

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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

Fairfield Waverly, LLC,

v.

Dorchester County Assessor,

GS Windsor Club, LLC,

v.

Dorchester County Assessor,

Respondent,

Appellant.

Respondent,

Appellant.

**RESPONDENTS' BRIEF IN RESPONSE TO AMICUS CURIAE BRIEF  
OF DEPARTMENT OF REVENUE**

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## STATEMENT OF ISSUE ON APPEAL

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

## STATEMENT OF THE CASE

This consolidated matter came before the South Carolina Administrative Law Court (“ALC” or “court”) pursuant to S.C. Code Ann. § 12-60-2540(A) (2011) for a contested case hearing requested by the two Respondents.

This action began when the Respondents filed a request for a contested case hearing with the Administrative Law Court on March 16, 2015. After notice to the parties, a hearing was held on May 20, 2015 at the ALC in Columbia, South Carolina. The issue that was decided by the court is whether, for property tax purposes, Respondents were entitled to benefit from the alternate property valuation available under § 12-37-3135 on a prospective basis for the sales of two real property parcels which occurred in 2012. Both Respondents and Appellant agreed that Respondents properly filed for and claimed the exemption for the 2014 tax year and following. Respondents failed to file for the exemption by January 31 of the year immediately following the 2012 sales, which in both cases was in 2013.

The two separate cases were consolidated before the ALC. The parties entered into Stipulations of Facts and both sides moved for summary judgment (Stipulations of Facts; R. pp. 17-20). The ALC ruled in favor of the Respondents on February 1, 2017 (the “ALC Order”), R. pp. 1-14, and the Appellant timely appealed. The Respondents agree with the Appellant regarding the sole issue before this Court, to wit, whether the Respondents are entitled to the Assessable

Transfer of Interest Exemption under § 12-37-3135 on a prospective basis if the exemption is filed with the County in a year subsequent to the assessable transfer of interest.

### ARGUMENT

I. THE ADMINISTRATIVE LAW COURT DID NOT ERR IN RULING THAT RESPONDENTS ARE ENTITLED TO THE ASSESSABLE TRANSFER OF INTEREST EXEMPTION UNDER S.C CODE ANN. § 12-37-3135 WHERE RESPONDENTS FAILED TO APPLY FOR THE EXEMPTION BEFORE JANUARY 31<sup>ST</sup> OF THE YEAR FOLLOWING THE ASSESSABLE TRANSFER OF INTEREST.

A. IT IS THE DEPARTMENT – AND NOT THE RESPONDENTS’ INTERPRETATION OF § 12-37-3135 THAT LEADS TO AN ABSURD RESULT THAT WAS NOT INTENDED BY THE LEGISLATURE.

The DOR argues for a literal reading of “current property tax year.” Read literally, however, this reading produces absurd results because the General Assembly grants taxpayers until January 31<sup>st</sup> *of the year following the purchase to apply*. (Presumably, this is in recognition of the numerous year-end closings of real estate.)

Read literally, if a taxpayer purchased a property on February 1, 2014, and applied on January 30, 2015, would the assessor be required to use the “current property tax year” 2015 property tax value (*i.e.*, the ATI or purchase price) or the 2014 value? Surely he would use the 2014 value. So the Act cannot be read literally as argued by the DOR or it would disqualify anyone who applied in January of the year following the acquisition.

Title 12 of the Tax Code imposes numerous filing requirements for exemptions and lower valuations. A farmer is required to apply to the county assessor for classification as agricultural real property on or before the first date taxes are due without penalty, § 12-43-220(d)(3). A farmer who misses this deadline pays higher taxes but only for one year (assuming he timely files the following year).

A person who purchases a home for his primary residence requires an application to the assessor before the first penalty date for taxes (January 16<sup>th</sup>). § 12-43-220. A person who misses this deadline pays higher taxes for only one year – not permanently.

A person over the age of 65 who qualifies for the homestead exemption must apply for the exemption. Section 12-37-250(4)(a) states that “[a] failure to apply constitutes a waiver of the exemption for that year,” *i.e.*, no refund claim can be filed.

A discount for the valuation of subdivided acreage is available upon application and “a failure to so apply shall constitute a waiver of the discounted value for that year.” § 12-43-224.

Homeowner’s Association property receives a special valuation and “failure to apply constitutes a waiver of the special valuation for that year.” § 12-43-230.

Note that many of the statutes above require an application to be filed by the penalty date for taxes, which is January 16 *of the following year*. A person purchasing a primary residence on January 1, 2019 has until January 16, 2020 to apply for primary residence status. § 12-43-220(c)(2)(ii). Do the repeated statutory references to “that year” refer to 2019 or 2020? Clearly, it refers to 2019.

Page 13 of the Amicus Brief states, “Instead, the Department contends that interpreting Current FMV as a fixed value – the value prior to the ATI – contradicts a plain reading of the statutory definition of Current FMV and leads to an absurd result because it essentially eliminates any time limit to apply for the ATI exemption. Under the interpretation adopted by the ALC, the property owner could surprise the county with an ATI exemption application decades after the ATI. Surely, the Legislature did not intend to impose this uncertainty on a county’s budget.”

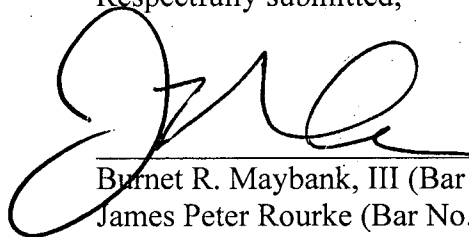
If a property owner surprises the County with an ATI exemption application filed decades after the ATI is that a bad thing for the county’s budget? The property owner has foregone decades

of lower taxes and the county has collected higher taxes for decades. (Presumably, the county prefers the property owner to wait decades before applying!) As stated in Respondents' initial brief, the tax relief is prospective only, and no refunds would be available for the decades of higher property taxes paid.

### CONCLUSION

Numerous property tax exemptions and special valuation statutes require an application. Failure to timely file results only in the loss for that year and not permanently.

Respectfully submitted,



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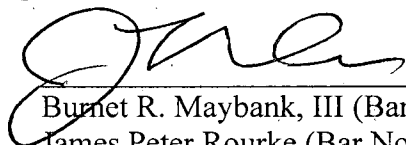
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Respondents' Brief in Response to Amicus Curiae Brief of Department of Revenue complies with Rule 211(b), SCACR.

  
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