220(f).

§ 217. **Legal Residence.** The legal residence and not more than 5 contiguous acres, when owned totally or in part in fee simple or by life estate and occupied by the owner of the interest, is taxed based on an assessment ratio of 4%. The residence must be the domicile of the owner at some time during the tax year. Additional dwellings located on the same property (not more than 5 acres) and occupied by immediate family members of the owner will also qualify for the 4% ratio. An individual is considered the owner of the property if he has an interest in it pursuant to an installment contract for sale with the U.S. Department of Veterans Affairs. If residential real property is held in trust and the income beneficiary of the trust occupies the property as his legal residence, the 4% ratio applies if the trustee certifies to the assessor that the income beneficiary occupies the property as a residence. When the legal residence, including a mobile home, is located on leased or rented property, and the residence is owned and occupied by the owner, the 4% assessment ratio applies for the residence (the assessment ratio for the land is 6%). If the lessee of property upon which he has located his legal residence is liable, by law, for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed 5 acres contiguous to his legal residence, will be assessed at the 4% ratio. See SC Code §12-37-620 and SC Rev. Ruling 93-11. The 4% assessment ratio does not apply to any mobile home or residence that is rented, or to any business for profit located on the residential property. See SC Code §§12-43-220(c) and 12-43-221.

A motor home, boat or watercraft, or trailer used for camping and recreational travel that is pulled by a motor vehicle may qualify as a legal residence if it meets the requirements set forth in SC Code §12-37-224. See §218 below for further discussion.

A purchaser who purchases residential property with the intent that it will become his primary residence, but the property is subject to vacation rentals as provided in SC Code Title 27, Chapter 50, Article 2, for no more than 90 days, may apply for the 4% assessment ratio once the purchaser occupies the property. If the owner actually occupies the property within 90 days of acquiring ownership and otherwise qualifies, the 4% ratio will apply retroactively to the date of ownership. A taxpayer is not disqualified from receiving the 4% legal residence assessment ratio just because he rents out his legal residence for not more than 14 days during the tax year.

Generally, the residential classification is not available unless the owner of the property applies to the county assessor before the first penalty date for taxes due (January 16). As part of the application, the taxpayer must certify that neither he nor any other member of his family (which includes his spouse, unless legally separated, and his dependent children under age 18) is residing in or occupying any other residence in South Carolina that has been qualified for the 4% assessment ratio by the taxpayer or a member of his family. He must

also certify that he does not claim to be a legal resident of a jurisdiction other than South Carolina for any purpose. The application may be extended by the local taxing authority for reasonable cause. A new application does not have to be filed unless there is a change in ownership. A residence that is qualified as a legal residence for any part of a year is entitled to the 4% assessment ratio for the entire year.

A member of the armed forces on active duty is deemed a legal resident and domiciled in South Carolina for purposes of the 4% assessment ratio if he owns and occupies a home in South Carolina and his permanent duty station is in South Carolina. SC Code §12-43-220(c)(2)(v).

A taxpayer may apply for a refund of property taxes overpaid because the property was eligible for the 4% assessment ratio. The procedure for claiming a refund is discussed in §536.1 below. The taxpayer must establish that the property in question was in fact his legal residence and where he was domiciled. SC Code §12-43-220(c)(3). The refund is made to the owner of record at the time the exemption is granted or the classification is made. SC Code §§12-37-252 and 12-45-78.

If a deceased taxpayer failed to claim the 4% assessment ratio before the date of the taxpayer's death, the personal representative of a deceased taxpayer's estate may apply for the 4% assessment ratio provided by SC Code §12-43-220(c). SC Code §12-37-252(C).

§ 218. Non-Traditional Residences. A motor home, boat or watercraft, or trailer used for camping and recreational travel that is pulled by a motor vehicle may qualify as a primary or secondary residence for property tax purposes if it qualifies for deduction of the interest portion of indebtedness on a qualified primary or secondary residence under the Internal Revenue Code. SC Code §12-37-224. Requirements for the relevant deduction under the Internal Revenue Code include on-board sleeping, cooking and toilet facilities. A primary residence is taxed based on a 4% assessment ratio, and secondary residence is taxed based on a 6% assessment ratio. Property that qualifies under SC Code §12-37-224 is valued in the same manner as motor vehicles. See §221.3 below.

§ 219. Ratio for All Other Property. Except as otherwise provided, a 6% assessment ratio applies to real property and a 10.5% assessment ratio applies to tangible personal property. SC Code §12-43-220(e) and (f).

§ 220. Valuation of Property. Article X, Section 1, of the South Carolina Constitution provides for taxation by classification, but also states that within each classification "fair market value" is to be used. Article III, Section 29 of the South Carolina Constitution provides that "[a]ll taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax." SC Code §12-37-930 provides that all property is to be valued "at its true value in money that is the price that the property would bring following reasonable exposure to the market where both seller and buyer are willing." See also *Lindsey v. S.C. Tax Comm'n*, 302 S.C. 504, 397 S.E.2d 95 (1990); *Smith v. Newberry County Assessor*, 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002).

However, with respect to real property, Article X, Section 6 of the South Carolina Constitution authorizes the General Assembly to provide a method for valuing real property whereby the value of each parcel, adjusted for improvements and losses, and does not increase more than 15% every 5 years, unless an assessable transfer of interest occurs.

§ 221. Valuation Methods. The South Carolina General Assembly has given specific instructions concerning the valuation of certain properties. Certain other valuation methods have been adopted by the Department.

§ 221.1. Valuation of Manufacturers' Machinery and Equipment. The value of machinery and equipment of manufacturers is based on a depreciation cost method. See SC Code §12-37-930. Property may not be depreciated below 10% of its original cost. SC Code §12-37-935. The depreciated cost method has been challenged on the ground that it does not conform to the "true value" or "fair market value" standard. This challenge was unsuccessful. See *S.C. Tax Comm'n v. S.C. Tax Bd. of Review*, 305 S.C. 183, 407 S.E.2d 627 (1991).

There is a *special reporting rule for idle property* not under an agreement for a fee in lieu of property tax. Personal property of a manufacturer located at the manufacturer's facility does not have to be returned for property tax purposes if the facility has not been operational for one fiscal year and the personal property has not been used in the operations for one fiscal year. A return is not required for the property until it becomes operational in a manufacturing process or until it has not been returned for 4 years, whichever occurs first. The manufacturer must continue to list the personal property annually with a designation that the personal property is not subject to tax. SC Code §12-37-900.

§ 221.2. Valuation of Business Personal Property. The value of merchants' and other business personal property is equal to its depreciated basis for income tax purposes, but not less than 10% of its original cost. 27 SC Code Regs. 117-1840.1 and 117-1840.2(b). See *S.C. Tax Comm'n v. S.C. Tax Bd. of Review*, 305 S.C. 183, 407 S.E.2d 627 (1991) (upholding this valuation method against an argument that it was unconstitutional).

§ 221.3. Valuation of Motor Vehicles, Aircraft, and Watercraft. The value of motor vehicles, aircraft, and watercraft is based on nationally recognized publications, except that the value may not exceed 95% of the prior year's value. SC Code §12-37-930. Also valued in this manner are motor homes, boats and watercraft, and trailers used for camping and recreational travel that pulled by a motor vehicle if they qualify as a primary or secondary residence under SC Code §12-37-224. See §218 above.

The property tax on motor carriers' motor vehicles is annually assessed on an apportioned basis by the Department. See SC Code §§12-37-2810 through 12-37-2880. Property tax is also apportioned for boats that are used in interstate commerce and that have a tax situs in South Carolina (by being physically present an aggregate of 30 days or more in a property tax year) and in at least one other state. SC Code §12-37-714(1).

§ 221.4. Valuation of Real Property. Real property, other than agricultural real property (see §222 below) and property that is subject to a fee in lieu of property taxes (see §712 below), is appraised to determine fair market value. Usually, reassessment (reappraisal) of real property takes place every 5 years. For property tax years after 2006, any increase in the fair market value of any parcel of real property as a result of a countywide reassessment program will be limited to 15% within a 5 year period.

Apart from countywide reassessment programs, appraisals are triggered by 2 other types of occurrences. The first type of occurrence is completion of most types of "improvements" or "additions," including new construction and remodeling. See SC Code §12-37-3130(1) for a comprehensive definition. The fair market value of improvements and additions will be added to the fair market value of a parcel after completion. SC Code §12-37-670. The 15% cap does not apply to the fair market value of improvements and additions in the year they are first subject to property tax. SC Code §12-37-3140. For further discussion, see § 310.3 below.

The second type of triggering occurrence is an "assessable transfer of interest," which encompasses a broad range of changes as to ownership, or use, or the passage of time. A non-exclusive list of events that constitute an assessable transfer of interest is provided in SC Code §12-37-3150. The statute also specifies events that do not constitute an assessable transfer of interest, some of which mirror transactions not subject to income tax under the provisions of the Internal Revenue Code. An assessable transfer of interest will trigger an unrestricted appraisal of fair market value, and the adjusted value is known as the "transfer value." The 15% cap does not apply to the transfer value in the year the transfer value is first subject to property tax. See SC Code §§12-43-217 and 12-37-3120 through 12-37-3170.

§ 221.5. Valuation of Subdivided Acreage. A discounted value is available for lots that are in the process of being sold from subdivided acreage. SC Code §12-43-224 and 12-43-225. There must be 10 or more lots within the subdivision. An application must be made in order to obtain the discount. See *Lindsey v. S.C. Tax Comm'n*, 302 S.C. 274, 395 S.E.2d 184 (1990). Note that this provision does not allow an assessor to reappraise the value of subdivided lots in a non-reassessment year.

§ 221.6. Valuation of Real Property Subject to Lease. In *S.C. Tax Comm'n v. S.C. Tax Bd. of Review*, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985), the court held that below-market contract rents from unfavorable long-term leases could be considered in calculating value using the capitalization of income approach because the leases in question were negotiated at arm's length, and because actual income produced by long-term leases is a determinative factor to potential investors.

Leases for a term of 99 years or more, or for a term certain renewable at the option of the lessee for an additional term of 99 years or more, are valued at the full value of the property and are taxed to the lessee, provided that the lease is recorded with the clerk of the court or register of mesne conveyances of the county where the property is located. SC Code §12-37-620.

§ 221.7. **Valuation of Utility Properties.** The Department is authorized to use the unit valuation method to determine utility values. SC Code §12-4-540. This method is referred to as the unit valuation method. The unit valuation method is not set forth statutorily or in a regulation. In practice, it is based on the: (1) cost, (2) income, and (3) stock and debt approaches. See SC Rev. Procedure 04-5 regarding use of a composite depreciation rate for valuing electric companies for purposes of property tax, as well as for a fee in lieu of property tax.

§ 221.8. **Valuation of Property of Homeowners' Associations.** Property that is commonly owned by homeowners' associations has intrinsic value and is subject to a separate property tax assessment. See *Long Cove Home Owners' Association v. Beaufort County Tax Equalization Board*, 327 S.C. 135, 488 S.E. 2d 857 (1997).

Homeowners' associations that make timely application may have their property valued at the greater of \$500 an acre, or an amount determined by dividing an association's gross receipts (not including dues, fees, or assessments from the members) by a capitalization rate of 20%. SC Code §§12-43-227 and 12-43-230(d).

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

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

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

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

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

The fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years. SC Code §12-43-220(d)(2)(B)(i). Values derived before 1992 and based on the soil capacity of the various regions of the state are provided in Department regulations for current use. See 27 SC Code Regs. 117-1780.1 and 117-1840.2(c).

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

§ 222.2. Definition of Agricultural Real Property. To qualify as agricultural real property, real property must be "actually used for agricultural purposes." SC Code §12-43-220(d). See also SC Commission Decision 92-77. This means that the property must be currently used for bona fide agricultural purposes. Intended or future use is not determinative. 27 SC Code Regs. 117-1780.1; SC Tax Commission Decision 92-77.

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

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

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

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

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

In cases in which the real property is committed to more than one use, one use being agricultural and the other use or uses being unrelated to agriculture, the agricultural activity must comprise the most significant use of the property for the property to be classified as agricultural real property. 27 SC Code Regs. 117-1780.1.

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

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

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

- A. *Timberland*: If the tract is used to grow timber, the tract must be 5 acres or more. Tracts of timberland of fewer than 5 acres qualify if they are contiguous to, or are under the same management system as, a tract of timberland that meets the minimum acreage requirement. Tracts of timberland of fewer than 5 acres are eligible to be agricultural real property if they are owned in combination with other tracts of agricultural real property that are not timberland but qualify as agricultural real property. Tracts of timberland must be devoted actively to growing trees for commercial use.
- B. *Christmas Trees*: A tract devoted to growing Christmas trees must be 5 acres or more. If the tract is fewer than 5 acres, it will qualify as agricultural real property if at least \$1,000 of gross farm income was reported for at least 3 of the last 5 tax years.
- C. *Other Acreage*: All other tracts must be at least 10 acres or more. Tracts of fewer than 10 acres qualify as agricultural real property if they are contiguous to other tracts that total at least 10 acres when combined. Tracts that do not meet this requirement will qualify if at least \$1,000 of gross farm income was reported for at least 3 of the last 5 tax years.
- D. *New Ownership*: A new owner may qualify a nontimberland tract of fewer than 10 acres if he earns at least \$1,000 of gross farm income in at least 3 of the first 5 years of ownership. If the new owner fails this requirement, the tract is not considered agricultural real property and is subject to the rollback tax.

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

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

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

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

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

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

Rehabilitated historic property is eligible for preliminary certification if:

- A. The owner of the property applies for and is granted historic designation; and
- B. The *proposed* rehabilitation receives approval of the proposed rehabilitation work from the reviewing authority as described below.

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

- 1. listed in the National Register of Historic Places;

2. at least 50 years old and designated as a historic property based on criteria established by the taxing entity; or
3. at least 50 years old and located in a historic district designated by the taxing entity within the geographic area of the taxing entity.

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

"Approval of rehabilitation work" means that "the proposed and completed rehabilitation work is approved by the reviewing authority as appropriate for the historic building and the historic district in which it is located."

A taxing entity may require that an owner apply for preliminary certification before any work begins. The taxing entity may adopt a preliminary certification procedure, or may choose only to have a final certification procedure for approving "rehabilitated historic property."

If a property that received preliminary certification fails to receive final certification as discussed below, any money not collected because of the special valuation must be paid to the taxing entity.

C. Upon completion of the project, the property must receive final certification from the taxing entity, or its designee, to continue to obtain its special valuation. To receive final certification the property must meet the following conditions:

1. the owner of the property must apply for and be granted historical designation by the county or municipal governing body based on the criteria established for a "historic designation" as discussed above for preliminary certification.
2. the *completed* rehabilitation must receive approval of the rehabilitation work from the appropriate reviewing authority; and
3. the "minimum expenditures for rehabilitation" must have been incurred and paid. "Minimum expenditures for rehabilitation" means the owner or his estate rehabilitates the building and incurs expenditures for the rehabilitation that exceed the minimum percentage of the fair market value of the building established by the taxing entity by ordinance. This percentage can range between 20 to 100%, and the taxing entity can establish different minimum percentages for income producing properties as opposed to residential properties.

Once the final certification has occurred, the property must be assessed based on a special valuation equal to its fair market value at the time of preliminary certification or final certification, whichever occurs first. This special valuation continues for 20 years or whatever lesser period the taxing entity establishes in its ordinance.

§ 223.2. Low and Moderate Income Rental Property. Upon certification by the governing body of the county, low and moderate income rental property is assessed based on a special valuation equal to the fair market value of the property at the time of certification.

Low and moderate income rental property is eligible for certification if:

A. either:

1. it provides accommodations under the Section 8 Program as defined in the United States Housing Act of 1937, and amended by the Housing and Community Act of 1974, for low and moderate income families and persons as defined in SC Code §31-13-170(p); or
 2. in the case of income producing real property, the expenditures for rehabilitation exceed the appraised value of the property; and
- B. if the low and moderate income housing rehabilitation is located in an area designated by the local government as a Low and Moderate Housing Rehabilitation District; and
- C. the owner or estate takes no actions that cause the property to be unsuitable for designation as "low and moderate income rental property;" and
- D. if the property qualifies as "historic" as defined above, then the rehabilitation work must be approved by the appropriate reviewing authority as provided above.

Once the certification has occurred, the property must be assessed based on a special valuation equal to its fair market value at the time of certification for 20 years or whatever lesser period the taxing entity establishes in its ordinance.

§ 223.3. Application and Effective Date of Special Valuation for "Rehabilitated Historic Property" and "Low and Moderate Income Rental Property." If an application for preliminary or final certification is filed by May 1st or approved by August 1st, the special valuation is effective for that year. Otherwise, it is effective beginning the following year. SC Code §4-9-195(F).

Once the governing body has granted the property tax assessments based on the special valuation authorized by this section, the owner of the property must apply to the auditor for the special assessment. SC Code §4-9-195(G).

Once a property has received final certification, it continues to receive the special assessment until one of the following occurs:

- A. the owner notifies the county in writing to remove the special assessment;
- B. a sale or transfer of the property except in the orderly course of probate proceedings (where someone is inheriting the property);
- C. removal of the historic designation by the county;
- D. rescission of the approval of the rehabilitation because of ineligible or inappropriate alterations to the property; or,
- E. in the case of low or moderate income rental property, decertification of the property by the local governing body as low or moderate income rental property for persons and families of moderate to low income as defined by SC Code §31-13-170(p).

Notification of changes affecting eligibility must be given immediately to the appropriate taxing and assessing authorities.

By ordinance or regulation, the county or municipality may establish fees for preliminary or final certification. A property that has been certified to receive the special property tax assessment under the prior law continues to receive the special assessment in effect at the time of certification until the special assessment period has expired.

PART IV: § 300. ASSESSMENT PROCEDURE.

Valuation responsibility is divided between the state (Department of Revenue) and county assessing officials (county assessor and county auditor), depending on ownership and use of the property. In general, the Department values the property of all manufacturers, utilities, mining companies and certain transportation companies (railroads, private carlines and airlines) used in the business of the taxpayer. The Department also values the personal property of merchants and the motor vehicles of motor carriers. SC Code §§12-4-540 and 12-37-2820. County assessors and county auditors value the remaining property, including commercial, residential and agricultural property. SC Code §12-37-90 (assessor—real property) and SC Code §12-39-340 (auditor—personal property).

§ 310. Assessment of Property. Generally, property taxes are levied by local government entities. There is a uniform assessment for such taxes. See SC Code §12-37-30. In most cases, property taxes on real property are due and payable to the county treasurer between September 30th and January 15th after their yearly assessment. SC Code §12-45-70(A); see SC Code §12-39-150. A county, by ordinance, may allow taxpayers to elect to prepay taxes on real property in 6 installments. SC Code §12-45-75.

In the case of real and personal property assessed by the Department, the Department generally certifies the assessment to the county auditor, who computes the tax and forwards the tax amount to the county treasurer for billing. However, for airlines, private carlines (railroad cars), and motor carriers, property taxes are both assessed by and paid to the Department.

§ 310.1. Lien Date. For property tax purposes, the lien date is the date as of which tax liability is fixed. Except as otherwise provided, liability for ad valorem taxes on real and personal property in South Carolina is based on ownership of the property on December 31st of the year preceding the tax year. SC Code §12-37-900. For example, liability for 2010 property taxes is based on ownership of the property on December 31, 2009.

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. See, e.g., 1965-66 Op. Atty. Gen. No. 2180 at 313. Unless otherwise provided by statute, the entire tax is owed by the owner of the property on December 31st of the year preceding the tax year. See *Atkinson Dredging Company v. Thomas*, 266 S.C. 361, 223 S.E.2d 592 (1976) (an out of state dredging company was liable for ad valorem tax for the full property tax year on a dredge located in Charleston County on December 31st, despite the fact that the dredge was present in Charleston County for only a few months).

Although the liability is fixed on December 31st of the year preceding the tax year, a county auditor must make appropriate adjustments in the valuation of real property that is damaged during the tax year as a result of fire, provided that the application for correction of the assessment is made before payment of the tax. SC Code §12-39-250(B). Note that only damage due to fire is covered.

A special lien date is provided for: (1) merchants' inventories, equipment, furniture and fixtures; (2) manufacturers' real and personal property; and (3) machinery, equipment, furniture and fixtures of any other taxpayer required to file a return with the Department. For these categories of property, the lien date is the last day of the taxpayer's accounting year. SC Code §12-37-970. Property tax returns for such property must be filed with the Department on or before the end of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes. Special rules are provided if the taxpayer changes accounting periods during the calendar year and when property is sold during the accounting period. For information about the filing of a manufacturer's property tax return, including filings for the first year of business in the state and upon sale of the manufacturer's property, consult SC Rev. Ruling 05-20.

§ 310.2. Where Personal Property Is Taxed. SC Code §12-37-890 provides that (1) business personal property is taxed where it is situated, and (2) nonbusiness personal property located in South Carolina, or kept or used temporarily out of the state, is taxed at the domicile of the owner if the owner is a resident of South Carolina; otherwise, such nonbusiness personal property is taxed at the residence of the person having it in charge. See also SC Code §12-37-210 and SC Code §12-37-710.

Boats that are not currently taxed in South Carolina and that are not used exclusively in interstate commerce become taxable if they are present in South Carolina for 60 consecutive days or for 90 days in the aggregate in a property tax year, or by local ordinance, for 180 days in the aggregate in a property tax year. Boats that are used in interstate commerce and that have a tax situs in at least one other state become taxable on a proportionate basis in South Carolina by being physically present in South Carolina an aggregate of 30 days or more in a property tax year. However, time spent in a marine repair facility pursuant to a written contract for repairs does not count toward establishing in-state tax situs. SC Code §12-37-714.

§ 310.3. When Improvements Are Subject to Tax. In general, value attributable to additions and improvements is first subject to property tax in the tax year following completion. SC Code §§12-37-670, 12-37-3140(E). Additions and improvements include new construction, reconstruction, major additions to the boundaries of the property or a structure on the property, remodeling, renovation and rehabilitation, including installation; excluded are minor construction, ongoing maintenance and repair of existing structures, qualifying repair or reconstruction of a structure damaged or destroyed by disaster, qualifying construction to make a home handicap accessible, and qualifying installation of a fire sprinkler system in a commercial or residential structure when the installation is not required by law, regulation, or code. SC Code §12-37-3130(1).

Before a new structure can be taxed, it must be "completed and fit for the use for which it is intended." SC Code §12-37-670. Unless the structure is completed and fit for the use intended on or before December 31st of the preceding property tax year, it cannot be taxed in the current property tax year. However, the statute does not prevent the assessment and taxation of portions of a structure that are completed on or before December 31st. See, e.g., *International Center II, LLC v. Berkeley County Assessor*, Docket No. 05-ALJ-17-0235-CC (SC Admin. L. Ct., filed Feb. 2, 2006).

SC Code §12-37-670(B) allows the governing body of a county to adopt an ordinance requiring that previously untaxed improvements to real property be listed for taxation with the county by the first day of the next calendar quarter after a certificate of occupancy is issued or after the structure actually is occupied if no certificate is issued. If the county adopts such an ordinance, the additional property taxes attributable to the improvements may be accelerated. They accrue on the listing date and are due when taxes are due for the property tax year in which the improvements were listed for taxation, regardless of whether the value of the improvements is reflected on a tax receipt issued for the tax year in question.

If the county adopts such an ordinance, the election is binding on all municipalities within the county that impose a property tax.

It should be noted that the constitutionality of the county ordinance provisions has been called into question. See 2006 Op. Atty. Gen. No. 06-___ (2006 WL 3199994).

§ 311. Notice to Taxpayer. When the county assessor records an increase in the value of a parcel by \$1,000 or more, the assessor is required to give notice of the increase to the taxpayer. If the increase is subject to the 15% cap imposed by Article 25, Chapter 37, Title 12 of the SC Code, the assessment notice must include both the fair market value and the value as limited by the 15% cap. SC Code §12-60-2510. In non-reassessment years and when there has been no increase in value as a result of additions, a taxpayer will receive only a tax notice (bill) and not a separate notice of assessment. SC Code §§12-60-2510 and 12-60-2520. See §510.1 below for a discussion of appeal procedures.

PART V: § 400. ASSESSMENT PRACTICE BY TAXPAYERS.

The assessment practice by taxpayers varies, depending on whether the property is assessed by the Department or by county officials. See §300 above. The procedure for appeals, also determined by this question, is discussed in detail at §500 through §545 below.

§ 410. The Property Tax Case Summarized. The nature of the property tax case depends upon the subject matter under appeal and the origin of the assessment. The subject matter may involve an element of the assessment, such as valuation or classification (the proper assessment ratio), or an exemption determination. The assessment may originate with the Department or with a county official (county assessor or auditor).

In challenging one or more elements of an assessment or an exemption determination, the taxpayer may appear for himself or be represented by certain others, as discussed below. If valuation is at issue, it is incumbent upon the taxpayer to produce evidence to support his assertion of value. It is insufficient merely to challenge the appraisal as void or illegal. See *Newberry Mills, Inc. v. Dawkins*, 259 S.C. 7, 190 S.E.2d 503 (1972).

§ 420. The Appraiser. Appraisers who are registered, licensed, or certified by the South Carolina Real Estate Appraisers Board may represent a taxpayer in matters limited to the valuation of real property. Alternatively, the taxpayer's appraiser may be a witness as to the value of the property in question. See Chapter 60 of Title 40 of the SC Code for appraiser licensing requirements.

§ 430. The Attorney. The attorney is an advocate of the taxpayer's position. The attorney's arguments are not testimony and are therefore not given evidentiary value. Appearances before county boards or the Department are not considered the practice of law in South Carolina, and representation of taxpayers before these boards or agencies is not limited to licensed attorneys. However, certain restrictions apply; see the sections that follow. Additional considerations are discussed in §545 below.

§ 431. Appearance by Nonresident Attorneys. Administrative practice allows attorneys licensed in any state to represent taxpayers before county boards and the Department. See generally SC Code §12-60-90. Additional considerations are discussed in §545 below.

§ 432. Appearances by In-House Attorneys and Officers. Corporations, unincorporated associations and partnerships may be represented by an officer or full-time employee. SC Code §12-60-90(C). Therefore, in-house attorneys or officers are specifically authorized to represent their employers. Additional considerations are discussed in §545 below.

§ 450. Other Persons. An individual may represent himself; partnerships may be represented by a partner or full time employee; and trusts, receiverships, guardianships, and estates may be represented by their trustees, receivers, guardians, administrators or executors, as applicable, or their regular full time employees.

In summary, only those persons authorized by SC Code §12-60-90 may represent taxpayers before the Department or county boards. As discussed above, attorneys, appraisers licensed or certified in South Carolina, and employees, including in-house counsel, and corporate

officers of the taxpayer, may appear on behalf of a taxpayer. Certified public accountants and enrolled agents may also appear in tax matters, and the Department has the authority to allow any other individual to represent a taxpayer when it seems appropriate. Additional considerations are discussed in §545 below.

PART VI: § 500. APPEAL OF TAX ASSESSMENT.

The South Carolina Revenue Procedures Act, Chapter 60, Title 12 of the SC Code, provides the appeal procedures for all tax matters, including property tax. It provides for an appeal from the Department or the county to the independent administrative law judges in the South Carolina Administrative Law Court (ALC), created by SC Code §1-23-500 (formerly the Administrative Law Judge Division (ALJD)). The procedure for challenging a property tax assessment depends on which taxing authority made the assessment, *i.e.*, the county assessor, the county auditor, or the Department. The following discussion will therefore be divided into 3 parts.

§ 510. Determinations by the County Assessor.

The county assessor is responsible for appraising and assessing all real property in the county not appraised and assessed by the Department. See SC Code §12-37-90. The assessor also determines eligibility for the 4% assessment ratio applicable to owner-occupied real property set forth in SC Code §12-43-220(c).

- A. The initial steps necessary to appeal an assessment made by a county assessor are set forth in SC Code §§12-60-2510 and 12-60-2520:
 1. When the county assessor records an increase in a property's fair market value by \$1,000 or more, the assessor must give written notice to the taxpayer by July 1st or as soon thereafter as practical. If the increase is subject to the 15% cap imposed by Article 25, Chapter 37, Title 12 of the SC Code, the assessment notice must include both the fair market value and the value as limited by the 15% cap.
 2. If the taxpayer objects to the assessment, he must give written notice of objection to the assessor within 90 days of the mailing of the assessment notice.
 3. In tax years in which a property's recorded fair market value has not been increased by \$1,000 or more, no assessment notice is required. In these years (generally, years for which there is no county wide reassessment and no assessable transfer of interest has occurred), the taxpayer may object in writing to the fair market value, special use value, assessment ratio and property tax assessment at any time. An appeal will apply to the previous tax year only if it is submitted before the first penalty date, *i.e.*, January 15th following the end of the previous property tax year on December 31st. An appeal submitted on or after the first penalty date applies for the succeeding property tax year.

4. After receiving the taxpayer's objection, the assessor must correct the error if the assessor agrees with the taxpayer. If the assessor does not agree with the taxpayer, the assessor must schedule a conference with the taxpayer within 30 days of the date of a request for a meeting or as soon thereafter as practical. Note that for a legal residence, the assessor shall consider the appeal and make adjustments, if warranted, based on the market values of real property as they existed in the year that the most recent reassessment was conducted and on which the assessment is based. SC Code §12-43-215.
 5. If the matter is not resolved at the conference, the taxpayer must file a written protest with the assessor within 30 days of the conference.
 6. The assessor must respond to the protest in writing within 30 days of the date of receipt of the written protest or as soon thereafter as practical.
- B. The assessor's decision may be appealed to the County Board of Assessment Appeals, as follows:
1. The taxpayer may appeal the assessor's decision by giving a written notice of intent to appeal to the assessor within 30 days of the date of the assessor's response. See SC Code §12-60-2530(A).
 2. The conference on appeal must be conducted by the County Board of Assessment Appeals.
 3. Third parties may intervene under certain circumstances.
 4. At least 15 days before the conference, the taxpayer and assessor must exchange lists of documents, witnesses and other evidence that they anticipate presenting to the County Board, and they must provide copies to the County Board.
 5. Responses to the exchanged information must be filed with the County Board at least 7 days before the conference. These responses must also be mailed to the other party.
 6. The procedures of the conference are specified in SC Code §12-60-2530. Each party may present evidence and arguments, and each side has the right of rebuttal. Any member of the County Board may ask questions.
 7. The County Board must mail a written decision to the taxpayer and the assessor.
- Conferences of the County Board are subject to any rules that may be prescribed by the Administrative Law Court (ALC).
- C. Either the taxpayer or the assessor may appeal the County Board's decision by requesting a contested case hearing before the ALC within 30 days after the date of the County Board's written decision, in accordance with ALC Rules. SC Code §12-60-2540.

The contested case hearing is discussed in §525 below. Payment of disputed property taxes pending appeal is discussed in §550 below.

§ 515. Determinations by the County Auditor.

The county auditor must insure that all taxable personal property not assessed by the Department is listed and assessed. SC Code §12-39-340. This includes such items as motor vehicles, boats and airplanes, as well as the personal property of the businesses specified in SC Code §12-39-70. The auditor also determines eligibility for the homestead exemption for the elderly, disabled or blind set forth in SC Code §§12-37-220(A)(9) and 12-37-250. See §642 below.

A. The procedure for contesting personal property tax assessments or a denial of a homestead exemption to the county auditor is set forth in SC Code §12-60-2910:

1. If the taxpayer objects to an assessment or to the denial of a homestead exemption, he must give written notice to the auditor at any time on or before the later of (a) 30 days after the tax notice (bill) is mailed, or (b) the last day the tax can be paid without penalty. See SC Code §12-45-180 (setting forth penalty dates).
2. The auditor will schedule a conference with the taxpayer within 30 days of the request for a meeting, or as soon thereafter as practical.
3. If the matter is not resolved at the conference, the taxpayer must file a written protest with the auditor within 30 days after the date of the conference.
4. The auditor must mail a written response within 30 days of receipt of the taxpayer's protest, or as soon thereafter as practical.

B. There is no appeal to a county board as there is with county assessed real property. A taxpayer may appeal the auditor's decision by requesting a contested case hearing before the Administrative Law Court (ALC) within 30 days after the date of the auditor's response, in accordance with ALC Rules. SC Code §12-60-2920.

The contested case hearing is discussed in §525 below. Payment of disputed property taxes pending appeal is discussed in §550 below.

§ 520. Determinations by the Department of Revenue.

The Department values and assesses the property of certain taxpayers specified by statute. See SC Code §§12-4-540 and 12-43-335. The Department is authorized to levy ad valorem tax on airlines, private carlines and motor carriers. See SC Code §§12-4-510 and 12-37-2850. The Department determines eligibility for exemptions in accordance with SC Code §§12-4-710 and 12-4-720. See §641.1 below regarding applications for exemption.

A. The initial steps necessary to appeal an assessment or denial of an exemption made by the Department are set forth in SC Code §§12-60-2110 and 12-60-2120:

1. The taxpayer must file a written protest with the Department (a) within 90 days after the date of the property tax assessment notice, or (b) within 90 days after the tax notice (bill) is mailed to the taxpayer if the Department did not send the taxpayer a property tax assessment notice, or (c) within 90 days after the date the notice of denial of an exemption is mailed to the taxpayer, as applicable.
2. The protest must contain certain information, including the taxpayer's assertion of the fair market value of the property and, if contested, the classification of the property the taxpayer believes is correct. If the protest claims the property is exempt, the taxpayer must state the basis on which the exemption is claimed.
3. The appeal must be conducted in accordance with SC Code §12-60-450. If the Department determination is adverse to the taxpayer, it must be in writing and sent or delivered to the taxpayer. It must explain the basis for the determination and inform the taxpayer of his right to a contested case hearing.

B. Either the taxpayer or the local governing body affected by the Department determination may appeal by requesting a contested case hearing before the Administrative Law Court (ALC) within 30 days after the date of the Department determination, in accordance with ALC Rules. SC Code §12-60-2130.

The contested case hearing is discussed in §525 below. Payment of disputed property taxes pending appeal is discussed in §550 below.

§ 525. Contested Case Hearing before the Administrative Law Court (ALC).

Contested case hearings must be held without a jury and in accordance with the ALC Rules and Chapter 23 of Title 1 of the SC Code. SC Code §12-60-3340. The Department may intervene in the contested case hearing if it is not already a party. SC Code §12-60-3330. Payment of disputed property taxes pending appeal is discussed in §550 below.

The contested case hearing is an entirely new hearing at which all evidence must be presented to the Administrative Law Judge (ALJ). The ALJ is the finder of fact, and the ALC record becomes the record for judicial appeals. The ALJ will decide the case in a written order. A party can make a motion for reconsideration if the motion is filed within 10 days of notice of the ALJ's written order. See *Home Medical Systems, Inc. v. S.C. Dep't of Revenue*, 382 S.C. 556, 677 S.E.2d 582 (2009).

If the taxpayer requests a contested case hearing without exhausting his prehearing remedies because he failed to file a protest or attend a conference with county or Department officials, as discussed in §510 through §520 above, the ALC will dismiss the action without prejudice. If the taxpayer failed to provide facts or law to support his position at the county or Department level, as appropriate, the ALC will remand the case for reconsideration in light of the new facts or law. The statutory time limitation period for assessment remains suspended during the remand process. SC Code §12-54-85(G).

The taxpayer can designate the hearing as a small claims case if no more than \$10,000 in taxes, including penalties, but not interest, is in controversy. A small claims case cannot be appealed and has no precedential value. SC Code §§12-60-1770 and 12-60-520.

§ 530. **Judicial Review.** An adverse decision by the ALC may be appealed to the South Carolina Court of Appeals, as provided in SC Code §§12-60-3370 through 12-60-3390.

The standard of review applied in such cases is as follows: The court will presume that the findings of an administrative agency are correct and will set them aside only if unsupported by substantial evidence in the record. *Hull v. Spartanburg County Assessor*, 372 S.C. 420, 641 S.E.2d 909 (Ct. App. 2007) (holding that, because the valuation of commercial real property as determined by the ALJ was supported by substantial evidence in the record, it would not be overturned on appeal).

To initiate an appeal, notice of appeal must be filed in the South Carolina Court of Appeals as provided in the South Carolina Appellate Court Rules and served on the opposing party or parties not more than 30 days after the party receives the final decision and order of the ALJ. SC Code §1-23-610(B). Additional considerations are discussed in §560 through §562 below. Payment of disputed property taxes pending appeal is discussed in §550 below.

§ 535. **Miscellaneous Relief - Waiver, Dismissal, or Reduction of Penalty.** A committee composed of the county auditor, county treasurer, and county assessor may waive, dismiss, or reduce a penalty levied against real or personal property in the case of an error by the county. SC Code §12-45-420.

§ 536. **Miscellaneous Relief - Claims for Refund.** If it is determined, under the procedures discussed below, that any tax in excess of the amount due was paid to, or collected by, a county, municipality, or other political subdivision, the county treasurer shall refund the taxes and penalties, if any, together with interest at the federal underpayment rate, within 30 days of the final determination. SC Code §12-60-1740. See SC Code §12-54-25.

A refund will not be granted if the claim is based on an exemption requiring an application unless the application was timely filed. It also will not be granted for errors in valuation, unless the assessment was appealed as outlined above. SC Code §12-60-1750.

All claims for refund must be filed within the later of 3 years from the date a return was filed, or 2 years from the date of payment of the tax. SC Code §12-54-85(F).

An administrative claim for refund is the appropriate means to challenge an excessive millage rate. *B&A Dev., Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007).

As in the case of a challenge to a tax assessment, the procedure for claiming a refund of property taxes paid depends on which taxing authority made the assessment, *i.e.*, the county assessor, the county auditor, or the Department. All claims for refunds based on exemptions other than the homestead exemptions are determined by the Department. All claims for refunds based on homestead exemptions are determined by the county auditor.

The following discussion will therefore be divided into 3 parts, based on the taxing authority.

§ 536.1. Determinations by the County Assessor. To claim a refund for taxes paid based on an assessment by the county assessor, the taxpayer must file the claim with the assessor. The assessor will meet with the county treasurer and the county auditor, and a majority of these officials will determine the taxpayer's refund, if any, and notify the taxpayer in writing. SC Code §12-60-2560.

The taxpayer may appeal to the County Board of Assessment Appeals within 30 days after the decision is mailed. The appeal is conducted in the same manner as an appeal of an assessment. See §510.B above.

An adverse decision by the County Board may be appealed to the Administrative Law Court (ALC) by requesting a contested case hearing within 30 days of the date of the mailing of the County Board's decision, in accordance with ALC Rules. See §510 above.

The contested case hearing is discussed in §525 above. The procedure for appeal from an ALC decision is discussed in §530 above.

§ 536.2. Determinations by the County Auditor. To claim a refund for taxes paid (a) based on an assessment by the county auditor or (b) if the taxpayer believes the property is subject to the homestead exemption for the elderly, disabled or blind, the taxpayer must file the claim with the auditor who made the assessment. The auditor will meet with the county treasurer and the county assessor, and a majority of these officials will determine the taxpayer's refund, if any, and notify the taxpayer in writing. SC Code §12-60-2940.

An adverse decision may be appealed to the Administrative Law Court (ALC) by requesting a contested case hearing within 30 days of the date of the mailing of the decision, in accordance with ALC Rules. See §510 above.

The contested case hearing is discussed in §525 above. The procedure for appeal from an ALC decision is discussed in §530 above.

§ 536.3. Determinations by the Department of Revenue. To claim a refund for taxes paid (a) based on an assessment by the Department or (b) if the taxpayer believes the property is exempt (under an exemption other than a homestead exemption), the taxpayer must file the claim with the Department. SC Code §12-60-2150. The claim must contain certain information as provided by SC Code §§12-60-2150(C) and 12-60-450(B). The Department will notify the counties affected by the claim, and the county auditor will notify any municipality affected by the claim. The Department will consider the claim, determine what refund is due, if any, and issue a written decision to the taxpayer. This process is discussed in SC Rev. Procedure 06-2.

If the decision is adverse, the taxpayer may file a written protest with the Department within 90 days of the date of the denial of any part of the claim for refund. SC Code §12-60-2110. The Department will conduct an appeal in accordance with SC Code §12-60-450, and will mail a Department determination to the taxpayer if the decision is adverse to the taxpayer.

The Department determination may be appealed by either the taxpayer or the local governing body affected by the Department determination in the same manner as an assessment would be appealed to the Administrative Law Court (ALC), by requesting a contested case hearing within 30 days of the date of the mailing of the Department determination, in accordance with ALC Rules. See §520.B above.

The contested case hearing is discussed in §525 above. The procedure for appeal from an ALC decision is discussed in §530 above.

§ 540. Practice and Procedure.

§ 541. **Use of Appraisals and Expert Witnesses.** A taxpayer is not required to use appraisals or expert witnesses in the appeals process. However, it is incumbent upon a taxpayer to prove his or her assertions. In questions of valuation, a taxpayer cannot prevail without establishing the valuation that he asserts. See *Newberry Mills v. Dawkins*, 259 S.C. 7, 190 S.E.2d 503 (1972), and *Belk Department Store v. Taylor*, 259 S.C. 174, 191 S.E.2d 144 (1972).

§ 543. **Forms and Pleadings.** No specific types of forms or pleadings are required to appeal a property valuation whether made at the local level or at the state level. However, most county assessors require the taxpayer to file a prescribed form after the initial conference pursuant to SC Code §§12-43-300 and 12-60-2520(B).

§ 544. **Method of Filing/Delivery.** For all appeal purposes, whenever a taxpayer is required to file a document by a certain date, timely mailing is timely filing. SC Code §12-60-50(B). Although no specific method of filing an appeal to the county or to the Department is required by South Carolina law, it may be prudent to hand deliver and obtain a clocked-in copy if the appeal is filed near the deadline, or to mail the appeal by certified mail, return receipt requested.

§ 545. **Appearances for the Taxpayer.** In general, the taxpayer may represent himself or certain specified others may represent the taxpayer in the administrative tax process. SC Code §12-60-90. See §420 through §450 above. The "administrative tax process" includes all matters connected with the presentation to any state or local tax authority, or any of its employees, relating to a client's rights, privileges, or liabilities under laws or regulations administered by such tax authorities. SC Code §12-60-90(A).

Taxpayer representatives must comply with the duties and restrictions contained in United States Treasury Department Circular No. 230 ("Circular No. 230"), Sections 10.20 through 10.24 and Sections 10.27 through 10.34, which cover a wide array of procedural, substantive, and ethical issues. See SC Code §12-60-90(E). The Department may suspend or disbar from practice in the administrative tax process an authorized representative who is incompetent or who fails to comply with SC Code §12-60-90(E) or engages in "disreputable conduct" as defined in Section 10.51 of Circular No. 230, or one who with intent to defraud, willfully and knowingly deceives, misleads, or threatens a person to be represented. SC Code §12-60-90(D).

Use of contingent fee arrangements in tax matters is limited. The acceptable uses are set forth in SC Rev. Ruling 04-03.

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§ 550. **Payment of Property Tax and Protest Procedure.** If a written protest or appeal extends beyond December 31st, the taxpayer must pay a portion of the tax equal to 80% of the protested property tax assessment and may agree in writing to pay a higher amount. SC Code §§12-60-2140, 12-60-2550, 12-60-2930. If the assessment as finally determined is less than the adjusted amount, a corrected assessment must be made and any overpayment plus interest must be refunded.

Before appealing to the South Carolina Court of Appeals, the taxpayer must pay, or post a bond for, all taxes, including interest, determined to be due by the Administrative Law Court (ALC), unless the taxpayer has paid at least 80% of the protested assessment as described above.

Interest must be paid on any additional tax due or on any refunds due after review, at the rate for underpayments provided in Internal Revenue Code Sections 6621(a) and 6622. No interest will be paid on refunds due that are paid within 75 days of (i) the last day prescribed for filing a tax return if the return was filed timely, (ii) the date a late return is filed, (iii) the last day prescribed for payment if no return is required, (iv) the date a claim for refund is filed, or (v) the county receiving notification from the Department that the taxpayer is due a credit or refund. SC Code §12-54-25.

§ 561. **Exhaustion of Administrative Remedies.** The South Carolina Revenue Procedures Act, SC Code Chapter 60, Title 12, provides the exclusive remedies for the illegal or wrongful collection of taxes. *B&A Dev., Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007); SC Code §12-60-80. Under the Revenue Procedures Act, the decision of any state or local tax authority relating to property taxes is first appealed to the Administrative Law Court (ALC). See §§500 through 525 above. Appeals from the ALC are then filed in the South Carolina Court of Appeals. See §530 above. In general, unless the taxpayer has exhausted those exclusive remedies, the case is not ripe for judicial remedy, and the courts will decline to intervene. See, e.g., *Brackenbrook North Charleston, LP v. County of Charleston*, 360 S.C. 390, 602 S.E.2d 39 (2004) (an administrative claim for refund is the appropriate means to challenge an excessive millage rate and must be exhausted before bringing suit in circuit court).

Only those cases in which the sole issue is a challenge to the constitutionality of a tax statute on its face may be initiated in the South Carolina circuit courts. *B&A Dev., Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007); SC Code §12-60-80(B). If the taxpayer merely asserts that the statute is unconstitutional in its application, he must exhaust his administrative remedies *Id.* See *Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 535 S.E.2d 642 (2000), and *Ward v. State*, 343 S.C. 14, 538 S.E.2d 245 (2000).

§ 562. **Class Action Lawsuits.** A class action lawsuit for a refund of taxes may not be brought in the Administrative Law Court or any court in this State, and the Department, political subdivisions, or their instrumentalities may not be named as a defendant in a class action lawsuit brought in South Carolina. SC Code §12-60-80(C).

PART VII: § 600. EXEMPTION FROM TAXATION.

§ 601. Generally; Fees for Fire Protection. Most property tax exemptions are codified in SC Code §12-37-220. Subsection (A) of SC Code §12-37-220 contains the property tax exemptions authorized by Section 3 of Article X of the SC Constitution, among others. Note that there is no exemption for property owned by "501(c)(3) organizations." These organizations qualify for property tax exemption only if they meet the other requirements of the exemption provisions.

The Department determines eligibility for most property tax exemptions. SC Code §12-4-710. The procedure for obtaining exemptions is set forth in SC Code §12-4-720.

Property that is exempt from taxation is also exempt from assessment. SC Code §12-43-330.

Except as otherwise stated below, counties and municipalities may require the owners of all real property exempt from property taxation to pay reasonable fees for fire protection. SC Code §12-37-235. Exceptions: These fees may not be required for property of the State, counties, municipalities, school districts and other political subdivisions used exclusively for public purposes, and property of public libraries. See 1982 Op. Atty. Gen. No. 82-68 at 68.

The fees must be based on the fire protection and services that are generally maintained by funds from ad valorem taxes. The fees cannot exceed the amount of taxes that would be levied on the property for any one service if the property were subject to taxation. No fees may be charged by a county for protection or service provided by a municipality.

§ 609. Exemption for All Residential Real Property Subject to a 4% Assessment Ratio. An exemption from all property taxes imposed for school operating purposes applies to 100% of the fair market value of residential real property subject to a 4% assessment ratio, to the extent it is not already exempt pursuant to the homestead exemption for the elderly, disabled or blind, discussed in §619 below. The exemption does not apply to millage imposed for the repayment of general obligation debt. SC Code §12-37-220(B)(47).

The exemption requires that the property be owner-occupied residential property eligible for and receiving a 4% assessment ratio, discussed in §217 above. Once the property is approved by the county assessor for the 4% assessment ratio, a separate exemption application is not required.

§ 610. Intangible Personal Property. Intangible personal property is exempt from property taxes. SC Code §12-37-220(A)(10); S.C. CONST. art. X, §3. No application for this exemption is necessary. SC Code §12-4-720(A)(3).

§ 611. Fire Sprinkler System Equipment. All fire sprinkler system equipment that is installed on a commercial or residential structure is eligible for a limited exemption when the installation is not required by law, regulation, or code. SC Code §12-37-220(B)(50). The value of such equipment is exempt until there is an assessable transfer of interest as determined by SC Code §12-37-3150. For more on assessable transfers of interest, see § 221.4 above.

§ 612. Certain Personal Use Property and Other Miscellaneous Property.

§ 612.1. Household Goods. All household goods and furniture used in the home of the owner, including built-in equipment such as ranges, dishwashers and disposals, are exempt from property taxes. This exemption applies to such personal property when located in a time share unit, but does not apply when used in hotels, rooming houses, apartments or other places of business. SC Code §§12-37-220(A)(5) and (B)(35); S.C. CONST. art. X, §3. No application is necessary for the exemption under SC Code §12-37-220(A)(5). SC Code §12-4-720(A)(3).

§ 612.2. Wearing Apparel. All wearing apparel is exempt from property taxes. SC Code §12-37-220(B)(9). No application for this exemption is necessary. SC Code §12-4-720(A)(3).

§ 612.3. Private Passenger Vehicles, Motorcycles, General Aviation Aircraft and Watercraft. The South Carolina Constitution allows, but does not require, the governing body of a county through ordinance to impose a local sales and use tax to exempt the value of private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors from property taxes levied in the county. S.C. CONST. art. X, §3. The exemption (or the rescission of the exemption) is allowed only pursuant to a county referendum that must be submitted to the voters at the next general election of representatives.

Watercraft and motors that have an assessment of not more than \$50 are exempt from property taxes. SC Code §12-37-220(B)(38)(a). In addition, the governing body of a county by ordinance may exempt from 42.75% of the fair market value of a watercraft and its motor from property tax. SC Code §12-37-220(B)(38)(b). Watercraft trailers are exempt from property taxes. SC Code §12-37-220(B)(40).

An antique motor vehicle is exempt from property taxes if it is licensed and registered as an antique motor vehicle pursuant to Article 23, Chapter 3, Title 56 of the SC Code. SC Code §12-37-220(B)(48).

§ 612.4. Private Passenger Vehicle of Certain Military Personnel. A private passenger motor vehicle leased by a member of the United States armed forces stationed in South Carolina is exempt if the service member's home of record is in another state and the leased vehicle is registered in South Carolina. SC Code §12-37-220(B)(45). Application must be filed with the Department within the period provided in SC Code §12-54-85(F) for claims for refund. SC Code §12-4-720(A)(1).

§ 613. Economic Development Related Exemptions.

§ 613.1. Inventories. All inventories are exempt from property taxes. SC Code §§12-37-220(A)(6), and 12-37-220(B); S.C. CONST. art. X, §3. No application for this exemption is necessary. SC Code §12-4-720(A)(3). SC Rev. Ruling 91-7 defines inventory as merchandise purchased for resale. Equipment that is rented and materials and supplies used in a business are not inventory. Generally, items will be classified as inventory if they are inventory for purposes of South Carolina income tax, which conforms to federal income tax provisions in this regard.

§ 613.2. Manufacturing. All new manufacturing establishments are exempt from county property taxes for 5 years from the time of establishment. Further, all additions to existing manufacturing establishments are exempt from county property taxes for 5 years from the time such additions are made, if the cost of such addition is \$50,000 or more. Such additions include additional machinery and equipment installed in the plant. SC Code §12-37-220(A)(7); S.C. CONST. art. X, §3. With the county's approval, an unrelated purchaser that acquires the facilities in an arms length transaction and preserves the existing facilities and the number of jobs may use the unexpired portion of this exemption. The exemption applies for the full 5 year period if the purchaser invests an additional \$50,000. SC Code §12-37-220(C). See SC Rev. Ruling 04-14, which discusses these requirements in detail, and SC Rev. Ruling 89-3, which discusses the calculation of the exemption.

This exemption is only for county taxes. It does not exempt the property from school or municipal taxes. However, a municipality may agree to exempt this property from municipal property taxes for up to 5 years. S.C. CONST. art. X, §3.

Application for this exemption must be filed with the Department within the period provided in SC Code §12-54-85(F) for claims for refund. SC Code §12-4-720(A)(1).

SC Private Letter Ruling 87-11 reviewed whether a new business purchasing an existing building from a facility that had ceased operations met the requirements to be a new manufacturing establishment, or whether it was a continuation of the previous business. The following elements were considered relevant: (1) change in ownership, (2) change in product, (3) substantial investment of new capital, (4) cessation of former business, and (5) change in product market. Based on the facts in the letter ruling, the plant met these elements to a degree sufficient to allow the exemption as a new manufacturing establishment and was entitled to a new 5 year exemption period under SC Code §12-37-220(A)(7).

With respect to a manufacturer's idle personal property, see the special reporting rule discussed in §221.1 above.

§ 613.3. Pollution Control. All facilities or equipment of industrial plants that are designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution (both internal and external) required by the state or federal government and used in the conduct of the business are exempt from property taxes. SC Code §12-37-220(A)(8); S.C. CONST. art. X, §3. For equipment that serves a dual purpose of production and pollution control, the value eligible for the property tax exemption is the difference in cost between this equipment and equipment of similar production capacity or capability without the ability to control pollution. For purposes of this exemption, 20% of the cost of any piece of equipment placed in service in a greige mill qualifies as internal air and noise pollution control property and is exempt from property taxes. *Greige mill* means all textile processes from opening through fabric formation before dyeing and finishing.

Application for this exemption must be filed with the Department before the first penalty date for payment of property taxes. SC Code §12-4-720(A)(2). The Department does not have the power to grant this exemption retroactively or refund previously paid taxes unless an application for the exemption was timely filed. *TNS Mills, Inc. v. South Carolina Department of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998).

§ 613.4. Environmental Cleanup Site. SC Code §12-37-220(B)(44) provides a 5 year exemption from county property taxes (the exemption does not apply to school and municipal property taxes) for property and improvements subject to a nonresponsible party voluntary cleanup contract for which a certificate of completion has been issued by the South Carolina Department of Health and Environmental Control pursuant to Article 7, Chapter 56, Title 44 (The Brownfields Voluntary Cleanup Program.) The exemption applies beginning with the taxable year in which a certificate of completion is issued.

§ 613.5. Corporate Headquarters, and Corporate Office and Distribution Facilities. All new corporate headquarters, corporate office facilities, distribution facilities, and all additions to existing corporate headquarters, corporate office facilities, or distribution facilities, are exempt from nonschool county ad valorem taxes for a period of 5 years from the time of establishment, construction, or being placed in service if the cost of the new construction or additions is \$50,000 or more and 75 or more new full time jobs are created in South Carolina. SC Code §12-37-220(B)(32). Upon approval of the county, an unrelated purchaser that acquires the facilities in an arms length transaction and preserves the existing facilities and the number of jobs may use the unexpired portion of this exemption. The exemption applies for the full 5 year period if the purchaser invests an additional \$50,000 and creates at least 75 new full time jobs. SC Code §12-37-220(C). See SC Rev. Ruling 04-14, which discusses these requirements in detail.

This exemption is only for county taxes. It does not exempt the property from school or municipal taxes. However, a municipality may agree to exempt this property from municipal property taxes for up to 5 years. SC Code §12-37-220(B)(39).

Application for exemption must be filed with the Department within the period provided in SC Code §12-54-85(F) for claims for refund. SC Code §12-4-720(A)(1). SC Private Letter Ruling 89-19 provides that the positions created to satisfy the statute for an addition to a corporate headquarters need not be placed in the new buildings; however, the new employees must be employed in the South Carolina headquarters complex. SC Revenue Ruling 98-10 provides guidance on the criteria that must be met in order for a taxpayer to qualify as a "corporate office facility."

§ 613.6. Research and Development. The facilities of all new enterprises engaged in research and development activities, and all additions valued at \$50,000 or more to existing facilities of enterprises engaged in research and development, are exempt from property taxation for 5 years. Additions include machinery and equipment installed in an existing manufacturing or research and development facility. SC Code §12-37-220(B)(34). Upon approval by the county, an unrelated purchaser that acquires a research and development facility in an arm's length transaction and preserves the existing facility and number of jobs may use the unexpired portion of this exemption. The exemption applies for the full 5 year period if the purchaser invests an additional \$50,000. SC Code §12-37-220(C). See SC Rev. Ruling 04-14, which discusses these requirements in detail.

This exemption is only for county taxes. It does not exempt the property from school or municipal taxes. However, a municipality by ordinance may exempt this property from municipal property taxes for no more than 5 years. SC Code §12-37-220(B)(39).

Facilities engaged in research and development activities are facilities devoted directly and primarily to research and development in the experimental or laboratory sense for new products, new uses for existing products, or for improving existing products. To be eligible for this exemption, the facility must be a separate facility devoted primarily to research and development. The exemption does not include facilities used in connection with efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, or research in connection with literary, historical, or similar projects. SC Code §12-37-220(B)(34).

Application for exemption must be filed with the Department within the period provided in SC Code §12-54-85(F) for claims for refund. SC Code §12-4-720(A)(1).

§ 613.7. Air Carrier Hubs. All *personal property*, including aircraft, of an air carrier that operates an air carrier hub terminal facility for a period of 10 consecutive years from the date of qualification is exempt from taxation. SC Code §12-37-220(B)(33)(a). See SC Code §55-11-500 for the definition of air carrier hub.

Alternatively, all *aircraft and associated personal property* owned by a company owning aircraft meeting the requirements of SC Code §55-11-500(a)(3)(i) (*i.e.*, two or more specially equipped planes that are used for the transportation of specialized cargo, irrespective of the number of flights) is exempt for property taxes. SC Code §12-37-220(B)(33)(b).

Application for exemption must be filed with the Department within the period provided in SC Code §12-54-85(F) for claims for refund. SC Code §12-4-720(A)(1). An aircraft qualifying for the exemption allowed under SC Code §12-37-220(B)(33)(b) cannot be used as the basis for an exemption under SC Code §12-37-220(B)(33)(a).

§ 613.8. New Single Family Housing for Sale by a Builder. A newly constructed detached single family home offered for sale by a residential builder or developer is exempt from property taxes through the earlier of (a) the property tax year in which the home is sold or otherwise occupied or (b) the property tax year ending the sixth December 31 after the home is completed and any required certificate of occupancy is issued, provided required notice is given for each year of eligibility and the county approves. To obtain this exemption, the owner of the property must notify the county assessor and county auditor by written affidavit that the property is eligible for the exemption and is unoccupied.

§ 613.9. Trailers and Semitrailers Used by Motor Carriers. Trailers and semitrailers used by motor carriers are subject to a one time \$87 fee in lieu of all property taxes and registration requirements after the initial registration. Trailers and semitrailers do not include pole trailers. SC Code §§12-37-2860 and 12-37-2880.

§ 613.10. Personal Property in Transit. Personal property in transit with "no situs" status is exempt from property taxes. Personal property in transit is personal property, goods, wares and merchandise that: (a) is moving in interstate commerce; or (b) was consigned to a warehouse (public or private) within South Carolina from without for storage in transit to a final destination outside of South Carolina, whether specified when transportation began or afterward. This property is subject to certain record keeping requirements. SC Code §12-37-220(B)(17) and Article 7, Chapter 37, Title 12. No application for this exemption is necessary. SC Code §12-4-720(A)(3).

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§ 613.11. **Multicounty Industrial Parks.** All property in *multicounty industrial parks* is exempt from property taxes, but property owners must pay an amount equivalent to the property taxes or other fee in lieu of property tax payments that would otherwise be due if it were not for this exemption. S.C. CONST. Art. VIII, §13(D). See §712 below regarding fee in lieu of property taxes. See also SC Code §4-1-170.

For purposes of collection and enforcement, a multicounty park fee in lieu of tax will be treated just like a property tax and the owners must file returns and pay a fee in lieu of tax just as if it were a property tax. All provisions relating to collection and enforcement of property taxes apply to a multicounty park fee in lieu of tax, including penalty provisions, but excluding SC Code §12-54-155 (substantial understatement of tax). SC Code §12-2-90(B).

§ 614. **Agricultural Personal Property.** The following agricultural personal property is exempt:

- A. All *agricultural products* owned by the producer are exempt from property taxes. SC Code §12-37-220(B)(13).
- B. All *farm machinery and equipment*, including self propelled farm machinery and equipment, but excluding motor vehicles licensed for use on the highways, are exempt from property taxes. For purposes of this item, farm equipment includes greenhouses. SC Code §12-37-220(B)(14).
- C. All *livestock and live poultry* are exempt from property taxes. SC Code §12-7-220(B)(15).

No application is necessary for these three agricultural exemptions. See SC Code §12-4-720(A)(3).

§ 615. **Other Particular Businesses.** Some or all of the property of the following businesses is exempt:

- A. The personal property of *banks and savings and loan associations* is exempt from property taxes. SC Code §12-37-220(B)(23). No application for this exemption is necessary. SC Code §12-4-720(A)(3).
- B. *Beer and wine* are exempt from property taxes. SC Code §§12-37-220(B)(23) and 12-21-1085. No application for this exemption is necessary. SC Code §12-4-720(A)(3).
- C. The property of *telephone companies and rural telephone cooperatives* used in providing rural telephone service that was exempt from property taxation as of December 31, 1973, is exempt from property taxes on a proportionate basis such that the amount of property subject to property taxes in any tax district is not less than the net amount to which the tax millage was applied for the year ending December 31, 1973. Property in any tax district added after December 31, 1973, is also exempt in the same proportion that the exempt property of the company or cooperative as of December 31, 1973, in that tax district, bears to the total property

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of the company or cooperative as of December 31, 1973, in that tax district. SC Code §12-37-220(B)(10). Application for this exemption must be filed with the Department within the period provided in SC Code §12-54-85(F) for claims for refund. SC Code §12-4-720(A)(1).

- D. All *carnival equipment* owned, leased, or used by a foreign corporation or other nonresident of South Carolina, and not physically present in South Carolina for an aggregate of more than 6 months of the tax year, and on which property taxes have been paid in at least one other state, is exempt from property taxes. SC Code §12-37-220(B)(28).

§ 616. Public Ownership and Public Use of Property.

§ 616.1. **Publicly Owned Property.** All property of the *State, counties, municipalities, school districts, water and sewer authorities and other political subdivisions* is exempt from property taxes, if the property is used exclusively for public purposes. It is the duty of the Department and the county assessor to determine whether such property is used exclusively for public purposes. SC Code §12-37-220(A)(1), S.C. CONST. art. X, §3. No application for exemption is necessary. SC Code §12-4-720(A)(3).

Property acquired by the State or a political subdivision from a private owner will be exempt in the year of acquisition if the acquisition precedes the date property taxes become due and payable. *Town of Myrtle Beach v. Holliday*, 203 S.C. 25, 26 S.E.2d 12 (1943). By statute, property taxes are assessed annually before September 30th and are due and payable between September 30th and January 15th. SC Code §12-45-70; see SC Code §12-39-150.

The statute granting exemption of the property of the State and political subdivisions from taxation is subject to liberal construction. The rule of strict construction governs exemptions applicable to private, not public property. *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 289 S.E.2d 416 (1982). See §714.2 below for further discussion of the meaning of "exclusively for public purposes" in the context of public property leased to private entities.

Real property not subject to property tax remains exempt if it is leased by a state agency, county, municipality, other political subdivision, or other state entity to an entity that would not be subject to property tax if the entity owned the property. SC Code §12-37-220(B)(49). See §715 below regarding ad valorem taxation of leasehold interests in exempt property.

§ 616.2. **Public Use of Property.** Exemptions related to the public use of property include the following:

Property owned by the *South Carolina Research Authority* is specifically exempted from property taxes. No payment for fire protection is necessary. No application for this exemption is necessary. SC Code §13-17-90.

- A. Property owned by any of the *Regional Transportation Authorities* is specifically exempted from property taxes. No payment for fire protection is necessary. No application for this exemption is necessary. SC Code §58-25-80.

B. *Property Leased for Public Purposes.* The following property leased for public purposes is exempt:

1. Real property *leased on a nonprofit basis to a state agency, county, municipality or other political subdivision* if used for a general public purpose is exempt from property taxes, except that this exemption does not apply to property used for office space or warehousing. SC Code §12-37-220(B)(18).
2. All personal property *loaned or leased on a non-profit basis to a state agency, county, municipality, or other political subdivision*, or to an organization exempt from federal income tax under Internal Revenue Code §501 through 514, for at least thirty days during the tax year, is exempt from property taxes as long as the property is used solely for the purpose of public display. SC Code §12-37-220(B)(25). No application for exemption is necessary. SC Code §12-4-720(A)(3).
3. All property leased to and operated by the *South Carolina Public Service Authority* for the generation or transmission of electric power is exempt from property taxes. SC Code §12-37-220(B)(21).
4. A private passenger motor vehicle leased to a governmental entity is exempt if the vehicle would be exempt under SC Code §12-37-220(A)(1) if it were owned by the governmental entity. SC Code §12-37-220(B)(46).

Except as otherwise indicated above, application for these exemptions must be filed with the Department within the period provided in SC Code §12-54-85(F) for claims for refund. SC Code §12-4-720(A)(1); see SC Code §12-4-720(A)(3).

- D. *Land subject to a perpetual easement* donated to the State under the South Carolina Scenic Rivers Act, Chapter 29, Title 49 of the SC Code is exempt from property tax. SC Code §12-37-220(B)(36). Application for this exemption must be filed with the Department within the period provided in SC Code §12-54-85(F) for claims for refund. SC Code §12-4-720(A)(1).
- E. *All property of a public benefit corporation* established by a county or municipality is exempt from property tax if used exclusively for economic development purposes that serve a governmental purpose as defined in §115 of the Internal Revenue Code. SC Code §12-37-220(A)(11). Application for this exemption must be filed with the Department within the period provided in SC Code §12-54-85(F) for claims for refund. SC Code §12-4-720(A)(1).

§ 617. Certain Nonprofit, Charitable, Religious, Educational, and Fraternal Organizations. The following is a listing of the nonprofit, charitable, religious, educational, and fraternal organizations that are entitled to property tax exemptions. Application for the following exemptions must be filed with the Department within the period provided in SC Code §12-54-85(F) for claims for refund. SC Code §12-4-720(A)(1).

- A. Property of all *schools, colleges* and other institutions of learning and all charitable institutions in the nature of *hospitals and institutions caring for the infirmed, the handicapped, the aged, children and indigent persons* is exempt from property taxes, except where the profits of such institutions are applied to private use. Equipment leased by and used in connection with the operation of charitable, not for profit, or governmental hospital is deemed to be owned by the hospital. SC Code §§12-37-220(A)(2) and 12-37-222; S.C. CONST. art. X, §3. For a discussion of what type of property of a hospital may qualify for an exemption under this section, see SC Rev. Ruling 05-18.
- B. The property of all *public libraries, churches, parsonages and burying grounds* is exempt from property taxes. This exemption for real property does not extend beyond the buildings and premises actually occupied by the owner. SC Code §12-37-220(A)(3); S.C. CONST. art. X, §3. But see (C) below for property owned, but not occupied, by churches.
- C. All real property of *churches* that extends beyond the buildings and premises actually occupied by the churches is exempt from property taxes if no profit or benefit from any operation on the churches' real property inures to the benefit of any private stockholder or individual and no income producing ventures are located on the property. SC Code §12-37-220(B)(31).
- D. The property tax liability of a person selling real property to a church ends once the church acquires the real property if it will be exempt from property taxes when owned by the church. The property taxes that have accrued up to the date of the acquisition by the church must be paid to the county within 30 days of the date of transfer. SC Code §12-37-220(D). The church must file an application for the exemption with the Department as provided in SC Code §12-4-720(A)(1).
- E. The property of all *charitable trusts and foundations* used exclusively for charitable and public purposes is exempt from property taxes. This exemption for real property does not extend beyond the buildings and premises actually occupied by the owner. SC Code §12-37-220(A)(4); S.C. CONST. art. X, §3. If an entity owns property a portion of which qualifies for this exemption, and a portion of which is leased to one or more separate entities and that property would be exempt under SC Code §12-37-220(A)(4) or (B)(16) if the entity leasing the property owned the property, then any portion of the property that is leased to such entity is exempt from property taxes. SC Code §12-37-220(E).
- F. The property of any *religious, charitable, eleemosynary, educational, or literary society, corporation, or other association* is exempt from property taxes when the property is used by the qualifying owner primarily for holding its meetings and conducting its business, or for certain future or investment uses when qualified, provided no profit or benefit inures to the benefit of any private stockholder or individual. SC Code §12-37-220(B)(16)(a) and (c).

If a religious, charitable, eleemosynary, educational, or literary society, corporation, or other association owns property, a portion of which is eligible for exemption by virtue of use primarily for the holding of the owner's meetings and the conduct of its business, and a portion of which is leased to one or more separate entities and that property would be exempt under SC Code §12-37-220(A)(4) or (B)(16) if the entity leasing the property owned the property, then any portion of the property that is leased to such entity is exempt from property taxes. SC Code §12-37-220(E).

- G. The property of any *religious, charitable, or eleemosynary society, corporation, or other association* when the property is acquired for the purpose of building or renovating *residential structures on it for not for profit sale to economically disadvantaged persons* is exempt from property taxes. The total properties for which this exemption may be claimed may not exceed fifty acres per county. SC Code §12-37-220(B)(16)(b).
- H. All property of a *nonprofit corporation* (1) created for the purpose of providing *water supply or sewage disposal*, or a combination of such services, and (2) organized pursuant to Chapter 36, Title 33 of the SC Code, is exempt from property taxes. SC Code §12-37-220(B)(4).
- I. All property of *nonprofit housing corporations* devoted exclusively to providing (1) *below cost housing for the aged or for handicapped persons* or for both aged and handicapped persons as authorized by Section 202 of the Housing Act of 1959 and regulated by regulations that appear in the Federal Register, 24 CFR Part 885, (2) *below cost supportive housing for elderly persons or households* as authorized by Section 202 of the Housing Act of 1959, (3) *below cost supportive housing for persons with disabilities* as authorized by Section 811 of the National Affordable Housing Act of 1990, or (4) *housing for elderly or handicapped persons* or families of *low or moderate income* as authorized by Section 515 of Title V of the Housing Act of 1949, is exempt from property taxes. SC Code §12-37-220(B)(11). Also, all property of nonprofit housing corporations, or solely owned instrumentalities of these corporations that are devoted to providing housing to low or very low income residents, is exempt from property taxes. A nonprofit housing corporation must satisfy the safe harbor provisions of IRS Revenue Procedure 96-32 to qualify for this exemption. SC Code §12-37-220(B)(11)(c).
- J. All property owned by *volunteer fire departments and rescue squads* used exclusively for the purposes of such departments and squads is exempt from property taxes. When property is leased to the fire department or rescue squad by an entity that is itself exempt from property tax, the exemption for the leased property is the same as if the property were owned by the fire department or rescue squad. SC Code §12-37-220(B)(19).
- K. All community owned *recreation facilities* open to the general public and operated on a nonprofit basis are exempt from property taxes. SC Code §12-37-220(B)(22).

L. All property of *nonprofit museums* that is used exclusively for such purpose is exempt from property taxes. SC Code §12-37-220(B)(20).

M. All property of *nonprofit or eleemosynary community theater companies, symphony orchestras, county and community arts councils and commissions*, and other such companies, that is used exclusively for the promotion of the arts, is exempt from property taxes. SC Code §12-37-220(B)(24).

N. Miscellaneous organizations.

1. All property of the *American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, Fleet Reserve Association, Marine Corps League, or any similar Veterans Organization chartered by Congress*, whether belonging to the department or to any of the posts in South Carolina, when used exclusively for the purpose of such organization and not used for any purpose other than club rooms, offices, meeting places or other activities directly in keeping with the policy stated in the national constitution of such organization, and when devoted entirely to its own uses and not held for pecuniary profit, such property is exempt from property taxes. "Pecuniary profit" refers to income received from the sale of alcoholic beverages to persons other than bona fide members and their bona fide guests, or any income, any part of which inures to the benefit of any private individual. SC Code §12-37-220(B)(5).
2. All property owned and used or occupied by any *Young Women's Christian Association, Young Men's Christian Association* or the *Salvation Army* used for the purpose of, or in support of, such organization is exempt from property taxes. However, this exemption does not apply to any portion of the property rented for purposes not related to the functions of the organization. SC Code §12-37-220(B)(6).
3. All property owned and used or occupied by *The Boy Scouts of America* or *The Girl Scouts of America* and used exclusively for the purposes of those organizations is exempt from property taxes. The exemption extends to property not owned by these organizations but that is used by them exclusively for scouting purposes. SC Code §12-37-220(B)(7).
4. All property used or occupied by the *South Carolina Association of Future Farmers of America*, is exempt from property taxes, as long as the property is used exclusively to promote vocational education or agriculture, better business methods and more effective organization for farming, or to encourage thrift or provide recreation for persons studying agriculture or home economics in the public schools. SC Code §12-37-220(B)(8).
5. The property of any *fraternal society, corporation or association*, when the property is used primarily for the holding of its meetings and the conduct of its business and no profit or benefit inures to the benefit of any private stockholders or individuals, is exempt from property taxes. SC Code §12-37-220(B)(12).

6. Property held in trust under the provisions of the *War Between the States Heritage Trust Program* in Chapter 18, Title 51 of the SC Code, and all real property of charitable trusts and foundations held for historic preservation of forts and battlegrounds that extends beyond the building and premises actually occupied by the charitable trusts or foundations that own the real property will be exempt from property taxes if:
 - a. No profit or benefit from any operations on the property inures to any private stockholder or individual; and
 - b. No income producing ventures are located on the property. SC Code §12-37-220(B)(42).

§ 618. **Disabled Persons and Certain Veterans.** Except as otherwise provided below, application for the following exemptions for disabled persons and certain veterans must be filed with the Department within the period provided in SC Code §12-54-85(F) for claims for refund. SC Code §12-4-720(A)(1).

- A. SC Code §12-37-220(B)(1) provides an exemption for the house owned in fee or for life, or jointly with a spouse, by one of the following persons:
 1. *a veteran of the United States armed forces* who is permanently and totally disabled as a result of a service related disability and who files with the Department a certificate signed by the county service officer certifying this disability.
 2. *a former law enforcement officer* who is permanently and totally disabled as a result of a law enforcement service connected disability. A "law enforcement officer," as defined in SC Code §23-6-400(D)(1), is an appointed officer or employee hired by and regularly employed on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrest for offenses committed or alleged to have been committed.
 3. *a former firefighter*, including a volunteer firefighter, who is permanently and totally disabled as a result of a firefighting service disability. A "firefighter," as defined in Chapter 80, Title 40 of the SC Code, is any person, male or female, paid or unpaid, who engages in rescue, fire suppression, or related activities under the supervision of a fire chief or fire department.
 4. *a "qualified surviving spouse."* A qualified surviving spouse is (a) a surviving spouse of the disabled service person, law enforcement officer or firefighter described above; or (b) the surviving spouse of a member of the United States Armed Forces who was killed in action, or the surviving spouse of a law enforcement officer or firefighter who died in the line of duty if, at the time of death, the deceased eligible person owned the house in fee simple, or jointly with the surviving spouse. To receive the exemption, the qualified surviving spouse

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must not remarry, must reside in the house, and must acquire ownership of the house in fee simple or for life. A house subsequently acquired by a qualified surviving spouse may also qualify for the exemption; however, the Department must be notified of the address of the new house.

For purposes of this exemption, "house" means a dwelling and a lot on which it is situated that qualifies as the legal residence of the taxpayer under SC Code §12-43-220(c). A house may be held in trust for a qualifying beneficiary if the house is his domicile.

"Permanently and totally disabled" means "the inability to perform substantial gainful employment by reason of a medically determinable impairment, either physical or mental, that has lasted or is expected to last for a continuous period of twelve months or more or to result in death." SC Code §12-37-220(B)(1)(e)(ii).

- B. The dwelling house and a lot (not to exceed one acre of land) owned in fee simple or for life, or jointly with a spouse, by a *paraplegic* or *hemiplegic* person is exempt from property taxes. The qualifying person must provide proof of his disability to the Department. The exemption is allowed to the surviving spouse of a qualifying person so long as the spouse does not remarry, resides in the dwelling, and obtains a fee simple interest or a life estate in the dwelling. The house may be held in trust for a qualifying beneficiary. The house must be the domicile of the qualifying person. This exemption is extended to persons with Parkinson's disease, multiple sclerosis, or amyotrophic lateral sclerosis (ALS) if the person has a doctor's statement stating that the disease has resulted in the same ambulatory difficulties as a person with paraparesis or hemiparesis; however, the exemption does not extend to the surviving spouse of such a person. SC Code §12-37-220(B)(2).
- C. Two private passenger vehicles owned or leased by any *totally and permanently disabled veteran* for which special license tags have been issued are exempt. In lieu of the license tag, a veteran may have a certificate of such disability signed by the county service officer or the Veterans Administration filed with the South Carolina Department of Motor Vehicles. SC Code §12-37-220(B)(3).
- D. Two personal motor vehicles owned or leased by *persons required to use wheelchairs*, and who qualify for special license tags, are exempt. SC Code §12-37-220(B)(27).
- E. One personal motor vehicle owned or leased by a *legal guardian of a minor who is blind* or is required to use a *wheelchair* is exempt provided the vehicle is used to transport the minor. SC Code §12-37-220(B)(37).
- F. Two private passenger vehicles owned or leased by recipients of the *Medal of Honor* are exempt. SC Code §12-37-220(B)(26).

G. Two personal motor vehicles (or trucks, not exceeding three quarter ton), owned or leased by and licensed and registered in the name of any member or former member of the armed forces who was a *prisoner of war (POW)* in certain wars or conflicts are exempt. This exemption also extends to the surviving spouse of a qualified former POW until the remarriage of the surviving spouse. SC Code §12-37-220(B)(29).

H. The dwelling home and a lot totaling one acre or less, owned by a resident of this State who is a recipient of the *Medal of Honor* or who was a *prisoner of war (POW)* in World War I, World War II, the Korean Conflict, or the Vietnam Conflict, is exempt from property taxes if certain requirements are met. This exemption is allowed to a surviving spouse of a qualifying person under the same terms and conditions governing the exemption of a surviving spouse under SC Code §12-37-220(B)(1). SC Code §12-37-220(B)(43).

The homestead exemption for the elderly, disabled or blind is discussed in §619 below.

§ 619. Homestead Exemption for the Elderly, Disabled or Blind. An exemption from all property taxes applies to the first \$50,000 of the fair market value of the dwelling place of a person who (a) has been a resident of South Carolina for at least 1 year and has reached the *age of 65*, or (b) has been classified as *totally and permanently disabled* as defined by the statute, or (c) is *legally blind* as defined by the statute. SC Code §§12-37-220(A)(9) and 12-37-250; S.C. CONST. art. X, §3. Application procedures are described in §642.1 below.

The term *dwelling place* means the permanent home and legal residence of the applicant. The exemption is applicable to county, municipal, school, and special assessment real estate property taxes.

With respect to qualifying interests, title in fee simple or by life estate held exclusively by the applicant qualifies to the full extent allowed (up to \$50,000). The dwelling place is also exempt to the full extent allowed (up to \$50,000) when jointly owned by husband and wife, if either spouse meets the criteria for the exemption. Otherwise, if the taxpayer's interest, whether a life estate or fee simple interest, is held in common with others, the exemption is calculated on a pro rata basis. An individual is considered the owner of the property if he or she has an interest pursuant to an installment contract for sale with the U.S. Department of Veterans Affairs. SC Code §12-43-221.

If a qualifying person owns a mobile home only and not the real property on which it is located, the mobile home will be exempt from personal property taxes to the extent and in accordance with the same procedures as is provided for in SC Code §12-37-250 for real property.

When a dwelling house owned and occupied by a qualifying person is located on leased property, the homestead exemption is allowed for the house in the same manner as though the qualifying person owned a fee simple or life estate interest in the leased property on which his dwelling house is located. This occurs even if, at the end of the lease period, the landowner becomes the owner of the residence.

The dwelling place of the surviving spouse of one who qualified for the homestead exemption at the time of death will qualify for the exemption to the same extent as before the death, provided (a) the surviving spouse acquires complete fee simple title to, or a life estate in, the dwelling place within 9 months after the death, and (b) the surviving spouse remains unmarried, and (c) the property is used as the permanent home and legal residence of the surviving spouse. The exemption for the surviving spouse is obtained in accordance with the procedures provided in SC Code §12-37-250. A surviving spouse who disposes of the dwelling place and acquires another residence in South Carolina for use as a dwelling place may apply for and receive the exemption on the newly acquired dwelling place.

The homestead exemption is also available for *dwellings held in trust*. When a trustee holds legal title to a dwelling that is the legal residence of a qualifying beneficiary, the dwelling qualifies for the homestead exemption. The trustee must make application to the county auditor for the exemption in person or by mail. No further application is necessary, but the trustee is subject to penalty if he does not notify the county auditor of any change in classification of the property within 6 months. SC Code §12-37-266.

Incorporated municipalities may provide for homestead exemptions from municipal ad valorem taxes on real property. SC Code §12-37-285.

A person who applies for this exemption and was qualified for the exemption in the prior tax year, in addition to the current year, may be certified for the exemption not to extend beyond the immediate preceding tax year. The personal representative of a deceased taxpayer's estate may apply on behalf of the deceased taxpayer for the homestead exemption and any refund due for those property tax years open to the deceased taxpayer immediately before the taxpayer's death. SC Code §12-37-252.

§ 640. Practice and Procedure in Exemption Cases.

§ 641. Exemption Cases (Other than the Homestead Exemption).

§ 641.1. Application for Exemption. Applications for exemptions other than the homestead exemption are filed with the Department, which determines eligibility. SC Code §12-4-710. (Procedures for the homestead exemption are discussed in §642 below.)

Certain exemptions do not require application. See SC Code §12-4-720 to determine if an application is required. When an application is required, it must be filed within the time period allowed under SC Code §12-4-720 or no exemption will be permitted for the tax year in question.

Upon receipt of an application and an investigation, the Department may declare that the property qualifies for exemption and certify the exemption to the auditor's office in the county in which the property is located. SC Code §12-4-730. If the exemption is granted, the owner is not required to file an additional annual application unless there is a change in the status of the property. An example of a change in the status of the property is a new lease. However, a taxpayer who is required to file a property tax return must claim the

property as exempt on the return. SC Code §12-4-720. Applications for certain exemptions, such as the economic development related exemptions discussed in §613, are made by properly filing the property tax return.

§ 641.2. Appeal when Exemption Denied or Revoked. If the Department denies an application for exemption or revokes the tax-exempt status of property because it does not qualify or continue to qualify for exemption, the taxpayer may appeal. See the South Carolina Revenue Procedures Act, Chapter 60, Title 12 of the SC Code; SC Rev. Procedure 06-2. The procedure for contesting the denial of an exemption is discussed in §520 above.

§ 641.3. Refunds. Refunds are not permitted for property tax exemptions requiring an application unless the application was timely filed. SC Code §12-60-1750. If an application was filed timely or was not required, a taxpayer may seek a refund by mailing or delivering a claim for refund to the Department within the time provided in SC Code §12-54-85(F), which is generally the later of 3 years from the date of a timely filed return or 2 years from the date of payment. Even if the taxpayer does not file a claim, if a timely claim for refund could be filed, there is no question of fact or law, and money has been erroneously or illegally collected, the Department may order a refund. SC Code §12-60-2150. See SC Rev. Procedure 06-2.

The procedure for claiming a refund of taxes paid if the taxpayer believes the property is subject to an exemption other than a homestead exemption is discussed in §536.3 above.

§ 642. The Homestead Exemption. The homestead exemption for taxpayers who are 65 and over, totally and permanently disabled, or legally blind is discussed in §619 above. This exemption is administered at the local level, as follows.

§ 642.1. Application for Exemption. The application for the homestead exemption for taxpayers who are 65 and over, totally and permanently disabled, or legally blind must be made to the county auditor and to the governing body of the municipality in which the home is located on forms provided by the county and municipality. Failure to apply constitutes a waiver of the exemption for that year subject to the exception set forth in SC Code §12-37-252.

This exemption will not be granted for the tax year in which application is made unless the person applies for the exemption before July 16th. If the person makes written application for the exemption after July 15th, the exemption will generally be granted for the succeeding tax year. However, if a person applies after July 15th, but before the first penalty date on property taxes for that year, and the person qualifies under this section when the application is made, the taxes due for that tax year will be reduced to reflect the exemption. SC Code §12-37-250.

When the homestead exemption is granted, it continues to be effective for successive years in which the ownership of the homestead or the other qualifications for the exemption remain unchanged. Notification of any change affecting eligibility must be given immediately to the county auditor. SC Code §12-37-255. See §619 above.

§ 642.2. Appeal when Exemption Denied or Revoked. If an application for the homestead exemption is denied, the taxpayer may challenge the decision by written request for a conference with the county auditor. The request may be made at any time before the later of (a) 30 days after the tax notice is mailed or (b) the last day the tax can be paid without penalty (January 15th). SC Code §§12-60-2910, 12-45-180 and 12-60-50.

The procedure for contesting the denial of a homestead exemption is discussed in §515 above.

§ 642.3. Refunds. Refunds are not permitted for property tax exemptions requiring an application unless the application was timely filed. SC Code §12-60-1750. If an application was filed timely or was not required, a taxpayer may request a refund of property taxes resulting from the denial of a homestead exemption by filing a claim for refund with the county auditor. SC Code §12-60-2940. The procedure for claiming such a refund is discussed in §536.2 above.

§ 642.4. Refund—Exception to the necessity of making application. When a taxpayer qualifies for a refund due to the reduction of the assessment ratio from 6% to 4% for a legal residence, the taxpayer may also be certified for the homestead exemption for the elderly, disabled or blind and given a refund for the immediate preceding tax year in spite of the fact that the taxpayer failed to file an application for that exemption. SC Code §§12-37-250 and 12-37-252(B).

PART VIII: § 700. MISCELLANEOUS ITEMS.

§ 710. Economic Development Incentives. Incentives for economic development include special assessment ratios (see §211 above), special valuations (see §220 above), and certain exemptions (see §613 above). In addition, to encourage economic growth and revitalization, South Carolina offers certain tax credits, as discussed in §711 below, and a fee in lieu of property tax, as discussed in §712 below.

§ 711. Tax Credits

§ 711.1. Incentive for Rehabilitating an Abandoned Textile Mill Site. The South Carolina Textile Communities Revitalization Act was enacted to encourage the renovation, improvement, and redevelopment of abandoned textile mills in South Carolina. The Act was recodified in 2008 in Chapter 65, Title 12 of the SC Code. It provides either a property tax credit or an income tax credit to a taxpayer that improves, renovates, or redevelops an abandoned textile mill site in South Carolina.

If the taxpayer elects to claim the property tax credit, the taxpayer must provide a Notice of Intent to Rehabilitate to the municipality in which the textile mill site is located, or to the county if the textile mill site is located in an unincorporated area, before incurring its first rehabilitation expenses at the textile mill site. Failure to provide the Notice results in only those rehabilitation expenses incurred after the Notice is provided qualifying for the credit. SC Code §12-65-30(B).

The Notice of Intent to Rehabilitate is a letter stating: (a) the intention of the taxpayer to rehabilitate the site; (b) the location of the site; (c) the amount of acreage involved with the site; (d) the estimated expenses to be incurred in rehabilitating the site; (e) which buildings on the site are to be renovated or demolished; and (f) whether new construction is to be involved at the site. SC Code §12-65-20(9).

The Act specifies the procedures for approval that the municipality or county must follow before the property tax credit goes into effect. These include giving notice to all affected taxing entities in whose jurisdiction the textile mill site is located. If a local taxing entity does not file a timely objection, it is deemed to have consented to the granting of the credit. SC Code §12-65-30(B).

The credit amount is based on actual or estimated rehabilitation expenses as follows:

1. If the actual expenses are between 80% and 125% of the estimated expenses listed in the Notice, the credit is *25% of the actual rehabilitation expenses* multiplied by the local taxing entity ratio for each local taxing entity that has consented to the credit.
2. If the actual expenses exceed 125% of the estimated expenses listed in the Notice, the credit is *25% of 125% of the estimated rehabilitation expenses* multiplied by the local taxing entity ratio for each local taxing entity that has consented to the credit.
3. If the actual rehabilitation expenses are below 80% of the estimated expenses, no credit is allowed.

The local governing body, by ordinance, must decide how much of the taxpayer's property tax may be offset by the credit; however, the credit cannot offset more than 75% of the real property taxes due for the eligible site in any single tax year. The credit is vested in the taxpayer in the year in which the eligible site is placed in service and may be carried forward for up to 8 years following that date. The credit may be claimed for each applicable phase or portion of the site beginning with the property tax year the applicable phase or portion is first placed in service. SC Code §12-65-30(B).

Note that the credit is not available if the taxpayer owned the textile mill site immediately prior to its abandonment and the site was operational at that time. SC Code §12-65-30(D).

Definitions. Under the South Carolina Textile Communities Revitalization Act, the following definitions apply. See SC Code §12-65-20.

1. "Textile Mill" means facilities that were last used for textile manufacturing, dying or finishing operations and for uses ancillary to those operations.
2. "Textile mill site" means the textile mill together with the land and other improvements on it that were used directly for textile manufacturing operations or ancillary uses. However, the area of the site is limited to the land located within the boundaries where the textile manufacturing, dying, or finishing facility structure is located and does not include land located outside the boundaries of the structure or devoted to ancillary uses.

3. "Ancillary Uses" are uses related to the textile manufacturing, dying, or finishing operations on a textile mill site consisting of sales, distribution, storage, water runoff, wastewater treatment and detention, pollution control, landfill, personnel offices, security offices, employee parking, dining and recreation areas, and internal roadways or driveways directly associated with such uses.
4. "Rehabilitation expenses" are expenses or capital expenditures incurred in the rehabilitation, renovation, or redevelopment of the textile mill site, including demolition costs, environmental remediation, site improvements and new construction costs, but excluding the cost of acquiring the site or the cost of personal property located at the site. For expenses to qualify for the credit, the textile mill and buildings on the site must be either renovated or demolished.
5. "Abandoned" means that at least 80% of the textile mill has been continuously closed to business or otherwise nonoperational as a textile mill for at least one year immediately preceding the date the taxpayer files a Notice of Intent to Rehabilitate. A textile mill that qualifies as abandoned may be subdivided into separate parcels, and those parcels may be owned by the same taxpayer or different taxpayers, and each parcel is deemed to be a textile mill site for purposes of determining whether each subdivided parcel has been abandoned.
6. "Placed in service" means the date the textile mill site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.
7. A "local taxing entity" is a county, municipality, school district, special purposes district, and any other entity or district with the power to levy ad valorem property taxes against the eligible site.
8. The "local taxing entity ratio" is the percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the eligible site.

Caution: Other rules not discussed in this general summary may apply to sites purchased before January 1, 2008 or a site located on the Catawba River near Interstate 77.

§ 711.2. Incentive for Rehabilitating Abandoned Retail Facilities. The South Carolina Retail Facilities Revitalization Act, Chapter 34, Title 6 of the SC Code, was enacted to encourage the renovation, improvement, and redevelopment of abandoned retail facilities in South Carolina. It provides either a property tax credit or an income tax credit to a taxpayer that improves, renovates, or redevelops an abandoned retail facility site in South Carolina.

The taxpayer may elect to claim the property tax credit by notifying the South Carolina Department of Revenue of its election prior to the date the eligible site is placed in service. If the taxpayer does not make the election in a timely manner, the taxpayer is deemed to have chosen the income tax credit. SC Code §6-34-40(D).

The Act specifies the procedures for approval that the municipality or county must follow before the property tax credit goes into effect. These include giving notice to all affected taxing entities in whose jurisdiction the textile mill site is located. If a local taxing entity does not file a timely objection, it is deemed to have consented to the granting of the credit provided the credit does not exceed the amount stated in the public hearing notice. SC Code §6-34-40(B).

If granted, the credit is equal to 25% of the rehabilitation expenses at the eligible site multiplied by the local taxing entity ratio for each local taxing entity that has consented to the credit. The local governing body, by ordinance, must decide how much the taxpayer's property tax may be offset by the credit; however, the credit cannot offset more than 75% of the real property taxes due for the site in any single tax year. The credit is vested in the taxpayer in the year in which the eligible site is placed in service and may be carried forward for up to 8 years following that date. SC Code §6-34-40(B).

The owner of the eligible site may transfer, devise, or distribute any unused credit against property tax or income tax to the tenant of the eligible site, provided the Department receives written notification of, and approves, the transfer, devise, or distribution. SC Code §6-34-40(E).

Definitions. Under the South Carolina Retail Facilities Revitalization Act, the following definitions apply. See SC Code §6-34-30.

1. An "eligible site" is a shopping center, mall, or free standing site whose primary use was as a retail facility with at least one tenant or occupant located in a 40,000 square foot or larger building or structure that has been abandoned. However, for purposes of the property tax credit, the governing body of a county or municipality where the site is located may, by resolution, reduce the 40,000 square foot eligibility requirement by not more than 15,000 square feet. See SC Code §6-34-40(F).
2. "Abandoned" means that at least 80% of the eligible site's building or structure has been continuously closed to business or nonoperational for at least one year immediately prior to the time the determination is to be made. However, during the abandonment, the eligible site may serve as a wholesale facility for no more than one year. The eligible site's facilities only include the site's building or structure.
3. "Rehabilitation expenses" are the expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site.
4. A "local taxing entity" is a county, municipality, school district, special purposes district, or any other entity or district with the power to levy ad valorem property taxes against the eligible site.
5. The "local taxing entity ratio" is the percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the eligible site.

6. "Placed in service" means the date on which the eligible site is suitable for occupancy for the purposes intended.

§ 711.3. Incentive for Installing a Fire Sprinkler System. A local taxing entity may allow a property tax credit to a taxpayer who installs a new or existing fire sprinkler system in a new or existing commercial or residential structure if the fire sprinkler system is not required by law, regulation, or code. The property tax credit is equal to 25% of the direct expenses, not including any fee charged by the utility, and is applied against real property taxes levied by the consenting local taxing entity. SC Code § 12-6-3622; see SC Code § 40-10-20 (definition of fire sprinkler system). The taxpayer may also claim an income tax credit equal to the amount of the property tax credit allowed by the local taxing entity.

The owner of the structure may transfer, devise, or distribute any unused credit to the tenant of the eligible site. To be effective, the local taxing entity must receive written notification.

§ 712. Fee in Lieu of Property Taxes.

§ 712.1. Introduction. Under Article X of the South Carolina Constitution, manufacturing real or personal property is assessed at 10.5% of its fair market value. Commercial personal property is assessed at 10.5%, while commercial real property is assessed at 6%. To promote the growth of manufacturing within this State, the legislature enacted 3 Fee in lieu of property tax statutes (referred to as "Fee in lieu" or "Fee").

The first Fee in lieu statute was enacted in SC Code §4-29-67 and is commonly referred to as the "Big Fee." The second statute is contained in Chapter 12 of Title 4 and is commonly referred to as the "Little Fee." The third statute is contained in Chapter 44 of Title 12 and is referred to as the "Simplified Fee." Special Fee in lieu provisions exist for very large investments. These provisions are known as the "Super Fee" with respect to the Little and Big Fee and as the "Enhanced Investment Fee" with respect to the Simplified Fee.

Property subject to the Fee usually consists of land, improvements to land, and/or machinery and equipment (excluding some mobile property) located at a project. See SC Rev. Rulings 93-7 and 97-21. The Fee statutes permit a company to negotiate to pay a fee instead of paying property taxes. The 10.5% assessment ratio can be, and often is, negotiated to 6% (4% for very large investments under the Super Fee or Enhanced Investment Fee). In addition, the company and the county can agree to freeze the millage rate applicable to the property at a set millage rate, or adjust the millage rate every 5 years, for the period the Fee is in effect. During the period of the Fee, the value of personal property is deemed to decrease each year by the depreciation allowable for property tax purposes subject to a floor on the value. The value of real property remains constant, and therefore, is not subject to inflation. The period of the Fee generally is 20 years for each item of property (30 years for the Super and Enhanced Investment Fee).

Calculations of the Fee must be made incorporating any property tax exemptions for which the property may be eligible, except for the 5 year exemptions from county property taxes allowed for manufacturing property, corporate headquarters, corporate office or distribution

facilities property, and research and development facilities provided for by Section 3(g) of Article X of the South Carolina Constitution, and SC Code §12-37-220(A)(7), and (B)(32) and (34), respectively. SC Code §§4-12-30(E), 4-29-67(E), and 12-44-50(A)(2).

Example. The following example shows the savings from reducing the assessment ratio from 10.5% to 6%. Savings are also available from freezing the millage rate and the value of real property.

	Normal Calculation	Fee in lieu Calculation
Total Investment in Equipment	\$100,000,000	\$100,000,000
Investment Less Depreciation	\$89,000,000	\$89,000,000
Assessment Ratio	x 10.5%	x 6%
Assessed Value	\$9,345,000	\$5,340,000
Millage	x .250	x .250
Tax Due	\$2,336,250	\$1,335,000
Savings		\$1,001,250

This synopsis begins with a general summary of the Little Fee, and is followed by a summary of the Big Fee, the Simplified Fee, the Super and Enhanced Investment Fees, and special source revenue bonds. Since this summary is necessarily a simplification, interested taxpayers and their representatives should review the statutes. For example, many transitional rules applicable to some projects that are already paying the Fee in lieu of property taxes under prior statutes are not included.

Note that, due to statutory changes and transitional rules, pre-existing agreements may not be subject to some, or all, of the provisions discussed below and may be affected by other provisions.

§ 712.2. Little Fee.

Steps in the Little Fee Process. In connection with the Little Fee, certain requirements must be satisfied:

- A. Project identification—The county must identify the project or proposed project. This may be accomplished by the adoption of an inducement resolution or similar resolution by county council.
- B. Inducement agreement—The company and the county must enter into an inducement agreement. This agreement establishes that a company will receive the Fee as an inducement for locating in the county. The company entering into the Little Fee is known as the "sponsor."
- C. Millage rate agreement—The sponsor and the county may enter into a millage rate agreement that fixes the millage rate for the entire Fee period or fixes it for the first 5

years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually fixed in the inducement agreement or the lease agreement.

- D. Transfer of the property to the county—Title to the property must be transferred to the county.
- E. Lease or lease purchase agreement—The sponsor and the county may enter into one or more lease agreements. This agreement leases the property from the county back to the sponsor and usually provides for the sale of the property to the sponsor at the end of the Fee period for a nominal sum. If there is a series of these agreements, the first one is called the initial lease agreement. A definition of "lease agreement" is provided in SC Code §4-12-10(5).
- F. Financing agreement—There may be one or more financing agreements, which may include special source revenue bonds issued pursuant to SC Code §4-29-68. (See the discussion of special source revenue bonds at §712.6.)

Some of these steps are often combined and there may be a number of transfers and lease agreements for one project.

Definition and Location of Project. A project is any land, building, and other improvements on the land including water, sewage, and pollution control improvements and all other machinery, apparatus, equipment, office facilities, and furnishings that are considered necessary, suitable, or useful by a sponsor. A project may also consist of, or include, an aircraft hangared or used at an airport in South Carolina. SC Code §4-12-10(2).

The project must be located in a single county, in a multicounty industrial park, or if certain agreements are made with the counties, the property may straddle contiguous counties. SC Code §4-12-30(B).

County Must Make Findings of Public Purpose. Before a project may qualify for the Little Fee, the county council must make all of the following findings:

- A. The project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits not otherwise provided locally.
- B. The project gives rise to no pecuniary liability of the county or any municipality or charge against its general credit or taxing power.
- C. The purposes to be accomplished by the project are proper governmental and public purposes.
- D. The benefits of the project are greater than the cost.

The county may seek the assistance and advice from the Board of Economic Advisors or the Department in making its findings. SC Code §4-12-30(B)(5).

Every lease agreement must contain a provision obligating a sponsor to maintain the project and carry insurance on the project. SC Code §4-12-30(B)(6).

Required Investment and Timing of Investment. Generally, the required investment must be made by a sponsor. A sponsor affiliate may also qualify for the Fee. A "sponsor" is defined as "one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise." A "sponsor affiliate" means an entity that joins with, or is an affiliate of, a sponsor and that participates in the investment in, or financing of, a project. SC Code §4-12-10.

There is a minimum investment amount required to qualify for a Fee in Lieu of property taxes. For the Little Fee, the minimum investment amount is \$2.5 million. However, the minimum investment amount is reduced to \$1 million for a sponsor investing in a county with an average annual unemployment rate of at least twice the state average during the last 24 months based on data available on November 1st. (See §712.7 "Fee in Lieu Reduced Investment Counties" for a list of qualifying counties.) The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56, of Title 44 of the SC Code, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million, and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. SC Code §4-12-30(B)(3).

Each sponsor and sponsor affiliate seeking to qualify for the Fee must invest the minimum investment amount. SC Code §4-12-30(B)(4)(a). However, in the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in SC Code §12-6-3360(M), each sponsor or sponsor affiliate does not have to invest the \$2.5 million minimum investment if the total investment at the project exceeds \$10 million. SC Code §4-12-30(B)(4)(b).

From the end of the property tax year in which the initial lease agreement is executed, the sponsor has 5 years to complete its required minimum investment and 5 years to complete the project. If the sponsor does not expect to complete the project within this 5 year period, it may apply to the county before the end of the 5 year period for an extension of up to 5 years to complete the project. A second extension may be approved, provided the second extension is requested before the end of the first extension period and the aggregate extension period does not exceed 5 years. Unless approved as part of the original lease documentation, any extension may be approved by resolution of county council with a copy provided to the Department within 30 days. SC Code §4-12-30(C).

Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the 5 year investment period. If the required minimum investment is not made within the 5 year investment period, all property covered by the Fee will be retroactively subject to a Fee equal to the general property tax. Any time limitation period for

assessment under SC Code §12-54-85 is suspended during the 5 year investment period. The sponsor must provide to the county the total amount invested in the project for each year during the 5 year investment period. SC Code §4-12-30(C).

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if (a) the county approves the addition of the sponsor affiliate for the Fee, (b) the sponsor affiliate invests the minimum investment amount, and (c) the sponsor affiliate agrees to be bound by those portions of the agreements that affect the county. An agreement may provide for a process of approval of sponsor affiliates. SC Code §4-12-30(B)(4).

All investment by the sponsor affiliate must be made at the sponsor's project. The Department must be notified in writing of all sponsor and sponsor affiliates that have investments subject to the Fee within 90 days after the end of the calendar year during which the project, or pertinent phase of the project, was placed in service. The time period may be extended upon written request. Failure to comply with this requirement will not adversely affect the Fee, but may result in a penalty being imposed. SC Code §4-12-30(B)(4).

With the county's approval, an entity whose investments are not being counted towards the minimum investment amount can make project expenditures during the 5 year investment period that qualify as investment expenditures subject to the Fee if the following criteria are satisfied. First, the project expenditures must be part of the original cost of the property. Second, the property must be transferred to one or more entities that are sponsors or sponsor affiliates whose investments are being considered for minimum investment purposes. Third, the property must be such as would have qualified for the Fee if it had been initially acquired by the sponsor rather than the transferor entity. Fourth, the income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer. However, if the income tax basis of the property after the transfer unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax that would be due without the Fee. SC Code §4-12-30(J).

Exemption Period for Property Subject to the Fee. Generally, each piece of property may be subject to the Fee for an exemption period of 20 years after it is placed in service. Before the end of the exemption period (Fee period), an extension of up to 10 years may be approved by resolution of county council upon a finding of substantial public benefit, with a copy of the resolution provided to the Department within 30 days. For projects that are completed and placed in service during more than one year, each year's investment may be subject to the Fee for 20 years or, if extended up to 30 years, for an aggregate period of up to 40 years. SC Code §4-12-30(C)(4).

Property Eligible for Fee. Title to Fee property must be held by the county, which leases the Fee property back to the sponsor. Property that has been previously subject to property taxes in South Carolina does not qualify for the Fee except for:

- A. Land, excluding improvements on the land, on which the new project is to be located.
- B. Property that has never been placed in service in South Carolina.

C. Aircraft.

In the case of property that is not subject to the Fee, repairs, alterations, or modifications are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements that constitute an expansion of the improvements. SC Code §4-12-30(J).

Disposal of Property and Replacement Property. The inducement agreement may provide that when property is scrapped, sold, or removed from the project, the Fee will be reduced by the amount of the Fee applicable to the property. If there is no provision in the inducement agreement dealing with the disposal of property, the Fee remains fixed. If property is removed from the project, but remains within South Carolina, the property becomes subject to property tax.

The inducement agreement may provide that any property that is placed in service as a replacement for property that is subject to the Fee will become part of the Fee payment. The following rules apply to replacement property:

- A. Title to the property must be held by the county.
- B. The replacement property does not have to serve the same function as the property it is replacing.
- C. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property that is being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property that it is replacing, the excess is subject to Fee payments equal to regular property taxes.
- D. More than one piece of replacement property can replace a single piece of original Fee property.
- E. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, that is disposed of in the same property tax year that the replacement property is placed in service.
- F. Replacement property is subject to the Fee in lieu of property taxes for the remaining portion of the Fee period (exemption period) applicable to the property that it is replacing.

If there is no provision in the inducement agreement dealing with replacement property, any property placed in service after the 5 year investment period is subject to either (a) Fee payments equal to property taxes under SC Code §4-12-20 if title is held by the county or (b) property taxes if title to the property is held by the sponsor. SC Code §4-12-30(F).

Rollback Taxes. Any property subject to the Fee is not subject to agricultural rollback taxes. SC Code §12-43-220(d)(6).

Timing of Investment Expenditures and Purchases. Investment expenditures incurred by a sponsor qualify as expenditures subject to the Fee if the inducement agreement is executed within 2 years of the date the county adopts a resolution identifying the project; otherwise, only expenditures made after the inducement agreement is executed qualify. Unless the sponsor's agreement covers replacement property, all property must be purchased either: (a) before the end of the 5 year investment period or (b) before the expiration of the additional time allowed to complete the project if an extension is granted (usually 5 additional years after the investment period has ended). SC Code §4-12-30(I). In any event, the minimum investment must be completed within the 5 year investment period.

Inducement Agreement. The inducement agreement is the major document of the transaction. It details the responsibility of each party and contains the negotiated assessment ratio. It may contain the millage rate, unless a separate millage rate agreement is executed. The sponsor and county may negotiate to use different assessment ratios for different assessment years or levels of investment. Thus, a sponsor may be subject to a 7% assessment ratio in its first year, but may be subject to a 6% assessment ratio in later years. However, the parties may not reduce the assessment ratio below the lowest assessment ratio for which the sponsor qualifies under SC Code §4-12-30(D).

Millage Rate Agreement. The millage rate agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the district where the project is located based on the preceding 5 year period. The initial millage rate used must be no lower than the cumulative property tax millage legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either: (a) on June 30th of the year preceding the year in which the millage rate agreement is executed or, if a millage rate agreement is not executed, when the lease agreement is executed; or (b) on June 30th of the year in which the millage rate agreement is executed or, if a millage rate agreement is not executed, when the lease agreement is executed. The millage rate agreement may be executed at any time up to the date the initial lease agreement is executed. SC Code §4-12-30(D)(2)(b) and (G).

Timing of the Initial Lease Agreement. Title to the property must be transferred to the county and made subject to a lease agreement before the end of the property tax year in which the property is placed in service. The sponsor and county have 5 years from the end of the property tax year in which they enter into an inducement agreement to enter into an initial lease agreement. SC Code §4-12-30(C).

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation; however, in certain instances, the value is determined by appraisal. For personal property, the original tax basis for South Carolina income tax purposes, less depreciation allowable for property tax purposes, is used for valuation without regard to any extraordinary obsolescence of that property. SC Code §4-12-30(D)(2)(a). Utility property that is subject to a fee is valued similarly to the method that the Public Service Commission uses to value utility property. See SC Rev. Procedure 04-5.

Financing Agreements. A sponsor or a county may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the project (including any lease) regardless of the identity of the income tax owner of the property that is subject to the Fee. SC Code §4-12-30(M).

Amendment of Agreements. The inducement agreement, the millage rate agreement, or both may be amended or terminated and replaced with regard to all matters, including but not limited to, the addition or removal of sponsors or sponsor affiliates. However, the millage rate and assessment ratio cannot be lowered once a millage rate agreement, or an inducement agreement that sets the millage rate, or a lease agreement has been executed. SC Code §4-12-30(H). Nor can the length of the agreement be increased, except as provided in SC Code §4-12-30(C).

Transfers of Fee Agreements or Property Subject to the Fee. A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement, if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. Prior approval, or subsequent ratification, can occur by a letter or other writing executed by an authorized county representative as provided in an appropriate agreement, by a resolution passed by the county council, or by county council following 3 readings and a public hearing. The county has the sole discretion as to which method to use. County approval is not required in connection with transfers to sponsor affiliates or financing related transactions. If an agreement is transferred, the transferee assumes the current basis that the transferor sponsor had in the real and personal property subject to the Fee for purposes of calculating the Fee. SC Code §4-12-30(M)(1) and (4).

Record Keeping Requirements. Any sponsor or sponsor affiliate that engages in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the inducement agreement and the lease agreement must be filed with the Department and appropriate county auditors and assessors within 30 days of execution. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property were subject to property tax. Penalties and interest may apply if a sponsor is late in making a Fee payment or in filing a required return. The Department may, for good cause, allow up to a 60 day extension for filing Fee returns. The written request must be filed on or before the due date of the return. To the extent that any Fee form or return is filed with the Department, a copy must also be filed with the county auditor, assessor, and treasurer for the county where the project is located. The county and the sponsor may agree to include a recapitulation of the terms of the transaction as part of the agreement. SC Code §§4-12-30(O) and 4-12-45.

Termination of Fee and Lease Agreement. If a sponsor fails to make the required minimum investment or to meet any other investment or job requirements set forth in the agreement, within the applicable time period, the Fee will terminate. Once terminated, all property that was subject to the Fee will be retroactively subject to property tax. If a sponsor fails to make its Fee or lease payments, then upon 90 days notice, the county may terminate the Fee and lease agreement and sell the property to which the county has title, free from any claims of the sponsor. SC Code §4-12-30(O)(6).

Expiration of Fee Period and Maintaining the Minimum Investment. After the Fee period has expired, the real property that was originally subject to the Fee will be subject to property tax based on the fair market value of the property as of the latest reassessment date for similar taxable property. Personal property will be subject to property taxes based on the then depreciated value applicable to such property under the Fee, and thereafter continuing with the appropriate property tax depreciation schedule. If the sponsor's investment in the property ever falls below the minimum investment amount required by the agreements (based on income tax basis without regard to depreciation), the Fee is no longer available and the sponsor must pay a Fee equivalent to property taxes on the property. SC Code §4-12-30(B)(4)(f) and (D)(3).

Infrastructure Improvement Credit. A county, municipality, or special purpose district that receives proceeds from a Fee may provide to a sponsor a payment derived from the Fee or a credit against the Fee. However, any payment or credit must be used for the purposes outlined in SC Code §4-29-68, including the purchase of eligible infrastructure and improved and unimproved real estate. SC Code §4-12-30(K)(3).

§ 712.3. Big Fee.

Steps in the Big Fee Process. In connection with the Big Fee, certain requirements must be satisfied:

- A. Project identification—The County must identify the project or proposed project. This may be accomplished by the adoption of an inducement resolution or similar resolution by county council.
- B. Inducement agreement—The company and the county must enter into an inducement agreement. This agreement establishes that a sponsor will receive the Fee as an inducement for locating in the county. The company that enters into the inducement agreement is known as the "sponsor."
- C. Millage rate agreement—The sponsor and the county may enter into a millage rate agreement that fixes the millage rate for the entire Fee period or fixes it for the first 5 years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually provided for in the inducement agreement or the lease agreement.
- D. Transfer of the property to the county—Title to the property must be transferred to the county.
- E. Lease or lease purchase agreement—The sponsor and the county may enter into one or more lease agreements. This agreement leases the property from the county back to the sponsor and usually provides for the sale of the property to the sponsor at the end of the Fee period for a nominal sum. If there is a series of these agreements, the first one is called the initial lease agreement. A definition of a "lease agreement" is found in SC Code §4-29-67(A)(1)(b).

- F. **Financing agreement**—There may be one or more financing agreements, which may include the issuance of industrial revenue bonds (which are often purchased by the sponsor leasing the project) and the issuance of special source revenue bonds pursuant to SC Code §4-29-68. (See the discussion of special source revenue bonds in §712.6.)

Some of these steps are often combined and there may be a number of transfers and lease agreements for one project.

Definition and Location of Project. A project is any land, building, and other improvements on the land including water, sewage, and pollution control improvements and all other machinery apparatus, equipment, office facilities, and furnishings that are considered necessary, suitable, and useful for a sponsor. SC Code §4-29-67(A)(1)(c).

The project must be located in a single county, in a multicounty industrial park, or if certain agreements are made with the counties, the project may straddle contiguous counties. SC Code §4-29-67(B).

Required Investment and Timing of Investment. Generally, the required investment must be made by a sponsor. A sponsor affiliate may also qualify for the Fee. A "sponsor" is defined as "one or more entities that sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise." SC Code §4-29-67(A)(1)(d). A "sponsor affiliate" means an entity that joins with, or is an affiliate of, a sponsor and that participates in the investment, or financing of, a project. SC Code §4-29-67(A)(1)(e).

There is a minimum investment amount required to qualify for a Fee in Lieu of property taxes. For the Big Fee, the minimum level of investment at the project is \$45 million. SC Code §4-29-67(B)(3). However, the minimum investment amount is reduced to \$1 million for a sponsor investing in a county with an average annual unemployment rate of at least twice the state average during the last 24 months based on data available on November 1st. (See §712.7 "Fee in Lieu Reduced Investment Counties" for a list of qualifying counties.)

The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56, of Title 44 of the SC Code, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million, and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. SC Code §4-29-67(B)(3).

Each sponsor and sponsor affiliate seeking to qualify for the Fee must invest the minimum investment amount. SC Code §4-29-67(B)(4)(a). However, in the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in SC Code §12-6-3360(M), each sponsor or sponsor affiliate does not have to invest the \$45 million minimum investment if the total investment at the project exceeds \$45 million. SC Code §4-29-67(B)(4).

From the end of the property tax year in which the initial lease agreement is executed, a sponsor has 5 years to complete its required minimum investment and 5 years to complete the project. If the sponsor does not expect to complete the project within this 5 year period, it may apply to the county before the end of the 5 year period for an extension of up to 5 years to complete the project. A second extension may be approved, provided the second extension is requested before the end of the first extension period and the aggregate extension period does not exceed 5 years. Unless approved as part of the original lease documentation, any extension may be approved by resolution of county council with a copy provided to the Department within 30 days. SC Code §4-29-67(C).

Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the 5 year investment period. If the required minimum investment is not made within the 5 year investment period, all property covered by the Fee will be retroactively subject to a Fee equal to the property tax. Any time limitation period for assessment under SC Code §12-54-85 is suspended during the 5 year investment period. SC Code §4-29-67(C).

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if (a) the county approves the addition of the sponsor affiliate for the Fee, (b) the sponsor affiliate invests the minimum investment amount, and (c) the sponsor affiliate agrees to be bound by agreements, or the relevant portions of the agreement, with the county relating to the Fee if such agreements affect the county. An agreement may provide for a process of approval of sponsor affiliates. SC Code §4-29-67(B)(4).

All investments must be at the sponsor's project. The Department must be notified in writing of all sponsors and sponsor affiliates that have investments subject to the Fee, within 90 days after the end of the calendar year in which the project, or pertinent phase of the project, was placed in service. The time period may be extended upon written request. Failure to comply with this requirement will not adversely affect the Fee, but may result in a penalty being imposed. SC Code §4-29-67(B)(4).

With the county's approval, an entity whose investments are not being counted towards the minimum investment amount can make project expenditures during the 5 year investment period that qualify as investment expenditures subject to the Fee if the following criteria are satisfied. First, the project expenditures must be part of the original cost of the property. Second, the property must be transferred to one or more entities that are sponsors or sponsor affiliates whose investments are being considered for minimum investment purposes. Third, the property must be such as would have qualified for the Fee if it had been initially acquired by the sponsor rather than the transferor entity. Fourth, the income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer. However, if the income tax basis of the property after the transfer unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax that would be due without the Fee. SC Code §4-29-67(J).

Exemption Period for Property Subject to the Fee. Generally, each piece of Fee property may be subject to the Fee for an exemption period of 20 years after it is placed in service. Before the end of the exemption period (Fee period), an extension of up to 10 years may be approved by resolution of county council upon a finding of substantial public benefit, with

a copy of the resolution provided to the Department within 30 days. For projects that are completed and placed in service during more than 1 year, each year's investment may be subject to the Fee for 20 years or, if extended up to 30 years, for an aggregate period of up to 40 years. SC Code §4-29-67(C)(3).

Property Eligible for Fee. Title to Fee property must be held by the county, which leases the Fee property to the sponsor. Property that has been previously subject to property taxes in South Carolina does not qualify for the Fee except for:

- A. Land, excluding improvements on the land, on which the new project is to be located.
- B. Property that has never been placed in service in South Carolina.
- C. Aircraft.

However, for purposes of the Big Fee, property that has been placed in service in South Carolina and subject to South Carolina property taxes and that is purchased in a transaction (other than a transaction between related taxpayers as determined under Section 267(b) of the Internal Revenue Code) may qualify for the Big Fee provided the sponsor invests at least an additional \$45 million in the project. SC Code §4-29-67(K).

In the case of property that is not subject to the Fee, repairs, alterations, or modifications are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements that constitute an expansion of the improvements. SC Code §4-29-67(K).

Disposal of Property and Replacement Property. The inducement agreement may provide that when property is scrapped, sold, or removed from the project, the Fee will be reduced by the amount of the Fee applicable to the property. If there is no provision in the inducement agreement dealing with the disposal of property, the Fee remains fixed. If property is removed from the project but remains in South Carolina, it becomes subject to property tax. SC Code §4-29-67(F)(1).

The inducement agreement may also provide that any property that is placed in service as a replacement for property that is subject to the Fee will become part of the Fee payment. The following rules apply to be subject to the Fee in lieu of property taxes:

- A. Title to the property must be held by the county.
- B. The replacement property does not have to serve the same function as the property it is replacing.
- C. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property that is being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property that it is replacing, the excess is subject to Fee payments equal to regular property taxes.

- D. More than one piece of replacement property can replace a single piece of original Fee property.
- E. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, that is disposed of in the same tax year that the replacement property is placed in service.
- F. Replacement property is subject to the Fee in lieu of property taxes for the remaining portion of the Fee period (exemption period) applicable to the property that it is replacing.

If there is no provision in the inducement agreement dealing with replacement property, any property placed in service after the period allowed for investment is subject to Fee payments equal to property taxes or to property taxes if title to the property is held by the sponsor. SC Code §4-29-67(F)(2).

If the sponsor disposes of property and the sponsor is using the net present value method described in SC Code §4-29-67(D)(2)(b) for determining its Fee, the Fee on the property that is disposed of must be recomputed using the standard Fee method contained in SC Code §4-29-67(D)(2)(a) and to the extent that the amount that would have been paid by the sponsor with respect to the disposed property exceeds the amount it paid under the net present value method, the sponsor must pay the county the difference with the next Fee payment. If the sponsor used the 5 year adjustable millage provision as part of its Fee, that millage rate must be used in determining the amount that the sponsor would have paid under the standard Fee method. SC Code §4-29-67(F)(1).

Rollback Taxes. Any property subject to the Fee is not subject to agricultural rollback taxes. SC Code §12-43-220(d)(6).

Timing of Investment Expenditures and Purchases. Investment expenditures incurred by a sponsor qualify as expenditures subject to the Fee if the inducement agreement is executed within two years of the date the county adopts a resolution identifying the project; otherwise, only expenditures made after the inducement agreement is executed qualify. Unless the sponsor's agreement covers replacement property, all property must be purchased either: (a) before the end of the 5 year investment period or (b) before the expiration of the additional time allowed to complete the project if an extension is granted (usually 5 additional years after the investment period has ended). SC Code §4-29-67(I). In any event, the minimum investment must be completed within the 5 year investment period.

Inducement Agreement. The inducement agreement is the major document of the transaction. It details the responsibility of each party and contains the negotiated assessment ratio and may contain the millage rate, unless a separate millage rate agreement is executed. The sponsor and county may negotiate to use different assessment ratios for different assessment years or levels of investment. Thus, a sponsor may be subject to a 7% assessment ratio in its first year, but may be subject to a 6% assessment ratio in later years. However, the lowest assessment ratio allowed is the lowest assessment ratio for which the sponsor may qualify under the statute. SC Code §4-29-67(D)(5).

Millage Rate Agreement. The millage rate agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the district where the project is located based on the preceding 5 year period. The initial millage rate used must be no lower than the cumulative property tax millage legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either: (a) on June 30th of the year preceding the year in which the millage rate agreement is executed or if a millage rate is not executed, when the lease agreement is executed; or (b) on June 30th of the year in which the millage rate agreement is executed, or if a millage rate agreement is not executed when the lease agreement is executed. The millage rate agreement may be executed at any time up to the date the initial lease agreement is executed. SC Code §4-29-67(G) and (D)(2).

Timing of the Initial Lease Agreement. Title to the property must be transferred to the county and made subject to a lease agreement before the end of the property tax year in which the property is placed in service. The sponsor and county have 5 years from the end of the property tax year in which they enter into an inducement agreement to enter into an initial lease agreement. SC Code §4-29-67(C).

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation, however, in certain instances, the value is determined by appraisal. For personal property, the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes is used for valuation without regard to any extraordinary obsolescence of that property. SC Code §4-29-67(D)(2). Utility property that is subject to a fee is valued similarly to the method that the Public Service Commission uses to value utility property. See SC Rev. Procedure 04-5.

Additional Method of Calculating Fee. Unlike the Little Fee, the Big Fee allows the use of a net present value method of calculating the Fee. The county and the sponsor may provide for an annual payment based on an alternative arrangement yielding a net present value of the sum of the Fees for the life of the agreement that is not less than the present value of the Fee schedule calculated using the equivalent of a 6% assessment ratio (or 4% if applicable) and a fixed millage rate. Net present value calculations must use a discount rate equivalent to the yield in effect for new or existing Treasury bonds of similar maturity as published during the month in which the inducement agreement is executed. Special rules are provided if no yield or bonds of appropriate maturity are available for that month. SC Code §4-29-67(D)(2)(b).

Financing Agreements. A sponsor, sponsor affiliate, or a county may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the project, regardless of the identity of the income tax owner of the property that is subject to the Fee. SC Code §4-29-67(O).

Amendment of Agreements. The inducement agreement, the millage rate agreement, or both may be amended or terminated and replaced with regard to all matters, including but not limited to, the addition or removal of sponsors or sponsor affiliates. However, the millage rate, assessment ratio and discount rate cannot be lowered once a millage rate agreement, or

an inducement agreement that sets the millage rate, or a lease agreement has been executed. SC Code §4-29-67(H). Nor can the length of the agreement be increased, except as provided in SC Code §4-29-67(C).

Transfers of Fee Agreements or Property Subject to the Fee. A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement, if it obtains the approval of the county before the transfer, or the subsequent ratification of the transfer by the county. Prior approval, or subsequent ratification, can occur by a letter or other writing executed by an authorized county representative as provided in an appropriate agreement, by a resolution passed by the county council, or by county council following 3 readings and a public hearing. The county has the sole discretion as to which method to use. County approval is not required in connection with transfers to sponsor affiliates or for financing transactions. If an agreement is transferred, the transferee assumes the basis that the transferor sponsor had in the real and personal property subject to the Fee for purposes of calculating the Fee. However, county approval is not required in connection with financing related transactions, or for transfers to sponsor affiliates. SC Code §4-29-67(O).

Record Keeping Requirements. Any sponsor or sponsor affiliate that engages in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the inducement agreement and the lease agreement must be filed with the Department and appropriate county auditors and assessors within 30 days of execution. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property were subject to property tax. The Department may, for good cause, allow up to a 60 day extension for filing Fee returns. The written request must be filed on or before the due date of the return. Penalties and interest may apply if a sponsor or sponsor affiliate is late in making a Fee payment or in filing a required return. To the extent that any Fee form or return is filed with the Department, a copy must also be filed with the county auditor, assessor, and treasurer for the county where the project is located. The county and the sponsor may agree to include a recapitulation of the terms of the transaction as part of the agreement. SC Code §§4-29-67(S) and 4-29-67(W).

Termination of the Fee and Lease Agreement. If a sponsor fails to make the minimum investment or any other investment or job requirement set forth in the agreements, within the applicable time period, the Fee will terminate. Once terminated, all property that was subject to the Fee will be retroactively subject to property tax. The sponsor and the county may agree in the agreement that if the sponsor fails to make the required minimum investment, the sponsor may elect to use the provisions of the Little Fee, including the reduced investment requirement. SC Code §4-29-67(Q).

Except for a failure to meet the minimum investment requirement, any loss of Big Fee benefits is prospective only from the date of noncompliance and only with respect to that portion of the project to which the Fee relates. Certain rules are provided relating to the Fees that can be collected. SC Code §4-29-67(T).

Expiration of Fee Period and Maintaining the Minimum Investment. After the Fee period has expired, the real property that was originally subject to the Fee will be subject to property taxes based on the fair market value of such property as of the latest reassessment date for

similar taxable property. Personal property will be subject to property taxes based on the then depreciated value applicable to such property under the Fee, and thereafter continuing with the appropriate South Carolina property tax depreciation schedule. SC Code §4-29-67(D)(3).

If a sponsor's investment at the project ever falls below the minimum investment amount required by the agreements (based on income tax basis without regard to depreciation) or such greater amount as specified in the inducement agreement or lease agreement, the Fee is no longer available and the sponsor must pay a Fee equivalent to property taxes on the property. If the agreement is terminated by agreement or by law and the sponsor is using the net present value method to compute the Fee, the sponsor must pay the county at the time of termination the difference between the Fee that would have been paid on the property if the Fee had been calculated using the standard Fee method and the amount that was actually paid to the county under the net present value method. SC Code §4-29-67(B)(4)(b)(iii).

Infrastructure Improvement Credit. A county, municipality, or special purpose district that receives proceeds from a Fee may provide to a sponsor a payment derived from the Fee or a credit against the Fee. However, any payment or credit must be used for the purposes outlined in SC Code §4-29-68, including the purchase of eligible infrastructure and improved and unimproved real estate. SC Code §4-29-67(L)(3).

Special Rules for Qualified Recycling Facilities. "Qualified recycling facilities," as defined in SC Code §12-6-3460(A)(3) (previously SC Code §12-7-1275(A)), may qualify for a Fee equivalent to a 3% assessment ratio. The Fee is available for each item of property for 30 years (for projects placed in service in more than one year, the Fee is available for a maximum of 40 years). If the qualified recycling facility elects to use the net present value calculation, it must use the discount rate equivalent to the yield in effect for new or existing Treasury bonds of similar maturity as published on any day selected by the qualified recycling facility during the year in which the assets are placed in service or in which the inducement agreement is executed. SC Code §4-29-67(V).

§ 712.4. Simplified Fee.

Steps in the Simplified Fee Process. In connection with the Simplified Fee, there are fewer steps and agreements that must be completed than those described above for the Little and Big Fee. They are:

- A. Project identification—The County must identify the project or proposed project. This may be accomplished by the adoption of an inducement or similar resolution by county council.
- B. Inducement resolution—The county council passes an inducement resolution if it was not done when the project was identified. This resolution sets forth the commitment of the county to enter into a Fee agreement concerning the project.

C. Fee agreement—The County and the company must enter into a Fee agreement setting forth the terms of the Fee. The company that enters into the Simplified Fee agreement is the "sponsor."

D. Financing agreement—There may be one or more financing agreements executed in connection with the transaction.

Definition and Location of the Project. A project is any land, building, and other improvements on the land including water, sewage, and pollution control improvements, and all other machinery, apparatus, equipment, office facilities, and furnishings that are considered necessary, suitable, and useful for a sponsor. A project may also consist of, or include, an aircraft hangared or used at an airport in South Carolina. SC Code §12-44-30(16).

The project must be located in a single county, in a multicounty industrial park, or if certain agreements are made with the counties, the property may straddle contiguous counties. SC Code §12-44-40(G).

County Must Make Findings of Public Purpose. Before a project may qualify for the Simplified Fee, the county council must make all of the following findings:

- A. The project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits not otherwise provided locally.
- B. The project gives rise to no pecuniary liability of the county or any municipality or charge against its general credit or taxing power.
- C. The purposes to be accomplished by the project are proper governmental and public purposes.
- D. The benefits of the project are greater than the cost.

The county may seek assistance and advice from the Board of Economic Advisors or the Department in making its findings, and the findings must be set forth in an ordinance. SC Code §12-44-40(H)

Required Investment and Timing of the Investment. Generally, the required investment must be made by a sponsor. A sponsor affiliate may also qualify for the Fee. A "sponsor" is defined as "one or more entities which sign the Fee agreement with the county, subject to the provisions of SC Code §12-44-40." (SC Code §12-44-40 is the general statutory provision granting the Fee.) A "sponsor affiliate" means an entity that joins with, or is an affiliate of, a sponsor, and that participates in the investment in, or financing of, a project. SC Code §12-44-30(18) and (19).

There is a minimum investment amount required to qualify for a Fee in Lieu of property taxes. For the Simplified Fee, the minimum investment amount is \$2.5 million. However, the minimum investment amount is reduced to \$1 million for a sponsor investing in a county

with an average annual unemployment rate of at least twice the state average during the last 24 months based on the data available on November 1st. (See §712.7 "Fee in Lieu Reduced Investment Counties" for a list of qualifying counties.) The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56, of Title 44 of the SC Code, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least \$1 million, and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. SC Code §12-44-30(14) and (18).

Each sponsor and sponsor affiliate seeking to qualify for the Fee must invest the minimum investment. SC Code §12-44-130(A). However, in the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in SC Code §12-6-3360(M), each sponsor or sponsor affiliate does not have to invest the \$2.5 million minimum investment if the total investment at the project exceeds \$10 million. SC Code §12-44-30(18).

The minimum investment must be completed within the investment period. For the Simplified Fee, the investment period begins with the first day that economic development property is purchased or acquired and ends 5 years after the last day of the property tax year in which the first property covered by the Fee is placed in service.

If the sponsor does not expect to complete the project within the investment period, it may apply to the county before the end of the period for an extension of up to 5 years to complete the project. A second extension may be approved, provided the second extension is requested before the end of the first extension period and the aggregate extension period does not exceed 5 years. Unless approved as part of the original documentation, any extension may be approved by resolution of county council with a copy provided to the Department within 30 days. SC Code §12-44-30(13).

Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the investment period. The first piece of fee property must be placed in service no later than the last day of the property tax year that is 3 years from the year in which the county and the sponsor enter into the Fee agreement. Any time limitation period for assessment under SC Code §12-54-85 is suspended during the time period for making the required minimum investment. SC Code §§12-44-30, 12-44-40 and 12-44-140.

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if (a) the county approves the addition of the sponsor affiliate for the Fee, (b) the sponsor affiliate invests the minimum investment amount, and (c) the sponsor affiliate agrees to be bound by those portions of the agreements that affect the county. An agreement may provide for a process of approval of sponsor affiliates. SC Code §12-44-130.

All investment by the sponsor affiliate must be made at the sponsor's project. The Department must be notified in writing of all sponsor and sponsor affiliates that have investments subject to the Fee within 90 days after the end of the calendar year during which the project, or pertinent phase of the project, was placed in service. The time period may be extended upon written request. Failure to comply with this requirement will not adversely affect the Fee, but may result in a penalty being imposed. SC Code §12-44-130.

Exemption Period for Property Subject to the Fee. Generally, each piece of Fee property may be subject to the Fee for an exemption period of 20 years after it is placed in service. Before the end of the exemption period (Fee period), an extension of up to 10 years may be approved by resolution of county council upon a finding of substantial public benefit, with a copy of the resolution provided to the Department within 30 days. For projects that are completed and placed in service in more than one year, each year's investment may be subject to the Fee for 20 years or, if extended, up to 30 years, for an approximate aggregate period of up to 40 years. SC Code §12-44-30(2), (8), (13) and (20).

Property Eligible for the Fee. It is not necessary to transfer title to property subject to the Simplified Fee to the county. Nevertheless, property that has been previously subject to property taxes in South Carolina does not qualify for the Fee except for:

- A. Land, excluding improvements on the land, on which the new project is to be located.
- B. Property that has never been placed in service in South Carolina.
- C. Aircraft.

Additionally, for purposes of the Simplified Fee, property that has been placed in service in South Carolina and subject to South Carolina property taxes and that is purchased in a transaction (other than a transaction between related taxpayers as determined under Internal Revenue Code §267(b)) may qualify for the Simplified Fee, provided the sponsor invests at least an additional \$45 million in the project: SC Code §12-44-110; see SC Code §12-44-30(16).

In the case of property that is not subject to the Fee, repairs, alterations, or modifications are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements that constitute an expansion of the improvements. SC Code §12-44-110.

Disposal of Property and Replacement Property. The Fee must be reduced by the amount of the Fee applicable to property scrapped, sold, or removed from the project. If property is removed from the project, but remains within South Carolina, the property becomes subject to property tax. SC Code §12-44-50.

The Fee agreement may provide that any property that is placed in service as a replacement for property that is subject to the Fee will become part of the Fee payment. The following rules apply to replacement property:

- A. The replacement property does not have to serve the same function as the property it is replacing.
- B. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property that is being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property that it is replacing, the excess is subject to property tax.

- C. More than one piece of replacement property can replace a single piece of original Fee property.
- D. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, that is disposed of in the same property tax year that the replacement property is placed in service.
- E. Replacement property is subject to the Fee in lieu of property taxes for the remaining portion of the exemption period (Fee period) applicable to the property that it is replacing.

If there is no provision in the Fee agreement dealing with replacement property, any property placed in service after the period allowed for investment is subject to property taxes. SC Code §12-44-60.

If the sponsor disposes of property and the sponsor is using the net present value method as described in SC Code §12-44-50(A)(3) for determining its Fee, the Fee on the property that is disposed of must be recomputed using the standard Fee method contained in SC Code §12-44-50(A)(1). To the extent the amount that would have been paid by the sponsor with respect to the disposed property exceeds the amount it paid under the net present value method, the sponsor must pay the county the difference with its next Fee payment. SC Code §§12-44-50 and 12-44-60.

Rollback Taxes. Any property subject to the Fee is not subject to agricultural rollback taxes. SC Code §12-43-220(d)(6).

Timing of Investment Expenditures and Purchases. If the county adopts an inducement resolution within 2 years of the date the county takes action reflecting or identifying the project, then all expenses for property for the Fee may be subject to the Fee. If the inducement resolution is adopted after the 2 year period, then only those expenses incurred after the date of adoption of the inducement resolution qualify for the Fee. SC Code §12-44-40.

The Inducement, Millage Rate, and Lease Agreements. These documents, which are used for the Little and Big Fee, are replaced by the Fee agreement in the Simplified Fee.

Inducement Resolution. The inducement resolution sets forth the commitment of the county to enter into a Fee agreement.

The Fee Agreement. The Fee agreement is the major document of the Simplified Fee transaction. It details the responsibilities of each party and contains the negotiated assessment ratio and the millage rate. It must be approved by the county through an ordinance, and it must be executed within 5 years after an inducement resolution or other action by the county identifying or reflecting the project; otherwise, any property previously purchased for the project will not qualify for the Fee. Once the Fee agreement is executed, the exemption period for each piece of property covered by the Fee begins on the first day of the next property tax year after the property is placed in service. SC Code §§12-44-30(8) and (10), and 12-44-40.

The Fee agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the district where the project is located based on the preceding 5 year period. The initial millage rate used must be no lower than the cumulative property tax millage legally levied by, or behalf of, all taxing entities within which the subject property is to be located that is applicable either: (a) on June 30th of the year preceding the year in which the Fee agreement is executed; or (b) on June 30th of the year in which the Fee agreement is executed. SC Code §12-44-50(A).

Valuation for Fee Purposes. Generally, for real property, the value is the original income tax basis for South Carolina income tax purposes without regard to depreciation; however, in certain instances, the value is determined by appraisal. For personal property, the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes is used for valuation without regard to any extraordinary obsolescence of that property. SC Code §12-44-50(A)(1)(c). Utility property that is subject to a Fee is valued similarly to the method used by the Public Service Commission uses to value utility property. See SC Rev. Procedure 04-5.

Additional Method of Calculating Fee. The Simplified Fee allows the use of a net present value calculation in determining the Fee if the proper investment level is met. A sponsor investing more than \$45 million at the project and the county may agree that the Fee will be based on an "alternative payment method" that is the equivalent of the net present value method in the Big Fee. This method yields a net present value of the Fee schedule as calculated using the methods described in the Big Fee; however, the sponsor must agree to use a fixed millage rate. SC Code §12-44-50.

Financing Agreements. A sponsor may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the project, regardless of the income tax owner of the property that is the subject of the Fee. SC Code §12-44-120.

Amendment of Agreements. A Fee agreement may be amended or terminated and replaced with regard to all matters, including, but not limited to, the addition or removal of sponsors and sponsor affiliates. However, the millage rate, discount rate, and assessment ratio cannot be changed once the Fee agreement is executed. Nor can the length of the Fee agreement be increased, except as provided in SC Code §12-44-30(13).

Transfers of Fee Agreements or Property Subject to the Fee. A sponsor may transfer a Fee agreement or the assets subject to the Fee agreement, if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. Prior approval or subsequent ratification can occur by a letter or other writing executed by an authorized county representative as provided in the Fee agreement, by a resolution passed by the county council, or by county council following three readings and a public hearing. The county has the sole discretion as to which method to use. County approval is not required in connection with financing related transactions or transfers to sponsor affiliates. If a Fee agreement is transferred, the transferee assumes the basis that the sponsor transferor had in the real and personal property subject to the Fee for purposes of calculating the Fee. SC Code §12-44-120.

Record Keeping Requirements. Any sponsor or sponsor affiliate that engages in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the Fee agreement must be filed with the Department and all appropriate county auditors and assessors within 30 days of execution. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property were subject to property tax. Penalties and interest may apply if a sponsor is late in making a Fee payment or in filing a required return. The Department may, for good cause, allow up to a 60 day extension for filing Fee returns. The written request must be filed on or before the due date of the return. To the extent that any Fee form or return is filed with the Department, a copy must be filed with the auditor, assessor, and treasurer for the county where the project is located. The county and the sponsor may agree to include a recapitulation of the transaction as part of the agreement. The provisions of Chapters 49, 51, and 53 of Title 12 of the SC Code are applicable to the Fee agreement and, for purposes of those chapters; the Fee is considered a property tax. SC Code §§12-44-55 and 12-44-90.

Termination of the Fee and Fee Agreement. The county and the sponsor may agree to terminate the Fee agreement at any time. If a sponsor fails to make the minimum investment within the investment period, the Fee agreement will terminate. Once terminated, all property that was subject to the Fee will be retroactively subject to property taxes as of the commencement date. The sponsor must pay the county a Fee equal to the difference between the Fees actually paid and the taxes that would have been paid if the property had been subject to property tax. SC Code §12-44-140(B).

The statute allows a "safety net" to a sponsor that commits to an investment above the minimum investment. Even if the sponsor fails to make or maintain the level of investment agreed to in the Fee agreement, the Fee agreement may allow property at the project to continue under the Fee provided that the minimum investment requirement is met. However, the assessment ratio and exemption period for property must be consistent with those available to a sponsor making the minimum investment. The Fee agreement may also allow for different yearly assessment ratios or different ratios for different levels of investment with limitations on the lowest assessment ratio allowable. SC Code §12-44-100.

If the agreement is terminated by agreement or by law and the sponsor was using the net present value method to compute the Fee, the sponsor must pay to the county at the time of termination the difference between the Fee that would have been paid on the property if the Fee had been calculated using the standard Fee method and the amount of Fees that were actually paid to the county under the net present value method. SC Code §12-44-140.

Expiration of Exemption Period and Maintaining the Minimum Investment. After the exemption period has expired, the real property that was originally subject to the Fee will be subject to property tax based on the fair market value of the property as of the latest reassessment date for similar taxable property. Personal property will be subject to property taxes based on the then depreciated value applicable to such property under the Fee, and thereafter continuing with the appropriate property tax depreciation schedule.

If the sponsor's investment in the property ever falls below the minimum investment required by the agreements (based on income tax basis without regard to depreciation), the Fee is no longer available and the sponsor must pay a Fee equivalent to property taxes on the property. SC Code §12-44-140(C).

Infrastructure Improvement Credit. A county, municipality, or special purpose district that received proceeds from a Fee may provide to a sponsor a payment derived from the Fee or a credit against the Fee. However, any payment or credit must be used for the purposes outlined in SC Code §4-29-68, including purchase of eligible infrastructure and improved and unimproved real estate. SC Code §§12-44-30(12) and 12-44-70.

Transitional Rules for Projects Under Existing Fee. Transitional rules are provided for projects that may be covered by preexisting Little Fee or Big Fee arrangements. If the county approves, an entity may transfer property from the existing Fee arrangement and have the property covered by the Simplified Fee provided that there is a continuation of the same Fee payments for any time remaining for the Fee and the appropriate documents are executed. Any new Fee arrangement must continue the provisions and limitations of the prior arrangement. SC Code §12-44-170.

If all or part of the Simplified Fee is declared illegal or unconstitutional, a sponsor has 180 days to transfer title to all Fee property to the county and have it qualify for the Little Fee. SC Code §12-44-160.

§ 712.5. Super and Enhanced Investment Fees. Both the Little and Big Fee contain a provision that allows certain entities to apply for a Super Fee. The Simplified Fee contains an equivalent provision, but calls it an Enhanced Investment Fee. The Super or Enhanced Investment Fee may be equal to what the property tax would have been if the property was assessed at 4%. In addition to a possible assessment ratio of 4%, if a company qualifies as a sponsor with respect to the Super Fee, the company has 8 years from the end of the property tax year in which the lease agreement is executed to make the investment required by the statute and may obtain an extension of up to 5 additional years to complete the project.

If the company qualifies as a sponsor with respect to the Enhanced Investment Fee, the company has from the date it purchases economic development property for the project until 8 years from the last day of the property tax year in which the first piece of Fee property is placed in service to make the required level of investment and may obtain an extension of up to 5 additional years to complete the project. Under the Enhanced Investment Fee, the first piece of property must be placed in service no later than 3 years from the end of the property tax year in which the company and the county enter into a Simplified Fee agreement.

If a project received an extension of less than 5 years originally, the sponsor can apply to the county before the end of the existing extension period for additional time to complete the project provided that the aggregate extension cannot exceed 5 years. The county council may approve the extension by resolution and a copy of the resolution must be delivered to the Department within 30 days of the resolution being adopted.

If a business qualifying as a sponsor with respect to the Super or Enhanced Investment Fee has more than \$500 million in capital investment in this State and employs more than 1,000 people in this State, the business will have 10 years to meet the minimum investment requirements of the Super Fee and 15 years to complete the project in question.

Qualifying property may be subject to the Super or Enhanced Investment Fee for an exemption period of 30 years after the property is placed in service. For those projects placed in service in more than one year, the Fee is available for an aggregate period of up to 43 years. SC Code §§4-12-30(C), 4-29-67(C), and 12-44-30(8), (13) and (20).

If a business qualifying as a sponsor with respect to the Super Fee has more than \$500 million invested in capital in this State and employs more than 1,000 employees in this State, that business will be eligible to have its property at a project subject to the Fee for a total of 45 years.

The following may qualify for an assessment ratio as low as 4% under the Little Fee Super Fee:

- A. A single sponsor that invests at least \$150 million and creates at least 125 new full-time jobs in South Carolina. SC Code §4-12-30(D)(4)(a)(i).
- B. A single sponsor that invests at least \$400 million at a project. SC Code §4-12-30(D)(4)(a)(ii).
- C. A project that satisfies the requirements of SC Code §11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to SC Code §11-41-70(2)(a). SC Code §4-12-30(D)(4)(a)(iii).

Note that the new full-time job requirements applicable in items (A) and (C) above do not apply to any taxpayer that for more than 25 years ending on the date of the agreement paid more than 50% of all property taxes actually collected in the county where it is seeking the Super Fee. SC Code §4-12-30(D)(4)(b).

The following may qualify for an assessment ratio as low as 4% under the Big Fee Super Fee:

- A. A single sponsor that invests at least \$150 million and creates at least 125 new full-time jobs at the project. SC Code §4-29-67(D)(4)(a)(i).
- B. A single sponsor that invests at least \$400 million in South Carolina. SC Code §4-29-67(D)(4)(a)(ii).
- C. A project that satisfies the requirements of SC Code §11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to SC Code §11-41-70(2)(a). SC Code §4-29-67(D)(4)(a)(iii).

Note that the new full-time job requirements applicable in items (A) and (C) above do not apply to any taxpayer that for more than 25 years ending on the date of the agreement paid more than 50% of all property taxes actually collected in the county where it is seeking the Super Fee. SC Code §4-29-67(D)(4)(b).

The following may qualify for an assessment ratio as low as 4% under the Enhanced Investment Fee:

- A. A single sponsor that invests at least \$150 million and creates at least 125 new full-time jobs at the project; however, the new full-time job requirement does not apply to a taxpayer that paid more than 50% of all property taxes actually collected in the county for more than 25 years, ending on the date of the Fee agreement. SC Code §12-44-30(7)(a).
- B. A single sponsor that invests at least \$400 million. SC Code §12-44-30(7)(b).
- C. A project that satisfies the requirements of SC Code §11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to SC Code §11-41-70(2)(a). SC Code §12-44-30(7)(c).

For both the Super Fee and the Enhanced Investment Fee, if a single sponsor enters into a financing arrangement, the investment or financing by a developer, lessor, financing entity, or another third person in accordance with this arrangement is considered an investment by the sponsor for purposes of meeting the investment requirements. Also, investments by a "related person" are considered to be investments by the sponsor. SC Code §§4-12-30(D)(4)(a), 4-29-67(D)(4)(a), and 12-44-30(7).

A "related person" includes any entity or person that bears a relationship to the sponsor as provided in Internal Revenue Code Section 267 and includes, but is not limited to, a limited liability company where more than 50% of the capital interest or profits is owned directly or indirectly by the sponsor or by a person or entity, or group of persons or entities, that owns more than 50% of the capital or profits in the sponsor. SC Code §12-10-80(D)(2).

§ 712.6. Special Source Revenue Bonds. In connection with a Little or Big Fee, a county (or municipality or special purpose district) where the project will be located may issue special source revenue bonds. These special source revenue bonds allow the political subdivision to finance infrastructure projects usually at or surrounding the project that enhance its economic development, and then pay back the bonds with money it receives from the Fee payments from the project. The rules regarding special source revenue bonds are contained in SC Code §4-29-68. Special source revenue bonds cannot be used with the Simplified Fee.

To issue special source revenue bonds, the governing body of the issuer must adopt an ordinance calling for the issuance of the special source revenue bonds, hold a public hearing, and then pass a resolution authorizing the issuance of the bonds. The bonds must be issued solely for the purpose of providing infrastructure that benefits the issuer's economic development. Bonds may be issued for improved and unimproved real property on which the project will be located.

The face of the bonds must provide that they are payable solely from the proceeds of the Fee, are not secured by the full faith and credit of the issuer, are not payable from any tax or license, and are not a pecuniary liability of the issuer or a charge against the issuer's

general credit or taxing power. The bonds can be issued as a single issue or several issues. The bonds can be payable in installments. The bonds may be sold at public or private sale, and the expenses of the issuance of the bonds may be paid out of the bond proceeds.

If the special source revenue bonds are issued to a third party and the project should fail to generate the necessary Fee payments to pay off the bonds, the company that is subject to the Fee must make up any shortfall.

§ 712.7. Fee in Lieu Reduced Investment Counties. For 2010, only Allendale County qualifies for the \$1 million minimum investment.

§ 713. Property Tax Reform.

The 2006 legislative session produced sweeping property tax reform. Among the most significant components were changes to the valuation of real property. Effective for property tax years after 2006, there is a 15% cap on increases in the fair market value of any parcel in the 5 year period between reassessments. This 15% cap will remain in effect until an "assessable transfer of interest" occurs, which will trigger a reappraisal not limited by the 15% cap. A non-exclusive list of events that constitute an assessable transfer of interest is provided in SC Code §12-37-3150. At the time of this writing, legislation is being considered to alter or eliminate this provision on the ground that an unrestricted reappraisal triggered by conveyance of real property discourages economic development.

Another component of the property tax reform was a "tax swap." In exchange for a 1% sales tax increase on all items except unprepared food, accommodations and items subject to a maximum sales tax, an exemption for all property taxes (millage) imposed for school operating purposes applies to legal residences assessed based on a 4% ratio, effective beginning with the 2007 property tax year. Act No. 388, 2006 SC Acts.

School districts are reimbursed from the Homestead Exemption Fund based on the amount of property taxes that would have been collected but for the school operating millage exemption. SC Code §11-11-156. Millage associated with lease-purchase and installment-purchase agreements is deemed to be for "school operating purposes" and therefore is subject to exemption and reimbursement from the Homestead Exemption Fund. *Berkeley County Sch. Dist. v. S.C. Dep't of Revenue*, 383 S.C. 334, 679 S.E.2d 913 (2009).

§ 714. Constitutional Issues.

§ 714.1. The Power of Local Government to Grant Exemptions. Article X, §3 of the SC Constitution mandates statewide uniformity in property tax exemptions enacted by the General Assembly. Therefore, counties may not enact local exemptions, and an act of the General Assembly so authorizing the counties is unconstitutional. *City of North Charleston v. County of Charleston*, 363 S.C. 527, 611 S.E.2d 920 (2005).

However, Article X, §3 expressly states that municipal governments can, by ordinance, exempt from municipal property taxes, for not more than 5 years, all new manufacturing establishments and all additions to existing manufacturing establishments, including additional machinery and equipment costing \$50,000 or more. S.C. CONST. art. X, §3(g).

Article X, §3 also authorizes the governing body of a municipality to exempt from municipal property taxes for not more than 5 years:

- A. All new corporate headquarters, corporate office facilities, distribution facilities, and additions to such facilities.
- B. All facilities of new enterprises engaged in research and development activities and additions to such facilities.

Counties can enter into agreements for economic development projects that make the projects exempt as "economic development property" during the period in which a fee in lieu of property taxes is paid pursuant to Chapter 44, Title 12 of the SC Code. See §§712.1, 712.4 and 712.5 above.

§ 714.2. The Meaning of "Exclusively for Public Purposes" in the Context of Public Property Leased to Private Entities. Article X, Section 3 of the South Carolina Constitution and SC Code §12-37-220(A)(1) provide that all property of a political subdivision is exempt if the property is used exclusively for public purposes. In *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 289 S.E.2d 416 (1982), a challenge was raised to the exemption of property owned by the Aviation Authority (a political subdivision) that was leased to a private business. The court held:

- A. The fact that property is used by a private business entity does not alone preclude its being used exclusively for public purposes;
- B. The use of the airport authority's property by certain private tenants, including airlines, car rental companies, a parking lot operator, a limousine and taxi service, an air cargo company and to the operator of a restaurant, snack bar, lounge and gift shop providing various services to meet the needs of passengers, was incidental to the public use. Therefore, such property was exempt under Article X, Section 3 of the South Carolina Constitution and SC Code §12-37-220(A)(1). By contrast, the use of the airport authority's property by two private aviation companies was primarily private: the public use was incidental to the private use. Consequently, the property leased to the private aviation companies was not exempt. Note that the court did not address the possible taxation of the leasehold interest of the lessees in that case.

In *Quirk v. Campbell*, 302 S.C. 148, 394 S.E.2d 320 (1990), a taxpayer challenged the constitutionality of one of South Carolina's "Fee in lieu" statutes. SC Code §4-29-67 allows a negotiated "fee in lieu of [property] taxes," with the possibility of no millage increases or increases in the property's value for 20 years.

To qualify for the "fee in lieu" under the statute in effect at the time, the property was required to be transferred to the county, which then leased it back to the private party making the investment. The lease was a 20 year financing lease that gave the investor the right of repurchasing the property at the end of the lease for \$1. The *Quirk* court, citing *Charleston County Aviation Authority v. Wasson*, *supra*, held that: (A) The "fee in lieu" statute was constitutional because the property qualified for the exemption provided for by

Article X, Section 3 of the South Carolina Constitution and SC Code §12-37-220(A)(1) (all property of a political subdivision is exempt if the property is used exclusively for public purposes); (B) The public purpose was "promoting industrial development."

Note that it is no longer always necessary to transfer title to property to the county to qualify for a "fee in lieu title to property taxes." See the discussion of the fee in lieu of property tax in §712 above.

Note further that a non-exempt lessee of exempt property may nonetheless be liable for property tax or a fee equal to the property tax. For example, SC Code §4-12-20 requires that if a county or any other political subdivision leases property, the lease must contain a provision requiring the lessee to make fee payments equivalent to the property tax that would have been due if the property was not exempt from property tax as a result of ownership by the political subdivision, unless a different fee in lieu of property tax is negotiated pursuant to SC Code §4-12-30. See §712 above (concerning the fee in lieu of property tax) and §715 below (concerning ad valorem taxation of leasehold interests in certain property).

§ 714.3. No Taxation without Representation. Section 5 of Article X of the SC Constitution states, in pertinent part: "No tax . . . shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled." In *Weaver v. Recreation District*, 328 S.C. 83, 492 S.E.2d 79 (1997), a taxpayer challenged the constitutionality of a statute that conferred taxing authority on a county recreation commission whose members were appointed, not elected. The commission was authorized to determine its annual budget and levy a property tax of up to 5 mills per year to meet the cost of maintaining and operating recreational facilities. The South Carolina Supreme Court held the tax unconstitutional stating that the "General Assembly may not, consistent with Article X, Section 5, delegate the unrestricted power of taxation to an appointive body."

§ 714.4. Financing Public Schools. In *Abbeville County School District v. State*, 335 S.C. 58, 515 S.E.2d 535 (1999), the plaintiffs, including 40 school districts, instituted an action to challenge South Carolina's statutory scheme for funding public schools.

The plaintiffs alleged that the State's statutory scheme of public school funding:

- A. is underfunded, inadequate, lacks uniformity and imposes unlawful tax burdens on the plaintiffs;
- B. is not serving the purpose for which it was enacted;
- C. has resulted in substantial disparity in the educational opportunities for students throughout the State, to the extent the students do not receive an education sufficient to meet constitutional and statutory mandates; and
- D. is not being funded at the level mandated by state statutes.

The complaint alleged violations of the Fourteenth Amendment to the United States Constitution, the education and equal protection clauses of the SC Constitution and the SC Education Finance Act of 1977 (EFA). The defendants moved to dismiss for failure to state a claim on which relief may be granted. The trial court granted the defendants' motion, and the plaintiffs appealed to the South Carolina Supreme Court.

The South Carolina Supreme Court affirmed in part, reversed in part, and remanded the case to the trial court. The Supreme Court held that the South Carolina Constitution's education clause requires the General Assembly to provide the opportunity for each child to receive a minimally adequate education. On the other hand, the Supreme Court dismissed the plaintiffs' equal protection claims and held that the EFA does not create a private cause of action.

On remand, the trial court rendered a decision in December 2005 on the plaintiffs' claim that their school districts were underfunded in relation to the economic conditions of their districts and socioeconomic status of their students.

Using the test established by the South Carolina Supreme Court, the trial judge examined the facts in each district to determine if the students in the plaintiff districts had the opportunity to acquire a minimally adequate education. The judge concluded that the facilities, teachers, course of instruction and other factors were sufficient to provide a minimally adequate education to most of the students in the plaintiff school districts and that additional funding alone would not insure better performance by the students in the relevant districts. However, the trial judge found that the failure to fund certain early childhood programs, specifically those directed at the specific needs of children in poverty, did deny the children in those districts the opportunity to acquire a minimally adequate education and that additional funds for early childhood education (pre-kindergarten through third grade) could be effective in minimizing the impact of poverty on the abilities and achievement of the students in later years. Order, *Abbeville School District v. State*, case number 93-CP-31-0169 (December 29, 2005). An electronic copy of the order can be found at www.scschoolcase.com/Abbeville-County-Order.pdf.

The plaintiffs and the South Carolina General Assembly filed cross-appeals in the South Carolina Supreme Court. The case was argued in 2008, and a decision is pending.

§ 715. Ad Valorem Taxation of Leasehold Interests in Certain Property. When real property owned by a tax exempt entity is leased to a taxable entity, there may be 2 alternative outcomes.

First, depending on the statutory language authorizing the exemption, the lease may invalidate the exemption, so that the owner owes property tax. For example, if a church leases its property to a non-exempt lessee, its exemption under SC Code §12-37-220(A)(3) is invalidated because the statute requires that the property be actually occupied by the owner.

Alternatively, the exemption statute may extend to leased property, so that the owner continues to be exempt from property tax liability. For example, if a county leases its property to a non-exempt lessee, its exemption under SC Code §12-37-220(A)(1) continues provided

the leased property is used exclusively for public purposes, as discussed in §714.2 above. Moreover, such property is exempt if it is leased to an entity that would not be subject to property tax if the entity owned the property. SC Code §12-37-220(B)(49).

A question then arises whether the owner's exemption protects the non-exempt lessee, or whether the non-exempt lessee's leasehold interest in the property becomes subject to property tax, with the leasehold being valued as though the lessee owned the underlying real property.

Two South Carolina statutes are applicable to this issue. The first statute, SC Code §4-12-20, provides as follows:

Every agreement between a county, municipality, school district, water and sewer authority, or other political subdivision and another party in the form of a lease must contain a provision requiring the other party to make payments to the county, municipality, school district, water and sewer authority, and other political subdivision in which the project is located in lieu of taxes, in the amounts that would result from taxes levied on the project by a county, municipality, school district, water and sewer authority, and other political subdivisions, if the project were owned by the other party, but with appropriate reductions similar to the tax exemptions, if any, which would be afforded to the other party if it were owner of the project.

The other pertinent statute is SC Code §12-37-950, which provides as follows:

When any leasehold estate is conveyed for a definite term by any grantor whose property is exempt from taxation to a grantee whose property is not exempt, the leasehold estate shall be valued for property tax purposes as real estate.

To return to the example, when a county leases its property to a non-exempt lessee, SC Code §4-12-20 provides that the lessee must pay a fee equal to the property taxes that would be due on the property if the lessee owned the property. SC Code §4-12-20; see SC Code §4-12-30 (a fee in lieu of property taxes may be negotiated). However, SC Code §4-12-20 applies only to property owned by political subdivisions, not by the state or federal government or other exempt entities. When one of these leases property to non-exempt lessees, SC Code §12-37-950 comes into play.

Practitioners in the area of ad valorem taxes are split on whether SC Code §12-37-950 should be construed as a tax imposition statute as well as a tax valuation statute. Some practitioners believe that SC Code §12-37-950 is merely a valuation statute that is obsolete because it values the leasehold interest, which they view as intangible personal property. Since intangible personal property is no longer subject to property taxes in South Carolina, these practitioners argue SC Code §12-37-950 is no longer relevant. They also argue that the general statutory scheme in South Carolina does not tax lessees of property, but owners of property. They further argue that if SC Code §12-37-950 were a tax imposition statute, it would have been addressed in such cases as *Quirk v. Campbell*, 302 S.C. 148, 394 S.E.2d 320 (1990), and *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 289 S.E.2d 416 (1982), both of which involved a tax exempt entity leasing property to an entity that did not qualify for a property tax exemption. However, those cases only reached the threshold issue of whether the owner's exemption remained intact

after the property was leased, as it was alleged (unsuccessfully) that the leased properties were no longer used exclusively for public purposes. In neither case did the court face a claim that the owner's exemption applied to any other party's liability for property tax. Because these decisions do not address the lessees' tax liability, they are not dispositive.

On the other side of the issue is a well known South Carolina tax commentator, William J. Quirk, professor at the University of South Carolina School of Law, and some of the Department staff, who take the position that SC Code §12-37-950 does in fact impose a tax on a taxable entity's leasehold interest when the property being leased is owned by a tax exempt entity.

Proponents of this view argue that the background of SC Code §12-37-950 makes it clear that it was intended to impose a tax on the lessee as well as provide for the valuation at the value of the fee simple interest. The title of the Act enacting SC Code §12-37-950 states that it is an "Act Relating to the Taxation and Valuation For Property Tax Purposes of Certain Leasehold Estates Conveyed by Grantors Whose Property is Exempt from Taxation." The title shows intent to impose a property tax liability. The appellate courts in South Carolina have held that "it is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature." *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634, 649, 528 S.E. 2d 647, 655 (1999).

SC Code §12-37-950 is similar to statutes enacted in other states that were designed to impose a tax on the leasehold interest of property of a tax exempt entity leased to a taxable party. These statutes were enacted in response to federal legislation that permitted the states to tax the use of federal property by a private party, even if the property remained titled to the federal government. Several states impose a tax on the leasehold interest of the taxable entity. Since SC Code §12-37-950 reads similarly to the statutes adopted by other states, it is reasonable to conclude that SC Code §12-37-950 was meant to be a tax imposition statute as well. It has been suggested that when public property is put to private use, the property, or the use of such property, should be subject to tax just like other taxable property and that is the intent of SC Code §12-37-950. The fact that the property tax is measured by the value of the underlying property used does not make the imposition of the tax on the leasehold interest in reality a tax on the tax exempt entity.

At present, we are not aware of any active property tax appeals involving this type of issue. Therefore, the controversy remains an unresolved issue.

§ 720. Jurisdiction of State and Local Agencies. Except as provided in the next paragraph, county assessors assess (determine the value and assessment ratio of) real property and county auditors assess personal property.

The South Carolina Department of Revenue has the sole responsibility for the appraisal, assessment, and equalization of the taxable values of corporate headquarters, corporate office

facilities, and distribution facilities and of all of the property owned by, or leased to, the following businesses and used in the conduct of their business:

- A. Manufacturing;
- B. Railway;
- C. Private carline;
- D. Airline;
- E. Water, heat, light and power;
- F. Telephone;
- G. Cable television;
- H. Sewer;
- I. Pipeline;
- J. Mining.

In addition, the Department has the sole responsibility for the appraisal, assessment, and equalization of the taxable values of the personal property of merchants and motor vehicles of motor carriers. SC Code §12-4-540.

§ 721. How to Contact the South Carolina Department of Revenue.

Address:

SC Department of Revenue
P. O. Box 125
Columbia, SC 29214
Fax: (803) 898-5484

Telephone Numbers for questions:

A. Utilities

- 1. Taylor Ingram (843) 852-3600 ext. 139

B. Business Personal Property

- 1. Trish Schwartz (803) 898-5827

C. Property Tax Exemption

- 1. Adriane Shealy (803) 898-5482

D. Manufacturing

- 1. Ralph Coleman (803) 898-5472

E. Motor vehicles

- 1. Trish Schwartz (803) 898-5827

F. Fee in Lieu of Tax

- 1. Meredith Robertson (803) 898-5390

G. Anything else:

- 1. Mary Lou Powell (803) 898-5518

§ 724. The County Property Tax Officials.

<u>COUNTY</u>	<u>ASSESSOR</u>	<u>AUDITOR</u>
Abbeville	Bobby Gladden P. O. Box 1050 Abbeville, SC 29620 864-366-5312 bgladden@abbevillecountysc.com	Brian K. Johnson P.O. Box 184 Abbeville, SC 29620. 864-366-5312 bjohnson@abbevillecountysc.com
Aiken	Rick Jantzen P.O. Box 518 Aiken, SC 29802 803-642-1576 rjantzen@aikencountysc.gov	Cyrus Spradley P.O. Box 94 Aiken, SC 29802 803-642-1508 cspradley@aikencountysc.gov
Allendale	Harvey Rouse P. O. Box 507 Allendale, SC 29810 803-584-2572 hrouse1@allendalecounty.com	Henri Mae Grant P. O. Box 583 Allendale, SC 29810 803-584-2011 hmaeaud@bellsouth.net
Anderson	Mike Freeman P.O. Box 8002 Anderson, SC 29622 864-260-4028 mfreeman@andersoncountysc.org	Jacky Hunter P.O. Box 8002 Anderson, SC 29622 864-260-4027 jhunter@andersoncountysc.org
Bamberg	Doretta Elliott P. O. Box 511 Bamberg, SC 29003 803-245-3010 bcassessor@yahoo.com	Margaret Meyer P. O. Box 179 Bamberg, SC 29003 803-245-3006 bamaud@hotmail.com
Barnwell	Mike Hughes P.O. Box 711 Barnwell, SC 29812 803-541-1011 mfhughes@barnwellsc.com	James Fickling P. O. Box 711 Barnwell, SC 29812 803-541-1040 jgf@barnwellsc.com
Beaufort	Ed Hughes P. O. Box 458 Beaufort, SC 29901 843-470-2513 edhughes@bcgov.net	Sharon Burris P. O. Box 458 Beaufort, SC 29901 843-470-2558 sharonb@bcgov.net

Berkeley	Wilson Baggett P.O. Box 6122 Moncks Corner, SC 29461 843-719-4061 wbaggett@berkeleycountysc.gov	Janet Jurosko P. O. Box 6122 Moncks Corner, SC 29461 843-719-4039 jjurosko@berkeleycountysc.gov
Calhoun	Steve Hamilton 115 Liberty Street, Ste 107 St. Matthews, SC 29135 803-874-3613 shamilton@calhouncounty.sc.gov	Pamela Taber 101 Courthouse Drive St. Matthews, SC 29135 803-874-3623 ptaber@calhouncounty.sc.gov
Charleston	Toy Glennon P.O. Box 427 Charleston, SC 29402 843-958-4100 tglennon@charlestoncounty.org	Peggy Moseley 2 Courthouse Square Charleston, SC 29402 843-958-4200 pmoseley@charlestoncounty.org
Cherokee	Rob Weaver P. O. Box 1405 Gaffney, SC 29342 864-487-2552 robert.weaver@cherokeecountysc.com	Merv Bishop P. O. Box 32 Gaffney, SC 29342 864-487-2543 marvin.bishop@cherokeecountysc.com
Chester	Ellis Faulkner P. O. Drawer 580 Chester, SC 29706 803-377-4177 efaulkner@chestercounty.org	Donnie Wade P.O. Drawer 580 Chester, SC 29706 803-385-2607 dwade@chestercounty.org
Chesterfield	Tommy Ballard 200 W. Main St. Chesterfield, SC 29709 843-623-7362 ccao@shtc.net	Jack Rivers 200 W. Main St. Chesterfield, SC 29709 843-623-2338 ccauditor@shtc.net
Clarendon	Robert Everett P. O. Box 367 Manning, SC 29102 803-435-4423 assessor@clarendoncountygov.org	Patricia Pringle P. O. Box 697 Manning, SC 29102 803-435-2013 ppringle@clarendoncountygov.org
Colleton	Bucky McCormack P. O. Box 1166 Walterboro, SC 29488 843-549-1213 gmcormack@colletoncounty.org	James O. Hiott, Jr. P. O. Box 128 Walterboro, SC 29488 843-549-2131 jhiott@colletoncounty.org

Darlington	Kyle Johnson 1 Public Square Rm 309 Darlington, SC 29532 843-398-4180 kjohnson@darcoosc.com	Rosa D. Hudson 1 Public Square Rm 205 Darlington, SC 29532 843-398-4110 rhudson@darcoosc.com
Dillon	Steve Rogers P. O. Box 1041 Dillon, SC 29536 843-774-1412 stvnsfrg@bellsouth.net	Kay McKenzie P. O. Box 32 Dillon, SC 29536 843-774-1418 dillonaudit@aol.com
Dorchester	Robert Welch 201 Johnston Street St. George, SC 29477 843-563-0156 wwelch@dorchestercounty.net	James Messervy 201 Johnston Street St. George, SC 29477 843-563-0118 jmessery@dorchestercounty.net
Edgefield	Lakeisha Bryant 129 Courthouse Square, Ste 205 Edgefield, SC 29824 803-637-4066 kbryant@edgefieldcounty.sc.gov	Bill Gilchrist 127 Courthouse Square Edgefield, SC 29824 803-637-4034 bgilchrist@edgefieldcounty.sc.gov
Fairfield	Wendell Irby P. O. Drawer 60 Winnsboro, SC 29180 803-712-6520 wirby@fairfieldsc.com	Peggy G. Hensley P. O. Box 88 Winnsboro, SC 29180 803-712-6524 phensley@fairfieldsc.com
Florence	Jack Newsome 180 N. Irby St. MSC-A Florence, SC 29501 843-665-3056 jnewsome@florenceco.org	H. Wayne Joye 180 N. Irby St. Florence, SC 29501 843-665-3088 auditor@florenceco.org
Georgetown	Susan Edwards P.O. Drawer 421270 Georgetown, SC 29442 843-545-3017 sedwards@georgetowncountysc.org	Linda Mock P. O. Drawer 421270 Georgetown, SC 29442 843-545-3284 lmock@georgetowncountysc.org
Greenville	Debbie Adkins Suite 1000 301 University Ridge Greenville, SC 29601 864-467-7300 dadkins@greenvillecounty.org	Scott Case Suite 800 301 University Ridge Greenville, SC 29601 864-467-7056 scase@greenvillecounty.org

Greenwood	Vivian Lancaster 528 Monument St. 109 Greenwood, SC 29646 864-942-8537 assessor@co.greenwood.sc.us	R. Brann Lowther 528 Monument St. 107 Greenwood, SC 29646 864-942-8543 brann@co.greenwood.sc.us
Hampton	Lester Warren P.O. Box 575 Hampton, SC 29924 803-943-7507 lwarren@hamptoncountysc.org	Teresa Williams P. O. Box 575 Hampton, SC 29924 803-914-2116 twilliams@hamptoncountysc.org
Horry	Rendel Mincey 1301 2 nd Ave., Ste. C108 Conway, SC 29526 843-915-5040 rmincey@horrycounty.org	Lois Eargle P.O. Box 1205 Conway, SC 29528 843-915-5054 earglel@horrycounty.org
Jasper	Susan Waite P.O. Box 837 Ridgeland, SC 29936 843-726-7725 swaite@jaspercountysc.gov	Hazel Holmes P. O. Box 807 Ridgeland, SC 29936 843-726-7732 hholmes@jaspercountysc.gov
Kershaw	Randy Roberts 515 Walnut St. Camden, SC 29020 803-425-1500 ext. 5338 randy.roberts@kershaw.sc.gov	Robin Watkins 515 Walnut St. Camden, SC 29020 803-425-1500 ext. 5421 robin.watkins@kershaw.sc.gov
Lancaster	Norman Anderson P. O. Box 1809 Lancaster, SC 29721 803-285-6964 nanderson@lancastercountysc.net	Cheryl Morgan P. O. Box 2016 Lancaster, SC 29721 803-285-7424 chmorgan@lancastercountysc.net
Laurens	Jerry Robertson P. O. Box 727 Laurens, SC 29360 864-984-6546 jrobertson@co.laurens.sc.us	Sally Lancaster P. O. Box 907 Laurens, SC 29360 864-984-2535 slancaster@co.laurens.sc.us
Lee	Clarence Caudill P.O. Box 309 Bishopville, SC 29010 803-484-5341 ccaudill@leecountysc.org	Cecil Stevens P. O. Box 241 Bishopville, SC 29010 803-484-5341 ext. 375 cstevens@leecountysc.org

Lexington	Rick Dolan 212 S. Lake Drive Lexington, SC 29072 803-785-8190 rdolan@lex-co.com	Chris Harmon 212 S. Lake Drive Lexington, SC 29072 803-785-8181 charmon@lex-co.com
Marion	Ruben Butler P. O. Box 429 Marion, SC 29571 843-423-8225 rbutler@marionsc.org	Nancy Best P. O. Box 672 Marion, SC 29571 843-423-8205 nbest@marionsc.org
Marlboro	Jeff Dudley P. O. Box 62 Bennettsville, SC 29512 843-479-5602 mcassessor@bellsouth.net	Benjy Rogers P. O. Box 468 Bennettsville, SC 29512 843-479-5608 mcauditor@bellsouth.net
McCormick	Curt Arnold 133 S. Mine St. McCormick, SC 29835 864-852-2931 tca_assessor@wctel.net	Virginia Edmonds 133 S. Mine St. McCormick, SC 29835 864-852-2107 vedmunds@mccormickcountysc.org
Newberry	Mary Arrowood P. O. Box 362 Newberry, SC 29108 803-321-2125 marrowood@newberrycounty.net	Donna Lominack P. O. Box 362 Newberry, SC 29108 803-321-2105 dlominack@newberrycounty.net
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Orangeburg	Jim McClain P. O. Drawer 9000 Orangeburg, SC 29116 803-533-6220 jmclean@orangeburgcounty.org	Roger Cleckley P. O. Drawer 9000 Orangeburg, SC 29116 803-533-6200 rleckley@orangeburgcounty.org
Pickens	David Day 222 McDaniel Ave B-8 Pickens, SC 29671 864-898-5871 daviddd@co.pickens.sc.us	Brent Suddenth 222 McDaniel Ave B-7 Pickens, SC 29671 864-898-5895 brents@co.pickens.sc.us

Richland	John A. Cloyd P. O. Box 192 Columbia, SC 29211 803-576-2640 cloydj@rcgov.us	Paul Brawley P. O. Box 192 Columbia, SC 29211 803-576-2600 brawleyp@rcgov.us
Saluda	Josephine Young 101 E. Church St. Saluda, SC 29138 864-445-4500 j.young@saludacounty.sc.gov	Jane B. Guy 101 E. Church St. Saluda, SC 29138 864-445-4550 saluda.auditor@saludacounty.sc.gov
Spartanburg	Gil Bulman P. O. Box 5762 Spartanburg, SC 29304 864-596-2544 gbulman@spartanburgcounty.org	Sharon West 366 N. Church St. Spartanburg, SC 29303 864-596-2600 swest@spartanburgcounty.org
Sumter	Lath Harris 13 E. Canal St. Sumter, SC 29150 803-436-2115 lharris@sumtercountysc.org	Lauretha A. McCants 13 E. Canal St. Sumter, SC 29150 803-436-2136 lmccants@sumtercountysc.org
Union	Susan Hanvey 203 N. Herndon Street Union, SC 29379 864-429-1650 shanvey@countyofunion.com	Bradley O. Valentine 210 W. Main St. Union, SC 29379 864-429-1618 BValentine@countyofunion.com
Williamsburg	Betty Etheridge 147 W. Main St. Kingstree, SC 29556 843-355-9321 ext. 119 betty.etheridge@williamsburgcounty.sc.gov	Sally Mouzon P.O. Box 7 Kingstree, SC 29556 843-355-9321 ext. 543 sally.mouzon@williamsburgcounty.sc.gov
York	Teresa Simmons P. O. Box 57 York, SC 29745 803-684-8526 teresa.simmons@yorkcountygov.com	Amy Boheler P. O. Box 25 York, SC 29745 803-684-8501 amy.boheler@yorkcountygov.com

§ 731. How To Obtain Forms. Forms may be obtained from the Department's web site: www.sctax.org. You can also call (803) 898-5599 to order forms (8:30 a.m. to 5:00 p.m. ET Monday-Friday). Forms may also be obtained by writing:

Forms
S.C. Department of Revenue
P.O. Box 125
Columbia, SC 29214

§ 732. The Basic Property Tax Forms.

PT- 100 Business Personal Property [Tax] Return

PT-139 Water and Sewer Companies Property Tax Return

PT-300 Manufacturing Property Tax Return PT-40 1 Application for [Property Tax] Exemption

PT-401-I Instruction for Application for [Property Tax] Exemption

§ 733. Other Forms of Possible Interest.

SC2848 Power of Attorney (federal form may be used with modifications)

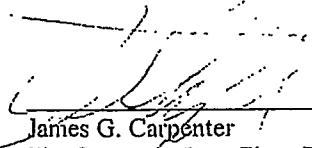
C-188 Request for Publications

I-231 Request for Forms

Certificate of Service

The undersigned attorney hereby certifies that he served a copy of the foregoing Petitioner's Motion for Summary Judgment and Memorandum on counsel for the Respondent by first class mail postage prepaid this 11th day of July, 2013, addressed as follows:

John H. Harris, Esq.
Spartanburg County Attorney
Post Office Box 5666
Spartanburg, SC 29304



James G. Carpenter
The Carpenter Law Firm, P.C.
819 E. North St.
Greenville, SC 29601
Tel. (864) 235-1269
Fax (864) 331-3083

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William J. Montgomery,	)	Docket No. 13-ALJ-17-0104-CC
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Spartanburg County Assessor,	)	RESPONDENT'S MEMORANDUM
	)	IN OPPOSITION TO
	)	PETITIONER'S MOTION FOR
Respondent.	)	SUMMARY JUDGMENT
In Re: TMS# 6-68-00-016.00	)	

Respondent Spartanburg County Assessor ("Assessor" or "Respondent"), acting through its attorneys, responds to Petitioner William J. Montgomery's ("Montgomery") Motion for Summary Judgment:

BACKGROUND

The Petitioner is the owner of parcel of land indentified as Spartanburg County Tax Map Number 6-68-00-016.00, which is commonly known as 891 Mount Lebanon Road, Pauline, SC 29374. The parcel of land consists of 150.4 acres and contains a home, a barn, and a pole building as the identified improvements. The real property is classified by the Assessor as agricultural real property.

For 2011, the tax year in dispute, the Assessor assigned an agricultural use value, using the soil capability method of valuation, to the land of \$12,211 and a fair market value to the improvements of \$28,430.

ISSUE

The issue in this case is whether the value of improvements, buildings or structures, located on property assessed as agricultural real property are included in the "fair market value for agricultural purposes."

FILED

JUL 20 2013

SC ADMIN. LAW COURT

RECORD 000141

STANDARD OF REVIEW

The tax payer bears the burden to overcome the presumption that the valuation is correct. *S.C. Tax Com'n v. S.C. Tax Bd of Review*, 278, S.C. 556, 562 (1983).

ARGUMENT

A. Motion filed in Violation of Rules of Administrative Law Court

Rule 19(A) of the Rules of Procedure for the Administrative Law Court provides "all motions shall be filed not later than thirty (30) days before the hearing date, unless otherwise ordered by the administrative law judge." This case is scheduled for hearing in the Administrative Law Court on July 31, 2013. Therefore, all motions in this case needed to be filed on or before July 1, 2013. The certificate of service attached to the Petitioner's motion is dated July 11, 2013. Consequently, Petitioner's motion for summary judgment is not timely filed in accordance with the Rules of Procedure for the Administrative Law Court, and the motion should be stricken. Should the Court hear the motion for summary judgment the Respondent would argue as follows:

B. All Real Property Is Taxable Unless Exempt

The South Carolina Code of Laws in Section 12-37-210 provides "[a]ll real and personal property in this State ... shall be subject to taxation." However, the General Assembly has utilized its Constitutional authority to exempt certain property from taxation. See SC Const. Art. X, Sec 3.

A general list of property exempted from taxes is contained in Section 12-37-220 of the South Carolina Code of Laws. Agricultural personal property is included in the list of exemptions, specifically all agricultural products owned by the producer, all farm machinery and equipment and all livestock and live poultry. S.C. Code Ann. § 12-37-220(B)(13), (14) and (15).

While there are exemptions for certain agricultural personal property, there is no exemption contained within this section for structures on agricultural real property. Therefore, structures on property classified as agricultural real property are subject to taxation.

In order for a property to be taxed, it must be assessed. *See State v. Cheraw & D.R. Co.*, 54 S.C. 564 (1899). The assessment is determined from the "product of three separate sets of numbers: the assessment ratio, the millage rate, and the fair market value of the property." *Beaufort County v. State*, 353 S.C. 240 (2003). The Assessor has classified the subject property as agricultural real property as defined in Section 12-43-230 of the South Carolina Code of Laws. Since all parties agree, the subject property is properly classified as agricultural real property that is owned by an individual and the millage rate is calculated by the Auditor, the sole remaining issue in the case is how to value agricultural real property.

1. The Assessment Ratio

Since the property is classified as agricultural real property, an assessment ratio as provided for in Section 12-43-220(d)(1) must be applied to the property. The subject property is owned by an individual, therefore, the assessment ratio is four percent. S.C. Code Ann. §12-43-220(d)(1)(A). In this case, there is not a dispute as to the assessment ratio of four percent.

2. The Millage Rate

The millage rate is established by the County Auditor in accordance with the budgets adopted by the various taxing authorities where the subject property is located. The millage rate is not an issue in this case.

3. The Fair Market Value of the Property

Absent another provision of the code providing an alternate method, all property in South Carolina must be valued at its true value in money which is the price a willing buyer would pay a

willing seller. S.C. Code Ann. § 12-37-930. In the case, the subject property has been determined by the Assessor to satisfy the statutory definition of agricultural real property set forth in Section 12-43-230 of the South Carolina Code of Laws. Under the statutory scheme in South Carolina, agricultural real property is divided into sub-classes for valuation.

C. Valuation of Agricultural Real Property

The South Carolina Constitution in Article X, Section 2 provides that the "General Assembly may define the classes of property and values for property tax purposes of the classes of property set forth in Section 1...." In accordance with Section 2, the General Assembly can "define sub-classes of property for those classes enumerated in § 1 and to determine how each sub-class is valued for tax purposes." *Beaufort County v. State*, 353 S.C. 240, 244 (2003). The legal residence classification is set forth in Section 1, subsection (3) of Article X of the South Carolina Constitution, while the agricultural real property classification is set forth in Section 1, subsection (4).

In Section 12-43-215, the General Assembly established sub-classes of property for the legal residence classification. Section 12-43-215, Owner-occupied residential real property, provides "the value of the land must be determined on the basis that its highest and best use is for residential purposes." S.C. Code Ann. § 12-43-215 (emphasis added). The General Assembly has made this same distinction between land and structures, if any, located thereon for agricultural real property as set forth below.

1. Value of Land Under S.C. Code Ann. § 12-43-220

As discussed above, the General Assembly can define sub-classes of property for the purposes of valuation in order to determine the total value of any real property. One sub-class is the value for the land, and second sub-class is a value for the improvements located on the land.

For agricultural property the value of the land is known as the "[f]air market value for agricultural purposes." South Carolina Code of Laws Section 12-43-220(d)(2)(A). Fair market value for agricultural purposes, when applicable to land used for the growth of timber, is defined by the General Assembly "as the productive earning power based on soil capability." *Id.* (emphasis added). Likewise, fair market value for agricultural purposes "when applicable to land used for the growth of other agricultural products the term is defined as the productive earning power based on soil capability...." *Id.* (emphasis added). "Soil capability when applicable to lands used for the growth of timber products means the capability of the soil to produce such timber products of the region...." *Id.* (emphasis added). Soil capability "when applicable to lands used for the growth of other agricultural products, means the capability of the soil to produce typical agricultural products of the region...." *Id.* If the General Assembly had intended this definition to apply to structures as well, it would have so stated.

This alternate valuation method established by the General Assembly provides that "[t]he fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years." South Carolina Code of Laws Section 12-43-220(d)(2)(B)(i). This valuation method is set forth in detail in the South Carolina Code of State Regulations, Section 117-1840.2(c). This regulation provides that "the value's [sic] in this regulation must be used by county assessors for assessment of cropland and timberland." *Id.* The regulation goes on to provide that "the fair market values provided for in this regulation are the values per acre determined for the 1991 tax year and thereafter." *Id.* (emphasis added). Based on the plain meaning of the above referenced state statute and regulation, the fair market value for agricultural purposes does not include the value of structures located thereon.

2. Value of Structures Under S.C. Code Ann. § 12-37-930

As discussed in the above section, the General Assembly provided for a method to determine the value of land component of agricultural real property. The General Assembly did not provide an alternate valuation method for structures located on agricultural real property. Therefore, the market value method set forth in Section 12-37-930 of the South Carolina Code of Laws is used to determine how the structures located on agricultural real property are to be valued for taxation. The market value method is used for determining the value of all real property unless an alternate valuation method is set forth in the statutes. Section 12-37-930 provides the valuation should be determined as follows:

All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

Since there is no alternate provision in the code of laws for the valuation of the structures on agricultural real property, those structures must be valued using this method. This conclusion is supported by language in Section 12-43-220 which provides "[a]s used in this section, fair market value with reference to real property means fair market value determined in the manner provided pursuant to Article X of the Constitution of this State, Section 12-37-930 and Article 25, Chapter 37 of this title." S.C. Code Ann. § 12-43-220.

D. Plain Meaning Rule

"Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Hodges v. Rainey*, 341 S.C. 79, 85 (2000) (citations omitted). The language in Section 12-43-220(d)(2)(A) is clear that the "fair market value for agricultural

purposes" applies to land used for the growth of timber or other agricultural products. There is no mention of structures in this section which sets forth the method to value the land. Structures are only mentioned in other sections, such as Section 12-43-230, which is the section used to determine whether a property should be classified as agricultural real property. Section 12-43-230 does not provide a method to value the real property. Consequently, Section 12-42-220(d)(2)(A) is not applicable for the valuation of structures on agricultural real property.

"The canon of construction '*expression unius est exclusio alterius*' or '*inclusion unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative'". *Rainey* at 86. Therefore, the General Assembly's inclusion of land in the meaning of "fair market value for agricultural purposes" excludes structures as they are not included in the meaning of "fair market value for agricultural purposes".

E. Past Administrative Practice

1. Department of Revenue's past administrative practice

The agricultural use valuation statute was originally enacted in 1975, which is 38 years ago, as Act 208. Since its first adoption, there have been numerous amendments to the statute. Since its inception, the Department of Revenue has been tasked with providing instruction to county assessors as to the law governing the assessment and taxation of all classes of property. This duty is explained in greater detail in the affidavit of Sanford Houck, Jr., which is attached as **Exhibit A**. As part of this statutory duty the Department may issue determinations as to the valuation, assessment or taxation of property and prepare manuals, guides and other aids for the equitable assessment of all properties. **Exhibit A** at p. 1, Par. 5.

The Department of Revenue in determining the value of agricultural real property, as defined by Section 12-43-230, has interpreted the South Carolina Code to provide two

components which comprise the total taxable value. *Id.* at p. 2, Par. 7. The first component is the agricultural land, which must be valued according to the productive earning capacity of the soil, as stated in Section 12-43-220(d)(2)(A). *Id.* at p. 2, Par. 8. The fair market value of any structures located on the land comprises the second component of the total taxable value utilizing the valuation method applicable to structures located on real property as set forth in Section 12-37-930. *Id.* Under the Department's interpretation, the value of any structures located on the agricultural land is added to the value of the agricultural land in order to determine the total taxable value of the agricultural real property. *Id.* at p. 2, Par. 9. This position has been the Department's consistent interpretation since the statutory enactment of agricultural use values by Act 208 in 1975. *Id.* at p. 2, Par. 10. Mr. Houck has been an employee of the Department of Revenue for over 35 years and is familiar with its interpretations. *See Exhibit A.* In accordance with the provisions of Chapter 4 of Title 12, the Department has conveyed its interpretation to the county assessors. *Id.* at p. 2, Par. 11.

2. County's past administrative practice

The Affidavit of Earl N. Alexander II, which is attached as **Exhibit B**, explains the valuation methods used by the County Assessor. The County Assessor has followed the Department of Revenue's interpretation as set forth above as to the method to value agricultural land and agricultural structures. **Exhibit B**, p. 1-2, Par. 3-5 and 7. The Assessor's Office has always valued agricultural real property in the manner described in Paragraphs 3 through 5 of **Exhibit B**. *Id.* at p. 2, Par. 6.

3. Effect of Past Administrative Practice

In South Carolina, the court has held that "[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." *Duton v. South Carolina Bd. Of Examiners in Optometry*, 291 S.C. 221, 223 (1987). "[W]here the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons." *Etiwan Fertilizer Co. v. South Carolina Tax Comm'n*, 217 S.C. 354, 359 (1950). The Petitioner has not presented any evidence to demonstrate the General Assembly is dissatisfied with the interpretation that the Department of Revenue and the County Assessor have used for the last 30 plus years. If the General Assembly was dissatisfied with the current interpretation, the General Assembly has had ample opportunity to provide an alternate method of valuation given the numerous amendments to Section 12-43-220 over the past 38 years since the valuation of agricultural real property was first enacted. "Under these extreme facts, a strong presumption arises that the administrative construction has the approval of the legislature." *Ryder Truck Lines, Inc. v. S.C. Tax Commission*, 248 S.C. 148, 153 (1966).

F. Legislative History of Section 12-43-220

In 1979 by Act 199, the General Assembly added the first paragraph of Section 12-43-220(d)(2)(A), the interpretation of which is at issue in this case. As part of the adoption of this Act, the General Assembly made several findings. One of those finds provides "The General Assembly finds that the income from timberlands should be used to determine the use value of such lands and the income of lands used to produce other agricultural products should be used to determine the use value of those lands." Notably absent, from this finding by the General Assembly, is any reference to the value of structures located on such lands. Legislative history "may be necessary and highly probative of the rationality of the legislature's determination."

State v. Byrd, 267 S.C. 87, 92 (1976). In this case, the legislative history is clear that the General Assembly only intended the language in Section 12-43-220(d)(2)(A) to apply to land.

G. Cases cited by Petitioner are inapposite

The cases cited by the Petitioner are inapposite to the case and issue before the court. The court in its opinion in *Smith v. Clarendon County Assessor* does not explain how “[t]he statutory classification of ‘agricultural use value’ includes the value of the structures located on Petitioners’ property,” when the language in Section 12-43-220(d)(2)(A) provides that the valuation method is to be used “when applicable to land.” *Smith v. Clarendon County Assessor*, 2011 WL 7119293 (2011). In *Rabbit Point Farm Ltd. v. Charleston County Assessor*, the holding of the court was the property “must be classified as agricultural real property for the tax year 1996.” *Rabbit Point Farm Ltd. v. Charleston County Assessor*, 1998 WL 85460 (1998). The *Rabbit Point* case only determined whether the property should be classified as “agricultural real property”. The court did not address the valuation of “agricultural real property,” which is the issue before this court. Consequently, the Petitioner’s cases provide no guidance to the Court in determining how to value structures located on agricultural real property.

H. Section 12-43-230 classifies real property, does not provide valuation method

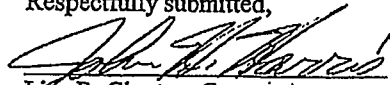
The Petitioner spends considerable time in his memorandum discussing Section 12-43-230 and what is included in agricultural real property. Section 12-43-230(a) is a statute that simply defines “agricultural real property;” it does not provide a method to value “agricultural real property.” Since “agricultural real property” includes both the land and structures, if any, located thereon, Section 12-43-230 discusses what structures are be included within this definition. As discussed above, the land component of “agricultural real property” is valued

using the soil capability method found in Section 12-43-220(d)(2)(A), while structures, if any, are valued using the market value approach found in Section 12-37-930.

CONCLUSION

Pursuant to the language found in Section 12-43-220(d)(2)(A), the value of agricultural land is determined using the soil capability method, while agricultural structures are valued using the market value approach under Section 12-37-930. This interpretation is supported by the plain meaning of the subject statute, the past administrative practice of the Department of Revenue and the County Assessor and the legislative history of Act 199 (1976). Consequently, the Court should uphold the decision of the Spartanburg County Board of Assessment Appeals. The Petitioner has failed to provide sufficient evidence to support his position that the fair market value for agricultural purposes includes the value of structures, if any, located on the land.

Respectfully submitted,



Lisa R. Claxton, County Attorney
John H. Harris, Senior Deputy County Attorney
Virginia Dupont, Deputy County Attorney
Spartanburg County Attorney's Office
P.O. Box 5666
Spartanburg, SC 29304-5666
Telephone: (864)596-2526
Facsimile: (864)596-2232

Attorneys for Respondent
Spartanburg County Assessor

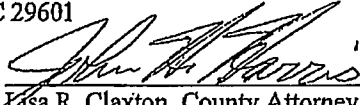
July 22, 2013
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William J. Montgomery,	)	Docket No. 13-ALJ-17-0104-CC
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Spartanburg County Assessor,	)	CERTIFICATE OF SERVICE
	)	
Respondent.	)	
In Re: TMS# 6-68-00-016.00	)	

I hereby certify that I am the attorney for the respondent in the above-captioned matter and that on the 22nd day of July, 2013, in Spartanburg, South Carolina, I served a copy of the forgoing Respondent's Memorandum in Opposition to Petitioner's Motion for Summary Judgment to all parties to this matter by causing a copy of same to be delivered via U.S. Mail, postage paid, addressed as follows and via electronic mail:

James G. Carpenter, Esq.
(james.carpenter@carpenterlawfirm.net)
L. Warren Clayton, III, Esq.
(warren.clayton@carpenterlawfirm.net)
The Carpenter Law Firm, P.C.
819 East North Street
Greenville, SC 29601


Lisa R. Claxton, County Attorney
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e-mail: jharris@spartanburgcounty.org

Attorneys for Respondent
Spartanburg County Assessor

Dated: July 22, 2013
Spartanburg, South Carolina

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SC ADMIN. LAW COURT

EXHIBIT A

RECORD 000153

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William J. Montgomery,	)	Docket No. 13-ALJ-17-0104-CC
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Spartanburg County Assessor,	)	AFFIDAVIT OF
	)	SANFORD HOUCK, JR.
	)	
Respondent.	)	
In Re: TMS# 6-68-00-016.00	)	

I, Sanford "Sandy" Houck, Jr., after being duly sworn, do hereby make oath and affirm as follows:

1. I am employed by South Carolina Department of Revenue ("Department") as the Special Projects Coordinator for the Local Government Section. I hold a Certified General Appraiser's license in South Carolina (CG 723), issued by the Real Estate Appraiser's Board of the South Carolina Department of Labor, Licensing and Regulation, and I have been with the Department of Revenue for over 35 years in the Local Government/Property section.

2. In my capacity as Special Projects Coordinator, I am authorized to make this Affidavit on behalf of myself and on behalf of the Department. Further, I make this Affidavit from my own personal knowledge based on the experience I have gained in over 35 years with the Department.

3. The Department was created to, among other things, administer and enforce the revenue laws of the State of South Carolina [S.C. Code Ann. § 12-4-10.] The Department is required to formulate and recommend legislation to enhance uniformity, enforcement, and administration of the tax laws, and to secure just taxation and improvements in the tax system. [Id. at § 12-4-520.] The Department may make rules and regulations – consistent with statutory law – to aid in the performance of its duties.

4. In addition to these general duties, the Department oversees county taxation matters. [Id. at § 12-4-520.] The Department is required to call meetings of all county assessors to provide instruction as to the law governing the assessment and taxation of all classes of property and must formulate and prescribe rules to given assessors and county boards of tax appeals in the discharge of their duties. The Department must advise and direct assessors and county boards of tax appeals regarding their duties. [Id.]

5. Moreover, the Department may issue determinations directing county officials to comply with South Carolina law relating to the valuation, assessment, or taxation of property. [Id. at § 12-4-535.] Additionally, the Department is required to prepare manuals, guides, and other aids for the equitable assessment of all properties. [Id. at § 12-4-560.]

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SC ADMIN. LAW COURT

RECORD 000154

6. Pursuant to its statutory duties and authority, the Department, as the agency charged with interpreting, administering, and executing South Carolina's tax laws, has established and applied an interpretation of the statutes and regulations governing the valuation of agricultural real property.

7. In determining the value of agricultural real property, as defined by section 12-43-230, the Department has interpreted the South Carolina Code to provide two components to the total taxable value.

8. The first component is the agricultural land, which must be valued according to the productive earning capacity of the soil, as stated in section 12-43-220(d)(2)(A).

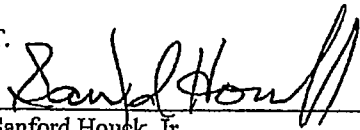
8. The Department has interpreted the constitutional provisions and statutes governing agricultural real property valuation as requiring county assessors to determine the fair market value of any structures located on the agricultural real property, utilizing valuation methods applicable to structures located on all real property, including but limited to section 12-37-930. The fair market value of any structures comprises the second component of the total taxable value.

9. Thus, under the Department's interpretation, the taxable value of agricultural real property is to be determined by valuing both the agricultural land, pursuant to the methods outlined in section 12-43-220(d)(2)(A), and any structures located on the agricultural land. Under the Department's interpretation, the value of any structures located on the agricultural land is added to the value of the agricultural land in order to determine the total taxable value of the agricultural real property.

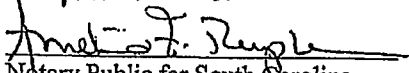
10. Further, this position has been the Department's consistent interpretation since the statutory enactment of agricultural use values by Act 208 in 1975, as expanded by Act 618 in 1976.

11. In accordance with the provisions of Chapter 4 of Title 12, the Department has conveyed its interpretation to the county assessors.

FURTHER AFFIANT SAYETH NOT.


Sanford Houck, Jr.

SWORN and subscribed to before me
this 18th day of July, 2013.


Notary Public for South Carolina
My Commission Expires: 4/10/2018

RECORD 000155

EXHIBIT B

RECORD 000156

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William J. Montgomery,	)	Docket No. 13-ALJ-17-0104-CC
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Spartanburg County Assessor,	)	AFFIDAVIT OF EARL N.
	)	ALEXANDER II REGARDING
	)	THE VALUATION OF
Respondent.	)	AGRICULTURAL REAL
In Re: TMS# 6-68-00-016.00	)	PROPERTY

I, Earl N. Alexander II, after being duly sworn, do hereby make oath and affirm as follows:

1. I am the Assessor for Spartanburg County ("Assessor").
2. In my capacity as Assessor, I am authorized to make this Affidavit on behalf of myself and on behalf of the Assessor's Office. Further, I make this Affidavit from my own personal knowledge of the matters referenced herein.
3. In determining the value of agricultural real property, the Assessor's Office has interpreted South Carolina Code Annotated section 12-43-220 to mean that agricultural land, which comprises one component of agricultural real property, must be valued according to the productive earning capacity of the soil, as stated in section 12-43-220(d)(2)(A).
4. In order to determine the total fair market value for agricultural purposes of any agricultural real property, the Assessor has interpreted the constitutional provisions and statutes governing agricultural real property valuation as requiring the Assessor to determine the fair market value of any structures located on the agricultural real property in accordance with section 12-37-930.
5. Under the Assessor's interpretation, the fair market value for agricultural purposes of agricultural real property is to be determined by valuing both the agricultural land, pursuant to the methods outlined in section 12-43-220(d)(2)(A), and any structures located on the agricultural land in accordance with section 12-37-930. The value of the agricultural land is added to the value of any structures thereon in order to determine the total fair market value for agricultural purposes of the agricultural real property.

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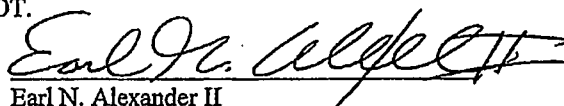
SC ADMIN. LAW COURT

RECORD 000157

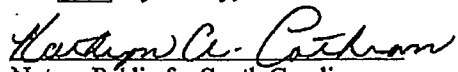
6. To the best of my knowledge, the Assessor's Office has always valued agricultural real property in the manner described in Paragraphs 3 through 5.

7. Further, the Assessor's interpretation and application of the law, as described in Paragraphs 3 through 5, is consistent with guidance provided to the Assessor's Office by the South Carolina Department of Revenue.

FURTHER AFFIANT SAYETH NOT.


Earl N. Alexander II

SWORN and subscribed to before me
this 22nd day of July, 2013.


Notary Public for South Carolina
My Commission Expires: 4-26-14

RECORD 000158

MONTGOMERY V. SPARTANBURG
COUNTY ASSESSOR

ALC Docket No. 2013-ALJ-17-0061-CC



James G. Carpenter
L. Warren Clayton, III
The Carpenter Law Firm, P.C.
819 East North St.
Greenville, SC 29601

SC ADMIN. LAW COURT

RECORD 000159

Supportive Authority for Petitioner's Position:

- South Carolina's Constitution
- South Carolina's Statutes
- South Carolina's Regulations
- The SCDOR Publications
- Existing Case Law

S.C. CONST. ART. X, § 1

S.C. CONST. ART. X, § 1

§ 1. Taxation and assessment.

Currentness

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 and uniform in the following classifications:

(1) All real and personal property owned by or leased to manufacturers, utilities and mining operations and used by the manufacturer, utility or mining operation, in the conduct of such business shall be taxed on an assessment equal to ten and one-half percent of the fair market value of such property.

(2) All real and personal property owned by or leased to companies primarily engaged in transportation for hire of persons or property and used by the company in the conduct of such business shall be taxed on an assessment equal to nine and one-half percent of the fair market value of such property.

(3) The legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property.

(4) Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to:

(A) four percent of its value for such purposes when owned or leased to individuals or partnerships and certain corporations which do not:

Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to: (A) four percent of its value for such purposes."

(B) six percent of its value for such purposes when owned or leased to corporations, except for certain corporations specified in (A) above. *Provided*, that the General Assembly shall by general law provide for a penalty system on lands classified as agricultural lands to insure the proper utilization of this classification.

(5) All other real property not herein provided for shall be taxed on an assessment equal to six percent of the fair market

AGRICULTURAL REAL PROPERTY INCLUDES ALL STRUCTURES ATTACHED THERETO.

- “Real property” (and likewise “agricultural *real property*”) specifically includes all structures attached thereto. See S.C. CODE ANN. § 12-37-10; see also SCDOR publication, *South Carolina Property Tax* § 110.1 (2010) (hereinafter the “D.O.R. Guide”); and, S.C. CODE REG. 117-1700.1.
- “‘*Real property*’ shall mean not only land, . . . but also *all structures* and other things therein contained or annexed or *attached thereto* which pass to the vendee by the conveyance of the land.” S.C. CODE ANN. § 12-37-10 (1) (emphasis added).

Code 1976 § 12-43-230

§ 12-43-230. Treatment of agricultural real property, mobile home and lessee improvements to real property; department shall prescribe regulations.

Currentness

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

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"agricultural real property" shall mean any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, ... including the preparation of the products raised thereon ... It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture.

provide additional space. The term "mobile home" shall also include units in two or more separately towable components designed to be joined into one integral unit for use, and capable of being again separated into the components for repeated towing. It may also include two units which may be joined, on site, into a single residential unit.

"agricultural real property" shall include real property used to provide free housing for farm laborers

homeowners' association if:

(1) property owned by the homeowners' association is held for the use, benefit, and enjoyment of members of the homeowners' association;

RECORD 000163

S.C. CODE ANN. § 12-43-230

**Agricultural real property
specifically includes:**

- structures used to store crops (such as silos or granaries, hay barns, tobacco barns and drying sheds, or other crop storage buildings or structures);
- structures used to raise, store, feed, breed or manage livestock (such as poultry houses, hog sties, stables or barns);
- structures used in the preparation of farm products – particularly those for dairying (such as milking parlors, and other milk or dairy product production and storage facilities); and,
- structures used as free housing for farm laborers.

AGRICULTURAL STRUCTURES ARE VALUED AS PART OF A STATUTORY TAXATION VALUE FOR AGRICULTURAL REAL PROPERTY IN S.C. CODE ANN. § 12-43-220

Code 1976 § 12-43-220

§ 12-43-220. Classifications shall be equal and uniform; particular classifications and assessment ratios; procedures for claiming certain classifications; roll-back taxes.

Effective: May 25, 2012

Currentness

Except as otherwise provided, the ratio of assessment to value of property in each class shall be equal and uniform throughout the State. All property presently subject to ad valorem taxation shall be classified and assessed as follows:

"Fair market value for agricultural purposes" . . . is defined as the productive earning power based on soil capability

(2) Real property owned by or leased to a manufacturer and used primarily for research and development is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property pursuant to this item (a). The term "research and development" means basic and applied research in the sciences and engineering and the design and development of prototypes and processes.

(3) Real property owned by or leased to a manufacturer and used primarily as an office building is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property pursuant to this

(d)(1) **Agricultural real property** which is actually used for such agricultural purposes shall be taxed on an assessment equal to: (A) **Four percent of its fair market value for such agricultural purposes**

equal to five percent of the fair market value of such property; provided, that all other farm machinery and equipment and all livestock and poultry shall be exempt from ad valorem taxes.

(e)(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

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RECORD 000165

166

GENERAL ASSEMBLY CHANGED AGRICULTURAL "LAND" TO AGRICULTURAL "REAL PROPERTY" IN S.C. CODE ANN. § 12-43-220(d)(1). (1979 Act 133, § 2)

220

STATUTES AT LARGE
GENERAL AND PERMANENT LAWS—1979

[No. 133

No. 134]

OF SOUTH CAROLINA
GENERAL AND PERMANENT LAWS—1979

221

Subitem (1) of item (d) of Section 12-43-220 . . . is further amended by striking the word "land" on line one and inserting "real property".

Governor.

Approved the 26th day of June, 1979.

(R187, H2445)

No. 133

An Act To Amend Sections 12-43-220 And 12-43-230, Code Of Laws Of South Carolina, 1976, As Amended, Relating To Equalization And Reassessment Program For Real Property, And To The Definition Of The Term "Agricultural Real Property" For Purposes Of Tax Assessment, So As To Change The Reference From Agricultural Land To Agricultural Real Property And To Include Property Used To Provide Free Housing For Farm Laborers In The Definition Of "Agricultural Real Property".

erty for which the tax relief is intended."

Taxing of real property

SECTION 2. Subitem (1) of item (d) of Section 12-43-220 of the 1976 Code, as last amended by Act 438 of 1978, is further amended by striking the word "land" on line one and inserting "real property". When amended, the subitem shall read:

"(1) Agricultural real property which is actually used for such agricultural purposes shall be taxed on an assessment equal to:

(A) Four percent of its fair market value for such agricultural purposes for owners or lessees who are individuals or partnerships and certain corporations which do not:

(i) Have more than ten shareholders.

(ii) Have as a shareholder a person (other than an estate) who is not an individual.

When amended, the subitem shall read: (1) Agricultural real property . . . shall be taxed on an assessment equal to: (A) Four percent of its fair market value for such agricultural purposes

raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture. In the event at least fifty percent of a real property tract shall qualify as 'agricultural real property', the entire tract shall be so classified, provided no other business for profit is being operated thereon. The term 'agricultural real property' shall include real property used to provide free housing for farm laborers provided such housing is located on the tract of land that qualifies as agricultural real property.

Approved the 26th day of June, 1979.

(R188, H2599)

No. 134

An Act To Amend Sections 47-5-20 And 47-5-50, Code Of Laws Of South Carolina, 1976, Relating To Rabies Control So As To Redefine The Term "Pet" And To Prohibit The Sale, As Pets, Of Carnivores Not Normally Domesticated: To Provide That Such

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S.C. CODE ANN. § 12-43-220(d)(2)(B)(i-ii)

(B)(i) For tax year 1988 and subsequent tax years, *fair market value for agricultural purposes must be determined* by adjusting the applicable base year value by an amount equal to the product of multiplying the applicable base year value by a percentage factor obtained *through the formula provided in this item*. For tax year 1988, the applicable base year is 1981. The fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years.

(ii) *The percentage factor provided in this item is derived from the most recent edition of the United States Department of Agriculture publication "AGRICULTURAL LAND VALUES AND MARKETS", specifically, from "Table 1--Farm Real Estate Values: Indexes of the average value per acre of land and buildings . . ." as listed for this State. The formula to determine the applicable percentage factor is the index of the year of change less the index of the base year with the resulting amount being divided by the index of the base year and rounded to the nearest whole number. For purposes of the formula, the base year is the last year in which values were adjusted under this item. (emphasis added).*

note to 401a summary table 1 valuation of

**"FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES"
SPECIFICALLY INCLUDES A "BUILDING" VALUE
COMPONENT. S.C. CODE ANN. § 12-43-220(d)(2)(B)(ii)**

§ 12-43-220. Classifications shall be equal and uniform;..., SC ST § 12-43-220

(ii) The percentage factor provided in this item is derived from the most recent edition of the United States Department of Agriculture publication "AGRICULTURAL LAND VALUES AND MARKETS", specifically, from "Table 1--Farm Real Estate Values: Indexes of the average value per acre of land and buildings . . ." as listed for this State. The formula to determine the applicable percentage factor is the index of the year of change less the index of the base year with the resulting amount being divided by the index of the base year and rounded to the nearest whole number. For purposes of the formula, the base year is the last year in which values were adjusted under this item.

**"Table 1--Farm Real Estate Values: Indexes of the average
value per acre of land and buildings . . ."**

rate of one-half of one percent a month must be paid on the difference between the amount that was paid and the amount that should have been paid, but not less than thirty dollars nor more than the current year's taxes.

(4) When real property which is in agricultural use and is being valued, assessed, and taxed under the provisions of this article, is applied to a use other than agricultural, it is subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the real property been valued, assessed, and taxed as other real property in the taxing district, in the current tax year (the year of change in use) and each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed as herein provided. If in the tax year in which a change in use of the real property occurs the real property was not valued, assessed, and taxed under this article, then the real property is subject to roll-back taxes for each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed hereunder. In determining the amounts of the roll-back taxes chargeable on real property which has undergone a change in use, the assessor shall for each of the roll-back tax years involved ascertain:

S.C. CODE ANN. § 12-37-3140

Code of Laws of South Carolina 1976 Annotated
Title 12. Taxation (Refs & Annos)
Chapter 37. Assessment of Property Taxes
Article 25. South Carolina Real Property Valuation Reform Act

Code 1976 § 12-37-3140

§ 12-37-3140. Determining fair market value.

Effective: June 16, 2010

Currentness

(A)(1) For property tax years beginning after 2006, the fair market value of real property is its fair market value applicable for the later of:

- (a) the base year, as defined in subsection (C) of this section;
- (b) December thirty-first of the year in which an assessable transfer of interest has occurred;
- (c) as determined on appeal; or
- (d) as it may be adjusted as determined in a countywide reassessment program conducted pursuant to Section 12-43-217, but limited to increases in such value as provided in subsection (B) of this section.

(2) To the fair market value of real property as determined at the time provided in item (1) of this subsection, there must be added the fair market value of subsequent improvements and additions to the property.

To the fair market value of real property . . . there must be added the fair market value of subsequent improvements and additions to the property.

(D) Real property valued by the unit valuation concept is excluded from the limits provided pursuant to subsection (B) of this section.

(E) Value attributable to additions and improvements, and changes in value resulting from assessable transfers of interest

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S.C. CODE ANN. § 12-37-3170

§ 12-37-3170. Effect on valuation of agricultural property., SC ST § 12-37-3170

Code of Laws of South Carolina 1976 Annotated
Title 12. Taxation (Refs & Annos)
Chapter 37. Assessment of Property Taxes
Article 25. South Carolina Real Property Valuation Reform Act

Code 1976 § 12-37-3170

§ 12-37-3170. Effect on valuation of agricultural property.

Effective: April 26, 2007

Currentness

(A) Nothing in this article affects the provisions of Section 12-43-220(d) that define and apply to "fair market value for agricultural purposes" for real property in agricultural use.

(B) Except as provided in Section 12-37-3150(9), this article does not affect the eligibility requirements for agricultural use or the imposition of rollback taxes when real property is changed from agricultural use.

Nothing in this article affects the provisions of Section 12-43-220(d) that define and apply to "fair market value for agricultural purposes"

Credits

HISTORY: 2006 Act No. 388, Pt IV, § 1, eff upon ratification of amendment to Article X of the Constitution (ratified April 26, 2007).

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Constitutional & Statutory Authority:

- S.C. CONST. ART. X, § 1
- S.C. CODE ANN. § 12-43-230
- S.C. CODE ANN. § 12-43-220
- S.C. CODE ANN. § 12-43-233
- S.C. CODE ANN. § 12-37-10
- S.C. CODE ANN. § 12-37-3140(a)(2) with S.C. CODE ANN. § 12-37-3170
- 84 C.J.S. Taxation § 530 (1954)
- 84 C.J.S. Taxation § 404 (1954) (property must be valued as a whole)

S.C. Regulatory Authority:

- S.C. CODE REG. 117-1700.1 (real property and agricultural real property include the structures attached thereto).
- S.C. CODE REG. 117-1780.1-1780.2 (defining what real property qualifies as agricultural real property).
- S.C. CODE REG. 117-1780.2, -1780.3 (if at least 50% of a tract qualifies as "agricultural real property" the entire tract shall be classified as agricultural real property).
- S.C. CODE REG. 117-1780.2, -1780.3 (any portion of an agricultural real property tract that is used for a legal residence or for some "other business for profit" shall be excluded from the agricultural real property classification).
- S.C. CODE REG. 117-1840 (providing tables of the values per acre for the fair market value for agricultural purposes of agricultural real property).

SCDOR Publications: (The 2010 DOR Guide)

D.O.R. Guide PART I: § 001(C)(1), § 221.4 ("Real property (*other than agricultural real property . . .*) is appraised to determine fair market value.")

D.O.R. Guide § 110.1 (real property and agricultural real property include the structures attached thereto).

D.O.R. Guide § 212 (real property used for agricultural purposes is classified as agricultural real property).

D.O.R. Guide § 222.2 (defining what real property qualifies as agricultural real property).

D.O.R. Guide § 212 (agricultural real property shall be assessed and taxed at 4% of its fair market value for agricultural purposes).

D.O.R. Guide §§ 212, 222 ("fair market value for agricultural purposes" is a "special valuation" that applies to agricultural real property).

D.O.R. Guide § 222.1 ("fair market value for agricultural purposes" is based on the productive earning capacity of the soil).

D.O.R. Guide § 222.2 (agricultural real property includes dockside facilities and free housing for farm laborers).

SCDOR Publications:

(SCDOR (PROPERTY DIV.), VALUATION OF AGRICULTURAL PROPERTY IN SOUTH CAROLINA (2010) (hereinafter "Valuation of Ag. Property"))

- VALUATION OF AG. PROPERTY, 3-5 (defining what real property qualifies as agricultural real property, and specifying agricultural real property includes dockside facilities and free housing for farm laborers).
- VALUATION OF AG. PROPERTY at 3 (if at least 50% of a tract qualifies as "agricultural real property" the entire tract shall be classified as agricultural real property).
- VALUATION OF AG. PROPERTY at 15-17 (agricultural real property shall be assessed and taxed at 4% of its fair market value for agricultural purposes).
- VALUATION OF AG. PROPERTY at 17 ("fair market value for agricultural purposes" is based on the productive earning capacity of the soil).
- VALUATION OF AG. PROPERTY at 20-21 (agricultural real property receives a "special assessment").

South Carolina Case Law Authority:

- Smith et al. v. Clarendon County Assessor, No.: 11-ALJ-17-0191-CC, 2011 WL 7119293 (S.C. Admin. Law Ct. 2011).

ORDER ON MOTION FOR RECONSIDERATION, Smith et al. v. Clarendon County Assessor, No.: 11-ALJ-17-0191-CC (Filed Oct. 31, 2011).

- Rabbit Point Farm Limited v. Charleston County Assessor, No: 97-ALJ-17-0501-CC, 1998 WL 85460 (S.C. Admin. Law Ct. 1998).

Smith et al. v. Clarendon County Assessor, No.: 11-ALJ-17-0191-CC, 2011 WL 7119293 (S.C. Admin. Law Ct. 2011).

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

C. Dom Smith, III and Kate E. Smith,

Petitioners,

vs.

Clarendon County Assessor,

Docket No.: 11-ALJ-17-0191-CC

ORDER

The Assessor then added to the "agricultural use value" an assessment of the "fair market value" of all outbuildings, barns, sheds and two buildings that had previously been used as residences, but now serve other purposes Respondent would add to the statutory formula the assessment of the "*fair market value*" of the agricultural-related *structures* on Petitioners' real estate.

three parcels of real property. On June 12, 2011, the Clarendon County Assessor ("Respondent" or "Assessor") filed a Motion for Summary Judgment on the grounds that there is no genuine

When real property has been properly classified as "agricultural real property," that real property must be assessed at the "fair market value for agricultural purposes."

Petitioners conducted by the Clarendon County Assessor. The real estate includes three properties that are identified as: TMS 344-00-02-011-00, TMS 345-00-03-005-00 and TMS 345-00-04-006-00.

The statutory classification of "agricultural use value" clearly includes the value of the structures located on Petitioners' property

SEP 15 2011

SC ADMIN LAW COURT

RECORD 000176

ORDER ON MOTION FOR RECONSIDERATION, Smith et al. v. Clarendon County Assessor, No.: 11-ALJ-17-0191-CC (Filed Oct. 31, 2011).

STATE OF SOUTH CAROLINA ADMINISTRATIVE LAW COURT

C. Don Smith, III and Kate E. Smith,

Petitioners,

vs.

Clarendon County Assessor,

Respondent.

Docket No.: 11-ALJ-17-0191-CC

ORDER ON MOTION FOR RECONSIDERATION

The above-captioned matter came before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to a request for contested case hearing filed on April 7, 2011 by the

In the Motion, Respondent also indicates some confusion as to what portion of Petitioners' property is being addressed by the Order. The case before this Court involves parcels identified by TMS 344-00-02-011-00, TMS 345-00-03-005-00 and TMS 345-00-04-006-00. As Respondent is aware, these parcels include land that was classified and assessed as "agricultural use real property", this classification has not been contested. There are also several structures located on these parcels, some of which Petitioners contend should have been classified as part of the agricultural use real property. The Petitioners argue the land and structures should not be valued and taxed separately. In the Order addressing the Motion and Cross-Motion for Summary Judgment, the Court agreed with Petitioner and ruled that "agricultural use value" includes the value of the structures located on Petitioners' property, other than the residence of the Petitioners or immediate family." The Petitioners conceded at the outset of this case, that the Petitioners' residences are not located on any of the identified parcels,

"Petitioners argue the land and structures should not be valued and taxed separately. . . . [T]he Court agreed with Petitioner and ruled that 'agricultural use value' includes the value of the structures located on Petitioners' property."

in favor of Petitioners.

On September 30, 2011, the Respondent filed a Motion requesting that this Court reconsider, alter or amend its Order issued on September 15, 2011. The Petitioners filed a Response to Respondent's Motion on October 11, 2011. In the Motion, the Respondent contends the Court failed to properly define the issues. I disagree. To properly rule on the issues contested, the Court was required to first determine whether certain structures should be classified as part of the agricultural real property, and secondly, whether these structures should be assessed and taxed based on "fair market value for agricultural purposes."

FILED

OCT 31 2011

SC ADMIN. LAW COURT

SHIRLEY C. ROBINSON
Administrative Law Judge

October 31, 2011
Columbia, South Carolina

RECEIVED
OCT 31 2011
CLARENCON COUNTY
SOUTH CAROLINA
BY: [Signature]
JAMES H. [Signature]

RECORD 000177

84 C.J.S Taxation § 530

84 C.J.S. Taxation § 530

Corpus Juris Secundum
Database updated June 2013
Taxation

John Bourdeau, J.D., James Buchwalter, J.D., Paul M. Coltoff, J.D., John Glenn, J.D., Rebecca Hatch, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., John Kimpflen, J.D., Stephen Lease, J.D., Lucas Martin, J.D., Eric Mayer, J.D., Tom Muskus, J.D., Karl Oakes, J.D., Jeffrey J. Shampo, J.D., Eric C. Surette, J.D.,

VI. Levy and Assessment
C. Assessment of Property
1. Overview

Topic Summary References Correlation Table

§ 530. Generally

West's Key Number Digest

West's Key Number Digest, Taxation ~~2430~~ 2432, 2460 to 2462

Tax assessments may only be made in strict conformity with taxation statutes although in some states, substantial compliance

No method of determining tax liability is valid unless authorized by statute and assessed in conformity to its terms. Accordingly, tax assessments may only be made in strict conformity with taxation statutes.

A tax assessment statute will not be extended by construction to things not directly named or described in the statute.* Nor will a new assessment law be construed to operate retroactively or retrospectively⁵ unless such is its clear meaning.⁶ Further, the repeal of an act under which an assessment has been made will not vacate or invalidate the assessment.⁷

A tax assessment statute will not be extended by construction to things not directly named or described in the statute.

RECORD 000178

The Court must apply the statutes as written:

- Courts are “confined to what the statute says, not what it ought to say, for we have no right to modify a statute’s application under the guise of judicial interpretation. In other words, when a statute is clear on its face, it is improvident to judicially engraft extra requirements to legislation just because doing so may further the intent behind the statute.” Grier v. AMISUB of South Carolina, Inc., 397 S.C. 532, 540, 725 S.E.2d 693, 698 (2012)(citations omitted).
- Courts “have no legislative authority and cannot vary a statutory scheme and this is true no matter how logical the basis of the variance.” Benat v. State Farm Mut. Ins. Co., 286 S.C. 132, 134, 333 S.E.2d 57, 58 (Ct.App. 1985).
- “[I]t is beyond th[e] Court’s power to effect a change in the statutes enacted by the Legislature.” The “Court does ‘not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly.’” Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007) (quoting Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996)) (other citations omitted).

Ambiguity in a taxation statute requires ruling for the taxpayer.

- “[T]he ALC referenced the settled principle that any substantial doubt in the application of a tax statute must be resolved in favor of the taxpayer. . . . *see also SCANA Corp. v. S.C. Dep’t of Revenue*, 384 S.C. 388, 394 n. 3, 683 S.E.2d 468, 471 (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 Communications, Inc. v. SCDOR, 399 S.C. 313, 318, 731 S.E.2d 869, 872 (2012).

- “In construing the statutes under which the tax has been assessed, our Supreme Court has pointed out in numerous cases that the taxpayer must receive the benefits in cases of doubt in the enforcement of tax statutes. . . . And this likewise is the rule of construction laid down by the Supreme Court of the United States in the case of United States v. Merriam, 263 U.S. 179, 44 S.Ct. 69, 68 L.Ed. 240, 29 A.L.R. 1547, where that court said that in statutes levying taxes, the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used, and if the words are doubtful, the **doubt must be resolved against the government and in favor of the tax payer.**”

Cooper River Bridge, Inc. v. S.C. Tax Comm’n, 182 S.C. 72, 76, 188 S.E. 508, 509-510 (1936) (emphasis added).

Normal rules of statutory interpretation do not apply to taxation statutes.

▪ **"Generally, a court must apply the rules of statutory interpretation to resolve the ambiguity and discover the intent of the legislature. However, [i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt. [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."**

Alltel Communications, Inc. v. SCDOR, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012)(some internal citations omitted)(emphasis added).

Applicability

SECTION 3A. The provisions of Section 24-9-40 of the 1976 Code added in Section 2 of this act shall not apply to facilities under construction on the effective date of this act.

Time effective

SECTION 4. This act shall take effect upon approval by the Governor.

Approved the 26th day of June, 1979.

(R187, H2445)

No. 133

An Act To Amend Sections 12-43-220 And 12-43-230, Code Of Laws Of South Carolina, 1976, As Amended, Relating To Equalization And Reassessment Program For Real Property, And To The Definition Of The Term "Agricultural Real Property" For Purposes Of Tax Assessment, So As To Change The Reference From Agricultural Land To Agricultural Real Property And To Include Property Used To Provide Free Housing For Farm Laborers In The Definition Of "Agricultural Real Property".

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

Agricultural real property defined

SECTION 1. Item (a) of Section 12-43-230 of the 1976 Code is amended to read:

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

FILED

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SC ADMIN. LAW COURT

The Commission shall provide by regulation for a more detailed definition of 'agricultural real property' consistent with the general definition set forth in this section, to be used by county assessors in determining entitlement to special assessment under this article. Such regulations shall be designed to exclude from the special assessment that real property which is not bona fide agricultural real property for which the tax relief is intended."

Taxing of real property

SECTION 2. Subitem (1) of item (d) of Section 12-43-220 of the 1976 Code, as last amended by Act 438 of 1978, is further amended by striking the word "land" on line one and inserting "real property". When amended, the subitem shall read:

"(1) Agricultural real property which is actually used for such agricultural purposes shall be taxed on an assessment equal to:

(A) Four percent of its fair market value for such agricultural purposes for owners or lessees who are individuals or partnerships and certain corporations which do not:

(i) Have more than ten shareholders.

(ii) Have as a shareholder a person (other than an estate) who is not an individual.

(iii) Have a nonresident alien as a shareholder.

(iv) Have more than one class of stock.

(B) Six percent of its fair market value for such agricultural purposes for owners or lessees who are corporations, except for certain corporations specified in (A) above."

Time effective

SECTION 3. This act shall take effect upon approval by the Governor and shall apply to the tax year 1979 and thereafter.

Approved the 26th day of June, 1979.

(R188, H2599)

No. 134

An Act To Amend Sections 47-5-20 And 47-5-50, Code Of Laws Of South Carolina, 1976, Relating To Rabies Control So As To Redefine The Term "Pet" And To Prohibit The Sale Of Pets, Of Carnivores Not Normally Domesticated; To Provide That Such

RECORD 000182

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Handout #3

P. Wendout - 5

Valuation of Agricultural Property in South Carolina



Property Division
South Carolina Department of Revenue
Continuing Education SCLLR CE-1040

2010

FILED

JUL 31 2013

SC ADMIN. LAW COURT

GWDCL 0001

RECORD 000183

*Valuation of Agricultural Property in
South Carolina*

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GWDCLE 0002

RECORD 000184

Valuation of Agricultural Property in S. C.

I. What is "Agricultural Real Property"

A. Definition (SC Code §12-43-230(a))

1. "Agricultural Real Property" shall mean any tract of real property which is used to:
 - a. raise, harvest, or store crops; or
 - b. feed, breed, or manage livestock; or
 - c. produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means.
2. "Agricultural Real Property" includes, but is not limited to, real property used for:
 - a. agriculture;
 - b. grazing;
 - c. horticulture;
 - d. forestry;
 - e. dairying;
 - f. mariculture.

B. Dockside Facility (SC Code §12-43-220(d)(5))

"Agricultural real property" also includes a dockside facility whose primary use is the landing and processing of seafood.

C. Property Committed to more than one use

1. If at least 50% of the real property tract qualifies as "agricultural real property" the entire tract shall be classified as "agricultural real property" as long as no other business for profit is being operated thereon.
(SC Code § 12-43-230(a))
2. When real property is committed to more than one use, one use being agricultural and the other use or uses being unrelated to agriculture, the agricultural activity use must comprise the most significant use of the property in order for it to be classified as "agricultural real property."
(27 SC Code Regs 117-1780.1)

3. Jasper County Tax Assessor v. Westvaco Corp., 305 S.C. 346, 409 S.E.2d 333 (1991).

Taxpayer was entitled to agricultural use assessment on tract of land which it had used primarily for harvesting of trees even though taxpayer leased property to hunting clubs in an attempt to control the deer population which was very destructive to reforestation. Revenue from the leases was no more than 1/10th of taxpayer's yearly revenue and the growing and harvesting of timber is the most significant use of the land.

D. Housing for farm laborers (SC Code §12-43-130(a))

Agricultural Real Property includes real property used to provide free housing for farm laborers provided such housing is located on the tract of land that qualifies as agricultural real property.

E. Agricultural use must be genuine (27 SC Code Regs 117-1780.1)

Real property which is ostensibly used for agricultural purposes, but which is in reality used for other purposes, is not agricultural real property. The agricultural use of the property must be genuine in nature as opposed to sham or deception.

F. Factors to be considered in determining agricultural use (27 SC Code Regs 117-1780.1)

1. The following factors shall be considered by county assessors in determining whether the tract in question is bona fide agricultural real property (these factors are not meant to be exclusive and all relevant facts must be considered):

- a. The nature of the terrain;
- b. The density of the marketable product (timber, etc) on the land;
- c. The past usage of the land;
- d. The economic merchantability of the agricultural product;
- e. The use or not of recognized care, cultivation, harvesting and like practices applicable to the product involved, and any implemented plans thereof;
- f. The business or occupation of the landowner or lessee, however, the fact that the tract may have been purchased

for investment purposes does not disqualify it if it is actually used for agricultural purposes.

2. Ralph Johnson v. Hampton County Assessor, 70-ALJ-17-0024-CC (January 16, 2008)

Zoning is not a determining factor in whether or not a property qualified for the special assessment as agricultural use property.

3. Commission Decision #93-37

The Greenville County Assessor and Board of Assessment Appeals denied taxpayer's application for agricultural classification on three vacant lots. The County determined that the subject properties were merely vacant residential lots instead of bona fide timber-producing lands. The commission affirmed this decision. Factors listed in Regulation 117.1780.1 (formerly Regulation 117-114) were considered, as were other factors not listed in the Regulation. Among the reasons stated in the opinion for the decision were: 1) There was no recognized care, cultivation, or harvesting occurring on the lots; 2) the lots settings were not conducive to bona fide timber production because they were located in residential subdivision that restricts use to residential purposes; 3) the lots have never been used for agricultural purposes in the past; and 4) no agricultural income has been derived from the lots.

G. Uses that do not qualify as agricultural (27 SC Code Regs 117-1780.1)

The following uses of real property do not qualify as agricultural:

1. Recreation
2. Hunting Clubs
3. Fishing Clubs
4. Vacant land (land lying dormant)
5. Any other similar use

H. Timberland (SC Code § 12-43-232(1)(a))

1. If a tract of land is used to grow timber, the tract must be five acres or more to qualify as agricultural real property.
2. Tracts of timberland of less than five acres which are contiguous to or are under the same management system as a tract of timberland which meets

the minimum acreage requirement are treated as part of the qualifying tract.

a. Attorney General Opinion 2006 WL 3522429 (November 8, 2006).

Property satisfies the "management system" requirement when evidence exists to show that property is part of a plan to produce and manage the growing of merchantable timber. The existence of a written management plan is evidence of this effort but is not the sole or primary requirement.

3. Tracts of timberland of less than five acres are eligible to be agricultural real property when they are owned in combination with nontimberland tracts that qualify as agricultural real property.

a. Attorney General Opinion 2006 WL 3522429 (November 8, 2006)

In order to qualify under this section two pieces of property do not have to be located in the same county. A property owner may satisfy the "owned in combination with" requirement by owning both qualifying nontimberland agricultural real property and a tract of timberland.

4. In order for a tract of land to be considered a "tract of timberland", it must be devoted actively to growing trees for commercial use.

I. Christmas Tree Tracts (SC Code §12-43-232(1)(b))

1. A tract which is five acres or more and is devoted to growing Christmas trees is considered timberland and qualified as agricultural real property.

2. A Christmas tree tract that is less than five acres qualifies as agricultural real property if the landowner reports gross income from Christmas Trees of at least \$1000 for at least 3 of the last 5 tax years.

J. Other Acreage

1. Tracts not used to grow timber must be ten acres or more to qualify as Agricultural Real Property. SC Code § 12-43-232(2)

2. Nontimberland tracts of less than ten acres which are contiguous to other such tracts which, when added together, meet the minimum acreage requirement, are treated as a qualifying tract. SC Code § 12-43-232(2)

a. For purposes of #2 above, contiguous tracts include tracts with identical owners of record separated by a dedicated high-way, street, or road or separated by any other public way.

3. Nontimberland tracts that do not meet the acreage requirements may qualify as agricultural real property if the person making application earned at least \$1000 of gross farm income for at least 3 of the 5 taxable years preceding the year of the application. The assessor may require the applicant to:

a. give written authorization consistent with privacy laws allowing the assessor to verify farm income from DOR or IRS; and

b. provide the ASCS farm identification number of the tract and allow verification with the ASCS office. SC Code § 12-43-232(3)(a)

4. A new owner may qualify a nontimberland tract of fewer than 10 acres as agricultural real property for the first 5 years of ownership if he earned at least \$1000 of gross farm income in at least 3 of the first 5 years of ownership.

a. If the new owner fails to meet the income requirements in the 5 year period, the tract is not considered agricultural real property and is subject to rollback tax. SC Code § 12-43-232(3)(b)

K. Other types of Qualifying nontimberland real property (SC Code § 12-43-232 (3) (c) & (d))

The following types of nontimberland real property do qualify as agricultural real property:

1. real property idle under a federal or state land retirement program (if the property otherwise would have qualified, subject to satisfactory proof to the assessor);

2. property idle pursuant to accepted agricultural practices (if the property otherwise would have qualified, subject to satisfactory proof to the assessor);

3. unimproved real property subject to a perpetual conservation easement as provided in Chapter 8 of Title 27 (if the property otherwise would have qualified, subject to satisfactory proof to the assessor).

L. Grandfather Clause (SC Code §12-43-232(3)(e))

1. A nontimberland tract that does not meet the acreage or income requirements must nevertheless be classified as agricultural real property if:

a. the current owner or an immediate family member of the current owner has owned the property for at least the 10 years ending January 1, 1994; AND

b. the property is classified as agricultural real property for property tax year 1994.

2. The property must continue to be classified as agricultural real property until the property is applied to another use or is transferred to someone other than an immediate family member, whichever occurs first.

a. "Immediate family" is defined as a person related to the current owner within the 3rd degree of consanguinity or affinity and a trust all of whose noncontingent beneficiaries are related to the grantor of the trust within the 3rd degree of consanguinity or affinity.

M. Agritourism

1. Agricultural real property may be used for agritourism, provided agritourism is supplemental and incidental to the primary purposes of the tract's use for agricultural purposes. (SC Code § 12-43-233)

2. Supplemental and incidental agritourism uses are not an "other business for profit" for purposes of Section 12-43-230(a).

3. Agritourism uses includes, but are not limited to:

- (1) wineries;
- (2) educational tours
- (3) education barns;
- (4) on-farm historical reenactments;
- (5) farm schools;
- (6) farm stores;
- (7) living history farms;
- (8) on-farm heirloom plants and animals;

- (9) roadside stands;
- (10) agricultural processing demonstrations;
- (11) on-farm collections of old farm machinery;
- (12) agricultural festivals;
- (13) on-farm theme playgrounds for children;
- (14) on-farm fee fishing and hunting;
- (15) pick your own;
- (16) farm vacations;
- (17) on-farm pumpkin patches;
- (18) farm tours;
- (19) horseback riding;
- (20) horseback sporting events;
- (21) training for horseback sporting events;
- (22) cross-country trails;
- (23) on-farm food sales;
- (24) agricultural regional themes;
- (25) hayrides;
- (26) mazes;
- (27) crop art;
- (28) harvest theme productions;
- (29) native ecology preservations;
- (30) on-farm picnic grounds;
- (31) dude ranches;
- (32) trail rides;
- (33) Indian mounds;
- (34) earthworks art;
- (35) farm animal exhibits;
- (36) bird-watching;
- (37) stargazing;
- (38) nature-based attractions;
- (39) ecological-based attractions. SC Code § 12-43-233

N. Leased Agricultural Real Property (SC Code § 12-43-232(4))

In the case of rented or leased agricultural real property, the property will qualify if either the lessor or the lessee meets the above requirements.

II. Assessment of Agricultural Real Property in SC

A. Assessment (SC Code § 12-43-220(d)(1))

Agricultural real property which is actually used for such agricultural purposes shall be taxed on an assessment equal to:

- ① 4% of its fair market value for such agricultural purposes for owners or lessees who are:

- a. individuals;
- b. partnerships;
- c. corporations which do not:

- (1) have more than 10 shareholders;
- (2) have as a shareholder a person (other than an estate) who is not an individual;
- (3) have a nonresident alien as a shareholder;
- (4) have more than one class of stock.

② 6% if fair market value for such agricultural purposes for owners or lessees who are corporations (except for certain corporations that qualify as above.)

B. Definition of "fair market value for agricultural purposes" (SC Code § 12-43-220(d)(2))

1. When applicable to land used for the growth of timber "fair market value for agricultural purposes" is defined as: The productive earning power based on soil capability to be determined by capitalization of typical cash rents of the lands for timber growth or by capitalization of typical net income of similar soil in the region or a reasonable area of the region from the sale of timber, not including the timber growing thereon.

a. "Soil capability" when applicable to lands used for the growth of timber products means the capability of the soil to produce such timber products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date.

2. When applicable to land used for the growth of other agricultural products "fair market value for agricultural purposes" is defined as: The productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region or a reasonable area of the region, not including the agricultural products thereon.

a. "Soil capability" when applicable to lands used for the growth of other agricultural products means the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date.

3. "Region" is defined by the statute as the geographical part of the State as determined by the Department to be reasonably similar for the production of the agricultural products.

4. Implementation of the use value procedures for timberland and cropland is the responsibility of the Department of Revenue. Pursuant to this authority, DOR has established values per acre for cropland and timberland.

a. The fair market values for agricultural purposes determined for the 1991 tax year is effective for all subsequent years.

b. The values derived for the 1991 tax year and based on the soil capability of the various regions of the state are provided in the 27 SC Code Regs 117-1840.2. This regulation provides a complete list of the fair market values for Cropland and Timberland.

SEE EXHIBIT A FOR THE VALUE PER ACRE CHART AS FOUND IN 27 SC CODE REGS 117-1840.2

C. Agricultural or forest land within easements granted to public bodies, agencies, railroads or utilities (SC Code § 12-43-220 (g))

1. All agricultural or forest land within easements granted to public bodies, agencies, railroads, or utilities for rights of way of thirty width or greater shall be assessed at the same cropland value per acre as soil class 7 (found in the DOR regulations).

2. In order to receive such assessment the landowner must apply to the tax assessor of the county where the easement is located, with documentation of the existence, location, and amount of acreage contained in the easement.

III. Procedure for receiving the special assessment on Agricultural Real Property

A. Application (SC Code § 12-43-220(d)(3))

1. In order for agricultural real property to be assessed as such, the owners of the real property or their agents must make a written application on or before the first penalty date for taxes due for the first tax year in which the special assessment is claimed.

2. Application for the special assessment must be made to the assessor of the county in which the agricultural real property is located.

3. Application must be made on forms provided by the county and approved by the Department.

a. On the application, the owner or his agent shall certify substantially a follows:

(1) "I certify that the property which is the subject of this application meets the requirements to qualify as agricultural real property as of January first of the current tax year." OR

(2) "I certify that the property which is the subject of this application meets the requirements to qualify as agricultural real property and for the special assessment ratio for certain agricultural real property as of January first of the current tax year." SC Code § 12-43-232(5)(a)

4. Failure to apply constitutes waiver of the special assessment for that year.

5. Governing body may extend the time for filing upon a showing satisfactory to it that the person had reasonable cause for not filing on or before the first penalty date.

a. Attorney General Opinion No. 85-139 (December 5, 1985)

(1) The authority granted a county governing body under § 12-43-220(d)(3) to extend the time in which to file for an agricultural use-value classification is not limited to the current tax year. The county governing body may extend the filing time back to past tax years.

(2) A property owner may qualify for a use value classification even though the owner has failed to record the deed.

6. Additional annual filing is NOT required as long as:

- a. the use of the property remains bona fide agricultural; AND
- b. the ownership remains the same.

7. If it is determined that the property for which the above certification was made did not meet the requirements to qualify for agricultural use classification at the time the certification was made, the property is denied

agricultural use value and tax on the property for each tax year in question must be recalculated. From the recalculated tax liability you must:

- a. Deduct any taxes paid for the year;
- b. Add penalties provided pursuant to Section 12-45-180;
- c. Add interest at the rate of one percent per month calculated from the last penalty date. SC Code § 12-43-232(5)(b)

B. Change in Use from Agricultural to Non-Agricultural (SC Code § 12-43-220(d)(3))

1. The owner shall notify the assessor within 6 months of a change in use.
2. For failure to notify the assessor of a change in use:
 - a. Penalty of 10 percent and interest at the rate of one-half of one percent a month must be paid on the difference between the amount that was paid and the amount that should have been paid, but not less than thirty dollars nor more than the current year's taxes.
3. When there is a change of use from agricultural real property to non-agricultural real property, Roll-Back Taxes will apply. See below.
4. A change in use of agricultural real property which subjects it to the rollback tax is considered an assessable transfer of interest pursuant to SC Code Section 12-37-3150(A).

C. Agricultural Use Appeals (SC Code § 12-60-2545)

If a taxpayer appeals a county assessor's decision to remove the agricultural use classification from a property, the county shall pay reasonable attorney's fees if the taxpayer prevails in the contested case hearing and the administrative law judge makes a finding that the county assessor's decision was not reasonable.

IV. Rollback Taxes

A. What are Rollback Taxes? (SC Code § 12-43-220(d)(4))

When real property which is in agricultural use and is being valued, assessed, and taxed as such is applied to a use other than agricultural, it is subject to additional taxes, referred to as "rollback taxes."

B. Calculation of Rollback Taxes (SC Code § 12-43-220(d)(4))

Rollback taxes are equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment as agricultural property and the taxes that would have been paid or payable had the real property been valued, assessed and taxed as other real property in the taxing district, in the current tax year (the year of change in use) AND each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed as agricultural property.

1. If in the tax year in which a change in use occurs, the real property was not valued as agricultural property, then the real property is subject to rollback taxes for each of the five tax years immediately preceding in which the property was valued, assessed, and taxed as agricultural property.
2. In determining the amount of roll-back taxes due, the assessor shall ascertain the following for each of the roll-back tax years: -
 - a. the fair market value without consideration of the standing timber of such real property under the valuation standard applicable to other real property in the same classification;
 - b. the amount of the real property assessment for the particular tax year by multiplying such fair market value by the appropriate assessment ratio;
 - c. the amount of the additional assessment on the real property for the particular tax year by deducting the amount of the actual assessment on the real property for that year from the amount of the real property assessment determined under section b above.
 - d. the amount of the rollback for that tax year by multiplying the amount of the additional assessment determined under c above by the property tax rate of the taxing district applicable for that tax year. SC Code § 12-43-220(d)(4)

3. Calculation of Rollback Millage (SC Code §12-37-251)

Rollback millage is calculated by dividing the prior year property tax revenues by the adjusted total assessed value applicable in the year the values derived from a countywide equalization and reassessment program are implemented. The amount of assessed value must be adjusted by deducting assessments added for the property or improvements not previously taxed, for new construction, and for renovation of existing structures.

C. Property not subject to roll-back taxes (SC Code § 12-43-220(d)(6))

The following property is NOT subject to roll-back taxes:

1. Any property which becomes exempt from property taxes under Section 12-37-220(A)(1). (property of the State, counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions, if the property is used exclusively for public purposes.)
2. Any economic development property which becomes exempt under Section 12-37-220(B).
3. Agricultural land acquired by a church and used as a cemetery are not subject to rollback taxes because Article X, Section 3(c) of the South Carolina Constitution and §12-37-200(3) exempts all property of libraries, churches, parsonages, and burying grounds from property taxation.

Attorney General Opinion No. 86-69 (July 24, 1985).

D. Who is responsible for the payment of rollback taxes?

1. The tax brought about by the change in use is an additional tax that is levied in the first taxable year that the property is subject to taxation upon the basis of the different use. Tax Status of property is determined on December 31 of the preceding tax year. Therefore, the owner of the property on December 31 preceding the tax year in which the additional taxes are levied is liable for the taxes. Attorney General Opinion No. 76-4328 (April 16, 1976).

2. EXAMPLE: Seller owned agricultural property in 2000, 2001, and half of 2002. In June of 2002 Seller sells the property to Buyer. Buyer changes the use of the property prior to December 2002. Seller is liable for 2002 use value taxes. Buyer will be responsible for Rollback taxes in 2003 based on the assessment date of December 31, 2002.

V. Agricultural Personal Property

A. Exempt agricultural personal property

The following agricultural personal property is exempt from property tax:

1. All agricultural products owned by the producer in this State.
SC Code § 12-37-220(B)(13)

2. All farm machinery and equipment, including self propelled farm machinery and equipment, but excluding motor vehicles licensed for use on the highways. SC Code § 12-37-220(B)(14)

a. For purposes of the above, farm equipment includes greenhouses.

b. For purposes of the above, "self-propelled farm machinery and equipment" means farm machinery or equipment which contains within itself the means for its own locomotion.

3. All livestock and live poultry. SC Code § 12-37-220(B)(15)

B. No application requirement (SC Code § 12-4-720(A)(3))

No application is required for the above agricultural personal property exemptions.

C. Attorney General Opinion No. 90-23 (February 26, 1990)

1. A piece of farm machinery, such as a tractor, used for nonagricultural purposes, is not exempt. The legislative intent in exempting farm machinery was to further the interest of agriculture.

2. An airplane used by a farmer solely for spraying agricultural crops IS exempt under Section 12-37-220(B)(14).

3. An airplane used solely by a farmer to spray his own crops AND the crops of others for a fee IS exempt under Section 12-37-220(B). The exemption in this statute appears to be based on use (whether or not the property is being used for the required purpose) rather than ownership.

4. Property LEASED TO a farmer for agricultural purposes is also exempt under 12-37-220 (B). Again, the exemption is based on use rather than ownership. The farm machinery does not need to be owned by a farmer to receive the exemption under 12-37-220 (B).

Exhibit A

Values Per Acre for Agricultural Land - Cropland

Cropland was separated into seven production classes. Each soil type within each county was assigned to a class. A listing of the soil types for each county with the appropriate class designated is shown in Section 4. The following table includes a low, an average and a high value for each class. The average must be used except when written justification for a different value is made on the appropriate recording document that is used to record property appraisals in accordance with applicable regulations. In no event may the value be less than the low value nor above the high value. Variables, including field size, ingress and egress, and location are among the factors which may justify an adjustment to the average.

TABLE 1 -Value Per Acre of Cropland for 1991 and Years Thereafter

CLASS	LOW	AVERAGE	HIGH
1	349	378	404
2	234	255	273
3	149	161	179
4	102	110	119
5	51	60	68
6	34	43	51
7	9	9	9

Values Per Acre for Agricultural Land - Timberland

The forty six counties are classified into one of four marketing provinces. These provinces were established relative to prices paid for pine stumpage in all counties. Additionally, each type of soil in each county is grouped into a class. A list of the provinces that each county has been assigned to is contained in Section 5. A listing of the soil types for each county with the appropriate class designated is listed in Section 4. The following table includes a low, an average and a high value for each class within each province. The average must be used except when written justification for a different value is made on the appropriate recording document that is used to record property appraisals in accordance with applicable regulations. In no event may the value be less than the low value nor above the high value. Variables, including field size, ingress and egress, and location, are among the factors which may justify an adjustment to the average.

Table 2 -Timberland Value Per Acre for Years 1991 and Thereafter

Timberland Coastal Plain Sand Hill Western Piedmont

Class Province Province Piedmont Province Blue

Province Ridge

Low Mod High Low Mod High Low Mod High Low Mod High

Class 1 255 273 289,187 213 238 230 242 255 179 199 221

Class 2 199 213 226 153 170 187 161 192 221 136 157 179

Class 3 128 161 195 110 128 145 128 141 153 102 119 136

Class 4 114 119 128 85 98 110 94 102 110 60 81 102

Class 5 81 85 89 76 76 76

Class 6 60 76 89 51 68 89 51 68 89 51 68 89

Class 7 9

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GWDCLE 0019

RECORD 000201

APPENDIX A

Classification of Property

Agricultural Use Property

GWDCLE 0020

RECORD 000202

117-1780. Classification of Property - Agricultural Use Property.

These regulations address the application of the property tax laws to agricultural property and how property may qualify as agricultural use property. (See also, Property Tax Regulation 117-1840.2 on how to value agricultural use property).

117-1780.1. Definition of Agricultural Real Property.

Agricultural Real Property, as that term is used in 12-43-220(d), 12-43-230, and 12-43-232 of the South Carolina Code of Laws means a tract of real property which is used for agricultural purposes. Real property must meet the requirements for agricultural real property of Code Sections 12-43-220(d), 12-43-230 and 12-43-232 in order to be classified as agricultural real property. Additionally, the term Agricultural Real Property shall not include any property used as the residence of the owner or others. In no event shall real property be classified as agricultural real property when such property is not used for bona fide agricultural purposes. Real property is not used for agricultural purposes unless the owner or lessee thereof has, in good faith, committed the property to that use. Real property which is ostensibly used for agricultural purposes, but which is in reality used for other purposes, is not agricultural real property. The agricultural use of the property must be genuine in nature as opposed to sham or deception. The following factors shall be considered by county assessors in determining whether the tract in question is bona fide agricultural real property: (These factors are not, however, meant to be exclusive and all relevant facts must be considered.)

1. The nature of the terrain
2. The density of the marketable product (timber, etc.) on the land
3. The past usage of the land
4. The economic merchantability of the agricultural product
5. The use or not of recognized care, cultivation, harvesting and like practices applicable to the product involved, and any implemented plans thereof.
6. The business or occupation of the landowner or lessee, however, the fact that the tract may have been purchased for investment purposes does not disqualify it if actually used for agricultural purposes.

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

The following uses of real property do not qualify as agricultural:

1. Recreation
2. Hunting Clubs
3. Fishing Clubs
4. Vacant Land (land lying dormant)
5. Any other similar use:

117-1780.2. Agricultural Special Assessment Applications.

I. Qualifications--Requirements

Agricultural real property which is actually used for such purposes, not including however, a corporation which is the owner or lessee except for certain corporations which do not:

1. have more than ten (10) shareholders
2. have as a shareholder a person (other than an estate) who is not an individual
3. have a non-resident alien as a shareholder; and
4. have more than one (1) class of stock

II. Definition of Agricultural Real Property

Agricultural real property shall mean any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agricultural, grazing, horticulture, forestry, dairying, and mariculture. In the event at least 50% of a real tract shall qualify as "agricultural real property", the entire tract shall be so classified, provided no other business for profit is being operated thereon. The term "agricultural real property" shall not include any property used as the residence of the owner or other in that the taxation of such property is specifically provided for in Section 2(C) and (E) of the Act.

III. Name shown on Property Tax Record Soc. Sec. No. OR Fed. I.D. No.

1. _____
2. _____

If more than two (2) owners, attach a sheet with above information on each owner.

IV. Tax Map Sheet Reference Number _____

Location of tract of land _____

No. of Acres _____

Tax District _____

V. Purpose for which the tract of real property is being used.

VI. Is any portion of the entire tract being used for other than agricultural profit?

NO _____ YES _____ IF YES, EXPLAIN

Based upon my knowledge and interpretation of the requirements for the special assessment and use value appraisal, I certify that the tract of land described in this application meets such requirements for the current tax year.

Signature of owner or agent

Date Phone No.

If agent signed for owner, give relationship and mailing address;

117-1780.3. Roll Back Provisions on Agricultural Land.

Whenever a tract of real property has 50% or more of its area being used for agricultural purposes, the entire tract shall qualify for agricultural real property. Excluding, however that portion on which a business is operated for profit or on which is located the residence of the owner or others in that the taxation of such property is specifically provided for in Sections 12-43-210 to 12-43-310 of the South Carolina Code of Laws.

If all or a portion of the agricultural part of the tract should change in use as to disqualify the non-agricultural portion which was receiving the agricultural classification, then only that part of the agricultural portion and the non-agricultural portion on which the use changes, shall be subject to the roll-back Code Sections 12-43-210 to 12-43-310.

(R280, S269)

No. 207

An Act To Amend Act 474 Of 1967, As Amended, Relating To Licensing And Regulation Of Boarding, Rest And Convalescent Homes, So As To Require Such Homes To Furnish Itemized Statements Of Charges For All Services.

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

SECTION 1. Charges to be itemized.—Act 474 of 1967 is amended by adding Section 3A to read:

"Section 3A. The boarding, rest and convalescent homes subject to the provisions of this act shall be required to furnish an item-by-item billing for all charges to the patient or the person paying such bill, upon request by such patient or person. Items which remain unpaid are not required to be itemized again. Such requests for itemized billing shall remain in effect until further notification by the patient or person paying such bill. *Provided*, that the provision herein shall not apply to the contracted amount of a state agency. Any amount above such contract shall be itemized as provided herein."

SECTION 2. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 4th day of June, 1975.

(R281, S209)

No. 208

An Act To Provide For The Classification Of Property, Uniform Assessment Ratios And A Statewide Property Equalization Program For All Counties Of The State; To Amend Section 65-1648 Of The 1962 Code, As Amended, And Act 1012 Of 1966, Both Relating To The Assessment Of Merchants' And Manufacturers' Property, So As To Delete Provisions Relating To Assessment Ratios; And To Repeal Act 1266 Of 1972, Relating To Assessment Of Merchants' And Manufacturers' Property.

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

SECTION 1. Counties to initiate equalization programs.—Each county during the calendar year 1975 shall initiate an equalization

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(c) The legal
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program, which shall include mapping and reappraisal of all real property in accordance with standards, rules and regulations formulated by the South Carolina Tax Commission (Commission); *Provided*, that this section shall not apply to any County which shall have completed an equalization program or in process and in accord with regulation formulated by S. C. Tax Commission.

SECTION 2. Classifications to be equal and uniform.—Except as otherwise provided, the ratio of assessment to value of property in each class shall be equal and uniform throughout the State. All property presently subject to ad valorem taxation shall be classified and assessed as follows:

(a) All real and personal property owned by or leased to manufacturers and utilities and used by the manufacturer or utility in the conduct of such business, shall be taxed on an assessment equal to ten and one-half percent of the fair market value of such property.

(b) All inventories of business establishments shall be taxed on an assessment equal to six percent of the fair market value of such property and all power driven farm machinery and equipment except motor vehicles registered with the South Carolina Highway Department owned by farmers and used on agricultural lands as defined in this act shall be taxed on an assessment equal to five percent of the fair market value of such property; *provided*, that all other farm machinery and equipment and all cattle shall be exempt from ad valorem taxes.

(c) 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 such interest shall be taxed on an assessment equal to not less than two and one-half percent or not more than four percent for a period of four years of the fair market value of such property as determined by the governing body of the county concerned; *provided*, that at the completion of the four-year period the property shall be taxed on an assessment of four percent of the fair market value; *provided*, further, that until the expiration of the four-year period the transition provisions of Section 2 shall not apply. In the event this property shall have located on it any rented mobile homes, or residences, which are rented or any business for profit, this four percent value shall not apply to those businesses or rental properties. This subsection (c) shall not be applicable unless the owner of such property or his agents make written application

RECORD 000207

to the county assessor on or before May first of the tax year in which the initial assessment under this Act is made and certify to the following statement: "Under the penalty of perjury I certify that I meet the qualifications for the special assessment ratio for a legal residence as of January first of the current tax year." After the initial application, the assessor shall mail an application, as approved by the South Carolina Tax Commission, to the owner at his last indicated mailing address.

The Assessor shall have printed in the local newspaper during the period January through April at least five ads calling to public attention the provisions of filing the application as a prerequisite for claiming this classification for the current tax year. Failure to file within the prescribed time will constitute abandonment of the owner's right for this classification for the current tax year.

If a person signs the certification and is not eligible or thereafter loses eligibility and fails to notify the county assessor, then a penalty of ten percent and interest at the rate of one-half of one percent per month shall be paid on the difference between the amount that was paid and the amount that should have been paid.

(d) Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to four percent of its fair market value for such purposes, not including, however, a corporation which is the owner or lessee except for certain corporations which do not:

- (1) have more than ten shareholders;
- (2) have as a shareholder a person (other than an estate) who is not an individual;
- (3) have a nonresident alien as a shareholder; and
- (4) have more than one class of stock.

Provided, that agricultural real property shall not come within the provisions of this subsection unless the owners of such real property or their agents make written application therefor on or before May first of the tax year in which the special assessment is claimed. The application for the special assessment shall be made to the assessor of the county, in which the agricultural real property is located, upon forms provided by the county and approved by the commission and a failure to so apply shall constitute a waiver of the special assessment for that year. *Provided*, further, when real property which is in agricultural use and is being valued, assessed and taxed under the provisions of this act, is applied to a use other than

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(i) The fair market value of such real property under the valuation standard applicable to other real property in the same classification;

(ii) The amount of the real property assessment for the particular tax year by multiplying such fair market value by the appropriate assessment ratio provided in this act;

(iii) The amount of the additional assessment on the real property for the particular tax year by deducting the amount of the actual assessment on the real property for that year from the amount of the real property assessment determined under (ii) hereof; and

(iv) The amount of the roll-back for that tax year by multiplying the amount of the additional assessment determined under (iii) hereof by the property tax rate of the taxing district applicable for that tax year.

(e) All other real property not herein provided for shall be taxed on an assessment equal to six percent of the fair market value of such property.

(f) All other personal property shall be taxed on an assessment equal to ten and one-half percent of fair market value of such property.

Notwithstanding any other provision of this act, on the effective date thereof, if it is found that there is a variation between the ratios being used and those stated in this section, the county may provide

for a gradual transition to the ratios as herein provided for over a period not to exceed seven years; *provided*, however, that all property within a particular classification shall be assessed at the same ratio, *provided*, further, however, that all property enumerated in Section 2(a) shall be assessed at the ratio provided in such section and the property enumerated in Section 2(b), (c), (d), (e), (f) and (g) shall be increased or decreased to the ratios set forth in this Act by a change in the ratio of not less than one-half of one percent per year nor more than one percent per year. *Provided*, however, that notwithstanding the provisions of this section, a county may, at its discretion, immediately implement the assessment ratios contained in Section 2(b), (c), (d), (e), and (f). *Provided*, however, that livestock shall not be subject to ad valorem taxation unless such livestock is physically located within the State for a period in excess of nine months. *Provided*, that this section shall not apply to farm animals and farm equipment in use on a farm in those counties which do not tax such property at the effective date of this act.

(g) All real and personal property owned by or leased to companies primarily engaged in the transportation for hire of persons or property and used by such companies in the conduct of such business and required by law to be assessed by the Commission shall be taxed on an assessment equal to nine and one-half percent of the fair market value of such property.

SECTION 3. Treatment of agricultural real property and mobile home.—(a) For the purposes of this act, unless otherwise required by the context, the words "agricultural real property" shall mean any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture. In the event at least fifty percent of a real property tract shall qualify as "agricultural real property", the entire tract shall be so classified, provided no other business for profit is being operated thereon.

The Commission shall provide by regulation for a more detailed definition of "agricultural real property" consistent with the general

definition set forth in determining entitlement regulations shall be that real property w for which the tax re

(b) For the purp shall be considered r for ad valorem taxat 2 of this Act. "Mobi and built to be towe wheels, connected to foundation for year- tain parts that may expanded on site to home" shall also in components designed capable of being aga towing. It may also into a single resident

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definition set forth in this section, to be used by county assessors in determining entitlement to special assessment under this act. Such regulations shall be designed to exclude from the special assessment that real property which is not bona fide agricultural real property for which the tax relief is intended.

(b) For the purposes of this Act all mobile homes in this State shall be considered real property and shall be classified and assessed for ad valorem taxation in accordance with the provisions of Section 2 of this Act. "Mobile homes" is defined as a portable unit designed and built to be towed on its own chassis, comprised of a frame and wheels, connected to utilities, and designed without a permanent foundation for year-round residential use. A mobile home may contain parts that may be folded or collapsed when being towed, and expanded on site to provide additional space. The term "mobile home" shall also include units in two or more separately towable components designed to be joined into one integral unit for use, and capable of being again separated into the components for repeated towing. It may also include two units which may be joined, on site, into a single residential unit.

(c) The commission shall further provide by regulation for definitions not inconsistent with general law for real property and personal property in order that such property shall be assessed uniformly throughout the State.

SECTION 4. Assessors to be full-time — duties.—All counties shall have a full-time assessor, whose responsibility is appraising and listing all property, whether exempted or not, at fair market value, within a county for the purpose of an ad valorem tax, including property which is assessed by the commission. When the commission assesses property, the county tax assessor shall attach to the assessment statement a certificate that the assessment truly reflects the fair market value of the property. The assessor shall be responsible for the operations of his office and shall:

(a) Maintain a continuous record of recorded deed sales transactions, building permits, tax maps and other records necessary for a continuing reassessment program;

(b) Diligently search for and discover all real property not previously returned by the owners or agents thereof or not listed for taxation by the county auditor, and list such property for taxation in the name of the owner or person to whom it is taxable;

(c) Fairly and impartially assess the value of all real property and enter it upon the returns and lists furnished the county auditor;

(d) Determine assessments and reassessments of real property in such a manner that the ratio of assessed value to fair market value shall be uniform throughout the county;

(e) From time to time, reassess any or all real property so as to reflect its proper valuation in the light of changed conditions;

(f) Appear as necessary before any appellate board to give testimony and present evidence as to the justification of any appraisal;

(g) Have the right of appeal from any disapproval of or modification of any appraisal made by him;

(h) Perform such other duties relating to the office of tax assessor as may be required by the laws of the State.

(i) Be the sole person responsible for the valuation of real property and these valuations shall be altered only by the assessor or by a legally constituted appellate board, commission or the courts.

Provided, that any two or more counties, with the approval of the commission, may enter into an agreement to establish a single assessor's office which would be in charge of the assessing of property of such counties under rules and regulations prescribed by the Commission.

SECTION 5. Duties of county auditors.—In addition to other duties and responsibilities provided by law, the county auditor shall have the responsibility of ascertaining that all personal property subject to the ad valorem tax by the Constitution or general law is listed and assessed according to manuals, guidelines and rules and regulations promulgated by the commission.

SECTION 6. Building permits.—All counties shall require by law or ordinance that building permits be issued to persons engaging in new construction or renovation and such permits shall correspond to minimum requirements of the commission. The county shall furnish a copy of the building permit to the assessor within ten days after such issuance.

Every municipality in the county requiring building permits shall furnish copies of said permit to the county assessor within ten days after such issuance.

SECTION 7. Assessor to endorse deeds.—When any deed is recorded it shall be presented to the county assessor's office and have

the endorsement of such identified and located on

SECTION 8. Adoption valuations of the assessor

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SECTION 8. Adoption of valuations.—The auditor shall adopt valuations of the assessor.

SECTION 9. Educational courses required.—All auditors, assessors and appointed appraisers from an assessor's office must attend educational courses required by the commission.

SECTION 10. Sales ratio studies—reassessment or remapping.—The commission shall make sales ratio studies in all counties of the State and when, in the judgment of the commission, a county needs to reassess or remap property, the commission shall make application to the circuit court in which the county is located for a determination of whether or not the county shall be required to commence reassessment or remapping. If the circuit court determines that the county needs reassessment or remapping, such county shall be required to commence the reassessment or remapping within thirty days of such determination.

SECTION 11. Tax allocations to counties.—Any county which wilfully fails to comply with the provisions of this act shall not be entitled to twenty percent of the allocation of the taxes as provided for in the General Appropriations Act for State Aid to Subdivisions. The commission shall make application to the circuit court for a determination as to whether or not such county meets the requirements of this act. The commission shall then, based on this determination, certify to the State Treasurer that such county meets the requirements of this act before any tax allocation is made to the county.

SECTION 12. Provisos deleted.—Section 65-1648 of the 1962 Code, as last amended by Act 1266 of 1972, is further amended by deleting from the end of the section:

“Provided, the South Carolina Tax Commission is directed to adjust formula used to assess property taxation, manufacturers' real and tangible personal property and the machinery, equipment, furniture and fixtures of all other taxpayers required to file returns to the South Carolina Tax Commission to arrive at a nine and one-half percent assessment ratio. Provided, further, the ratio of any existing manufacturer shall not be adjusted more than one percent per year while the present ratio is either above or below the nine and one-half percent ratio.”

SECTION 12A. Adjustments restricted to one percent variance.—Notwithstanding any other provisions of law, no county, school district, municipality or any other political subdivision's total ad valorem taxes shall be increased or decreased by more than one percent of the total ad valorem tax assessed by such county, school district, municipality or any other political subdivision due to the adjustment of assessment ratios as set forth in this act.

SECTION 12B. Total tax not to be increased more than one percent.—Notwithstanding any other provisions of law, upon completion of an equalization and reassessment program as required by this act, the total ad valorem tax, for any county, school district, municipality or any other political subdivision, shall not exceed the total ad valorem tax of such county, school district, municipality or any other political subdivision for the year immediately prior to such completion by more than one percent, *provided*, such increase in total taxes was caused by the equalization and reassessment provided by this act. This shall not prohibit an increase in the total ad valorem tax as a result of the assessments added for property or improvements not heretofore taxed, for new construction or for renovation of existing structures taking place during the reassessment period.

SECTION 12C. Exceptions.—The limitations set forth in Sections 12A and 12B shall not prohibit any county, school district, municipality or any other political subdivision from increasing the millage on all taxable property for the purpose of obtaining additional monies for increased or new services provided for the taxpayers of the county, school district, municipality or any other political subdivision. In the event of an increase of this nature, the tax notice shall state the purpose of such increase so as to distinguish between a millage change made pursuant to Section 12A or 12B and a millage change made under this section.

SECTION 13. When notices required—appeals.—Whenever the market value estimate of assessed value of any property is fixed by the assessor at a sum greater by one hundred dollars or more than the amount returned by the owner or his agent, or whenever any property is valued and assessed for taxation which has not been previously returned or assessed, the assessor shall, on or before the third Monday in June, or as soon thereafter as may be prac-

ticable, in the year in give written notice the agent. The notice shall state the assessment ratio, the ownership and legal owner's records. The notice shall be given personally or by mail to the last known place of the owner, or most recent listing in the official Highway Department's records or the assessor's records. The owner or agent, shall serve the assessor within thirty days. The assessor shall the agent within twenty days requests it, the owner complete and return to the South Carolina Department of Transportation property and the reassessment conference, or as assessor shall mail written notice to the owner. The owner and assessment, may appeal the Appeals by giving notice thereof to the assessor of such notice. The Assessment Appeals of

SECTION 14. Section by striking out Section

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SECTION 16. Time provided for herein, the

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ticable, in the year in which the valuation and assessment is made give written notice thereof to the owner of such property or his agent. The notice shall include the total market value estimate, the assessment ratio, the total new assessment and other pertinent ownership and legal description data shown on the county auditor's records. The notice may be served upon the owner or his agent personally or by mailing it to the owner or his agent at his last known place of residence which may be determined from the most recent listing in the applicable telephone directory, South Carolina Highway Department Motor Vehicle Registration List, county treasurer's records or official notice from the property owner or his agent. The owner or his agent, if he objects to the valuation and assessment, shall serve written notice of such objection upon the assessor within thirty days of the date of the mailing of such notice. The assessor shall then schedule a conference with the owner or agent within twenty days of receipt of such notice. If the assessor requests it, the owner shall within thirty days after such conference complete and return to the assessor such form as may be approved by the South Carolina Tax Commission relating to the owner's property and the reasons for his objection. Within thirty days after such conference, or as soon thereafter as may be practicable, the assessor shall mail written notice of his action upon such objection to the owner. The owner or agent, if still aggrieved by the valuation and assessment, may appeal from such action to the Board of Assessment Appeals by giving written notice of such appeal and the grounds thereof to the assessor within ten days from the date of the mailing of such notice. The assessor shall promptly notify the Board of Assessment Appeals of such appeal.

SECTION 14. Section 1 deleted.—Act 1012 of 1966 is amended by striking out Section 1.

SECTION 15. Repeal.—Act 1266 of 1972 is repealed.

SECTION 16. Time effective.—Except as otherwise specifically provided for herein, this act shall take effect for the tax year 1976.

SECTION 17. Not to affect certain contracts.—In those counties which have a nondevelopment contract, those contracts which have been executed at the effective date of this act shall be valid for the period for which they were executed.

Approved the 3rd day of June, 1975.

GE [No. 616
S-1976

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No. 617]

OF SOUTH CAROLINA
GENERAL AND PERMANENT LAWS—1976

1645

(R711, S801)

No. 617

An Act To Amend Act 493 Of 1971, As Amended, Relating
To Borrowing In Anticipation Of Federal Grants, So As To Pro-
vide That The Pledge Of Full Faith And Credit Of The Bor-
rower Shall Be Optional Rather Than Mandatory.

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

SECTION 1. Borrowing in anticipation of grants.—Section 3 of
Act 493 of 1971 is amended to read:

"Section 3. Any borrower which is entitled to any grant may,
pending the receipt thereof, but within the limitation set forth in this
act, borrow from any person and evidence the debt so incurred by a
note or other written obligation executed by the officers of the bor-
rower and containing such terms and provisions as may be prescribed
by the governing body of the borrower. Such note shall be expressed
to mature not later than the occasion on which the proceeds of the
grant are expected to be received and shall pledge for the payment
of the principal and interest therefor the proceeds of such grant and
in addition thereto may pledge the full faith, credit and taxing power
of the borrower."

SECTION 2. Time effective.—This act shall take effect upon ap-
proval by the Governor.

Approved the 25th day of May, 1976.

(R712, S592)

No. 618

An Act To Amend Section 65-64, Code Of Laws Of South
Carolina, 1962, As Amended, Relating To Tax Commission
Powers, So As To Provide For The Commission To Appraise And
Assess Mine Property And Certain Other Property Leased Or
Used By Other Companies; And To Amend Act 208 Of 1975,
Relating To Property Classification, Uniform Assessment Ratios
And A Statewide Property Equalization Program For All Coun-
ties Of The State, So As To Authorize The Tax Commission To
Promulgate Regulations To Insure Uniform And Equitable Prop-
erty Assessments, To Exempt All Livestock And Poultry From
Ad Valorem Taxes, Provide For Assessment Of Residences On

Leased Property, Further Provide For Assessment Of Agricultural Property, Provide For Taxation Of Lessees' Improvements As Real Property And Further Provide For Duties Of County Assessors.

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

SECTION 1. Assessment, appraisal and equalization of property.—Section 65-64 of the 1962 Code, as last amended by Act 476 of 1967, is further amended by striking subsection (17) and inserting:

"(17) Shall have the sole responsibility for the assessment, appraisal and equalization of taxable values upon the property and franchises of street railway companies, mines, electric railways, water, heat, light and power companies and private car lines, and shall assess, appraise and equalize all real and tangible personal property of manufacturers, except as to inventory; only manufactured articles which have been offered for sale at retail or which have been available for sale at retail shall be included in the inventory listed in such return. The commission shall also assess to the owner thereof all real or personal property leased to or used by the above-mentioned companies. The owner of property leased to or used by the above-mentioned companies shall make returns thereof to the commission on forms prescribed by the commission."

SECTION 2. All property to be assessed uniformly—rules and regulations.—Section 1 of Act 208 of 1975 is amended to read as follows:

"Section 1. All property shall be uniformly and equitably assessed throughout the State. The South Carolina Tax Commission (commission) shall promulgate rules and regulations to insure such equalization which shall be adhered to by all assessing officials in the State."

SECTION 3. Assessments to be equal—exemptions.—Section 2(b) of Act 208 of 1975 is amended by striking the proviso at the end and inserting: "provided, that all other farm machinery and equipment and all livestock and poultry shall be exempt from ad valorem taxes." The subsection when amended shall read:

"(b) All inventories of business establishments shall be taxed on an assessment equal to six percent of the fair market value of such property and all power driven farm machinery and equipment except motor vehicles registered with the South Carolina Highway

Department owned by fi defined in this act shall b cent of the fair market other farm machinery an shall be exempt from ad

SECTION 4. Rate of 2(c) of Act 208 of 197:

"(c) The legal residen thereto, when owned tot occupied by the owner of ment equal to not less ti than four percent of the period of four years as county concerned; *provid* period the property shall of the fair market value; of the four-year period tl not apply; *provided*, furtl may exempt such county ing such property at not more than four percent fr value and provide for the market value as provided the legal residence is loc residence is owned and leased property, even tho becomes the owner of the shall be at the same ratio upon which he has locate such leased property, the taxes, not to exceed five shall be assessed at the this property shall have residences which are rer percent value shall not ap This subsection (c) shall property or his agents mal on or before May first o ment under this act is m

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Department owned by farmers and used on agricultural lands as defined in this act shall be taxed on an assessment equal to five percent of the fair market value of such property; *provided*, that all other farm machinery and equipment and all livestock and poultry shall be exempt from ad valorem taxes."

SECTION 4. Rate of taxation on legal residences.—Section 2(c) of Act 208 of 1975 is amended to read as follows:

"(c) 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 such interest, shall be taxed on an assessment equal to not less than two and one-half percent or not more than four percent of the fair market value of such property for a period of four years as determined by the governing body of the county concerned; *provided*, that at the completion of the four-year period the property shall be taxed on an assessment of four percent of the fair market value; *provided*, further, that until the expiration of the four-year period the transition provisions of this section shall not apply; *provided*, further, that the governing body of any county may exempt such county from the immediate requirement of assessing such property at not less than two and one-half percent or not more than four percent for a period of four years at the fair market value and provide for the transition to such four percent of the fair market value as provided in Section 2; *provided*, further, that 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 shall be at the same ratio as provided herein. If the lessee of property upon which he has located his legal residence is liable for taxes on such leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, shall be assessed at the same ratio herein provided. In the event this property shall have located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value shall not apply to those businesses or rental properties. This subsection (c) shall not be applicable unless the owner of such property or his agents make written application to the county assessor on or before May first of the tax year in which the initial assessment under this act is made and certify to the following statement:

"Under the penalty of perjury I certify that I meet the qualifications for the special assessment ratio for a legal residence as of January first of the current tax year"; *provided*, however, for the tax year 1976 only, the date for the filing of such application shall be extended to June 1, 1976. After the initial application, the assessor shall annually mail an application, approved by the commission, to the owner at his last indicated mailing address.

The assessor shall have printed in the local newspaper during the period January through April at least five notices calling to public attention the provisions of filing the application as a prerequisite for claiming this classification for the current tax year. Failure to file within the prescribed time shall constitute abandonment of the owner's right for this classification for the current tax year. *Provided*, however, the local taxing authority may extend the time for filing upon a showing satisfactory to it that the person had reasonable cause for not filing on or before May first.

If a person signs the certification and is not eligible or thereafter loses eligibility and fails to notify the county assessor, a penalty of ten percent and interest at the rate of one-half of one percent per month shall be paid on the difference between the amount that was paid and the amount that should have been paid.

Notwithstanding the provisions for application herein set forth, the governing body of the county concerned as an alternative may elect, determine and direct that the tax assessor shall determine and designate the various properties to be subject to the special assessment ratio provided in this subsection. Upon such determination by the governing body of the county concerned no publication of notice shall then be required and no application or other certification shall then be required."

SECTION 5. Tax assessment on agricultural land.—Section 2(d) of Act 208 of 1975 is amended to read:

"(d)(1) Agricultural land which is actually used for such agricultural purposes shall be taxed on an assessment equal to

(A) Four percent of its fair market value for such agricultural purposes for owners or lessees who are individuals or partnerships and certain corporations which do not:

(i) Have more than ten shareholders.

(ii) Have as a shareholder a person (other than an estate) who is not an individual.

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not eligible or thereafter y assessor, a penalty of half of one percent per en the amount that was paid.

cation herein set forth, l as an alternative may sor shall determine and ct to the special assess- i such determination by no publication of notice other certification shall

ultural land.—Section ad:

lly used for such agri- sment equal to ie for such agricultural ividuals or partnerships

er than an estate) who

- (iii) Have a nonresident alien as a shareholder.
- (iv) Have more than one class of stock.

(B) Six percent of its fair market value for such agricultural purposes for owners or lessees who are corporations, except for certain corporations specified in (A) above.

(2) 'Fair market value for such agricultural purposes' is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of like soil in the locality or a reasonable area of the locality, not including the agricultural products thereon. Soil capability means the capability of the soil to produce typical agricultural products of the area considering any natural deterrents to the potential capability of the soil as of the current assessment date.

After average net annual earnings have been established for agricultural lands, they shall be capitalized to determine use-value of the property based on a capitalization rate which includes:

- 1. An interest component.
- 2. A local property tax differential component.
- 3. A risk component.
- 4. An illiquidity component.

Each of these components of the capitalization rate shall be based on identifiable factors related to agricultural use of the property. The interest rate component will be the average coupon (interest) rate applicable on all bonds which the Federal Land Bank of Columbia, which serves South Carolina farmers, has outstanding on July first of the crop-years being used to estimate net earnings and agricultural use-value. Implementation of the provisions contained in this Section shall be the responsibility of the Commission.

(3) Agricultural real property shall not come within the provisions of this section unless the owners of such real property or their agents make written application therefor on or before May first of the tax year in which the special assessment is claimed. The application for the special assessment shall be made to the assessor of the county in which the agricultural real property is located, upon forms provided by the county and approved by the commission and a failure to so apply shall constitute a waiver of the special assessment for that year; *provided*, however, for the tax year 1976 only the date for the filing of such application shall be extended to June 1, 1976.

(4) When real property which is in agricultural use and is being valued, assessed and taxed under the provisions of this act, is applied to a use other than agricultural, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the real property been valued, assessed and taxed as other real property in the taxing district, in the current tax year (the year of change in use) and each of the five tax years immediately preceding in which the real property was valued, assessed and taxed as herein provided. If in the tax year in which a change in use of the real property occurs the real property was not valued, assessed and taxed under this act, then such real property shall be subject to roll-back taxes for each of the five tax years immediately preceding in which the real property was valued, assessed and taxed hereunder. In determining the amounts of the roll-back taxes chargeable on real property which has undergone a change in use, the assessor shall for each of the roll-back tax years involved ascertain:

(A) The fair market value of such real property under the valuation standard applicable to other real property in the same classification;

(B) The amount of the real property assessment for the particular tax year by multiplying such fair market value by the appropriate assessment ratio provided in this act;

(C) The amount of the additional assessment on the real property for the particular tax year by deducting the amount of the actual assessment on the real property for that year from the amount of the real property assessment determined under (B) hereof;

(D) The amount of the roll-back for that tax year by multiplying the amount of the additional assessment determined under (C) hereof by the property tax rate of the taxing district applicable for that tax year."

SECTION 6. Tax assessment on all other personal property.—Section 2(f) of Act 208 of 1975 is amended by striking "and the" beginning on line nine of the second paragraph and inserting "unless the governing body of any county shall affirmatively declare that it shall not be immediately assessed at such ratio, in which event it

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SECTION 7. Mob
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amended shall read :

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ural use and is being of this act, is applied to additional taxes, amount equal to the payable on the basis of under and the taxes : real property been in the taxing district, use) and each of the he real property was If in the tax year in rs the real property . act, then such real each of the five tax property was valued, the amounts of the ich has undergone a : roll-back tax years

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ersonal property.— striking "and the" nd inserting "unless vely declare that it in which event it

shall be assessed in the manner provided for in the following sentence. The". When amended item (f) shall read:

"(f) All other personal property shall be taxed on an assessment equal to ten and one-half percent of fair market value of such property.

Notwithstanding any other provision of this act, on the effective date thereof, if it is found that there is a variation between the ratios being used and those stated in this section, the county may provide for a gradual transition to the ratios as herein provided for over a period not to exceed seven years; *provided*, however, that all property within a particular classification shall be assessed at the same ratio; *provided*, further, however, that all property enumerated in Section 2(a) shall be assessed at the ratio provided in such section unless the governing body of any county shall affirmatively declare that it shall not be immediately assessed at such ratio, in which event it shall be assessed in the manner provided for in the following sentence. The property enumerated in Section 2(b), (c), (d), (e), (f) and (g) shall be increased or decreased to the ratios set forth in this Act by a change in the ratio of not less than one-half of one percent per year nor more than one percent per year. *Provided*, however, that notwithstanding the provisions of this section, a county may, at its discretion, immediately implement the assessment ratios contained in Section 2(b), (c), (d), (e), and (f). *Provided*, however, that livestock shall not be subject to ad valorem taxation unless such livestock is physically located within the State for a period in excess of nine months. *Provided*, that this section shall not apply to farm animals and farm equipment in use on a farm in those counties which do not tax such property at the effective date of this act."

SECTION 7. Mobile homes and improvements to leased property considered real property.—Section 3(b) of Act 208 of 1975 is amended by adding after "State" on line one "and all improvements to leased real property made by the lessee". The item when amended shall read:

"(b) For the purposes of this act all mobile homes in this State and all improvements to leased real property made by the lessee shall be considered real property and shall be classified and assessed for ad valorem taxation in accordance with the provisions of Section 2 of this act. 'Mobile homes' is defined as a portable unit designed and built to be towed on its own chassis, comprised of a frame and wheels, connected to utilities, and designed without a permanent

foundation for year-round residential use. A mobile home may contain parts that may be folded or collapsed when being towed, and expanded on site to provide additional space. The term 'mobile home' shall also include units in two or more separately towable components designed to be joined into one integral unit for use, and capable of being again separated into the components for repeated towing. It may also include two units which may be joined, on site, into a single residential unit."

SECTION 8. Counties to have full time assessor—duties.—Section 4 of Act 208 of 1975 is amended to read as follows:

"Section 4. All counties shall have a full-time assessor, whose responsibility is appraising and listing all real property, whether exempted or not, except real property required by law to be assessed by the commission and property owned by the federal government, state government, county government or any of its political subdivisions which is exempt from property taxation. If the assessor discovers that any real property required by law to be assessed by the commission has been omitted, he shall notify the commission that such property has been omitted and the commission shall be required to appraise and assess the omitted property.

The assessor shall be responsible for the operations of his office and shall:

(a) Maintain a continuous record of recorded deed sales transactions, building permits, tax maps and other records necessary for a continuing reassessment program;

(b) Diligently search for and discover all real property not previously returned by the owners or agents thereof or not listed for taxation by the county auditor and list such property for taxation in the name of the owner or person to whom it is taxable;

(c) When values change, reappraise and reassess any or all real property so as to reflect its proper valuation in light of changed conditions, except for exempt property and real property required by law to be appraised and assessed by the commission, and furnish a list of these assessments to the county auditor;

(d) Determine assessments and reassessments of real property in such a manner that the ratio of assessed value to fair market value shall be uniform throughout the county;

(e) Appear as necessary before any appellate board to give testimony and present evidence as to the justification of any appraisal;

(f) Have the right of any appraisal

(g) Perform such as may be required

(h) Be the sole property except that the commission, and only by the assessor commission or the c

Provided, that any commission, may enter its office which was such counties under section."

SECTION 9. Addition of Act 208 of 1975 is:

"Section 8. The assessor and the commission property required by omitted, he shall not have been omitted at and assess the omitted

SECTION 10. Rules and Regulations. All rules and regulations of the Commission for the year of 1975 may be declared null and void with the passage of the joint

SECTION 11. Final Assessments—exceptions. Except for the initial application of such subsection during the 1977 the foregoing provisions of the county and direct that the various properties t

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(f) Have the right of appeal from any disapproval of or modifica-
tion of any appraisal made by him;

(g) Perform such other duties relating to the office of tax asses-
sor as may be required by the laws of the State;

(h) Be the sole person responsible for the valuation of real
property except that required by law to be appraised and assessed by
the commission, and the values set by the assessor shall be altered
only by the assessor or by legally constituted appellate boards, the
commission or the courts.

Provided, that any two or more counties, with the approval of the
commission, may enter into an agreement to establish a single asses-
sor's office which would be in charge of the assessing of property of
such counties under rules and regulations prescribed by the commis-
sion."

SECTION 9. Adoption of valuations—omissions.—Section 8 of
Act 208 of 1975 is amended to read as follows:

"Section 8. The auditor shall adopt valuations of the assessor
and the commission. If the auditor discovers that any personal
property required by law to be assessed by the commission has been
omitted, he shall notify the commission that the personal property
has been omitted and the commission shall be required to appraise
and assess the omitted personal property."

SECTION 10. Rules and regulations may be repealed.—Any or
all rules and regulations promulgated by the South Carolina Tax
Commission for the implementation of the provisions of Act 208
of 1975 may be declared null and void by passage of a joint reso-
lution expressing such intention. Such rules and regulations declared
null and void will be considered repealed on and after the date of
passage of the joint resolution.

SECTION 11. Further provisions for applications for special as-
sessments—exceptions.—Notwithstanding the provisions of subsec-
tion (c) of Section 2 of Act 208 of 1975, as further amended herein,
the initial application for the special assessment ratio which is the sub-
ject of such subsection shall be mailed by the tax assessor to the appli-
cant during the 1976 tax year only; *provided*, that notwithstanding
the foregoing provision or any other provision of law, the governing
body of the county concerned as an alternative may elect, determine
and direct that the tax assessor shall determine and designate the
various properties to be subject to the special assessment ratio pro-

vided in said subsection (c), Section 2 of Act 208 of 1975. In the event the governing body of the county concerned makes such election and determination, no mailing by the tax assessor shall be required under this subsection (c) or any other provision of law relating to said subsection (c) of Section 2 of Act 208 of 1975 and no application or other certification shall then be required, without regard to the application procedure set forth in such subsection (c) or any other provision of law relating to such subsection (c), Section 2 of Act 208 of 1975.

SECTION 12. Adjustments restricted to five percent.—Section 12A of Act 208 of 1975 is amended to read:

"Section 12A. Notwithstanding any other provision of law, no county, school district, municipality or any other political subdivision may increase or decrease the total ad valorem tax of such county, school district, municipality or any other political subdivision by an amount exceeding seven percent of total ad valorem taxes for such county, school district, municipality or any other political subdivision for the 1975 tax year due to the adjustment to the ratios set forth in this act. This seven percent limitation shall be the total increase or decrease over the 1975 taxes due to the adjustment of ratios regardless of the number of years involved in the transition; *provided*, however, that the increase or decrease over the 1975 taxes due to the adjustment of ratios may not exceed two percent in any one taxable year during the transition period."

SECTION 13. Exemptions.—Section 2(f) of Act 208 of 1975 is amended by striking the last two provisos at the end thereof and inserting:

"*Provided*, however, that all livestock and poultry shall not be subject to ad valorem taxes. *Provided*, that this section shall not apply to any farm equipment in use on a farm in those counties which do not tax such property at the effective date of this act."

SECTION 14. Time effective.—This act shall take effect commencing with the 1976 tax year.

Approved the 26th day of May, 1976.

(R714, S644)

**An Act To Amend /
The Charleston Court
Alternative Procedure
Exempt Status And I
posed For Not Filing**

Be it enacted by the Ger

SECTION 1. Property
as last amended by Act

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SECTION 2. Maxim
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SECTION 3. Time
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(R715, S654)

**An Act To Amend
Of South Carolina,
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Be it enacted by the G

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SECTION 23

To Amend Section 12-43-220, Code of Laws of South Carolina, 1976, as Amended, Relating to Property Classifications and Assessment Ratios for Property Tax Purposes, so as to Further Define the Terms "Fair Market Value" and "Locality" as the Terms Relate to Agricultural Property and Timberlands.

A. The General Assembly finds that a substantial part of the lands used for the growth of agricultural products in this State is in fact used for the growth of timber. The remainder of land used for the growth of agricultural products is applied to the growth of many other diverse agricultural products. Because of this situation the General Assembly finds that the income from timberlands should be used to determine the use value of such lands and income of lands used to produce other agricultural products should be used to determine the use value of those lands. The General Assembly further finds that a locality may appropriately include more than one county and be designated as a region.

B. The first paragraph of item (2) of subsection (d) of Section 12-43-220 of the 1976 Code, as last amended by Act 438 of 1978, is further amended to read:

" 'Fair market value for such agricultural purposes' when applicable to land used for the growth of timber is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents of such lands for timber growth or by capitalization of typical net income of similar soil in the region or a reasonable area of the region from the sale of timber, not including the timber growing thereon, and when applicable to land used for the growth of other agricultural products the term is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region or a reasonable area of the region, not including the agricultural products thereon. Soil capability when applicable to lands used for the growth of timber products means the capability of the soil to produce such timber products of the region considering any natural deterrents to the potential capability of the soil of the current assessment date. The term when applicable to lands used for the growth of other agricultural products shall mean the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The

term 'region' shall mean that geographical part of the State as determined by the Tax Commission to be reasonably similar for the production of such agricultural products."

C. The provisions of Section 12-43-220 of the 1976 Code amended in paragraph B shall apply to the tax year 1979 and thereafter.

SECTION 24

To Amend Sections 9-1-1790 and 9-11-90, Code of Laws of South Carolina, 1976, as Amended, Relating to the South Carolina Retirement System and the South Carolina Police Officers Retirement System, so as to Increase the Amount a Retired Member who Returns to Covered Employment may Earn Without Affecting his Benefits.

A. Section 9-1-1790 of the 1976 Code, as last amended by Act 428 of 1978, is further amended by adding after "thousand" on lines three and five "five hundred". The section as amended shall read:

"Section 9-1-1790. Any retired member of the System may return to employment covered by the System and earn up to four thousand five hundred dollars per fiscal year without affecting the monthly retirement allowance he is receiving from the System; *provided*, if such retired member continues in service after having earned four thousand five hundred dollars in a fiscal year, his retirement allowance shall be discontinued during his period of service in the remainder of such fiscal year. If such employment continues for at least forty-eight consecutive months the provisions of Section 9-1-1590 shall apply. *Provided*, further, the provisions of this section shall not apply to any employee or member of the System who has mandatorily retired because of age pursuant to Section 9-1-1530."

B. Subsection (4) of Section 9-11-90 of the 1976 Code, as last amended by Act 428 of 1978, is further amended by adding after "thousand" on lines three and six "five hundred". The subsection as amended shall read:

"(4) Notwithstanding the provisions of subsections (1) and (2) of this section, any retired member of the System may return to employment covered by the System and earn up to four thousand five hundred dollars per fiscal year without affecting the monthly retirement allowance he is receiving from the System; *provided*, if such retired member continues in service after having earned four thousand five hundred dollars in a fiscal year, his retirement allowance shall be discontinued during his period of service in the remainder of such

fiscal year. If such em consecutive months the shall apply. *Provided*, fi not apply to any employe torily retired because of

C. This section shall t

To Amend Section 59-6t
Relating to Parent
so as to Reduce the
Required to Attend
School Districts to
Students and Infor
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(A) Section 59-65-10

"Section 59-65-10. A children or wards who e inclusive, to regularly a garten of this State whi Education or a member Schools' Association or denominational school, o by the State Board of E The provisions of thi be in conflict with Secti

(B) School districts : of children who will re: plicable school year and schools to encourage th beginning of the school y the availability of public

(C) Each school dist: public school for all pu who request such transp Education governing the

South Carolina General Assembly
107th Session, 1987-1988

Bill 1147

Current Status

Bill Number:	1147
Ratification Number:	639
Act Number	558
Introducing Body:	Senate
Subject:	Agricultural use

View additional [legislative information](#) at the LPITS web site.

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A558, R639, S1147)

AN ACT TO AMEND SECTION 12-43-220, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CLASSIFICATION OF PROPERTY FOR PURPOSES OF PROPERTY TAXATION AND THE APPLICABLE ASSESSMENT RATIOS, SO AS TO PROVIDE A FORMULA FOR DETERMINING FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES FOR AGRICULTURAL REAL PROPERTY FOR TAX YEARS BEGINNING AFTER 1987 AND TO REQUIRE THE SOUTH CAROLINA TAX COMMISSION TO PROMULGATE REGULATIONS ESTABLISHING A CLASSIFICATION FOR TIMBER WETLANDS FOR PURPOSES OF PROPERTY TAXATION.

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

Agricultural use

SECTION 1. Section 12-43-220(d)(2) of the 1976 Code is amended to read:

"(2)(A) 'Fair market value for agricultural purposes', when applicable to land used for the growth of timber, is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents of the lands for timber growth or by capitalization of typical net income of similar soil in the region or a reasonable area of the region from the sale of timber, not including the timber growing thereon, and when applicable to land used for the growth of other agricultural products the term is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region or a reasonable area of the region, not including the agricultural products thereon. Soil capability when applicable to lands used for the growth of timber products means the capability of the soil to produce such timber products of the region considering any natural deterrents to the potential capability of the soil as of the current

assessment date. The term, when applicable to lands used for the growth of other agricultural products, means the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The term 'region' means that geographical part of the State as determined by the commission to be reasonably similar for the production of the agricultural products.

After average net annual earnings have been established for agricultural lands, they must be capitalized to determine use-value of the property based on a capitalization rate which includes:

1. an interest component;
2. a local property tax differential component;
3. a risk component;
4. an illiquidity component.

Each of these components of the capitalization rate must be based on identifiable factors related to agricultural use of the property. The interest rate component is the average coupon (interest) rate applicable on all bonds which the Federal Land Bank of Columbia, which serves South Carolina farmers, has outstanding on July first of the crop-years being used to estimate net earnings and agricultural use-value. Implementation of the provisions contained in this section is the responsibility of the commission.

(B)(i) For tax year 1988 and subsequent tax years, fair market value for agricultural purposes must be determined by adjusting the applicable base year value by an amount equal to the product of multiplying the applicable base year value by a percentage factor obtained through the formula provided in this item. For tax year 1988, the applicable base year is 1981. After the initial use of the valuation

method provided in this item for tax year 1988, fair market value for agricultural purposes must be redetermined every three years if the percentage factor in that year exceeds five percent but at least every six years regardless of the percentage.

(ii) The percentage factor provided in this item is derived from the most recent edition of the United States Department of Agriculture publication 'AGRICULTURAL LAND VALUES AND MARKETS', specifically, from 'Table 1--Farm Real Estate Values: Indexes of the average value per acre of land and buildings...' as listed for this State. The formula to determine the applicable percentage factor is the index of the year of change less the index of the base year with the resulting amount being divided by the index of the base year and rounded to the nearest whole number. For purposes of the formula, the base year is the last year in which values were adjusted under this item."

Timber wetlands regulations

SECTION 2. The South Carolina Tax Commission shall promulgate regulations establishing a

classification for timber wetlands for purposes of property taxation.

Applicable years

SECTION 3. The amendment to Section 12-43-220(d) of the 1976 Code contained in this act is effective for taxable years beginning after 1987.

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

2011 WL 7119294 (S.C.Admin.Law.Judge.Div.)

Administrative Law Court

State of South Carolina

C. DORN SMITH, III AND KATE E. SMITH, PETITIONERS

vs.

CLARENDON COUNTY ASSESSOR, RESPONDENT

Docket No.: 11-ALJ-17-0191-CC

October 31, 2011

ORDER ON MOTION FOR RECONSIDERATION

*1 The above-captioned matter came before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to a request for contested case hearing filed on April 7, 2011 by the above Petitioners, C. Dorn Smith, III and Kate E. Smith. Petitioners sought this Court's review of the decision of the Clarendon County Board of Assessment Appeals ("Board") relative to the classification of three parcels of property identified by TMS 344-00-02-011-00, TMS 345-00-03-005-00 and TMS 345-00-04-006-00. Prior to seeking review from this Court, the Petitioners exhausted their administrative remedies at the county level.

On June 12, 2011, the Clarendon County Assessor ("Respondent" or "Assessor") filed a Motion for Summary Judgment, and on July 15, 2011, the Petitioners filed a Cross Motion for Summary Judgment. In lieu of the contested case hearing, the parties requested that the Court conduct a hearing to hear arguments on Respondent's Motion and Petitioners' Cross Motion. A hearing was held on August 9, 2011, and on September 15, 2011, the Court issued an Order which denied Respondent's Motion for Summary Judgment and granted Summary Judgment in favor of Petitioners.

On September 30, 2011, the Respondent filed a Motion requesting that this Court reconsider, alter or amend its Order issued on September 15, 2011. The Petitioners filed a Response to Respondent's Motion on October 11, 2011. In the Motion, the Respondent contends the Court failed to properly define the issues. I disagree. To properly rule on the issues contested, the Court was required to first determine whether certain structures should be classified as part of the agricultural real property, and secondly, whether these structures should be assessed and taxed based on "fair market value for agricultural purposes."

In the Motion, Respondent also indicates some confusion as to what portion of Petitioners' property is being addressed by the Order. The case before this Court involves parcels identified by TMS 344-00-02-011-00, TMS 345-00-03-005-00 and TMS 345-00-04-006-00. As Respondent is aware, these parcels include land that was classified and assessed as "agricultural use real property", this classification has not been contested. There are also several structures located on these parcels, some of which Petitioners contend should have been classified as part of the agricultural use real property. The Petitioners argue the land and structures should not be valued and taxed separately. In the Order addressing the Motion and Cross-Motion for Summary Judgment, the Court agreed with Petitioner and ruled that "agricultural use value" includes the value of the structures located on Petitioners' property, other than the residence of the Petitioners or immediate family." The Petitioners conceded at the outset of this case, that the Petitioners' residences are not located on any of the identified parcels, however, there are some rented structures, including a residence and two or three mobile homes, which Petitioners have excluded from this action. In short, Petitioners do not contest the value placed on these structures by the Assessor, and their classification and valuation are not addressed by the Order.

*2 Following careful review of the Respondent's Motion to Reconsider, Alter or Amend, the Court finds no valid basis for granting the Motion. Therefore,

IT IS HEREBY ORDERED that Respondent's Motion to Reconsider, Alter or Amend the Order issued on September 15, 2011, is denied.

AND IT IS SO ORDERED.

Shirley C. Robinson
Administrative Law Judge

October 31, 2011

Columbia, South Carolina

2011 WL 7119294 (S.C.Admin.Law.Judge.Div.)

End of Document

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

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

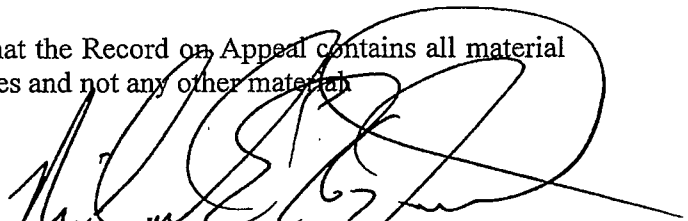
William J. Montgomery, ... Respondent,

v.

Spartanburg County Assessor, ... Appellant.

CERTIFICATE OF COUNSEL

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



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

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

William J. Montgomery, ...Respondent,

v.

Spartanburg County Assessor, ...Appellant.

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

WHAT IS THE MEANING OF “FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES” IN SOUTH CAROLINA CODE ANNOTATED SECTION 12-43-220(D)?

STATEMENT OF THE CASE

1. History of Proceedings

The Spartanburg County Assessor (“Assessor” or “Appellant”) and William J. Montgomery (“Taxpayer” or “Respondent”) (collectively “Parties”) disagree on the 2011 tax year, *ad valorem* assessment for real property at 891 Mount Lebanon Road, Pauline, South Carolina 29374, Tax Parcel 6-68-00-016.00 (“Property”). The disagreement produced a hearing before the Spartanburg County Board of Assessment Appeals (“Board”), resulting in the Board’s written decision of February 11, 2013, upholding the Assessor’s position. Dissatisfied with the Board’s decision, on March 12, 2013, the Taxpayer filed a petition with the South Carolina Administrative Law Court (“ALC”) seeking a contested case hearing.

2. Nature of Taxpayer’s Action and Nature of Response by Assessor

Before the ALC, Taxpayer asserted the Property’s taxable value as agricultural real property is \$12,211; the Assessor asserted a taxable value as agricultural real property of \$40,641. On July 10, 2013, the Taxpayer moved for Summary Judgment. The Assessor initially opposed the Taxpayer’s motion, but, at the hearing of the Taxpayer’s summary judgment motion on July 31, 2013, the Assessor likewise moved for summary judgment.

3. Action of the Administrative Law Court and Subsequent Appeal

The Court heard cross-motions for Summary Judgment on July 31, 2013, and issued an Order in favor of the Taxpayer on November 19, 2013. The Assessor filed and served a Notice of Appeal on December 17, 2013.

STATEMENT OF FACTS

Taxpayer's Property comprises 150.4 acres in Spartanburg County, South Carolina.¹ The Property is used both for growing pine timber and for growing crops such as row crops, alfalfa, and wheat.² Besides the land, the Property includes improvements of a farmhouse and two barns (collectively, "Structures").³

The Structures are not a "legal residence" and are not operated as a for-profit business venture.⁴ Instead, the Structures are used in the agricultural activities conducted on the Property.⁵ Thus, given the agricultural use of both the land and the Structures, the Assessor assessed the Property as agricultural real property for tax year 2011.

In assessing the Property, the Assessor used a valuation method that values the land under a soil capability method (value \$12,211), values the Structures under the fair market value method (value \$28,430), and concludes the value of \$40,641 is the Property's "fair market value for agricultural purposes."⁶ The Taxpayer, however, uses a valuation method that values the entire Property (all of the Structures as well as the land) using only the soil capability method (value \$12,211) as the fair market value for agricultural purposes.⁷ Hence, the matter on appeal is a challenge to the ALC's summary judgment decision finding the Taxpayer's entire Property (all Structures as well as the land) must be valued using only the soil capability method.

¹ (R. p. 34, at ¶ 2.)

² (R. p. 37, at ¶ 18.)

³ (R. p. 35, at ¶ 5.)

⁴ (R. p. 35, at ¶ 8.)

⁵ (R. pp. 35-36, at ¶¶ 9-10.)

⁶ (R. p. 3.)

⁷ (*Id.*)

STANDARD OF REVIEW

When reviewing an order granting summary judgment, an appellate court applies the same standard as that applicable to the trial court. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). The standard applicable to the trial court is whether the pleadings, depositions, affidavits, and discovery on file show no genuine issue of material fact exists such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC.

Thus, two elements are needed: (1) no genuine dispute as to any material fact; and (2) the moving party must be entitled to judgment as a matter of law.

1. There Are No Disputed Material Facts

By granting summary judgment for the Taxpayer, the ALC implicitly ruled no material facts are in dispute. In direct terms, the ALC explicitly ruled “the parties agree that there is no dispute as to the relevant facts.”⁸ Such rulings (rulings finding a lack of disputed facts), whether implicit or explicit, have not been appealed. Therefore, these rulings are the law of the case and must be affirmed. *Douglass v. Boyce*, 344 S.C. 5, 9 n. 3, 542 S.E.2d 715, 717 n. 3 (2001).

2. Judgment Due as a Matter of Law to the Assessor, Not the Taxpayer

Regarding the second element, the Assessor agrees judgment is due as a matter of law. However, judgment is due in favor of the Assessor, not the Taxpayer. In reaching its conclusion, the ALC framed the issue as a statutory interpretation of South Carolina Code Annotated section 12-43-220(d)(2):

⁸ (R. p. 4.)

Therefore, the property that is the subject of this matter should be assessed and taxed based on its “fair market value for agricultural purposes.” That value must be calculated using the formula set forth in S.C. Code Ann. § 12-43-220(d)(2). Buildings and improvements located on the property may not be separately valued because their value is included in, and subsumed by, the fair market value for agricultural purposes.

(R. p. 10.)

Questions of statutory interpretation are questions of law. *Jeter v. S.C. Dep’t of Transp.*, 369 S.C. 433, 438, 633 S.E.2d 143, 146 (2006). As a question of law, this Court makes its own decision unencumbered by the ALC’s ruling. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C.67, 74, 716 S.E.2d 877, 881 (2011) (“Questions of statutory interpretation are questions of law, which [this Court is] free to decide without any deference to the court below.”). This Court will correct errors of law in ALC decisions. *Media Gen. Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 144, 694 S.E.2d 525, 528 (2010) (“A reviewing 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.”).

Here, although summary judgment is appropriate, the ALC erred in interpreting the law in favor of the Taxpayer. Instead, as a matter of law, the Assessor’s Motion for Summary Judgment—not the Taxpayer’s—should have been granted.

ARGUMENT

COUNTY ASSESSORS MUST ASSESS AND VALUE AGRICULTURAL LAND UNDER A SOIL CAPABILITY METHOD, VALUE STRUCTURES ON AGRICULTURAL LAND UNDER A FAIR MARKET VALUE METHOD, AND ADD THE TWO TO DETERMINE THE “FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES” UNDER SECTION 12-43-220(D)

I. Analysis of Errors Committed by the Administrative Law Court in Review of Applicable Statutes

A. *The Assessor Complied With the Assessment Process for Taxing Real Property*

The assessment process begins by understanding the property under review. Here, the Property is agricultural real property, consisting of land and Structures.⁹ The land and Structures must¹⁰ be taxed¹¹ unless expressly exempted from taxation.¹² In the instant case, the property is used for agricultural purposes.¹³ No exemption exists for the mere use of real property in agriculture.¹⁴ Thus, the Property is taxable and must be assessed.¹⁵

Property is assessed when valued for taxation, assigned an assessment ratio, and given a millage rate.¹⁶ No dispute exists as to the 4% assessment ratio applied to the land and Structures.¹⁷ The land and Structures receive an undisputed millage rate.¹⁸ All that remains in the assessment process is the required valuation.

B. The Assessor Adhered to the Valuations Statutes, Recognizing that Valuation Methods Vary Depending on the Type and the Use of the Property

Property valuation methods are controlled by statute. In certain instances, the General Assembly requires that real property be valued under a “willing buyer and

⁹ (R. pp. 34–35, ¶¶ 2, 5.)

¹⁰ S.C. Code Ann. § 12-37-10(1) (“‘Real property’ shall mean not only land, . . . but also all structures . . . annexed or attached thereto which pass to the vendee by the conveyance of the land or lot.”).

¹¹ S.C. Const. Art. 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.”); S.C. Code Ann. § 12-37-210 (“All real . . . property in this State . . . shall be subject to taxation.”).

¹² The Constitution authorizes exemptions, *see* S.C. Const. Art. X, § 3 (“There shall be exempt from ad valorem taxation: . . .”), and allows the General Assembly to create others, *Id.* (“In addition to the exemptions listed in this section, the General Assembly may provide for exemptions from the property tax.”).

¹³ (R. pp. 35–36, ¶¶ 9, 10.)

¹⁴ The only agricultural exemptions from *ad valorem* tax address agricultural personal property, not agricultural real property. *See* S.C. Code Ann. §§ 12-37-220(B)(13)–(15) (exempting “agricultural products,” “farm machinery,” and “livestock”).

¹⁵ *State v. Cheraw & D. R. Co.*, 54 S.C. 564, 32 S.E. 691, 694 (1899) (“In our opinion, an assessment . . . is essential to constitute a legal liability to pay taxes.”).

¹⁶ *Beaufort County v. State*, 353 S.C. 240, 242–43, 577 S.E.2d 457, 459–60 (2003).

¹⁷ (R. p. 3 (“The parties agree . . . the proper assessment ratio is four percent.”).)

¹⁸ (*Id.* (stating that the “millage rate [is] accurate as calculated by the Assessor.”).)

willing seller” method.¹⁹ In other circumstances, the General Assembly may require a particular aspect of real property (such as structures or other improvements on the land) to be valued under a “willing buyer and willing seller” method, but other aspects of the same real property (the land) to be valued using a “use value” method. Indeed, the method of valuation employed by the Assessor is not unusual. Rather, the General Assembly adopted precisely the same method of valuation for other real property by leaving the valuation of structures under the 12-37-930 methodology, while creating a separate valuation method for the land as a subclass.²⁰

The Assessor complied with these standards and employed: (a) the use value method of section 12-43-220(d)(2)(A) to value Taxpayer’s land; and (b) the willing buyer and willing seller valuation method of section 12-37-930 to value the Structures. In accomplishing that task, the primary valuation standards for *ad valorem* taxation are found in Chapter 37 of Title 12, which provides instructions and principles applicable to the taxation of *all* property in South Carolina. As to valuation, section 12-37-930 states:

¹⁹S.C. Code Ann. § 12-37-930; *see also* S.C. Tax Comm’n v. S.C. Tax Board of Review, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985) (establishing that S.C. Code § 12-37-930 sets fair market value as the equivalent to what a willing buyer would pay a willing seller).

²⁰The General Assembly is permitted to create subclasses of real property and to define valuation methods applicable to those subclasses. *See* S.C. Const. Art. X, § 2; *accord* Beaufort County, 353 S.C. at 244, 577 S.E.2d at 459. In fact, it is fairly common for the General Assembly to create subclasses of real property and to then make specific rules governing the treatment of those subclasses. *See*, for example, section 12-43-215, which imposes a use value on land while leaving structure valuation at fair market value. S.C. Code Ann. § 12-43-215 (“When owner-occupied residential property assessed pursuant to Section 12-43-220(c) is valued for purposes of ad valorem taxation, the *value of the land must be* determined on the basis that its highest and best use is *for residential purposes.*”) (emphasis added). Section 12-37-252 limits land to a use valuation, but not structures. *See* S.C. Code Ann. § 12-37-252 (“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.*”). In similar fashion, agricultural land is a subclass of agricultural real property, for which the General Assembly has chosen to establish a specific valuation method. *See* S.C. Code Ann. § 12-43-220(d)(2)(A).

All property must be valued for taxation *at its true value in money* which in all cases is the prices which the property would bring following reasonable exposure to the market where, both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

S.C. Code Ann. § 12-37-930 (emphasis added). By its plain terms, section 12-37-930 applies to “all property,” and case law has applied this section to a variety of properties, including real property. *See, e.g., Long Cove Home Owners’ Ass’n, Inc. v. Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 488 S.E.2d 857 (1997) (applying § 12-37-930 in reviewing the valuation of real property); *Lindsey v. S.C. Tax Comm’n*, 302 S.C. 504, 397 S.E.2d 95 (1990) (same).

In short, no authority excludes agricultural real property from the reach of section 12-37-930’s declaration that “[a]ll property must be valued for taxation at its true value in money.” Rather, just the opposite is true. Section 12-43-220 (the very statute containing the valuation methodology for agricultural real property) expressly invites and includes valuation under section 12-37-930 when determining the value encompassed by section 12-43-220(d).²¹

²¹Section 12-43-220, which only deals in part with the valuation of agricultural real property, makes specific reference to section 12-37-930: “As used in this section, fair market value with reference to real property means fair market value determined in the manner provided pursuant to Article X of the Constitution of this State, Section 12-37-930 and Article 25, Chapter 37 of this title.” Therefore, section 12-43-220 expressly contemplates that assessors will look to section 12-37-930 in determining the value of property under section 12-43-220. Section 12-37-930 plainly applies to agricultural real property.

C. *Unlike the Assessor, the ALC, Under a Flawed "Plain Meaning" Analysis, Allows the Taxpayer to Disregard the Valuation Statutes Governing Agricultural Real Property*

The ALC erred in failing to interpret section 12-43-220(d) as a statute requiring the application of both the "willing buyer and willing seller" method, plus a "use value" method. In committing such an error, the ALC asserted that the "plain meaning" of the relevant statutes supported its conclusion. However, the ALC's finding in favor of the Taxpayer is predicated on four incorrect conclusions about the "plain meaning" of the law. The four errors are identified here as "Classified and Taxable,"²² "Real Property Definition,"²³ "Fifty Percent Rule,"²⁴ and "USDA Table."²⁵

1. *Classified and Taxable: Merely Classifying Property As Agricultural Real Property Does Not Create a Taxable Value for All Aspects of the Property.*

In applying the "plain meaning" rule, the ALC found "*structures* located on a tract of agricultural real property . . . are *classified as agricultural real property and their taxable value is included in the tract's 'fair market value for agricultural purposes.'*" (R. p. 6 (emphasis added).) Since the issue before the ALC was the value of the property, the ALC's analysis quoted above seeks to support its use-value determination for all aspects of the property. The ALC's analysis contains two fundamental errors.

²²(R. p. 6 ("[T]he language in . . . 12-43-220 – 230 is unambiguous . . . [and] structures located on a tract of agricultural real property, . . . are classified as agricultural real property and their taxable value is included in the tract's "'fair market value for agricultural purposes.'""))

²³(R. p. 7 ("Moreover, the definition of 'real property' includes the structures and improvements on the land."))

²⁴(R. p. 6 ("[I]f at least 50% of a tract of real property is used for agricultural purposes, the entire tract must be classified as 'agricultural real property' and the Assessor may not carve out and separately assess a small portion of the tract (such as the structures attached thereto)"))

²⁵(R. p. 7 ("[And, under] S.C. Code Ann. § 12-43-220(d)(2)(B) . . . , the tables used to arrive at the Agricultural Use Value include the value of buildings in the calculation."))

First, the ALC wrongly assumes being “classified as agricultural real property” establishes a use-value as the “taxable value [that] is included in the tract’s ‘fair market value for agricultural purposes.’” Second, classification as agricultural real property directs the valuation process to specifically value land at a use value but leaves structures to be valued at fair market value.

a. Simple Classification Does Not Equal Use Valuation

The first error (the ALC’s finding that classification equals soil capability valuation) results from the ALC not appreciating the task accomplished by section 12-43-220(d)(1)(A): the task of setting a four percent assessment ratio for agricultural real property. Rather, the ALC errantly found that the statute does far more. The ALC holds the classification as agricultural real property establishes the soil capability valuation method as being applicable to all aspects of the Property—both land and structures.

On the contrary, the statute says “[a]gricultural real property . . . shall be taxed on an assessment equal to . . . *four percent* of its fair market value for such agricultural purposes” S.C. Code Ann. § 12-43-220(d)(1) (emphasis added). Thus, rather than establishing valuation, the statute raises an obvious valuation question: “Four percent of what?” Therefore, finding property is agricultural real property does not and cannot answer the valuation issue. The ALC wrongly concludes it does.

b. Classifying Property as Agricultural Use Creates a Use Valuation Method for Land Only, Not Structures.

To the extent property being “classified as agricultural real property” is relevant to valuation, the relevance is to land only, not to structures. Section 12-43-220(d)(2)(A) establishes that the soil capability method applies only to land and does nothing to change the taxable status of Structures:

(2)(A) "Fair market value for agricultural purposes", *when applicable to land* used for the growth of timber, is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents of the lands for timber growth or by capitalization of typical net income of similar soil in the region or a reasonable area of the region from the sale of timber, not including the timber growing thereon, *and when applicable to land used for the growth of other agricultural products* the term is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region or a reasonable area of the region, not including the agricultural products thereon. Soil capability *when applicable to lands used for the growth of timber* products means the capability of the soil to produce such timber products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The term, *when applicable to lands* used for the growth of other agricultural products, means the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The term "region" means that geographical part of the State as determined by the department to be reasonably similar for the production of the agricultural products. After average net annual earnings have been established for agricultural lands, they must be capitalized to determine use-value of the property based on a capitalization rate

S.C. Code Ann. § 12-43-220(d)(2)(A) (emphasis added). Likewise, South Carolina Code

Annotated Regulations section 117-1840.2(c)(1) states:

§ 12-43-220(d) of the South Carolina Code of Laws, provides that implementation of the use value procedures for *timberland* and *cropland* . . . shall be the responsibility of the [South Carolina Department of Revenue]. Under this authority, the value's [sic] in this regulation must be used by county assessors for assessment of *cropland* and *timberland*.

(emphasis added).

The General Assembly understands the import of the words it uses in a statute and it intends to use them in their ordinary and common meaning. *Powers v. Fidelity & Deposit Co. of Maryland*, 180 S.C. 501, 186 S.E. 523, 527 (1936). Here, by its plain, unambiguous language section 12-43-220(d)(2)(A), on which the Taxpayer's entire argument hinges, applies only to *land*. As addressed in the quoted statute above, the phrase "when applicable" plainly restricts applying section 12-43-220(d)(2)(A) to *all* of

the real property. Rather, the Assessor is directed to use the soil capability valuation method only “when applicable *to land* used for the growth of timber” and only “when applicable *to land* used for the growth of other agricultural products.” Thus, structures, being real property but not being land, and lacking any exemption must be valued as structures using section 12-37-930, the normal willing buyer and willing seller valuation statute.²⁶

2. *Real Property Definition: The ALC's Finding that Structures and Land Are Real Property Underscores the Requirement to Value Structures at Fair Market Value*

The Parties agree that the Structures are part of agricultural real property. It is curious then that the ALC relies on the Structures' status as real property as a basis for finding in favor of the Taxpayer. (R. p. 7 (“Moreover, the definition of ‘real property’ includes the structures and improvements on the land.”).) The ALC's error is obvious when the statutorily-created taxation principles are viewed in a logical progression:

- (1) all real property is taxable (§ 12-37-210);
- (2) structures are real property (§ 12-37-10(1));
- (3) structures are not exempt merely by being used in agriculture because structures are not personal property (§ 12-37-220(B)(13), (14), & (15));
- (4) structures, being taxable, must be valued apart from agricultural land because agricultural land is valued under the soil capability method, a method patently unsuitable for a structure (§ 12-43-220(d)(2)(A)); and

²⁶ Taxpayer's argument in the instant case has the practical effect of claiming an exemption from *ad valorem* taxation for the Structures. Exempting farm-related structures from taxation in the context of valuing farm property is not novel. In fact, North Dakota provides for just such treatment and has done so for years. *See, e.g.*, N.D. Cent. Code § 57-02-08(15)(a) (“All property described in this section to the extent herein limited shall be exempt from taxation: All farm structures and improvements located on agricultural lands.”). In short, if our General Assembly wanted to exempt farm structures, it could easily do so—it has not.

(5) structures, not being otherwise valued, must be valued under the willing buyer and willing seller method (§ 12-37-930).

Accordingly, the ALC's reliance on structures being real property supports rather than diminishes the correctness of the Assessor's position.

Moreover, the General Assembly knows the difference between the terms "land" and "real property." They are not synonymous terms.

For example, the statutory definition of "real property" lists land apart from structures, demonstrating land and structures are separate concepts unified under one statutory definition. *See* S.C. Code Ann. § 12-37-10(1). Where the term "real property" is absent from a statute (as is the case here because the General Assembly used only "land" in 12-43-220(d)(2)(A)), neither the Taxpayer nor the Assessor may supplement or change the General Assembly's language.

Further, the General Assembly demonstrated it knows the difference between the terms "land" and "real property" because section 12-43-220(d)(2)(A) grants the Assessor authority to value the *land* under a special use value but did not grant such authority for structures on the land either as a specific listing or for "real property" as the broader category. Instead, the General Assembly in section 12-43-220(d)(2)(A) evidences its intention to give farmers relief from rising land prices but gives no evidence the General Assembly intends to exempt from taxation all structures on agricultural real property such as barns, shelters, farm offices, and other structures of significant monetary value.

3. *Fifty Percent Rule: Section 12-43-230(a) Applies to Classification, Rather than Valuation*

The ALC incorrectly interpreted and applied the “50 Percent Rule,” outlined in section 12-43-230(a). The ALC concluded that because more than 50% of the Taxpayer’s Property was agricultural real property, then the Assessor could not apply different valuation methods to the Taxpayer’s land and the Structures on the Taxpayer’s land. (R. pp. 6–7.) In reaching this conclusion, the ALC misinterpreted the application of section 12-43-230(a).

The South Carolina Constitution establishes different classifications of property, including different classifications of real property. *See* S.C. Const. Art. X, § 1. The Constitution also gives the General Assembly the authority to define the property classifications. *Id.* at § 2. In section 12-43-230(a), the General Assembly exercised its authority to define the agricultural real property *classification*. Section 12-43-230(a) does not assign a particular method of *valuing* agricultural real property.

The language of section 12-43-230(a) is plain. After defining the term “agricultural real property,” section 12-43-230(a) states:

In the event at least fifty percent of a real property tract shall qualify as “agricultural real property,” the *entire tract shall be so classified*, provided no other business for profit is being operated thereon.

S.C. Code Ann. § 12-43-230(a) (emphasis added). This statute governs how real property is *classified*. Specifically, it provides that small portions of an agricultural real property tract being used for non-agricultural purposes will not destroy the tract’s overall classification as agricultural real property. *See Jasper County Assessor v. Mead Westvaco Corp.*, 409 S.E.2d 333, 334, 305 S.C. 346, 347–48 (1991). The Assessor has never argued that the Property is not agricultural real property in its entirety, and the Assessor has never argued that the Structures are not part of the agricultural real property. The

Taxpayer's and the ALC's reliance on section 12-43-230(a) is a distraction from the main issue in this case: how agricultural real property is *valued*.

Unlike sections 12-37-930 and 12-43-220, section 12-43-230(a) does not dictate or otherwise prescribe the manner for valuing agricultural real property. The ALC erred as a matter of law in concluding to the contrary.

4. *USDA Table: The USDA Table Referenced in South Carolina Code Annotated Section 12-43-220(d) Does Not Affect the Use Value of Agricultural Real Property*

The ALC erred in concluding that an isolated reference to a federal agency publication in section 12-43-220(d)(2)(B)(ii) supports the Taxpayer's position. (R. p. 7.) The table, which was created by the United States Department of Agriculture, is entitled "Table 1 – Farm Real Estate Values: Indexes of the average value per acre of land and buildings" ("USDA Table"). S.C. Code Ann. § 12-43-220(d)(2)(B)(ii). The USDA Table that the ALC relied on was used to establish a "percentage factor," which under an older version of section 12-43-220(d) was used as a reference to determine the percentage by which cropland and timberland values should have increased each year. *Compare* S.C. Code Ann. § 12-43-220(d)(2)(B)(ii), *with* 1997 S.C. Act No. 106.

Section 12-43-220(d)(2)(B)(ii) does not state that the USDA Table establishes cropland and timberland values. To the contrary, section 12-43-220(d)(2)(A) provides the basic method for determining the value of agricultural lands. The actual values for different types of land are determined by the South Carolina Department of Revenue ("SCDOR"). South Carolina Code Annotated Regulations section 117-1840.2(c)(1) explains:

Section 12-43-220(d)(2) of the [Code] provides that implementation of the use value procedures for timberland and cropland, as provided in Code Section 12-43-220 shall be the responsibility of the Department of

Revenue. Under this authority, the values in this regulation must be used by county assessors for assessment of cropland and timberland.

S.C. Code Ann. Regs. 117-1840.2(c)(1). South Carolina Code Annotated Regulations section 117-1840.2 sets forth several tables showing—based on the different types of cropland and timberland—the values that county assessors must apply to agricultural *lands* (not structures). *See id.* at 117-1840.2(c)(1)–(5). The SCDOR Regulations—not the USDA Table—establish cropland and timberland value. A comparison of the USDA Table and SCDOR’s soil values demonstrates that the per acre values established by each source are drastically different. *Compare* USDA Table, *with* S.C. Code Ann. Regs. 117-1840.2(c)(2)–(3).²⁷

Further, section 12-43-220(d)(2)(B)(i) was amended by Act 106 of 1997. Act 106 amended section 12-43-220(d)(2)(B)(i) to state that land values for tax year 1991 were effective for all subsequent years. *See* 1997 S.C. Act No. 106. The SCDOR’s Regulation 117-1840.2(c)(1) reflects this fact.²⁸

Prior to Act 106 fixing the cropland and timberland values at 1991 levels, the “percentage factor” referenced in section 12-43-220(d)(2)(B)(ii) was a reference to determine how much agricultural land values should increase year-over-year. Since Act 106 froze cropland and timberland levels at 1991 levels, the “percentage factor” derived from the USDA Table is no longer utilized.

²⁷ In fact, the USDA Table’s values are so much higher than SCDOR’s per acre values that had the Assessor applied the values contained in the USDA Table to determine the value of the Property, the Taxpayer’s initial tax bill would have been substantially higher.

²⁸ The SCDOR Regulations state: “Code Section 12-43-220(d)(2)(B)(i) provides that the fair market values for agricultural purposes determined for the 1991 tax year are effective for all subsequent years. Accordingly, the fair market values provided for in this regulation are the values per acre determined for the 1991 tax year and thereafter. These fair market values for cropland and timberland are contained in Sections 2 and 3 of this regulation, respectively.” S.C. Code Ann. Regs. 117-1840.2(c)(1).

The Taxpayer and the ALC placed great weight on the USDA Table's reference to "land and buildings." However, as the above demonstrates, their reliance is unfounded. The ALC erred as a matter of law in extrapolating a taxation theory from a single reference to a publication prepared by a federal agency, especially considering that the ALC's taxation theory was inconsistent with the taxation scheme established by the General Assembly.

D. Summary as to Land Values and Structures

In summary, having identified the use value method for valuing the land, determining the Parcels' "fair market value for agricultural purposes" requires valuing the Structures on the Property. Section 12-37-930—as required by section 12-43-220—dictates that the Assessor determine the fair market value of the Structures on Taxpayer's Property using normal principles of fair market valuation. Doing so not only results in a tax assessment that recognizes the significant tax savings intended by the General Assembly for farmers, but also harmonizes sections 12-37-930 and 12-43-220(d)(2)(A) and gives effect to all statutory language.

Accordingly, the ALC erred in interpreting section 12-43-220(d)(2)(A)—which provides the method for determining the use value for only agricultural *land*—as being the method for valuing both land and structures.

II. Analysis of Errors Committed by the Administrative Law Court When Employing its Legislative History Review of Applicable Statutes.

A. Under Its "Legislative History" Analysis, the Administrative Law Court Erred in its Interpretation of the Valuation of Agricultural Real Property.

The ALC's Order is quite clear: sections "12-43-220 – 230 are unambiguous."²⁹ Although the Assessor agrees the statutes are unambiguous, the Assessor disagrees with the interpretation the ALC finds to be the "plain meaning" of the statutes. And in that light, the ALC found the Assessor's method of valuation "comports with the Department of Revenue's . . . interpretation of Section 12-43-220(d)(2)(A) and the longstanding practice of all the counties in the state,"³⁰ but then chose to reject that interpretation because it concluded that "the plain language of the statute is contrary to the agency's interpretation."³¹

Notwithstanding the ALC's finding that the statute was unambiguous, the ALC treated the applicable statute as though it was ambiguous. Indeed, the ALC explored the legislative history of section 12-43-220(d) as an aid in reaching its decision and stated it was "convinced by the legislative history of the relevant statutes" that the Taxpayer's interpretation was correct.³² Accordingly, as an alternative argument to the Assessor's view that the applicable statutes are plain on their face, if this Court determines an ambiguity exists, the Assessor asserts the ALC's analysis of legislative history is flawed and the ALC erred in disregarding the SCDOR's and the Assessor's longstanding administrative policy.

1. *The ALC Improperly Interprets the Legislative History of Acts 618 of 1976 and 133 of 1979*

The ALC incorrectly interpreted South Carolina Act 618 of 1976. Act 618 altered the language of section 12-43-220(d)(1) and changed the words "agricultural real property" to the words "agricultural land." However, Act 133 of 1979 reversed the

²⁹ (R. p. 6.)

³⁰ (R. p. 5.)

³¹ (*Id.*)

³² (R. pp. 7–10.)

change—the word “land” was replaced with the words “real property.” This change does not affect the issue involved in this case. Section 12-43-220(d)(1) deals with the *assessment ratio* that should apply to agricultural real property. Prior to Act 133 of 1979, the plain language of the statute would have required application of the 4% assessment ratio to *only* agricultural land. By changing the language of § 12-43-220(d)(1) to “real property,” Act 133 made plain that all agricultural real property—including both land *and* structures—must be assessed and taxed. If anything, this change supports the Assessor’s interpretation of the term “fair market value for agricultural purposes.” Had the General Assembly wanted to ensure that § 12-43-220(d)(2)(A) applied to all real property, it could easily have changed the word “land” to “real property” in that section as well. The General Assembly did not choose to make this amendment to section 12-43-220(d)(2)(A).

2. *The ALC Improperly Interprets the Legislative History of Act 199 of 1979*

The ALC’s reliance on South Carolina Act 199 of 1979 is misplaced. Essentially, the ALC reasoned that the General Assembly’s reference to “timber lands” and “crop lands” in Act 199 was merely a reference to two different agricultural uses for land. (R. pp. 9–10.) The ALC concluded that “references to timber or crop ‘land’ in section 12-43-220(d)(2) were attempts to distinguish areas used for growing timber versus other products, and not an expression of the General Assembly’s intent for ‘fair market value for agricultural purposes’ to only apply to land.” (*Id.*)

The ALC’s reasoning regarding Act 199 is unclear. It is not evident how the General Assembly’s reference to different “land” uses—and the General Assembly’s conscious choice to use the term “land” repeatedly in Act 199—shows the General Assembly intended section 12-43-220(d)(2)(A)’s use valuation methodology to apply to

agricultural “real property.” If anything, Act 199’s repeated and consistent references to “land” *support* the Assessor’s interpretation.

The General Assembly could have referenced “agricultural real property” used for the growing crops and timber, but the General Assembly did not. The ALC’s Order should be reversed.

B. Under Its “Legislative History” Analysis, the Administrative Law Court Erred in Failing to Provide Sufficient Deference to the Long Standing Administrative Policy of the Assessor and the South Carolina Department of Revenue.

The Assessor’s interpretation is supported by the long-standing administrative practice of both SCDOR and the Spartanburg County Assessor’s Office. Affidavits submitted to the ALC show that both the Assessor and SCDOR have consistently applied the Appellant’s interpretation for over 30 years.

First, the affidavit of Mr. Sanford Houck that was submitted as an exhibit to the Assessor’s Motion for Summary Judgment explains that SCDOR “oversees county taxation matters” when it carries out its statutory duty of South Carolina Code Annotated section 12-4-520(1) to “formulate and prescribe rules to govern assessors and county boards of tax appeals in the discharge of their duties.” (R. pp. 154–155.) As part of that duty, “as the agency charged with interpreting, administering, and executing South Carolina’s tax laws, [SCDOR] has established and applied an interpretation of the statutes and regulations governing the valuation of agricultural real property.” (R. p. 155 at ¶ 6.) Further, Mr. Houck, a career SCDOR employee of 35 years (all in the property tax area), states:

7. In determining the value of agricultural real property, as defined by section 12-43-230, the Department has interpreted the South Carolina Code to provide two components to the total taxable value.

8. The first component is the agricultural land, which must be valued according to the productive earning capacity of the soil, as stated in § 12-43-220(d)(2)(A).

8. [sic] The Department has interpreted the constitutional provisions and statutes governing agricultural real property valuation as requiring county assessors to determine the fair market value of any structures located on the agricultural real property, utilizing valuation methods applicable to structures located on all real property, including but [sic] limited to § 12-37-930. The fair market value of any structures comprises the second component of the total taxable value.

9. Thus, under the Department's interpretation, the taxable value of agricultural real property is to be determined by valuing both the agricultural land, pursuant to the methods outlined in § 12-43-220(d)(2)(A), and any structures located on the agricultural land. Under the Department's interpretation, the value of any structures located on the agricultural land is added to the value of the agricultural land in order to determine the total taxable value of the agricultural real property.

10. Further, this position has been the Department's consistent interpretation since the statutory enactment of agricultural use values by Act 208 in 1975, as expanded by Act 618 in 1976.

(R. p. 155 at ¶¶ 7-11). Likewise, the Affidavit of Earl N. Alexander II, the Spartanburg County Assessor, shows that Spartanburg has always valued agricultural property based on valuing the land under a use value derived from soil capability and then adding the value of the structures on the land using the willing buyer and willing seller method of section 12-37-930. (R. pp. 157-158.)

Longstanding administrative policies should not be overturned without cogent reasons, and where an administrative interpretation of a statute has been applied for several years without being changed by the General Assembly, despite amendments to the statute, a presumption is created the agency interpretation is correct. *Ryder Truck Lines, Inc. v. S.C. Tax Comm'n*, 248 S. C. 148, 149 S. E. 2d 435, 437 (1966); *Etiwan Fertilizer Co. v. S.C. Tax Comm'n*, 217 S. C. 354, 60 S. E. 2d 682, 684 (1950).

Here, section 12-43-220 has been amended over forty times during its over thirty-year life and no alteration to SCDOR's position³³ or the Assessor's position has been made. Given such an uninterrupted administrative position by both SCDOR and the Assessor's Office, the ALC erred in adopting an inconsistent interpretation.

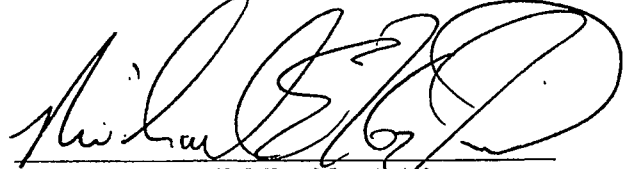
CONCLUSION

The Assessor respectfully asks this Court to reverse the decision of the Administrative Law Court and reinstate the Assessor's valuation of the Property.

[SIGNATURE PAGE FOLLOWS]

³³ In its Order, the ALC cited SCDOR's *South Carolina Property Tax* publication ("Publication") in its analysis. (R. p. 7.) Specifically, the ALC cited section 110.1 of the Publication, which basically restates the definition of "real property" found in section 12-37-10. (*Id.*) Section 110.1 is entirely consistent with the Assessor's position in this case. The Assessor has never argued that the term "real property" does not include both land and structures on the land. However, § 110.1 of the Publication has no effect on the method by which real property is *valued*, which is the sole issue in this case. Put simply, the ALC confused the analysis. The Publication is entirely consistent with the interpretation espoused by the Assessor and SCDOR.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

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

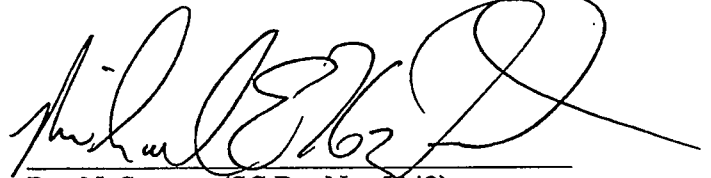
William J. Montgomery, ...Respondent,

v.

Spartanburg County Assessor, ...Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Appellant complies with Rule 211(b),
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v.

Spartanburg County Assessor, ... Appellant.

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STATEMENT OF ISSUES ON APPEAL

- I. WHEN THE ASSESSOR APPEALS AN ADVERSE SUMMARY JUDGMENT RULING, SHOULD THIS COURT APPLY THE SAME SUMMARY JUDGMENT STANDARD, GIVING THE BENEFIT OF THE DOUBT TO THE TAXPAYER, AND STRICTLY CONSTRUING THE TAXATION STATUTES AS WRITTEN?
- II. WHEN THE STATUTES, THE REGULATIONS, AND THE DEPARTMENT OF REVENUE TRAINING MATERIALS INCLUDE THE LAND AND THE BUILDINGS IN THE DEFINITION OF "AGRICULTURAL REAL PROPERTY," IS THE VALUE OF THE BUILDINGS INCLUDED IN THE DEFINITION OF "FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES?"
- III. WHEN THE ASSESSOR HAS NO STATUORY OR REGULATORY DIRECTIVE TO ADD THE FAIR MARKET VALUE OF BUILDINGS TO THE "FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES," DOES HE VIOLATE S.C. CODE ANN. § 12-43-220?

Statement of the Case

Will Montgomery owns a 150 acre farm at 891 Lebanon Rd., Pauline, South Carolina, in Spartanburg County, TMS#: 6-68-00-016.00 ("Parcel," "Farm," "Tract" or "Property"). Montgomery appealed the Property's 2011 tax assessment. The County Board of Assessment Appeals ruled for the County in a split decision. Montgomery appealed to the Administrative Law Court. After cross motions for summary judgment and an extended hearing, the Administrative Law Court ruled for Montgomery (R. pp. 2-10). The Court ruled that the value of the structures on the agricultural real property were already included in, and subsumed by the tract's statutory fair market value for agricultural purposes (Agricultural Use Value).

The Assessor argued that he had a long-standing practice of assessing the full fair market value of all structures on a tract of agricultural real property and then adding that value to the tract's Agricultural Use Value. The Assessor argued that his practice should effectively abrogate the plain language of S.C. CODE ANN. § 12-43-220. The Court rejected that argument:

The language in Sections 12-37-10(1) and 12-43-220-230 is *unambiguous*. *It is clear* that the "*fair market value for agricultural purposes*" includes *land* used for the growth of agricultural products *and* the *buildings or improvements on that land*. South Carolina's statutes, regulations and case law, as well as the DOR's instructional publications, all support the Petitioner's position that structures located on a tract of agricultural real property, which are not used as a "legal residence" or "other business for profit," are classified as agricultural real property and their taxable value is included in the tract's "fair market value for agricultural purposes."

(R. p. 7) (emphasis added). The Court further reasoned, "Finally, I am convinced by the legislative history of the relevant statutes that the General Assembly intended for the value of buildings and improvements to be subsumed within the calculation of [a tract's]

Agricultural Use Value.” (R. p. 7). “Therefore, in 2011 the Agricultural Use Value for Taxpayer’s Property already included the value of the structures on Taxpayer’s Property. The Assessor’s separate assessment and taxation of the Taxpayer’s farm buildings was improper and constituted a double taxation.” (R. pp. 8-9). The Court concluded:

Based on the foregoing, I find that judgment should be entered in favor of the Petitioner. The statutory classification of “agricultural use value” includes the value of the structures located on Petitioner’s property. Therefore, the property that is the subject of this matter should be assessed and taxed based on its “fair market value for agricultural purposes.” That value must be calculated using the formula set forth in S.C. Code Ann. § 12-43-220(D)(2). *Buildings and improvements located on the property may not be separately valued because their value is included in, and subsumed by, the fair market value for agricultural purposes.*

...
The Petitioner’s Property identified as TMS #6-68-00-016.00 shall be assessed and taxed based on its agricultural use value alone *without adding a separate value for the improvements on the Property.*

(R. p. 10) (emphasis added).

The Assessor appealed to this Court.

Facts

The Assessor classified Montgomery's Tract as "agricultural real property." Three buildings sit on the Property: two small barns or sheds (the "barn") and a small mobile home that was once an office for a used car dealership (the "house"). Montgomery purchased the house for \$6,000.00¹, moved it to the Property, and established it as the headquarters for his farm (R. p. 35, par. 5). It has never been anyone's "legal residence" (R. p. 35, par. 8). The house is used as Montgomery's farm office and is the headquarters for his farm operations (R. p. 35, par. 9). The day's farming tasks are often planned there. (R. p. 35, par. 9). It also serves as a meeting place for contractors and workers, and a shelter for the persons who perform farm work and maintenance. (R. p. 35, par. 9). The house contains bunk beds and sometimes houses the people who use the tractors, implements, equipment and tools, who cultivate the soil, who spray the herbicides, who plant the seeds and trees, and who spread the lime and fertilizer as a part of farming operations (R. p. 36, par. 11). The house may also be used overnight one or two nights a year for hunting trips, but Montgomery hasn't spent the night in the house in six or seven years (R. p. 36, par. 15). Montgomery lives nearby in Spartanburg, and he owns and operates a feed and seed store just a few miles down the road in Pauline (R. p. 36, par. 13). Accordingly, there is little need for him to use the house except for when he is conducting farming operations. (R. p. 36, par. 13). Montgomery estimated that more than 98% of the times he stayed at the house he was actively farming (R. p. 36, par. 12).

¹ Even though Taxpayer paid \$6,000 for this building, the Assessor has assessed its "fair market value" at \$33,000.

The farm's structures are used to store farming equipment, tools, ATV's used in farm operations, spraying equipment, spreaders, tractors, tractor and tractor implement parts and manuals, fertilizer, lime, seed, herbicides, and other supplies used in farming operations (R. p. 35, par. 10). This is where farming equipment is cleaned, repaired, refueled, serviced, and otherwise maintained. (R. p. 35, par. 10). The buildings are predominantly used for agricultural activities. (R. p. 36, par. 16). These structures have not been used for some other business for profit, but rather serve functions related to the agricultural use of the real estate (R. p. 35, par. 8).

The Assessor has agreed that the majority of the Parcel is being used for agricultural purposes—primarily forestry (R. p. 35, par. 7). Initially, the Assessor valued the vast majority of the Tract using its statutory "fair market value for agricultural purposes" or Agricultural Use Value, but the Assessor improperly carved out and separately assessed the structures and 1 acre surrounding the structures at 6% percent of their "fair market value" (R. p. 35, par. 6). Prior to the hearing, the Assessor reassessed the Tract's *entire* 150.4 acres at four percent (4%) of its "fair market value for agricultural purposes," but continued his practice of assessing the buildings at four percent (4%) of their "fair market value," and adding this amount to the Tract's statutory "fair market value for agricultural purposes" (R. p. 35, par. 7).

Montgomery contends that the value of these structures is subsumed in the statutory calculation of the Property's agricultural use value, and separately assessing the structures is contrary to the plain language of the statutes.

ARGUMENT

- I. **WHEN THE ASSESSOR APPEALS A SUMMARY JUDGMENT RULING, THE COURT SHOULD APPLY THE SUMMARY JUDGMENT STANDARD, GIVE THE BENEFIT OF THE DOUBT TO THE TAXPAYER, AND STRICTLY CONSTRUE THE TAXATION STATUTES AS WRITTEN.**
 - A. **WHEN THE ASSESSOR APPEALS AN ADVERSE RULING ON SUMMARY JUDGMENT, THE COURT SHOULD APPLY THE SAME SUMMARY JUDGMENT STANDARD.**

This is a case of statutory interpretation. Because the Administrative Law Court granted summary judgment to Montgomery, this Court reviews that decision with the standard of review for summary judgment rulings. See Savannah Riverkeeper v. SCDHEC, 400 S.C. 196, 205, 733 S.E.2d 903, 907 (2012). Summary Judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCp. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 SC 440, 452, 548 S.E.2d 868, 874 (2001).

- B. **WHEN THE COURT CONSTRUES TAXATION STATUTES, IT SHOULD GIVE THE BENEFIT OF THE DOUBT TO THE TAXPAYER.**

Second, our Supreme Court and the United States Supreme Court have repeatedly held that in construing taxation statutes, the *taxpayer* is entitled to the benefit of the doubt, and the statutes must be strictly construed *against* the taxing authority.

Generally, a court must apply the rules of statutory interpretation to resolve the ambiguity and discover the intent of the legislature. *However, [i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt.* [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.

Alltel Communications, Inc. v. SCDOR, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012)

(some internal citations omitted) (emphasis added).

“[T]he ALC referenced the settled principle that any substantial doubt *in the application of a tax statute must be resolved in favor of the taxpayer*. . . . see also SCANA Corp. v. S.C. Dep’t of Revenue, 384 S.C. 388, 394 n. 3, 683 S.E.2d 468, 471 (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 Communications, Inc. v. SCDOR, 399 S.C. 313, 318, 731 S.E.2d 869, 872 (2012).

In construing the statutes under which the tax has been assessed, our Supreme Court has pointed out in numerous cases that *the taxpayer must receive the benefits in cases of doubt in the enforcement of tax statutes*. . . . And this likewise is the rule of construction laid down by the Supreme Court of the United States in the case of United States v. Merriam, 263 U.S. 179, 44 S.Ct. 69, 68 L.Ed. 240, 29 A.L.R. 1547, where that court said that in statutes levying taxes, the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used, and if the words are doubtful, the *doubt must be resolved against the government and in favor of the taxpayer*.

Cooper River Bridge, Inc. v. S.C. Tax Comm’n, 182 S.C. 72, 76, 188 S.E. 508, 509–510 (1936) (emphasis added). See also, S.C. Nat’l Bank v. S.C. Tax Comm’n, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989) (“In the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt.”); both cited in Charleston Cnty. Assessor v. LMP Properties, Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct. App. 2013).

C. THE COURT SHOULD STRICTLY CONSTRUE TAXATION STATUTES AS WRITTEN.

Third, courts must interpret the taxation statutes as written, and they are not free to amend the statutes or fill in the gaps.

Courts are “confined to what the statute says, not what it ought to say, for we have no right to modify a statute’s application under the guise of judicial interpretation. In other words, when a statute is clear on its face, it is

improvident to judicially engraft extra requirements to legislation just because doing so may further the intent behind the statute.”

Grier v. AMISUB of South Carolina, Inc., 397 S.C. 532, 540, 725 S.E.2d 693, 698 (2012) (citations omitted). Courts “have no legislative authority and cannot vary a statutory scheme and this is true no matter how logical the basis of the variance.” Benat v. State Farm Mut. Ins. Co., 286 S.C. 132, 134, 333 S.E.2d 57, 58 (Ct. App. 1985). “[I]t is beyond th[e] Court’s power to effect a change in the statutes enacted by the Legislature.” The “Court does ‘not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly.’” Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007) (quoting Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996)) (other citations omitted).

“In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” Lexington Law Firm v. S.C. Dep’t of Consumer Affairs, 382 S.C. 580, 588, 677 S.E.2d 591, 595 (2009) (citations omitted). “[L]egislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” *Id.*; see also, Rabbit Point Farm Limited v. Charleston County Assessor, No: 97-ALJ-17-0501-CC, 1998 WL 85460 (S.C. Admin. Law Ct. 1998).

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 a legislature says in the *text of a statute* is considered the best evidence of the legislative intent or will.

Therefore, the courts are bound to give effect to the expressed intent of the legislature.

If a statute's terms are clear and unambiguous, they must be taken and understood in their *plain, ordinary and popular sense*, unless it fairly appears from the context that the Legislature intended to use such terms in a technical or peculiar sense. The prime object, of course, in the construction of a statute is to ascertain and give effect to the legislative intent.

Media Gen. Communications, Inc. v. S. Carolina Dep't of Revenue, 388 S.C. 138, 147-48, 694 S.E.2d 525, 529-30 (2010) (citations omitted) (emphasis added).

II. THE STATUTES, REGULATIONS, AND DEPARTMENT OF REVENUE PUBLICATIONS, CLEARLY INDICATE THAT "FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES" INCLUDES THE VALUE OF THE STRUCTURES.

South Carolina's Constitution and statutes require certain properties to be assessed as "agricultural real property." South Carolina statutes require that "agricultural real property" be valued and assessed at its "fair market value for agricultural purposes," also known as "Agricultural Use Value," which is statutorily set based on "the productive earning power based on soil capability." *See* S.C. CODE ANN. § 12-43-220. The South Carolina Department of Revenue establishes categories of soil and classifications. Counties must use these categories and classifications when assessing the value of agricultural real property.

South Carolina's statutes, regulations and case law, as well as the Department of Revenue's instructional publications, all demonstrate that structures located on a tract of agricultural real property that are not used as a "legal residence" or "other business for profit," are classified as agricultural real property and their taxable value is included in the

tract's "fair market value for agricultural purposes."² Therefore, the value of Montgomery's farm structures was already included in the Parcel's Agricultural Use Value, and it was improper for the Assessor to tax them separately at "fair market value."

The issue in this case is whether structures on a tract of agricultural real property may be assessed and taxed at full "fair market value," separately from the property on which they sit; or whether the taxable value of the structures is already included in and subsumed by the tract's "fair market value for agricultural purposes" referenced in S.C. CODE ANN. § 12-43-220(d).

A. The South Carolina Constitution Requires a Separate Method of Taxation for Agricultural Real Property.

The South Carolina Constitution requires certain properties to be taxed as "agricultural real property." "Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to: (A) four percent of its value *for such purposes*." S.C. CONST. art. X, § 1 (emphasis added); *see also* S.C. CODE ANN. § 12-43-220(d)(1)(A).

B. The South Carolina Code and Regulations and SCDOR Instructional Publications' Definitions of "Agricultural Real Property" Include Structures.

Under South Carolina law, if at least 50% of a tract of real property is used for agricultural purposes, the entire tract must be classified and assessed as "agricultural real property" and the Assessor may not carve out and separately assess a small portion of the Tract (such as the structures attached thereto), even if it is not being used strictly for

² The Assessor suggests that Montgomery's argument exempts the structures from taxation (Appellant's Brief, p. 11 n. 26). That is not Montgomery's argument; rather the valuation of the structures is included in the fair market value of the tract for agricultural purposes.

agricultural purposes. S.C. CODE ANN. § 12-43-230; Jasper County Tax Assessor v. Westvaco Corp., 305 S.C. 346, 347-48, 409 S.E.2d 333, 334 (1991). Improvements such as a farmhouse, barn, or outbuilding do not change the essential agricultural character of a tract of agricultural real property. Each is part and parcel of a farming enterprise. See Rabbit Point Farm Limited, No: 97-ALJ-17-0501-CC, at *3, 1998 WL 85460 (S.C. Admin. Law Ct. 1998).

There are only two exceptions to this rule: (1) “legal” residences of the taxpayer or his immediate family, and (2) when the real property is being used for some other “business for profit.” See S.C. CODE ANN. §§ 12-43-230, 12-43-220(c)(1); S.C. CODE REGS. 117-1780.1 – 117-1780.3. These two statutory exceptions establish the only circumstances under which part of an agricultural real property tract can be assessed and taxed at its full fair market value. The Parties agree that neither exception applied to Montgomery’s Property in 2011. Besides the two noted exceptions, the statutory method of classifying and valuing a tract of agricultural real property is comprehensive and includes all improvements located on that tract of agricultural real property. The Assessor has departed from the statutes by taxing the Tract at its Agricultural Use Value, and then carving out, assessing, and taxing all structures located on the Tract at full “*fair market value*.” This amounts to an improper double taxation.

The statutory definition of “real property” (and likewise “agricultural *real property*”) includes all structures attached thereto. “‘Real property’ shall mean not only land, . . . but also *all structures* and other things therein contained or annexed or *attached thereto* which pass to the vendee by the conveyance of the land.” S.C. CODE ANN. § 12-37-10 (1) (emphasis added); (R. pp. 183-205) and S.C. CODE REG. 117-1700.1.

South Carolina statutes require properties classified as "agricultural real property" be valued and assessed at a statutory value called its "fair market value for agricultural purposes" or "Agricultural Use Value." S.C. CODE ANN. § 12-43-220(d). This statutory value includes the value of structures on the agricultural real property.

As noted above, the Assessor initially classified the house and one (1) acre as "other property," then assessed and taxed them at 6% of their full fair market value. The Assessor's historical treatment of the farmhouse or office, the barns and one (1) acre differently from the rest of the Parcel, and his assessment at 6% of their full fair market value was improper. The Assessor now agrees that the entire Parcel is properly classified as "agricultural real property," which should be taxed at 4% (Appellant's Brief, p. 2).

Section 12-43-230 defines "agricultural real property."

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

S.C. CODE ANN. § 12-43-230 (emphasis added).

South Carolina's statutes repeatedly indicate that agricultural real property includes the attached structures.³ South Carolina's Regulations do so as well. The Regulations also

³ For example:

support the same statutory scheme for classification and valuation of agricultural real property.⁴ Like the statutes, the regulations hold that agricultural real property includes attached structures, and that the values of the structures on agricultural real property are subsumed within the “fair market value for agricultural purposes.” They are not valued and taxed separately.

Publications by the South Carolina Department of Revenue follow the statutes and regulations, and support the analysis of the taxpayer, Montgomery. The South Carolina Department of Revenue publishes a guide for South Carolina Assessors entitled *South Carolina Property Tax* (2010) (“the D.O.R. Guide” or the “Guide”) (R. pp. 45-139). The Guide and similar publications contain “procedures” or “instructions” that the Department of Revenue is required to issue, and county assessors must comply with these procedures and instructions. See S.C. CODE ANN. § 12-4-560; § 12-60-1720. SCDOR also publishes the Guide on its website.

-
- (1) structures used to store crops (such as silos or granaries, hay barns, tobacco barns and drying sheds, or other crop storage buildings or structures), S.C. CODE ANN. § 12-43-230(a);
 - (2) structures used to raise, store, feed, breed or manage livestock (such as poultry houses, hog sties, stables or barns), *Id.*;
 - (3) structures used in the preparation of farm products – particularly those for dairying (such as milking parlors, and other milk or dairy product production and storage facilities), *Id.*;
 - (4) structures used as free *housing* for farm laborers, *Id.*;
 - (5) dockside *facilities*, S.C. CODE ANN. § 12-43-220(d)(5); and,
 - (6) structures used in agritourism such as roadside stands, wineries, education barns, farm schools, farm stores, on-farm fee fishing and hunting, and dude ranches. S.C. CODE ANN. § 12-43-233.

⁴ See S.C. CODE REG. 117-1700.1 (real property and agricultural real property include the structures attached thereto); S.C. CODE REG. 117-1780.1-1780.2 (defining what real property qualifies as agricultural real property); S.C. CODE REG. 117-1780.2, -1780.3 (if at least 50% of a tract qualifies as “agricultural real property” the entire tract shall be classified as agricultural real property); S.C. CODE REG. 117-1780.2, -1780.3 (any portion of an agricultural real property tract that is used for a legal residence or for some “other business for profit” shall be excluded from the agricultural real property classification); S.C. CODE REG. 117-1840 (providing tables of the values for the fair market value for agricultural purposes of agricultural real property).

The Guide and other SCDOR publications follow the same analysis for classification and valuation of agricultural real property.⁵ Montgomery provided the Administrative Law Court with additional SCDOR materials specifically prepared and dedicated to the topic of valuing agricultural real property as part of county assessor continuing education seminar materials. S.C. DEP'T. OF REVENUE (PROPERTY DIV.), VALUATION OF AGRICULTURAL PROPERTY IN SOUTH CAROLINA (2010) (hereinafter "Valuation of Ag. Property") (R. pp. 183-205). Similar to the Guide, this publication follows the process of assessing agricultural real property agreeing with the Taxpayer's position.⁶

⁵ See (R. pp. 45-139) § 110.1 (2010) (real property and agricultural real property include the structures attached thereto); D.O.R. Guide § 212 (real property used for agricultural purposes is classified as agricultural real property); D.O.R. Guide § 222.2 (defining what real property qualifies as agricultural real property); D.O.R. Guide § 212 (agricultural real property shall be assessed and taxed at 4% of its fair market value for agricultural purposes); D.O.R. Guide §§ 212, 222 ("fair market value for agricultural purposes" is a "special valuation" that applies to agricultural real property); D.O.R. Guide § 222.1 ("fair market value for agricultural purposes" is based on the productive earning capacity of the soil); and, D.O.R. Guide § 222.2 (agricultural real property includes dockside facilities and free housing for farm laborers).

⁶ See VALUATION OF AG. PROPERTY (R. pp. 183-205), 3-5 (defining what real property qualifies as agricultural real property, and specifying agricultural real property includes dockside facilities and free housing for farm laborers); *Id.* at 3 (if at least 50% of a tract qualifies as "agricultural real property" the entire tract shall be classified as agricultural real property); *Id.* at 15-17 (agricultural real property shall be assessed and taxed at 4% of its fair market value for agricultural purposes); *Id.* at 17 ("fair market value for agricultural purposes" is based on the productive earning capacity of the soil); *Id.* at 20-21 (agricultural real property receives a "special assessment").

C. The Historical Development of S.C. CODE ANN. § 12-43-220 Demonstrates that Agricultural Real Property's "Fair Market Value for Agricultural Purposes" Includes Not Only the Value of Land, But Also the Value of the Structures Located There.

- 1. The General Assembly amended S.C. CODE ANN. § 12-43-220 explicitly to include the value of farm structures in a tract's "fair market value for agricultural purposes".**

Agricultural real property is taxed at its "fair market value for agricultural purposes" or Agricultural Use Value. The General Assembly defines "fair market value for agricultural purposes," how it is applied, and how it must be calculated in S.C. CODE ANN. § 12-43-220(d)(2). Agricultural Use Values were first enacted in 1975 by Act 208 §2(d) (R. pp. 206-215).⁷ Similar to today's § 12-43-220(d), Act 208 provided a tax break for agricultural "real property". However, Act 618 of 1976 (R. pp. 219-221), § 5 amended Act 208 of 1975, §2(d) changing the statutory language from "agricultural *real property*" to "agricultural *land*."⁸ Act 618 also added what is now §12-43-220(d)(2)(A), but it did not contain references to "land" for growth of timber until three years later.

⁷ 1975 Act 208, §2(d) stating in part: "(d) Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to four percent of its fair market value for such purposes..."

⁸ 1976 Act 618, §5 (underline and 2nd bold added) stated:

SECTION 5. Tax assessment on agricultural land. – Section 2(d) of Act 208 of 1975 is amended to read:

"(d)(1) Agricultural land which is actually used for such agricultural purposes shall be taxed on an assessment equal to

(A) Four percent of its fair market value for such agricultural purposes for owners or lessees who are individuals or partnerships and certain corporations which do not:

....
(2) 'Fair market value for such agricultural purposes' is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of like soil in the locality or a reasonable area of the locality, not including the agricultural products thereon. Soil capability means the capability of the soil to produce typical agricultural products of the area considering any natural deterrents to the potential capability of the soil as of the current assessment date.

The General Assembly then changed the reference from agricultural "*land*" back to agricultural "*real property*" in Act 133 of 1979, §2 (R. p. 182).⁹

For a period of three (3) years in 1976-1978, South Carolina's agricultural real property valuation statute (what is now §12-43-220(d)) specifically applied only to agricultural "*land*." However, in 1979 the General Assembly purposefully amended §12-43-220(d)(1), so that the agricultural assessment value, the "fair market value for agricultural purposes" would apply *not only* to agricultural "*land*," but also to agricultural "*real property*" which includes *both the land and all structures*. The change from agricultural "*land*" to "*real property*" was the only change made to §12-43-220(d)(1).

The Assessor's contention that a tract's Agricultural Use Value only applies to agricultural "*land*" (Appellant's Brief, pp. 9-11) may have been valid from 1976-1979. But by enacting Act 133 of 1979, the General Assembly decisively changed the language of §12-43-220(d) so that the property valuation "fair market value for agricultural purposes" would apply to and include not only land, but also all its structures. This portion of §12-43-220(d)(1) has not changed since it was amended by Act 133 of 1979. Accordingly, in

⁹ 1979 Act 133 stated:

No. 133

An Act To Amend Sections 12-43-220 And 12-43-230, Code Of Laws Of South Carolina., 1976, As Amended, Relating To Equalization And Reassessment Program For Real Property, And To The Definition Of The Term "Agricultural Real Property" For Purposes Of Tax Assessment, So As To Change The Reference From Agricultural Land To Agricultural Real Property And To Include Property Used To Provide Free Housing For Farm Laborers In The Definition Of "Agricultural Real Property".

...

Taxing of real property

SECTION 2. Subitem (1) of item (d) of Section 12-43-220 of the 1976 Code, as last amended by Act 438 of 1978, is further amended by striking the word "land" on line one and inserting "real property". When amended, the subitem shall read:

"(1) Agricultural real property which is actually used for such agricultural purposes shall be taxed on an assessment equal to:

(A) Four percent of its fair market value for such agricultural purposes"

(emphasis added)

2011 the Agricultural Use Value for Montgomery's Property already included the value of the structures on Montgomery's Property. The Assessor's separate assessment and taxation of Montgomery's barn, non-residential house was improper and constituted a double taxation.

The Assessor claims the General Assembly has acquiesced in the DOR and County's longstanding administrative practice of assessing farm structures separately at full "fair market value" (Appellant's Brief, pp. 19-21). He reasons that if the General Assembly was dissatisfied with how the County and DOR have interpreted the agricultural real property valuation statutes, it could have provided an alternate method of valuation in one of the many amendments to §12-43-220 since its enactment in 1975 (Appellant's Brief, p. 21). The General Assembly did exactly that with Act 133 of 1979 when it amended §12-43-220(d) to clarify that agricultural "real property" (which includes both land and buildings) rather than just agricultural "land," would be assessed using "fair market value for agricultural purposes."¹⁰

2. **References to "land" in reference to growth of timber or crops in § 12-43-220(d)(2) did not express the General Assembly's intent to exclude building values from the definition of "fair market value for agricultural purposes."**

The Assessor asserts that the multiple references to "fair market value for agricultural purposes" applying to "land" used for growth of timber or other agricultural products in §12-43-220(d)(2) is proof that Agricultural Use Value only applies to land, and does not include the structures thereon (Appellant's Brief, pp. 9-11). The frequent use of

¹⁰ See also, Montgomery v Spartanburg County Assessor, No. 13 ALJ-17-0104-CC (S.C. Admin. Law Ct. 2013), at *6-7. (R.pp.7-8).

the term "land" in §12-43-220(d)(2) was added by Act 199 of 1979, Part II, §23. A review of Act 199 shows the General Assembly included an introductory paragraph in Act 199, § A identifying South Carolina's substantial timber production, and expressing the need to distinguish property used for farming trees from property used to grow other crops. The introductory paragraph states as follows:

A. The General Assembly *finds* that a *substantial part* of the lands used for the growth of agricultural products in this State is in fact *used for the growth of timber*. The remainder of land used for the growth of agricultural products is applied to the growth of many other diverse agricultural products. *Because of this situation* the General Assembly finds that the *income from timberlands should be used to determine the use value of such lands and income of lands used to produce other agricultural products should be used to determine the use value of those lands*. The General Assembly further finds that a locality may appropriately include more than one county and be designated as a region.

(R. p. 226) (emphasis added).

The General Assembly determined that property used for timber growth should be valued differently from property used to produce other agricultural products. Therefore, references to timber or crop "land" in §12-43-220(d)(2) were attempts to distinguish areas used for growing timber from areas used to grow other products, and not an expression of the General Assembly's intent to define "fair market value for agricultural purposes" as applying only to land.

Furthermore, subsequent to adding the references to "land" in 1979, the General Assembly specifically included a building component in the statutory method for calculating Agricultural Tax Value in Act 558 of 1988, §1. The subsequent addition of a building component to the method for calculating "fair market value for agricultural purposes" reconfirms the General Assembly's intent to have the value of farm buildings included in a tract's Agricultural Use Value. See § S.C. CODE ANN. § 12-43-

220(d)(2)(B)(i-ii) (including the USDA Table 1 – “Value per acre of land and buildings”) See (R. pp. 39-42).

D. “Fair Market Value for Agricultural Purposes” Specifically Includes a Building Component.

South Carolina statutes dictate how “fair market value for agricultural purposes” must be calculated. The statutory method for calculating “fair market value for agricultural purposes” is set out in § 12-43-220(d), and it calculates the value of farm land and buildings together. Section 12-43-220(d)(2)(B)(ii) prescribes how “fair market value for agricultural purposes” must be calculated, stating “[t]he percentage factor provided in this item is derived from the most recent edition of the United States Department of Agriculture publication ‘AGRICULTURAL LAND VALUES AND MARKETS’, specifically, from ‘*Table 1--Farm Real Estate Values: Indexes of the average value per acre of land and buildings . . .*’ as listed for this State.” S.C. CODE ANN. § 12-43-220(d)(2)(B)(ii) (emphasis added) (R. pp. 39-42).

Section 12-43-220(d)(2)(B)(i) states that the “fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years.” Therefore, the values contained in Table 1 of the 1991 USDA publication applied in 2011, and shall apply from now on.

In addition to Table 1 referenced above, the 1991 USDA publication *Agricultural Land Values and Markets* also contained a nearly identical table, *Table 5.—Average per acre value of farmland, by State* (R. p. 43), which included the average value per acre of *only* farmland. Had the General Assembly intended to tax the buildings separately from the land in the calculation of “fair market value for agricultural purposes,” it could have referenced Table 5 (which excluded building values) instead of Table 1 (which included

the values of both land and buildings) in § 12-43-220(d)(2)(B)(i), but the General Assembly referenced Table 1, land *and buildings*. Under S.C. CODE ANN. § 12-43-220(d), assessors were specifically directed to include a building value component when calculating the 1991 “fair market value for agricultural purposes,” and these same 1991 Agricultural Use Values still apply today.

E. The 2007 South Carolina Real Property Valuation Reform Act Confirms that the General Assembly Does Not Intend for Agricultural Structures to be Valued Separately at Their Full Fair Market Value.

The 2007 South Carolina Real Property Valuation Reform Act (the “Reform Act”) verifies that the General Assembly never intended for structures and improvements to be assessed separately from the agricultural property on which they sit. *Id.* at S.C. CODE ANN. § 12-37-3110.

The Reform Act mandated that the “fair market value” of *improvements and additions* to property be added to the value of the real property on which they sit. S.C. CODE ANN. § 12-37-3140(A)(2). However, § 12-37-3170 specifically provided that **nothing** in the Reform Act would affect the statutory provisions which define and apply to “fair market value for agricultural purposes.” The Reform Act would apply only to the imposition of rollback taxes when real property is *changed from* agricultural use. *See* S.C. CODE ANN. §§ 12-37-3170, and 12-37-3150(9). The General Assembly specifically *exempted* from the Reform Act improvements to *agricultural* real property.

Had the General Assembly intended for the value of structures and other improvements located on a tract of agricultural real property to be assessed and taxed separately from the Agricultural Use Value of the agricultural real property on which they sit (as the Assessor contends), *they would not have specifically exempted agricultural real*

property from the Reform Act. Under Assessor's scenario, there would be no reason to exempt agricultural structures from the Reform Act. Exempting farm improvements from the Reform Act's provisions also contradicts the Assessor's claim that the General Assembly has supported or acquiesced in Assessor's improper valuation of agricultural real property.

F. Several Administrative Law Court Decisions Have Held that the Value of Structures on Agricultural Real Property are Included in the Property's Agricultural Use Value.

On three other occasions, taxpayers have presented this same issue to the Administrative Law Court. In three similarly clear cases, three other judges in the Administrative Law Court have ruled that the value of the taxpayer's structures located on tracts of agricultural real property was included in the property's "fair market value for agricultural purposes" or Agricultural Use Value. Dotsy, LLC v. Greenwood County Assessor, No. 13-ALJ-17-0061-CC (S.C. Admin. Law Ct. 2014); Smith et al. v. Clarendon County Assessor, No.: 11-ALJ-17-0191-CC, 2011 WL 7119293 (S.C. Admin. Law Ct. 2011); and Rabbit Point Farm Limited v. Charleston County Assessor, No: 97-ALJ-17-0501-CC, 1998 WL 85460 (S.C. Admin. Law Ct. 1998).

1. Dotsy, LLC v. Greenwood County Assessor

Dotsy case similar to Montgomery. Dotsy is the owner of a family farm in Greenwood County, consisting of five tracts. Two of the tracts had houses on them and multiple barns storage sheds and outbuildings. Neither house had been anyone's legal residence for 20 years. Nevertheless, the assessor had carved out the two houses and 10 acres on which the houses sat, classified them as "other real property," and taxed them at 6% of their fair market value. After Dotsy appealed, the assessor agreed that all of the real

property should be considered agricultural real property. The assessor sought to tax the land pursuant to the agricultural use value and add to that figure the fair market value of the buildings situated on the land. Like Montgomery, Dotsy contended that the Agricultural Use Value included the land and the structures. The assessor argued that she had used her method of taxation for many years. The Court was not persuaded.

While a court typically defers to an agency's construction of its own regulation, where the plain language of the statute is contrary to the agency's interpretation, the Court will reject its interpretation. Brown v. S.C. Dept. of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 341 S.C. at 85, 533 S.E.2d at 581 (2000) (citations omitted). *The language in Sections 12-07-10(1), 12-43-220 and 12-43-230 is unambiguous. It is clear that the "fair market value for agricultural purposes" includes land used for the growth of agricultural products and the buildings or improvements on that land.* South Carolina's statutes, regulations and case law, as well as the DOR's instructional publications, all support Dotsy's position that *structures located on a tract of agricultural real property, which are not used as a "legal residence" or "other business for profit," are classified as agricultural real property and their taxable value is included in the tract's "fair market value for agricultural purposes."*

Dotsy, LLC v. Greenwood County Assessor, No. 13-ALJ-17-0061-CC, * 4-5 (SC Admin. Law Ct., 2014) (emphasis added).

2. Smith et al. v. Clarendon County Assessor

The Smith case similarly involved the classification, valuation, and assessment of two houses previously used as residences, as well as multiple barns, sheds and outbuildings. The assessor had assessed all structures at their full fair market value and then added it to the Agricultural Use Value of the Smiths' property. Smith et al. v. Clarendon County Assessor, No.: 11-ALJ-17-0191-CC, 2011 WL 7119293 (S.C. Admin. Law Ct. 2011). Relying on § 12-43-230, the Administrative Law Court found the majority of the taxpayers' property was used for agricultural purposes and qualified as agricultural

real property, and therefore, the entire property “both land and structures” must be classified and assessed as “agricultural real property.” Smith, 2011 WL 7119293, at *2-3.

Like the Spartanburg Assessor, the Clarendon County Assessor argued that the Smiths’ structures must be valued at their “true money value” or “fair market value” and then added to the agricultural use value. However, the Smith court held that although “fair market value” is the usual method of valuation for general real and personal property,” the *only* time that “fair market value” should be applied to agricultural real property is when establishing the property’s value for the assessor’s own records in case the property became subject to roll-back taxes. *Id.* at *3.

The Smith court agreed with the taxpayers that property properly classified as agricultural real property (including structures) must be assessed at its “fair market value for agricultural purposes,” and a tract’s “fair market value for agricultural purposes” already includes the value of the structures located thereon. *Id.* at *3-4. The Smith court concluded its decision by holding,

The statutory classification of ‘*agricultural use value*’ clearly includes the *value of the structures* located on Petitioners’ property Therefore, the properties that are the subject of this matter should be *assessed and taxed based on their “fair market value for agricultural purposes.”*

Smith, 2011 WL 7119293 at *4 (emphasis added). The Administrative Law Court later affirmed its holding in its Order on the Assessor’s Motion for Reconsideration. “To properly rule on the issues contested, the Court was required to first determine whether certain structures should be classified as part of the agricultural real property, and secondly, whether these structures should be *assessed and taxed based on ‘fair market value for agricultural purposes.’*” (R. p. 231). The Administrative Law Court ruled for Taxpayers on both points: “In the Order addressing the Motion and Cross-Motion for Summary

Judgment, the Court agreed with Taxpayer and ruled that '*agricultural use value*' includes the value of the structures located on Taxpayers' property." (R. p. 231).

3. **Rabbit Point Farm Limited v. Charleston County Assessor**

Thirteen years prior to the Smith case, the ALC held in Rabbit Point Farm Limited v. Charleston County Assessor, No: 97-ALJ-17-0501-CC, 1998 WL 85460 (S.C. Admin. Law Ct. 1998) that the structures and improvements on a tract of agricultural real property were classified as agricultural real property and must be assessed and taxed as part of the property's fair market value for agricultural purposes. In Rabbit Point Farm all of the taxpayer's 300.3 acre parcel had been classified and assessed as agricultural real property except for one acre containing a house with an attached wooden ramp leading to a dock and boat house. The assessor had assessed the one acre and the house with its improvements at 6% of their fair market value, and the taxpayer appealed. *Id.* at *2.

The Assessor asserted the construction of the house and other improvements changed the character of the property, and disqualified it from the agricultural classification. Rabbit Point Farm, 1998 WL 85460, at *3. The Administrative Law Court disagreed, finding that the house was used in conjunction with the agricultural usage of the property and primarily for the maintenance and upkeep of the farm and also served as a farm office. The Court determined that the use of the house was incidental to the farm business conducted there. *Id.*

The Court construed the applicable statutes and regulations by their plain and ordinary meaning without resorting to subtle or forced construction, and found the taxpayer's house, which had not been used as a legal residence, was:

an improvement similar to a barn or outbuilding, which does not change the essential agricultural character of the property. Each is part and parcel of a

farming enterprise. . . . Even though the construction of a building or house on a property constitutes an improvement to the real property, unless it changes the character of the property and the usage of the property, . . . *the property retains its agricultural classification for tax purposes.*

Id. (emphasis added).

The Court ordered, “the Taxpayers’ property containing 300.3 acres, *specifically including the farm house and attachments* . . . must be classified as agricultural real property” and assessed as such. Rabbit Point Farm, 1998 WL 85460, at *4 (emphasis added).

In summary, each time this issue has come before the administrative law court, the court has ruled in favor of the taxpayer and held that South Carolina's taxation laws prohibit the separate valuation and taxation agricultural real property and the structures located on it. The Administrative Law Court in Montgomery, Dotsy, Smith and Rabbit Point Farm each held that even improvements not strictly associated with agriculture did not affect the character of the agricultural real property; they remained classified as agricultural real property, and the value of the improvements was included in and subsumed by the property’s fair market value for agricultural purposes.

Montgomery’s Parcel of agricultural real property contains buildings that are used in conjunction with his farming operations. No improvement on Montgomery’s Parcel has changed the agricultural character of the Property. Montgomery’s structures are part of the agricultural real property, and their value is subsumed by and already included in the calculation of the Parcel’s Agricultural Use Value or “fair market value for agricultural purposes.” Therefore, it was improper for the Assessor to separately value and assess Montgomery’s structures at full “fair market value” and then add that value to the Tract’s “fair market value for agricultural purposes.” Because the buildings’ values were already

included in the property's agricultural use value, their separate assessment constituted an improper double taxation.

III. WHEN THE STATUTES, REGULATIONS, AND DEPARTMENT OF REVENUE PUBLICATIONS DO NOT AUTHORIZE THE ASSESSOR TO ADD THE FAIR MARKET VALUE OF BUILDINGS TO THE "FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES," HE VIOLATES THE PLAIN LANGUAGE OF S.C. CODE ANN. § 12-43-220.

A. No Statutory Authority Exists Directing or Implying That Agricultural Structures Must or May Be Assessed at Full Fair Market Value Separately from the Agricultural Property Where They Sit.

The Assessor cites *no direct statutory authority* specifically requiring, directing or allowing his method of separately assessing and taxing all structures and improvements on tracts of *agricultural* real property at their full "fair market value," as opposed to the method required by statute: "fair market value for agricultural purposes."

No method of determining tax liability is valid unless authorized by statute and assessed in conformity to its terms. Accordingly, tax assessments may only be made in strict conformity with taxation statutes. . . . *A tax assessment statute will not be extended by construction to things not directly named or described in the statute.*

84 C.J.S. *Taxation* § 530 (emphasis added). The Assessor fails to identify any statutory authority providing that structures on agricultural real property shall be assessed as anything other than part of that tract's Agricultural Use Value. Not only does the Assessor fail to identify statutory authority allowing his scheme of assessment, he cites *no other legal authority* requiring or directing his assessment method. The Assessor's method of determining Taxpayer's tax liability is not authorized by statute, and the Assessor's failure to make its tax assessment on a statutory basis is an error of law. *See* 84 C.J.S. *Taxation* §§ 530, 569.

The Assessor argues that his long-standing practice to tax structures on agricultural real property separately (Appellant's Brief, pp. 19-21). However, the Assessor failed to show that the DOR has ever provided instructional materials to county assessors suggesting or directing they assess agricultural real property by this method. The Assessor also failed to cite any provision from the DOR Guide, the VALUATION OF AG. PROPERTY materials, or any other DOR publication requiring or allowing taxation of agricultural property according to the method that the Assessor espouses. The DOR's taxing methodology did not change after Act 133 of 1979 changed the statutory language from "agricultural *land*" to "agricultural *real property*." The taxation methodology used by the Department of Revenue and county assessors failed to keep current with changes in the statutory language.

The VALUATION OF AG. PROPERTY and the DOR Guide were prepared in fulfillment of the DOR's statutory duty to prepare manuals, guides, and other aids for the equitable assessment of all properties. S.C. CODE ANN. § 12-4-560. The Guide is more than 90 pages long. It is posted on the SCDOR website, and it is distributed to county assessors statewide to assist and instruct them in assessing real property. The Guide contains *no directive or even implication* that the Assessor is to first calculate a tract's "fair market value for agricultural purposes," and then add the full "fair market value" of the buildings or structures on the property. The same is true for the DOR continuing education seminar materials entitled "VALUATION OF AGRICULTURAL PROPERTY IN SOUTH CAROLINA." If the Assessor's valuation method were statutorily mandated, the DOR Guide and CLE materials would address them.

B. Structures on Agricultural Real Property Cannot Be Separately Assessed at Full Fair Market Value Pursuant to the General Valuation Statute S.C. CODE ANN. § 12-37-930.

The Assessor contends that he may distinguish land and structures in applying Agricultural Use Value (Appellant's Brief, p. 5). The Assessor claims that agricultural structures must be separately assessed at their "true value in money"¹¹ or full "fair market value" pursuant to S.C. CODE ANN. § 12-37-930 (Appellant's Brief, pp. 5-7). Conversely, the Administrative Law Court has ruled in accord with the principle that real estate should not be assessed and taxed separately as land and structures: "The value of the taxpayer's property consists of the whole property, and not of separate items of land and improvements. 84 C.J.S. *Taxation* § 404 (1954)." Barrett v. Georgetown County Assessor, No. 95-ALJ-17-0294-CC, 1995 WL 929813 (S.C. Admin. Law Ct. 1995) (Stevens, J.). "Real estate is assessed in its entirety and is not an assessment of separate portions of the property. . . . A residence consists of a lot and a house as a whole, not as separate parts." Weddle v. Charleston County Assessor, No.: 95-ALJ-17-0525-CC, 1995 WL 930077 (S.C. Admin. Law Ct. 1995) (Stevens, J.).

Section 12-37-930 is a general catch-all valuation statute that values normal real property at its full "fair market value". Assessor contends that absent the presence of an alternate method of valuation, all property must be valued at its "fair market value" under § 12-37-930. Assessor also contends that an unlabeled paragraph at the end of §12-43-220 provides for assessment of farm buildings at fair market value under §12-37-930 (Appellant's Brief, p. 8). The language on which the Assessor depends states: "[a]s used

¹¹ Property's "true value in money" under S.C. CODE ANN. § 12-37-930 is the price a willing buyer would pay a willing seller, also referred to as its "fair market value."

in this section, *fair market value* with reference to real property means *fair market value* determined in the manner provided pursuant to Article X of the Constitution of this State, Section 12-37-930 and Article 25, Chapter 37 of this title.” S.C. CODE ANN. §12-43-220 (emphasis added). This portion of §12-43-220 which references §12-37-930 corresponds to “fair market value” instead of “fair market value *for agricultural purposes*”.

“Fair market value” and “fair market value *for agricultural purposes*” are two completely different valuations. They are not interchangeable, and the Assessor has cited no statutory authority for combining the two methods, as he seeks to do. Ordinary real property is taxed at “fair market value.” Agricultural real property is not. That kind of taxation would put many farmers out of business. Instead, agricultural real property must be taxed using a “*special valuation*” that only applies to agricultural real property—its “fair market value for agricultural purposes.” See (R. pp. 45-139). This method of valuation and assessment of Agricultural Real Property encompasses the land and the structures.

South Carolina treats agricultural real property valuation differently from all other real property. The Guide also distinguishes the valuation of agricultural real property from the valuation of other real property. Ordinary property is to be appraised to determine fair market value. “*Real property (other than agricultural real property . . .) is appraised to determine fair market value.*” (R. pp. 53-54) (emphasis added); See also (R. p 58) ¹² Agricultural real property is not appraised. Because agricultural real property is distinct, S.C. CODE ANN. § 12-37-930 does not apply to agricultural real property.

Furthermore, section 12-37-930 cannot be extended to things not directly named or

¹² § 221.4. Valuation of Real Property. Real property, *other than agricultural real property* (see §222 below) . . . is appraised to determine fair market value.” (R. p. 58) (emphasis added).

described in the statute. *See* 84 C.J.S. *Taxation* § 530.

The legislature may determine the method or manner in which different forms of property may be valued for taxation. In such cases, the method prescribed by the legislature must be followed unless shown to be impossible or impracticable in the particular case or inconsistent with constitutional standards. Indeed, the *failure to make tax assessment on statutory basis is an error of law*.

84 C.J.S. *Taxation* §§ 569, 410 (emphasis added) (*quoted in part by S.C. Tax Comm'n. V. S.C. Tax Bd. of Review*, 278 S.C. 556, 561, 299 S.E.2d 489, 492 (1983)).

Section 12-37-930 does not address “fair market value *for agricultural purposes*,” nor does it address the valuation of structures or improvements on agricultural real property. The statute does not authorize the Assessor’s method of determining Taxpayer’s tax liability, and the Assessor’s failure to make its tax assessment on a statutory basis is an error of law. *See* 84 C.J.S. *Taxation* §§ 530, 569.

Section 12-37-930 is a general statute, not a specific one. While the general rule may be to assess property at its full “fair market value,” when there is a general rule and an applicable exception, the exception controls.

Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, *the more specific statute will be considered an exception to, or a qualifier of, the general statute* and given such effect. Wilder v. South Carolina Hwy. Dep’t, 228 S.C. 448, 90 S.E.2d 635 (1955). *See also* Wooten ex rel. Wooten v. S.C. Dep’t of Transp., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) (a specific statutory provision prevails over a more general one); Atlas Food Sys. & Servs., Inc. v. Crane Nat’l VenD.O.R.s Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995) (general rule of statutory construction is that a *specific statute prevails over a more general one*).

Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (emphasis added). “Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to: (A) Four percent of its fair market

value for such agricultural purposes.” S.C. CODE ANN. § 12-43-220(d)(1)(A), *See also*, S.C. CONST. art. X, § 1. This is the specific provision that prevails over the general provision. *See* (R. pp. 57, 63-64).

The assessment of agricultural real property at its “fair market value for agricultural purposes” is an exception to the general rule. Accordingly, the exception controls here, and agricultural real property and the structures located thereon are not assessed at “fair market value,” but rather, at their “fair market value for agricultural purposes.”

C. Assessor’s Long-Time Administrative Practice of Separately Assessing Agricultural Land and Agricultural Structures Is Not Controlling, and is Not Approved by the General Assembly.

Assessor and the DOR contend it has been their administrative practice to separately assess agricultural land and agricultural structures for more than thirty (30) years. Assessor also claims that the legislature has acquiesced in this 30 year practice of assessing agricultural structures at their full “fair market value” separately from the agricultural land on which they sit, creating a strong presumption of approval by the legislature (Appellant’s Brief, pp. 19-20).

The legislative intent of a statute shall prevail over an administrative agency’s interpretation. The Courts of this State have repeatedly recognized this principle.

While the construction of a statute by the officials charged with its administration, which has been acquiesced in by the Legislature for a long period of time, should be given great weight, Etiwan Fertilizer Co. v. S.C. Tax Commission, 217 S.C. 354, 60 S.E.2d 682, the final responsibility for the *interpretation of the law rests with the courts*. “*At most, administrative practice is a weight in the scale, to be considered, but not to be inevitably followed.* * * * While we are of course bound to weigh seriously such rulings, *they are never conclusive.*”

Stone Mfg. Co. v. S. Carolina Employment Sec. Comm’n, 219 S.C. 239, 249, 64 S.E.2d 644, 648 (1951) (citations omitted) (emphasis added). While the Court may “give great

weight to an agency's long-standing construction of a statute, such a construction is not dispositive." Plyler v. Evatt, 313 S.C. 405, 408, 438 S.E.2d 244, 246 (1993) (citing Gilstrap v. South Carolina Budget and Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992)). "An administrative construction affords no basis for the perpetuation of a patently erroneous application of the statute." State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575-76 (2010) (internal quotations omitted). Where "the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation." Media Gen. Commc'ns, Inc., at 149-50, 694 S.E.2d at 530-31 (quoting Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003)). The plain language of the statutes, regulations and DOR publications, as well as the Administrative Law Court's prior case law require a different interpretation than those given by the Assessor and the Department of Revenue.

Furthermore, the legislature has not approved or acquiesced in the practice of separately valuing agricultural structures at full "fair market value" and then adding that value to a tract's "fair market value for agricultural purposes." To the contrary, by Act 133 of 1979, the General Assembly intentionally rewrote §12-43-220 so that the assessment value of **both** agricultural land and the attached structures would be included in a tract's "fair market value for agricultural purposes." The legislature later added a building component to the statutory calculation of "fair market value for agricultural purposes" in Act 558 of 1988, §1. The legislature also went out of its way to ensure that the 2007 South Carolina Real Property Valuation Reform Act would not affect the valuation of agricultural real property.

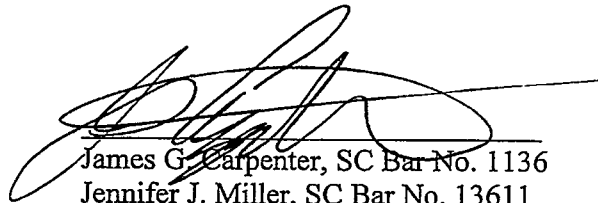
The general rules of statutory interpretation are different for taxation statutes. All ambiguities in a taxation statute must be construed in favor of the taxpayer and against the

CONCLUSION

The Administrative Law Court's ruling complies with the South Carolina Constitution, its statutes, legislative history, case law, regulations, and the Department of Revenue's instructional publications, and three other administrative law court rulings from three other judges. Based on the foregoing authorities, this Court should affirm the grant of Judgment to Montgomery. The structures on his Property may not be carved out and assessed separately, but rather his agricultural real property Tract includes its structures, and their taxable value is already included in and subsumed by the Tract's "fair market value for agricultural purposes."

Respectfully submitted,

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In the Court Of Appeals

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

William J Montgomery..... Respondent,

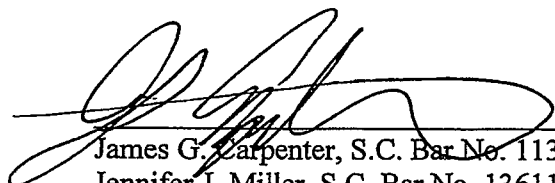
V.

Spartanburg County Assessor..... Appellant

CERTIFICATE OF COMPLIANCE WITH S.C. RULE 211(b)

The undersigned attorney hereby certifies that the foregoing Respondent's Final Brief complies with the South Carolina Rule 211(b).

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

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

William J. Montgomery, ...Respondent,

v.

Spartanburg County Assessor, ...Appellant.

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ARGUMENT

The Administrative Law Court's ("ALC") decision should be reversed and the Spartanburg County Assessor's ("Assessor") valuation of the Property¹ reinstated.

I. RESPONDENT'S IRRELEVANT CONTENT SHOULD BE IGNORED

Here, one issue—only one issue—needs resolution: South Carolina Code Annotated section 12-43-220(d)'s meaning of "fair market value for agricultural purposes." (Appellant's Brief, at p. 1) Despite this single dispute concerning valuation methodology, Taxpayer's Respondent's Brief repeatedly treats in a disputed manner the following two entirely undisputed issues: (i) both structures and land are real property; and (ii) both structures and land are classified as agricultural use property. Rather than being disputed issues, the Parties agree and the ALC concurred.

A. *Arguments Presenting Undisputed Issues Should be Ignored as Irrelevant*

Classification of the Property as agricultural use property is undisputed since the ALC's Order explains "[t]he parties . . . agree . . . the proper assessment ratio is four percent." (R. p. 3.) Further, the position that agricultural real property includes not only land but also structures is also undisputed, as noted in the ALC's Order: "[t]he parties agree that the structures on the Property are related to the agricultural activities and uses of the Property." (*Id.*)

Despite being undisputed, Taxpayer repeatedly presents these issues as though a dispute exist. Each such exposition by Taxpayer is irrelevant and should be ignored. *Cf.*

¹ As used herein, the term "Property" means the real property located at 891 Mount Lebanon Road, Pauline, South Carolina 29374, Tax Parcel 6-68-00-016.00.

Nichols v. Briggs, 18 S. C. 473, 479 (1883) (striking a portion of the pleadings because “[a]n allegation is irrelevant when it has no substantial relation to the controversy.”)

B. Taxpayer’s Statements Asserting How the Property is Used Should be Ignored as Irrelevant

Taxpayer utilizes two full pages setting out “Facts” replete with details of how the property is “used as Montgomery’s farm.” (Respondent’s Initial Brief, at pp. 4–5.) Use is relevant only to deciding an agricultural use classification. *See* S.C. Code Ann. § 12-43-230 (defining agricultural real property based on whether the property is “used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man”). Given that the Parties agree the Property is agricultural real property, Taxpayer’s “Facts” serve only to obscure and distract from the analysis of the sole issue in this case: valuation methodology.

C. Taxpayer’s Arguments Asserting Agricultural Real Property Includes Land and Structure Should be Ignored as Irrelevant

In a similar fashion, Taxpayer repeatedly couches his discussion of the undisputed issue that land and structures are real property—more precisely agricultural real property—in a fashion seeking to clothe that issue in controversy. (See Respondent’s Initial Brief, at p. 11 (stating that the “definition of ‘real property’ (and likewise ‘agricultural *real property*’) includes all structures attached thereto.”); *Id.* at p. 13 (“South Carolina’s statutes repeatedly indicate that agricultural real property includes the attached structures.”); *Id.* at p. 13 (“[T]he regulations hold that agricultural real property includes attached structures.”); *Id.* at p. 14 n.5 (“[T]he regulations hold that agricultural real property includes attached structures.”)). No controversy exists—the Assessor in his Appellant’s Brief wholly agrees that real property includes both land and structures. Just

like the “use of the property issue,” Taxpayer’s discussions recounting the undisputed conclusion that real property includes land and structures should be ignored.

II. THE STATUTORY SCHEME TAXING REAL PROPERTY SUPPORTS THE ASSESSOR’S ARGUMENT

The sole issue in this case—and the disagreement between the Parties—is how to satisfy the valuation methodology of South Carolina Code Annotated section 12-43-220(d). That section requires valuing agricultural real property at “fair market value for agricultural purposes.”

In the Appellant’s Brief, the Assessor outlines a logical, analytical structure complying with the valuation requirements for agricultural real property:

- (1) all real property, including agricultural real property, is taxable (S.C. Code Ann. § 12-37-210);
- (2) land is a component of agricultural real property (*See* S.C. Code Ann. § 12-37-10(1));
- (3) structures are a component of agricultural real property (*See* S.C. Code Ann. § 12-37-10(1));
- (4) structures on agricultural land are not exempt from taxation and, therefore, must be taxed (S.C. Code Ann. § 12-37-220(B)(13), (14), & (15));
- (5) the land component of agricultural real property is valued under the soil capability valuation method, applicable only to *land* as required by S.C. Code Ann. § 12-43-220(d)(2)(A);
- (6) structures on agricultural real property, not being subjected to a specified valuation method (as land is) and not being exempt, must be valued (S.C. Code Ann. § 12-37-210); and
- (7) because no specific valuation method is prescribed for valuing structures on agricultural land, the structures are valued under the willing buyer and willing seller method in S.C. Code Ann. § 12-37-930.

The Assessor's position, as outlined above, relies upon specific statutory authority. Thus, the Taxpayer's assertion that the Assessor "cites no direct statutory authority specifically requiring, directing or allowing his method" of valuing agricultural real property is false. (Respondent's Initial Brief, at p. 26.) On the other hand, Taxpayer, rather than addressing the Assessor's straight forward argument, makes several confusing and incorrect arguments requiring correction.

A. *The Department's Unofficial Publications do not Support Taxpayer's Argument*

Taxpayer argues that a publication entitled *South Carolina Property Tax* (2010) and certain continuing education seminar materials prepared by the South Carolina Department of Revenue ("SCDOR") support the Taxpayer's interpretation. (Respondent's Initial Brief, at pp. 9–14.) Such an assertion is incorrect for three reasons.

First, SCDOR's unofficial, instructional publications referenced by the Taxpayer are not the law. In fact, the *South Carolina Property Tax* publication contains an express disclaimer² regarding its authority.

Second, the Taxpayer does not point to any statement in these SCDOR publications adopting or endorsing Taxpayer's interpretation of section 12-43-220(d)(2)(A). Rather, Taxpayer relies on statements affirming the undisputed conclusion that agricultural real property comprises both land and structures. The Assessor agrees agricultural real property comprises both land and structures. Thus, Taxpayer's argument

² The *South Carolina Property Tax Manual*, to which Taxpayer cites liberally and on which Taxpayer relies, contains this express disclaimer: "This publication does *not* constitute tax, legal or other advice. The opinions expressed in any section of this publication are the individual opinions of the author of that section and *should not be attributed to the South Carolina Department of Revenue*. This publication is written in general terms and *may not contain all of the specific requirements or provisions of cited authority* and the authorities are subject to change. . . . This publication should not be relied upon as it does *not* represent official Department policy." (R. p. 46) (emphasis added.) Mr. Sandy Houck's Affidavit, which is discussed later in this Reply Brief, contains no such disclaimer or other limitation. (R. pp. 154–155.)

referencing SCDOR publications does not address—let alone resolve—the valuation issue.

Third, Mr. Sandy Houck, who has been employed by SCDOR for over 35 years and is authorized to speak on behalf of SCDOR, provided an Affidavit to the ALC supporting the Assessor's position. (R. pp. 154–155.) Mr. Houck's Affidavit is SCDOR's official pronouncement of its administrative policy and expression of SCDOR's interpretation of how agricultural real property should be valued for *ad valorem* taxation purposes. *Id.* SCDOR's interpretation of the statutes governing agricultural real property valuation is entitled to respectful deference. *Goodman v. City of Columbia*, 318 S.C. 488, 491, 458 S.E.2d 531, 532 (1995). The Court should reject Taxpayer's argument to the contrary.

B. The USDA Table Referenced in Section 12-43-220(d) Neither Establishes Land Values nor Supports Taxpayer's Argument

The values in the United States Department of Agriculture table entitled “Table 1 – Farm Real Estate Values: Indexes of the average value per acre of land and buildings” (“USDA Table”) neither apply to nor set the use value for agricultural real property. Instead, determining the values for a variety of types of agricultural land rests solely with SCDOR. The General Assembly mandated SCDOR perform that task and reinforced that demand by regulations:

Section 12-43-220(d)(2) of the [Code] provides that implementation of the use value procedures for timberland and cropland, as provided in Code Section 12-43-220 shall be the responsibility of the Department of Revenue. Under this authority, the values in this regulation must be used by county assessors for assessment of cropland and timberland.

S.C. Code Ann. Regs. 117-1840.2(c)(1).

Thus, Taxpayer's argument that the "1991 Agricultural Use Values [set forth in the USDA Table] still apply today," is contrary to the law. Had the USDA Table been used to calculate the value of Taxpayer's Property, the Taxpayer would be disputing a much larger tax bill. Indeed, the land values established by the USDA Table are far greater than the values established by SCDOR. (*Compare* S.C. Code Ann. Regs. 117-1840.2(c), *with* USDA Table).

As the Assessor explained in his Appellant's Brief, section 12-43-220 merely references the USDA Table as an inflation index. (Appellant's Brief, at pp. 14-16.) Prior to South Carolina Act 106 of 1997 permanently establishing land values at SCDOR's 1991 levels, the USDA Table established how much SCDOR could elevate land values each year. *Compare* S.C. Code Ann. § 12-43-220(d)(2)(B)(ii), *with* 1997 S.C. Act No. 106. The ALC erred in interpreting the USDA Table as altering the taxation scheme outlined in section 12-37-930 and section 12-43-220(d)(2). Thus, this Court should reject Taxpayer's argument.

C. The 2007 South Carolina Real Property Valuation Reform Act (S.C. Code Ann. § 12-37-3110 et seq.) has no Bearing on or Application to This Case

Taxpayer asserts the 2007 South Carolina Real Property Valuation Reform Act ("Act") "verifies that the General Assembly never intended for structures and improvements to be assessed separately from the agricultural property on which they sit." (Respondent's Initial Brief, at p. 20). The inaccuracy of such a statement cannot be more certain. The Act explicitly states it does not affect the valuation of agricultural real property. *See* S.C. Code Ann. § 12-37-3170(A) ("[n]othing in this article affects the

provisions of Section 12-43-220(d) that define and apply to 'fair market value for agricultural purposes' for real property in agricultural use.").

This language puts the point beyond dispute: the Act can have no effect on the meaning of the term "fair market value for agricultural purpose." To then rely on the Act to determine the meaning of the term "fair market value for agricultural purposes" would itself be contrary to the plain intent and statement of the General Assembly.

D. South Carolina Code Annotated Section 12-37-930 Applies to the Valuation of Agricultural Real Property

Taxpayer attempts to dismiss the language of South Carolina Code Annotated section 12-37-930 by stating the section applies only to real property not in use as agricultural real property. (Respondent's Initial Brief, at pp. 28-31.) Taxpayer's argument is simply incorrect.

The plain and direct language of section 12-37-930 states "[a]ll property must be valued for taxation at its true value in money" Thus, unless otherwise changed by the General Assembly, section 12-37-930 applies to *all property*, whether real, personal, or agricultural.³ See S.C. Code Ann. § 12-37-930.

Further, section 12-37-930 contains none of the limitations referenced by Taxpayer. (Respondent's Initial Brief, at pp. 28-31.) Rather, section 12-37-930's willing buyer and willing seller standard is a broadly applicable statute that informs every aspect of South Carolina's *ad valorem* taxation of property. Indeed, when the General Assembly deviates from the willing buyer and willing seller standard of 12-37-930 it has done so

³ The only change in valuing agricultural real property which deviates from the valuation method of section 12-37-930 is the special legislative requirement in section 12-43-220(d) to value *land* under the soil capability method.

for land values, not structure values.⁴ Thus, in the instant case, the General Assembly has again followed the same pattern by choosing to establish a use value for only land (the soil capability method) and leaving section 12-37-930 to value the structures.

Contrary to the above described taxing pattern of the General Assembly, Taxpayer asks this Court to read section 12-43-220(d)(2)(A) with no regard for the overall taxation scheme. The Court is asked to adopt a valuation method (one based solely on soil capability) that equates structures as having no value. Doing so wholly contradicts any other valuation method imposed by the General Assembly. Rather than an entire break with the existing scheme of valuation, this Court should adopt the Assessor's and SCDOR's interpretation of the term "fair market value for agricultural purposes." Doing so harmonizes section 12-43-220(d)(2)(A) with South Carolina's overall taxation scheme. *See Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000) ("Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." (citing *Butler v. Unisum, Inc.*, 323 S.C. 402, 475 S.E.2d 758 (1996))).

III. SECTION 12-43-220(D) IS A TAX EXEMPTION STATUTE STRICTLY CONSTRUED AGAINST THE TAXPAYER

As presented in the Assessor's Appellant's Brief, the plain language of South Carolina Code Annotated section 12-43-220(d)(2)(A) resolves this case in favor of the Assessor. However, to the extent this Court finds any uncertainty in the meaning of section 12-43-220(d)(2)(A), the statute must be construed *against* Taxpayer.

Taxpayer asserts he is entitled to receive a special valuation under section 12-43-220. (Respondent's Initial Brief, at p. 29 ("[A]gricultural real property must be taxed

⁴ *See, e.g.*, S.C. Code Ann. § 12-43-215 ("When owner-occupied residential property assessed pursuant to Section 12-43-220(c) is valued for purposes of ad valorem taxation, the *value of the land must be* determined on the basis that its highest and best use is *for residential purposes*." (emphasis added)).

using a “special valuation” that only applies to agricultural real property—its “fair market value for agricultural purposes.” (emphasis in original).) This Court held “section 12-43-220 is a tax exemption statute.” *Ford v. Beaufort County Assessor*, 398 S.C. 508, 515–16, 730 S.E.2d 335, 339 (Ct. App. 2012) (*cert. denied* April 16, 2014) (citing *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). “The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption.” *Home Med. Sys., Inc. v. S.C. Dept. of Revenue*, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009) (citing *TNS Mills, Inc. v. S.C. Dept. of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998)). *See also Southeastern-Kusan, Inc. v. S.C. Tax Comm’n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981) (“As a general rule, tax exemption statutes are strictly construed against the taxpayer.”).

Accordingly, since Taxpayer claims entitlement to a “special valuation,” such special treatment is treated as a tax exemption under section 12-43-220(d)(2)(A). *See Ford*, 398 S.C. at 515–16, 730 S.E.2d at 339. As an exemption provision, this Court must construe section 12-43-220(d)(2)(A) *against* Taxpayer. Such law is well-settled; Taxpayer is simply incorrect in asserting otherwise.

IV. THE LEGISLATIVE HISTORY OF SECTION 12-43-220 DOES NOT SUPPORT TAXPAYER’S ARGUMENTS

Again, while the Court need look no further than the plain language of South Carolina Code Annotated sections 12-43-220 and 12-37-930, should the Court believe an ambiguity exist, the legislative history of section 12-43-220 is informative and supports the Assessor’s position. South Carolina Act 618 of 1976 altered the section 12-43-220(d)(1) by changing the words “agricultural real property” to the words “agricultural

land.” However, Act 133 of 1979 reversed the change—the word “land” was replaced with the words “real property.” *This change does not affect the issue involved in this case.*

Section 12-43-220(d)(1) deals with the *assessment ratio* that should apply to agricultural real property. The assessment ratio is an entirely different issue than deciding how agricultural real property is *valued*. Prior to South Carolina Act 133 of 1979, the plain language of the statute would have applied the 4% assessment ratio *only* to agricultural land, leaving structures assessed at a 6% assessment ratio.

By changing the language of section 12-43-220(d)(1) to “real property,” Act 133 assured all agricultural real property—including both land *and* structures—must be assessed and taxed at 4% of its value. This change demonstrates that the General Assembly clearly understood the significant difference between the terms “real property” and “land.” The General Assembly, through Act 133, made sure that the 4% assessment ratio applied to all agricultural real property—not just land. In contrast, the General Assembly chose *not* to change the language of section 12-43-220(d)(2)(A) from “land” to “real property.” Thus, the change by Act 133 supports the Assessor’s interpretation of the term “fair market value for agricultural purposes.” The Parties and the Court must respect the General Assembly’s word choice.

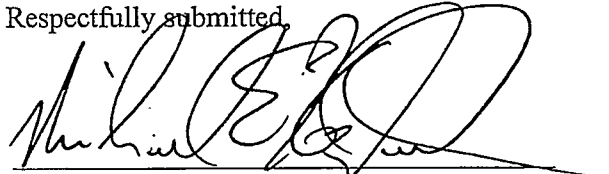
The Taxpayer’s interpretation of the legislative history ignores the fact that Act 133 changed only section 12-43-220(d)(1), the section dealing with the assessment ratio applicable to agricultural real property. Rather, no change occurred to section 12-43-220(d)(2), the section addressing how agricultural real property is *valued*. Thus, the

Court should reject Taxpayer's efforts to conflate and confuse the assessment ratio determination with the valuation process.

CONCLUSION

The Assessor respectfully asks this Court to reverse the decision of the Administrative Law Court and reinstate the Assessor's valuation of the Property.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

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

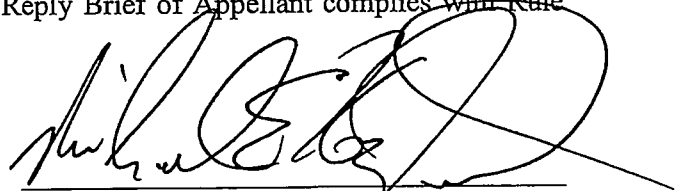
William J. Montgomery, ...Respondent,

v.

Spartanburg County Assessor, ...Appellant.

CERTIFICATE OF COUNSEL

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



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

William J. Montgomery, Respondent,

v.

Spartanburg County Assessor, Appellant.

Appellate Case No. 2013-002697

Appeal From The Administrative Law Court
Deborah Brooks Durden, Administrative Law Judge

Opinion No. 5455
Heard September 8, 2016 – Filed November 16, 2016

REVERSED

Ray Nelson Stevens, Michael Enrico Kozlarek, and
Walter Hammond Cartin, all of Parker Poe Adams &
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and John Holladay Harris, both of Spartanburg County
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Burnet R. Maybank, III, and James Rourke, Amici
Curiae, for South Carolina Farm Bureau Federation.

LOCKEMY, C.J.: In this action from the Administrative Law Court (ALC), the Spartanburg County Assessor (Assessor) appeals the ALC's order granting William J. Montgomery's motion for summary judgment. Assessor argues the ALC erred in its definition of "fair market value for agricultural purposes" in section 12-43-220(d) of the South Carolina Code (2014). We reverse.

I. FACTS/PROCEDURAL HISTORY

Montgomery owns a tree farm located in Pauline, South Carolina. The property includes three buildings—two storage buildings for farm equipment and one mobile home that is used as an office for the farming operation. The parties agree the structures are related to the agricultural use of the property and are neither residences nor used for any other for-profit business.

For the 2011 tax year, the Assessor valued Montgomery's property for taxation purposes at \$40,641. The Assessor reached its valuation by valuing the land at \$12,211 using the soil capability valuation method, valuing the structures on the land at \$28,430 using the fair market value of the improvements, and adding the two figures together.

Montgomery appealed the Assessor's valuation to the ALC. Montgomery argued the entire tract, including the buildings, must be assessed as agricultural real property and the value of the buildings is subsumed in the statutory calculation of the agricultural real property value. The Assessor conceded the structures were agricultural real property and should be assessed using the 4% ratio; however, the Assessor argued section 12-43-220(d)(2)(A) only provides the process for valuing the land used for agricultural purposes, not the structures.

The ALC granted summary judgment in favor of Montgomery. The ALC found Montgomery's entire farm "must be classified and assessed as agricultural real property and the Assessor may not carve out and separately assess a small portion of the tract (such as the structures attached thereto)" Accordingly, the ALC

found the Assessor improperly assessed Montgomery's property and ordered the property be "assessed and taxed based on its agricultural use value alone without adding a separate value for the improvements on the [p]roperty." This appeal followed.

II. STANDARD OF REVIEW

"Tax appeals to the ALC are subject to the Administrative Procedures Act (APA)." *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011). "Accordingly, we review the decision of the ALC for errors of law." *Id.* at 74, 716 S.E.2d at 881. "Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the [ALC]." *Id.*

III. STATUTORY INTERPRETATION

The Assessor asserts the ALC erred by finding the value of structures located on agricultural real property is already included in, and subsumed by, the tract's fair market value for agricultural purposes. We agree.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *Centex Int'l v. S.C. Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* (quoting *Sloan*, 371 S.C. at 498, 640 S.E.2d at 459). "In interpreting a statute, '[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.'" *Id.* (alteration in original) (quoting *Sloan*, 371 S.C. at 499, 640 S.E.2d at 459). "Further, 'the statute must be read as a whole and sections which are a 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)). This court "must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.'" *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 (quoting *State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008)).

For the purposes of property taxes, real property "shall mean not only land, city, town and village lots but also all structures and other things therein contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot." S.C. Code Ann. § 12-37-10 (2014). Generally, "[a]ll property must be valued for taxation at its true value in money which in all cases is the price

which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing" S.C. Code Ann. § 12-37-930 (2014). "Agricultural real property which is actually used for such agricultural purposes shall be taxed on an assessment equal to . . . [f]our percent of its fair market value for such agricultural purposes" S.C. Code Ann. § 12-43-220(d)(1)(A) (2014); *see also* S.C. Const. art. X, §1. "'Fair market value for agricultural purposes', when applicable to land used for the growth of timber, is defined as the productive earning power based on soil capability" S.C. Code Ann. § 12-43-220(d)(2)(A) (2014). "Soil capability when applicable to lands used for the growth of timber products means the capability of the soil to produce such timber products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date." *Id.*

"The construction of a statute by an agency charged with its administration will be accorded most respectful consideration and will not be overturned absent compelling reasons." *Jasper Cty. Tax Assessor v. Westvaco Corp.*, 305 S.C. 346, 348, 409 S.E.2d 333, 334 (1991); *see also Gilstrap v. S.C. Budget & Control Bd.*, 310 S.C. 210, 215, 423 S.E.2d 101, 104 (1992) ("Where an administrative agency has consistently applied a statute in a particular manner, its construction should not be overturned absent cogent reasons."). "If possible, the [c]ourt will construe a statute so as to escape [an] absurdity and carry the [General Assembly's] intention into effect." *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016).

The ALC considered similar issues in two unappealed cases decided prior to this dispute.¹ *See Smith v. Clarendon Cty. Assessor*, 2011 WL 7119293 (S.C. Admin. Law Ct. Sept. 15, 2011); *Rabbit Point Farm Ltd. v. Charleston Cty. Assessor*, 1998 WL 85460 (S.C. Admin. Law Ct. Feb. 10, 1998).

The assessor in *Rabbit Point Farm* assessed a farm house on the landowner's property at the 6% ratio and the remaining agricultural property at the 4% ratio. 1998 WL 85460, at *1-2. The landowner appealed, arguing the entire tract should be assessed as agricultural real property. *Id.* The ALC found "[t]he construction of the farm house, without any supportive evidence that it is used for commercial, recreational or residential purposes, is not sufficient to change the character of the property from agricultural to residential for tax assessment purposes." *Id.* at *4.

¹ During the pendency of this appeal, the ALC again found in favor of the taxpayer in a case involving this issue. *See Dotsy, LLC v. Greenwood Cty. Assessor*, 2014 WL 1234871 (S.C. Admin. Law Ct. Mar. 24, 2014).

The ALC ordered the assessor to classify the property, including the structures, as agricultural real property. *Id.*

The facts in *Smith* are analogous to this case. The assessor valued Smith's property by adding together the soil capability of the land and the fair market value of the structures. *Smith*, 2011 WL 7119293, at *1. On appeal, the ALC found the assessor was statutorily required to use the soil capability method of valuation for the land and structures to determine the "fair market value for agricultural purposes." *Id.* at *3-4. The ALC ordered Smith's property be "assessed and taxed based on [its] agricultural use value[]." *Id.* at *4.

Here, both parties agree Montgomery's property should be assessed at the 4% ratio applicable to agricultural real property pursuant to section 12-43-220(d)(1)(A). The statutory definition of "real property" includes the structures attached to the land that pass by conveyance of the land. *See* § 12-37-10. Section 12-43-230 of the South Carolina Code (2014), explicitly includes within the definition of agricultural real property "any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use" Accordingly, the entire property is properly assessed at the 4% ratio to determine Montgomery's tax liability.

The analysis does not end there, however, because section 12-43-220(d)(1)(A) provides only the assessment ratio to apply to the property, not the valuation method. The plain language of section 12-43-220(d)(2)(A) provides the method for valuing only land used for the growth of timber, not structures also located on the property.

By its own terms, section 12-43-220(d)(2)(A) defines fair market value for agricultural purposes for *land* used for the growth of timber and *land* used for the growth of other agricultural products. It is noteworthy that the General Assembly did not use the more expansive "real property" as defined section 12-37-10. Instead, the General Assembly limited its valuation method to the "land used for the growth of timber." § 12-43-220(d)(2)(A). We find the ordinary meaning of "land" within section 12-43-220(d)(2)(A) applies only to the property used to grow timber, not the structures situated on the same property. *See Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 707 (2012) ("Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning."). The General Assembly would have used the defined term "real property" in section 12-43-220(d)(2)(A) if it

intended to include structures attached to the land, as Montgomery argues. Because it did not, we find the value of the structures is not reflected in the soil capability valuation method and the structures must therefore be valued under the fair market value method. *See* § 12-37-930 ("All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing . . .").

This interpretation is the same interpretation used by the Department since 1975. Sandy Houck, Jr., the Special Projects Coordinator for the Local Government Section at the South Carolina Department of Revenue (the Department), explained in an affidavit that the Department "has interpreted the South Carolina Code to provide two components to the total taxable value" for agricultural real property. He stated, "[t]he first component is the agricultural land, which must be valued according to the productive earning capacity of the soil, as stated in section 12-43-220(d)(2)(A)." He also indicated, "[t]he Department has interpreted the constitutional provisions and statutes governing agricultural real property valuation as requiring county assessors to determine the fair market value of any structures located on the agricultural real property, utilizing the valuation methods applicable to structures located on all real property . . ." Further, he asserted, "[u]nder the Department's interpretation, the value of any structures located on the agricultural land is added to the value of the agricultural land in order to determine the total taxable value of the agricultural property." We find the Department's interpretation of the statute is reasonable and the ALC erred by failing to give proper deference to the agency's longstanding policy. *See Westvaco Corp.*, 305 S.C. at 348, 409 S.E.2d at 334 ("The construction of a statute by an agency charged with its administration will be accorded most respectful consideration and will not be overturned absent compelling reasons.").

The ALC found the Department's instructional publications support Montgomery's position. Specifically, the ALC cited the Department's publication, *South Carolina Property Tax* that states, "'Real property' means not only land, but also all structures and other things therein contained or annexed or attached to the land that pass . . . by the conveyance of the land." *South Carolina Property Tax* § 110.1 (2015).² This quoted language in the Department's publication mirrors the definitional language used in section 12-37-10. This language is not applicable to

² South Carolina Property Tax is an online resource available on the Department's website.

this situation, however, because the term "real property" is only used in in the classification statute, not the valuation statute.

The ALC also based its decision on the legislative history of the property tax statutes at issue in this case. We find the ALC's reliance on previous versions of the valuation statute is misplaced.

The legislative history of section 12-43-220(d)(1)(A) does not support Montgomery's argument that the structures on his property should be valued using the soil capability method. The first version of section 12-43-220(d)(1)(A) was enacted in 1975. *See* Act No. 208, 1975 S.C. Acts 248. The 1975 Act provided, "Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to four percent of its fair market value for such purposes" 1975 S.C. Acts 250. In 1976, the General Assembly enacted a new version of the statute that provided, "Agricultural *land* which is actually used for such agricultural purposes shall be taxed on an assessment equal to (A) [f]our percent of its fair market value for such agricultural purposes" Act No. 618, 1976 S.C. Acts 1648 (emphasis added). Finally, in 1979 the General Assembly again amended the Act to state, "Agricultural real property which is actually used for such agricultural purposes shall be taxed on an assessment equal to: (A) [f]our percent of its fair market value for such agricultural purposes" Act No. 133, 1979 S.C. Acts 221. These statutes, which deal only with the *classification* of agricultural real property, have no bearing on the *valuation method* to be used when determining the owner's property tax liability.

The General Assembly also amended the precursor to section 12-43-220(d)(2)(A) in 1979. From 1976 to 1979, the statute provided, "'Fair market value for such agricultural purposes' is defined as the productive earning power based on soil capability" Act No. 618, 1976 S.C. Acts 1649. During that time, only agricultural *lands* could be assessed as agricultural real property. In 1979, the General Assembly recognized the significant amount of land used for timber production and changed the valuation statute to its current version, which defines fair market value of agricultural purposes, "when applicable to *land* used for the growth of timber" as the productive earning power based on soil capability for that crop. Act No. 199, 1979 S.C. Acts 881 (emphasis added). The 1979 amendment thus created a new valuation method for land used for timber production, but did nothing to change the method of valuing any structures on the land.

Accordingly, we find the legislative history supports the Assessor's argument that the General Assembly intended to continue valuing only the land based upon the

soil capability. In 1976, only lands could be assessed using the 4% rate. In 1979, when the General Assembly amended the statute to include all agricultural real property in the 4% assessment, it also changed the valuation statute to apply only to land. Therefore, the ALC erred in determining the legislative history supports Montgomery's argument regarding the valuation method to be used for structures on agricultural land.

Finally, the definition adopted by the ALC would lead to an absurd result. According to Montgomery, the only valuation method applicable to agricultural real property is the soil capability method. As a result, structures on agricultural land would be essentially exempt from tax. Montgomery acknowledged at oral argument that under his interpretation, a valuable home located on a tree farm would not be valued for tax purposes as long as that home is not a legal residence and is used for agricultural purposes. We find the General Assembly did not intend to create such an exemption. Instead, the General Assembly sought to protect farmers from rapidly escalating property tax liabilities by limiting the assessable value of the land. As Montgomery acknowledged at oral argument, to expand the exemption to include structures would allow both tractor sheds and million dollar buildings that are nominally used for agricultural purposes to avoid assessment for property tax purposes. The legislature could not have intended such a result.

CONCLUSION

For the foregoing reasons, the ALC's decision is

REVERSED.

KONDUROS and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case Number 2013-002697
(Opinion Number 5455, Filed November 16, 2016)

William J. Montgomery, ... Respondent,

v.

Spartanburg County Assessor, ... Appellant.

RESPONDENT'S PETITION FOR REHEARING

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Statement of the Case

Will Montgomery owns a 150 acre farm in Spartanburg County. The Assessor classified Montgomery's Tract as "agricultural real property." Three agricultural buildings sit on the Property: two small barns or sheds (the "barn") and a small mobile home that was once an office for a used car dealership (the "house"). Montgomery purchased the house for \$6,000.00¹, moved it to the Property, and established it as the headquarters for his farm (R. p. 35, par. 5). It has never been anyone's "legal residence" (R. p. 35, par. 8). Montgomery uses the house as the farm office and the headquarters for his farm operations (R. p. 35, par. 9). The day's farming tasks are often planned there. (R. p. 35, par. 9). It also serves as a meeting place for contractors and workers, and a shelter for persons who perform farm work and maintenance. (R. p. 35, par. 9). The house contains bunk beds and sometimes houses people who use the tractors, implements, equipment and tools, who cultivate the soil, who spray the herbicides, who plant the seeds and trees, and who spread the lime and fertilizer as a part of farming operations (R. p. 36, par. 11). The house may also be used overnight one or two nights a year for hunting trips, but Montgomery hasn't spent the night in the house in six or seven years (R. p. 36, par. 15).

Montgomery lives nearby in Spartanburg, and he owns and operates a feed and seed store just a few miles down the road in Pauline (R. p. 36, par. 13). Accordingly, there is little need for him to use the house except for when he is conducting farming operations. (R. p. 36, par. 13). Montgomery estimated that more than 98% of the times he stayed at the house he was actively farming (R. p. 36, par. 12).

¹ Even though Taxpayer paid \$6,000 for this building, the Assessor has assessed its "fair market value" at \$33,000.

Montgomery uses the farm's structures to store farming equipment, tools, ATV's used in farm operations, spraying equipment, spreaders, tractors, tractor and tractor implement parts and manuals, fertilizer, lime, seed, herbicides, and other supplies used in farming operations (R. p. 35, par. 10). This is where farming equipment is cleaned, repaired, refueled, serviced, and otherwise maintained. (R. p. 35, par. 10). The buildings are predominantly used for agricultural activities. (R. p. 36, par. 16). These agricultural structures have not been used for some other business for profit, but rather serve functions related to the agricultural use of the real estate (R. p. 35, par. 8).

The Assessor agreed that the majority of the Parcel is being used for agricultural purposes—primarily forestry (R. p. 35, par. 7). Initially, the Assessor valued the vast majority of the Tract using its statutory "fair market value for agricultural purposes" or Agricultural Use Value, but the Assessor improperly carved out the structures and 1 acre surrounding the structures and separately assessed them at 6% percent of their "fair market value" (R. p. 35, par. 6). Prior to the hearing, the Assessor reassessed the Tract's **entire 150.4 acres** at four percent (4%) of its "fair market value for agricultural purposes," but also assessed the agricultural buildings at four percent (4%) of their "**fair market value**," and added this amount to the Tract's statutory "fair market value for agricultural purposes" (R. p. 35, par. 7).

Montgomery contends that the value of these agricultural structures is subsumed in the statutory calculation of the Property's agricultural use value. Separately assessing and taxing the agricultural buildings is double taxation, and contrary to the plain language of the statutes and the Constitution.

Montgomery appealed the Property's 2011 tax assessment. The County Board of Assessment Appeals ruled for the Assessor in a split decision. Montgomery appealed to the Administrative Law Court.

After cross motions for summary judgment and an extended hearing, the Administrative Law Court ruled for Montgomery (R. pp. 2-10). The Court ruled that the value of the agricultural structures were already included in, and subsumed by the tract's statutory fair market value for agricultural purposes (Agricultural Use Value). They cannot be separated from agricultural purposes of the property.

The Assessor argued that he assessed the fair market value of all agricultural structures on a tract of agricultural real property and then added that value to the tract's Agricultural Use Value. The Court rejected the Assessor's construction. The Assessor's practice would effectively abrogate the plain language of S.C. CODE ANN. § 12-43-220.

The language in Sections 12-37-10(1) and 12-43-220-230 is unambiguous. It is clear that the "fair market value for agricultural purposes" includes land used for the growth of agricultural products and the buildings or improvements on that land. South Carolina's statutes, regulations and case law, as well as the DOR's instructional publications, all support the Petitioner's position that structures located on a tract of agricultural real property, which are not used as a "legal residence" or "other business for profit," are classified as agricultural real property and their taxable value is included in the tract's "fair market value for agricultural purposes."

(R. p. 7) (emphasis added). The Court further reasoned, "Finally, I am convinced by the legislative history of the relevant statutes that the General Assembly intended for the value of buildings and improvements to be subsumed within the calculation of [a tract's] Agricultural Use Value." (R. p. 7). "Therefore, in 2011 the Agricultural Use Value for Taxpayer's Property already included the value of the structures on Taxpayer's Property.

The Assessor's separate assessment and taxation of the Taxpayer's farm buildings was improper and constituted a double taxation." (R. pp. 8-9). The Court concluded:

Based on the foregoing, I find that judgment should be entered in favor of the Petitioner. The statutory classification of "agricultural use value" includes the value of the structures located on Petitioner's property. Therefore, the property that is the subject of this matter should be assessed and taxed based on its "fair market value for agricultural purposes." That value must be calculated using the formula set forth in S.C. Code Ann. § 12-43-220(D)(2). **Buildings and improvements located on the property may not be separately valued because their value is included in, and subsumed by, the fair market value for agricultural purposes.**

The Petitioner's Property identified as TMS #6-68-00-016.00 shall be assessed and taxed based on its agricultural use value alone **without adding a separate value for the improvements on the Property.**

(R. p. 10) (emphasis added).

The Assessor appealed to this Court. This Court said the Administrative Law Court's ruling (and three similar rulings of other Administrative Law Courts) that included agricultural buildings in agricultural real property "would lead to an absurd result" (Slip opinion, p. 8). Montgomery respectfully suggests that the absurdity arose, not from the facts of this case, but from an extreme, bizarre, hypothetical question posed by the Assessor.

Accordingly, Montgomery petitions for rehearing.

RESPONDENT'S POINTS FOR REHEARING
Stated with particularity
SCACR 221(a)

SCACR 221(a) requires a petition for rehearing to “state with particularity the points supposed to have been overlooked or misapprehended by the court.” Accordingly, Montgomery respectfully suggests the following points:

1. The South Carolina Constitution states: “Agricultural **real property** which is **actually used** for such purposes shall be taxed on an assessment equal to: (A) four percent of its value for such purposes.” S.C. CONST. Art. X, § 1 (emphasis added). First, the Constitution says “agricultural real property.” It does **not** say “agricultural land.” This court ruled that the agricultural use value applied only to “agricultural land,” not “agricultural real property” (Slip opinion, p. 8). Montgomery respectfully submits that the court “overlooked or misapprehended” the plain language of S.C. CONST. Art. X, § 1.
2. Second, the Constitution says that taxation shall be “on assessment equal to . . . four percent of its **value for such purposes**.” It does not say “four percent of fair market value.” This court ruled that agricultural buildings should be assessed at 4% of their **fair market value**, not their “fair market value for agricultural purposes” (Slip opinion, p. 6). Montgomery respectfully submits again that the court “overlooked or misapprehended” the plain language of S.C. CONST. Art. X, § 1.
3. The South Carolina Code follows the text of the Constitution. “Agricultural **real property** which is **actually used for such agricultural purposes** shall be taxed on an assessment equal to four percent of its fair market value for such agricultural purposes.”

S.C. Code Ann. § 12-43-220(d)(1)(A) (2014) (emphasis added). Like the Constitution, the statute says “agricultural real property.” The statute does not say “agricultural land.” Contrary to the plain language of the statute, this court ruled that agricultural use value applied only to land (Slip opinion, p. 8). Montgomery respectfully suggests that the court “overlooked or misapprehended” the plain language of S.C. Code Ann. § 12-43-220(d)(1)(A) (2014).

4. Similarly, the statute says that the agricultural real property is taxed “on an assessment equal to four percent of its fair market value for such agricultural purposes.” It does not say that it is taxed on its “fair market value.” Again, this court ruled that agricultural buildings should be taxed at their fair market value (Slip opinion, p. 6). Montgomery again respectfully submits that the court “overlooked or misapprehended” the plain language of S.C. Code Ann. § 12-43-220(d)(1)(A) (2014).
5. It is undisputed that these buildings in this case were “agricultural real property.” Montgomery respectfully submits that the court “overlooked or misapprehended” this undisputed fact.
6. Furthermore, it is undisputed that these buildings were “actually used for such purposes.” Therefore, under the Constitution and statutes, these agricultural buildings should have been taxed at 4% of their “value for such purposes” (agricultural use value), not their “fair market value.” Montgomery respectfully submits that the court “overlooked or misapprehended” this undisputed fact.

7. No statute and no Constitutional provision authorize the Assessor to tax agricultural real property “actually used for such agricultural purposes” at “fair market value.” Nevertheless, that is what this Court authorized. Montgomery respectfully submits that the court approved a result not authorized by statute or the Constitution, and thereby “overlooked or misapprehended” the extra-textual nature of this ruling.

8. In its opinion, the court nearly ignored the effect of Act 133 of 1979 (Slip Opinion, p. 7). Act 133 changed the wording of the agricultural use value taxation statute from “agricultural land” to “agricultural real property.” That change was the main purpose of that Act; it corrected an error from three years earlier. Agricultural Use Values were first enacted in 1975 by Act 208 §2(d) (R. pp. 206-215). Like the current § 12-43-220(d), Act 208 of 1975 provided a tax break for agricultural “real property.” However, Act 618 of 1976 (R. pp. 219-221) amended Act 208 of 1975, §2(d) changing the statutory language from “agricultural real property” to “agricultural land.”

For a period of three (3) years in 1976-1979, South Carolina’s agricultural real property valuation statute (what is now §12-43-220(d)) specifically applied only to “agricultural land.” However, in 1979 the General Assembly amended §12-43-220(d)(1), so that the “fair market value for agricultural purposes” would apply not to “agricultural land,” but to “agricultural real property,” which includes both the land and all agricultural structures. The change from agricultural “land” to “real property” was the only change made to §12-43-220(d)(1).

This portion of §12-43-220(d)(1) has not changed since it was amended by Act 133 of 1979. Accordingly, in 2011 the Agricultural Use Value for Montgomery’s

Property already included the value of the agricultural structures. The Assessor's separate assessment and taxation of Montgomery's barn and non-residential house-office was improper and constituted a double taxation. This Court seemed to ignore Act 133 of 1979, and its very important purpose and effect. Montgomery respectfully submits that the court "overlooked" the importance of Act 133 of 1979.

9. Montgomery respectfully submits that the court relied on Act 199 of 1979 to make a point that Act 199 did **not address**. The Court relied on the references to "land" used for growth of timber or other agricultural products in §12-43-220(d)(2) to conclude that Agricultural Use Value only applies to land, and does not include the agricultural structures (Slip Opinion, p. 7). Act 199 distinguished between taxation for land used to grow **timber** and land used to grow **other crops**. The General Assembly included an introductory paragraph in Act 199, § A:

A. The General Assembly finds that a substantial part of the lands used for the growth of agricultural products in this State is in fact used for the growth of timber. The remainder of land used for the growth of agricultural products is applied to the growth of many other diverse agricultural products. Because of this situation **the General Assembly finds that the income from timberlands should be used to determine the use value of such lands and income of lands used to produce other agricultural products should be used to determine the use value of those lands**. The General Assembly further finds that a locality may appropriately include more than one county and be designated as a region.

(R. p. 226) (emphasis added).

References to timber or crop "land" in §12-43-220(d)(2) were attempts to distinguish areas used for growing timber from areas used to grow other products, and not an expression of the General Assembly's intent to define "fair market value for

agricultural purposes” as applying only to land. Act 199 did **not** address whether taxation should be based on “agricultural land” or “agricultural real property.” Montgomery respectfully suggests that because this court relied on Act 199 for a point that it did not address, the court “misapprehended” the purpose and effect of Act 199.

10. Montgomery did **not** acknowledge that a million dollar building “**nominally**” used for agricultural purposes could avoid a separate assessment (as the Court reported). This was the bizarre, hypothetical question posed by the Assessor, to keep the Court from focusing on the undisputed facts of **this case**. Instead, Montgomery contended that an agricultural building “**actually used for such agricultural purposes**” (as the Constitution and statutes say) should be taxed on its “fair market value for such purposes” (as the Constitution and statutes say). The Assessor’s hypothetical question, far removed from the facts of this case, sidetracked the Court and skewed the Court’s analysis. In its determination to avoid what might have been an “absurd” result, based on hypothetical facts, this Court issued a wrong decision on the facts of **this case**. Montgomery respectfully submits that the court’s focus on the Assessor’s hypothetical question was a point “misapprehended by the court.”

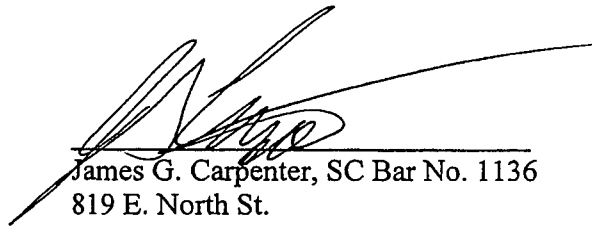
CONCLUSION

Respondent Montgomery respectfully requests that the Court:

- a. Rule based only the facts of **this case**;
- b. Rely on the **plain text** of the Constitution and statutes; and
- c. Reverse its earlier decision, and affirm the Administrative Law Court, based on the **undisputed facts** of this case.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'J. Carpenter', is written over a horizontal line.

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The undersigned attorney hereby certifies that he served a copy of the Respondent's Petition for Rehearing upon all other counsel by first class mail, postage prepaid this Thursday, December 01, 2016, addressed as follows:

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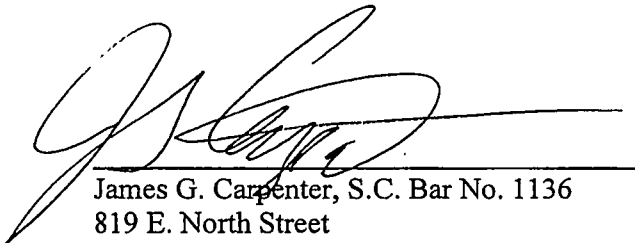
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Appellate Case Number 2013-002697
(Opinion Number 5455, Filed November 16, 2016)

William J. Montgomery, ... Respondent,
v.
Spartanburg County Assessor, ... Appellant.

APPELLANT'S RETURN TO RESPONDENT'S PETITION FOR REHEARING

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ASSESSOR'S OPPOSITION TO REHEARING
Stated with particularity
SCACR 221(a)

The Respondent ("Montgomery" or "Taxpayer") asserts this Court's analysis is deficient by having overlooked or misapprehended ten separate aspects of this case. Respondent's Petition for Rehearing, p. 5 – 9. The Appellant ("Assessor") disagrees. On the contrary, this Court has neither overlooked nor misapprehended any aspect of this case.

The Taxpayer's ten assertions are essentially four arguments: i) the Court is alleged to have failed to understand the meaning of constitutional and statutory references to Agricultural Real Property, ii) the Court is alleged to have been confused as to "Fair Market Value" for Agricultural Use Value, iii) the Court is alleged to have misunderstood the Legislative History of agricultural use valuations, and iv) the Court is alleged to have been distracted (as the Taxpayer phrases it) by a "bizarre, hypothetical question." Each is addressed below.

I. The Meaning of Agricultural Real Property

Taxpayer in numbered paragraphs 1 through 6 of his Petition for Rehearing argues the Court overlooked or misapprehended the meaning of Agricultural Real Property. More particularly, Paragraphs 5 and 6 suggest the Court overlooked undisputed facts, Paragraphs 1 and 2 argue the Court "overlooked or misapprehended" the plain language of S.C. Const. Art. X, § 1, and Paragraphs 3 and 4 "overlooked or misapprehended" the plain language of S.C. Code Ann. § 12-43-220(d)(1)(A). All assertions are incorrect.

A. Undisputed Facts

The Court has not overlooked or misapprehended the undisputed fact that the buildings in this case are "agricultural real property" nor does the Court overlook or misapprehend the undisputed fact the buildings are "actually used for such purposes." Just the opposite is true since the Court acknowledged (rather than overlooked) real property includes both land and the structures attached to the land.

The statutory definition of "real property" includes the structures attached to the land that pass by conveyance of the land. See § 12-37-10.

Slip Opinion p. 5.

The Court did not overlook the fact the buildings were "actually used for such purposes" since the Court relied upon that fact to uphold the 4% ratio for agricultural property by holding "Montgomery's property should be assessed at the 4% ratio applicable to agricultural real property." Slip Opinion p. 4.

The Court did not misapprehend the legal significance of these facts. Rather the Court accurately noted the legal significance:

Accordingly, the entire property is properly assessed at the 4% ratio to determine Montgomery's tax liability. **The analysis does not end there, however, because section 12-43-220(d)(1)(A) provides only the assessment ratio to apply to the property, not the valuation method.** (Emphasis added)

Slip Opinion p. 5.

Thus, the undisputed facts are not overlooked and the legal significance is not misapprehended. Instead, Taxpayer's allegation neglects the importance of S.C. Const. Art. X, § 2. That provision explicitly grants the General Assembly the authority to "define the . . . values for property tax purposes of the classes of property set forth in Section 1 of this article." Because "[a]gricultural real property which is actually used for such purposes" is a class of property set forth in S.C. Const. Art. X, § 1, the General

Assembly is authorized to define such property's *value* for property tax purposes pursuant to S.C. Const. Art. X, § 2. Thus, this Court correctly concluded S.C. Code Ann. §12-43-220(d)(1)(A) provides only the assessment ratio for the property while the "plain language of section 12-43-220(d)(2)(A) provides the [soil capability] method *for valuing* only land . . ." *Id.*

B. Plain Language of S.C. Const. Art. X, § 1

The Taxpayer alleges the Court "overlooked or misapprehended" the plain language of S.C. Const. Art. X, § 1 because the Taxpayer claims the Court "ruled that agricultural buildings should be assessed at 4% of their fair market value, not their 'fair market value for agricultural purposes'" (Respondent's Petition for Rehearing, p. 5). The Assessor disagrees.

Taxpayer's allegation fails to properly consider the literal language of Art. X, § 1(4)(A). The section provides

The General Assembly may provide for the ad valorem taxation . . . of all real and personal property [with t]he assessment . . . be[ing] equal and uniform in the following classifications [with a]gricultural real property . . . actually used for such purposes . . . [to] be taxed on an assessment equal to four percent of its value for such purposes.

Thus, Art. X, §1 establishes "an assessment equal to four percent of its value for such purposes." It does not establish the value. Rather, once setting the assessment ratio of 4%, other provisions of the Constitution establish values. In particular, the "value for such [agricultural use] purposes" looks to section 2(a) of Article X of the South Carolina Constitution. That section places the valuation decision entirely in the General Assembly.

The General Assembly may define the classes of property and values for property tax purposes of the classes of property set forth in Section 1 of this article.

And, consistent with placing the valuation decision with the General Assembly, this Court correctly concluded that to impose the soil capability method on structures “[t]he General Assembly would have used the defined term ‘real property’ in Section 12-43-220(d)(2)(A) if it intended to include structures attached to the land . . . [and b]ecause it did not, we find the *value* of the structures is not reflected in the soil capability valuation method and the structures must therefore be *valued* under the fair market value method.” The Court’s conclusion is not a misapprehension of Art X, § 1.

C. The Plain Language of S.C. Code Ann. §12-43-220(d)(1)(A)

Taxpayer alleges the Court “overlooked or misapprehended” the plain language of S.C. Code Ann. § 12-43-220(d)(1)(A) because the Court “ruled that agricultural use value applied only to land” (Respondent’s Petition for Rehearing, p. 6). The Court did not overlook or misapprehend the plain language of S.C. Code Ann. §12-43-220(d)(1)(A).

Taxpayer continues to misunderstand Article X of the South Carolina Constitution. Article X provides a list of classes of property which must be *assessed* using the assessment ratios enumerated in Section 1. Section 2 of Article X, on the other hand, grants the General Assembly the authority to define the *values* of the classes of property for property tax purposes. This Court correctly concluded “section 12-43-220(d)(1)(A) provides only the assessment ratio to apply to the property, *not the valuation method.*” With the constitutional authority to define values, the General Assembly enacted the plain language of S.C. Code Ann. §12-43-220(d)(2)(A) to set the fair market value for agricultural purposes “**when applicable to land . . . as the productive earning power based on soil capability . . .**” (Emphasis added.). Thus, because the General Assembly passed no statute requiring agricultural buildings be valued under a

special valuation method, such buildings are valued under the willing buyer and willing seller valuation method of § 12-37-930.¹

The Court's conclusion is consistent with well-established statutory construction that requires, if possible, every word and every provision of a statute is given effect. None should be ignored; none needlessly given an interpretation that causes it to duplicate another provision or to have no consequence. *16 Jade Street, LLC v. R. Design Const. Co., LLC*, 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012) ("Similarly, we are to construe a statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.'). Accordingly, the General Assembly has the constitutional authority to define how agricultural real property is valued. In enacting § 12-43-220(d)(2)(A), the General Assembly placed agricultural land—not structures—under a special valuation method: the soil capability method.

II. Taxpayer's Confusion in Applying the Label of Fair Market Value

Taxpayer argues a rehearing is warranted since "[n]o statute and no Constitutional provision authorize the Assessor to tax agricultural real property 'actually used for such agricultural purposes' at 'fair market value.'" (Respondent's Petition for Rehearing, p. 7). Such a position is in error.

The Assessor values property as dictated by the enactments of the General Assembly. This Court holds the General Assembly requires "land" used for agricultural purposes be valued under the soil-capability method and "structures" used for agricultural purposes under the fair market value method of a willing buyer and willing seller. Slip Opinion, p. 5 ("The General Assembly would have used the defined term 'real property'

¹ Section 12-43-220 cross references Section 12-37-930, stating "[a]s used in this section, fair market value with reference to real property means fair market value determined in the manner provided pursuant to Article X of the Constitution of this State, Section 12-37-930 and Article 25, Chapter 37 of this title."

in section 12-43-220(d)(2)(A) if it intended to include structures attached to the land, as Montgomery argues [and b]ecause it did not, we find the value of the structures is not reflected in the soil capability valuation method and the structures must therefore be valued under the fair market value method. *See* § 12-37-930.”)

Article X, Section 2, of the South Carolina Constitution explicitly grants the General Assembly the authority to define the values of the classes of property enumerated in Article X, Section 1. “Agricultural real property which is actually used for such purposes” is a class of property enumerated in Article X, Section 1.

The General Assembly in §12-37-930 requires

All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.”

Because the General Assembly has not enacted a special valuation method for agricultural buildings, such buildings must be valued pursuant to the willing buyer and willing seller fair market value method. Hence, the Court has not overlooked or misapprehended any provision of law valuing land or valuing structures on the land when used for agricultural purposes.

III. Legislative History

Taxpayer alleges the Court “overlooked or misapprehended” the “importance of Act 133 of 1979” which “amended § 12-43-220(d)(1), so that the ‘fair market value for agricultural purposes’ would apply not to ‘agricultural land,’ but to ‘agricultural real property,’ which includes both the land and all agricultural structures.” According to

Taxpayer, this Court's ruling "was improper and constituted a double taxation." (Respondent's Petition for Rehearing, pp. 9-10). The Assessor disagrees.

This Court correctly concluded Act 133 of 1979 dealt "only with the *classification* of agricultural real property [and] h[as] no bearing on the *valuation method* to be used when determining the owner's property tax liability" (Slip opinion, p. 7). The Taxpayer's allegations again seek to conflate the assessment ratio determination with the valuation determination. The only issue disputed in this case is the valuation determination and the Court correctly determined that agricultural buildings are valued according to the willing buyer and willing seller fair market value method.

Taxpayer continues its assertions on Legislative History by alleging the Court "overlooked or misapprehended" the "purpose and effect of Act 199 [of 1979]" because "Act 199 did not address whether taxation should be based on 'agricultural land' or 'agricultural real property'" (Respondent's Petition for Rehearing, p. 9). The Assessor again disagrees.

This Court did not overlook or misapprehend Act 199 of 1979. Rather, this Court reconciled Act 199 of 1979 with Act 618 of 1976 and Act 133 of 1979. According to the Court, Act 618 of 1976 restricted the assessment of agricultural real property to land only. Subsequently, Act 133 of 1979 removed "land" and replaced it with "real property," thus broadening the types of property assessed as agricultural real property. Also in 1979, the General Assembly passed act 199, which required a special valuation method be applied to "land used for the growth of timber." Thus, from 1976 to 1979, agricultural land was the only type of property assessed at the 4% ratio under Article X of the South Carolina Constitution. From 1979 forward, both agricultural land and agricultural

buildings are assessed at the 4% ratio under Article X of the South Carolina Constitution, but agricultural land is valued using a special valuation method. This Court correctly concluded that Act 199 of 1979 “created a new valuation method for land used for timber production, but did nothing to change the method of valuing any structures on the land.”

IV. Taxpayer’s Allegation a Hypothetical Question “Sidetracked” the Court

Taxpayer alleges a “bizarre, hypothetical question . . . sidetracked the Court and skewed the Court’s analysis.” (Respondent’s Petition for Rehearing, p. 9). The Assessor disagrees.

Rather than the Court’s analysis having been sidetracked by a “bizarre, hypothetical question,” the Court focuses on the practical result of the lower court’s decision. The Court concludes the lower court creates an exemption never intended by the General Assembly.

Finally, the definition adopted by the ALC would lead to an absurd result. According to Montgomery, the only valuation method applicable to agricultural real property is the soil capability method. As a result, structures on agricultural land would be essentially exempt from tax. Montgomery acknowledged at oral argument that under his interpretation, a valuable home located on a tree farm would not be valued for tax purposes as long as that home is not a legal residence and is used for agricultural purposes. We find the General Assembly did not intend to create such an exemption.

A Court called upon to interpret a statute always seeks a meaning that furthers the intention of the General Assembly because the primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). In addition, in seeking that intent, courts will reject a meaning “when to accept it would lead to a result so plainly absurd that it could not have been intended by the General Assembly. *Kiriakides v. United Artist Commc’ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)

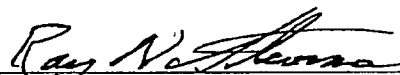
Here, the Court correctly concluded Taxpayer's position would lead to an absurd result – exempting all structures on agricultural land from property tax. Thus, the Court did not misapprehend the intention of the General Assembly.

CONCLUSION

The Appellant, Spartanburg County Assessor, respectfully requests the Court:

- a. Deny Respondent's Petition for Rehearing
- b. Confirm Opinion Number 5455, Filed November 16, 2016

[SIGNATURE PAGE FOLLOWS]



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Appellate Case Number 2013-002697
(Opinion Number 5455, Filed November 16, 2016)

William J. Montgomery, ...Respondent,

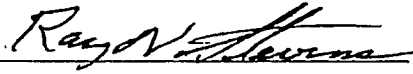
v.

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Appellant's Return to Respondent's Petition for Rehearing complies with Rule 221 and Rule 240, SCACR.

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Appellate Case Number 2013-002697
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William J. Montgomery, ...Respondent,

v.

Spartanburg County Assessor, ...Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on December 12, 2016 s/he has caused a copy of the Appellant's Return to Respondent's Petition for Rehearing to be served upon all parties of record by hand delivering and U.S. Mail a copy of the same, addressed as follows:

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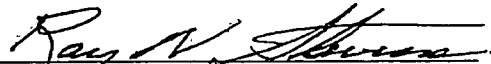
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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case Number 2013-002697
(Opinion Number 5455, Filed November 16, 2016)

William J. Montgomery, ... Respondent,

v.

Spartanburg County Assessor, ... Appellant.

RESPONDENT'S REPLY IN SUPPORT OF PETITION FOR REHEARING

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In his Return to the Petition for Rehearing, the Assessor agreed that the Parcel is being used for agricultural purposes, and he admits that the buildings are agricultural real property. The Assessor further admits that the agricultural buildings at issue are actually used for agricultural purposes. However, without statutory authority, the Assessor insists on assessing the agricultural buildings at four percent (4%) of their "fair market value," instead of their statutory "fair market value for agricultural purposes." That is the heart of the dispute. The Constitution and the statutes require that they be assessed at their "fair market value for agricultural purposes." The Administrative Law Court's ruling in this case (and three similar rulings of other Administrative Law Courts) properly ruled that the value of the agricultural buildings was already included for tax purposes in the assessment of "agricultural real property."

Separately assessing and taxing the agricultural buildings is double taxation, and contrary to the plain language of the statutes and the Constitution. No statute and no Constitutional provision authorize the Assessor to tax agricultural real property "actually used for such agricultural purposes" at "fair market value." Nevertheless, that is what this Court authorized.

Accordingly, Respondent Montgomery petitions for rehearing, and respectfully requests that the Court: rule based only the facts of this case; rely on the plain text of the Constitution and statutes; and reverse its earlier decision, and affirm the Administrative Law Court, based on the undisputed facts of this case.

Respectfully submitted,
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The undersigned attorney hereby certifies that he served a copy of the Respondent's Petition for Rehearing upon all other counsel by first class mail, postage prepaid this Friday, December 16, 2016, addressed as follows:

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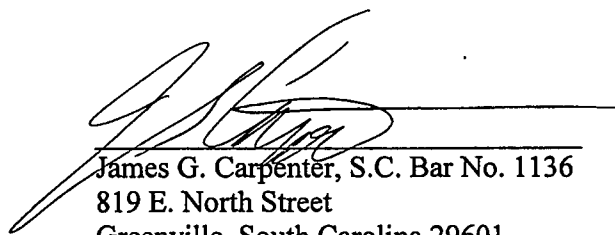
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The South Carolina Court of Appeals

William J. Montgomery, Respondent,

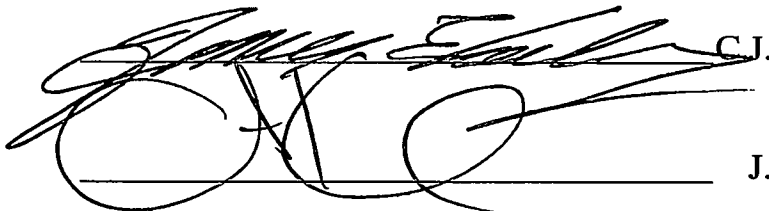
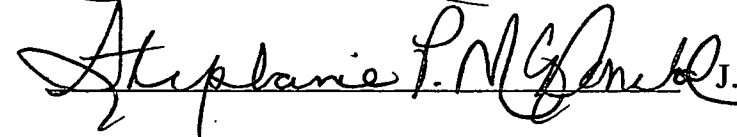
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ORDER

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

 C.J.
 J.

Columbia, South Carolina

cc:

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February 16, 2017

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