

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case Number 2018-002153
Case Number 18-ALJ-17-0233-CC

RECEIVED
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SC Court of Appeals

J. ANNETTE OAKLEY,

Appellant,

vs.

BEAUFORT COUNTY ASSESSOR,

Respondent.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

J. Annette Oakley,

Docket No. 18-ALJ-17-0233-CC

Petitioner,

vs.

Beaufort County Assessor,

Respondent.

**ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY
JUDGMENT**

APPEARANCES: For the Petitioner: Curtis L. Coltrane, Esquire
For the Respondent: Stephen P. Hughes, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to a request for a contested case hearing filed by J. Annette Oakley (Petitioner) on July 3, 2018. The Petitioner contests the determination of the Beaufort County Assessor (Respondent or Assessor) that the Petitioner does not qualify for the four percent (4%) residential assessment ratio¹ because a member of her household, her husband, is a legal resident of Tennessee. The Petitioner contends that the Assessor's definition of member of household, as found in Section 12-43-220(c)(2)(iii)(A) of the South Carolina Code, does not apply, and that her husband is not a member of her household under the ordinary definition of the term "household." On September 13, 2018, the Petitioner filed a motion for summary judgment. Likewise, on September 18, 2018, the Assessor filed a motion for summary judgement. The parties agree that the determination in this matter hinges on a legal question – specifically, the applicable definition of the term "member of my household," as used in Section 12-43-220(c)(2)(ii)(A) – and is thus appropriate for summary judgment.

A hearing was held on the motions on September 20, 2018, at the ALC in Columbia, South Carolina. After careful consideration of the parties' arguments and the applicable law, the court finds that the statutory definition of "a member of my household," as found in Section 12-43-220(c)(2)(iii), should apply. The court further finds that, under that definition, the

¹The four percent (4%) residential assessment ratio is also referred to herein as the "homestead exemption" **FILED** NOV 07 2018

not qualify for the homestead exemption because a member of her household, her husband, is a legal resident of a jurisdiction other than South Carolina. Consequently, the Assessor's motion for summary judgment should be granted.²

PROCEDURAL HISTORY

The parties stipulated to the relevant facts in this matter. At all times relevant to this action, the Petitioner was the sole owner of the property located at 18 Plumbridge Lane, Hilton Head Island, South Carolina in Beaufort County, and designated on the relevant Beaufort County tax maps as District R550, Map 15D, Parcel 286 (the subject property). The Petitioner was a citizen and resident of Beaufort County, South Carolina, and owned and occupied the subject property as her primary legal residence at all times relevant to this action. Accordingly, the Petitioner timely submitted an application seeking eligibility of the subject property for the four percent (4%) residential assessment ratio, available to qualifying properties under Section 12-43-220(c)(1) of the South Carolina Code, for the tax year 2017. For calendar/tax year 2017, the Petitioner did not claim the four percent (4%) residential assessment ratio on any real property other than the Subject Property.

At all times relevant to this action, the Petitioner was married to Millard V. Oakley, a citizen and legal resident of the state of Tennessee. During calendar year 2017, Mr. Oakley occupied the property at 1051 Monterey Highway, Livingston, Tennessee, as his primary legal residence. He did not reside at the subject property at any point during calendar year 2017, or at the time of the Petitioner's application. At no time has either the Petitioner or Mr. Oakley sought or obtained a legal separation, a limited divorce, a partial or complete termination of their marital relationship, or any property or marital settlement, in any court of competent jurisdiction, whether in South Carolina, Tennessee, or any other state of the United States.

STANDARD OF REVIEW

Rule 68 of the South Carolina Administrative Law Court Rules provides that "[t]he South Carolina Rules of Civil Procedure . . . may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by these

²The Petitioner's motion for summary judgment is therefore denied.

rules.” Rule 56(c) of the South Carolina Rules of Civil Procedure states that summary judgment is appropriate and should be granted when the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citation omitted). “In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party.” *Byers v. Westinghouse Elec. Corp.*, 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992) (citation omitted). Stated differently, “the evidence and all reasonable inferences from it are assessed in the light most favorable to the non-moving party” *Rogers v. Norfolk S. Corp.*, 356 S.C. 85, 90, 588 S.E.2d 87, 92 (2003) (citation omitted).

“[S]ince it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.” *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004) (citation omitted). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Singleton v. Sherer*, 377 S.C. 185, 197, 659 S.E.2d 196, 202 (Ct. App. 2008) (citations omitted). “Even when there is no dispute as to evidentiary facts, but only as to the conclusion or inferences to be drawn from them, summary judgment should be denied.” *Singleton* at 197, 659 S.E.2d at 202 (citations omitted).

“[H]owever, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Thus, “when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001) (citation omitted). Additionally, summary judgment should be granted when a party “fails to make a showing sufficient to establish the existence of an element essential to [that] party's case and on which that party will bear the burden of proof at trial.” *Carolina All. for Fair Emp't v. S.C. Dep't of Labor, Licensing, & Regulation*, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999) (citation omitted). Finally, “[t]he question of statutory interpretation is one of law for the court to

decide.” *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 316, 731 S.E.2d 869, 870 (2012) (citation omitted).

DISCUSSION

In this case, the Petitioner does not dispute that her husband is a legal resident of a jurisdiction other than South Carolina, and that owner-occupants are ineligible for the homestead exemption if a member of their household is a resident of a jurisdiction other than South Carolina. Likewise, the Assessor does not dispute that the Petitioner is the sole owner and occupant of the subject property. The single disputed issue in this case is whether, as a matter of law, the Petitioner's non-resident husband qualifies as a member of her household for purposes of the homestead exemption certification in Section 12-43-220(c)(2)(ii).

To qualify for the four percent (4%) residential assessment ratio, an owner-occupant must certify to the following statement in her application:

“Under penalty of perjury I certify that:

(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) (2014). Title 12, including Section 12-43-220, does not contain a definitional section that defines “member of my household,” nor does it furnish an otherwise generally applicable definition for the term. However, Section 12-43-220(c)(2)(iii) provides in pertinent part that:

For purposes of subitem (ii)(B) of this item, “a member of my household” means:

(A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant

S.C. Code Ann. § 12-43-220(c)(2)(iii)(A) (2014). Therefore, “member of my household,” while defined for its use in Subitem (B) of Section 12-43-220(c)(2)(ii), is not expressly defined by the statute as it pertains to Subitem (A).

In light of this discrepancy regarding the term's use in Subitem (A), the question of whether Mr. Oakley qualifies as a member of the Petitioner's household for the purposes of the homestead exemption depends on which definition is applied to the term. If the definition used for Subitem (B) is also applied to Subitem (A), which the Assessor contends is the most logical approach, then Mr. Oakley is a member of the Petitioner's household since he and the Petitioner are not legally separated. Consequently, the subject property would be ineligible for the homestead exemption due to Mr. Oakley's out-of-state residency. On the other hand, if, as the Petitioner urges, the narrower ordinary definition of "household" is applied because of the stated limited applicability of the statutory definition of "member of household", then Mr. Oakley would not be a member of the Petitioner's household because he does not dwell at the subject property. See BLACK'S LAW DICTIONARY, *Household* (10th ed. 2014) (defining "household" as "[a] group of people who dwell under the same roof"). This would result in the subject property qualifying for the homestead exemption.

First, as stated *supra*, a plain reading of Section 12-43-220 reveals that the term "member of my household," as used in Section 12-43-220(c)(2)(ii)(A), is not expressly defined. As the Petitioner notes, generally, "[w]hen faced with an undefined statutory term, the Court must interpret the term in accord with its usual and customary meaning." *Branch v. City of Myrtle Beach*, 340 S.C. 405, 409-10, 532 S.E.2d 289, 292 (2000) (citation omitted); see also *Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002) (stating that where a word is not defined in a statute, "courts have looked to the usual dictionary meaning to supply its meaning."). However, "[c]ourts should consider not merely the language of the particular clause being construed, but the undefined word and its meaning in conjunction with the purpose of the whole statute and the policy of the law." *Branch*, 340 S.C. at 410, 532 S.E.2d at 292 (citation omitted). As such, courts are "bound to give [an undefined term] its ordinary meaning unless the context suggests otherwise." *Tankersley v. Almand*, 837 F.3d 390, 395 (4th Cir. 2016) (citation omitted) (internal quotation marks omitted).

Curiously, in this instance, the same term of art is used in both Subitem (A) and Subitem (B) of the homestead certification yet is only defined as it pertains to Subitem (B). Thus, when viewing the term "member of my family" in the context of Section 12-43-220(c)(2), it is unclear whether the General Assembly intended for homeowners to apply the ordinary definition to the

term's use in Subitem (A), or the statutory definition found in Section 12-43-220(c)(2)(iii), or some combination thereof.³ Moreover, upon review of the statute as a whole, the definition for "member of my family" in Section 12-43-220(c)(2)(iii) is also used to define the term in an analogous "special assessment ratio for owner-occupied residential property" for members of the Armed Forces. S.C. Code Ann. § 12-43-220(v)(B) (Supp. 2017) ("[T]he provisions of this sub-subitem (B) do not apply if the owner or a member of the owner's household, as defined in item (2)(iii) of this subsection (c), claims the special four percent assessment ratio allowed pursuant to this subsection for any other residential property located in this State."). In that light, the term in Subitem (A) is open to several reasonable interpretations regarding its definition within the context of the statute. Consequently, the court finds that Section 12-43-220 is ambiguous with respect to the intended definition of "member of my household," as used in Section 12-43-220(c)(2)(ii)(A). See *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S.Ct. 843, 846 (1997) (citations omitted) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."); *S.C. Dep't of Soc. Servs. v. Lisa C.*, 380 S.C. 406, 416, 669 S.E.2d 647, 652 (Ct. App. 2008) (citation omitted) ("If a statute is susceptible to two reasonable interpretations, it is ambiguous.").

Next, the court must construe the terms of the statute to determine the appropriate definition of the term "member of my household" in Section 12-43-220(c)(2)(ii)(A). See *Wade v. Berkeley Cnty.*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) (citation omitted) ("[W]here a statute is ambiguous, the Court must construe the terms of the statute."). When construing the meaning of an undefined term, "[t]he question of Legislative intent is, of course, the pivotal question with which we are here concerned." *Buchanan v. S.C. Prop. and Cas. Ins. Guar. Ass'n*, 2018 WL 4212101 at *3 (2018) (citation omitted) (internal quotation marks omitted). However, as explained

³ The homestead certification must be filled out by every homeowner seeking the exemption. To that end, while certain portions of the South Carolina Code may ordinarily only be viewed and interpreted by sophisticated parties—to include attorneys, legislators, and accountants—the absence of a definition for the term in Subitem (A) is particularly noteworthy given this provision is intended to be certified by members of the general public. Thus, homeowners are left to speculate upon which definition applies to the term in Subitem (A) and what significance, if any, the definition provided for the same term in Subitem (B) has on the definition for the term in the preceding subitem. See *Burgess v. U.S.*, 553 U.S. 124, 130, 128 S.Ct. 1572, 1577 (2008) (citations omitted) (internal quotation marks omitted) ("As a rule, [a] definition which declares what a term means ... excludes any meaning that is not stated.")

supra, the General Assembly's decision to use a term of art that is both used and defined by the statutory definition elsewhere in Section 12-43-220, including within the same subsection, casts doubt on whether it intended for the term to hold a different definition and significance in Subitem (A). It is not clear from the language in Section 12-43-220 what definition the General Assembly intended to apply to the term, as used in Section 12-43-220(c)(2)(ii)(A). See *Stephen v. Avins Constr. Co.*, 324 S.C. 334, 339, 478 S.E.2d 74, 76-77 (Cl. App. 1996) (citation omitted) ("If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself."). Consequently, the court must endeavor to ascertain and effectuate the legislative intent. *Major v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 384 S.C. 457, 468, 682 S.E.2d 795, 801 (2009) (citations omitted) (stating that where a term is not defined in the South Carolina Code, courts "must employ the rules of statutory construction to ascertain and effectuate the intent of the General Assembly."); In doing so, the court may turn to the legislative history of the statute for guidance or evidence of the General Assembly's intent. *U.S. v. Hatcher*, 560 F.3d 222, 226 (4th Cir. 2009) (citations omitted) (stating that where the terms of a statutory provision are ambiguous, courts are "permitted to consider other evidence to interpret the meaning of the provision, including the legislative history. . . ."); *Stiltner v. Beretta U.S.A. Corp.*, 74 F.3d 1473, 1482 (4th Cir. 1996) (citations omitted) ("[I]f the statutory phrase at issue is ambiguous, [courts] may look beyond the language of the statute to the legislative history for guidance.").

The court finds persuasive evidence of the intent of the General Assembly in two previous amendments to the homestead exemption certification in Section 12-43-220. In 1996, the statute was amended to include the following certification:

"Under penalty of perjury I certify that:

(A) the residence which is the subject of this application is my legal residence and where I am domiciled; and

(B) that neither I nor any other member of my household own any other residence in South Carolina which currently receives the owner-occupant four percent assessment ratio."

S. C. Code Ann. § 12-43-220(c)(2)(ii) (as amended by H.B. 4834, 111th Gen. Assemb., Reg. Sess. (S.C. 1996)). The definition of "a member of my household" was added to Section 12-43-220 at the time as well, which read in pertinent part:

For purposes of subitem (ii)(B) of this item, "a member of my household" means:

(A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant⁴

Id. at § 12-43-220(c)(2)(iii)(A). Therefore, when the definition was added to the statute in 1996, the term "member of my household" was used only in Subitem (B) of the homestead exemption certification. The term remained confined to Subitem (B)⁵ for fourteen (14) years until 2012, when the certification language was amended to read:

"Under penalty of perjury I certify that:

(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) (as amended by H.B. 3934, 119th Gen. Assemb., Reg. Sess. (S.C. 2012)). However, the scope of the definition in Section 12-43-220(c)(2)(iii) was not amended to encompass the addition of the term in Subitem (A). However, the General Assembly originally intended for the definition in Section 12-43-220(c)(2)(iii)(A) to apply to the term's use within the certification, which originally was limited to Subitem (B) when the certification was first adopted. Given that, it appears that through a drafting error the General Assembly simply failed to rectify the definition's longstanding scope with the addition of the term in Subitem (A). Consequently, the history of the legislation suggests that, but for a scrivener's error, the General

⁴ This portion of the definition, including the language limiting its scope to Subitem (B), is identical to that found in the current version of the Code.

⁵ Subitem (B) was twice independently amended between 1996 and 2012, though always included the term "member of my household." See S.C. Code Ann. § 12-43-220(c)(2)(ii) (as amended by H.B. 3696, 113th Gen. Assemb., Reg. Sess. (S.C. 1999)); *id.* (as amended by S.B. 852, 114th Gen. Assemb., Reg. Sess. (S.C. 2002)).

Assembly intended for the statutory definition to apply to the term used in the homestead certification. See *Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (“[T]his Court has interpreted statutes in accord with legislative intent despite contrary literal meaning in cases where there has been an oversight by the legislature that is clearly in conflict with the overall intent of the statute . . .”).

This intent is further evinced by viewing the term in Subitem (A) in the context of the statute as a whole. The General Assembly chose to use a term of art in Subitem (A) that is used and defined elsewhere in the statute, rather than use a term that would clearly delineate a different significance. See *Sullivan v. Stoop*, 496 U.S. 478, 484 (1990) (citations omitted) (“[The] normal rule of statutory construction [is] that identical words used in different parts of the same act are intended to have the same meaning.”). To that end, the court sees no logical rationale for affording the term varying definitions within the same certification, and it strains credulity to believe that the General Assembly intended such a result. What’s more, the statutory definition faithfully adheres to the policy concerns behind the homestead certification, which was clearly intended to prevent multiple homestead exemptions from being claimed by members of a family or household. See *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (citation omitted) (“A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.”); see also *Se. 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.”). Therefore, in view of the foregoing analysis, the court finds that the legislature intended for the definition in Section 12-43-220(c)(2)(iii)(A) to apply to the term “member of my household” in Section 12-43-220(c)(2)(ii)(A).⁶

Notably, an analogous situation was presented to the United States Court of Appeals for the Fourth Circuit in *Healthkeepers, Inc. v. Richmond Ambulance Authority*. See *Healthkeepers,*

⁶ Though the precise issue in this case appears to be one of first impression, the court notes that the definition for “member of my household” in Section 12-43-220(c)(2)(iii)(A) has been applied to the term’s use in Subitem (A) in at least three (3) prior cases from the ALC. See *Sara Ginsburg v. Beaufort County Assessor*, Docket No. 17-ALJ-17-01-71-CC (S.C. Admin. Law Ct. November 29, 2017); *Irene Pajer v. Lancaster County Assessor*, Docket No. 16-ALJ-17-0156-CC (S.C. Admin. Law Ct. June 14, 2017); *Karl S. Long and Catherine F. Long v. Lancaster County Assessor*, Docket No. 16-ALJ-17-0150-CC (S.C. Admin. Law Ct. August 3, 2016).

In re v. Richmond Ambulance Auth., 642 F.3d 466 (4th Cir. 2011). In that case, the Fourth Circuit Court of Appeals was presented with the following question:

[W]hether the definition in § 1396u-2(b)(2)(B) applies to all references to emergency services within the text. [The appellant] argues that the definition of emergency services in § 1396u-2(b)(2)(B) does not apply to § 1396u-2(b)(2)(D) since the definition in § 1396u-2(b)(2)(B) begins with “[i]n subparagraph 2(A)(i), the term ‘emergency services’ means” This phrase suggests that the preceding definition only applies to the term “emergency services” in § 1396u-2(b)(2)(A)(i) and might not apply in other sections or subsequently added sections. The [appellee] argues that the definition in § 1396u-2(b)(2)(B) should apply to all parts of the statute since terms of art used in a statute should be given similar meaning throughout the statute.

Id. at 471. That court’s analysis centered on the interplay between four (4) canons of statutory construction: (1) “that all language in the statute should be given full effect”; (2) “that identical words used in different parts of the same act are intended to have the same meaning”; (3) “that to the extent possible, [a court’s interpretation should] ensure that the statutory scheme is coherent and consistent”; and (4) “that where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Id.* at 471-72 (citations omitted). After weighing the various canons of interpretation, the Court of Appeals concluded that, despite the limiting language, the statutory definition should apply to all uses of the term within the statute. *See Id.* at 472. In doing so, the court found that:

[A]pplying different definitions to a single term of art within this one statute would be both cumbersome and illogical. The incongruity of this result on the one hand overwhelms any concerns we have over the unsubstantial surplusage on the other hand.

Id. This court agrees with the Fourth Circuit’s reasoning; applying different definitions to a single term of art here, particularly within the same certification, would be both “cumbersome and illogical.” Consequently, even if the legislative history and contextual clues are not dispositive of the General Assembly’s intent, applying the statutory definition is clearly the more sound approach under the traditional canons of statutory interpretation.

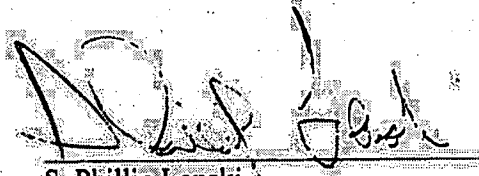
Therefore, having concluded, as a matter of law, that the statutory definition of "a member of my household" should apply in this case, the only remaining question is whether the Petitioner's husband qualifies as such under the facts. Here, the Petitioner does not dispute that she and Mr. Oakley were married at all times relevant to this case, and that they are not legally separated by any means. As such, Mr. Oakley is a member of the Petitioner's household for the purposes of the homestead exemption. Since the Petitioner likewise does not dispute that Mr. Oakley is a resident of the state of Tennessee, as proscribed by Section 12-43-220(c)(2)(ii)(A), the court finds that the Subject Property is ineligible for the four percent (4%) residential assessment ratio.

ORDER

IT IS THEREFORE ORDERED that Assessor's Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.

November 7, 2018
Columbia, South Carolina


S. Phillip Lenski
Administrative Law Judge

**South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201**

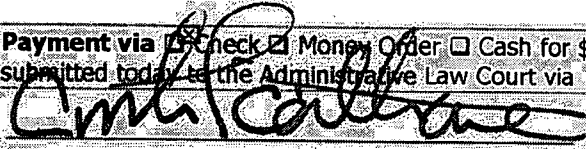
Last Name: Oakley Joyce Annette	First:	Middle:	<input type="checkbox"/> Mr. <input type="checkbox"/> Miss <input checked="" type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: 18 Plumbridge Lane	City: Hilton Head Island		State and Zip: SC, 29926	
Home Number:	Work Number:	Cell Number:	*E-Mail Address:	

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission.


REPRESENTATION

Are you representing yourself? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Are you represented by an Attorney? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Name of Attorney: Curtis L. Coltrane
Attorney Mailing Address: Post Office Box 6808	City, State and Zip: Hilton Head Island, SC 29938
Attorney Work Number and Cell Number: w (843) 785-5551 c(843) 338-3721	Attorney E-Mail Address: curtis@coltraneandwilkins.com

CASE INFORMATION

Name of Agency that Issued the Decision: (Example - Dept. of Revenue, Dept. of Insurance, DHEC) Beaufort County Assessor, Beaufort County Board of Assessment Appeals	
In order to have your case processed, you must attach the agency decision. Is it attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If no, please explain:
Date the decision was issued: June 4, 2018	Date the decision was received: June 6, 2018
Please provide a brief statement regarding why the hearing is being requested and the relief sought: J. Annette Oakley is a resident of South Carolina, and the property at issue is her primary residence, and because no member of her household as described in S. C. Code Ann. § 12-43-220(c)(2)(ii)(A)(Supp. 2017), claims to be a legal resident of a jurisdiction other than South Carolina for any purpose, J. Annette Oakley is entitled to the 4% Assessment Ratio.	
Payment via <input checked="" type="checkbox"/> Check <input type="checkbox"/> Money Order <input type="checkbox"/> Cash for \$ 75.00 (applicable filing fee pursuant to ALC Rule 71) is being submitted today to the Administrative Law Court via <input type="checkbox"/> U.S. Postal Service <input type="checkbox"/> Hand-delivery	
	June 3, 2018
<input checked="" type="checkbox"/> Your Signature or Signature of Attorney	Date

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: Curtis L. Coltrane	Date: June 3, 2018	City: Hilton Head Is.	State: SC
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names): Stephen P. Hughes, Attorney for Beaufort County Assessor Post Office Drawer 40 Beaufort, SC 29901			
Name and/or Agency Name: Thomas J. Keaveny, II, Esq. Attorney for Beaufort County Board of Assessment Appeals	Address: Post Office Drawer 1128	City, State and Zip: Beaufort, SC 29901	JUL 03 2018 SC ADMIN. LAW COURT June 3, 2018
Name and/or Agency Name: 	Address:	City, State and Zip:	
<input checked="" type="checkbox"/> Your Signature or Signature of Attorney	Date		

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.



BEAUFORT COUNTY
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Web Site: www.bccgov.net
Paul Jernigan, Chair Linda Brown, BAA Coordinator

June 04, 2018

Annette Oakley
18 Plumbridge Lane
Hilton Head, SC 29928

Re: Hearing: Board of Assessment Appeals Hearing
Date of Hearing: May 23, 2018
Parcel: R550 015 00D 0286 0000
Situs Address: 18 Plumbridge Lane

Dear Ms. Oakley:

The appeals process is a procedure that is afforded to every property owner in the state of South Carolina pursuant to South Carolina Code Ann. §12-60-2530. The Beaufort County Board of Assessment Appeals (BAA) serves as an independent and neutral body to review property tax assessments and appraised value disputes between the Assessor and the Taxpayer. The board is charged with making a fair and impartial decision, taking into account the facts as presented by the Assessor and the Taxpayer, in accordance with South Carolina Law.

The Beaufort County Board of Assessment Appeals has considered the facts concerning the issues at hand in the appeal of the above-described property. Written documents were provided to the board, from both sides, fifteen (15) and seven (7) days before the scheduled hearing date.

Gary N. James, Assessor, represented the Beaufort County Assessor's office. The Assessor's office detailed their assertions using PowerPoint and an explanation of the issues. Mr. James presented three recent cases: *Irene Pajer verses Lancaster County Assessor*, *Karl and Catherine Long verses Lancaster County Assessor*, and *Sara Ginsburg verses Horry County Assessor*. Cases presented by the Assessor where upheld in the favor of the Assessor.

Attorney Curtis Coltrane represented the owner, Annette Oakley. Mr. Coltrane did not do a formal presentation before the BAA members; however, he stated, "he would stand on the papers" that were submitted on the fifteen (15) and seven (7) day exchanges. Mr. Coltrane did want to address the definition that the Assessor used for the word "household." He presented no additional evidence (during the hearing) to support the property owner's request for the legal residential exemption (4% exemption).

The BAA board members went into executive session, asking all parties depart the room. The Board's Attorney, Thomas Keaveny remained, with the Board, to answer any legal questions presented by the board members.

The Chairman called the hearing to order. All five board members in attendance voted unanimously in favor of the Assessor's Office.

CONCLUSIONS

Based upon all written documents, sworn oral testimony presented, and taking into account the credibility and accuracy of the evidence presented, this five (5)-member board, for this hearing, by unanimous vote, has made the following determination:

The request for the 4% exemption is denied for the tax year 2017.

The Petitioner or the Assessor may appeal the decision of this board pursuant to S.C. Ann. §12-60-2540(A). The appeal must be made, in writing, within thirty (30) days after the date of the Board's written determination and mailed to:

Administrative Law Judge Division
Edgar A. Brown Building, Suite 224
1205 Pendleton Street,
Columbia, SC 29201

Sincerely,



Paul Jernigan, Chairman
Beaufort County Board of Assessment Appeals

CC: Beaufort County Assessor, Gary James
Beaufort County Board of Assessment Appeal Members
Beaufort County Board Attorney, Thomas Keaveny
Legal Counsel for Annette Oakley, Attorney, Carl Coltrane
Legal Counsel for Beaufort County Assessor's Office, Attorney, Steven Hughes

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

COPY

Docket No.: 18-ALJ-17-0233-CC

J. ANNETTE OAKLEY,

Petitioner,

vs.

BEAUFORT COUNTY ASSESSOR,

Respondent.

PRE-HEARING STATEMENT OF
J. ANNETTE OAKLEY

J. Annette Oakley files her Pre-Hearing Statement as follows:

1. The nature of this proceeding.

RESPONSE:

J. Annette Oakley challenges the Beaufort County Assessor's denial of her application for the 4% Special Assessment Ratio for her primary residence.

2. The statutory provisions conferring subject matter jurisdiction to the Administrative Law Court and other applicable statutes and regulations - be specific, not general.

RESPONSE:

(a) Subject matter jurisdiction to hear this case is conferred on the Administrative Law Court by S. C. Code Ann. § 1-23-600 (Supp. 2018), and by S. C. Code Ann. § 12-60-2540 (Supp. 2018).

(b) This case concerns S. C. Code Ann. § 12-43-220 (Supp. 2018), and specifically, subsections (c)(2)(ii) and (iii) of S. C. Code Ann. § 12-43-220 (Supp. 2018).

3. The issues, set forth with particularity, to be presented for determination, including any claims or defenses to be raised.

RESPONSE:

The issue presented by this case is this:

FILED

JUL 30 2018

J. Annette Oakley is married to Millard V. Oakley, who is a citizen and resident of the state of Tennessee. Millard V. Oakley does not reside with J. Annette Oakley.

S. C. Code Ann. 12-43-220(c)(2)(ii) and (iii)(Supp. 2018) read:

(ii) This item does not apply unless the owner of the property or the owner's agent applies for the four percent assessment ratio before the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. In the application the owner or his agent shall provide all information required in the application, and shall certify to the following statement:

"Under penalty of perjury I certify that:

(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.

(iii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:

(A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and

(B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.

By its plain language, subitem (c)(2)(iii) does not apply to subitem (c)(2)(ii)(A), which reads: "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."

Since the definition of "a member of my household" in S. C. Code Ann. § 12-43-220(c)(2)(B)(iii)(A), does not, by its express language, apply to S. C. Code Ann. § 12-43-220(c)(2)(ii)(A)(Supp. 2018), there is no statutory definition of "a member of my household" that applies to S. C. Code Ann. § 12-43-220(c)(ii)(A). As a result, the common, ordinary meaning of the phrase

applies to S. C. Code Ann. § 12-43-220(c)(2)(ii)(A)(Supp. 20178).

Because Millard V. Oakley does not reside with J. Annette Oakley, he is not a member of her household. Because Millard V. Oakley does not claim the special assessment ratio on another residence, the definition of "member of my household" in S. C. Code Ann. 12-43-220(c)(2)(iii)(Supp. 2018), does not apply.

The Beaufort County Assessor denied J. Annette Oakley's application for the special assessment ratio, and did so because he deemed Millard V. Oakley to be a member of J. Annette Oakley's household by incorrectly applying the definition of "member of my household" in S. C. Code Ann. 12-43-220(c)(2)(iii)(Supp. 2018) to Millard V. Oakley.

4. A brief summary of the facts to be presented at the hearing:

RESPONSE:

The following are the material facts relevant to the issue in this case which is set out in the response to Number 3 above.

1. J. Annette Oakley is the owner of real property lying in Beaufort County, South Carolina, known as 18 Plumbridge Lane, Hilton Head Island, South Carolina.
2. J. Annette Oakley is a citizen and resident of the State of South Carolina.
3. 18 Plumbridge Lane, Hilton Head Island, South Carolina, is the primary residence of J. Annette Oakley.
4. J. Annette Oakley is married to Millard V. Oakley.
5. Millard V. Oakley is a citizen and resident of the State of Tennessee.
6. Millard V. Oakley does not reside with J. Annette Oakley.
7. Millard V. Oakley does not claim the 4% Special Assessment Ratio authorized by S. C. Code Ann. 12-43-220(c)(1)(Supp. 2018) on any real property.

5. The action requested of the court and a detailed statement of the law which supports the requested action, including statutory and/or case citations:

RESPONSE.

J. Annette Oakley requests that the Court reverse the determination of the Beaufort County Assessor, because the Beaufort County Assessor has improperly expanded the definition of "member of my household" in S. C. Code Ann. 12-43-220(c)(2)(iii)(Supp. 2018), which only applies to S. C. Code Ann. § 12-43-220(c)(2)(ii)(B)(Supp. 2018), the Beaufort County Assessor has mis-interpreted the statute and his determination is wrong as a matter of law.

In South Carolina, the cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.*, at 499, 640 S.E.2d at 459.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion.

RESPONSE:

At this point, J. Annette Oakley does not anticipate that any motions will be raised at the hearing.

7. A list of proposed witnesses and exhibits.

RESPONSE:

(a) J. Annette Oakley anticipates that the parties will be able to stipulate to the facts of this case, and that no witnesses will be needed.

(b) J. Annette Oakley will offer the following exhibits:

1. Correspondence dated December 21, 2017, Gary N. James, Beaufort County Assessor, including the attachments:

(a) "Special Assessment 4% Legal Residence Application";

- (b) J. Annette Oakley's South Carolina Driver's License;
 - (c) J. Annette Oakley's 2016 South Carolina Tax Return;
 - (d) Vehicle Registrations for J. Annette Oakley's automobiles;
 - (e) Recorded deed for J. Annette Oakley's property.
2. Copy of Stamped first page of J. Annette Oakley's application, showing receipt on December 21, 2017.
3. Correspondence to Hon. Maria Walls dated December 28, 2017, paying the 2017 real estate taxes under protest, including the attachments:
- (a) 2017 Property Tax Bill and payment;
 - (b) Correspondence to Maria Walls from J. Annette Oakley, noting that the payment of the 2017 real estate taxes is under protest;
 - (c) Copy of the December 21, 2017, correspondence to Gary N. James, with all exhibits.
4. Paid receipt for the 2017 real property taxes on J. Annette Oakley's property.
5. Letter from Joan Gillis to J. Annette Oakley denying application dated February 1, 2018.
6. Notice of Appeal dated March 2, 2018, to Gary N. James, with exhibits:
- (a) Copy of December 28, 2017, correspondence to Maria Walls, including the attachments;
 - (b) Copy of December 21, 2017, correspondence to Gary N. James, including the attachments.
7. Correspondence from Gary N. James dated March 21, 2018, denying appeal.
8. Correspondence to Gary N. James dated March 23, 2018, appealing March 21, 2018, denial, including the attachments:
- (a) Copy of the December 21, 2017, correspondence to Gary N. James.
8. A statement regarding the necessity for discovery, if any.

J. Annette Oakley does not anticipate the need for any discovery.

9. The estimated time required for a hearing.

If the parties are able to agree on a stipulation of facts, which J. Annette Oakley anticipates, the hearing should take no more than one hour.

10. Any dates in the next one-hundred twenty (120) days when you will not be available for a hearing.

REPOSE:

As of this time I will be unavailable on July 31, August 2, August 3, August 6, August 7, August 9, September 6, September 11, October 8 and October 25. As matters get scheduled, this list will likely be expanded to include additional days.

11. An e-mail address where you can be reached.

RESPONSE:

The undersigned can be reached at: curtis@coltraneandwilkins.com.

Respectfully submitted:

COLTRANE & WILKINS, LLC

By:



Curtis L. Coltrane
South Carolina Bar Number: 1344
Post Office Box 6808
Hilton Head Island, SC 29938
(843) 785-5551
(843) 785-5552
curtis@coltraneandwilkins.com

Hilton Head Island, South Carolina

This 30th day of July, 2018.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

J. Annette Oakley,

Petitioner,

vs.

Beaufort County Assessor,

Respondent.

DOCKET NO: 18-ALJ-17-0233-CC

PRE-HEARING STATEMENT
OF RESPONDENT
BEAUFORT COUNTY
ASSESSOR

1. The nature of this proceeding:

This matter is before the Administrative Law Court upon a demand for a Contested Case Hearing, filed on behalf of the Petitioner/taxpayer, J. Annette Oakley. By her demand, the Petitioner has challenged the Assessor's denial of the 4% residential assessment ratio for the tax year 2017, on the taxpayer's real property, with improvements thereon, located at 18 Plumbridge Lane, Hilton Head Island, South Carolina, and identified on the relevant tax maps as District R550, Map 15D, Parcel 286. It is the contention of the Respondent Assessor that the subject real property has failed to meet the requirements for the 4% residential assessment ratio, as set forth within Section 12-43-220(c)(2)(ii)(A)(B), and that the actions of the Assessor, in denying the 4% residential assessment ratio for the tax year 2017, were in accordance with and required by the provisions of relevant law.

2. The statutory provisions conferring jurisdiction, and other applicable statutes and regulations:

Jurisdiction is conferred upon this court by the provisions of Section 12-60-2540, South Carolina Code of Laws 1976 as Amended.

Statutes specifically applicable to the action include Section 12-43-220(c)(2)(ii)(A), and South Carolina Code Section 12-43-220(c)(2)(iii)(A).

3. The issues to be presented for determination:

The sole issues before the court concern:

- a. Whether the subject property satisfies those criteria, established by the relevant statutes, for eligibility for the 4% residential assessment ratio;
- b. Whether the Assessor was correct in his determination, as upheld by the Board of Assessment Appeals, that the subject property failed

to satisfy those criteria for eligibility for the 4% residential assessment ratio for the tax year 2017.

4. A brief summary of facts to be presented at the hearing:

The evidence will show that the Petitioner/taxpayer, J. Annette Oakley, acquired title to the subject property in February 2015, was the sole owner of the subject property as of December 31, 2016 and remained the sole owner throughout the tax year 2017. The evidence will further show that the taxpayer, throughout the tax year 2017, was married to Millard Oakley, who, throughout the tax year 2017, was a legal resident of the state of Tennessee. Finally, the evidence will show that there have been no legal proceeding by which either J. Annette Oakley or Millard Oakley has sought or obtained a legal separation, any legal termination of the marital relationship, or any property or marital settlement executed or approved by any court of competent jurisdiction.

5. The action requested of the court and a detailed statement of the law which supports the requested action, including statutory and/or case citations:

The Respondent seeks a determination by this court that the subject property failed to satisfy the legislatively imposed criteria for eligibility for the 4% residential assessment ratio, and is thus not qualified for the 4% residential assessment ratio for the tax year 2017.

The criteria for eligibility for the 4% residential assessment ratio are set forth within South Carolina Code Section 12-43-220(c). The provisions of Section 12-43-220(c)(1) require, among other criteria, that the property, to qualify for the favorable 4% residential assessment ratio, (1) must be the legal residence of the taxpayer, (2) must be owned by the taxpayer, and (3) must be occupied by the taxpayer as his or her legal residence. Those criteria, however, are not exhaustive; additional mandatory requirements for eligibility for the 4% residential assessment ratio are set forth within Code Section 12-43-220(c)(2)(ii). That sub-section requires that the taxpayer make application for the preferential assessment ratio, and further mandates that the taxpayer, under penalty of perjury, certify that:

"(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 resident of a jurisdiction other than South Carolina for any purpose;

(B) That neither I, nor any member of my household, claim the special assessment ratio allowed by this section on another residence.

Moreover, "a member of my household" is further defined, with Section 12-43-220(c)(2)(iii), to include:

"(A) the owner-occupant's spouse, except were that spouse is legally separated from the owner-occupant; ..."

Both of the aforesaid certifications are specifically mandated by the statute, and both of the certifications are clearly required for eligibility for the 4% assessment ration. The statute is equally clear denying the 4% ratio in instances where the required certifications are false or inaccurate. South Carolina Code Section 12-43-220(c)(2)(vii).

The taxpayer, within her application for the 4% residential assessment ratio for the tax year 2017 (submitted under cover of correspondence dated December 21, 2017 from taxpayer's counsel, Attorney Curtis Coltrane), specifically confirmed that a "member of [her] household" claimed legal/primary residence on property other than the subject property at 18 Plumbridge Lane, Hilton Head Island, South Carolina. Mr. Coltrane's accompanying correspondence further confirmed that the taxpayer, J. Annette Oakley, was "... married to Millard Oakley who is a resident of the state of Tennessee." Identical representations had previously been made by the taxpayer within her letter of December 18, 2017, wherein she advised the Beaufort County Treasurer that her husband, Millard Oakley, "... resides on a farm in Tennessee..." that Mr. Oakley was a lifelong resident of Overton County Tennessee, and that Mr. Oakley would maintain his legal residence in the state of Tennessee. (Copies of the Petitioner's application, Mr. Coltrane's cover correspondence of December 21, 2017, and the Petitioner's correspondence of December 18, 2017 are attached herein as Exhibits A, B, & C, respectively).

It is the contention of the Petitioner taxpayer that "a member of my household" as defined in Section 12-43-220 (c)(2)(iii)(A), applies solely to that term ("member of my household") is used in Section 12-43-220(c)(2)(ii)(B), and, by contrast, that the aforesaid definition does not apply to the term "member of my household", as used in Section 12-43-220(c)(2)(iii)(A). It is the Petitioner's further contention that the fact, conceded by the taxpayer, that her spouse claims legal residence in a state other than South Carolina will not preclude her eligibility for the 4% residential assessment ratio available only to qualifying properties under the relevant provisions of the code.

Notwithstanding the assertions of the taxpayer, it appears clearly to have been the intention of the legislature, in the enactment Section 12-43-220(c)(2)(ii)(A), and in the enactment of Section 12-43-220(c)(2)(iii)(A), that the term "member of my household", as defined in the latter statutory subsection, was to apply to that term ("member of my household") as set forth in both subparagraphs (A)(B) and of code Section 12-43-220(c)(2)(ii).

Prior to the 2012 amendments to Section 12-43-220(c), the certification required by Section 12-43-220(c)(2)(ii) read as follows:

Under penalty of perjury I certify that:

- A. The residence which is the subject of this application is my legal residence where I am domiciled at the time of this application and that I do not claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; (emphasis supplied)
- B. That neither I nor any member of my household is residing in or occupying any other residence which I or any other member of my immediate family has qualified for the Special Assessment Ratio allowed by the section; (emphasis supplied)

Prior to the 2012 amendments, Section 12-43-220(c)(2)(iii) read, in relevant part, as follows:

For purposes of subitem (ii)(B) of this item, "a member of my household" means:

(A) The owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant...

A copy of Code sub-sections 12-43-220(c)(2)(ii)(A)&(B), and 12-43-220(c)(2)(iii)(A) as those subsections had been enacted prior to the 2012 amendments, is attached hereto as Exhibit D.

Thus, it is clear that the term "member of my household", as defined by the legislature prior to the 2012 amendment, was meant to encompass the owner occupant's spouse. It is equally clear that, prior to the 2012 amendments to code Section 12-43-220(c), the aforesaid defined term, "member of my household", was utilized only in Section 12-43-220(c)(2)(ii)(B).

Pursuant to the 2012 amendments to the statute, Section 12-43-220(c)(2)(ii)(A) was modified, and now reads as follows:

Under penalty of perjury I certify that:

(A) The residence which is the subject of this application is my legal residence and were 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; (emphasis supplied).

Although the 2012 amendment did not set forth any further definition of the term "member of my household", as set forth in Section 12-43-220(c)(2)(iii)(A), it was clearly the intention of the legislature that such definition be applied to "member of my household" as utilized both in Sections A and B of sub Section (ii). Any other interpretation would lead to an absurd result clearly not contemplated by the General Assembly.

It should be noted that the general issues before this court have been previously addressed in no fewer than three opinions issued by the Administrative Law Court. Paier vs Lancaster County Assessor, 16-ALJ-17-0156-CC (2017); Ginsburg vs Horry County Assessor, 17-ALJ-17-0171-CC (2017); and Long vs Lancaster County Assessor, 16-ALJ-17-0150-CC (2016). In each of the aforesaid opinions, the Court determined that the residence of the taxpayer's spouse in a jurisdiction other than South Carolina, disqualified the taxpayer from eligibility for the 4% residential assessment ratio. The Ginsburg Court, in specifically considering the statutory provisions at issue here, determine that "... the language of the statute plainly and unambiguously requires that, in order for the petitioner to qualify for the special assessment ratio, neither [she], nor any member of [her] household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose, and further determined that the taxpayers husband was properly considered a "member of the household".

It is submitted that the aforesaid opinions of the ALC are dispositive, and render the taxpayer ineligible for the requested assessment ratio.

Moreover, and as noted previously herein, the Petitioner, within her application for the 4% assessment ratio, specifically confirmed that a "member of [her] household" claimed legal/primary residence on property other than the subject property at 18 Plumbridge Lane.

It is the contention of the Assessor that the statute is clear in reflecting the intention of the legislature that the preferential residential assessment ratio is unavailable to a taxpayer whose

spouse (and from whom the taxpayer is not legally separated); maintains legal residence in a state other than South Carolina.

Moreover, even assuming that some ambiguity might be found in the aforesaid legislative provisions, the South Carolina Supreme Court has consistently held that ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer. The Court, in State vs Life Insurance Company of Georgia, 254 S.C. 286, 175 S.E. 2nd 203 (1970) recited the "... well-settled rule that "constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption, who must clearly bring himself within the constitutional or statutory language upon which he relies." (quoting York County Fair Association vs. Tax Commission, 249 S.C. 337, 154 S.E. 2nd 361 (1967)). This recitation followed a 1964 opinion, in which the court had stated that language in a statute giving rise to an exemption must be given "... its plain, ordinary meaning and construed strictly against the claimed exemption." Chronicle Publisher Inc. vs. Tax Commission, 244 S.C. 192, 136 S.E. 2nd 261 (1964).

The Supreme Court has imposed an identical standard for construction of statutory provisions granting deductions from taxation. This standard is evidenced by the Supreme Court's declaration that language in "... a deduction statute... is not to be liberally construed. The plaintiff must place himself squarely within the terms of the statute." Lowenstein and Sons Inc. vs. Tax Commission, 277 S.C. 561, 290 S.E. 2nd 812 (1982). Similarly, the court, in Davis Mechanical Contractors vs. Wasson, 268 S.C. 26, 231 S.E. 2nd 300 (1977), determined that statutory language purportedly granting deductions must be strictly construed against the claimed deduction.

It bears emphasis that our Supreme Court has recently applied these rules to the construction of Section 12-43-220 (c) which the Court clearly determined to be an exemption statute. CFRE vs. Greenville County Assessor, 395 S.C. 67, 716 S.E. 2nd 877 (2011).

As noted hereinabove, the 4% assessment ratio is available only to those residential properties which satisfy the legislatively imposed requirements. Absent satisfaction of those requirements, the property is assessed, in accordance with the general rule, at 6%.

Moreover, the preferential assessment ratio sought by the taxpayer in this matter is a matter of legislative grace, and the taxpayer seeking the relief afforded by the preferential assessment ratio must clearly bring himself within the terms of the authorizing statute. Guarantee Bank and Trust Company vs. Tax Commission, 254 S.C. 82, 173 S.E. 2nd 367 (1970).

Inasmuch as the Supreme Court has clearly required that ambiguities within the statutes, purportedly affording benefits as matters of legislative grace, be strictly construed against the taxpayer, any potential ambiguity found within Section 12-43-220(c) must be resolved against the petitioner taxpayer in the instant proceedings.

The petitioner/taxpayer has clearly failed to satisfy the statutory prerequisites to the availability of the 4% assessment ratio for the subject property, for the tax year 2017, and the Assessor's determination, denying such assessment, should be upheld by this court.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:

It is anticipated that the respondent Assessor may seek summary judgement as to the claims asserted by the taxpayer/petitioner, premised generally upon those considerations set forth hereinabove.

7. A list of proposed witnesses and exhibits:

A. A listing of witnesses:

- a. Gary James, Beaufort County Assessor
- b. Ebony Sanders, Office of the Beaufort County Assessor.

B. A list of exhibits may include the following:

- a. The taxpayers application for the special assessment ratio on the subject property, for the tax year 2017.
- b. Correspondence, dated December 21, 2017, from Petitioner's attorney, Curtis Coltrane, accompanying the Petitioner's application for the 4% residential assessment ratio for the tax year 2017.
- c. Correspondence, dated December 18, 2017, from taxpayer petitioner, Joyce Annette Oakley, to the Beaufort County Treasurer (confirming residence of taxpayers spouse, Millard Oakley, in Tennessee).

8. A statement regarding the necessity of discovery, if any:

It is not anticipated that the matter will require any discovery prior to the contested case hearing.

9. The estimated time required for the hearing:

It is anticipated that the hearing will require approximately two hours.

10. Dates in the next 120 days where the Petitioner, its counsel and any witnesses will not be available for a hearing:

August 1, 3, 6, 7, 9, 10, 13-17, 20, 22, 23, 24, 27, 28, 29, 30, 31.

September 4, 5, 7, 10, 11, 17, 18, 19, 24-28.

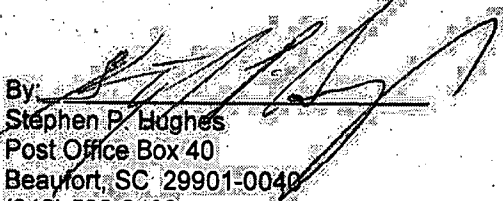
October 1, 8, 15, 22-26, 29-31.

November 1 and 2, 2018

11. An e-mail address that the Court can use for e-mail correspondence:

Stephen P. Hughes sphughes@hghpa.com

HOWELL, GIBSON & HUGHES, P.A.

By: 
Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Beaufort County Assessor

Beaufort, South Carolina

July 31, 2018

CERTIFICATE OF SERVICE

I certify that I served the foregoing upon all counsel/parties of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on July _____, 2018.

By: 
Stephen P. Hughes

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

J. Annette Oakley,

Petitioner,

Vs.

Beaufort County Assessor,

Respondent.

DOCKET NO. 18-ALJ-17-0233-CC

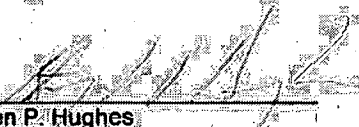
Stipulation of Facts


Stipulation of Facts

1. That the Petitioner, J. Annette Oakley, was, at all times during the calendar year 2017, the sole owner of that certain real property, with all improvements thereon, situated in Beaufort County, South Carolina, known as 18 Plumbridge Lane, Hilton Head Island, South Carolina, and designated on the relevant Beaufort County tax maps as District R550, Map 15D, Parcel 286 ("the subject property").
2. That the Petitioner, at all times during the calendar year 2017, was a citizen and resident of Beaufort County, in the state of South Carolina.
3. That the Petitioner, at all times during calendar year 2017, owned and occupied the subject property as her primary legal residence.
4. That the Petitioner submitted a timely application seeking eligibility of the subject property for the 4% Residential Assessment Ratio, available to qualifying properties under South Carolina Codes Section 12-43-220(c)(1) (Supp.2018) for the tax year 2017. A copy of the referenced application for the 4% Residential Assessment Ratio is attached hereto and fully incorporated herein as exhibit "A".
5. That the Petitioner, J. Annette Oakley, is, and was during all of calendar year 2017, and at the time of her application for the 4% Residential Assessment Ratio, married to Millard V. Oakley.

6. That Millard V. Oakley is, and was at all times during calendar year 2017, and on the date of the submission of the Petitioner's application for the 4% Residential Assessment Ratio, a citizen and legal resident of the state of Tennessee.
7. That Millard V. Oakley, at all times during calendar year 2017, and at the time of the submission of the Petitioner's application for the 4% Residential Assessment Ratio, occupied, as his primary legal residence, the property at 1051 Monterey Highway, Livingston, Tennessee. Millard V. Oakley did not reside at the subject residence at 18 Plum Bridge Lane, Hilton Head Island, South Carolina, during any period of calendar year 2017, or at the time of the Petitioner's application for the 4% Residential Assessment Ratio.
8. That, for calendar/tax year 2017, the Petitioner did not claim the 4% Residential Assessment Ratio, available to qualifying properties under South Carolina Code Section 12-43-220(c)(1)(Supp.2018), on any real property other than the subject property at 18 Plum Bridge Lane, Hilton Head Island, South Carolina.
9. That neither the Petitioner, J. Annette Oakley, nor her husband, Millard V. Oakley, has, at any time, either sought or obtained a legal separation, a limited divorce, a partial or complete termination of their marital relationship, or any property or marital settlement, in any court of competent jurisdiction, whether in South Carolina, Tennessee, or any other state of the United States.

HOWELL, GIBSON & HUGHES, P.A.

By: 
Stephen P. Hughes
Post Office Box 40
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(843) 522-2400
Attorney for Beaufort County Assessor

By: 
Curtis L. Coltrane
Post Office Drawer 6808
Hilton Head Island, SC 29938
Attorney for J. Annette Oakley

Beaufort, South Carolina

September 11, 2018



COUNTY COUNCIL OF BEAUFORT COUNTY
 Office of the Assessor
 Beaufort County Government Robert Smalls Complex
 Post Office Box 1228, Beaufort, South Carolina 29901-1228
 Phone: (843) 255-2400 Website: www.bcgov.net

Special Assessment 4%
Legal Residence
Application
Due January 15th

Parcel ID Number: R 550 -15 -00D -0286 -0000 Alternate ID Number: 02755110

ALL QUESTIONS MUST BE ANSWERED BEFORE APPLICATION CAN BE PROCESSED

Property Address: 18 Plumbridge Lane, Hilton Head, SC City, State, Zip: 29928
 Check one: Initial Application Renewal Change from Secondary Residence to Primary Residence

1. Do you occupy this as your legal/primary residence? Yes No
 Date you first occupied this property as your legal/primary residence: February 25, 2015

2. Are you or any member of your household claiming legal/primary residence on any other property in the US? Yes No
 If yes, give the property address: 1051 Monterey Hwy, Livingston, TN 38570

3. Is your home mailing address the same as the property address? Yes No
 If no, explain:

4. Is any of this property being used commercially or for a home business? Yes No
 If yes, explain and give the percentage or square footage used:

5. Is any portion of this property (land and/or building) rented or leased to others? Yes No
 If yes, what percentage? # days rented or leased/year

6. Is this property being held in a Trust? (If yes, submit Trust documents to be reviewed) Yes No

7. If this is a mobile home, please specify if you own or rent the land? Own Rent
 If you own the land, list the Parcel ID Number for the land: R

PROOF OF ELIGIBILITY REQUIRED FROM ALL OWNERS & SPOUSES

- SC Driver's License/I.D. Card
- SC Vehicle Registration/Voter Registration if no Vehicles
- SC Individual Income Tax Return
- PCS Orders/Military I.D. Cards for Military Personnel
- Additional Documents as may be Requested

PENALTY OF PERJURY, FRAUD AND REMOVAL OF LEGAL RESIDENCE

Pursuant to Section 12-43-220(C)(v)(6) of the SC Code of Laws: "If a change in ownership or use occurs, the owner who had qualified for the special assessment ratio allowed by this section shall notify the assessor of the change in classification within six months of the change. Another application is required by the new owner to qualify the residence for future years for the four percent assessment ratio allowed by this section." Change of use includes, but is not limited to: renting or leasing, vacating, or using the parcel for second / vacation home, or commercial use. A penalty in the amount of the real property taxes previously paid will be assessed for failure to notify the Assessor within six months of the change.

"Under penalty of perjury, I certify that: (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 any member of my household claim the special assessment ratio allowed by this section on another residence. *A member of my household means: (a) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and (b) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return."

Owner Name: <u>J. Annette Oakley</u>	Spouse/Co-Owner Name: _____
Signature: <u>[Signature]</u>	Signature: <u>[Signature]</u>
SSN: <u>2350745527</u> Date: _____	SSN: <u>414-54-8843</u> Date: _____
Daytime Phone/Cell: <u>931-267-6281</u>	Daytime Phone/Cell: _____

For Office Use Only
 Approved _____ Disqualified _____ Initials of Reviewing official _____ Date: _____

Submitting this application does not allow you to delay paying taxes that are billed. Penalties & interest will NOT be waived. You will only be notified if your application is denied. Form Revised: 06/1/2017

LEGAL RESIDENCE EXEMPTION: CALL THE ASSESSOR'S OFFICE AT 843-255-2400
(Other county offices will not be able to provide you with accurate answers)

If you have not heard regarding the status of this application prior to the penalty date for payment of taxes:

- **PAY YOUR BILL:** A refund will be issued if/when the application is approved.

If this application is approved:

- You may not receive any further notification if your application is approved for the 4% ratio.
- The 4% ratio will be computed into your tax bill
- 4% will be noted as the assessment ratio on your bill (Except when split assessment - 6% noted as assessment ratio)

If your application is disapproved or 4% is removed for any reason - you will receive a written Notice of 4% Assessment Denial:

- The notice will show "6%" as the assessment ratio.
- The notice will advise you of your appeal rights and the appeal period.

Following are limited **EXCERPTS** from the legal residence exemption statute: **SECTION 12-43-220 (C)**
The entire statute is available by calling the Assessor's Office at 843-255-2400

- (1) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a residence by the income beneficiary of the trust.

When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties. For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

- (2) (i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.
- (ii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:
- (A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and
 - (B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.
- (iv) In addition to the certification, the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires including, but not limited to:
- (A) a copy of the owner-occupant's most recently filed South Carolina individual income tax return;
 - (B) copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant;
 - (C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.
- (vi) No further applications are necessary from the current owner while the property for which the initial application was made continues to meet the eligibility requirements. If a change in ownership or use occurs, the owner who had qualified for the special assessment ratio allowed by this section shall notify the assessor of the change in classification within six months of the change. Another application is required by the new owner to qualify the residence for future years for the four percent assessment ratio allowed by this section.
- (vii) If a person signs the certification, obtains the four percent assessment ratio, and is thereafter found not eligible, or thereafter loses eligibility and fails to notify the assessor within six months, a penalty is imposed equal to one hundred percent of the tax paid, plus interest on that amount at the rate of one-half of one percent a month, but in no case less than thirty dollars nor more than the current year's taxes. This penalty and any interest are considered ad valorem taxes due on the property for purposes of collection and enforcement.
- (3) Notwithstanding any other provision of law, a taxpayer may apply for a refund of property taxes overpaid because the property was eligible for the legal residence assessment ratio. The application must be made in accordance with Section 12-60-2560. The taxpayer must establish that the property in question was in fact his legal residence and where he was domiciled. A county council, by ordinance, may allow refunds for the county government portion of property taxes for such additional past years as it determines advisable.

Please initial acknowledging that you have read and understand this application.

Owners Initials: _____

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Docket No.: 18-ALJ-17-0233-CC

J. ANNETTE OAKLEY,

Petitioner,

vs.

BEAUFORT COUNTY ASSESSOR,

Respondent.

NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT

Please take notice that J. Annette Oakley, by and through her undersigned counsel, shall move before the Hon. S. Phillip Lensky, Judge of the South Carolina Administrative Law Court, at The South Carolina Administrative Law Court, 1205 Pendleton Street, Edgar Brown Office Building, Second Floor, Columbia, South Carolina, on September 20, 2018, at 10:00 o'clock, A. M., or at such other time and place as set by the Court, for Summary Judgment in her favor and against the Beaufort County Assessor, pursuant to Rule 56, SCRPC, on the grounds that there is no genuine issue as to any material fact and J. Annette Oakley is entitled to judgment as a matter of law.

The motion is based upon the pleadings, the record on file with the Court, this notice, the September 11, 2018, Stipulation of Facts filed in this case, Rule 56, SCRPC, and all other law as is then and there applicable.

SUMMARY JUDGMENT STANDARD

Under Rule 56, SCRPC, Summary Judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Café Associates Limited v. Gengross, 305 S.C. 6, 406 S.E.2d 162 (1991)

Under Rule 56, SCRPC, Summary Judgment is appropriate:

If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In determining whether any material issue of fact exists, the evidence and all inferences that can be drawn from the evidence must be viewed in the light most favorable to the non-moving party, or the party resisting the motion.² The purpose of Summary Judgment is to expedite the disposition of cases that do not require the services of a fact-finder.³ For purposes of Summary Judgment, an issue is 'material' if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action.⁴ Once the moving party has met its burden of demonstrating that no genuine issue of material fact exists, a party defeats summary judgment by affirmatively demonstrating the presence of a genuine issue of material fact. Rule 56(e), SCRPC, states a party may not rest upon the mere allegations or denials of his pleadings.⁵

STIPULATED FACTS

This is an appeal by J. Annette Oakley of the Beaufort County Assessor's denial of her application for the 4% Residential Assessment Ratio for calendar year 2017.⁶ By a Stipulation of Facts dated September 11, 2018, J. Annette Oakley and the Beaufort County

² *Redwend Limited Partnership v. Edwards*, 354 S.C. 58, 581 S.E.2d 496 (Ct.App., 2003)

³ *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

⁴ *P.P.G. Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc.*, 297 S.C. 176, 375 S.E.2d 331 (Ct.App., 1988).

⁵ *Hoard ex rel. Hoard v. Roper Hospital, Inc.*, 387 S.C. 539, 694 S.E.2d 1 (2010).

⁶ The 4% Residential Assessment Ratio is authorized in S. C. Code Ann. § 12-43-220(c)(1)(Supp. 2018).

Assessor stipulated to the facts relevant to this case. The September 11, 2018, Stipulation of Facts reveals the following:

At all times during calendar year 2017, J. Annette Oakley owned real property in Beaufort County, South Carolina, known as 18 Plumbridge Lane, Hilton Head Island, South Carolina.⁷ At all times during calendar year 2017, J. Annette Oakley was a citizen and resident of Beaufort County, South Carolina, and occupied 18 Plumbridge Lane as her primary legal residence.⁸ For calendar year 2017, J. Annette Oakley timely filed an application with the Beaufort County Assessor seeking the 4% Residential Ratio for 18 Plumbridge Lane.⁹ For calendar year 2017, J. Annette Oakley did not seek the 4% Residential Assessment Ratio for any property other than 18 Plumbridge Lane.¹⁰ J. Annette Oakley is married to Millard V. Oakley, who is a legal resident of the State of Tennessee, and who does not reside at 18 Plumbridge Lane.¹¹ J. Annette Oakley and Millard V. Oakley are not legally separated, and no action is pending in any court for a legal separation, division of martial property or any partial or complete termination of their marriage.¹²

ISSUE BEFORE THIS COURT

The narrow issue before the Court is this:

Does the text of S. C. Code Ann. § 12-43-220 (c)(2)(iii)(A) (Supp. 2018), which reads:

⁷ See: September 11, 2018, Stipulation of Facts, Number 1.

⁸ See: September 11, 2018, Stipulation of Facts, Numbers 2 and 3.

⁹ See: September 11, 2018, Stipulation of Facts Number 4.

¹⁰ See: September 11, 2018 Stipulation of Facts, Number 8.

¹¹ See: September 11, 2018, Stipulation of Facts, Numbers 5, 6 and 7.

¹² See: September 11, 2018, Stipulation of Facts, Number 9.

(iii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:

(A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant;

apply to S. C. Code Ann. § 12-43-220 (c)(2)(ii)(B)(Supp. 2018), only, or does it apply to both S. C. Code Ann. § 12-43-220 (c)(2)(iii)(A) and (B)(Supp. 2018).

The language of S. C. Code Ann. § 12-43-220 (c)(2)(iii)(A) (Supp. 2018) is plain. The definition of "member of my household" set out in S. C. Code Ann. § 12-43-220 (c)(2)(iii)(A) (Supp. 2018), applies only to S. C. Code Ann. § 12-43-220 (c)(2)(ii)(B)(Supp. 2018).

Despite the plain language, the Beaufort County Assessor asserts that the definition for "member of my household" in S. C. Code Ann. § 12-43-220 (c)(2)(iii)(A) (Supp. 2018), applies to both S. C. Code Ann. § 12-43-220 (c)(2)(ii)(A) and (B)(Supp. 2018).

APPLICABLE LAW

The case presents a question of interpretation of an unambiguous statute. In South Carolina, the applicable law for this case is this: When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. In interpreting a statute, words must be given their plain and ordinary meaning with resort to subtle or forced construction to limit or expand the statute's operation.¹³

ARGUMENT

In this case, the Beaufort County Assessor has done precisely what the law does not allow. The Beaufort County Assessor applied the definition of "member of my household"

¹³ See: *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007); *Paschal v. State Election Commission*, 317 S.C. 434, 454 S.E.2d 890 (1995).

in S. C. Code Ann. § 12-43-220(c)(2)(iii)(A)(Supp. 2018), to J. Annette Oakley's application, despite the fact that the application did not reveal that either J. Annette Oakley or Millard V. Oakley sought the 4% Residential Assessment Ratio on any other property.¹⁴

The Beaufort County Assessor's argument is set out in his Pre-Hearing Statement as follows:

Notwithstanding the assertions of the taxpayer, it appears clearly to have been the intention of the legislature, in the enactment of Section 12-43-220(c)(2)(ii)(A), and in the enactment of Section 12-43-220(c)(2)(iii)(A), that the term "member of my household", as defined in the latter statutory subsection, was to apply that term ("member of my household") as forth in both subparagraphs (A)(B) and of Code Section 12-43-220(c)(2)(ii).¹⁵

Contrary to the Beaufort County Assessor's argument, the language of S. C. Code Ann. § 12-43-220(c)(2)(iii)(A)(Supp. 2018), could not be more plain, and the application of it is unambiguously limited to S. C. Code Ann. § 12-43-220(c)(2)(ii)(B)(Supp. 2018).¹⁶

Because the language of statute is unambiguous, the legislature's intent must be derived

¹⁴ The Beaufort County Assessor's decision is based only on the fact that Millard V. Oakley is a citizen and resident of Tennessee. There is no evidence that either J. Annette Oakley or Millard V. Oakley sought the 4% Residential Assessment Ratio on any other property. See: September 11, 2018, Stipulation of Facts, Numbers 5, 6, 7 and 8.

¹⁵ See: Beaufort County Assessor's July 31, 2018, Pre-Hearing Statement, page 3.

¹⁶ The three Administrative Law Court cases cited by the Beaufort County Assessor in his Pre-Hearing Statement, *Pajer v. Lancaster County Assessor*, 16-ALJ-0156-CC; *Ginsburg v. Horry County Assessor*, 17-ALJ-17-0171-CC; and *Long v. Lancaster County Assessor*, 16-ALJ-17-150-CC, do present similar fact patterns to this case, and in each case, the Administrative Law Judge ruled against the taxpayer, based on precisely the same misreading of the statute urged by the Beaufort County Assessor. But, in these cases, it does not appear that the taxpayer challenged the application of S. C. Code Ann. § 12-43-220(c)(2)(iii)(A)(Supp. 2018), to the taxpayer's situation, and none of the taxpayers appealed the decisions, so there is no binding authority on this point from the South Carolina Supreme Court or South Carolina Court of Appeals.

solely from language used.¹⁷ There is simply no basis for the Beaufort County Assessor's imposition of his own belief as to what the legislature intended.¹⁸

Because Millard V. Oakley does not reside with J. Annette Oakley, he is not a "member of her household" as that term is used in S. C. Code Ann. § 12-43-220(c)(2)(iii)(A)(Supp. 2018).¹⁹ The application of J. Annette Oakley indeed shows that she is squarely within the terms of S. C. Code Ann. § 12-43-220(c)(Supp. 2018), and that she is entitled to the 4% Residential Assessment Ratio.

CONCLUSION

The application of J. Annette Oakley for the 4% Residential Assessment Ratio met the requirements of S. C. Code Ann. § 12-43-220(c)(Supp. 2018), and the Beaufort County Assessor's denial of it was improper. J. Annette Oakley urges the Administrative Law Court to reverse the Beaufort County Assessor's denial of her application, and grant to her the 4% Residential Assessment Ratio.

¹⁷ In his Pre-Hearing Statement, the Beaufort County Assessor cites many cases for the proposition that language in statutes creating exemptions or deductions from taxation are to be strictly construed against the taxpayer. These cases have no application to this case, because S. C. Code Ann. § 12-43-220(c)(2)(iii)(A)(Supp. 2018), is not unambiguous. By its plain terms, the application of it is limited to S. C. Code Ann. § 12-43-220(c)(2)(ii)(B)(Supp. 2018), and it does not apply to S. C. Code Ann. § 12-43-220(c)(2)(ii)(A)(Supp. 2018).

¹⁸ *Sloan v. Hardee, supra.; Paschal v. State Election Commission, supra.*

¹⁹ The Beaufort County Assessor has argued that because J. Annette Oakley has conceded that Millard V. Oakley is a member of her household by identifying his address in Item 2 of her application. This is incorrect. All J. Annette Oakley did was to forthrightly reveal that her spouse has a different residence. There was no other place on the form to provide this information. In addition, the September 11, 2018, Stipulation of Facts shows that Millard V. Oakley does not reside with J. Annette Oakley at 18 Plumbridge Lane. See: September 18, 2018, Stipulation of Facts, Numbers 6 and 7.

COLTRANE & WILKINS, LLC

By:



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Hilton Head Island, South Carolina

This 13th day of September, 2018.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

J. Annette Oakley,

Petitioner,

Vs.

Beaufort County Assessor,

Respondent.

DOCKET NO: 18-ALJ-17-0233-CC

MOTION FOR SUMMARY
JUDGEMENT

TO: Curtis Coltrane, Attorney for the Petitioner:

YOU WILL PLEASE TAKE NOTICE THAT the Respondent, Beaufort County Assessor, by and through its undersigned counsel, Howell Gibson and Hughes, PA, will appear before the honorable Judge Phillip S. Lenski, at the Administrative Law Court, Columbia, South Carolina, on or within the 10th day after service hereof, or at such other place and time as may be directed by the court, and then and there move for an order of summary judgement as to all claims asserted by the petitioner.

The within motion, made pursuant to SCALC Rule 19, is premised upon the following considerations:

a. That, by her demand for a contested case hearing, the Petitioner, J. Annette Oakley, has challenged the denial, by the Respondent Assessor, of the Petitioner's claim for the 4% Residential Assessment Ratio, for the tax year 2017.

on her property, with improvements thereon, at 18 Plumbridge Lane, Hilton Head Island, South Carolina (District R550, Map 15D, Parcel 266)

b. That the Petitioner, J. Annette Oakley, is, and was at all times during the calendar year 2017, a citizen and resident of Beaufort County, in the state of South Carolina;

c. That the Petitioner, at all times during calendar year 2017, and at the time of her application for the 4% Residential Assessment Ratio, was married to Millard V. Oakley;

d. That Millard V. Oakley, the spouse of the Petitioner/taxpayer, is, and was at all times during calendar year 2017, and on the date of the submission of Petitioner's application for the 4% Residential Assessment Ratio, a citizen and legal resident of the state of Tennessee;

e. That Millard V. Oakley, at all times during calendar year 2017, and at the time of the submission of the Petitioner's application for the 4% Residential Assessment Ratio, occupied, as his primary legal residence, the property at 1051 Monterey Highway, Livingston, Tennessee. Millard V. Oakley did not reside at the subject residence at 18 Plumbridge Lane, Hilton Head Island, South Carolina, during any period of the calendar year 2017, or at the time of the Petitioner's application for the 4% Residential Assessment Ratio;

f. That neither the Petitioner, J. Annette Oakley, nor her husband, Millard V. Oakley, has, at any time, either sought or obtained a legal separation, a limited divorce, or a partial or complete termination of their martial relationship.

or any property or marital settlement, in any court of competent jurisdiction, whether in South Carolina, Tennessee, or any other state of the United States.

g. That the criteria for eligibility for the 4% Residential Assessment Ratio are set forth within South Carolina Code 12-43-220(c). Those statutory provisions require, among other criteria, that the property be the legal residence of the taxpayer, be owned by the taxpayer, and be occupied by the taxpayer as his or her legal residence. Those criteria further require that the taxpayer make application for the preferential assessment ratio, and mandate that the taxpayer certify not only that the subject residence is the legal residence of the taxpayer, but also that neither the taxpayer, nor any member of his or her household, claims to be a resident of a jurisdiction other than South Carolina for any purpose.

h. That South Carolina Code Section 12-43-220(c) defines a "member of my household" as "the owner occupant's spouse, except where that spouse is legally separated from the owner-occupant....".

The criteria for eligibility for the 4% Residential Assessment Ratio, as set forth within Code Section 12-43-220(c) are clear, and preclude eligibility where the spouse of the taxpayer, in the absence of a legal separation, is a resident of a jurisdiction other than South Carolina.

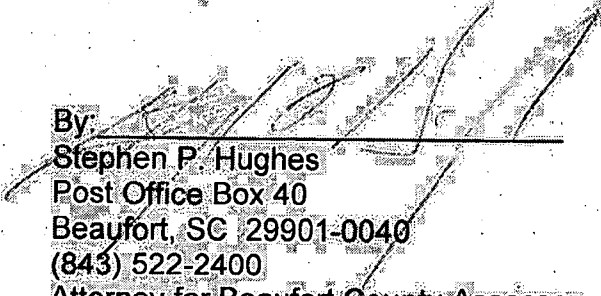
In light of the forgoing considerations, the taxpayer has failed to satisfy the mandatory statutory criteria for eligibility, and is not entitled to the 4% Residential Assessment Ratio, on the subject property, for the tax year 2017. Under the

circumstances, there is no genuine issue as to any material fact, and the Respondent Assessor is entitled to judgement in his favor as a matter of law.

The within motion will be further supported by the statutory and common law of the State of South Carolina, the relevant rules of Civil Procedure, the Respondent's prehearing statement, the stipulation of facts as submitted by the parties, and any memorandum of law which may be submitted in support of the instant motion.

Respectfully Submitted:

HOWELL, GIBSON & HUGHES, P.A.

By: 
Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Beaufort County Assessor

Beaufort, South Carolina

September 17th, 2018

Tennessee, where he maintained his primary legal residence at 1051 Monterey Highway, Livingston, Tennessee. Moreover, neither the Petitioner, J. Annette Oakley, nor her husband, Millard V. Oakley, has, at any time, either sought or obtained a legal separation, a limited divorce, a partial or complete termination of their marital relationship, or any property or marital settlement, in any court of component jurisdiction, whether in South Carolina, Tennessee, or in any other state of the United States.

B: Legal Argument

The criteria for eligibility for the 4% residential assessment ratio are set forth within South Carolina Code Section 12-43-220(c). The provisions of Section 12-43-220(c)(1) require, among other criteria, that the property, to qualify for the favorable 4% residential assessment ratio, (1) must be the legal residence of the taxpayer, (2) must be owned by the taxpayer, and (3) must be occupied by the taxpayer as his or her legal residence. Those criteria, however, are not exhaustive, additional mandatory requirements for eligibility for the 4% residential assessment ratio are set forth within Code Section 12-43-220(c)(2)(ii). That sub-section requires that the taxpayer make application for the preferential assessment ratio, and further mandates that the taxpayer, under penalty of perjury, certify that:

"(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;

(B) that neither I, nor any member of my household, claim the special assessment ratio allowed by this section on another residence.

Moreover, "a member of my household" is further defined, with Section 12-43-220(c)(2)(iii), to include:

"(A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; ..."

Both of the aforesaid certifications are specifically mandated by the statute, and both of the certifications are clearly required for eligibility for the 4% assessment ratio. The statute is equally clear in denying the 4% ratio in instances where the required certifications are false or inaccurate. South Carolina Code Section 12-43-220(c)(2)(vii).

The taxpayer, within her application for the 4% residential assessment ratio for the tax year 2017 (submitted under cover of correspondence dated December 21, 2017 from taxpayer's counsel, Attorney Curtis Coltrane), specifically confirmed that a "member of [her] household" claimed legal/primary residence on

property other than the subject property at 18 Plumbridge Lane, Hilton Head Island, South Carolina. Mr. Coltrane's accompanying correspondence further confirmed that the taxpayer, J. Annette Oakley, was "... married to Millard Oakley who is a resident of the state of Tennessee." Identical representations had previously been made by the taxpayer within her letter of December 18, 2017, wherein she advised the Beaufort County Treasurer that her husband, Millard Oakley, "... resides on a farm in Tennessee..."; that Mr. Oakley was a lifelong resident of Overton County, Tennessee, and that Mr. Oakley would maintain his legal residence in the state of Tennessee (Copies of the Petitioner's application, Mr. Coltrane's cover correspondence of December 21, 2017, and the Petitioner's correspondence of December 18, 2017 are attached herein as Exhibits A, B, & C, respectively).

It is the contention of the Petitioner taxpayer that "a member of my household", as defined in Section 12-43-220 (c)(2)(iii)(A), applies solely to that term ("member of my household") as used in Section 12-43-220(c)(2)(ii)(B), and, by contrast, that the aforesaid definition does not apply to the term "member of my household", as used in Section 12-43-220(c)(2)(iii)(A). It is the Petitioner's further contention that the fact, conceded by the taxpayer, that her spouse claims legal residence in a state other than South Carolina, will not preclude her eligibility for the 4% residential assessment ratio available only to qualifying properties under the relevant provisions of the code.

Notwithstanding the assertions of the taxpayer, it appears clearly to have been the intention of the legislature, (in the enactment Section 12-43-220(c)(2)(ii)(A), and in the enactment of Section 12-43-220(c)(2)(iii)(A),) that the term "member of my household", as defined in the latter statutory subitem, was to apply to that term ("member of my household") as set forth in both subparagraphs (A) and (B) of code Section 12-43-220(c)(2)(ii).

Prior to the 2012 amendments to Section 12-43-220(c), the certification required by Section 12-43-220(c)(2)(ii) read as follows:

Under penalty of perjury I certify that:

A. the residence which is the subject of this application is my legal residence where I am domiciled at the time of this application and that I do not claim to be a legal resident of a jurisdiction other than South Carolina for any purpose, (emphasis supplied)

B. that neither I nor any member of my household is residing in or occupying any other residence which I or any member of my immediate family has qualified for the special assessment ratio allowed by the section. (emphasis supplied)

Prior to the 2012 amendments, Section 12-43-220(c)(2)(iii) read, in relevant part, as follows:

For purposes of subitem (ii)(B) of this item, "a member of my household" means:

A. the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant;

A copy of Code sub-sections 12-43-220(c)(2)(ii)(A)&(B), and 12-43-220(c)(2)(iii)(A) as those subsections had been enacted prior to the 2012 amendments, is attached hereto as Exhibit D.

Thus, it is clear that the term "member of my household", as defined by the legislature prior to the 2012 amendment, was meant to encompass the owner-occupant's spouse. It is equally clear that, prior to the 2012 amendments to code Section 12-43-220(c), the aforesaid defined term, "member of my household", was utilized only in Section 12-43-220(c)(2)(ii)(B).

Pursuant to the 2012 amendments to the statute, Section 12-43-220(c)(2)(ii)(A) was modified, and now reads as follows:

Under penalty of perjury I certify that:

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. (emphasis supplied).

A copy of Code Subsection 12-43-220(c)(ii)(A), as amended in 2012, is attached hereto as Exhibit E.

Although the 2012 amendment did not set forth any further definition of the term "member of my household", as set forth in Section 12-43-220(c)(2)(iii)(A), it was clearly the intention of the legislature that such definition be applied to "member of my household" as utilized both in Sections A and B of sub Section (ii). Any other interpretation would lead to an absurd result clearly not contemplated by the General Assembly.

It should be noted that the general issues before this court have been previously addressed in no fewer than three opinions issued by the Administrative Law Court: Pajer vs Lancaster County Assessor, 16-ALJ-17-0156-CC (2017); Ginsburg vs Horry County Assessor, 17-ALJ-17-0171-CC (2017); and Long vs Lancaster County Assessor, 16-ALJ-17-0150-CC (2016). In each of the aforesaid opinions, the Court determined that the residence of the taxpayer's spouse, in a jurisdiction other than South Carolina, disqualified the taxpayer from eligibility for the 4% residential assessment ratio. The Ginsburg Court, in specifically considering the statutory provisions at issue here, determined that "the

language of the statute plainly and unambiguously requires that, in order for the petitioner to qualify for the special assessment ratio, neither [she], nor any member of [her] household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose", and further determined that the taxpayer's husband was properly considered a "member of the household".

It is submitted that the aforesaid opinions of the ALC are dispositive, and render the taxpayer ineligible for the requested assessment ratio.

Moreover, and as noted previously herein, the Petitioner, within her application for the 4% assessment ratio, specifically confirmed that a "member of [her] household" claimed legal/primary residence on property other than the subject property at 18 Plumbridge Lane.

It is the contention of the Assessor that the statute is clear in reflecting the intention of the legislature that the preferential residential assessment ratio is unavailable to a taxpayer whose spouse (and from whom the taxpayer is not legally separated), maintains legal residence in a state other than South Carolina.

Moreover, even assuming that some ambiguity might be found in the aforesaid legislative provisions, the South Carolina Supreme Court has consistently held that ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer. The Court, in State vs. Life Insurance Company of Georgia, 254 S.C. 286, 175 S.E. 2nd 203 (1970) recited the "...well-settled rule that "constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption, who must clearly bring himself within the constitutional or statutory language upon which he relies," (quoting York County Fair Association vs. Tax Commission, 249 S.C. 337, 154 S.E. 2nd 361 (1967)). This recitation followed a 1964 opinion, in which the court had stated that language in a statute giving rise to an exemption must be given "...its plain, ordinary meaning and construed strictly against the claimed exemption." Chronicle Publisher Inc. vs. Tax Commission, 244 S.C. 192, 136 S.E. 2nd 261 (1964).

The Supreme Court has imposed an identical standard for construction of statutory provisions granting deductions from taxation. This standard is evidenced by the Supreme Court's declaration that language in "...a deduction statute... is not to be liberally construed. The plaintiff must place himself squarely within the terms of the statute." Lowenstein and Sons Inc. vs. Tax Commission, 277 S.C. 561, 290 S.E. 2nd 812 (1982). Similarly, the court, in Davis Mechanical Contractors vs. Wasson, 268 S.C. 26, 231 S.E. 2nd 300 (1977), determined that statutory language purportedly granting deductions must be strictly construed against the claimed deduction.

It bears emphasis that our Supreme Court has applied these rules to the construction of Section 12-43-220 (c), which the Court clearly determined to be an exemption statute. CFRE vs. Greenville County Assessor, 395 S.C. 67, 716 S.E. 2nd 877 (2011).

As noted hereinabove, the 4% assessment ratio is available only to those residential properties which satisfy the legislatively imposed requirements. Absent satisfaction of those requirements, the property is assessed, in accordance with the general rule, at 6% Section 12-43-220(e).

Moreover, the preferential assessment ratio sought by the taxpayer in this matter is a matter of legislative grace, and the taxpayer seeking the relief afforded by the preferential assessment ratio must clearly bring himself within the terms of the authorizing statute. Guarantee Bank and Trust Company vs. Tax Commission, 254 S.C. 82, 173 S.E. 2nd 367 (1970).

Inasmuch as the Supreme Court has clearly required that ambiguities within statutes, purportedly affording benefits as matters of legislative grace, be strictly construed against the taxpayer, any potential ambiguity found within Section 12-43-220(c) must be resolved against the petitioner taxpayer in the instant proceedings.

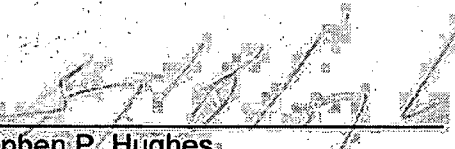
The petitioner/taxpayer has clearly failed to satisfy the statutory of prerequisites to the availability of the 4% assessment ratio for the subject property, for the tax year 2017, and the Assessor's determination, denying such assessment, should be upheld by this court.

CONCLUSION:

The parties, by stipulation, have confirmed that the spouse of the taxpayer, at the time of her application for the residential assessment ratio, and throughout the relevant tax year 2017, was a citizen and resident, not of the state of South Carolina, but of the state of Tennessee. Under the circumstances, the taxpayer has failed to satisfy those legislatively imposed criteria for eligibility for the 4% residential assessment ratio.

Respectfully Submitted:

HOWELL, GIBSON & HUGHES, P.A.

By: 
Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Beaufort County Assessor

Beaufort, South Carolina

September 17, 2018

CERTIFICATE OF SERVICE

I certify that I served the foregoing Memorandum in Support of Respondent's Motion for Summary Judgment, and referenced exhibits, have been served upon all counsel of record by email and by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on _____ day of September, 2018.

By: 
Stephen P. Hughes

EXHIBIT

A



COUNTY COUNCIL OF BEAUFORT COUNTY
Office of the Assessor
 Beaufort County Government Robert Smalls Complex
 Post Office Box 1228, Beaufort, South Carolina 29901-1228
 Phone: (843) 255-2400 Website: www.bcgov.net

Special Assessment 4%
Legal Residence
Application
Due January 15th

Parcel ID Number: R550 - 15 - 00D - 0286 - 0000 Alternate ID Number: 02755110

ALL QUESTIONS MUST BE ANSWERED BEFORE APPLICATION CAN BE PROCESSED

Property Address: 18 Plumbridge Lane, Hilton Head, SC City, State, Zip: 29928

Check one: Initial Application Renewal Change from Secondary Residence to Primary Residence

1. Do you occupy this as your legal/primary residence? Yes No
 Date you first occupied this property as your legal/primary residence: February 25, 2015

2. Are you or any member of your household claiming legal/primary residence on any other property in the US? Yes No
 If yes, give the property address: 1051 Monterey Hwy, Livingston, TN 38570

3. Is your home mailing address the same as the property address? Yes No
 If no, explain: _____

4. Is any of this property being used commercially or for a home business? Yes No
 If yes, explain and give the percentage or square footage used: _____

5. Is any portion of this property (land and/or building) rented or leased to others? Yes No
 If yes, what percentage? _____ # days rented or leased/year _____

6. Is this property being held in a Trust? (If yes, submit Trust documents to be reviewed) Yes No

7. If this is a mobile home, please specify if you own or rent the land? Own Rent
 If you own the land, list the Parcel ID Number for the land: R _____

PROOF OF ELIGIBILITY REQUIRED FROM ALL OWNERS & SPOUSES

- SC Driver's License/I.D. Card
- SC Individual Income Tax Return
- Additional Documents as may be Requested
- SC Vehicle Registration/Voter Registration if no Vehicles
- PCS Orders/Military I.D. Cards for Military Personnel

PENALTY OF PERJURY, FRAUD AND REMOVAL OF LEGAL RESIDENCE

Pursuant to Section 12-43-220(C)(4)(6) of the SC Code of Laws: "If a change in ownership or use occurs, the owner who had qualified for the special assessment ratio allowed by this section shall notify the assessor of the change in classification within six months of the change. Another application is required by the new owner to qualify the residence for future years for the four percent assessment ratio allowed by this section." Change of use includes, but is not limited to: renting or leasing, vacating, or using the parcel for second / vacation home, or commercial use. A penalty in the amount of the real property taxes previously paid will be assessed for failure to notify the Assessor within six months of the change.

"Under penalty of perjury, I certify that: (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 any member of my household claim the special assessment ratio allowed by this section on another residence. *A member of my household' means: (a) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and (b) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return."

Owner Name: <u>J. Annette Oakley</u> Required Signature: <u>[Signature]</u> SSN: <u>2350745527</u> Date: _____ Daytime Phone/Cell: <u>931-267-6281</u>	Spouse/Co-Owner Name: _____ Required Signature: <u>[Signature]</u> SSN: <u>414-54-8843</u> Date: _____ Daytime Phone/Cell: _____
---	---

For Office Use Only

Approved _____ Disqualified _____ Initials of Reviewing official: _____ Date: _____

Submitting this application does not allow you to delay paying taxes that are billed. Penalties & interest will NOT be waived. You will only be notified if your application is denied. Form Revised 06/1/2017

LEGAL RESIDENCE EXEMPTION: CALL THE ASSESSOR'S OFFICE AT 843-255-2400
(Other county offices will not be able to provide you with accurate answers)

If you have not heard regarding the status of this application prior to the penalty date for payment of taxes:

- **PAY YOUR BILL: A refund will be issued if/when the application is approved.**

If this application is approved:

- You may not receive any further notification if your application is approved for the 4% ratio.
- The 4% ratio will be computed into your tax bill.
- 4% will be noted as the assessment ratio on your bill (Except when split assessment - 6% noted as assessment ratio).

If your application is disapproved or 4% is removed for any reason, you will receive a written Notice of 4% Assessment Denial:

- The notice will show "6%" as the assessment ratio.
- The notice will advise you of your appeal rights and the appeal period.

Following are limited *EXCERPTS* from the legal residence exemption statute: **SECTION 12-43-220 (C)**.
The entire statute is available by calling the Assessor's Office at 843-255-2400.

- (i) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a residence by the income beneficiary of the trust.

When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties. For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

- (2) (i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.
- (ii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:
- (A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and
- (B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.
- (iv) In addition to the certification, the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires including, but not limited to:
- (A) a copy of the owner-occupant's most recently filed South Carolina individual income tax return;
- (B) copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant;
- (C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.
- (vi) No further applications are necessary from the current owner while the property for which the initial application was made continues to meet the eligibility requirements. If a change in ownership or use occurs, the owner who had qualified for the special assessment ratio allowed by this section shall notify the assessor of the change in classification within six months of the change. Another application is required by the new owner to qualify the residence for future years for the four percent assessment ratio allowed by this section.
- (vii) If a person signs the certification, obtains the four percent assessment ratio, and is thereafter found not eligible, or thereafter loses eligibility and fails to notify the assessor within six months, a penalty is imposed equal to one hundred percent of the tax paid, plus interest on that amount at the rate of one-half of one percent a month, but in no case less than thirty dollars nor more than the current year's taxes. This penalty and any interest are considered ad valorem taxes due on the property for purposes of collection and enforcement.
- (3) Notwithstanding any other provision of law, a taxpayer may apply for a refund of property taxes overpaid because the property was eligible for the legal residence assessment ratio. The application must be made in accordance with Section 12-60-2560. The taxpayer must establish that the property in question was in fact his legal residence and where he was domiciled. A county council, by ordinance, may allow refunds for the county government portion of property taxes for such additional past years as it determines advisable.

Please initial acknowledging that you have read and understand this application:

Owners' Initials: _____

EXHIBIT

B

COLTRANE & WILKINS, LLC
ATTORNEYS AT LAW

POST OFFICE BOX 6808
HILTON HEAD ISLAND, SC 29938
(843) 785-5551
(843) 785-5552 (FAX)

Curtis L. Coltrane
E-Mail: curtis@coltraneandwilkins.com
Certified Circuit Court Mediator
Certified Circuit Court Arbitrator
Certified Federal Court Mediator

Curtis L. Coltrane*
John W. Wilkins
*Also Member Virginia Bar

December 21, 2017

Hon. Gary N. James
ASSESSOR, BEAUFORT COUNTY, SOUTH CAROLINA
539 William Hilton Parkway, Room 106
Hilton Head Island, SC 29926

RE: Application of Joyce Annette Oakley for 4% Assessment Ratio
18 Plumbridge Lane, Hilton Head Island, SC 29928

Dear Mr. James:

Attached, you will find the "Special Assessment 4 % Legal Residence Application" that has been prepared and signed by Joyce Annette Oakley, a resident of Beaufort County, South Carolina, at 18 Plumbridge Lane, Hilton Head Island, SC, 29928.

As you will see from the application, Ms. Oakley is married to Millard Oakley who is a resident of the State of Tennessee. In previous years, Beaufort County, South Carolina, has denied Ms. Oakley's application for the 4% Assessment due to the fact that Mr. Millard Oakley is a resident of Tennessee.

I am writing because I believe that Beaufort County, South Carolina's interpretation of S. C. Code Ann. § 12-43-220 (Supp. 2017), is incorrect and does not follow the express language of the statute.

S. C. Code Ann. § 12-43-220(c)(2)(i) (Supp. 2017), reads:

(2)(i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the

Mr. Gary N. James
December 21, 2017
Page 2 of 4

residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

(ii) This item does not apply unless the owner of the property or the owner's agent applies for the four percent assessment ratio before the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. In the application the owner or his agent shall provide all information required in the application, and shall certify to the following statement:

"Under penalty of perjury I certify that:

(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.

(iii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:

(A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and

(B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.

Specifically, Subsection (A) above reads: "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."

Beaufort County, South Carolina, has interpreted to mean that a spouse who does not live with the property owner disqualifies the property owner from the 4% Ratio. Beaufort

Mr. Gary N. James
December 21, 2017
Page 3 of 4

County, South Carolina, bases this interpretation on the text of S. C. Code Ann. § 12-43-220 (2)(iii), which reads:

(iii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:

(A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and

(B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.

The problem with Beaufort County, South Carolina's interpretation of the statute is that the text of S. C. Code Ann. § 12-43-220(iii) expressly limits the application of it to "subitem (ii)(B)." It does not, by the language of it, apply to subitem (ii)(A).

Since the statute does not, by its express language, apply S. C. Code Ann. § 12-43-220(iii)(Supp. 2017), to S.C. Code Ann. § 12-43-220(c)(ii)(A)(Supp. 2017), there is no statutory definition of "household" that applies to S.C. Code Ann. § 12-43-220(c)(ii)(A).

As a result, the common, ordinary meaning of the word "household" applies. The law in South Carolina relating to construction of unambiguous statutes is: A Court cannot construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope. *Paschal v. State Election Commission*, 317 S.C. 434, 454 S.E.2d 890 (1995).

The common, ordinary meaning of "household" is: "those who dwell under the same roof and compose a family; also: "a social unit composed of those living together in the same dwelling," or, "A person or group of people occupying a single dwelling." Because Mr. Oakley does not reside with Ms. Oakley on Hilton Head Island, under the common ordinary meaning of household, he is not a member of Joyce Annette Oakley's household and he does not disqualify her from receiving the 4% special assessment ratio. Further, the application of Joyce Annette Oakley does not reveal that any member of her "household" as defined in S. C. Code Ann. § 12-43-220(iii), claims the 4% ratio authorized by S. C. Code Ann. § 12-43-220(c)(2)(i) (Supp. 2017).

Joyce Annette Oakley's application reveals that she is entitled to the 4 % assessment ratio because:

1. 18 Plumbrige Lane, Hilton Head Island, SC, 29928, is her legal residence where she is domiciled, and no member of her "household," being

Mr. Gary N. James
December 21, 2017
Page 4 of 4

any person who resides at 18 Plumbridge Lane, Hilton Head Island, SC, 29928, is a resident of any other state.

2. No member of her household, as defined by S. C. Code Ann. § 12-43-220(iii)(Supp. 2017), claims the 4 % assessment ratio on any other property.

Based on the foregoing, Joyce Annette Oakley seeks the 4 % assessment ratio for 18 Plumbridge Lane, Hilton Head Island, SC, 29926. I am,

Sincerely,

COLTRANE & WILKINS, LLC



Curtis L. Coltrane

CLC/bms

cc: Joyce Annette Oakley
Millard V. Oakley

Enc.: As Stated

EXHIBIT

C

JOYCE ANNETTE OAKLEY
18 PLUMBRIDGE LANE
HILTON HEAD ISLAND, SC 29928

December 18, 2017

Beaufort County Treasurer
P. O. Drawer 486
Beaufort, SC 29901-0487

Dear Sirs:

Attached is my check in the amount of \$22,248.66 representing taxes for the year 2017. This payment is being paid under protest and it is to be accepted in that manner. As last year, I am not protesting the actual assessment of the property but the manner in which it was assessed. I am a resident of South Carolina but I am being taxed as a non-resident and I submitted what I perceived to be sufficient documentation on this last year, but my protest was denied and time ran out for the appeal. For easy reference purposes, I am attaching as exhibits the following:

- 1) Warranty Deed conveying the property to me individually in fee simple. I have occupied the property basically since February of 2015 or thereabouts.
- 2) I am attaching a copy of the two automobiles that I own that are registered in South Carolina that are self-explanatory. I pay the appropriate taxes on both of these vehicles in South Carolina.
- 3) My husband, Millard Oakley, resides on a farm in Tennessee and he is presently 87 years of age and would not qualify for a South Carolina driver's license. I was advised in the office that I had to furnish a copy of his driver's license. Obviously since he does not have a South Carolina license I cannot furnish same. Again, for physical and other reasons he will not be maintaining a South Carolina license or residence. He has been a resident of Overton County, Tennessee all of his life as well as his father, grandfather, great-grandfather, etc., etc., and although he is in South Carolina a good bit and pays a substantial amount of real estate taxes, has a business, etc., he is going to maintain his residence in Tennessee.

I have asked Attorney Curtis Coltrane of Hilton Head to assist me in this matter and if you could just correspond with him direct relative to any issues that may arise, it will be appreciated.

If this documentation is not sufficient, I would be happy to furnish proof of my bank account where I do business, utility bills, etc., etc. I was going to obtain a voter's registration, but at the time I was going to apply for same it was going to be somewhat time consuming and I am planning on obtaining this prior to the next election.

Sincerely,


J. Annette Oakley

JAO/tis

Enclosures

Cc: Beaufort County Treasurer's Office
P. O. Box 580074
Charlotte, NC 28258-0074

Mr. Curtis Coltrane
Coltrane & Wilkins
P. O. Box 6808
Hilton Head Island, SC 29938
Phone: 843-785-5551
E-mail: curtis@coltraneandwilkins.com

EXHIBIT

D

EQUALIZATION AND REASSESSMENT

§ 12-43-220

12-43-220. Classifications shall be equal and uniform; particular classifications and assessment ratios; procedures for claiming certain classifications; roll-back taxes.

Except as otherwise provided, the ratio of assessment to value of property in each class shall be equal and uniform throughout the State. All property presently subject to ad valorem taxation shall be classified and assessed as follows:

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

(2) Real property owned by or leased to a manufacturer and used primarily for research and development is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property pursuant to this item (a). The term "research and development" means basic and applied research in the sciences and engineering and the design and development of prototypes and processes.

(3) Real property owned by or leased to a manufacturer and used primarily as an office building is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property pursuant to this item (a) if the office building is not located on the premises of or contiguous to the plant site of the manufacturer.

(4) Real property owned by or leased to a manufacturer and used primarily for warehousing and wholesale distribution is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property pursuant to subsection (a). For purposes of this item, the real property owned by or leased to a manufacturer and used primarily for warehousing and wholesale distribution must not be physically attached to the manufacturing plant unless the warehousing and wholesale distribution area is separated by a permanent wall.

(b) All inventories of business establishments shall be taxed on an assessment equal to six percent of the fair market value of such property and all power driven farm machinery and equipment except motor vehicles registered with the Department of Motor Vehicles owned by farmers and used on agricultural lands as defined in this article shall be taxed on an assessment equal to five percent of the fair market value of such property; provided, that all other farm machinery and equipment and all livestock and poultry shall be exempt from ad valorem taxes.

(c)(1) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property. If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a residence by the income beneficiary of the trust. When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same

ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties. For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

(2)(i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

(ii) This item does not apply unless the owner of the property or the owner's agent applies for the four percent assessment ratio before the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. In the application the owner or his agent must certify to the following statement:

"Under penalty of perjury I certify that:

(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 I do not claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and

(B) that neither I nor any other member of my household is residing in or occupying any other residence which I or any member of my immediate family has qualified for the special assessment ratio allowed by this section."

(iii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:

(A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and

(B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.

(iv) In addition to the certification, the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires including, but not limited to:

(A) a copy of the owner-occupant's most recently filed South Carolina individual income tax return;

(B) copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant;

(C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.

If the assessor determines the property tax assessment ratio or the classification as provided in Cl

(v) A member of the armed force a legal resident of and domiciled in a residence and domiciled in this State permanent duty station is in this S with the assessor is considered proof station.

(vi) No further applications are n property for which the initial app. eligibility requirements. If a change had qualified for the special assessm the assessor of the change in class. Another application is required by t future years for the four percent.

(vii) If a person signs the certifier ratio, and is thereafter found not elig to notify the assessor within six mc hundred percent of the tax paid, pl one-half of one percent a month, b more than the current year's taxes. ered ad valorem taxes due on the enforcement.

(viii) Failure to file within the pre the owner's right for this classificat taxing authority may extend the time that the person had reasonable cause.

(3) Notwithstanding any other provi refund of property taxes overpaid beca residence assessment ratio. The applic Section 12-60-2560. The taxpayer mus was in fact his legal residence and wher ordinance, may allow refunds for the taxes for such additional past years as it

(4) A legal residence qualifying for th by this item must have an assessed valu

(5) To qualify for the four percent as legal residence that is being purchased title must record the contract for sale o register of mesne conveyances or the cle office of the register of mesne conveyanc

For purposes of this subsection, a conf of real property by a seller, who finances solely as security for the debt.

(6) Notwithstanding any other provis residential property intending that the primary residence, but subject to vacati

If the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title.

(v) A member of the armed forces of the United States on active duty who is a legal resident of and domiciled in another state is nevertheless deemed a legal resident and domiciled in this State for purposes of this item if the member's permanent duty station is in this State. A copy of the member's orders filed with the assessor is considered proof sufficient of the member's permanent duty station.

(vi) No further applications are necessary from the current owner while the property for which the initial application was made continues to meet the eligibility requirements. If a change in ownership or use occurs, the owner who had qualified for the special assessment ratio allowed by this section shall notify the assessor of the change in classification within six months of the change. Another application is required by the new owner to qualify the residence for future years for the four percent assessment ratio allowed by this section.

(vii) If a person signs the certification, obtains the four percent assessment ratio, and is thereafter found not eligible, or thereafter loses eligibility and fails to notify the assessor within six months, a penalty is imposed equal to one hundred percent of the tax paid, plus interest on that amount at the rate of one-half of one percent a month, but in no case less than thirty dollars nor more than the current year's taxes. This penalty and any interest are considered ad valorem taxes due on the property for purposes of collection and enforcement.

(viii) Failure to file within the prescribed time constitutes abandonment of the owner's right for this classification for the current tax year, but the local taxing authority may extend the time for filing upon a showing satisfactory to it that the person had reasonable cause for not filing before the first penalty date.

(3) Notwithstanding any other provision of law, a taxpayer may apply for a refund of property taxes overpaid because the property was eligible for the legal residence assessment ratio. The application must be made in accordance with Section 12-60-2560. The taxpayer must establish that the property in question was in fact his legal residence and where he was domiciled. A county council, by ordinance, may allow refunds for the county government portion of property taxes for such additional past years as it determines advisable.

(4) A legal residence qualifying for the four percent assessment ratio provided by this item must have an assessed value of not less than one hundred dollars.

(5) To qualify for the four percent assessment ratio, the owner-occupant of a legal residence that is being purchased under a contract for sale or a bond for title must record the contract for sale or the bond for title in the office of the register of mesne conveyances or the clerk of court in those counties where the office of the register of mesne conveyances has been abolished.

For purposes of this subsection, a contract for sale or a bond for title is the sale of real property by a seller, who finances the sale and retains title to the property solely as security for the debt.

(6) Notwithstanding any other provision of law, a purchaser who purchases a residential property intending that the property shall become the purchaser's primary residence, but subject to vacation rentals as provided for in Title 27,

Chapter 50, Article 2 for no longer than ninety days, may apply for the four percent assessment ratio when the purchaser actually occupies the property. If the owner actually occupies the residence within ninety days of acquiring ownership, the four percent assessment ratio, if the owner is otherwise qualified, applies retroactively to the date ownership was acquired.

(7) Notwithstanding any other provision of law, the owner-occupant of a legal residence is not disqualified from receiving the four percent assessment ratio allowed by this item if the taxpayer's residence meets the requirements of Internal Revenue Code Section 280A(g) as defined in Section 12-6-40(A) and the taxpayer otherwise is eligible to receive the four percent assessment ratio.

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

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

- (i) Have more than ten shareholders.
- (ii) Have as a shareholder a person (other than an estate) who is not an individual.
- (iii) Have a nonresident alien as a shareholder.
- (iv) Have more than one class of stock.

(B) Six percent of its fair market value for such agricultural purposes for owners or lessees who are corporations, except for certain corporations specified in (A) above.

(2)(A) "Fair market value for agricultural purposes", when applicable to land used for the growth of timber, is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents of the lands for timber growth or by capitalization of typical net income of similar soil in the region or a reasonable area of the region from the sale of timber, not including the timber growing thereon, and when applicable to land used for the growth of other agricultural products the term is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region or a reasonable area of the region, not including the agricultural products thereon. Soil capability when applicable to lands used for the growth of timber products means the capability of the soil to produce such timber products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The term, when applicable to lands used for the growth of other agricultural products, means the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The term "region" means that geographical part of the State as determined by the department to be reasonably similar for the production of the agricultural products. After average net annual earnings have been established for agricultural lands, they must be capitalized to determine use-value of the property based on a capitalization rate which includes:

1. an interest component;
2. a local property tax differential component;

3. a risk component;
4. an illiquidity component.

Each of these components of the identifiable factors related to agricultural rate component is the average county which the Federal Land Bank of farmers, has outstanding on July first net earnings and agricultural use contained in this section is the response:

(B)(i) For tax year 1988 and subsequent agricultural purposes must be determined value by an amount equal to the previous year value by a percentage factor of this item. For tax year 1988, the applicable value for agricultural purposes determined all subsequent years.

(ii) The percentage factor provided in the most recent edition of the United States "AGRICULTURAL LAND VALUE INDEX" Table 1—Farm Real Estate Value Index land and buildings as listed in the applicable percentage factor index of the base year with the ratio of the base year and rounded to the nearest whole number. In the formula, the base year is the year under this item.

(3) Agricultural real property does not qualify for special assessment under this section unless the owners of the real property apply therefor on or before the first day of the tax year in which the special assessment must be made to agricultural real property is located in the county and approved by the department and a special assessment for that year. The filing upon a showing satisfactory to the department is not filing on or before the first day of the tax year required while the use of the property remains the same. The penalty for failure to file in addition to any other penalties provided in this section is interest at the rate of one-half of one percent per month of the difference between the amount that would have been paid, but not less than thirty dollars.

(4) When real property which is assessed, and taxed under the provisions of this section, is not agricultural, it is subject to additional back taxes, in an amount equal to the difference between the taxes payable on the basis of the valuation and the taxes that would have been

3. a risk component;
4. an illiquidity component.

Each of these components of the capitalization rate must be based on identifiable factors related to agricultural use of the property. The interest rate component is the average coupon (interest) rate applicable on all bonds which the Federal Land Bank of Columbia, which serves South Carolina farmers, has outstanding on July first of the crop-years being used to estimate net earnings and agricultural use-value. Implementation of the provisions contained in this section is the responsibility of the department.

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

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

(3) Agricultural real property does not come within the provisions of this section unless the owners of the real property or their agents make a written application therefor on or before the first penalty date for taxes due for the first tax year in which the special assessment is claimed. The application for the special assessment must be made to the assessor of the county in which the agricultural real property is located, on forms provided by the county and approved by the department and a failure to apply constitutes a waiver of the special assessment for that year. The governing body may extend the time for filing upon a showing satisfactory to it that the person had reasonable cause for not filing on or before the first penalty date. No additional annual filing is required while the use of the property remains bona fide agricultural and the ownership remains the same. The owner shall notify the assessor within six months of a change in use. For failure to notify the assessor of a change in use, in addition to any other penalties provided by law, a penalty of ten percent and interest at the rate of one-half of one percent a month must be paid on the difference between the amount that was paid and the amount that should have been paid, but not less than thirty dollars nor more than the current year's taxes.

(4) When real property which is in agricultural use and is being valued, assessed, and taxed under the provisions of this article, is applied to a use other than agricultural, it is subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the real property been

valued, assessed, and taxed as other real property in the taxing district, in the current tax year (the year of change in use) and each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed as herein provided. If in the tax year in which a change in use of the real property occurs the real property was not valued, assessed, and taxed under this article, then the real property is subject to roll-back taxes for each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed hereunder. In determining the amounts of the roll-back taxes chargeable on real property which has undergone a change in use, the assessor shall for each of the roll-back tax years involved ascertain:

(A) the fair market value without consideration of the standing timber of such real property under the valuation standard applicable to other real property in the same classification;

(B) the amount of the real property assessment for the particular tax year by multiplying such fair market value by the appropriate assessment ratio provided in this article;

(C) the amount of the additional assessment on the real property for the particular tax year by deducting the amount of the actual assessment on the real property for that year from the amount of the real property assessment determined under (B) of this section;

(D) the amount of the rollback for that tax year by multiplying the amount of the additional assessment determined under (C) of this section by the property tax rate of the taxing district applicable for that tax year.

(5) Any other provision of law to the contrary notwithstanding, a dockside facility whose primary use is the landing and processing of seafood is considered agricultural real property.

(6) Any property which becomes exempt from property taxes under Section 12-37-220(A)(1) or any economic development property which becomes exempt under Section 12-37-220(B) is not subject to rollback taxes.

(e) All other real property not herein provided for shall be taxed on an assessment equal to six percent of the fair market value of such property.

(f) Except as specifically provided by law, all other personal property must be taxed on an assessment of ten and one-half percent of fair market value of the property, except that commercial fishing boats and commercial tugboats and pilot boats must be taxed on an assessment of five percent of fair market value. As used in this item "commercial fishing boats" means boats used exclusively for commercial fishing, shrimping, or crabbing and (1) licensed by the Department of Natural Resources, or (2) on or from which is used commercial fishing equipment licensed by the Department of Natural Resources. As used in this item, "commercial tugboats" shall mean boats used exclusively for harbor and ocean towing, documented with the U.S. Coast Guard, constructed of steel, and being at least seventy-nine feet in length and having a gross tonnage of at least ninety-nine tons. As used in this item, "pilot boats" shall mean boats used exclusively for pilotage and operated exclusively by state pilots who are licensed by the Commissioners of Pilotage pursuant to Chapter 15 of Title 54 and Chapter 136 of the regulations issued pursuant thereto.

(g) All real and personal property owned by or leased to companies primarily engaged in the transportation for hire of persons or property and used by such

companies in the conduct of such business department shall be taxed on an assessment the fair market value of such property.

The department shall apply an equalization owned by or leased to transportation con legislation.

Notwithstanding any other provision of that there is a variation between the rat section, the county may provide for a g provided for over a period not to exceed property within a particular classificatio provided, further, however, that all prop assessed at the ratio provided in such sub subsections (b), (c), (d), (e), (f), and (g) sha set forth in this article by a change in th percent per year nor more than one per notwithstanding the provisions of this s immediately implement the assessment ra (e), and (f). Provided, however, that live taxation unless such livestock is physically excess of nine months. Provided, that thi and farm equipment in use on a farm i property as of June 3, 1975.

Provided, however, all agricultural or public bodies, agencies, railroads, or utility or greater shall be assessed at the same schedule 1 of R-117-126 of the State Dep; such assessment the landowner must appl the easement is located, with documentati of acreage contained in the easement.

As used in this section, fair market val fair market value determined in the manr Constitution of this State, Section 12-37-9

HISTORY: 1975 (59) 246; 1976 Act No. 618 §1 No. 528; 1979 Act No. 117 § 1; 1979 Act No. 466, Part II § 33; 1984 Act § 1, 2; 1988 Act No. 558, § 1; 1988 Act No § 23(A); 1993 Act No. 87, §§ 1, 2; 1993 A § 219; 1994 Act No. 406, § 3; 1994 Act No. 145, Part II, § 119G; 1996 Act No. 363, § 16; 1997 Act No. 106, § 3; 1997 Act No. 155, Part II, § 69A; 1998 Act No. 419, Par No. 100, Part II, § 91; 2000 Act No. 399, § 15, eff June 24, 2002; 2002 Act No. 336, § eff June 7, 2005; 2006 Act No. 388, Pt IV, Article X of Constitution (ratified April 2 approval (became law without the Governor § 2, eff June 16, 2009; 2010 Act No. 290, §

Code Commissioner's Note
Pursuant to the direction to the Code Commis Public Safety" was changed to "Department of Mo

companies in the conduct of such business and required by law to be assessed by the department shall be taxed on an assessment equal to nine and one-half percent of the fair market value of such property.

The department shall apply an equalization factor to real and personal property owned by or leased to transportation companies for hire as mandated by federal legislation.

Notwithstanding any other provision of this article, on June 3, 1975, if it is found that there is a variation between the ratios being used and those stated in this section, the county may provide for a gradual transition to the ratios as herein provided for over a period not to exceed seven years; provided, however, that all property within a particular classification shall be assessed at the same ratio, provided, further, however, that all property enumerated in subsection (a) shall be assessed at the ratio provided in such subsection and the property enumerated in subsections (b), (c), (d), (e), (f), and (g) shall be increased or decreased to the ratios set forth in this article by a change in the ratio of not less than one-half of one percent per year nor more than one percent per year. Provided, however, that notwithstanding the provisions of this section, a county may, at its discretion, immediately implement the assessment ratios contained in subsections (b), (c), (d), (e), and (f). Provided, however, that livestock shall not be subject to ad valorem taxation unless such livestock is physically located within the State for a period in excess of nine months. Provided, that this section shall not apply to farm animals and farm equipment in use on a farm in those counties which do not tax such property as of June 3, 1975.

Provided, however, all agricultural or forest land within easements granted to public bodies, agencies, railroads, or utilities for rights of way of thirty feet in width or greater shall be assessed at the same cropland value per acre as soil class 7 in schedule 1 of R 117-126 of the State Department of Revenue. In order to receive such assessment the landowner must apply to the tax assessor of the county where the easement is located, with documentation of the existence, location, and amount of acreage contained in the easement.

As used in this section, fair market value with reference to real property means fair market value determined in the manner provided pursuant to Article X of the Constitution of this State, Section 12-37-330 and Article 25, Chapter 37 of this title.

HISTORY: 1975 (59) 248; 1976 Act No. 618 §§ 3-6, 13; 1978 Act No. 438, §§ 2, 3; 1978 Act No. 528; 1979 Act No. 117 § 1; 1979 Act No. 133 § 2; 1979 Act No. 199, Part II, § 23; 1982 Act No. 466, Part II § 33; 1984 Act No. 419; 1985 Act No. 132; 1988 Act No. 404, §§ 1, 2; 1988 Act No. 558, § 1; 1988 Act No. 637; 1990 Act No. 603, § 3; 1992 Act No. 361, § 23(A); 1993 Act No. 87, §§ 1, 2; 1993 Act No. 164, Part II, § 104A; 1993 Act No. 181, § 219; 1994 Act No. 406, § 3; 1994 Act No. 506, § 12; 1995 Act No. 60, § 4H; 1995 Act No. 145, Part II, § 119C; 1996 Act No. 363, § 1; 1996 Act No. 431, § 24; 1996 Act No. 459, § 16; 1997 Act No. 106, § 3; 1997 Act No. 128, § 1; 1997 Act No. 149, § 8; 1997 Act No. 155, Part II, § 69A; 1998 Act No. 419, Part II, § 60A; 1998 Act No. 442, § 4C; 1999 Act No. 100, Part II, § 91; 2000 Act No. 399, § 2(A), eff August 17, 2000; 2002 Act No. 334, § 15, eff June 24, 2002; 2002 Act No. 336, § 1, eff January 1, 2003; 2005 Act No. 145, § 49, eff June 7, 2005; 2006 Act No. 388, Pt IV, § 2.A, eff upon ratification of amendment to Article X of Constitution (ratified April 26, 2007); 2008 Act No. 313, § 2.J.1, eff upon approval (became law without the Governor's signature on June 12, 2008); 2009 Act No. 76, § 2, eff June 16, 2009; 2010 Act No. 290, § 13, eff January 1, 2011.

Code Commissioner's Note

Pursuant to the direction to the Code Commissioner in 2003 Act No. 51, § 18, "Department of Public Safety" was changed to "Department of Motor Vehicles" in paragraph (b).

§ 12-43-220

TAXATION

Editor's Note

2000 Act No. 399, § 2.B., provides as follows:

"The change in this section to the definition of 'commercial fishing boats' applies for property tax years beginning after 1999. The change in this section adding 'commercial tugboats and pilot boats' to the five percent assessment ratio and the definition of 'commercial tugboats and pilot boats' is effective for tax years commencing January 1, 1999, and after."

2002 Act No. 336, § 4, provides as follows:

"This act takes effect January 1, 2003, and applies to the covered residential transactions entered into on or after that date."

2008 Act No. 313, § 2.J.2 provides as follows:

"This subsection takes effect upon approval of this act by the Governor and applies in each county in the year after the next countywide reassessment is implemented. The owners of existing warehouses affected by Section 12-43-220(a)(4), as amended by this section, who are paying a 10.5 percent assessment ratio in 2008 shall notify the county in writing by July 1, 2009, for the ratio to be reduced. Warehouses must continue to be assessed at 10.5 percent of fair market value until this written notification is given."

Effect of Amendment

The 2000 amendment rewrote paragraph (f).

The first 2002 amendment, in paragraph (c)(2)(i)(A), inserted "at the time of this application and that I do not claim to be a legal resident of a jurisdiction other than South Carolina for any purpose"; and in paragraph (c)(2)(ii)(B), deleted "in South Carolina" following "other residence".

The second 2002 amendment added item (c)(6).

The 2005 amendment added subitem (c)(7) relating to the four percent assessment ratio.

The 2006 amendment added the last undesignated paragraph relating to fair market value of real property.

The 2008 amendment, in item (a), designated subitems (1) to (4); made nonsubstantive changes in subitems (2) to (4); and, in subitem (4), deleted "of clothing and wearing apparel" following "distribution" and at the end "of this section if the property is not located on the premises of or contiguous to the manufacturing site of the manufacturer."

The 2009 amendment, in subitem (c)(2)(iii)(B), added "under the age of eighteen years old."

The 2010 amendment rewrote paragraph (a)(4), relating to real property owned by or leased to a manufacturer.

Cross References

Assessable transfer of interest (ATI) fair market value exemption from property tax, requirements, see § 12-37-3135.

Domicile defined, voter eligibility, see § 7-1-25.

Tax credits for fortification measures, see S.C. Code of Regulations R. 69-75.

Notes of Decisions

Construction and application
Contiguity of office buildings and manufacturing plant 2

(S.C. 2011) 2011 WL 3804517. Taxation ⇨ 2088

2. Contiguity of office buildings and manufacturing plant

To effectuate the intent of the Legislature, the word "contiguous" within the context of the statute providing that the manufacturing-related property tax ratio did not apply to office buildings if they were not on the premises of or contiguous to a manufacturing site, should be broadly construed. *Sonoco Products Co. v. South Carolina Dept. of Revenue* (S.C. 2008) 378 S.C. 385, 662 S.E.2d 599, rehearing denied. Taxation ⇨ 2481.

Public road and railroad tracks, in which taxpayer held fee simple, did not defeat contiguity of taxpayer's manufacturing plant and its office buildings, which were separated by the road and tracks, under the statute providing that the manufacturing-related property tax ratio did not apply to office buildings if they were not on the premises of or contiguous to manufacturing site, and thus the plant and office buildings were "contiguous" and the office buildings were subject to the manufacturing-related ratio, where there was no barrier or well-defined land

2. Construction and application

Real estate owned by single-member limited liability company (LLC) qualified for the legal residence ratio for purposes of property tax assessment; LLC qualified for all tax benefits its member qualified for pursuant to statute that disregarded the corporate form for single-member LLCs that were not taxed as corporations, thereby merging the existence of the company and its member for all tax purposes. *CFRE, LLC v. Greenville County Assessor* (S.C. 2011) 2011 WL 3804517. Taxation ⇨ 2161

Administrative Law Court (ALC) erred in relying on unenacted pieces of legislation specifically incorporating single-member limited liability companies within statute regarding residential tax ratio for purposes of property tax assessments as demonstrative of the General Assembly's intent with respect to the current version of statute regarding tax implications of single-member limited liability companies. *CFRE, LLC v. Greenville County Assessor*

EQUALIZATION AND I

area separating office building from manufacturing plant, and there were no intervening landowners. *Sonoco Products Co. v. South Carolina*

§ 12-43-225. Multiple lot discounts.

(A) For subdivision lots in a plat recorded notwithstanding the provisions of Section 12 allowed in the valuation of the platted lots on section, and this discounted value applies for is sold, or a certificate of occupancy is issued improvement is occupied, whichever of the discount allowed by this section no longer valued as provided by law.

(B) To be eligible for a subdivision lot discount least ten building lots. The owner shall apply application to the assessor on or before May is claimed. The value of each platted building

(1) by dividing the total number of platted entire parcel as undeveloped real property

(2) as provided in Section 12-43-224 calculations determined.

The value of a lot as determined under S For lots in plats recorded in 2001, the value difference.

For lots in plats recorded in 2002, the value For lots in plats recorded after 2002, 1 percent of the difference.

(C) If a lot allowed the discount provided residential homebuilder's license or general continues through the first tax year which end the purchaser files a written application for May first of the year for which the applicant

HISTORY: 2000 Act No. 346, § 1A, eff for prop No. 89, § 57, eff July 20, 2001.

Editor's Note

2000 Act No. 346, § 1B, provides as follows: "The provisions of Section 12-43-225 of the 1976 Code, not severable, and if a court of competent jurisdiction finds the entire section unconstitutional or otherwise invalid, the entire section 12-43-224 of the 1976 Code shall remain in effect."

Effect of Amendment

The 2001 amendment restructured the section March first to May first.

§ 12-43-230. Treatment of agricultural lessee improvements to real property.

[See main volume for

(c) The department may further provide consistent with general law for real property property must be assessed uniformly through

EXHIBIT

E

EQUALIZATION AND REASSESSMENT

§ 12-43-220

classification of property pursuant to subsection (a). For purposes of this item, the real property owned by or leased to a manufacturer and used primarily for warehousing and wholesale distribution must not be physically attached to the manufacturing plant unless the warehousing and wholesale distribution area is separated by a permanent wall.

(b) All inventories of business establishments shall be taxed on an assessment equal to six percent of the fair market value of such property and all power driven farm machinery and equipment except motor vehicles registered with the Department of Motor Vehicles owned by farmers and used on agricultural lands as defined in this article shall be taxed on an assessment equal to five percent of the fair market value of such property; provided, that all other farm machinery and equipment and all livestock and poultry shall be exempt from ad valorem taxes.

(c)(1) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property. If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence; then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a residence by the income beneficiary of the trust. When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties. For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

(2)(i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

(ii) This item does not apply unless the owner of the property or the owner's agent applies for the four percent assessment ratio before the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. In the application the owner or

his agent shall provide all information required in the application, and shall certify to the following statement:

"Under penalty of perjury I certify that:

(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."

(iii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:

(A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and

(B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.

(iv) In addition to the certification, the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires including, but not limited to:

(A) a copy of the owner-occupant's most recently filed South Carolina individual income tax return;

(B) copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant;

(C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.

If the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title.

(v) A member of the armed forces of the United States on active duty who is a legal resident of and domiciled in another state is nevertheless deemed a legal resident and domiciled in this State for purposes of this item if the member's permanent duty station is in this State. A copy of the member's orders filed with the assessor is considered proof sufficient of the member's permanent duty station.

(vi) No further applications are necessary from the current owner while the property for which the initial application was made continues to meet the eligibility requirements. If a change in ownership or use occurs, the owner who had qualified for the special assessment ratio allowed by this section shall notify the assessor of the change in classification within six months of the change. Another application is required by the new owner to qualify the residence for future years for the four percent assessment ratio allowed by this section.

(vii) If a person signs the certification, obtains the four percent assessment ratio, and is thereafter found not eligible, or thereafter loses eligibility and

fails to notify the assessor within one hundred percent of the value of one-half of one percent a year more than the current year considered ad valorem tax and enforcement.

(viii) Failure to file within the owner's right for this classifying authority may extend it that the person had reassessed.

(3) Notwithstanding any other refund of property taxes over legal residence assessment ratio with Section 12-60-2560. The question was in fact his legal council, by ordinance, may all property taxes for such addition.

(4) A legal residence qualified by this item must have a dollars:

(5) To qualify for the four percent legal residence that is being purchased title must record the contract register of mesne conveyances office of the register of mesne

For purposes of this subsection sale of real property by a seller property solely as security for

(6) Notwithstanding any other residential property intending primary residence, but subject Chapter 50, Title 27 for no percent assessment ratio when the owner actually occupies ownership, the four percent applied, applies retroactively to the

(7) Notwithstanding any other legal residence is not disqualified ratio allowed by this item if the Internal Revenue Code Section the taxpayer otherwise is eligible

(8)(i) For ownership interest in the property has the individual claiming the share

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Appellate Case Number 2018-002153
Case Number 18-ALJ-17-0233-CC

RECEIVED
MAR 29 2019
SC Court of Appeals

J. ANNETTE OAKLEY,

Appellant,

vs.

BEAUFORT COUNTY ASSESSOR,

Respondent.

RULE 210(g) CERTIFICATION

The undersigned certifies, as required by 210(g), SCACR, that the Record on Appeal contains all material proposed to be included by any party, and not any other material.

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This 15th day of March, 2019.