THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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Docket No. 17-ALJ-17-0451-CC

Mary Cromey .....Appellant,

v.

South Carolina Department of Revenue .....Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the Administrative Law Court err in concluding the property tax exemption under S.C. Code Ann. § 12-37-220(B)(1) is not available to a surviving spouse of a disabled veteran where the surviving spouse did not first acquire a previously exempt house from the disabled veteran and the disabled veteran did not file a certification of disability with the Department of Revenue during the disabled veteran's lifetime?

STATEMENT OF THE CASE

This matter is before the Court of Appeals on appeal from the Administrative Law Court ("ALC") and arises from a request for a contested hearing filed by Mary E. Cromey ("Taxpayer") challenging the South Carolina Department of Revenue's ("Department") determination that Taxpayer is not entitled, under S.C. Code Ann. § 12-37-220(B)(1)(b), to a property tax exemption ("Exemption") for certain real property[1] for tax years 2017 and 2018 ("Years in Dispute"). (R. p. 000167-000190). The Department's issuance of its determination dated November 20, 2017 (the "Department Determination") denied Taxpayer's application for exemption from *ad valorem* property tax on the Property. (R. p. 000159-000166).

Both Taxpayer and the Department filed a Motion for Summary Judgment. (R. p. 000032-000073). The ALC subsequently held a hearing on May 24, 2018. In the ALC's order dated August 24, 2018, the ALC found the following facts to be undisputed:

> Petitioner is the surviving spouse of Lloyd D. Cromey (Mr. Cromey). In February 2004, the United States Veterans Administration (VA) deemed Mr. Cromey to be permanently and totally disabled. Petitioner and Mr. Cromey lived in a jointly owned home in Owing Mills, Maryland, until his death in 2005. Mr. Cromey has never been a resident of South Carolina or owned real property in South Carolina.

[1] As used herein, the term "Property" means the real property located at 1885 Carolina Towne Court, Mount Pleasant, South Carolina, 29464, Tax Parcel #5-58-15-002.69.

> In 2010, several years after Mr. Cromey's death, Petitioner moved to South Carolina and purchased real property located at 1551 Ben Sawyer Blvd., Unit 6B, Mount Pleasant, South Carolina. Petitioner submitted an application to the Department for the disabled veteran property tax exemption as a surviving spouse on this property beginning with tax year 2011. The Department granted Petitioner's application.
>
> In 2016, Petitioner sold the property located at 1551 Ben Sawyer Blvd., Unit 6B, Mount Pleasant, South Carolina, and purchased a new property located at 1885 Carolina Towne Court (Towne Court), Mount Pleasant, South Carolina. Petitioner was, and is, the sole owner of Towne Court. Thereafter, on February 17, 2017, Petitioner applied for the disabled veteran property tax exemption as a surviving [spouse] for Towne Court. The Department denied Petitioner's application. Petitioner has never remarried.

(R. p. 000002-000003).

The ALC determined Taxpayer was not eligible for the Exemption because (1) Mr. Cromey did not file a certification with the Department and therefore Taxpayer is not a "qualified surviving spouse" and (2) even if the certification requirement were waived, the Taxpayer did not first acquire a previously exempt house from Mr. Cromey before acquiring the Property. *Id.* (R. p. 000003-000011). In addition, the ALC determined Taxpayer's position would produce an absurd result where a surviving spouse of a veteran killed in action would face a greater burden than a surviving spouse of a disabled veteran would face in applying for the Exemption. *Id.* (R. p. 000011).

The ALC's Order should be reversed because (1) the plain language of the Exemption statute does not condition eligibility on first acquiring a previously exempt house, (2) the certification requirement does not apply to Taxpayer, (3) the Taxpayer's interpretation of the Exemption does not produce an absurd result, and (4) the legislative history of the Exemption supports Taxpayer's position.

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), SCRCP.

Thus, two elements are required: (1) no genuine dispute may exist 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 to the Department, the ALC implicitly ruled no material facts are in dispute. In direct terms, the ALC explicitly ruled "In this case, the parties agree upon the facts, leaving only a question of law. . . . Therefore, I find summary judgment is appropriate in this case." (R. p. 000003). Whether implicit or explicit, the ALC's finding of no disputed material facts is not under appeal. Therefore, the ALC's finding of no disputed material facts is 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 is Due as a Matter of Law to Taxpayer, Not the Department

Regarding the second element, the Taxpayer agrees judgment is due as a matter of law. However, judgment is due in favor of the Taxpayer, not the Department. In reaching its conclusion, the ALC framed the issue as a statutory interpretation of South Carolina Code Annotated section 12-37-220(B)(2): "Here we are dealing with a property exemption statute and strict construction is appropriate." (R. p. 000006).

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 County 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 prohibition or it is affected by an error of law.").

The granting of an exemption from property taxation is a matter of legislative grace and such exemptions are generally construed strictly against a taxpayer. *See, e.g. Owen Industrial Products, Inc. v. Sharpe*, 274 S.C. 193, 262 S.E.2d 33 (1980). However, "[t]his rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. It does not mean that we will search for an interpretation in [DOR]'s favor where the plain and unambiguous language leaves no room for construction." *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 71 S.E.2d 877 (2011) (citing *Se.-Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981)). It is "[o]nly when the literal application of the statute produces an absurd result will we consider a different meaning." *Id.* at 75, 71 S.E.2d at 881 (citing 276 S.C. at 499-90, 280 S.E.2d at 58).

Here, although summary judgment is appropriate, the ALC erred in imposing requirements not contained in the statute upon Taxpayer. Instead, as a matter of law, the

Taxpayer's Motion for Summary Judgment – not the Department's – should have been granted.

ARGUMENT

The Administrative Law Court's ("ALC") decision should be reversed and Mary Cromey ("Taxpayer") should be granted the Exemption with respect to the Property for the Years in Dispute.

I. THE PLAIN LANGUAGE OF THE EXEMPTION STATUTE DOES NOT CONDITION ELIGIBILITY ON FIRST ACQUIRING A PREVIOUSLY EXEMPT HOUSE

Section 12-37-220(B)(1) grants a property tax exemption to three distinct categories of houses: (1) a house owned by an *eligible owner*, (2) a house acquired from a deceased spouse by a *qualified surviving spouse*, and (3) a house subsequently acquired by an *eligible surviving spouse*. This case involves only the third category. The Taxpayer has consistently maintained she is eligible for the Exemption as an eligible surviving spouse of a disabled veteran.

To establish eligibility for the Exemption, the Taxpayer must show (1) the Property is a "house", (2) the Property is "subsequently acquired," and (3) the Taxpayer is an "eligible surviving spouse" of a disabled veteran.

A. House

The Exemption statute defines "house" as "a dwelling and the lot on which it is situated classified in the hands of the current owner for property tax purposes pursuant to Section 12-43-220(c)." S.C. Code Ann. § 12-37-220(B)(1)(e)(iv). For the Years in Dispute, the undisputed facts establish Taxpayer owned the Property and lived at the Property as Taxpayer's legal residence and domicile. (R. p. 000047). Consequently,

Taxpayer satisfies the first element as she owned a "house" within the statutory meaning of the Exemption statute.

B. Subsequently Acquired

The phrase "subsequently acquired" is not defined in the Exemption statute. In South Carolina, "[w]here a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning." *Lee v. Thermal Engineering Corp.*, 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002). Subsequently means "at a later or subsequent time" and acquired has two accepted definitions, including "gained by or as a result of effort or experience" or "attained as a new or added characteristic, trait, or ability." *Merriam-Webster's Online Dictionary*, https://www.merriam-webster.com/dictionary/subsequently; https://www.merriam-webster.com/dictionary/acquired. The plain meaning of the phrase can be summed up as "attained at a later time." However, this Court must decide what the precipitating event is which the acquisition of "a house" is later in time to.

Viewed in isolation, the phrase "subsequently acquired" could mean either after first acquiring a house from a decedent spouse or after the death of the decedent spouse. A statute must "be read as a whole and in harmony with its purpose." *16 Jade Street, LLC v. R. Design Const. Co., LLC*, 398 S.C. 338, 343, 728 S.E2d 448, 450 (2012). Excerpts from a statute should not be read in isolation or out of context with the remainder of the statute. *See Travelscape, LLC v. South Carolina Dep't of* Revenue, 391 S.C. 89, 101, 705 S.E.2d 28, 34 (2011) ("[W]ords in a statute must be construed in context, and their meaning may be ascertained by reference to words associated with them in the statute.").

When viewing the phrase "subsequently acquired" in context with the remainder of the statute, it becomes clear that the phrase means after the death of the decedent spouse.

The Exemption applies to certain real property acquired by a surviving spouse "from the deceased spouse." Surviving spouse is a term of art in probate law that means "[a] spouse who outlives the other spouse." *Black's Law Dictionary* 1486 (8th Ed. 2004). Surviving means "Remaining alive, living beyond the happening of an event so as to entitle one to a distribution of property or income <surviving spouse>." *Black's Law Dictionary* 1439 (8th Ed. 2004). Thus, surviving spouse is a term that only has meaning at the moment the other spouse has passed away. At precisely that moment the surviving spouse for purposes of probate law becomes entitled to inherit certain real property *from the deceased spouse.*

Firmly established principles of probate law establish that title to real property passes immediately upon death, whether by survivorship, intestacy, or devise. Restatement of the Law – Property; § 7.1 Will Substitutes – Definition and Validity (2018); S.C. Code Ann. § 62-2-804 (survivorship); S.C. Code Ann. § 62-3-101 (devolution of real property via intestacy or by devise). Because a surviving spouse takes title to real property at the moment the decedent spouse dies, such real property is "acquired from the deceased spouse" and thus qualifies for the Exemption under the second category. Any house acquired by a surviving spouse after the death of the decedent spouse would thus be a "subsequently acquired" house qualifying for the Exemption under the third category.

Generally, a legislative body is presumed to know the state of existing law when it passes legislation. *See e.g. State v. Williams*, 2014 WI 64, 852 N.W.2d 467 (2014);

Paquette v. Com. 440 Mass. 121, 795 N.E.2d 521 (2003). In light of existing probate law, the General Assembly's enactment of an exemption for a surviving spouse for a house "acquired from the deceased spouse" and a separate exemption for a surviving spouse for a house "subsequently acquired" should be interpreted as granting an exemption for a house acquired by a surviving spouse after the death of the deceased spouse. For the Years in Dispute, the undisputed facts establish Taxpayer acquired the Property in 2016, after the death of Mr. Cromey in 2005. (R. p. 000047). Consequently, Taxpayer satisfies the second element as the Property was "subsequently acquired" within the meaning of the Exemption statute.

C. By an Eligible Surviving Spouse

The ALC's Order determined that Taxpayer must meet the statutory definition of "qualified surviving spouse" to be eligible for exemption on "a house subsequently acquired by an eligible surviving spouse." Taxpayer disagrees and asserts the Taxpayer must merely be an "eligible surviving spouse" pursuant to the text of the statute.

The General Assembly used the phrase "qualified surviving spouse" four times in the Exemption statute but chose to use the phrase "eligible surviving spouse" when granting the exemption on a "house subsequently acquired." Courts must presume "the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998); *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 ("[W]e must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'" (internal citations

omitted)). Moreover, "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Hock RH, LLC v. S.C. Dep't of Revenue*, 423 S.C. 208, 214, 813 S.E.2d 540, 543 (Ct. App. 2018).

The Exemption was not enacted in a vacuum. Rather, the Exemption is one of 63 separately enumerated exemptions from property taxation. S.C. Code Ann. § 12-37-220. Among these 63 enumerated exemptions are five (counting the Exemption) separate exemptions for property owned by a surviving spouse. S.C. Code Ann. § 12-37-220(B)(2)(A) (granting an exemption for a legal residence to a surviving spouse of a paraplegic or hemiplegic person "so long as the spouse does not remarry"); S.C. Code Ann. § 12-37-220(B)(3) (granting an exemption for certain vehicles to a surviving spouse of a disabled veteran "for their lifetime or until the remarriage of the surviving spouse"); S.C. Code Ann. § 12-37-220(B)(29) (granting an exemption for certain vehicles to a surviving spouse of a prisoner of war "for the lifetime or until the remarriage of the surviving spouse"); and S.C. Code Ann. § 12-37-220(B)(43) (granting an exemption for a legal residence to a surviving spouse of a recipient of the Medal of Honor "under the same terms and conditions governing the exemption for surviving spouses pursuant to item (1) of this subsection"). In every one of these instances, a surviving spouse must remain unmarried to receive the property tax benefit. Given this context, it is reasonable to assume the General Assembly intended "eligible surviving spouse" to mean a surviving spouse that remains unmarried. When construed this way, the phrase "eligible surviving spouse" is broad enough to include any "qualified surviving spouse" as well as any surviving spouse who did not acquire or inherit a previously exempt house directly from a deceased spouse. This reading of the statute reconciles the meaning of "eligible

surviving spouse" with the meaning of "qualified surviving spouse" and gives both phrases meaning consistent with the statute as a whole.

The undisputed facts show the Taxpayer is the surviving spouse of Mr. Cromey, a disabled veteran, and that Taxpayer has not remarried since the death of Mr. Cromey. (R. p. 000047). Consequently, Taxpayer is an eligible surviving spouse of a disabled veteran within the meaning of the Exemption statute.

II. THE CERTIFICATION REQUIREMENT DOES NOT APPLY TO THE TAXPAYER

The ALC's Order determined Taxpayer could not qualify for the Exemption because Mr. Cromey did not file the certificate required by S.C. Code Ann. § 12-37-220(B)(1)(e)(i)(A) with the Department of Revenue. (R. p. 000005-000007). The ALC reasoned the certification requirement applies to Taxpayer via the definition of "qualified surviving spouse" which references "individuals described in subsubitem (i)." *Id.* Under the ALC's theory, because Mr. Cromey was a disabled veteran and the description of disabled veterans in "subsubitem (i)" includes the certification requirement, Taxpayer can only be granted the exemption if Mr. Cromey had complied with the certification requirement during his lifetime.

However, as demonstrated above, the relevant portion of the statute granting the exemption on a "house subsequently acquired" does not invoke the statutory definition of "qualified surviving spouse." Instead, the relevant portion of the exemption is explicitly granted to an "eligible surviving spouse." Because there is no textual link in the statute between an eligible surviving spouse and the certification requirement, Taxpayer is not required to establish that Mr. Cromey filed any certificate with the Department.

III. TAXPAYER'S POSITION DOES NOT PRODUCE AN ABSURD RESULT

The ALC's Order concluded Taxpayer's position produces an absurd result – namely that a surviving spouse of a veteran killed in action (who did not acquire a previously exempt house from the deceased spouse) would not be eligible for the Exemption but a surviving spouse of a disabled veteran would be. (R. p. 000011). The ALC based this conclusion on the definition of "qualified surviving spouse" which includes the surviving spouse of a veteran killed in action "only if 'at the time of death [the military spouse] owned the house in fee or jointly with the now surviving spouse.'" (R. p. 000010).

This is an incorrect characterization of Taxpayer's position. Under Taxpayer's position a surviving spouse of a veteran who was killed in action would be on equal terms with a surviving spouse of a disabled veteran as both would have to prove the same elements to establish eligibility under the third category of the Exemption. Both spouses would be required to show the spouse owns an eligible house (i.e. the house is a legal residence), the house was acquired after the death of the veteran, and the spouse is an eligible surviving spouse of a veteran (i.e. has not remarried).

IV. THE LEGISLATIVE HISTORY OF SECTION 12-37-220(B)(1) SUPPORTS TAXPAYER'S POSITION

While the Court need look no further than the plain language of South Carolina Code Annotated section 12-37-220, should the Court believe an ambiguity exists, the legislative history of section 12-37-220 is informative and supports the Taxpayer's position.

The prior version of the exemption granted the exemption on a dwelling acquired from the deceased spouse and on "another residence" provided the surviving spouse first

"disposes of the exempt dwelling and acquires another residence in this State . . . with a value no greater than one and one-half times the fair market value of" the previously exempt dwelling. 2000 S.C. Act 399, Section 3(Q)(1). The prior version of the exemption also prohibited the exemption on a "subsequent dwelling." The 2004 legislation deleted the disposal requirement, deleted the requirement to acquire "another residence" in the state, and deleted the prohibition of the exemption on a "subsequent dwelling." 2004 S.C. Act 224. In replacement, the General Assembly provided a new category of exempt property consisting of "a house subsequently acquired by an eligible surviving spouse."

The pre-2004 statutory language was crystal clear – the surviving spouse was required to first own the exempt dwelling inherited or acquired from the deceased spouse, then dispose of that dwelling, and then acquire another residence in this state (that met the 150% value limitation). Each of these actions had to be accomplished before the surviving spouse could be granted the exemption on "another residence." In addition, prior law required a taxpayer to "inform the Department of Revenue of *the change in address* of the dwelling." Following the 2004 legislation, the Exemption statute only requires a taxpayer to "inform the Department of Revenue of *the address* of a subsequent house."

Taken together, these legislative changes cannot be reasonably construed to perpetuate the old law's requirement that a surviving spouse first dispose of a previously exempt house before qualifying for exemption on a subsequent house. If the General Assembly intended the Department's interpretation to prevail, the General Assembly would not have deleted the explicit disposal requirement, the explicit requirement to acquire "*another* residence in this State," or the explicit requirement to notify the

Department of a "change in address." If the Department's position were to be enforced, it would render the General Assembly's affirmative choice to delete substantial portions of the pre-2004 Exemption text a nullity.

Taxpayer's position is further supported by the caption of the 2004 legislation which made the changes described above. The 2004 Act was described, in pertinent part, as, "An Act to Amend Section 12-37-220, As Amended, Code of Laws of South Carolina, 1976, Relating to Exemptions from Property Tax so as to . . . Provide the Requirements for *this Extended Exemption*." 2004 S.C. Act 224 (emphasis added). The General Assembly's use of the phrase "this extended exemption" reinforces Taxpayer's position that the General Assembly's intent in passing the 2004 amendment was to broaden the scope of the prior exemption. *Cf. Hock RH, LLC v. South Carolina Dep't. of* Revenue, 423 S.C. 208, 813 S.E.2d 540, 544 (Ct. App. 2018) (concluding the General Assembly's intent "was to clarify rather than broaden the exemption already afforded" when it enacted an Act with the caption "An act to amend section 59-40-140 ... so as to clarify that property of charter schools exempt from such taxation includes owned or leased property").

CONCLUSION

The Taxpayer respectfully asks this Court to reverse the decision of the Administrative Law Court and grant an exemption from *ad valorem* property taxation to Taxpayer on the Property for tax years 2017 and 2018 pursuant to the requirements of Section 12-37-220(B)(1)(b).

Respectfully submitted,

Nate Dunn on behalf of Madison Felder

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Appellant's Final Brief in the above-referenced matter complies with SCRCP 211(b).

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