THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

H.W. Funderburk, Administrative Law Judge

Appellate Case No.: 19-ALJ-17-0016-CC

Kristiane M. Shirer, Respondent,

v.

Calhoun County Assessor, Appellant.

INITIAL BRIEF OF APPELLANT

Charles D. Rhodes (SC Bar No. 101452)
cdrhodes@popeflynn.com
1411 Gervais Street, Suite 300
Columbia, South Carolina 29201
(803) 354-4911 Telephone

Robert E. Tyson, Jr. (SC Bar No. 10820)
rtyson@robinsongray.com
Benjamin R. Gooding (SC Bar No. 100620)
bgooding@robinsongray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400 Telephone
(803) 929-0300 Fax

Attorneys for Appellant Calhoun County Assessor

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STATEMENT OF ISSUE ON APPEAL

I. Did the administrative law court err in finding that a second dwelling located on the same parcel as Respondent's primary residence was entitled to the reduced four-percent assessment ratio afforded to a taxpayer's "legal residence" under Section 12–43–220 of the South Carolina Code?

STATEMENT OF THE CASE

This tax appeal concerns whether a second dwelling located on the same property as a taxpayer's residence can be considered part of his "legal residence" under Section 12–43–220 of the South Carolina Code, thereby qualifying this second dwelling for the special four-percent tax rate.

Respondent Kristiane M. Shirer ("Respondent") and her husband Michael P. Shirer (collectively, the "Shirers") reside in a home situated at 7187 Cameron Road in Cameron, South Carolina. [Tr. of Hearing on Sept. 18, 2919, p. 55, line 24 – p. 56, line 7]. The Shirers constructed this home in 1976 on a portion of farmland deeded to Mr. Shirer by his father. [Tr. p. 12, lines 3-14]. Title to the property was initially in Mr. Shirer's name, but at some point, Mr. Shirer transferred title to the home into Respondent's name as part of their estate planning. *Id.*

In 1984 or 1985, the Shirers constructed a small pool house that was approximately 432 square feet behind their residence. [Tr. p. 12, line 24 – p. 13, line 8]. In 2014, the Shirers renovated this pool house to add approximately 1600 additional square feet of living space. [Tr. p. 37, lines 10-13]. These renovations included upgrading the existing kitchen and adding several rooms to the building, including a large entertainment and eating area, a bedroom, and a second full bathroom. [Tr. p. 38, line 19 – p. 39, line 3]. These renovations brought the pool house to 2032 square feet and made the property a "dwelling" as defined by International Building Code, which had been adopted by Calhoun County and incorporated into Appellant's internal policies. [Tr. p. 101, line 23 – p. 104, line 15].

Upon completion of the renovations to the second dwelling, Appellant Calhoun County Assessor ("Appellant" or the "Assessor") sent an appraiser out to inspect the property. [Tr. p. 72, line 21 – p. 73, line 18]. Following this inspection, Appellant notified Respondent of its intent to

change the classification of the pool house and one acre of Respondent's property to a separate dwelling and apply the standard six-percent tax rate. [Tr. p. 85, line 20 – p. 86, line 25].

Respondent appealed the Assessor's decision to the Calhoun County Board of Assessment Appeals (the "Assessment Appeal Board"). [Written Decision]. On December 20, 2018, a hearing was held before the Assessment Appeal Board. *Id.* On December 21, 2018, the Assessment Appeal Board issued a written decision, finding that respondent had failed to present sufficient evidence to support her claim that she was entitled to legal residence classification on her pool house. *Id.*

Pursuant to Section 12–60–2540 of the South Carolina Revenue Procedures Act, Respondent appealed this decision to the administrative law court (the "ALC"). [Notice of Appeal]. Prior to the hearing before the ALC, Petitioner and Respondent each submitted prehearing statements outlining their view of the operative facts and law. [Prehearing Statements]. On September 18, 2019, a hearing was held before the ALC. [Tr. pp. 1–144]. At this hearing, both Respondent and her husband testified that they primarily use this second dwelling to house their children and grandchildren when they visit. [Tr. p. 42, line 21 – p. 43, line 23, p. 50, lines 5-8]. Respondent also testified that the Shirers temporarily lived in this second dwelling while their primary residence was renovated. [Tr. p. 48, line 11 – p. 49, line 24].

On October 10, 2019, the ALC issued a final order reversing the decision of the Calhoun County Board of Assessment Appeals and granting Respondent's request to apply the four-percent special assessment ratio to the second dwelling. [Final Order]. In its order, the ALC found that the expanded pool house met the applicable definition of a "dwelling" but found that statute allowed for "additional dwellings located on the same property" that are "occupied by the owner or her immediate family." *Id.*

On October 25, 2019, Appellant filed a motion to reconsider, arguing that the exception for additional dwellings did not apply in this case because it requires that the second dwelling be occupied by immediate family members, which was not the case here. [Mot. to Recons.]. On November 18, 2019, the ALC issued an order denying the motion to reconsider. [Ord. denying Mot. to Recons.]. In this order, the ALC found that Section 12–43–220 "limits the use of [the additional] dwellings to immediate family members, [but] does not require an additional dwelling . . . be continuously occupied by the same additional family members." *Id.* at p. 1. The ALC concluded that because the Shirers, their children and their grandchildren "have been the sole, but not continuous, occupants of this [second dwelling]," the "additional dwelling" exception applied. *Id.* at p. 2. This appeal followed. [Not. of App.].

STANDARD OF REVIEW

"Tax appeals to the ALC are subject to the Administrative Procedures Act." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 73, 716 S.E.2d 877, 880 (2011). "The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Taylor v. Aiken Cnty. Assessor*, 402 S.C. 559, 561, 741 S.E.2d 31, 32 (Ct. App. 2013) (quoting *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008)). "Questions of statutory interpretation are questions of law, which [appellate courts] are free to decide without any deference to the court below." *CFRE*, 395 S.C. at 74, 716 S.E.2d at 880.

ARGUMENT

The ALC erred in finding that a second dwelling constructed on the same property as Respondent's legal residence was entitled to the reduced four-percent assessment ratio that is afforded to a taxpayer's "legal residence" under S.C. Code Ann. § 12–43–220.

This is a statutory interpretation case concerning whether a taxpayer's "legal residence" under Section 12–43–220 of the South Carolina Code can include a second dwelling located on

the same property as the taxpayer's primary residence, thus entitling the second dwelling to the reduced four-percent assessment ratio. Because the clear and unambiguous terms of Section 12–43–220 demonstrate that a taxpayer can only claim one dwelling as his or her "legal residence" and Respondent's second dwelling does not qualify for the "additional dwelling" exception set forth in subpart (c)(1) of the statute, the ALC's final order should be reversed.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In doing so, courts must give the words found in a statute 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. "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.* at 498, 640 S.E.2d at 459.

"Additionally, under South Carolina law, 'revenue laws are generally construed in favor of the taxpayer and against the taxing authority.'" *Taylor*, 402 S.C. at 563, 741 S.E.2d at 33 (quoting *Clark v. S.C. Tax Comm'n*, 259 S.C. 161, 169, 191 S.E.2d 23, 26 (1972)); *Cooper River Bridge, Inc. v. S.C. Tax Comm'n*, 182 S.C. 72, 76, 188 S.E. 508, 509-510 (1936) ("[W]here the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor.") However, when interpreting statutes that create tax credits or tax exemptions, our courts "strictly construe a tax credit against the taxpayer as it is a matter of legislative grace." *Centex Int'l, Inc. v. S.C. Dep't of Rev.*, 406 S.C. 132, 140, 750 S.E.2d 65, 69 (2013); *see also CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 ("[I]nterlaced with these standard canons of statutory construction is our policy of strictly construing tax exemption statutes against the

taxpayer."). Accordingly, any ambiguities in tax exemption or tax credit statutes are construed against the taxpayer and in favor of taxation. *See, e.g.*, *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 140, 796 S.E.2d 165, 173 (Ct. App. 2016).

Section 12–43–220 is a tax exemption statute. *See Ford v. Beaufort Cnty. Assessor*, 398 S.C. 508, 515, 730 S.E.2d 335, 339 (Ct. App. 2012); *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881. Section 12–43–220 reads in relevant part:

> 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.
>
> . . .
>
> 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.

S.C. Code Ann. 12–43–220(c)(1) (Supp. 2018) (emphasis added). "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." S.C. Code Ann. 12–43–220(c)(2)(i) (emphasis added). In order to apply and receive the four-percent assessment contained in Section 12–43–220, the taxpayer must submit an application for special assessment that includes the following certification language:

> 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) (emphasis added). "[T]he burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant." S.C. Code Ann. 12–43–220(c)(2)(iv). "If the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies . . . ." *Id.*

In this case, Respondent's claim that the second dwelling on her property is entitled to the reduced four-percent assessment ratio fails for two reasons. First, the clear and unambiguous terms of Section 12–43–220 mandate that a taxpayer can only claim a single dwelling as their "legal residence" and only that dwelling is entitled to the reduced four-percent tax rate. Second, the exception in Section 12–43–220 that allows "additional dwellings" to be taxed at the reduced assessment ratio, only applies to dwellings that are (1) "located on the same property" and (2) "occupied by immediate family members of the owner of the interest." S.C. Code Ann. 12–43–220(c)(1). Respondent's second dwelling cannot fall under this exception because none of her immediate family occupy this building. Because Respondent can only claim one dwelling as her "legal residence" and her second dwelling does not qualify under the exception for "additional dwellings" exception, the ALC's final order granting Respondent's request to assess her second dwelling at the reduced rate should be reversed.

Before turning to the analysis that supports this conclusion, Appellant would first note to the Court that the issue on appeal in this case—whether a second dwelling located on the same parcel as a taxpayer's primary residence can be assessed at the reduced four-percent assessment under Section 12–43–220—already has been examined by a South Carolina court. The ALC examined this exact issue in *Guthrie v. Orangeburg Cnty. Assessor*, No. 01-ALJ-17-0173-CC,

2001 WL 1107822 (Sept. 5, 2001), and found that a second dwelling located on the same parcel was not entitled to the reduced assessment ratio.

In that case, the Guthries purchased a house located on the adjoining lot to their primary residence. *Id.* at *2. After purchasing this second house, the two properties were combined into a single parcel for tax purposes by county administration, and therefore shared a single TMS number. *Id.* The Guthries used both homes as residential space. *Id.* They kept clothes, furniture, and other personal property at the newly-acquired house. *Id.* The Guthries also lived in the newly-acquired property for seven months while their original residence was being repaired following a house fire. *Id.* The Guthries argued that both houses constituted their legal residence and therefore should be taxed at the four-percent rate afforded to a taxpayer's legal residence under Section 12–43–220. *Id.*

Then Administrative Law Judge John Geathers wrote the decision for the ALC and found that "the term 'legal residence' as used in Section 12–43–220(c) for the residential assessment ratio must be construed in the singular number, and must, therefore, be understood to refer to a single dwelling of the taxpayer." *Id.* at *4. The ALC therefore concluded that the Guthries' claim that both residences "are their legal residence for purposes of the 4% residential assessment ratio must fail" and that under a plain reading of Section 12–43–220's terms, "only one dwelling can qualify as a legal residence, and only that dwelling can receive the residential assessment ratio." *Id.* "In sum, whether an individual has a secondary residence in another state or simply next door like Petitioners, the law holds that unless and until abandoned, only that individual's primary residence can be his domicile." *Id.*

In the final order in this case, the ALC noted that Appellant had brought the *Guthrie* decision to the ALC's attention, but nevertheless declined to follow the analysis set forth in the

Guthrie decision. [Final Order at p. 3, fn. 1]. In doing so, the ALC noted that "the Court is not bound by a previous ALC decision" and that the current case "involves two dwellings located on the same lot at the same address" which the ALC found to be "distinguishable from the 'strain' apparent in *Guthrie*." *Id.*

While the ALC is correct that prior ALC decisions are not binding precedent, *see generally*, *King v. Order of United Commercial Travelers of Am.*, 333 U.S. 153, 160 (1948) (noting that an unappealed decision from a trial court "is binding solely upon the parties who are before the Court in that particular case and would not constitute a precedent in any other case in that Court or in any other court in the State of South Carolina"), the ALC incorrectly concluded that factual scenario presented in *Guthrie* is distinguishable from the factual scenario in this case, such that ALC's analysis in *Guthrie* is rendered inapplicable. Notably, the ALC failed to conduct any analysis to support its naked assertion that the current case is "distinguishable from the 'strain' apparent in *Guthrie*." Instead, the relevant facts in *Guthrie* are virtually indistinguishable from the facts in this case, as both cases involve two dwellings located on the same tax parcel, which is less than five contiguous acres, and taxpayers who are seeking to have both dwellings be assessed at the reduced four-percent rate under Section 12–43–220. The fact that the Guthries bought their second dwelling—rather than have it constructed, as Respondent has done—is immaterial to the analysis as to whether a taxpayer can reside in more than one dwelling simultaneously or whether such a dwelling meets the requirements to fit under the exception for "additional dwellings." Ultimately, the analysis in *Guthrie* is directly on point and the only conclusion that can be drawn from the Section 12–43–220's plain language is that "only one dwelling can qualify as a legal residence, and only that dwelling can receive the residential assessment ratio." *Guthrie*, 2001 WL 1107822 at *4.

The plain language of Section 12–43–220 only permits a taxpayer to occupy a single dwelling. As noted by ALC in *Guthrie*, Section 12–43–220 uses the term "residence" solely in the singular, referring throughout to "the legal residence," "the residence," and "a residence." In addition, Section 12–43–220 recognizes that a legal residence is a single dwelling because it draws a distinction between the "legal residence" and "additional dwellings located on the same property." The former is always entitled to the four-percent assessment, whereas the latter is only entitled when "occupied by immediate family members of the owner" of the property. S.C. Code Ann. 12–43–220(c)(1). This distinction is consistent with the proposition that the taxpayer can only dwell in one residence at a time. This distinction makes it clear that it is not the taxpayer, but rather a member of his or her family, who must occupy the "additional dwellings" allowed under the exemption.

This interpretation of the term "legal residence" to refer to a single dwelling is consistent not only with the use of this term in Section 12–43–220, but also consistent with the use of this term throughout South Carolina's statutory scheme. The term "legal residence" is used exclusively in the singular throughout both South Carolina's statutes and regulations. *See, e.g.*, S.C. Code Ann. § 12–8–540(B)(2) (2014) (referring to an individual renting "a residential housing unit which is his legal residence"); S.C. Code Ann. § 12–6–1610 (2014) (defining "legal residence" as "the taxpayer's residence pursuant to Section 12–43–220 (c)"); S.C. Code Ann. § 38–75-485 (Supp. 2018) (setting forth requirements receiving a grant including that the requirements that residential property must be "the applicant's primary legal residence" and "be the owner's legal residence as described in Section 12–43–220(c)"); S.C. Code Ann. § 12–37–266(1) (Supp. 2018) (concerning a trustee who holds title "to a dwelling that is the legal residence of a beneficiary"); S.C. Code Ann. § 12–37–290 (Supp. 2018) (defining "dwelling place" for the homestead exemption as "the

permanent home and legal residence of the applicant"); S.C. Code Ann. Regs. 117–1800.1 (2004) (defining "legal residence" as "the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled"). This consistent use of "legal residence" as a singular term indicates the Legislature's intent that this term refer to a single dwelling of an individual.

In addition to its repeated use of "legal residence" in the singular, Section 12–43–220 also requires that if a residence is to qualify for the tax exemption, it must "be the domicile of the owner-applicant." It is well-settled that an individual can only have legal domicile in one dwelling. *See e.g.*, BLACKS' LAW DICTIONARY 558 (9th ed. 2009) (defining "domicile" as "[t]he place at which a person is physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere"). While an individual can maintain any number of residences, only one of those residences can be that individual's domicile. This legal principle has been utilized often by South Carolina's Legislature and has been upheld often by South Carolina's appellate courts. For example, South Carolina's statutes governing elections define a person's domicile as "a person's fixed home where he has an intention of returning when he is absent." S.C. Code Ann. § 7–1–25(A) (2019). "A person has only one domicile." *Id.* Further, the South Carolina Supreme Court has stated that the legal principles that "a person can have only one domicile at a time" and "[a] person may have more than one residence, but cannot have more than one domicile . . . at the same moment" are "elementary propositions which require no citation of authority." *Ravenel v. Dekle*, 265 S.C. 364, 379, 218 S.E.2d 521, 528 (1975); *see also Russell v. Cox*, 383 S.C. 215, 218, 678 S.E.2d 460, 462 (Ct. App. 2009) ("A person may have only one domicile, but may have several residences."). Indeed, this basic principle is widely accepted across

our country's numerous jurisdictions. *See, e.g.*, 28 C.J.S. Domicile § 3 (2020) (stating that "generally, a person can have only one domicile at any given time" and citing to cases in more than a dozen different jurisdictions). Whether the secondary residence is thousands of miles away and across the country or only 25 feet from the taxpayer's back door, our state's law holds that only an individual's primary residence can be his domicile. The requirement in Section 12–43–220(c) that the claimed legal residence be the owner's domicile further indicates the Legislature's intent that the reduced four-percent tax rate for an owner-occupied dwelling apply to a single dwelling.

Further, there is no evidence in this case that the second dwelling on Respondent's property can meet both qualifications to fall under the "additional dwellings" exception found in subsection 12–43–220(c)(1). Specifically, there is no evidence that this dwelling is "occupied by immediate family members of the owner of the interest." At the final hearing, Respondent and her husband testified that the second dwelling was occasionally used by their children and grandchildren when visiting. [Tr. p. 42, lines 21-23; p. 50, lines 5-8]. Mr. Shirer specifically testified that these family members only used the second dwelling as guests and that none of these family members resided in the second dwelling. [Tr. p. 42, line 25 – p. 43, line 5]. Because the occupation element cannot be satisfied, the second dwelling is not entitled to the reduced four-percent tax rate.

In its order denying Appellant's motion to reconsider, the ALC erroneously found that Section 12–43–220 "limits the use of [the additional] dwellings to immediate family members, [but] does not require an additional dwelling . . . be continuously occupied by the same additional family members." [Order denying Mot. to Recons., p. 1.]. The ALC went on to conclude that because the Shirers, their children and their grandchildren "have been the sole, but not continuous, occupants of this [second dwelling]," the second dwelling therefore fits within "additional

dwelling" exception. [Order denying Mot. to Recons., p. 2.]. This analysis fails for several reasons.

First, the "additional dwellings" exception found in Section 12–43–220 permits a taxpayer to apply for the four-percent assessment ratio for "additional dwellings located on the same property and **occupied by immediate family members of the owner of the interest**." S.C. Code Ann. 12–43–220(c)(1) (emphasis added). Because additional dwellings only qualify for the exemption if they are "occupied by immediate family members of the owner of the interest" and not by the owner of interest herself, Respondent's alleged occupation of the second dwelling would not qualify this dwelling for the "additional dwelling" exception. Further, as noted above, Respondent and her husband can only occupy one residence at a time and therefore do not reside in or occupy the second dwelling.

Second, the Shirers' children and grandchildren do not reside in or occupy this second dwelling either. The Shirers testified at the final hearing that their children reside in their respective homes in Mt. Pleasant and Aiken. [Tr. p. 43, lines 10-19]. The clear policy behind Section 12–43–220(c)(1) and the statutory certification requirement in Section 12–43–220 (c)(2)(ii) is to avoid the exact situation here, where a person claims to reside in more than one dwelling so that an additional dwelling can receive the reduced assessment ratio.

Finally, the ALC's reading of this statute gives the term "occupied" a meaning that is completely outside of its ordinary use. The term "occupy" is synonymous with term "reside." For example, Merriam Webster defines "occupy" as "to reside in as an owner or tenant." Occupy, MERRIAM-WEBSTER ONLINE DICTIONARY, www.merriam-webster.com/dictionary/occupy (Apr. 13, 2020). The ALC's analysis changes the term "occupied" to instead mean "occasionally visited on a temporary basis." Under this interpretation, any second home can be "solely, but not

continuously occupied" by immediate family, so long as that property is not rented or otherwise used by nonfamily members. Such an interpretation would lead to absurd results when applying this same definition in other contexts. Further, even limiting this analysis to the context presented here, interpreting the term occupy to mean only temporary occupation would mean that a second dwelling located on the same property could be said to be occupied by immediate family, even if that family only visited the visited or stayed in the dwelling for a single night in an entire calendar year. Taking this one step further, adopting this interpretation would also lead to the absurd result that if no one ever spent a night in the dwelling it would be subject to standard six-percent tax-rate, while a family member spending a single night would bring it under the reduced four-percent rate. Such an interpretation reads additional language into the statute that was not included by our legislature. Only through a liberal interpretation to Section 12–43–220's terms can this Court adopt the definition of "occupy" implemented by the ALC. Such a liberal interpretation would directly violate our courts' longstanding policy of strictly construing tax credit statutes against the taxpayer and in favor of taxation. *See, e.g.*, *Centex*, 406 S.C. at 140, 750 S.E.2d at 69 (noting our court's policy of "strictly constru[ing] a tax credit against the taxpayer"). This exceedingly liberal interpretation would also make Section 12–43–220 impossible for assessors across the State to enforce.

CONCLUSION

This Court should reverse the ALC's order permitting Respondent to have her second dwelling assessed at the reduced four-percent assessment ratio under Section 12–43–220 of the South Carolina Code. Under a plain reading of Section 12–43–220's terms, only one dwelling can qualify as a legal residence, and only that dwelling can receive the reduced residential assessment ratio. Further, Respondent's second dwelling cannot fall under the "additional dwelling"

exception found in subsection 12–43–220(c)(1) because it is not "occupied by immediate family members of the owner of the interest." Accordingly, the ALC's final order granting Respondent's request to assess her second dwelling at the four percent ratio should be reversed.

ROBINSON GRAY STEPP & LAFFITTE, LLC

By: *s/Benjamin R. Gooding*
Robert E. Tyson, Jr. (SC Bar No. 10820)
rtyson@robinsongray.com
Benjamin R. Gooding (SC Bar No. 100620)
bgooding@robinsongray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400 Telephone
(803) 929-0300 Fax

POPE FLYNN GROUP

Charles D. Rhodes (SC Bar No. 101452)
cdrhodes@popeflynn.com
1411 Gervais Street, Suite 300
Columbia, South Carolina 29201
(803) 354-4911 Telephone

Attorneys for Appellant Calhoun County Assessor

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Kristiane M. Shirer.....Respondent,

v.

Calhoun County Assessor.....Appellant.

PROOF OF SERVICE

I certify that I have caused **Appellant's Initial Brief and Designation of Matter to be Included on Appeal** to be served on Respondent via AIS email, pursuant to Supreme Court Order dated March 20, 2020, addressed as follows:

Bates N. Felder, Esquire
The Felder Firm, LLP
Post Office Box 346
St. Matthews, South Carolina 29135
batesfelder@sc.rr.com

Harry A. Dixon, Esquire
Andrew C. English, III, Esquire
Callison Tighe & Robinson, LLC
Post Office Box 1390
Columbia, South Carolina 29202
harrydixon@callisontighe.com
drewenglish@callisontighe.com
Attorneys for Respondent

Copy of the Service email is attached herewith, as required.

I further certify that all parties required by Rule to be served have been served.

ROBINSON GRAY STEPP & LAFFITTE, LLC

By: *s/Benjamin R. Gooding*
Robert E. Tyson, Jr. (SC Bar No. 10820)
rtyson@robinsongray.com
Benjamin R. Gooding (SC Bar No. 100620)
bgooding@robinsongray.com
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400 Telephone
(803) 929-0300 Fax

POPE FLYNN GROUP

Charles D. Rhodes, III (SC Bar No. 101452)
cdrhodes@popeflynn.com
1411 Gervais Street, Suite 300
Columbia, South Carolina 29201
(803) 354-4911 Telephone

Attorneys for Appellant Calhoun County Council

From:	Cynthia D. Nygord
To:	batesfelder@sc.rr.com; harrydixon@callisontighe.com; drewenglish@callisontighe.com
Cc:	Rob Tyson; Benjamin Gooding; Cynthia D. Nygord; {F284811}.Clients@f8eed.imanage.work
Subject:	Shirer v. Calhoun County Assessor - Appellant"s Initial Brief and Designation of Matter [IMAN-CLIENTS.FID284811]
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Please see the attached Appellant's Initial Brief and Designation of Matter being filed with SC Court of Appeals today. Due to the coronavirus emergency, we are serving via email.

Please let us know if you have any difficulties opening the attachments.

With kindest regards,
Cyndi Nygord

ROBINSON GRAY
Litigation + Business

CYNDI NYGORD PARALEGAL

DIRECT 803.231.7845
VCARD
ROBINSONGRAY.COM

1310 Gadsden Street
PO Box 11449 (29211)
Columbia, SC 29201

MERITAS LAW FIRMS WORLDWIDE