

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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Case Nos. 14-ALJ-17-0601-CC,  
14-ALJ-17-0602-CC  
Appellate Case No: 2017-000569

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SC Court of Appeals

Fairfield Waverly, LLC,.....Respondent,

v.

Dorchester County Assessor,.....Appellant.

and

GS Windsor Club, LLC,.....Respondent,

v.

Dorchester County Assessor,.....Appellant.

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**BRIEF OF AMICUS CURIAE**

**South Carolina Department of Revenue**

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## STATEMENT OF ISSUES ON APPEAL

Did the Administrative Law Court err in ruling that the Respondents are entitled to the Assessable Transfer of Interest (“ATI”) exemption under S.C. Code Ann. § 12-37-3135 (2014) where the Respondents failed to apply for the exemption before January 31<sup>st</sup> of the year following the assessable transfer of interest?

## STATEMENT OF THE CASE

Pursuant to Rules 213 and 208(b)(6), SCACR, the Department adopts the Statement of the Case, Statement of Facts and Standard of Review of Appellant, Dorchester County Assessor (Dorchester County). However, by way of brief background, the Respondents purchased real property eligible for the ATI exemption in 2012. The Respondents did not file an application for the ATI exemption with the Appellant until January 16, 2014. The Appellant denied the ATI exemption, the Respondents protested the denial, the Dorchester County Board of Assessment Appeals (Board) upheld the denial, and the Respondents appealed the Board’s decision. The South Carolina Administrative Law Court (ALC) overruled the Board’s decision and granted the ATI exemption prospective to the Respondents’ application.

## ARGUMENT

**I. THE ADMINISTRATIVE LAW COURT ERRED IN RULING THAT RESPONDENTS ARE ENTITLED TO THE ASSESSABLE TRANSFER OF INTEREST EXEMPTION UNDER S.C. CODE ANN. § 12-37-3135 WHERE RESPONDENTS FAILED TO APPLY FOR THE EXEMPTION BEFORE JANUARY 31<sup>ST</sup> OF THE YEAR FOLLOWING THE ASSESSABLE TRANSFER OF INTEREST.**

**A. Real property is taxed based on its “fair market value” as determined either at the time of the sale of the property or during the five-year countywide reappraisal.<sup>1</sup>**

The ad valorem taxation of real and personal property in South Carolina begins with the South Carolina Constitution. *See* S.C. Const. art. X, § 1. Real property is taxed based on its “fair market value.” *Id.* In addition, the Constitution authorizes the General Assembly, “by general law, to define ‘fair market value’ and to define when property has been improved or when losses have occurred to change the value of the real property.” *See* S.C. Const. art. X, § 6. Real property is valued “at its true value in money which in all cases shall be held to be the price which the property would bring following reasonable exposure to the market where both seller and buyer are willing.” *See* S.C. Code Ann. § 12-37-930 (2014); *see also Lindsey v. S.C. Tax Comm’n*, 302 S.C. 504, 397 S.E.2d 95 (1990).

The county assessor appraises real property to determine its fair market value.<sup>2</sup> Real property is reappraised on a countywide basis every five years, and the reappraised values are generally

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<sup>1</sup>For a more complete discussion of ad valorem taxation, see the South Carolina Department of Revenue’s policy manual entitled *South Carolina Property Tax* (2015 ed.), available at <https://dor.sc.gov/policy/index/policy-manuals>.

<sup>2</sup>The ad valorem taxation of property consists of three elements: value, assessment ratio, and millage. *See* South Carolina Revenue Advisory Bulletin #02-7, available at <https://dor.sc.gov/policy/index/advisory-opinions>. Most real property in this State is appraised to determine its value. This value is often referred to as the “appraised value.” The appraised value of the real property is then multiplied by an assessment ratio to get an assessed value. The assessed value is then multiplied by the millage rate to determine the taxes due on a particular piece of real property. The county assessor is charged with valuing and assessing real property (other than that real property statutorily required to be assessed by the Department).

implemented in the year following the countywide reappraisal. *See* S.C. Code Ann. § 12-43-217 (2014). Following this reassessment, the increase (if any) in the fair market value of a parcel is constitutionally capped at 15%, generally. *See* S.C. Const. art. X, § 6; *see also* S.C. Code Ann. §§ 12-43-210 - 217 (2014).<sup>3</sup>

An ATI, however, will subject the property to a reappraisal outside of the typical five-year countywide reappraisal process.<sup>4</sup> An ATI will trigger an unrestricted appraisal of the subject property's fair market value. In other words, when an ATI occurs, the appraised value of the property will be adjusted by the county assessor to reflect the new fair market value of the parcel based on the reappraisal following the transfer. The 15% cap on the reappraised value of the property does not apply when an ATI occurs. The adjusted value is known as the "transfer value." *See* S.C. Code Ann. § 12-37-3140(5) (2014). The 15% cap does not apply to the transfer value in the year the transfer value is first subject to property tax. *See* S.C. Code Ann. §§ 12-43-217, 12-37-3120 - 3170 (2014).

B. Real property ad valorem taxes for the current year are based on ownership status as of December 31<sup>st</sup> of the preceding calendar year.

Real property taxes are based on the value of the property and ownership status as of the preceding December 31<sup>st</sup>. *See* S.C. Code Ann. § 12-37-610 (2014). In general, the property is assessed based on ownership as of the prior December 31<sup>st</sup>, the property tax bills (which contain the assessed value of the property) are sent to property owners in the fall of that tax year, and the taxes are due and payable between September 30<sup>th</sup> of that same tax year when the county auditor certifies the tax

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<sup>3</sup>Property valued by the unit valuation method is not capped per S.C. Code Ann. § 12-37-3140(D) (2014). This part of this statute is not applicable to this case.

<sup>4</sup>S.C. Code Ann. § 12-37-3150(A) (2014) details transfers that may constitute an ATI. These transfers include the obvious—a conveyance by deed, (§ 12-37-3150(A)(1))—and the less obvious—a transfer of a more than 50% interest in a corporation, (§ 12-37-3150(A)(8)).

duplicate, *see* S.C. Code Ann. § 12-38-150 (2014) and January 15<sup>th</sup> of the following year. *See* S.C. Code Ann. § 12-45-70 (2014).

For example, if John Smith is the owner of record of a parcel of real property as of December 31, 2010, then the 2011 property tax bill will be sent to him. Mr. Smith will typically receive his 2011 property tax bill in the fall of 2011. His 2011 property tax bill will be based on the value of the property as of December 31, 2010, and he can pay his 2011 property tax bill anytime between September 30, 2011 and January 15, 2012. If the property was valued at \$100,000 on December 31, 2010, then the county assessor's book will reflect the value of the property as \$100,000 and the 2011 property tax bill will be based on that \$100,000 value.

C. Property owners may be eligible for a partial exemption of the fair market value of their property when an assessable transfer of interest occurs.

Importantly, real property that undergoes an ATI after 2010 may be eligible for a partial exemption (“ATI exemption”)<sup>5</sup> if the following requirements are met:

- The property must be subject to property tax before the ATI;
- The property must be subject to the 6% assessment ratio before the ATI and remain so thereafter; and
- The owner must notify the assessor that the property will be subject to the 6% assessment ratio before January 31<sup>st</sup> of the property tax year for which the owner first claims eligibility for the ATI exemption.

*See* § 12-37-3135 (B)-(C). It is this notice requirement that forms the basis of the instant appeal.

D. The partial exemption under § 12-37-3135 is available to a property owner only if the statutorily defined “exemption value” of the property is less than the statutorily defined “current fair market value” of the property.

The ATI exemption discussed above is applied to the fair market value of the subject property only if the “exemption value” exceeds the “current fair market value.” *See* § 12-37-3135(B)(2)(a). If

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<sup>5</sup>The ATI exemption is equal to 25% of the ATI fair market value of the property. *See* § 12-37-3135(B)(2)(a).

the exemption value is less than the current fair market value of the property, the ATI exemption is not allowed. *Id.* (“[N]o exemption value calculated pursuant to this section may be less than current fair market value of the parcel.”).

In order to determine whether the ATI exemption applies, the county assessor must calculate a variety of values as set forth in § 12-37-3135. The following statutory definitions are relevant to this calculation:

- “ATI fair market value” (“ATI FMV”) means the fair market value of the property “determined by appraisal at the time the property last underwent an assessable transfer of interest.” *See* § 12-37-3135(A)(1).
- “Current fair market value” (“Current FMV”) means “the fair market value of a parcel of real property as reflected on the books of the property tax assessor for the current property tax year.” *See* § 12-37-3135(A)(2).
- “Exemption value” is defined as the ATI fair market value when reduced by the 25% ATI exemption. *See* § 12-37-3135(A)(3).
- “Fair market value” means “the fair market value of a parcel of real property and any improvements thereon as determined by the property tax assessor by an initial appraisal, by an appraisal at the time the parcel undergoes an assessable transfer of interest, and as periodically reappraised pursuant to 12-43-217 [the five-year reassessment provision.]” *See* § 12-37-3135(A)(4). Fair market value is not any capped value<sup>6</sup> or exemption value because those are separately defined terms.

Based on these definitions, the county assessor uses the following formulas to determine the taxable value of the property:

$$\text{Exemption Amount} = \text{ATI FMV} \times 0.25$$

$$\text{Exemption Value} = \text{ATI FMV} - \text{Exemption Amount}$$

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<sup>6</sup>“Property tax value” is defined as the fair market value as limited by the 15% cap imposed in S.C. Code Ann. § 12-37-3140 (2014). *See* § 12-37-3135(A)(5). This value is commonly referred to as the “capped value” to reflect the statutorily imposed limit of not increasing the value of the property by more than 15% unless an assessable transfer of interest or county-wide reassessment has occurred.

If Exemption Value > Current FMV, then Taxable Value = Exemption Value  
If Exemption Value < Current FMV, then Taxable Value = Current FMV

E. The plain language of § 12-37-3135 indicates that the “current fair market value” of the property is a dynamic—not static—value that may change from year to year.

In the instant case, the parties, the ALC and the Department, all agree that the above formula for calculating the ATI exemption is correct. However, the parties disagree about one value used in that formula—the meaning of “current fair market value.” Respondents and the ALC interpreted “current fair market value” as a static term frozen at the value prior to an ATI; Appellant interprets “current market value” as a dynamic term that changes with the passage of time, consistent with the plain meaning of its statutory definition.

When construing a statute, the cardinal rule is to ascertain the intent of the Legislature. *SCANA Corp. v. South Carolina Dept. of Revenue*, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009). “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 purpose of the statute.” *Id.* at 23, 579 S.E.2d at 336. The words of the statute “must be given their plain and ordinary meaning 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). “In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992). Further, it is well established in South Carolina that an exemption of private property is strictly construed – taxation is the rule and exemption is the exception. *State v. City of Columbia*, 115 S.C. 108, 104 S.E.2d 337 (1920). Exemption statutes are narrowly construed, and taxpayers bear the burden of bringing themselves squarely within the parameters of the statute which grants the exemption. *See Owen Indus. Prods., Inc.*

*v. Sharpe*, 274 S.C. 193, 262 S.E.2d 33 (1980); *S. Soya Corp. of Cameron v. Wasson*, 252 S.C. 484, 167 S.E.2d 311 (1969); *S. Weaving Co. v. Query*, 206 S.C. 307, 34 S.E.2d 51 (1945).

The Department submits that the Respondents and the ALC misinterpreted the meaning of “current fair market value” in a manner contrary to the plain meaning of the statutory scheme. Instead, the plain meaning of “current fair market value” as defined in § 12-37-3135, as well as the overall statutory scheme for determining whether the partial exemption is allowed, indicates that the “current fair market value” of real property necessarily changes over time.

The statutory definition of “Current FMV” clearly provides that it is the fair market value that is reflected on the books of the property tax assessor for the current property tax year. Moreover, the definition of “fair market value” make it clear that the property tax assessor shall reappraise the value of the property either after an ATI or periodically under § 12-43-217 (the five-year countywide reappraisal). The fair market value following an ATI (the “ATI Fair Market Value”) is then entered in the assessor’s books as the “current fair market value.” This designation is mandated by S.C. Code § 12-37-3140(A)(1) (2014) which states that “the fair market value of real property is its fair market value applicable for the later of: . . . (b) December thirty first of the year in which an assessable transfer of interest has occurred.” So, the assessor has correctly “replaced” the previous FMV with the ATI fair market value. Thus, the “Current FMV” is a dynamic value that may change from year to year, but is statutorily defined as that value as reflected on the books of the assessor.

F. Because the Respondents failed to apply for the assessable transfer of interest exemption during the first year the property qualified for the exemption, the “current fair market value” had changed such that it was equivalent to the “ATI fair market value” of the property, rendering the property ineligible for the exemption.

As discussed above, the ATI exemption does not apply unless the property owner notifies the county assessor that the property will be subject to the 6% assessment ratio before January 31<sup>st</sup> for the tax year for which the owner first claims eligibility for the ATI exemption. *See* § 12-37-3135(C).

The fact that the Current FMV is a dynamic value that may change from year to year underscores the importance of claiming the ATI exemption in the year immediately following the ATI.

In this appeal, the parties stipulated that Respondent’s property was eligible for the ATI exemption beginning with the 2013 tax year; that Respondent did not file for the ATI exemption for the 2013 tax year; and therefore the property did not qualify for the ATI exemption for the 2013 tax year. (R. p. 3; Order p. 11). Applying the statutory definitions of “Current FMV” to the facts here demonstrates how the calculation of the ATI exemption arrives at different results depending on when the taxpayer files an application for the ATI exemption.

When the properties at issue in this matter underwent an assessable transfer of interest in 2012, the assessor properly calculated the new value based on the ATI. As stipulated by the parties, the property was valued as shown below:

<u>Property</u>	<u>Current FMV (Property Tax Value at the Time of Purchase)</u>	<u>Purchase Price</u>	<u>ATI FMV</u>
Fairfield Waverly	\$11,155,000	\$13,850,000	\$13,849,900
GS Windsor Club	\$17,230,100	\$26,372,923	\$24,650,000

If Respondents had applied for the ATI exemption in 2013, the year in which they were first eligible, the exemption value<sup>7</sup> would be as shown below:

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<sup>7</sup>The exemption value is calculated according to § 12-37-3135(B) as:  $ATI\ FMV \times .25 = Exemption\ Amount$ .  $ATI\ FMV - Exemption\ Amount = Exemption\ Value$ .

<u>Property</u>	<u>Current FMV (Property Tax Value at the Time of Purchase)</u>	<u>Purchase Price</u>	<u>ATI FMV</u>	<u>Exemption Amount (25% x ATI FMV)</u>	<u>Exemption Value (ATI FMV- Exemption Amount)</u>
Fairfield Waverly	\$11,155,000	\$13,850,000	\$13,849,900	\$3,462,475	\$10,387,425
GS Windsor Club	\$17,230,100	\$26,372,923	\$24,650,000	\$6,162,500	\$18,487,500

In this case, the Exemption value of the Fairfield property would be less than the Current FMV, shown in the chart as “Property Tax Value at Purchase.” Because § 12-37-3135(B)(2)(a) states the Exemption value cannot be less than the Current FMV, the taxable value of the Fairfield property would be the ATI FMV of \$13,849,900.<sup>8</sup> On the other hand, the Exemption value of the Windsor property would be higher than the Current FMV, so the taxable value of the Windsor property would be the exemption value of \$18,487,500.

However, because Respondents did not apply for the ATI exemption before January 31, 2013, the ATI FMV became the Current FMV value because the ATI FMV was the fair market value of the property as reflected on the assessor’s records at the end of tax year 2013. Thus, when the Respondents finally applied for the ATI exemption in 2014 (the second year following the ATI), the ATI FMV from the 2012 sale and the Current FMV (as of December 31, 2013) were the same. When the county assessor calculated the Exemption Value (ATI FMV – Exemption Amount) in 2014, the result was that the Exemption Value was less than the Current FMV. Because the statute expressly provides that

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<sup>8</sup>Under § 12-37-3140(A)(1), the FMV is the FMV of the later of: December 31<sup>st</sup> of the year in which an ATI has occurred (ATI value), as determined on appeal, or as adjusted at the countywide reassessment. Here, FMV is the ATI value. Section 12-37-3135(B)(2)(b) anticipates a similar scenario by saying if the ATI FMV (the value determined after the ATI occurs) is less than the current FMV, the exemption value does not apply and the new value is the ATI FMV as provided in S.C. Code Ann. § 12-37-3140(A)(1)(b) (2014).

no Exemption Value may be less than the Current FMV of the property, *see* § 12-37-3135(B)(2), the practical result is that the ATI exemption is effectively rendered inapplicable, as illustrated by the following calculation:

<u>Property</u>	<u>Purchase Price (in 2012)</u>	<u>ATI FMV</u>	<u>Current FMV At the Time of Application (based on the book value as of 12/31/2013)</u>	<u>Exemption Amount (25% x ATI FMV)</u>	<u>Exemption Value (ATI FMV – Exemption Amount)</u>
Fairfield Waverly	\$13,850,000	\$13,849,900	\$13,849,900	\$3,462,475	\$10,387,425
GS Windsor Club	\$26,372,923	\$24,650,000	\$24,650,000	\$6,162,500	\$18,487,500

In other words, because these properties underwent an ATI in 2012, the assessor was required to reassess the properties to determine the fair market value pursuant to § 12-37-3135(A)(4). The assessor entered the ATI FMV in the books as the Current FMV, because that was the fair market value at the end of 2012 and no exemption had been applied for to reduce the taxable value in 2013. Thus, when Respondents applied for the ATI Exemption in 2014, the calculated Exemption values for both properties were less than the Current FMV on the books as of December 31, 2013. Accordingly, the proper taxable value of the properties in 2014 was the Current FMV—the ATI FMV of \$13,849,900 for the Fairfield property and \$24,650,000 for the Windsor property.

- G. It is Respondent's—not the Department's—interpretation of § 12-37-3135 that leads to an absurd result that was not intended by the Legislature.

In this case, the ATI for both properties occurred in late 2012 (November and December). In its final order, the ALC found that Respondent's (and Department's) interpretation of the shifting Current FMV could lead to an absurd result. Although the ALC's opinion is not clear why this would be an absurd result, it appears the ALC was mistakenly concerned about two potential scenarios. First,

if the fair market value of a property changes on the December 31<sup>st</sup> following an ATI, the property owner would have to rush to apply for the ATI exemption prior to that December 31<sup>st</sup>. Second, a taxpayer who purchased property on February 1<sup>st</sup> of any year would never receive the ATI exemption.

However, plain reading of § 12-37-3135(C) should assuage any such concerns. The statute specifically states that the owner must notify the county assessor “before January thirty-first for the tax year which the owner first claims eligibility for the exemption.” Moreover, understanding the timeline of how property taxes are assessed, billed, and paid (as discussed in Section I.B. above) further illustrates why the ALC’s concerns are misplaced.

To illustrate this point, consider the example of John Smith discussed above. Assume that on February 1, 2010, John Smith purchased a parcel of property from Jane Doe. The sale price was \$100,000, but prior to the sale the parcel was valued at \$50,000. Because Jane Doe was the owner of record as of December 31, 2009, the 2010 property tax bill (based on a value of \$50,000) will be sent to Jane Doe sometime in the fall of 2010. Thus, even though the property was sold to John Smith for \$100,000 in early 2010, it is Jane Doe who will be responsible to pay the 2010 property tax bill, and the bill will be based on the \$50,000 value.

However, the sale of this parcel constitutes an ATI. Accordingly, the assessor would be required to reappraise the property and enter the ATI FMV (likely around \$100,000 assuming the reappraisal equals the purchase price) in the county assessor’s book on December 31, 2010. Because John Smith will be the owner of record as of December 31, 2010, the 2011 tax bill will be sent to Mr. Smith. If Mr. Smith applies for the ATI exemption before January 31, 2011, then the county assessor will recalculate the value of the property using the formula described above, Mr. Smith will receive the ATI exemption of 25%, and the value of the property on his 2011 property tax bill will be \$75,000.

<u>Property</u>	<u>Current FMV (Property Tax Value at Time of Purchase)</u>	<u>Purchase Price</u>	<u>ATI FMV</u>	<u>Exemption Amount (ATI FMV x .25)</u>	<u>Exemption Value (ATI FMV – Exemption Value)</u>
Mr. Smith's property purchased on 2/1/2010	\$50,000	\$100,000	\$100,000	\$25,000	\$75,000

However, if Mr. Smith does not apply for the ATI exemption before January 31, 2011, then the ATI value of \$100,000 will become the Current FMV on the books as of December 31, 2011. Thus, if Mr. Smith applies for the ATI exemption a year later in January 2012, any calculated exemption will necessarily be less than the Current FMV on the books as of December 31, 2011, and therefore Mr. Smith will be ineligible for the exemption.

Thus, as illustrated above, the Department's interpretation does not lead to an absurd result. Instead, the Department's position is logical and based on the plain language of the statute. As the ALC itself concluded: "[T]he most logical interpretation of the statute is to allow a taxpayer until January 31<sup>st</sup> of the year following the purchase to apply for the exemption." *Fairfield Waverly LLC v. Dorchester County Assessor*, Docket No. 14-ALJ-17-0601-CC (S.C. Admin. Law Ct. February 1, 2017) at 7.<sup>9</sup> In other words, the Legislature clearly contemplated that some sales of properties may occur late in any given tax year (as it did in this case), and therefore the Legislature specifically ensured that property owner will have—at a minimum—a full month (assuming the property is sold on December 31<sup>st</sup>) in which it can apply for the exemption.

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<sup>9</sup>Despite making this finding, the ALC allowed the taxpayers until *two* years following the ATI to apply for the exemption.

Instead, the Department contends that interpreting Current FMV as a fixed value—the value prior to the ATI—contradicts a plain reading of the statutory definition of Current FMV and leads to an absurd result because it essentially eliminates any time limit to apply for the ATI exemption. Under the interpretation adopted by the ALC, the property owner could surprise the county with an ATI exemption application decades after the ATI. Surely, the Legislature did not intend to impose this uncertainty on a county's budget. Rather, the intent of the Legislature was that the property owner promptly apply for the ATI exemption before January 31<sup>st</sup> of the year following the ATI. Otherwise, the Current FMV—i.e. the value reflected on the books of the property tax assessor—will change in accordance with the ordinary appraisal process and may, as was the case here, prevent the property owner from receiving the benefit of an ATI exemption.

### **CONCLUSION**

For the reasons cited herein this Court should reverse the decision of the Administrative Law Court and find that the ALC erred in ruling that the Respondents would be entitled to the ATI Exemption allowed by § 12-37-3135 after the initial year of eligibility.

Respectfully Submitted,



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March 22, 2019

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
S. Phillip Lenski, Administrative Law Judge

**RECEIVED**  
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SC Court of Appeals

Case Nos. 14-ALJ-17-0601-CC,  
14-ALJ-17-0602-CC  
Appellate Case No: 2017-000569

Fairfield Waverly, LLC,.....Respondent,

v.

Dorchester County Assessor,.....Appellant.

and

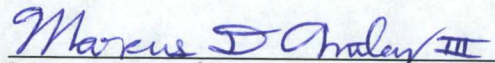
GS Windsor Club, LLC,.....Respondent,

v.

Dorchester County Assessor,.....Appellant.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that this Brief of *Amicus Curiae* – South Carolina Department of Revenue complies with Rule 211(b), SCACR.



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