

assessor written notice of objection "within ninety days after the assessor mails the property tax assessment notice." In this case, the assessor has never mailed the assessment notice.

Respondent, in its argument contesting the Court's factual finding on this issue, claims that this Court misconstrued the holding of the South Carolina Supreme Court in *Southbridge Properties, Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d 535 (1987). The Court's reference to *Southbridge Properties* quotes the supreme court's statement that giving notice "to a third party does not amount to service on the addressee." Respondent goes a step further and states that an appeal is perfected when "the third party actually mails the document." What the supreme court determined was that a Notice of Appeal was not deposited in the United States postal service until after the appeal period had expired. Importantly, the appeal period ran from the date "appellant received written notice of the trial court's order." That is also the rule of *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985). Furthermore, in *Hamm v. S.C. Pub. Serv. Comm'n*, 287 S.C. 180, 336 S.E.2d 470 (1985) the supreme court held that sending a copy of an order to an individual, who, as the sender knew, was no longer employed by Hamm, was invalid service. Hamm's appeal within thirty (30) days of obtaining a copy of the order from the sender's office was timely.

Petitioner's testimony that he did not receive the Notice of Assessment coupled with the irregularities of transmission support the Court's finding that the appeal period did not start until February 2016.

Respondent's contends that the Court erred by extending or enlarging the time for appeal as set by statute. However, as the supreme court stated in *Hamm*, at 182, 471, applying a statutory appeal period set at thirty (30) days, "we believe the statute must be read to allow a party thirty days after notice of a decision to bring an appeal [emphasis in original]." This Court is not extending the ninety (90) days to appeal but determining on the facts of the case when the time begins to run.

The fourth ground argued by Respondent is that the Court's interpretation of Petitioner's March 14, 2016, letter referring to a "2016 Appeal" was not accurate. The Court determined the letter to be an appeal of the 2015 tax because the 2016 tax notices had not been mailed. Respondent points out that an appeal received after the last date for appeals is considered to be an appeal for the succeeding tax year. Thus, an appeal could be made before a tax notice is sent. As authority for this rule, Respondent points to S.C. Code Ann. § 12-60-2510(A)(4) which allows appeal of fair

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market value, the special use value, the assessment ratio and the property tax assessment of a parcel at any time. Section 12-60-2510(A)(4) states as follows:

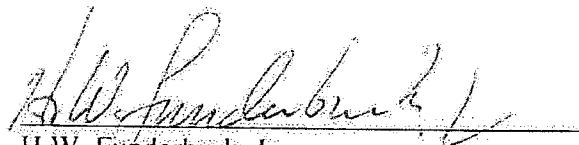
An appeal submitted before the first penalty date applies for the property tax year for which that penalty would apply. An appeal submitted on or after the first penalty date applies for the succeeding property tax year.

Respondent seeks to apply a rule statutorily limited to "years when there is no notice of property tax assessment" to a year in which a Notice of Assessment was allegedly sent. Moreover, it is clear from the letter that Petitioner has discussed the issue of the 2015 tax as well as the 2016 tax on telephone calls placed to the various individuals in the Assessor's office. Furthermore, Petitioner's April 18, 2016, letter refers to "a chance to appeal 2015" and to conversations in which he was told that nothing could be done "about the 2015 overpayment same as the penalty applied for 2015." Petitioner finally "request[s a] 2015 Appeal for the commercial real estate property tax numbers referenced above....." Even if Respondent is correct and the Court has misinterpreted the March 14, 2016, letter, this April 18, 2016, letter clearly asks for an appeal of the 2015 tax assessment. It also suggests that conversations between Petitioner and Respondent's employees may have resulted in further confusion about what and how Petitioner could appeal. Moreover, if Petitioner's testimony that he received his first notice of the tax and property valuation in February 2016 is interpreted as meaning February 1, 2016, the April 18, 2016, appeal is within ninety (90) days of his receipt of the notice. Hence, it is timely.

For the above reasons, Respondent's MOTION FOR RECONSIDERATION is **DENIED**.

AND IT IS SO ORDERED.

January 10, 2018
Columbia, South Carolina


H.W. Funderburk, Jr.
Administrative Law Judge

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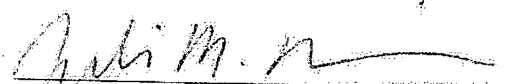
CERTIFICATE OF SERVICE

I, Julia M. Miller, 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).

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January 10, 2018
Columbia, S.C.



Julia M. Miller
Judicial Law Clerk

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