THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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Case No. 17-ALJ-17-0451-CC
Appellate Case No. 2018-001739

Mary Cromey,.....Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This matter came before the South Carolina Administrative Law Court (ALC) following Appellant Mary Cromey's (Appellant) request for a contested case hearing under S.C. Code Ann. § 12-60-2120(D) (2014). (R. pp. 167-190; Request for Contested Case Hearing, pp. 1-24.) Appellant requested a contested case hearing to challenge Respondent South Carolina Department of Revenue's (Department) determination that Appellant is not entitled to a property tax exemption as a surviving spouse of a totally and permanently disabled veteran ("disabled veteran") pursuant to S.C. Code Ann. § 12-37-220(B)(1) (2014) for her legal residence located at 1885 Carolina Towne Court, Mount Pleasant, South Carolina, 29464 (the "Property"). *Id.* *See also* R. pp. 159-166; Department Determination, pp. 1-8.

On February 23, 2018, the Department filed a motion for summary judgment. (R. pp. 32-69; Department's motion for summary judgment, pp. 1-38.) Appellant filed a motion for summary judgment on or about February 28, 2018. (R. pp. 70-73; Appellant's motion for summary judgment, pp. 1-4.) A motions hearing was held before the ALC on May 24, 2018. (R. pp. 90-149; Motions hearing transcript, pp. 1-60.) On August 24, 2018, the ALC issued a Final Order granting the Department's motion for summary judgment and denying Appellant's motion for summary judgment. (R. pp. 2-13; Final Order, pp. 1-12.)

On September 24, 2018, Appellant filed her notice of appeal of the ALC's decision to the South Carolina Court of Appeals.

STATEMENT OF FACTS

The parties stipulated to the facts in this matter, and thus, the facts below are not in dispute:

> Petitioner [Appellant, Mary Cromey] 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.
>
> 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. pp. 2-3; Final Order, pp. 1-2.)

STANDARD OF REVIEW

In an appeal from the decision of an administrative agency, the Administrative Procedures Act provides the appropriate standard of review. *Olson v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct. App. 2008); *Turner v. S.C. Dep't of Health & Envtl. Control*, 377 S.C. 540, 544, 661 S.E.2d 118, 120 (Ct. App. 2008); *Clark v. Aiken County Gov't*, 366 S.C. 102, 107, 620 S.E.2d 99, 101 (Ct. App. 2005). S.C. Code Ann. § 1-23-610(B) (Supp. 2017) provides the applicable standard:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse to modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

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

When reviewing an order granting summary judgment, "the appellate court applies the same standard as that used by the trial court pursuant to Rule 56(c), SCRCP." *Joseph v. S.C. Dep't of Labor, Licensing and Regulation*, 417 S.C. 436, 448, 790 S.E.2d 763, 769 (2016) (citing *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011)). Under Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRCP), summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Young v. S.C. Dep't of Disabilities & Special Needs*, 374 S.C. 360, 649 S.E.2d 488 (2007); *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007).

Here, the parties stipulated to the facts at the motions hearing, and the ALC determined that no material facts are in dispute. Because Appellant did not challenge the ALC's "Undisputed Facts" in the Final Order, the ALC's determination is the law of the case. (R. pp. 2-3; Final Order, pp. 1-2.) *Dreher v. S.C. Dep't of Health and Envtl. Control*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015) ("An unappealed ruling is the law of the case and requires affirmance.").

Resolution of this matter depends upon the rules of statutory construction. Statutory interpretation is a question of law. *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce*, 423 S.C. 295, 300, 814 S.E.2d 513, 516 (2018). In South Carolina, it is well settled that "the language of a tax exemption statute must be given its plain, ordinary meaning and must be construed strictly against the claimed exemption." *Owen Indus. Prods., Inc. v. Sharpe*, 274 S.C. 193, 195, 262 S.E.2d 33, 34 (1980); *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, in order to claim an exemption a taxpayer has the burden of "clearly bring[ing] himself within the constitutional or statutory language upon which he relies." *York County Fair Ass'n, Inc. v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967) (*quoting Textile Hall Corp. v. Hill*, 215 S.C. 262, 54 S.E.2d 809 (1949)). *See also Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) ("When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.").

Nevertheless, even if this Court engages in statutory construction, when construing a statute the cardinal rule is to ascertain the intent of the Legislature. *Georgia-Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct. App. 2003). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purposes of the statute." *Id.* at 23, 579 S.E.2d at 336. The words of the statute "must be given their plain and ordinary language without resort[ing] to subtle or forced construction to limit or expand [the statute's] operation." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (internal citations omitted). Further, "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (quoting *Dunton v. S.C. Bd. of Exam'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)); *see also Nucor Steel v. S.C. Pub. Serv. Comm'n*, 310 S.C. 539, 543, 426 S.E.2d 319, 321 (1992) (recognizing that where

an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason).

ARGUMENTS

This Court should affirm the ALC's decision because there are no errors of law. While Appellant argues this Court should employ certain rules of statutory interpretation, these rules are inapplicable where - as here - the language of the statute at issue is plain and unambiguous. Nevertheless, even if the statute is ambiguous, the Department is charged with administering the statute at issue. Thus, the Department's construction of the statute is entitled to deference and should not be overruled absent compelling reasons. *Kiawah Development Partners, II v. S.C. Dep't of Health and Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) (noting that South Carolina courts "give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statues and regulations.").

The Department has consistently interpreted and applied this property tax exemption statute the same way it applied the statute to Appellant. Appellant simply cannot meet the strict requirements of the exemption statute. *See* R. p. 8; Final Order, p. 7 ("Deference, as construed in *Kiawah*, requires the court to uphold an agency's interpretation when a statute is ambiguous unless that interpretation is 'arbitrary, capricious, or manifestly contrary to the statute.'" (citing *Kiawah*, 411 S.C. at 35, 766 S.E.2d at 18 (quoting *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844, 104 S.Ct. 2778 (1984))).

I. THE ADMINISTRATIVE LAW COURT CORRECTLY CONCLUDED THAT APPELLANT IS NOT A "QUALIFIED SURVIVING SPOUSE" PURSUANT TO THE PROPERTY TAX EXEMPTION OF S.C. CODE ANN. § 12-37-220(B)(1).

Appellant contends that she is entitled to a property tax exemption for the Property as the surviving spouse of a disabled veteran pursuant to S.C. Code Ann. § 12-37-220(B)(1)(b) (2014).

In contrast, the Department argues Appellant cannot meet the strict requirements of the exemption statute, and thus, Appellant is not entitled to receive the property tax exemption for the Property. After a hearing on the parties' motions for summary judgment, the ALC correctly concluded that Appellant cannot meet the requirements of the exemption statute, and therefore, Appellant is not entitled to receive the property tax exemption for her legal residence in South Carolina.

A. The Legislature has provided for a property tax exemption to a disabled veteran for his legal residence if certain requirements are met.

Under South Carolina law, "[a]ll real and personal property in this State . . . shall be subject to taxation" unless expressly exempted as a matter of legislative grace. S.C. Code Ann. § 12-37-210 (2014); *S. Weaving Co. v. Query*, 206 S.C. 307, 34 S.E.2d 51 (1945). South Carolina's General Assembly delineated specific exemptions to ad valorem property tax in S.C. Code Ann. § 12-37-220 (2014). The relevant subsection of this statute provides that certain properties are eligible for a property tax exemption:

> (a) the house owned by an eligible owner in fee or jointly with a spouse;
>
> (b) the house owned by a qualified surviving spouse acquired from the deceased spouse and a house subsequently acquired by an eligible surviving spouse. The qualified surviving spouse shall inform the Department of Revenue of the address of a subsequent house;

Section 12-37-220(B)(1). For purposes of the exemption in § 12-37-220(B)(1), "eligible owner" means:

> (A) a veteran of the armed forces of the United States who is permanently and totally disabled as a result of a service-connected disability and who files with the Department of Revenue a certificate signed by the county service officer certifying this disability.

S.C. Code Ann. § 12-37-220(B)(1)(e)(i) (2014). The definition of "qualified surviving spouse" is also relevant for purposes of this exemption:

> "[Q]ualified surviving spouse" means the surviving spouse of an [eligible owner] while remaining unmarried, who resides in the house, and who owns the house in fee or for life. Qualified surviving spouse also means the surviving spouse of a member of the armed forces of the United States who was killed in action, or the surviving spouse of a law enforcement officer or firefighter who died in the line of duty as a law enforcement officer or firefighter . . . who at the time of death owned the house in fee or jointly with the now surviving spouse, if the surviving spouse remains unmarried, resides in the house, and has acquired ownership of the house in fee or for life.

S.C. Code Ann. § 12-37-220(B)(1)(e)(iii) (2014). Finally, for purposes of this property tax exemption, "house" is defined 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) (2014). Stated differently, "the house must be a primary residence located in South Carolina." (R. p. 4; Final Order, p. 3 (citing S.C. Code Ann. § 12-43-220(c) (2014)).

B. Appellant is not a "qualified surviving spouse" pursuant to the plain language of § 12-37-220(B)(1)(e)(iii).

The exemption in § 12-37-220(B)(1) is first granted to the "eligible owner" (the disabled veteran). Under the exemption statute, the "eligible owner" must meet several requirements: (1) is a veteran of the armed forces of the United States; (2) who is permanently and totally disabled as a result of a service-connected disability; and (3) who files with the Department of Revenue a certificate signed by the county service officer certifying this disability. S.C. Code Ann. § 12-37-220(B)(1)(e)(i)(A) (2014). Once the *disabled veteran* has met the requirements of the statute, the exemption in § 12-37-220(B)(1) may be extended to the surviving spouse if certain requirements are met. Section 12-37-220(B)(1)(e)(iii). Pursuant to § 12-37-220(B)(1)(e)(iii), a "qualified surviving spouse" must be: (1) the surviving spouse of an "eligible owner"; (2) remain unmarried;

(3) reside in the house; and (4) own the house in fee or for life. Based upon the plain language of the statute, the ALC correctly concluded the following:

> Reviewing the statutory definition of "eligible owner," the statutory definition is clear and unambiguous – an eligible owner is "a veteran of the armed forces who is permanently and totally disabled due to a service-connected disability *and who files with the Department of Revenue a certificate signed by the county service officer certifying this disability*. Therefore, to meet the first element of the definition of qualified surviving spouse, one must show they are the surviving spouse of a permanently and totally disabled veteran of the armed forces who filed with the Department a certificated signed by the county service officer certifying the disability.

(R. p. 5; Final Order, p. 4, emphasis in original.)

The ALC further acknowledged that it is "constrained to give effect to the plain meaning of the statute, *which requires a specific type of certification*." (R. p. 5; Final Order, p. 4, emphasis added). *See Hodges*, 341 S.C. at 87, 533 S.E.2d at 582 ("When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning."). Because Appellant is requesting an exemption from property taxes, the courts must apply the rule of strict construction. *See Charleston Cty. Aviation Auth. v. Wasson*, 277 S.C. 480, 485-86, 289 S.E.2d 416, 419-420 (1982) (holding the general rule is that a strict construction is required of constitutional and statutory provisions that grant exemptions or deductions from taxation); *CFRE, LLC. v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[The] rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor.").

Under the rule of strict construction, Appellant can never qualify as a "qualified surviving spouse" pursuant to the plain language of § 12-37-220(B)(1)(e)(iii) because she was never the spouse of an "eligible owner." Mr. Cromey never filed any documentation with the South Carolina

Department of Revenue regarding a property tax exemption request. (R. p. 4; Final Order, p. 3.) Mr. Cromey never filed any documentation for a property tax exemption in South Carolina because he neither owned nor resided in a house in South Carolina. In fact, Mr. Cromey passed away in 2005, approximately eleven (11) years prior to Appellant's purchase of the Property in South Carolina. By the statute's plain terms, Mr. Cromey was never eligible to receive the exemption in South Carolina. Thus, Appellant cannot meet the definition of "qualified surviving spouse" because she is not the surviving spouse of an "eligible owner" as Mr. Cromey did not file the certificate with the Department.[1] Thus, the exemption cannot then be extended to Appellant as the surviving spouse.

Furthermore, 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 Rev.*, 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] 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)); *Hock RH, LLC v. S.C. Dep't of Rev.*, 423 S.C. 208, 214, 813 S.E.2d 540, 543 (Ct. App. 2018) (stating "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will."); *see also* R. pp. 6-7; Final Order, pp. 5-6. Accordingly, the ALC was correct to "presume the legislature had a purpose in requiring a disabled veteran to certify his disability status with a county officer to the Department or the legislature would have indicated" another certification

[1]As discussed on pages 17-18 of this brief, the prior version of S.C. Code Ann. § 12-37-220(B)(1) (2014) provided that a qualifying surviving spouse could file the certificate with the Department. However, the statute was subsequently amended and in its current form only the disabled veteran may file the certificate with the Department.

method was sufficient for purposes of this exemption statute. (R. p. 7; Final Order, p. 6.) Because Mr. Cromey did not file the required certification with the Department, Appellant cannot qualify for the disabled veteran property tax exemption as the surviving spouse.

In her brief, Appellant argues the ALC erroneously substituted the statutory definition of "qualified surviving spouse" for the meaning of "eligible surviving spouse" to reach the conclusion that Appellant is not entitled to the property tax exemption as a surviving spouse. (App. Br., p. 10.) However, as discussed below, Appellant reads the second clause of subsection 12-37-220(B)(1)(b) ("a house subsequently acquired by an eligible surviving spouse") in isolation and without regard for the exemption statute as a whole. Although "eligible surviving spouse" is not defined in the statute, it is necessary to consider the context of the term within the exemption statute. *See Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005) ("The terms [of a statute] must be construed in context and their meaning determined by looking at the other terms used in the statute." (citations omitted)). As demonstrated through the legislative history discussed below, it is apparent the Legislature wanted to ensure that a "qualified surviving spouse" who remains unmarried becomes the "eligible" owner for each legal residence owned by her subsequent to the house she acquired from the deceased spouse.

II. EVEN IF THE CERTIFICATION REQUIREMENT UNDER S.C. CODE ANN. § 12-37-220(B)(1)(e)(i) COULD BE RELAXED OR WAIVED, APPELLANT STILL DOES NOT QUALIFY FOR THE EXEMPTION UNDER S.C. CODE ANN. § 12-37-220(B)(1)(b).

As discussed above, the property tax exemption in this matter may be claimed on qualifying houses as described in subsections S.C. Code Ann. §§ 12-37-220(B)(1)(a) and (b) (2014). Relevant to this matter, subsection (b) permits the property tax exemption on two types of houses: (1) the house owned by a qualified surviving spouse acquired from the deceased spouse and (2) a house subsequently acquired by an eligible surviving spouse. In her brief, Appellant argues that

because she purchased the Property subsequent to the death of her husband, the Property qualifies for the property tax exemption under the second type of house described in subsection 12-37-220(B)(1)(b).

However, Appellant must first establish eligibility for the property tax exemption on a previous home in this state that was owned by or with the disabled veteran before she can be extended the exemption on "a house subsequently acquired by an eligible surviving spouse." Section 12-37-220(B)(1)(b). Simply put, Appellant's argument requires the second phrase in subsection 12-37-220(B)(1)(b) to be read in isolation and without regard for the exemption statute as a whole. More importantly, Appellant does not argue or provide any meaningful support in her brief that the Department's interpretation of subsection (1)(b) is "arbitrary, capricious, or manifestly contrary to the statute." *See* R. p. 8; Final Order, p. 7 ("Deference, as construed in *Kiawah*, requires the court to uphold an agency's interpretation when a statute is ambiguous unless that interpretation is 'arbitrary, capricious, or manifestly contrary to the statute.'" (citing *Kiawah*, 411 S.C. at 35, 766 S.E.2d at 19 (internal citations omitted))). Rather, Appellant simply disagrees with the Department's interpretation.

Under the rules of statutory construction, the ALC correctly concluded that the "purpose of [the property tax exemption] statute is to initially grant the exemption to *resident* veterans, and any subsequent benefits/exemptions flow from that initial exemption. (R. p. 10; Final Order, p. 9 (emphasis in original)); *see Hitachi*, 309 S.C. at 178, 420 S.E.2d at 846 (stating that the language of a statute must "be read in a sense which harmonizes with its subject matter and accords with its general purpose."). The plain language of subsection (a) "is set up to first grant the exemption to a veteran who owns a residence in South Carolina and then to extend the exemption upon the veteran's death to a surviving spouse who continues to reside in the house or in a subsequent house

in South Carolina." *Id.* Subsection 12-37-220(B)(1)(e)(iv) defines "house" as the owner's legal residence pursuant to § 12-43-220(c). In order to qualify for the exemption under § 12-37-220(B)(1), the "eligible owner" must have owned the house in fee or jointly with his spouse. Section 12-37-220(B)(1)(a). Further, because § 12-37-220(B) is an exemption from South Carolina property taxes, it necessarily follows that the qualifying house owned by the eligible owner must be located within South Carolina. *See* § 12-37-220(B)(1)(e)(iv) (citing § 12-43-220(c)). For a house to qualify as a legal residence under § 12-43-220(c), the owner is required to certify the following:

> (A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and
>
> (B) that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence.

S.C. Code Ann. § 12-43-220(c)(2)(ii)(A) and (B) (2014).

As the ALC correctly concluded, the property tax exemption statute requires "a resident veteran to qualify for the exemption as a pre-requisite to a surviving spouse[2] qualifying for the exemption." (R. p. 10; Final Order, p. 9.) Here, Mr. Cromey neither owned nor resided in the home for which Appellant seeks the exemption. Moreover, Mr. Cromey never owned or resided

[2]In her brief, Appellant asserts "surviving spouse is a term of art in probate law" and cites to various legal sources to support her position that a "surviving spouse takes title to real property at the moment the decedent spouse dies." (App. Br., pp. 7-8.) It is irrelevant how probate law or any other area of law defines surviving spouse. Section 12-37-220(B)(1)(e)(iii) specifically defines "qualified surviving spouse" and there is no need to supply another definition outside of the Legislature's words in the applicable statute. *See Hodges*, 341 S.C. at 87, 533 S.E.2d at 582 ("When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.").

in any house in South Carolina. For the Property to qualify for the exemption, Mr. Cromey – the "eligible owner" – must have owned the home in South Carolina in fee or jointly with a spouse, such that Appellant would have acquired the home from him upon or subsequent to his death. Simply put, the exemption is available only when the spouse acquires the house from the eligible disabled veteran. Appellant did not acquire the Property from Mr. Cromey as she purchased it approximately 11 years after his death. Accordingly, because Appellant cannot show that she acquired a qualifying home in South Carolina from Mr. Cromey, the exemption cannot be extended to Appellant.

Moreover, § 12-37-220(B)(1) does not automatically extend the disabled veteran property tax exemption granted in another state to a surviving spouse who subsequently purchases a legal residence in South Carolina.[3] The disabled veteran property tax exemption varies by state, and in some cases, by local jurisdictions. *See* Md. Code Ann., Tax-Property § 7-208 (2014) (requiring the "dwelling house" to be acquired by the surviving spouse within 2 years of the individual's death, if the individual or the surviving spouse was domiciled in Maryland as of the date of the individual's death); Ga. Code Ann. § 48-5-48 (2017) (a disabled veteran may receive a property tax exemption of $60,000 or more on his primary residence if the veteran is 100 percent disabled; property in excess of this exemption remains taxable); N.C. Gen. Stat. Ann. § 105-277.1C (2010) (providing a property tax exemption to disabled veterans of up to the first $45,000 of the appraised value of his property residence if the veteran is 100 percent disabled as a result of service).

[3]Courts have recognized a state's right to create exemptions from local property taxes for the surviving spouse of a resident disabled veteran but denying the exemption to a surviving spouse of a nonresident disabled veteran. *Garma v. Twp. of Lakewood*, 14 N.J. Tax 1, 1994 WL 380713 (N.J. Tax Ct., March 22, 1994).

Finally, contrary to the assertion made by the Appellant at the motions hearing, the Department's application of § 12-37-220(B) in this matter is not solely based upon Mr. Cromey's residence in Maryland at the time of his death. If Mr. Cromey and Appellant resided in South Carolina, but rented or leased the dwelling they resided in, Appellant would not be eligible for the exemption. In that scenario, Mr. Cromey did not own a legal residence in South Carolina prior to his death, and thus, Petitioner would not be a "qualified surviving spouse" as Mr. Cromey would not be an "eligible owner."

III. THE DEPARTMENT'S CONSISTENT INTERPRETATION AND APPLICATION OF S.C. CODE ANN. § 12-37-220(B)(1) SUPPORTS THE ALC'S DECISION AND IS ENTITLED TO DEFERENCE.

The Department has consistently applied its interpretation of § 12-37-220(B). *See Brown*, 348 S.C. at 515, 560 S.E.2d at 414 ("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.") (internal citation omitted); *Kiawah Dev. Partners II*, 411 S.C. at 34, 766 S.E.2d at 718 (stating "the deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statue or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons."). In *Watson v. South Carolina Department of Revenue*, 2000 WL 147506, No. 99-ALJ-17-0304-CC, (S.C. Admin. Law Ct. 2000), the ALC agreed with the Department's interpretation and found that five elements are required for a taxpayer to claim this exemption:[4]

> (1) the disabled veteran must have resided in the dwelling; (2) the disabled veteran must have owned the property in fee, for life or jointly with his spouse; (3) the spouse must not be remarried; (4)

[4]Although the wording of the statute applied in *Watson* was subsequently amended to its current form, the substance of the relevant portions that form the basis of that decision remains unaltered. *See supra* pp. 17-21.

> the spouse must reside at the same dwelling; and (5) the spouse must have obtained by devise a fee or life estate in the property from the disabled veteran.

Appellant cannot meet this burden, and the exemption cannot be granted. Mr. Cromey never resided in any residence in South Carolina (element 1), he has never owned any interest in any residence in South Carolina (element 2), Appellant never resided in the same residence with Mr. Cromey in South Carolina (element 4), and Appellant did not receive a fee or life estate in the property from Mr. Cromey (element 5). These facts *independently* disqualify Appellant from receiving the disabled veteran property tax exemption as a surviving spouse pursuant to § 12-37-220(B)(1). Although the application of the statute may appear harsh in this case, the Department must follow the law as written.[5] *Smith v. Wallace*, 295 S.C. 448, 369 S.E.2d 657 (Ct. App. 1988) ("The Legislature can repeal or amend its statute but neither the [state agency] nor this Court has the authority to do so."). Appellant purchased the Property in her own name subsequent to the death of her husband, and unfortunately, that disqualifies the Property from the available exemption under § 12-37-220(B). Appellant did not receive a fee or life estate in the house from her husband at his death, as required by § 12-37-220(B)(1), and the house does not qualify under

[5]The Department does not dispute that Appellant received the surviving spouse exemption for property tax years 2011-2016; however, the Department erroneously granted such exemption to Appellant as she did not meet the requirements of § 12-37-220(B) when she purchased the home in 2010. *See* S.C. Code Ann. § 12-4-710 (2014) (granting the Department the authority determine if any property qualified for exemption from local property taxes under § 12-37-220). The error was not discovered until she applied for the same exemption for the legal residence purchased in 2016. Unfortunately, the Department's error with regard to the exemption granted in 2011 does not automatically extend the surviving spouse exemption to Appellant's legal residence purchased in 2016. The Department, and ultimately, this Court, must follow the statute as written. As discussed above, Appellant failed to meet the requirements of the statute. *See Morgan v. S.C. Budget and Control Bd.*, 377 S.C. 313, 319-230, 659 S.E.2d 263, 266-267 (2008) (concluding "[e]stoppel will not lie against a government entity where a government employee gives erroneous information in contradiction of statute. Simply stated, equity follows the law.") (citations omitted).

the second clause of subsection (b) as a "subsequently acquired" home by an "eligible surviving spouse." When the terms of a statute are clear and unambiguous, there is no room for construction, and the court must give such terms their literal meaning. *Duke Power Co. v. S.C. Tax Comm'n*, 292 S.C. 64, 354 S.E.2d 902 (1987).

IV. THE LEGISLATIVE HISTORY OF S.C. CODE ANN. § 12-37-220(B)(1) SUPPORTS THE ALC'S DECISION IN THIS MATTER.

Appellant argues in her brief the legislative history of § 12-37-220(B)(1) supports her position in this matter. However, Appellant's interpretation is contrary to the plain language of the statute, is contrary to the Legislature's intent (as shown through statutory amendments), and leads to an absurd conclusion.

In 2000, the South Carolina Legislature amended § 12-37-220(B)(1)(a) as follows:

> (1)(a) The dwelling house in which he resides and a lot not to exceed one acre of land owned in fee or for life, or jointly with a spouse, by ~~any~~ a veteran who is one hundred percent permanently and totally disabled from a service-connected disability, if the veteran or qualifying surviving spouse files a certificate, signed by the county service officer, of the total and permanent disability with the ~~State~~ Department of Revenue. The exemption is allowed the surviving spouse of the veteran and also is ~~also~~ allowed to the surviving spouse of a serviceman or law enforcement officer as defined in Section 23-6-400(D)(1) killed in action in the line of duty who owned the lot and dwelling house in fee or for life, or jointly with his spouse, so long as the spouse does not remarry, resides in the dwelling, and obtains ~~by devise~~ the fee or a life estate in the dwelling. A surviving spouse who disposes of the exempt dwelling and acquires another residence in this State for use as a dwelling house with a value no greater than one and one-half times the fair market value of the exempt dwelling may apply for and receive the exemption on the newly acquired dwelling, but ~~no~~a subsequent dwelling of a surviving spouse is not eligible for exemption ~~under~~ pursuant to this item. The spouse shall inform the Department of Revenue of the change in address of the dwelling. ~~The dwelling house is defined as a person's legal residence.~~ To qualify for the exemption, the dwelling house must be the domicile of the person who qualifies for the exemption.

2000 S.C. Act 399, § (Q)(1), eff. Aug. 17, 2000. The 2000 Amendment made one significant change: the disabled veteran or the qualifying surviving spouse could file the required certification documentation with the Department. However, the Legislature amended this statute in 2004, and made three additional significant changes.

First, the Legislature removed the cap on the number of subsequent homes a qualified surviving spouse may receive the property tax exemption upon after disposing of the initial exempt dwelling. For example, under the two prior versions, a surviving spouse would continue to receive the property tax exemption initially granted to the disabled veteran, and such exemption would be extended to a subsequently purchased home. At that point, the qualified surviving spouse could not extend the property tax exemption on the purchase of a third home. However, under the 2004 amendment, the Legislature removed the cap on the number of times the property tax exemption can be extended to the qualified surviving spouse. Under the current version of the statute, a qualified surviving spouse may continue to receive the property tax exemption on the purchase of any subsequent legal residence so long as she remains unmarried. *See* § 12-37-220(B)(1)(b); *see also* Preamble of Senate Journal for Bill S.769 (sponsored by Senators Cromer and Reese), 2004 S.C. Act 224 ("A Bill to amend section 12-37-220 . . . to allow the surviving spouse of a disabled veteran to receive the exemption for any subsequent dwelling."); Preamble ("An Act to Amend section 12-37-220 . . . to continue the exemption to subsequent homesteads of surviving spouses and provide the requirements for this extended exemption. . . .").

The second significant change of Act 224 was the removal of the valuation cap on the subsequently purchased home by the qualified surviving spouse. Previously, the property tax exemption to the subsequently purchased dwelling was capped at 150% of the fair market value of the initial exempt dwelling. Under the current version, the 150% valuation cap was removed

and the subsequently purchased home by the qualified surviving spouse (assuming she continues to meet the statutory requirements) receives a 100% property tax exemption regardless of the purchase price.

Finally, the Legislature removed the language in the prior version of the statute that allowed the "qualifying surviving spouse" to file the required documentation with the Department. Under the current version, the disabled veteran must file the documentation with the Department prior to his/her death, and there is no provision allowing the qualified surviving spouse to file such certificate. The Legislature intended to grant the exemption to the disabled veteran, and then upon his death, provide the same exemption to the surviving spouse for the home they jointly owned and resided in. The public policy behind such intent is to ensure the surviving spouse can continue to remain in the home and receive the property tax exemption the spouse (deceased disabled veteran) had received. However, the Legislature did not intend to extend a 100% property tax exemption to a surviving spouse whose disabled veteran spouse never owned a house in South Carolina prior to his/her death.[6]

Thus, the statutory amendments did not made any substantive changes to affect the analysis and reasoning the ALC used in this matter or the analysis provided by the ALC. *Watson,* 2000 WL 147506, *1-5. The statutory requirements under the prior versions of § 12-37-220(B)(1) were not removed from the current version; rather, those requirements remain and are contained within

[6]Given the Legislature's fair market value cap for taxpayers residing in South Carolina who are sixty-five and over or those totally and permanently disabled and blind, it is unlikely the Legislature intended to allow a 100% exemption to a surviving spouse of a disabled veteran who never resided in South Carolina. *See* S.C. Code Ann. § 12-37-250 (2014) (providing that the homestead property tax exemption is capped to the first fifty thousand dollars of the fair market value of the dwelling place).

other provisions of the current version of § 12-37-220(B)(1). Specifically, the statutory requirements under the prior version of the statute are as follows:

> (1) the disabled veteran must have resided in the dwelling; (2) the disabled veteran must have owned the property in fee, for life or jointly with his spouse; (3) the spouse must not be remarried; (4) the spouse must reside at the same dwelling; and (5) the spouse must have obtained by devise a fee or life estate in the property from the disabled veteran.

See Watson, 2000 WL 1147506, *2. These requirements remain in the current version of the statute. Subsection 12-37-220(B)(1) provides for an exemption on the "house owned by an eligible owner." Subsection 12-37-220(B)(1)(e)(i) defines eligible owner as a disabled veteran (who files the required certificate with the Department) and subsection 12-37-220(B)(1)(e)(iv) defines "house" as a dwelling which is "classified in the hands of the current owner" as the legal residence. Thus, element 1 of the previous version is still contained within the current version as the disabled veteran must have resided in the dwelling (i.e., his legal residence). Likewise, element 2 is provided for in the current version of subsection 12-37-220(B)(1)(a): "the house owned by an eligible owner in fee or jointly with a spouse."

Next, elements 3, 4, and 5 of the prior version of the statute are now contained in the definition of "qualified surviving spouse" in subsection 12-37-220(B)(1)(e)(iii). Specifically, "qualified surviving spouse" is defined as "the surviving spouse of an [eligible owner] **while remaining unmarried, who resides in the house, and who owns the house in fee or for life.**" (Emphasis added). Thus, the Department has consistently interpreted and applied § 12-37-220(B). Further, the legislative history of the exemption statute supports the Department's interpretation and application of § 12-37-220(B) in this matter. Finally, the ALC's determination in this matter is consistent with the legislative history and the Department's interpretation of § 12-37-220(B). (R. pp. 2-13, 160-166; Final Order, pp. 1-12; Department Determination, pp. 1-7.) Appellant does

not meet the statutory requirements to receive the requested property tax exemption on the Property. Although § 12-37-220(B) has been amended, neither the prior versions nor the current version provides that any surviving spouse of a disabled veteran qualifies for the exemption regardless if the deceased veteran never owned a legal residence in South Carolina.[7]

V. APPELLANT'S INTERPRETATION OF S.C. CODE ANN. § 12-37-220(B)(1)(b) LEADS TO AN ABSURD RESULT.

Finally, Appellant's interpretation of § 12-37-220(B)(1)(b) leads to an absurd result when reading the statute as a whole. Under Appellant's interpretation, the surviving spouse of a disabled veteran is entitled to the property tax exemption even if her husband never lived or owned property in South Carolina. Appellant reads the second clause of § 12-37-220(B)(1)(b) ("a house subsequently acquired by an eligible surviving spouse") in isolation and without regard for the exemption statute as a whole. For example, Appellant's interpretation would lead to an absurd result when applying such interpretation to the definition of "qualified surviving spouse":

> "[Q]ualified surviving spouse" means the surviving spouse of an [eligible owner] while remaining unmarried, who resides in the house, and who owns the house in fee or for life. Qualified surviving

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[7]The Department is not inserting "eligible owner" for the words "current owner" in subsection 12-37-220(B)(1)(e)(iv). As discussed above, the disabled veteran is the "eligible owner" as the exemption is initially granted to the veteran. Upon his death, the exemption may be extended to his "qualified surviving spouse." At that point, the "qualified surviving spouse" becomes the "current owner" for purposes of subsection (B)(1)(e)(iv).

This interpretation is further evidenced by the language of subsection (B)(1)(b):

> (b) the house owned by a **qualified surviving spouse** acquired from the deceased spouse and a house subsequently acquired by an **eligible surviving spouse. . . .**

Once the "qualified surviving spouse" receives the property tax exemption, as long as she continues to meet the requirements of the statute (i.e., remains unmarried), she becomes the "eligible surviving spouse" (i.e., the current owner for purposes of subsection (B)(1)(e)(iv) for a house subsequently acquired by her).

> spouse also means the surviving spouse of a member of the armed forces of the United States who was killed in action, or the surviving spouse of a law enforcement officer or firefighter who died in the line of duty as a law enforcement officer or firefighter . . . who at the time of death owned the house in fee or jointly with the new surviving spouse, if the surviving spouse remains unmarried, resides in the house, and has acquired ownership of the house in fee or for life.

Section 12-37-220(B)(1)(e)(iii). As noted, Appellant's interpretation would grant the exemption to the surviving spouse of a disabled veteran regardless if he jointly owned the dwelling with the spouse (or if she received such dwelling by devise). However, under the plain language of the definition of "qualified surviving spouse," a qualified surviving spouse whose husband was a member of the armed forces and killed in action, can be extended the property tax exemption **only if** "at the time of death owned the house in fee or jointly with the now surviving spouse. . . ." *Id.* (Emphasis added). Thus, for such surviving spouse to receive the same property tax exemption as Appellant is requesting, the armed forces member had to own the exempted house at the time of his death. Construing the statute as urged by Appellant places more stringent requirements on the qualified surviving spouse of a member of the armed forces who was killed in action and allows much broader requirements on the surviving spouse of a disabled veteran. Construing this property tax exemption as Appellant urges leads to an absurd result. *See Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 378, 735 S.E.2d 453, 455 (2012) (holding "[t]his Court will not construe a statute in a way which leads to an absurd result or renders it meaningless."); *Sonoco Products Co. v. S.C. Dep't of Rev.*, 378 S.C. 385, 391, 662 S.E.2d 599, 602 (2008) (holding that courts "will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the legislature or would defeat the plain legislative intention."); *see also Hodges*, 341 S.C. at 91, 533 S.E.2d at 584.

Appellant purchased the Property in her own name subsequent to the death of her husband, and that disqualifies the Property from the available exemption under § 12-37-220(B)(1). Appellant did not receive a fee or life estate in the house from her husband at his death, as required by § 12-37-220(B)(1), and the house does not qualify under the second clause of subsection (b) as a "subsequently acquired" home by an "eligible surviving spouse." When the terms of a statute are clear and unambiguous, there is no room for construction, and the Department must give such terms their literal meaning. *Duke Power Co.*, 292 S.C. 64, 354 S.E.2d 902.

CONCLUSION

For the reasons explained more fully above, this Court should affirm the ALC's decision as the ALC did not make any errors of law that affected the decision.

Respectfully Submitted,

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Columbia, South Carolina
March 26, 2019

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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Case No. 17-ALJ-17-0451-CC
Appellant Case No. 2018-001739

Mary Cromey,.....Appellant,

v.

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

CERTIFICATE OF COUNSEL

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

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