THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable H. W. Funderburk, Jr., Administrative Law Judge

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Case No. 2019-ALJ-17-0016-CC
Appellate Case No. 2019-002049

Kristiane M. Shirer, Respondent,

vs.

Calhoun County Assessor, Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

I. Did the Administrative Law Court correctly interpret S.C. Code Ann. § 12-43-220(c)(1) in holding Respondent's pool house should be taxed at the 4% assessment rate?

STATEMENT OF THE CASE

This case is about the proper application of S.C. Code Ann. § 12-43-220(c)(1) (Supp. 2019), a tax exemption statute that allows a "legal residence and not more than five acres contiguous thereto" and "additional dwellings located on the same property and occupied by immediate family members of the owner of the interest" to be taxed at a special 4% assessment rate rather than the standard 6% assessment rate.

Respondent Kristiane Shirer ("Respondent") and her husband, Mike Shirer (collectively, "Shirers"), live in Calhoun County, South Carolina on their family farm, which includes a main house and a pool house. From the mid-1980s until 2014, the Shirers were taxed at the 4% assessment rate on both the main house and pool house. In 2014, the Shirers expanded their pool house, and in 2015, Appellant Calhoun County Assessor ("Appellant") began assessing the pool house at the 6% rate.

After discovering the increase, Respondent contested Appellant's assessment decision by letter dated March 21, 2018. [Respondent's Letter]. Appellant denied Respondent's challenge to the assessment decision and a request for a refund for prior tax years by separate letters on October 18, 2018, and October 19, 2018, respectively. [Appellant's Denial Letter; Appellant's Refund Denial Letter]. On November 13, 2018, Respondent appealed Appellant's decision to the Calhoun County Board of Assessment Appeals. [Respondent's Appeal Letter]. The Board of Assessment Appeals heard the matter on December 20, 2018, and denied Respondent's appeal on December 21, 2018. [BOAA Order]. On January 18, 2019, Respondent requested a contested hearing with the Administrative Law Court ("ALC"). [Request for Contested Hearing]. The ALC heard the matter on September 18, 2019 and ruled in Respondent's favor on October 10, 2019. [ALC Order]. Appellant timely moved the ALC to reconsider its ruling on October 25, 2019, which the ALC

denied by written order on November 18, 2019. [ALC Reconsideration Order]. On December 17, 2019, Appellant appealed both ALC orders to this Court. [Notice of Appeal].

STATEMENT OF THE FACTS

The Shirers live at 7187 Cameron Road in Calhoun County, South Carolina, on their family farm. [Transcript at 56, line 5; ALC Order at 1]. The single property contains approximately 75 acres, [Deed to Respondent; Plat 920], and is titled solely in Respondent. [Deed to Respondent; Transcript at 12, line 3–23; Transcript at 27, line 6–16; CC Assessor's Prehearing statement at 5]. One acre on the property contains the main house, various outbuildings, and a pool house, which the Shirers built in the 1980s. [ALC Order at 1; Transcript at 13, line 6–8, Respondent's Exhibit 2; CC Assessor's Prehearing statement at 5]. All structures on the property share the 7187 address. [Transcript at 56, line 8–12]. The pool house initially contained roughly 400 square feet, and from the time the pool house was constructed until 2015, the main house and pool house were taxed at the 4% rate. [ALC Order at 1; CC Assessor's Prehearing statement at 6]. The Shirers also own other houses on separate properties that are taxed at the 6% assessment rate. [ALC Reconsideration Order at 2; Transcript at 50, line 20–25].

In 2014, the Shirers expanded the pool house to 2032 total square feet, [ALC Order at 1; Transcript at 37, line 12, through 38, line 8], and it now contains a kitchen, two bathrooms, one bedroom, a storage room, and a living area. [ALC Order at 2; Transcript at 38, line 19, through 39, line 17]. In 2015, Appellant began assessing the pool house at the 6% rate. [Transcript at 73, line 6–13].

The Shirers always have lived in the main house, except for a nearly one-year period when they lived in the pool house while renovating the main house. [ALC Order at 1; Transcript at 41, line 4, through 42, line 20]. The Shirers use the pool house as a place for family gatherings, and

their children and grandchildren stay in the pool house when visiting. [ALC Order at 1; Transcript at 42, line 21 – 43, line 23]. The pool house is the only room in either the main house or pool house that can accommodate all eleven Shirer family members when the Shires host all their children and grandchildren. [Transcript at 23, line 6–9; Transcript at 52, line 19, through 53, line 8]. The pool house has never been rented or used commercially, and no one outside the family has ever resided there. [ALC Order at 1; Transcript at 24, line 15–17].

STANDARD OF REVIEW

"Tax appeals to the ALC are subject to the Administrative Procedures Act (APA)," and this Court reviews ALC decisions for errors of law. *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 73–74, 716 S.E.2d 877, 880–81 (2011); *Ford v. Beaufort Cty. Assessor*, 398 S.C. 508, 511, 730 S.E.2d 335, 337 (Ct. App. 2012). The Court presumes that the findings of an administrative agency are correct and will set them aside only if unsupported by substantial evidence in the record. *Hull v. Spartanburg Cty. Assessor*, 372 S.C. 420, 641 S.E.2d 909 (Ct. App. 2007). "Substantial evidence is...evidence which, considering the record as whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." *Id.* at 425, 641 S.E.2d at 424 (quoting *Lark v. Bi-Lo*, Inc. 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). "Questions of statutory interpretation are questions of law, which [this Court is] free to decide without any deference to the court below." *CFRE*, 395 S.C. at 74, 716 S.E.2d at 81.

ARGUMENT

I. THE ALC CORRECTLY HELD THE POOL HOUSE SHOULD BE TAXED AT THE 4% ASSESSMENT RATE PURSUANT TO S.C. CODE ANN. § 12-43-220(c)(1).

Respondent's pool house is exactly what § 12-43-220(c)(1) allows: 1) an additional dwelling, 2) located on the same property as Respondent's legal residence, 3) occupied, 4) by Respondent's immediate family members—herself, her husband, her children, and her grandchildren. Like the ALC, this Court should resolve this case by applying the plain meaning of § 12-43-220(c)(1), which provides in pertinent 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.

Conversely, Appellant asks this Court to read in a requirement that "additional dwellings" must be the "legal residence" of the immediate family members of the property owner for the "additional dwelling" to be taxed at the 4% rate. This is an unreasonable interpretation of the statute.

Furthermore, Respondent would prevail even if Appellant's analysis were correct. The pool house is part of the "legal residence" because it is part of the same address as the main house. Moreover, the pool house is part of the "legal residence and not more than five acres contiguous thereto"—which § 12-43-220(c)(1) describes as "property"—because this Court already recognized real property in tax statues includes structures. Accordingly, this Court should reject Appellant's interpretation and affirm the ALC.

The cardinal rule of statutory interpretation is to "ascertain and effectuate the intent of the legislature." *CFRE,* 395 S.C. at 74, 716 S.E.2d at 881 (quoting *Sloan v. Hardee,* 371 S.C. 495,

498, 640 S.E.2d 457, 459 (2007)). Accordingly, courts give words in a statute their "plain and ordinary meaning," reading the statute as a whole rather than reading individual words in isolation. *Id.* at 74, 716 S.E.2d at 881. Moreover, statutes are read so "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law." *Id.* (quoting *State v. Sweat,* 379 S.C. 367, 382, 665 S.E.2d 645, 654 (Ct. App. 2008)) (internal punctuation omitted).

As a general rule, courts strictly construe tax exemption statutes against the taxpayer. *Id.* However, courts do not "search for an interpretation in [the taxing authority's] favor where the plain and unambiguous language leaves no room for construction." *Id.* Rather, "strict construction simply means . . . statutory language will not be strained or liberally construed in the taxpayer's favor." *Id.* Accordingly, the rule of construction does not apply unless the plain language of the statute is ambiguous. *See, e.g., Mead v. Beaufort County Assessor*, 419 S.C. 125, 140, 796 S.E.2d 165, 173 (2016) (applying the plain meaning of an unambiguous statute without the rule of construction).

A. The pool house is an "additional dwelling[] located on the same property and occupied by immediate family members of the owner."

1. The pool house is a "dwelling," and there is no "legal residence" requirement for an "additional dwelling."

"Dwelling" in § 12-43-220(c)(1)—although undefined—can only mean a building capable of habitation and cannot reasonably be read to mean a building only used as a "legal residence." Section 12-43-220(c)(1) provides for "the legal residence . . . and additional dwellings," which indicates a "legal residence" includes a "dwelling." S.C. Code Ann. § 12-43-220(c)(1). Similarly, the South Carolina Supreme Court has already recognized one may have one legal residence or

domicile—a precise term—but may have multiple residences. *See Phillips v. S.C. Tax Comm'n*, 195 S.C. 472, 12 S.E.2d 13, 16, 18 (1940) ("[A] man can have but one domicile at one and the same time although he may have several residences . . . It will be observed that the [c]ourt here treats domicile as being substantially the same as principal place of residence or legal residence."). Moreover, where the legislature has decided to define "dwelling," it has defined it as a building capable of habitation. *See, e.g.,* S.C. Code Ann. § 16-11-430(1) (2015) (by its terms applying only to the Protection of Persons and Property Act and providing "'Dwelling' means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be *occupied* by people lodging there at night.") (emphasis added). Accordingly, "additional dwellings" are immediately distinguished from the "legal residence," and to read it otherwise would render "dwellings" superfluous.

2. "Occupied" does not require that the pool house be used as a "legal residence."

This Court has already held in other contexts that a primary home and a secondary residence were "occupied" where they were not lived-in and where the owners had been away for an extended period. *See State v. Davis*, 422 S.C. 472, 485, 812 S.E.2d 423, 430 (Ct. App. 2018) (homeowner in nursing home); *State v. Evans*, 376 S.C. 421, 656 S.E.2d 782 (Ct. App. 2008) (secondary residence with limited use). *Evans* and *Davis*, though burglary cases, understood "occupied" like other cases have understood "occupied" and "reside" in the tax context. *See Phillips v. S.C. Tax Comm'n*, 195 S.C. 472, 12 S.E.2d 13, 16, 18 (1940); *Turner v. Bd. of Cty. Tax Assessors*, 71 Ga. App. 374, 31 S.E.2d 61, 63 (1944); *accord* 1978 S.C. Op. Atty. Gen. No. 78-126, 1978 WL 22594. Moreover, the legislature generally does not say only "occupied" when it

wants to say, "occupied as a legal residence." Accordingly, "occupied" in § 12-43-220(c)(1) does not require use as a "legal residence."

Davis considered whether a home was "occupied" as a "dwelling house" under a burglary statute.[1] 422 S.C. at 485, 812 S.E.2d at 431. The court held there was sufficient evidence in the record to establish a home—in which no one lived—was occupied where the homeowner had lived in the home for thirty-seven years before moving to a nursing home, the home was for sale, the homeowner's furniture and possessions were in the house, the utilities were on, and the homeowner's son routinely checked on the house. *Id.* at 485, 812 S.E.2d at 432.

Likewise, *Evans* considered whether "a secondary residence" was a "dwelling house" as defined under the burglary statute, and the test applied was "whether the *occupant* has left with the intention to return." *Evans, 376 S.C* at 424–25, 656 S.E.2d at 784 (citing S.C. Code Ann. § 16-11-10 and *State v. Glenn*, 297 S.C. 29, 374 S.E.2d 671 (1988)) (emphasis added). *Evans* recognized the secondary residence was occupied, and occupied "with the intention to return," where the homeowner had "visited the home about once every two weeks or month, the utilities were all on in the home, . . . it was ready to be lived in[,] [the *Evans* homeowner] had previously been living in the home off and on, and the only reason [the *Evans* homeowner] had not been staying overnight in the home the last three years was his wife's current medical condition prevented them from doing so." *Id.* at 425, 656 S.E.2d at 784 (internal citations omitted). Accordingly, this Court has

[1] The statutory definition of "dwelling" for burglary requires that the structure subject to the burglary be subject to a specific occupancy. *See* S.C. Code Ann. § 16-11-10 ("any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property shall be deemed a dwelling house."); *id.* at § 16-11-430 ("'Dwelling' means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be *occupied* by people lodging there at night.") (emphasis added).

already recognized a secondary residence was occupied without it being used as a legal residence where no one regularly slept there overnight.

Evans and *Davis* dovetail with the rationale in *Phillips*, although the cases addressed different legal questions. *Phillips* considered the statutory meaning of "residing" where the taxpayer claimed legal residence in Virginia; lived in Asheville, North Carolina, part of the year; and lived in Hardeeville, South Carolina, for roughly six months each year. *Phillips v. S.C. Tax Comm'n*, 195 S.C. 472, 12 S.E.2d 13 (1940). The South Carolina Supreme Court recognized "domicile" and "residence" "are not interchangeable words or words of equivalent meaning because a man can have but one domicile at one and the same time although he may have several residences." *Id.* at 472, 12 S.E.2d at 16, 18. As noted above, *Phillips* treated "legal residence" and "domicile" as similar concepts.[2] *See id.* ("It will be observed that the Court here treats domicile as being substantially the same as principal place of residence or legal residence."). The statutory oath in § 12-43-220(c)(2)(ii) recognizes these same distinctions between residence and legal residence:

> "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*."

[2] So does § 12-43-220(c)(1) ("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)(2)(ii) (emphasis added). Reading *Evans*, *Davis*, and *Phillips* together, it is clear "residences" other than a "legal residence" are "occupied," even where they are not lived in as "legal residences."

In fact, a Georgia appellate court applying language similar to § 12-43-220(c)(1) to a *Phillips* fact pattern of multiple residences interpreted "occupied" as this Court did in *Evans* and *Davis*. *See Turner v. Bd. of Cty. Tax Assessors*, 71 Ga. App. 374, 31 S.E.2d 61 (1944). *Turner* considered a constitutional tax exemption—employing a similar strict construction rule for tax exemptions—for homesteads: "there shall be exempted from all ad valorem taxation for State, county, and school purposes the homestead of each resident of this State actually *occupied* by the owner as a residence and homestead, to the value of $2,000, and only so long as actually *occupied* by the owner primarily as such." *Id.* at 374, 31 S.E.2d at 62 (citations omitted) (emphasis added). The taxpayer worked and "temporarily reside[d]" in North Carolina, owned a house in which her parents lived in Georgia, and returned to George twice per year for some period of time. *Id.* at 374, 31 S.E.2d at 63. *Turner* held she occupied the homestead in Georgia despite having two residences, one of which was in North Carolina. *Id.* Regarding "occupancy," *Turner* stated:

> These words do not mean here, or in everyday life, that the owner must occupy the property in person every day in the year, or a majority of the days of a year. They mean that there must be such occupancy by the owner as is not inconsistent with his ownership and maintenance of the dwelling as his homestead and place of abode. Hence one may actually occupy a home through the agency of others so long as it is maintained as a home, and the control is not changed in character. The emphasis in the words used in the provisions is not on the actual occupancy, but on the provision as a whole, the actual occupancy primarily as a residence or homestead.

Id. at 374, 31 S.E.2d at 63. Notably, a South Carolina Attorney General opinion relied on *Phillips* and *Turner* when interpreting § 12-43-220(c) and concluded a legal residence was occupied where

a "person maintains another residence and partly occupies both the legal and the other residence on a frequent and periodic basis." *See* 1978 S.C. Op. Atty. Gen. No. 78-126, 1978 WL 22594.

The legislature's usage of "occupied" follows *Evans*, *Davis*, *Turner*, and the Attorney General's opinion. For example, § 12-43-220(c)(1) provides:

> 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.

(emphasis added). Both the "legal residence" and "additional dwellings" must be "occupied," which shows "occupied" is broader than "occupying as a legal residence." Section 12-43-220(c)(2) follows the same usage: "[t]o 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." (emphasis added). By specifying the occupancy "as his legal residence," the legislature is clear that "occupied" by itself would not have meant "occupied as a legal residence," in line with the rationale of *Evans*, *Davis*, *Phillips*, *Turner* and the Attorney General's opinion.

The "occupied" requirements are further clarified when read in context with the rental restriction in § 12-43-220(c)(1): "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*." (emphasis added). These residences would be "occupied," but the legislature specifically chose to exclude mobile homes or residences "occupied" by renters.

Other statutes in the South Carolina Code confirm "occupied" alone does not mean "occupy as a legal residence." *See, e.g.,* S.C. Code Ann. § 16-11-820 (2015) ("It is permissible to infer that the existence of any connection, wire, conductor, or other device whatsoever, between

facilities of a cable television system or closed circuit coaxial cable communication system and the premises *occupied* by the person which makes possible the use of cable television service by any person without that use being specifically authorized by, or compensation paid to, the operator of cable television service indicates that the occupant of the premises has violated this section.") (emphasis added); § 16-11-430 ("'Dwelling' means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be *occupied* by people lodging there at night."); § 27-35-70 ("In all cases of tenancy the owner, landlord or person entitled to possession shall be deemed to be in possession of the real estate used or *occupied* by the tenant and the tenant shall be deemed to be holding thereunder."); § 12-43-225(A) (2014) ("For subdivision lots in a plat recorded on or after January 1, 2001, a subdivision lot discount is allowed in the valuation of the platted lots only as provided in subsection (B) of this section, and this discounted value applies for five property tax years or until the lot is sold or a certificate of occupancy is issued for the improvement on the lot, or the improvement is *occupied*, whichever of them elapses or occurs first. When the discount allowed by this section no longer applies, the lots must be individually valued as provided by law."); § 12-37-220(A)(3) (2014) ("all property of all public libraries, churches, parsonages, and burying grounds, but this exemption for real property does not extend beyond the buildings and premises actually *occupied* by the owners of the real property"). These statutes are not an exhaustive list, but they indicate the legislature uses "occupied" in the same way as *Evans*, *Davis*, *Phillips*, *Turner* and the Attorney General's opinion.

Additionally, BLACK'S LAW DICTIONARY recognizes this same definition of "occupy" and illustrates that "occupy" depends on the context of its use:

1. To seize or take possession of; esp., to enter and take control of (a place)

2. To take up the extent, space, room, or time of
3. To hold possession of; to be in actual possession of
4. To employ; to possess or use the time or capacity of
5. To use (money) in commerce; to invest; to employ for profit
6. To live or stay in (a place)

Occupy, BLACK'S LAW DICTIONARY (11th ed. 2019); *see also State v. Myers,* 313 S.C. 391, 393, 438 S.E.2d 236, 237 (1993) (recognizing both BLACK'S and prior Supreme Court cases as indications of "plain and ordinary meaning."). Notably, an ALC relied on an earlier version of BLACK'S LAW DICTIONARY that defined "occupy" as "to take or enter upon possession of" in deciding a residence owner would no longer "occupy" the residence if it were rented to a tenant, who would occupy it. *See Charleston Cty. Assessor v. Schmidt*, No. 98-ALJ-17-0090-CC, 1998 WL 419711, at *2 (S.C. Admin. Law Div. July 9, 1998) (citing *Occupy,* BLACK'S LAW DICTIONARY (6th ed. 1990)).

Certainly, if the pool house were occupied by an immediate family member as a legal residence, then such a use would satisfy § 12-43-220(c)(1). However, the statute does not *limit* "additional dwellings" to that particular use. In § 12-43-220(c)(1) and (2), the legislature plainly recognized a difference between "legal residence," other "residences," and "additional dwellings" but recognized all could be "occupied." These statutes; *Evans*, *Davis*, *Phillips*, *Turner* and the Attorney General's opinion; and BLACK'S LAW DICTIONARY show "occupied" can not be reasonably interpreted to mean only "occupy as a legal residence." The legislature was quite capable of expressly requiring an "additional dwelling" to be a "legal residence" but chose not to do so. It would be unreasonable to read this requirement into the statute through the word "occupied" where the legislature chose not to require such a use.

3. The pool house is "located on the same property" as the main house.

Section 12-43-220(c)(1) requires the "additional dwelling" be "located on the same property" as the "[t]he legal residence and not more than five acres contiguous thereto." The record is clear the pool house is near the back of the main house and within the five acres around the main house, [ALC Order at 1; Transcript at 13, line 6–8, Respondent's Exhibit 2; CC Assessor's Prehearing statement at 5], and on the same 75-acre property as the main house and pool house, [Deed to Respondent; Transcript at 12, line 3–23; Transcript at 27, line 6–16; CC Assessor's Prehearing statement at 5].

4. Only "immediate family members of the owner of the interest" occupied the pool house.

Finally, § 12-43-220(c)(1) requires the "additional dwelling" be occupied by "immediate family members of the owner of the interest." The record is clear Respondent, her husband, their children, and their grandchildren occupied the pool house. *See* [ALC Order at 1; Transcript at 42, line 21 – 43, line 23]. The use by the Shirers for family gatherings, weekend visits, and extended stays by their children and grandchildren is at least as indicative of "occupied" as *Evans* and *Davis*. While Respondent asserts use by her alone would be sufficient under the statute because she is a part of her immediate family, the Court need not reach this issue in this case. The record is clear Respondent's husband (who is not an owner), the Shirer's children, and/or the Shirer's grandchildren have occupied the pool house.

5. The ALC was exactly right.

In sum, the legislature chose specific words and used those words both consistently across statutes and consistently within § 12-43-220(c): "legal residence" and "domicile" are very specific, "residence" is broader, and "dwelling" and "occupied" are even broader. These distinctions underscore the legislature did not intend for "additional dwelling" and "occupied" to require use

as a "legal residence." Simply, the legislature intended that an additional dwelling like a guest house or pool house be used by the family of the owner of the "legal residence." Most importantly, the ALC recognized these distinctions and correctly applied S.C. Code Ann. § 12-43-220(c)(2)(i). *See* [ALC Order at 3 ("These additional dwellings can only be occupied by the owner or her immediate family"); Reconsideration Order at 2 (Section 12-43-220(c)(2)(i) "does not require an additional dwelling to be continuously occupied by the same immediate family members. In this case, [Respondent], her spouse, her children, and grandchildren have been the sole, but not continuous, occupants.")].

B. Appellant suggests an unreasonable interpretation of the statute.

Appellant asserts the ALC erred because 1) a taxpayer can have only one legal residence, 2) "occupied" means as "legal residence," and 3) therefore the pool house is not Respondent's "legal residence" and not "occupied" by her "immediate family members." To support its position, Appellant principally relies on *Guthrie v. Orangeburg Cty. Assessor*, No. 01-ALJ-17-0173-CC, 2001 WL 1107822 (S.C. Admin. Law Div. Sept. 5, 2001). These arguments are unavailing.

Guthrie is non-binding and distinguishable—the two dwellings in *Guthrie* were located on separate properties. 2001 WL 1107822, at *1–2 ("Prior to this purchase, 152 Scoville was owned and occupied by individuals other than the Petitioners and was considered to be a plot of land separate and distinct from 184 Scoville"). However, § 12-43-220(c) only gives the exemption to "[t]he legal residence and not more than five acres contiguous thereto . . . and additional dwellings located on the *same property*." (emphasis added). The separate property issue was not addressed because the *Guthrie* opinion was argued and decided on whether the two houses were together one "legal residence." *See id.* at *4 ("Thus, Petitioners' claim that both the 184 Scoville and 152 Scoville residences are their legal residence for purposes of the 4% residential assessment ratio

must fail; only one dwelling can qualify as a legal residence, and only that dwelling can receive the residential assessment ratio."). The taxpayer does not appear to have argued the second residence would have been an "additional dwelling," likely because the houses were on separate properties and could not have qualified. The ALC below noted this exact distinction. *See* ALC Order at 3, n. 1 ("[T]his case which involves two dwellings located on the same lot at the same address is distinguishable from the 'strain' apparent in *Guthrie*.").

In fact, *Yeo v. Lexington Cty. Assessor* recently highlighted this exact problem. No. 19-ALJ-17-0111-CC, 2019 WL 5558537 at *1 (S.C. Admin. Law Div. Oct. 17, 2019). The *Yeo* homeowner, like *Guthrie*, purchased the house next door, which had its own tax map number and was on a "separate but contiguous" property. *Id.* The taxpayer asserted the house next door qualified as an additional dwelling because the taxpayer owned it, it was contiguous to the legal residence, and met the occupancy requirement. *Id.* at *3. However, the ALC held § 12-43-220(c)(2)(i) did not apply and the "[house next door] does not qualify because the house is not on the same property as [the taxpayer's] legal residence." *Id.* The failure to meet the "same property" requirement is exactly the unaddressed issue in *Guthrie*. Accordingly, *Guthrie* does not aid the Court's analysis here, except perhaps to highlight a key difference in this case.

More importantly, Appellant incorrectly asserts "Section 12-43-220 only permits a taxpayer to occupy a single dwelling." Appellant's brief at 10. This incorrect statement is fatal to Appellant's argument given the use of "occupied" in the disputed statute and case law.[3] While a taxpayer may only "occupy" one dwelling *as a legal residence*, the statute in no way uses "occupied" to mean *only* as a "legal residence." *Davis*, *Evans*, *Phillips*, *Turner* and the Attorney

[3] *See* discussion *supra* Section I.A.2. (discussing meaning of "occupied").

General's opinion are clear "occupied" is not so limited, and the legislature's use of "occupied" does not deviate from the "occupancy" discussed in those cases. *Davis*, 422 S.C. at 472, 812 S.E.2d at 430 (homeowner in nursing home); *Evans*, 376 S.C. at 421, 656 S.E.2d at 782 (secondary residence with limited use); *Phillips*, 195 S.C. at 472, 12 S.E.2d at 13; *Turner*, 71 Ga. App. at 374, 31 S.E.2d at 61; 1978 S.C. Op. Atty. Gen. No. 78-126, 1978 WL 22594. *Evans* particularly rejects Appellant's argument—it recognized a "secondary residence" was occupied where the owners had not slept in it for three years and it was not their primary home. *Evans*, 376 S.C. at 421, 656 S.E.2d at 782.

Additionally, MERRIAM-WEBSTER's definition of occupy, "[to] reside in as an owner or tenant," does not help Appellant. *See* Appellant's Brief at 13 (citing MERRIAM-WEBSTER ONLINE DICTIONARY, www.merriam-webster.com/dictionary/occupy (Apr. 13, 2020)). This definition follows *Davis*, *Evans*, *Phillips*, *Turner,* and the Attorney General's opinion, which collectively recognize "reside" allows for multiple, occupied, residences. Even if MERRIAM-WEBSTER's definition could be read as contradicting *Evans, et al*, MERRIAM-WEBSTER's definition lacks the context of the statute. As set forth above, when the legislature says "occupied," it also specifies a particular use if necessary. *See, e.g.,* S.C. Code Ann. § 12-43-220(c)(2) ("[t]o 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.") (emphasis added). Accordingly, MERRIAM-WEBSTER does not help Appellant's position in this case.

Finally, Appellant's "absurd" results are actually not so absurd—not only could a second dwelling located on the same property as a "legal residence" "be said to be occupied by immediate family even if that family only visited or stayed in the dwelling for a single night in an entire

calendar year," Appellant's brief at 14, the legislature *did* say that. And the hypothetical of the unused guest house, *id.*, misunderstands "occupied," although the Court need not reach this issue on the clear factual record here. Either Mrs. Shirer or her husband (who is not an owner) would "occupy" the pool house without actually sleeping in it during the year by maintaining, furnishing, and using the pool house, even disregarding the use by the children and grandchildren. *See Davis*, 422 S.C. at 472, 812 S.E.2d at 430 (homeowner in nursing home with no one in house); *Evans*, 376 S.C. at 421, 656 S.E.2d at 782 (secondary residence with limited use).

Accordingly, Appellant's definition of "occupied" as requiring use as a "legal residence" reads a requirement into the statute that is not there. Such a reading is an unreasonable interpretation because it disregards the statute's plain meaning as indicated by the statutory context, case law, and common usage. The only reasonable interpretation of "additional dwellings located on the same property and occupied by immediate family members of the owner of the interest" is the same interpretation explained above and applied by the ALC—and the pool house qualifies.

II. ALTERNATIVELY, THE POOL HOUSE IS PART OF RESPONDENT'S "LEGAL RESIDENCE AND NOT MORE THAN FIVE ACRES CONTIGUOUS THERETO" LIKE ANY OTHER STRUCTURE, AND THIS COURT SHOULD AFFIRM PURSUANT TO RULE 220(c), SCACR.

A. "Legal Residence" includes not just one dwelling building but the area and structures surrounding the dwelling, like Respondent's pool house.

The pool house is part of the one address—7187 Cameron Road—shared with the primary dwelling, is located several yards away from the main house, and is part of Respondent's "legal residence."

The context of § 12-43-220(c) recognizes "legal residence" is not just a single building. S.C. Code Ann. § 12-43-220(c)(2) provides "[t]o 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." Similarly, the residence must be the "domicile" to be the "legal residence." *See* S.C. Code Ann. § 12-43-220(c)(1) ("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."). Moreover, the two items required from the taxpayer to prove his "legal residence" list items that certify an address rather than a specific building:

1. "a copy of the owner-occupant's most recently filed South Carolina individual income tax return"; and

2. "copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant and registered at the same address of the four percent domicile."

S.C. Code Ann. §§ 12-43-220(c)(2)(iv)(A), (B). Notably, *Phillips v. Commissioner* addressed the distinctions between "domicile," "reside," and "residence" without limiting "residence" to a single building. *See* discussion *supra* Section I.A.1.

South Carolina's tax regulations are consistent with this interpretation. S.C. Code Ann. Regs. 117-1800.1(2) provides "[f]or property tax purposes the term 'Legal Residence' shall mean the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled." S.C. Code Ann. Regs. 117-1800.1(2) (2004) (titled "Application for Special Assessment as Legal Residence."). Likewise, S.C. Code Ann. Regs. 117-1800.1(1) provides "[t]he legal residence includes not more than five acres contiguous to the actual residence."

Indisputably, the pool house, which is located several yards from the main house,[4] and the main house share an address—7187 Cameron Road. Accordingly, the pool house is part of the Respondent's "domicile" and included in the definition of "legal residence."

Conversely, Appellant asserts "legal residence" means "one dwelling" because § 12-43-220(c)(1) provides "[t]he legal residence and not more than five acres contiguous thereto . . . and additional dwellings." As Appellant states, a "legal residence" necessarily includes a "dwelling." However, providing for a 4% assessment rate on "additional dwellings" does not implicitly limit "legal residence" to only one structure. Rather, it merely recognizes a "legal residence" would include a "dwelling" without prohibiting other buildings. Appellant's interpretation unreasonably adds a limitation that is not present in the text.

Guthrie, although supporting Appellant's position, does not dictate the outcome here because *Guthrie* reads "legal residence" too narrowly. *Guthrie* cites several authorities that state the general principle in *Phillips*—that a taxpayer may have one "legal residence" or "domicile" but may have several residences. Like *Phillips*, the supporting authorities in *Guthrie* do not address what makes up a residence, only that a person may have only one "legal residence." *Guthrie* did not recognize any ambiguity but applied a "narrow construction" to "legal residence" rather than the rule of construction where a statute is ambiguous, as recognized in *Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 796 S.E.2d 165 (2016) (the tax exemption statutes at issue "d[id] not contain any ambiguity, and therefore, there [was] nothing to construe in any party's favor."). Notably, *Guthrie* did not consider the statutory and regulation references to "address" when construing "legal residence."

[4] Or, as the ALC found, "in their backyard." ALC Order at 1.

Nonetheless, *Guthrie* was rightly decided even if Respondent disputes the reasoning applied—the two houses at issue were themselves separate residences. The court was clear the facts showed two separate houses, on two separate lots, with two separate addresses. *See Guthrie*, 2001 WL 1107822 at *1-2; *see also Yeo*, 2019 WL 5558537 at *1. Accordingly, the outcomes in *Guthrie* and *Yeo* would not have changed had those courts applied Respondent's position.

Respondent's pool house is not like *Guthrie* or *Yeo*: the pool house is on the same lot as the main house, at the same address as the main house, and contains the only space on the property where all eleven Shirer family members can gather. The pool house had even been considered part of the "legal residence" until the expansion in 2014. The pool house is quite a contrast with the *Guthrie* or *Yeo* houses given these dispositive differences. Accordingly, this case is not *Guthrie* or *Yeo*, and the plain meaning of "legal residence" in the statute is not limited to one building used as a "dwelling."

B. The pool house is a structure attached to the real property making up Respondent's "legal residence and not more than five acres contiguous thereto."

"The legal residence and not more than five acres contiguous thereto"—which is described in both the South Carolina Constitution and several statutes as "property"—includes other structures like the pool house within that five acres because "real property" under the tax statues includes structures attached to the land. S.C. Const. art. X, § 1(3); S.C. Code Ann. §§ 12-43-22(c)(1), 12-37-10.

The statutory definition of "real property" in tax statutes includes the structures attached to the land that pass by conveyance of the land. *See Montgomery v. Spartanburg Cty. Assessor*, 419 S.C. 77, 83, 795 S.E.2d 866, 869 (Ct. App. 2016) ("For the purposes of property taxes, real property shall mean not only land, city, town and village lots but also all structures and other things

therein contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot.") (citing S.C. Code Ann. § 12-37-10 (2014)). While § 12-37-10 does not expressly apply to § 12-43-220, this Court applied the § 12-37-10 definition in a case addressing § 12-43-220(d)(1)(A) and § 12-43-230. *Montgomery*, 419 S.C. at 83, 795 S.E.2d at 869. Likewise, the South Carolina Code of Regulations adopts the same definition: "For the purpose of classifying property for taxation, land, buildings and items of property devoted primarily to the general use of the land and buildings, and all other property which according to custom has been considered to be real property, are defined as real property." S.C. Code Ann. Regs. 117-1700 (citing authority under § 12-43-230(c)). The South Carolina Department of Revenue takes the same position in unofficial guidance. *See* SOUTH CAROLINA DEPARTMENT OF REVENUE, SOUTH CAROLINA PROPERTY TAX § 110.1 "Real Property" (2015) ("Real property means not only land, but also all structures and other things therein contained or annexed or attached to the land that pass to the vendee by the conveyance of the land.") (citing SC Code §12-37-10(1)); *see also* SC Rev. Rul. 17-1, p. 5 (allowing a residential electricity sales and use tax exemption for additional buildings on a single family home, such as a "pool house, garage, storage shed, or other recreational area.").

Section 12-43-220(c)(1) uses "property" throughout and can only be reasonably interpreted as describing real property. "The legal residence and not more than five acres contiguous thereto" is referred to as "the same property" and "the property" later in the same sentence. § 12-43-220(c)(1) ("[A]dditional 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*.") (emphasis added). In fact, the statute specifically allows for "residential real property" held in trust to receive the 4% assessment ratio. *Id.* ("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.") (emphasis added). Additionally, proof of eligibility for the legal residence tax exemption is certified to the assessor, who taxes real property.[5] *See* S.C. Code Ann. § 12-43-220(c)(2)(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"). Moreover, § 12-43-215 references property assessed pursuant to § 12-43-220(c) as being real property:

> When *owner-occupied residential property assessed pursuant to Section 12-43-220(c)* is valued for purposes of ad valorem taxation, the value of the land must be determined on the basis that its highest and best use is for residential purposes. When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, *based on the market values of real property* as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based.

§ 12-43-215 (emphasis added) (notably, § 12-43-215 is titled "Owner-occupied residential real property; highest and best use; appeals of assessment value."). S.C. Const. art. X, § 1(3), which provides the 4% assessment ratio codified at § 12-43-220(c)(1), describes "the legal residence and not more than five acres contiguous thereto" as "property." *See* S.C. Const. art. X, § 1(3) ("The legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of *such property*.") (emphasis added).

Conversely, when the legislature wants to address only a part of real property, it specifies which part. *See, e.g., Montgomery*, 419 S.C. at 83, 795 S.E.2d at 869 (recognizing a distinction

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[5] Assessors handle real property while auditors handle personal property. *Compare* S.C. Code Ann. § 12-37-90 ("All counties shall have a full-time assessor, whose responsibility is appraising and listing all real property") *with* S.C. Code Ann. § 12-39-340 ("the county auditor shall have the responsibility of ascertaining that all personal property subject to the ad valorem tax by the Constitution or general law is listed and assessed.").

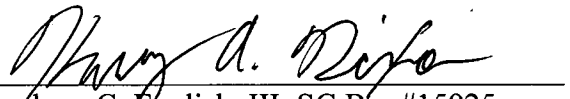
between the assessment ratio for agricultural real property and the valuation method for only the land). Like *Montgomery*, the legislature drew a distinction for residential real property by describing the "[t]he legal residence and not more than five acres contiguous thereto" as property, § 12-43-220(c)(1); while providing a specific valuation method for the land, § 12-43-215 ("the value of the land must be determined on the basis that its highest and best use is for residential purposes"); and yet still requiring the assessor to consider "market values of real property," § 12-43-215 ("the assessor shall consider the appeal and make any adjustments, if warranted, based on the market values of real property"). "Land" and "property" are distinguished, and "[t]he legal residence and not more than five acres contiguous thereto" is described as "property," which in this context can only be real property including structures. Accordingly, the pool house is a structure on the property included within "the legal residence and not more than five acres contiguous thereto," even if it were not also an "additional dwelling" or part of the "legal residence."

CONCLUSION

For these reasons, Respondent asks that this Court affirm the ALC's decision.

[Signatures on Following Page]

Respectfully submitted,



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May 20, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable H. W. Funderburk, Jr., Administrative Law Judge

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Case No. 2019-ALJ-17-0016-CC
Appellate Case No. 2019-002049

Kristiane M. Shirer, Respondent,

vs.

Calhoun County Assessor, Appellant.

PROOF OF SERVICE

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

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A copy of the service email is attached hereto, as required.

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

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May 20, 2020

Kathy Romero

From: Kathy Romero
Sent: Wednesday, May 20, 2020 5:44 PM
To: Benjamin Gooding; Rob Tyson; cdrhodes@popeflynn.com
Cc: batesfelder@sc.rr.com; Cynthia D. Nygord; Andrew English; Harry Dixon
Subject: Shirer v. Calhoun County Assessor / Appellate Case No. 2019-002049
Attachments: Initial Respondent's Brief (TO FILE).pdf; DOM - final.pdf; Proof of Service - Respondent's Initial Brief & DOM.pdf; Clerk.003.pdf

Dear Counsel,

Attached please find the Respondent's Initial Brief, Designation of Matter to be Included in the Record on Appeal, and Proof of Service in the above-referenced matter, which are being filed with the SC Court of Appeals today. Pursuant to section (g)(3) of Order No. 2020-03-20-01 issued by The Supreme Court of South Carolina (RE: Operation of the Appellate Courts During the Coronavirus Emergency), the attached documents are being served upon you via email only. Thank you.

With kind regards,

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May 20, 2020

VIA EMAIL: ctappfilings@uscourts.org
& U.S. MAIL
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

RE: Kristiane M. Shirer vs. Calhoun County Assessor
Case No. 2019-ALJ-17-0016-CC
Appellate Case No. 2019-002049

Dear Ms. Kitchings:

Enclosed herewith please find an original and one (1) copy each of Respondent's Initial Brief, Designation of Matter to be Included in the Record on Appeal, and Proof of Service in the above-referenced matter. Kindly file the same and return a clocked-in copy of each to the undersigned in the envelope provided.

The enclosed documents have also been forwarded to your office and served upon Appellant's counsel today via email.

Please feel free to contact me with any questions. Thank you.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC

Harry A. Dixon

HAD:ksr
Enclosures
cc (via email): Robert E. Tyson, Jr., Esquire
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