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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2020-000983
Trial Court Case No. 17-ALJ-17-0237-CC

Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County,
Williamsburg County School District, Clarendon School District Two, Florence School District
One, Florence School District Three, Sumter County School District, Clarendon County Hospital
District, Lee County School District, and Clarendon School District
One Appellants-Respondents,

v.

South Carolina Department of Revenue, Farmers Telephone Cooperative, Inc., FTC
Communications, LLC, and FTC Diversified Services, LLC, ... Respondents.

Of Which, Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC
Diversified Services, LLC, are the Respondents-Appellants

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STATEMENT OF ISSUES ON APPEAL

- I. THE ALC CORRECTLY FOUND THAT IT HAD SUBJECT MATTER JURISDICTION PURSUANT TO SECTIONS 12-60-2130 AND 12-60-2150 OF THE SOUTH CAROLINA CODE.**
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STATEMENT OF THE CASE

Appellants/Respondents Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County (each a “County,” and collectively, the “Counties”), Williamsburg County School District, Clarendon School District Two, Florence School District One, Florence School District Three, Sumter County School District, Clarendon County Hospital District, Lee County School District, and Clarendon School District One (collectively with the Counties, “Taxing Entities”) reincorporate the Statement of the Case set forth in Appellants/Respondents’ Initial Brief at pages 1–3.

STATEMENT OF FACTS

Taxing Entities reincorporate the Statement of Facts set forth in Appellants/Respondents’ Initial Brief at pages 3–19. In addition to the facts set forth in Taxing Entities’ Initial Brief, the following facts are relevant to addressing the issues raised in Respondents/Appellants’ Farmers Telephone Cooperative, Inc. (“Farmers”), FTC Communications, LLC (“FTCC”), and FTC Diversified Services, LLC (“Diversified,” and collectively with Farmers and FTC, “Taxpayers”) Initial Brief:

I. Taxing Entities’ Budgeting Process and Property Tax Administration

The South Carolina Department of Revenue (“DOR”) is charged with assessing and valuing certain types of taxpayers’ property, such as Taxpayers in this case, for property tax purposes,¹ but the actual property tax payments are paid entirely to and for the benefit of local governing bodies, such as Taxing Entities in this case. (Stip. of Facts ¶¶ 31 & 35; R. __). Because Taxing Entities are materially impacted by decisions regarding DOR’s property tax assessments, the General Assembly has established certain statutory notification requirements and protections for Taxing Entities. *See generally* S.C. Code Ann. §§ 12-37-970 (establishing deadlines for

¹ See S.C. Code Ann. § 12-4-540

taxpayers to file property tax returns with DOR and requiring DOR to send its assessments “to the appropriate local taxing authorities no later than August fifteenth of the applicable tax year”); 12-39-150 (establishing the annual deadline of September 30th for county auditors to deliver the county tax duplicate to the county treasurer for collection of taxes).

Additionally, South Carolina law requires that local governing bodies adopt their annual budgets before the fiscal year begins on July 1st. S.C. Code Ann. §§ 4-9-140 & 6-11-260. As a result, June 30th is the deadline for local governing bodies to adopt their budgets for the upcoming fiscal year. (Stip. of Facts ¶ 4; R. __). Property tax revenues are managed by each County’s Auditor, Assessor, and Treasurer. (Stip. of Facts ¶¶ 31 & 35; R. __). For utility taxpayers like Taxpayers in this case, DOR communicates directly with the County Auditor by providing assessment notifications and certifications regarding the value of certain property. (*Id.*; R. __).

Significantly, **property tax revenues account for approximately 75% of Clarendon County’s overall revenue.** (Tr. 67:15–18; R. __). Clarendon County’s Chief Financial Officer, Lynden Anthony, testified about Clarendon’s budgeting process and the importance of receiving timely notification of property tax exemptions by the June 1st deadline each year. Because of competing interests among constituent groups, identifying the most important issues to Clarendon as a whole, and allocating the budget to address these issues, takes considerable time and resources. (Tr. 56:20–25; R. __).²

Timely notification of property tax exemptions is important because Clarendon County’s budget becomes finalized upon the county council’s final reading in mid-June of each year. (Tr. 66:2–7; R. __). Thus, finalization of Clarendon County’s budget in June is necessary in order for

² Clarendon County served as the lead County in this case, and Mr. Anthony’s testimony was offered to show the impact property tax revenues—and DOR’s decisions impacting those revenues—have on Clarendon County, specifically, and the other Counties and Taxing Entities, generally. (*See generally* Tr: 51–96; R. __).

Clarendon County to have an effective budget beginning no later than July 1st. (Tr. 66:8–21; R. ____). Without a finalized and effective budget beginning on July 1st, Clarendon County would be without authorization to contract for goods and services and would, thus, be incapable of making many needed operational decisions throughout the year. (Tr. 66:8–67:9; R. ____). Therefore, any decision made by DOR exempting Taxpayers’ assets from property taxation and granting retroactive property tax refunds has an adverse impact on Taxing Entities’ ability to effectively budget and implement operational decisions.

II. The Settlement Agreement

On January 8, 2017, DOR and Taxpayers entered into a settlement agreement compromising a property tax dispute, without providing any notice to or receiving consent from Taxing Entities. (Trial Ex. 91; Tr. 696:19–697:3; R. ____). In the Settlement Agreement, DOR agreed to exempt millions of dollars of Taxpayers’ assets used to provide FTCC’s wireless cellular service and Diversified’s landline telephone service from property taxation pursuant to the Rural Telephone Service Exemption codified in section 12-37-220(B)(10) of the South Carolina Code (the “Exemption”). (Trial Ex. 91; R. ____). DOR further agreed to grant FTCC and Diversified the Exemption for tax years 2010 through 2016.³ (*Id.*; R. ____). DOR and Taxpayers also agreed that FTCC and Diversified’s property used to provide any other services was *not* entitled to the Exemption. (*Id.*; R. ____).

Further, because DOR could not originally tell from the face of Taxpayers’ original property tax returns that Taxpayers were attempting to claim the Exemption or which assets Taxpayers were attempting to claim as exempt, (Trial Exs. 82 & 83; Tr. 131:13–15 & 692:23–694:4; R. ____), DOR and Taxpayers agreed that FTCC and Diversified would file amended property

³ Diversified did not exist until 2012, and therefore was only granted the exemption beginning in 2013.

tax returns for every applicable year to allow DOR to calculate and certify revised assessments to the applicable counties. (Trial Ex. 91; R.__). Once DOR made its revised assessments, DOR agreed to certify the final assessments for the applicable years, which purported to exempt Taxpayers' property used to provide FTCC's wireless cellular service and Diversified's landline telephone service from property taxation. (*Id.*; R.__). The Settlement Agreement stated that once each County received the certified final assessments, each County would recalculate Taxpayers' property tax amount for each tax year. (*Id.*; R.__). In other words, DOR (without Taxing Entities' input, knowledge, or consent) represented to Taxpayers in the Settlement Agreement that Taxpayers would receive refunds from Taxing Entities for the taxes Taxpayers previously paid to Taxing Entities.

For each year, FTCC and Diversified would either make payment if additional taxes were owed (which none were according to the Settlement Agreement), or, if an overpayment was determined, "FTCC and Diversified agree to provide the counties an option to refund or credit the overpayment over the three property tax years immediately succeeding the property tax year in which the overpayment is determined." (Trial Ex. 91, §§ 2.1–2.4; R.__).

Following the execution of the Settlement Agreement by DOR and Taxpayers, FTCC and Diversified filed revised PT-427 forms⁴ for tax years 2010 through 2016. (Trial Ex. 92; R.__). The revised forms made two primary changes to the original forms: (1) the assets were segregated by line of business and (2) typewritten label of "exempt" was inserted near the top righthand corner for only the assets being claimed as exempt pursuant to the Exemption. (*See id.*; R.__). Based off the information provided in the amended forms, DOR calculated revised assessments. These

⁴ Each year, Taxpayers are required to file a property tax return, which typically consists of the main utility property tax return form, a PT-420, and a supplemental form, either a PT-427 or a PT-429. (Order 26; R.__).

revised assessments exempted Taxpayers' assets used for FTCC's wireless cellular service and for Diversified's landline telephone service. (Trial Exs. 12, 17, 30, 43, 48, 59, 64, & 69; R. __).

Over five months after DOR and Taxpayers executed the Settlement Agreement, and for the very first time, DOR provided notice of the Settlement Agreement to the county auditors for each County on June 14, 2017. (Stip of Facts. ¶ 48; Trial Exs. 115–119; R. __). On June 21, 2017, Clarendon County received a copy of the Settlement Agreement, which was dated January 8, 2017. Then, on July 6, 2017, DOR sent letters to each of the Counties informing them that:

Per the signed settlement agreement, both [FTCC and Diversified] will now be subject to the rural telephone exemption just as [Farmers] has been in years prior. . . . Please use the following assessments when billing these companies for tax years 2010 through 2016, and in doing so take careful notice of the “exempt” or “non-exempt” clarification on each line item. If the assessment is labeled as “exempt,” then the corresponding assessment is exempt from the county portion of the millage. If the assessment is labeled as “non-exempt,” then the corresponding assessment is subject to all millage for billing purposes.

(Trial Exs. 124–28; R. __). Attached to each July 6, 2017 letter sent to the Counties were documents called Utilities Supplemental Certifications (collectively, the “Supplemental Certifications”) for FTCC for tax years 2010 through 2016 and for Diversified for tax years 2013 through 2016. (*See id.*; R. __). The Supplemental Certifications sent to Taxing Entities by DOR provided that Taxpayers were entitled to multi-million-dollar refunds from Taxing Entities for those tax years. (*See id.*; R. __).

III. Taxpayers' Property Tax Returns

A. Taxpayers' Original Property Tax Returns

Each year, Taxpayers are required to file a property tax return. (Order 26; R. __). For tax years 2010 through 2016, FTCC filed an original property tax return with DOR within each respective tax year. (Order 5; Trial Exs. 18, 19, 31, 39, & 44; Stip. of Facts ¶¶ 14, 19, 22, & 26; R. __). These original tax returns submitted by FTCC for tax years 2010 through 2016 did not

include the word “exempt” anywhere on the returns or within the documents attached to the returns, and failed to include any statement that an exemption was being applied for, claimed, or requested. (Order 28, 78, & 84; R. __).

On April 25, 2017, FTCC filed an original property tax return for tax year 2017, separately listing certain assets as exempt and other assets as non-exempt. (Order 8; Stip. of Facts ¶ 27; R. __). On April 23, 2018, FTCC filed an original property tax return for tax year 2018, separately listing certain assets as exempt and other assets as non-exempt. (Order 6; Stip. of Facts ¶ 28; R. __).

For tax years 2013 through 2017, Diversified filed original property tax returns with DOR within each respective tax year. (Trial Exs. 55, 60, 65; Stip. of Facts ¶¶ 15, 18, 23, 26, & 27; R. __). Like the original returns submitted by FTCC, the original returns submitted by DOR for tax years 2013 through 2017 did not include the word “exempt” anywhere on the returns or within the documents attached to the turns, and failed to include any statement that an exemption was being applied for, claimed, or requested. (Order 28, 78, & 84; R. __).

On April 23, 2018, Diversified filed an original property tax return for tax year 2018 separately listing certain assets as exempt and other assets as non-exempt. (Stip. of Facts. ¶ 28; R. __).

Taylor Ingram, DOR’s utility assessment coordinator, oversees the property tax return process and testified as to the substance of Taxpayers’ original property tax returns for tax years 2010 through 2016. Mr. Ingram is responsible for reviewing property tax returns of utility companies, like Taxpayers and other telephone companies and rural telephone cooperatives. (Tr. 101:7–13; R. __). After Mr. Ingram reviewed Taxpayers’ original returns, he stated that he could not tell from the face of those returns whether Taxpayers were claiming any property as exempt. (Tr. 131:13–15; R. __) (“Upon receipt of this return, there would have been no indication that they were asking for any sort of exemption on any property.”); (Tr. 160:23–161:1, & Tr. 166:20–

167:20; R.__) (stating that the mere inclusion of the word “rural” on Form PT-427 was insufficient to claim the Exemption).

B. Taxpayer’s Amended Property Tax Returns

On January 20, 2017, FTCC filed amended PT-427 forms for tax years 2010 through 2016 which, for the first time, separately listed some assets as exempt and others as non-exempt for tax years 2010 through 2016. (Order 84; R.___). On January 20, 2017, Diversified filed amended PT-427 forms for tax years 2013 through 2016. (Order 84; R.___). However, these amended forms did not include the word “exempt” anywhere on the returns or within the documents attached to the turns, and failed to include any statement that an exemption was being applied for, claimed, or requested. Taxpayers provided no evidence to the ALC that Diversified ever filed an amended property tax return for tax year 2017.

STANDARD OF REVIEW

The ALC’s decision may be reversed or modified “only if substantive rights of the appellant [have] been prejudiced because the ALC’s decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion, or affected by other error of law.” *S.C. Dep’t of Corr. v. Mitchell*, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008). “In determining whether the ALC’s decision was supported by substantial evidence, the Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion as the ALC.” *Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Envtl. Control*, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014) (citing *Hill v. S.C. Dep’t of Health & Envtl. Control*, 389 S.C. 1, 9–10, 698 S.E.2d 612, 617 (2010)).

ARGUMENTS

I. THE ALC CORRECTLY FOUND THAT IT HAD SUBJECT MATTER JURISDICTION PURSUANT TO SECTION 12-60-2130 AND 12-60-2150.

The ALC correctly concluded that it had subject matter jurisdiction to hear this case pursuant to sections 12-60-2130 and 12-60-2150 of the South Carolina Code. Both statutes provide local governing bodies the right to request a contested case hearing when they disagree with a department determination. *See* S.C. Code Ann. § 12-60-2130 & -2150(H). Taxpayers assert a number of reasons why a department determination was not issued by DOR in this case. However, each argument presented by Taxpayers is premised on the false idea that DOR’s final decisions related to property tax exemptions and refunds are shielded from judicial review, **if DOR wants their final decisions to be shielded from judicial review**. Under Taxpayers’ argument, so long as DOR never issues a document specifically entitled “department determination,” a local governing body has no right whatsoever to appeal DOR’s final decision—no matter how adverse the impact DOR’s final decision may be on a local governing body. Each one of Taxpayers’ arguments begs this question: if this case does not present the exact scenario where a local governing body’s statutorily granted appeal rights are implicated, when would a local governing body ever be able to exercise the appeal rights so clearly granted to them by sections 12-60-2130 and 12-60-2150?

“Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong.” *S.C. Dept. of Revenue v. Club Rio*, 392 S.C. 636, 641, 709 S.E.2d 690, 693 (Ct. App. 2011) (quoting *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237–38, 442 S.E.2d 589, 600 (1994)). The subject matter jurisdiction of the ALC is set by the parameters prescribed by the General Assembly. *Amisub of South Carolina, Inc. v. S.C. Dep’t of Health & Entl. Control*, 403 S.C. 576, 585, 743 S.E.2d 786, 791 (2013). The General Assembly has

statutorily authorized the ALC to preside over contested case hearings. *Id.* (citing S.C. Code Ann. § 1-23-600(A)).

This case involves Taxing Entities' request for a contested case hearing in response to a department determination issued by DOR. Section 12-60-2130 states that a "local governing body who disagrees with the department determination may request a contested case hearing before the [ALC] if he files an action within thirty days of the date of the department's determination." S.C. Code Ann. § 12-60-2130. Similarly, section 12-60-2150 states that a "local governing body who disagrees with the department determination may request a contested case hearing before the [ALC] by filing the request in accordance with the [ALC] rules within thirty days of the date of the department determination." S.C. Code Ann. § 12-60-2150(H).

Thus, pursuant to both sections 12-60-2130 and 12-60-2150, Taxing Entities' had the statutory right to request a contested case hearing when they disagreed with the department determination issued in this case. For the reasons explained more fully herein, the ALC correctly concluded that it had subject matter jurisdiction to hear this case pursuant to sections 12-60-2130 and 12-60-2150.

A. Taxpayers' Interpretation Conditions Taxing Entities' Right to Appeal a DOR Decision Solely on a Taxpayer's Actions, Permits DOR to Dictate Whether its Final Decisions are Shielded From Judicial Review, and Creates Absurd Results.

Both sections 12-60-2130 and 12-60-2150 provide a county or local governing body with the right to request a contested case hearing if they disagree with a department determination. S.C. Code Ann. §§ 12-60-2130 & -2150. Taxpayers spend considerable time obfuscating the pertinent issues of this case by discussing all the ways DOR's final decision in this case was not a department determination. Taxpayers would have this Court interpret the relevant statutes in a manner which (1) conditions a local governing body's right to appeal a final decision of DOR solely on a taxpayer's actions; (2) permits DOR to dictate whether its final decisions are shielded from judicial

review based upon the form of the documents issued by DOR, rather than the substance of the decisions made by DOR; and (3) creates absurd results.

First, Taxpayers argue that a county may only request a contested case hearing **if the taxpayer disagrees with DOR**. Under this interpretation, a county's right to challenge a decision that clearly affects it financially would be dependent upon whether a taxpayer initiated the administrative review process and then subsequently decided not to settle with DOR. (Order 46–47; R.____). This argument is not grounded in the relevant statutory scheme and makes no logical sense. To find that counties do not have a right to challenge DOR's final decisions unless a taxpayer forces a department determination conflicts with sections 12-60-2130 and 12-60-2150. If the Court were to agree with Taxpayers' interpretation, then the Court would also have to question when a local governing body would ever be able to exercise the appeal rights so clearly granted to them by sections 12-60-2130 and 12-60-2150.

Sections 12-60-2130 and 12-60-2150 plainly reflect that the General Assembly intended to grant local governing bodies an **independent** right to request a contested case hearing when they disagree with a department determination issued by DOR. (Order 47; R.____). Specifically, these statutes provide that either the taxpayer **or** the local governing body can request a contested case hearing after a department determination is issued. *See* S.C. Code Ann. §§ 12-60-2130 & -2150(H). These statutes do not require that a taxpayer first request a contested case for a county to have the right to request a contested case, *see id.*, so why would a county's appeal rights be conditioned on a taxpayer's actions up to that point? To find that the Settlement Agreement and Supplemental Certifications in this case did not result in a department determination would create conflict with the statutory scheme because counties would have the statutory right to appeal but no practical means to procedurally exercise that right. *See Enos v. Doe*, 380 S.C. 295, 305, 669 S.E.2d 619, 623 (Ct. App. 2008) ("A court should not consider a particular clause in a statute as being construed

in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law.”).

Additionally, permitting DOR to dictate whether something is a department determination based upon the form of the documents issued by DOR, rather than the substance of DOR’s decisions, would set a dangerous precedent of permitting a state agency to decide *when* its final decisions are subject to judicial review. (Order 46; R. __). Taxpayers assert that the fear that such an interpretation would allow DOR to manipulate and circumvent local governing bodies’ appeal rights is unfounded and unsupported. Contrary to Taxpayers’ representation to this Court that this fear is “unsupported,” the record shows that this fear was actually realized in this case.

At the hearing, Taxpayers’ tax attorney, Jeffrey Allen, testified that Taxpayers included within the first draft of the Settlement Agreement a provision which required DOR to issue a “department determination.” (Tr. 699:9–16; R. ____). Mr. Allen explained that this was done to ensure those potentially affected by the exemption of Taxpayers’ assets (i.e., Taxing Entities) had a right to appeal. (*Id.* at 708:1–4; R. ____). However, **DOR specifically decided to exclude the provision requiring the issuance of a department determination in order to foreclose any right of appeal.** (*Id.* 708:4–6; R. ____). This is a decision that wiped millions of dollars of taxable property off of Taxing Entities’ tax rolls, and DOR specifically tried to ward off judicial review. DOR’s intentional decision not to label its final decision a “department determination” should not shield DOR’s decision from judicial review. Sections 12-60-2130 and 12-60-2150 show that the General Assembly clearly envisioned that counties had a right to seek judicial review of final decisions made by DOR.

Furthermore, DOR’s testimony on this issue illustrates the absurd result created by the interpretation advanced by Taxpayers. In DOR’s 30(b)(6) deposition, DOR’s designee was asked to consider a hypothetical in which a settlement agreement took \$50,000,000 of tax revenue off of

a county's books as result of a disputed issue being resolved by settlement agreement between a taxpayer and DOR. (Ruple Dep. Designations 79:22–80:14; R. __). **DOR's official position: if the \$50,000,000 disputed issue was resolved by a settlement agreement and no document labeled a "department determination" was issued from within the Office of General Counsel, then the county would have no right to appeal that decision.** (*Id.* at 80:8–14; R. __).

This is clearly an absurd result which the General Assembly could not have intended. *See Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) ("The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd."). If a decision by DOR to take \$50,000,000 worth of property tax revenue from a county does not trigger a county's appeal rights, Taxing Entities ask again: when would a county ever be able to exercise those rights so clearly granted to them by sections 12-60-2130 and 12-60-2150?

DOR admitted its decision to exempt Taxpayers' assets was final once it sent the Supplemental Certifications to Taxing Entities, and the Supplemental Certifications were necessary in order for Taxing Entities' to generate revised tax bills exempting Taxpayers' assets. (Tr. 106:2–14; R. __). Thus, despite Taxpayers' attempt to classify DOR's final decision as something other than a department determination, this Court should find that the facts, circumstances, and statutory scheme indicate that the Supplemental Certifications, particularly when viewed in light of the Settlement Agreement, were reviewable department determinations. Therefore, the Court should uphold the ALC's finding that it had subject matter jurisdiction to hear this case.⁵

⁵ Taxpayers also incorrectly argue that the ALC concluded that it had jurisdiction over *all* disagreements between a county government and DOR. (Respondents/Appellants' Initial Brief 23). However, the ALC made no such finding, and the ALC's holding with respect to subject matter jurisdiction was much more limited than this. The ALC recognized that its subject matter jurisdiction, as well as a local governing body's right to request a contested case hearing, was

B. The Settlement Agreement and Supplemental Certifications Resulted in a Department Determination from which Taxing Entities Could Request a Contested Case Hearing.

Taxpayers incorrectly argue that no department determination was issued in this case because DOR never issued a specific document entitled “department determination.” However, there is no requirement that a department determination be in a particular form. *See* S.C. Code Ann. § 12-60-30(10). DOR’s decision to resolve the dispute with Taxpayers by (1) entering into the Settlement Agreement with Taxpayers and (2) sending the Supplemental Certifications to Taxing Entities, which, if not objected to by Taxing Entities would have required Taxing Entities to issue substantial refunds to Taxpayers, resulted in a department determination from which Taxing Entities had a right to request a contested case hearing.

The Revenue Procedures Act defines a “department determination” as “the final determination within the department from which a person may request a contested case hearing before the [ALC].” S.C. Code Ann. §12-60-30(10)). Aside from the requirement that a “final determination” be made from somewhere within DOR, the statutes do not provide further guidance or explanation as to what qualifies as a department determination. Because neither “final” nor “determination” is defined by the relevant statutes, the Court can look to the usual definitions to determine their meanings. *Lee v. Thermal Eng’g Corp.*, 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002) (“Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.”). “Determination” has been generally defined as “the resolving of a question by argument or reasoning.” (Order 43–44 (citing Merriam Webster,

conditioned upon DOR’s issuance of a department determination. (*See* Order 39–41; R. __). Moreover, Taxpayers cite *Amisub of S.C., Inc. v. S.C. Dep’t of Health & Envtl. Control*, 403 S.C. 576, 743 S.E.2d 786 (2013) for an analogous proposition that the ALC does not have jurisdiction over all DHEC licensing decisions. (Respondents/Appellants’ Initial Brief 23). However, that is a gross overstatement of what *Amisub* held. The Supreme Court explicitly found that no written decision of any kind was issued by DHEC in that case. *Amisub*, 403 at 595–96, 743 S.E.2d at 796–97.

<http://www.merriam-webster.com/dictionary/determination> (last visited Feb. 14, 2019); R.____).⁶

In addition, South Carolina Revenue Procedure #06-2 defines a department determination as follows:

Department Determination – The final determination of an appeal approved by the Director or his designee made in accordance with this Revenue Procedure. This determination may be appealed to the Administrative Law Court. **If a document is consistent with this definition, it will be deemed to be the department determination even though it may be entitled a final agency determination or some other name.**

(Trial Ex. 184, II(B) (emphasis added); R.____). Thus, even DOR’s own internal policy does not define a department determination beyond the definition provided in section 12-60-30(10), with the exception of stating that it is a final determination of an appeal “approved by the Director or his designee.” (*Id.*; R.____).⁷

In this case, DOR entered into the Settlement Agreement with Taxpayers, and DOR did not issue any separate or distinct document entitled “department determination.” However, as shown by DOR’s own internal policy, the fact that there is no document entitled “department

⁶ With respect to the language “from which a person may request a contested case hearing before the [ALC]” within the statutory definition of “department determination,” the ALC’s analysis is sound and should be upheld. (Order 43; R.____). A “department determination” is something from which you can “request a contested case hearing before the [ALC].” S.C. Code Ann. § 12-60-30(10). At the same time, however, the right to request a contested case hearing under sections 12-60-2130 and 12-60-2150 is based on the existence of a department determination. (Order 43; R.____). Thus, the definition of department determination is circular, and “the phrase ‘from which a person may request a contested case hearing’ is simply an affirmation of the finality of the decision and not a requisite for a ‘department determination.’” (*Id.*; R.____).

⁷ Although Taxing Entities disagree, Taxpayers and DOR, argued throughout this case that the Settlement Agreement was approved by the Director. The ALC decided that the Settlement Agreement alone was not a “final” determination until the Supplemental Certifications were sent to Taxing Entities, but there is no reason that the Settlement Agreement alone could not satisfy DOR’s own internal policy on what constitutes a department determination. (*See* Trial Ex. 184, II(B); R.____). The Settlement Agreement was DOR’s determination of taxpayers’ appeal and was approved by the Director’s designee and DOR attorney, Bill Condon (Trial Ex. 91; R.____). Therefore, the Settlement Agreement satisfied DOR’s internal definition of a department determination. (*See* Trial Ex. 184, II(B); R.____).

determination” has no bearing on whether or not DOR actually issued a department determination. (Trial Ex. 184 at II(B); R. ____). In order to reach a decision regarding whether Taxpayers’ assets were eligible for the Exemption, a “determination” was necessarily involved because factual and legal reasoning were necessary to decide whether Taxpayers’ property was entitled to the Exemption and whether Taxpayers were entitled to refunds. (Order 44; R. ____). Therefore, the Settlement Agreement was a determination by DOR as to whether Taxpayers’ property was taxable.

DOR’s determination to exempt certain property of Taxpayers became DOR’s “final” determination of Taxpayers’ appeal when DOR sent the Supplemental Certifications to Taxing Entities. (Order 44–45; R. ____). DOR not only admitted that its decision was final once it sent the Supplemental Certifications, but also that the Supplemental Certifications were necessary for Taxing Entities to generate revised tax bills exempting Taxpayers’ assets. (Tr. 106:2–4; R. ____). The Supplemental Certifications corrected and clarified the assessments previously provided to Taxing Entities, and the Supplemental Certifications did not request or allow any comment by Taxing Entities. (Trial Exs. 124–28; R. ____).

The finality achieved by the Supplemental Certifications establishes that they served as DOR’s final determination because they purported to require Taxing Entities to issue substantial refunds to Taxpayers, if Taxing Entities did not object by requesting a contested case hearing. (Order 45 (citing S.C. Code Ann. § 12-60-30(10)). Therefore, the ALC correctly held that the Supplemental Certifications were “department determinations.”

C. Settlement Agreements and Department Determinations are Not Mutually Exclusive Outcomes for a Taxpayer’s Appeal of a Proposed Assessment.

Taxpayers incorrectly argue that a settlement agreement and a department determination are mutually exclusive outcomes for a taxpayer’s protest. Section 12-60-450(D)(1) states “[a]fter the protest is filed, the taxpayer and department shall stipulate the facts and issues upon which they

can agree and **may attempt to settle the case.**” S.C. Code Ann. § 12-60-450(D)(1) (emphasis added). Thus, DOR is permitted, but not required, to attempt to settle a disputed case with a taxpayer.

Section 12-60-450(E)(1) states that “[t]he department **will make a department determination** using the information provided by the taxpayer. . . .” S.C. Code Ann. § 12-60-450(E)(1) (emphasis added). Nothing within section 12-60-450 contemplates that DOR will not issue a department determination if DOR and the taxpayer enter into a settlement agreement. Rather, section 12-60-450 simply (1) **permits** DOR to settle disputes with taxpayers and (2) **mandates** that DOR will issue a department determination once a taxpayer has appealed a proposed assessment. *See* S.C. Code Ann. § 12-60-450. Interpreting section 12-60-450 to permit DOR to settle disputes with a taxpayer but mandating that DOR issue a department determination once a taxpayer has appealed a proposed assessment harmonizes section 12-60-450 with sections 12-60-2130 and 12-60-2150. Both sections 12-60-2130 and 12-60-2150 grant counties statutory rights to appeal a department determination with the ALC. DOR cannot sidestep its mandatory requirement to issue a department determination under 12-60-450(E)(1) by settling a taxpayer’s appeal of a proposed assessment.

If the General Assembly had intended a settlement agreement entered into by DOR and a taxpayer to relieve DOR of its independent statutory duty to issue a department determination in every case a taxpayer appealed a proposed assessment, then the General Assembly could have expressly done so. *See Giannini v. S.C. Dep’t of Transp.*, 378 S.C. 573, 587, 664 S.E.2d 450, 457 (2008) (“If the Legislature had intended for the \$600,000 aggregate cap to be divided in proportion to the verdicts awarded to each plaintiff, it could have said so.”); *Carroll v. Guess*, 302 S.C. 175, 177, 394 S.E.2d 707, 708 (1990) (“If the legislature had intended Section 38-77-180 to overrule

the substantial right of a defendant to be tried in the county of his residence as contained in the mandatory language of Section 15-7-30, it would have so stated”).

For example, section 12-60-450(D) states the following: “**After the protest is filed**, the taxpayer and department shall stipulate the facts and issues upon which they can agree and may attempt to settle the case.” S.C. Code Ann. § 12-60-450(D)(1) (emphasis added). The General Assembly could have done the same with section 12-60-450(E)(1) by merely inserting language to the effect of “**only after the taxpayer’s and DOR’s attempt to settle the case has failed**, DOR will make a department determination.” However, the General Assembly did not do so in section 12-60-450. Under the express language of section 12-60-450, a settlement agreement is **permitted**, whereas DOR’s requirement to issue a department determination once a taxpayer has appealed a proposed assessment is **mandatory**.

Taxpayers also cite to Revenue Procedure #06-2 in support of the same argument. That is, a department determination is not required if DOR and a taxpayer enter a settlement agreement. Taxpayers’ argument misconstrues the language of Revenue Procedure #06-02, which states:

The Department representative will review the file and either agree with the taxpayer and close the case file, or agree with all or part of the proposed assessment in which case the Department representative will draft a Department determination setting forth the facts, issues and support for the position of the Department . . .

(Trial Ex. 184, III(B)(2); R.__). Revenue Procedure #06-2 further provides that “[i]f the Department representative determines that the proposed assessment was correct or determines a matter adverse to the taxpayer, a Department determination will be issued.” (*Id.* at III(B)(3); R.__). In other words, if DOR’s representative disagrees with the taxpayer **over any single issue** in the proposed assessment, DOR’s representative **must** issue a department determination.

That is exactly what occurred in this case. The Settlement Agreement was a compromise between DOR’s initial position and Taxpayers’ initial position on appeal. In the Settlement

Agreement, DOR agreed that certain assets of Taxpayers were entitled to the Exemption, whereas other assets of Taxpayers (which Taxpayers initially asked DOR to exempt) were not. (*See* Trial Ex. 91; R.____). As a result, DOR’s act of not granting the Exemption for all of Taxpayers’ requested assets shows that DOR disagreed with Taxpayers on at least one issue. Indeed, Taxpayers admit that “the settlement and certifications *were* adverse to the [Taxpayers], in part, because they did not provide all the relief the [Taxpayers] had sought.” (Respondents/Appellants’ Initial Brief 22) (emphasis in original). Similar to section 12-60-450, Revenue Procedure #06-2 mandates that, under the facts of this case, DOR issue a department determination.

DOR’s failure to issue a document entitled “department determination” has no bearing on whether a department determination was issued in this case. (*See* Trial Ex. 184, II(B); R.____). Indeed, DOR issued a determination that certain assets of Taxpayers were entitled to the Exemption, whereas others were not, when DOR entered into the Settlement Agreement with Taxpayers. This determination became DOR’s final determination—and, thus, the “department determination”—when the Supplemental Certifications were sent to Taxing Entities.

D. A Department Determination is Not Required to be in a Specific Form or Drafted by a Particular Person.

Taxpayers incorrectly argue that a department determination must be (1) drafted and prepared by a DOR attorney; and (2) inform a taxpayer of his right to request a contested case hearing within thirty days. To do so, Taxpayers take the statutory definition of department determination and impose a number of conditions onto that term that are not present in the relevant statutes. To restate, a department determination is simply “the final determination within the department from which a person may request a contested case hearing before the [ALC].” S.C. Code Ann. § 12-60-30(10).

1. *A department determination is not required to be prepared by DOR's counsel.*

Taxpayers argue that the Supplemental Certifications cannot be a department determination because they were not prepared by DOR's counsel. To support this argument, Taxpayers rely on the definition of "department representative." A "department representative" is defined as "the person appointed by the department to prepare the department's determination and represent the department at the contested case hearing." S.C. Code Ann. § 12-60-30(11). Taxpayers argue that because department representatives prepare department determinations, then any document which is not prepared by a department representative cannot possibly be a department determination. This argument is logically unsound and adds requirements to the statutory definition of department determination that are not found in the legislative text by attempting to fuse the definition of department representative onto the definition of department determination. The statutory definition of department determination does not even mention department representatives, much less *require* the involvement of a department representative in order for a department determination to exist. *See* S.C. Code Ann. § 12-60-30(10).

In addition, Taxpayers attempt to equate the phrase "represent the department at the contested case hearing" to "an attorney who provides the department's legal representation at contested case hearings." Taxpayers' argument strains the plain language of the Section 12-60-30(11). There is no actual authority which requires an attorney to prepare a department determination or that the phrase "represent DOR at the contested case hearing" translates to "provides legal representation to DOR at the contested case hearing." Neither the statutes nor Revenue Procedure #06-2 require a department determination be prepared by an attorney. Instead, a department determination only requires that a final determination be made within DOR. Any interpretation which seeks to condition the issuance of a department determination on being prepared by a DOR attorney does not comport with the overall statutory scheme.

It is difficult to believe that the General Assembly, by using the term “represent” in a definition, meant to delegate the decision-making process and all responsibility for drafting a department determination to only DOR’s attorneys. A more logical interpretation of Section 12-60-30(11) is that a “department representative” is any individual within DOR who is tasked with preparing the final decision of DOR and will also stand behind the positions asserted within the department determination at a contested case hearing by providing testimony explaining DOR’s positions. In fact, that is exactly what happened here. Mr. Ingram sent out the Supplemental Certifications and provided testimony on behalf of DOR at the contested case hearing. (*See generally* Tr. 99–238; R.__). Therefore, this Court should reject Taxpayers’ argument that a department determination is required to be prepared by a DOR attorney.

2. *DOR’s failure to inform Taxpayers of their right to request a contested case hearing within 30 days does not negate the existence of a department determination.*

Taxpayers also argue that neither the Settlement Agreement nor the Supplemental Certifications constitute department determinations because neither contains language informing Taxpayers of their right to request a contested case hearing within thirty days. The ALC’s conclusions with respect to this argument are sound and should be affirmed. (*See* Order 49; R.__).

The Supplemental Certifications do not meet the requirements cited by Taxpayers for the simple reason that the Supplemental Certifications were not intended for Taxpayers, but, rather, for Taxing Entities. Additionally, given the fact that the Settlement Agreement was a negotiated agreement between DOR and Taxpayers, there is no practical reason whatsoever for either the Settlement Agreement or the Supplemental Certifications to have contained language informing Taxpayers of their right to request a contested case hearing. Indeed, Taxpayers waived their right to request a contested case hearing in the Settlement Agreement. (*See* Trial Ex. 91, ¶ 1.1; R.__).

The ALC correctly concluded that DOR's failure to explain the basis of its decision or to inform a taxpayer of its right to request a contested case hearing does not negate the existence of a department determination. (Order 49; R. __). DOR's failure to comply with section 12-60-450(E)(2) is not relevant to the issues of whether a department determination was issued and whether Taxing Entities had a right to request a contested case hearing challenging the department determination. Therefore, the Court should affirm the ALC's finding that it had subject matter jurisdiction to hear this case.

E. The ALC's Analysis of Sections 12-60-450, 12-60-2130, 12-60-2150 Creates No Conflict with Section 12-4-320.

Taxpayers argue that by finding the Settlement Agreement resulted in a department determination from which Taxing Entities had a statutory right to appeal, the ALC nullified section 12-4-320(4). However, no conflict with section 12-4-320(4) is created by the ALC's finding that the Taxing Entities have the right to request a contested case hearing under sections 12-60-2130 and 12-60-2150.

Taxpayers started the entire appeal process by filing their written protest with DOR. *See* S.C. Code Ann. § 12-60-450(A). DOR was then *permitted* to attempt to settle the case with the Taxpayers. S.C. Code Ann. § 12-60-450(D)(1). DOR was also *permitted* to enter into a written settlement agreement with the Taxpayers. S.C. Code Ann. § 12-4-320(4). Once the Settlement Agreement was executed, neither DOR nor Taxpayers were entitled to reopen the Settlement Agreement through the administrative or judicial process, except in limited circumstances. *Id.* However, once the appeal process was commenced by Taxpayers filing their written protest, section 12-60-450(E) *required* DOR to, at some point, issue a department determination. Sections 12-60-2130 and 12-60-2150 both provided Taxing Entities with the right to request a contested case hearing once the department determination was issued.

The ALC’s analysis of sections 12-60-450, 12-60-2130, and 12-60-2150 does not create any conflict with section 12-4-320. Therefore, the Court should uphold the ALC’s finding that it had subject matter jurisdiction to hear this case.

II. THE ALC CORRECTLY FOUND THAT THE SETTLEMENT AGREEMENT IS NOT EFFECTIVE TO BIND A NON-PARTY TO ITS TERMS.

Taxpayers argue that the ALC did not have jurisdiction to hear this case because of section 12-4-320(4)’s prohibition on re-opening settlement agreements. Taxpayers attempt to stretch the language of these statutes so that section 12-4-320(4)’s prohibition on re-opening settlement agreements applies also to non-parties to the Settlement Agreement. However, Taxing Entities are not re-opening the Settlement Agreement at all, but are, rather, ignoring the Settlement Agreement—because they are not parties to the agreement and under fundamental principles of contract law are not bound by its terms. This does not nullify section 12-4-320(4), and there is no conflict with sections 12-60-450, 12-60-2130, or 12-60-2150.

Section 12-4-320 provides that DOR may “enter into a written agreement with a person with regard to tax liability[, and] [i]f the agreement is approved by the director, it is final and conclusive and the case may not be reopened by administrative or judicial action or otherwise, except in cases of fraud, malfeasance, or misrepresentation.” S.C. Code Ann. § 12-4-320(4). There is no question that DOR is entitled to enter into an enforceable settlement agreement with a taxpayer resolving a disputed tax liability, and that settlement agreement is “final and conclusive” with respect to DOR and the taxpayer (absent fraud, malfeasance, or misrepresentation).

However, that is a fundamentally different issue than the argument advanced by Taxpayers. In this case, the question is not whether the Settlement Agreement is final and conclusive with respect to DOR and Taxpayers. Instead, the question is whether the Settlement Agreement is final and conclusive with respect to Taxing Entities who were **not** parties to the Settlement

Agreement—the same Taxing Entities that are deeply and adversely impacted by the Settlement Agreement.

General contract principles apply in the construction of the Settlement Agreement because settlement agreements are reviewed as contracts under South Carolina law. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009). A fundamental tenet of contract law is that a contract cannot bind a party who has not assented to its terms. *Edens v. Laurel Hill, Inc.*, 271 S.C. 360, 364, 247 S.E.2d 434, 436 (1978) (“It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms.”); *Drafts v. Shull Sausage Co., Inc.*, 276 S.C. 52, 54, 275 S.E.2d 577, 577 (1981) (“Since the [third-party defendant] was not a party to the original contract, . . . it owed no duty or obligation thereunder.”); *Florence City-County Airport Comm’n v. Air Terminal Parking Co.*, 283 S.C. 337, 341, 322 S.E.2d 471, 473 (Ct. App. 1984) (“If one of the parties has not agreed, then a prerequisite to formation of the contract is lacking.”).⁸

Section 12-4-320(4) permits DOR to “enter into a written agreement with a person.” The intent of such language is to bind the contracting parties to the agreement. The statute does not permit DOR to enter into a written agreement with a person **that binds a third person who is otherwise a stranger to the settlement agreement**. Absent clear authorization from the General

⁸ Additionally, the general rule in South Carolina is that courts “will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 33, 644 S.E.2d 663, 673 (2007) (citing *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 555, 606 S.E.2d 752, 758 (2004)). Therefore, if the Settlement Agreement (1) granted the Exemption to Taxpayers’ assets which are not used to provide rural telephone service pursuant to section 12-37-220(B)(10), or (2) granted illegal retroactive refunds in contravention of the relevant statutes, the Settlement Agreement’s terms which exempted Taxpayers’ assets or entitled Taxpayers to refunds would be unenforceable under South Carolina law. *See id.*

Assembly permitting DOR to enter into settlement agreements binding third parties, such a contract is unenforceable as it relates to that third party.⁹

A. Taxing Entities' Rights to Challenge DOR's Decision are Not Dependent upon or Derivative of the State in this Context.

Taxpayers argue that this case is an appropriate circumstance where a contract (the Settlement Agreement) can bind third parties who did not sign it (Taxing Entities) because the Taxing Entities' rights "are dependent on or derivative of a signatory's rights." However, the only right of Taxing Entities implicated by Taxpayers' erroneous interpretation of section 12-4-320 is the statutory right to appeal a department determination conferred by sections 12-60-2130 and 12-60-2150. This statutory appeal right is in no way derivative of or dependent on the rights of either of the signatories to the Settlement Agreement.

"Article VIII of the South Carolina Constitution mandates 'home rule' for local governments." *Riverwoods, LLC v. Cty. of Charleston*, 349 S.C. 378, 385, 563 S.E.2d 651, 656 (2002) (quoting *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 37, 530 S.E.2d 369, 373 (2000) (internal quotations omitted)).¹⁰ The South Carolina Constitution provides that "all laws

⁹ Further, section 12-4-320 provides that settlement agreements are final and conclusive "*if the agreement is approved by the director.*" S.C. Code Ann. § 12-4-320(4) (emphasis added). There is no evidence that this occurred in this case. The then-acting director, Rick Reames, III, did not sign the Settlement Agreement nor is there an acknowledgement in the document that he approved the Settlement Agreement. (See Trial Ex. 91; R.____). Mr. Reames also has no specific recollection of approving the Settlement Agreement. (Trial Ex. 141 ¶ 7 (Mr. Reames in an affidavit stating that "I do not have a specific recollection at this time of meeting with the then General Counsel for Litigation to authorize the settlement of a matter involving [Taxpayers] in a property tax matter related to the qualification of certain Farmers' assets for the rural telephone exemption."); see also *id.*, n.1 ("I do recall discussing within the Department issues related to a parent company with wholly owned subsidiaries and the impact of [CFRE, LLC] on state and local taxes. **It is possible that this could have been** in conjunction with a discussion regarding approval of the Farmers settlement.") (emphasis added); R.____). Mr. Reames's memory served him no better at his deposition. (Reames Dep. Designations 28:13–19) ("I didn't and still don't recall having the conversation with [DOR's General Counsel for Litigation] about this specific settlement."); R.____).

¹⁰ See also *Hospitality Ass'n of S.C., Inc. v. Cty. of Charleston*, 320 S.C. 219, 224–25, 464 S.E.2d 113, 117 (1995) ("For generations, legislative delegations of the General Assembly controlled virtually every aspect of local government. . . . As ratified, new Article VIII directed the General

concerning local government shall be liberally construed in their favor.” *Id.* (quoting S.C. Const. art. VIII, § 17); *see also Williams v. Town of Hilton Head Island, S.C.*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) (“This Court concludes that by enacting the Home Rule Act, S.C. Code Ann. § 5–7–10, et seq. (1976), the legislature intended to abolish the application of Dillon's Rule in South Carolina and restore autonomy to local government.”). As part of home rule legislation, the General Assembly granted Counties broad powers to act “for the security, general welfare, and convenience of the counties for preserving health, peace, order, and good government in them” and instructed the Courts that “[t]he powers of a county must be liberally construed in favor of the county.” S.C. Code Ann. § 4-9-25.¹¹

To hold that a settlement agreement between DOR and Taxpayers—which deals entirely with local revenue belonging solely to Taxing Entities—forecloses Taxing Entities’ appeal rights because Taxing Entities’ rights are “derivative of” the State’s rights, is repugnant to the home rule principles established by the South Carolina Constitution and the general laws of this State. For one, the State’s budget does not include any property tax revenues—these are entirely devoted to local governing bodies. Second, the Counties have independent statutory authority to levy and collect property tax revenues within their jurisdictional boundaries. *See* S.C. Code Ann. § 4-9-30(5)(a) (stating that counties have the power to “assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided. . . .”); *see also Ex parte Yeargin*,

Assembly to implement what was popularly referred to as ‘home rule’ by establishing the structure, organization, powers, duties, functions, and responsibilities of local governments by general law. In addition, **new Article VIII mandated a liberal rule of construction regarding any constitutional provisions or laws concerning local governments.**”) (citing S.C. Const. art. VIII, §§ 7, 9, & 17) (emphasis added).

¹¹ Counties are also granted statutory rights “to sue and be sued” and to “do all acts in relation to the property and concerns of the county necessary thereto.” S.C. Code Ann. § 4-1-10; *see also Glaze v. Grooms*, 324 S.C. 249, 255, 478 S.E.2d 841, 845 (1996) (holding that a local government that established “infringement of its own proprietary interests or statutory rights” has standing).

295 S.C. 521, 524, 369 S.E.2d 844, 845 (1988) (finding that in section 4-9-30(5), “the General Assembly has authorized counties to assess taxes and to make appropriations to county functions and operations”).

For these same reasons, Taxing Entities also have independent statutory appeal rights to protect these very same property tax revenues. S.C. Code Ann. §§ 12-60-2130 & 12-60-2150. Taxing Entities here have acted to protect their revenue interests and the revenue interests of the individual taxing entities located within their geographical boundaries by exercising their statutory rights to appeal. The revenue which Taxing Entities have acted to protect is the same revenue that would, absent Taxing Entities’ actions objecting to DOR’s granting of the Exemption, be forfeited by school districts, hospital districts, and the Counties, to the detriment of the general welfare of the citizens of those Counties. Taxing Entities are merely exercising their statutorily granted right to object to DOR’s decision to remove millions of dollars of property tax revenue from Taxing Entities’ budgets.

B. DOR’s Sole and Exclusive Authority to Assess and Value a Utility’s Property Does Not Shield DOR’s Decisions from Judicial Review.

Taxpayers specifically argue that DOR is authorized to bind non-parties to settlement agreements entered into with taxpayers because DOR has the exclusive authority to assess and determine the value of a utility’s property, to determine whether any exemptions apply to it, decide whether any refunds are due, and to issue certifications to counties. Taxpayers cite to sections 12-

4-540(A), 12-4-710, 12-4-730, 12-60-410,¹² 12-60-420(A),¹³ and 12-60-2150(A)¹⁴ in support of their argument.

Section 12-4-540 simply provides that DOR “has the sole responsibility for appraisal, assessment, and equalization of the taxable values” of the personal property owned by telephone companies. S.C. Code Ann. § 12-4-540(A)(1)(f). Under section 12-4-710, DOR is required to “determine if any property qualifies for exemption from local property taxes under [s]ection 12-37-220. . . .” Section 12-4-730 permits DOR to “declare the real and personal property of a property owner . . . as exempt” but only “upon receipt of an application and upon proper investigation.” Section 12-4-730 also requires DOR to certify the grant of any exemption to the “auditor’s office in which the property is located,” and requires the auditor to “void any tax notice applicable to the property” upon receipt of DOR’s certification.

None of the statutes referenced by Taxpayers limit, or even reference, the right of local governing bodies to challenge a DOR decision. If DOR was truly the **sole** authority on property tax assessment, there would be no right to review whatsoever—even for taxpayers. Taxpayers’ argument again presents the question: if DOR is permitted to make decisions significantly affecting local governing bodies without ever being subject to judicial review, when would a local governing body ever be able to exercise the appeal rights that are so clearly granted to them by sections 12-60-2130 and 12-60-2150?

¹² Section 12-60-410 applies only to “state taxes,” which are defined by section 12-60-30(26) to exclude property taxes, thereby rendering the section irrelevant to this case.

¹³ Section 12-60-420 permits a division of DOR to provide written notice of a division decision or proposed assessment to an affected taxpayer, provided the written notice informs the affected taxpayer (a) of the basis of the division decision or proposed assessment and (b) that if the taxpayer does not protest the division decision or proposed assessment pursuant to Section 12-60-450 then the division decision or proposed assessment will become final.

¹⁴ Section 12-60-2150(A) permits a taxpayer to file a claim for refund of property taxes assessed by DOR on the basis of an exemption from property tax, but only if the taxpayer satisfies the application requirements of section 12-60-1750 and the timeliness requirements of section 12-54-85(F).

A more reasonable interpretation of these statutes is that only DOR, and not another state agency or other entity, has the authority to appraise and assess telephone-related property and to grant property tax exemptions. The fact that the General Assembly granted DOR the sole responsibility to do a certain thing does not mean that DOR is unanswerable for improper exercises of that responsibility or that DOR—if it so chooses—can completely extinguish an affected party’s statutory right to appeal. *See Bauer v. S.C. State Housing Auth.*, 271 S.C. 219, 233, 246 S.E.2d 869, 876 (1978) (“[T]he Legislature may not vest unbridled, uncontrolled, or arbitrary power in an administrative agency for, otherwise, the courts, when presented with a challenge of the agency’s actions, would, there being no limitations on the agency’s authority, be unable to judicially review its actions.”).

Furthermore, Taxpayers argue that “the fact that section 12-4-320 does not itself expressly authorize [DOR] to compel or constrain local government action as part of its settlement of a taxpayers’ liability is of no moment because adjacent statutes and chapters authorize such compulsion or constraint.” (Respondents/Appellants’ Initial Brief 31). However, when section 12-4-320(4) is read in context with the remainder of Chapter 4 of Title 12, it becomes apparent that the General Assembly could not have intended DOR to be able to bypass an affected local government’s statutory appeal rights by simply entering into a settlement agreement with a property taxpayer under the auspices of section 12-4-320(4).

Chapter 4 of Title 12 imbues DOR with various powers and responsibilities with respect to taxation generally. Section 12-4-320 is codified in Article 3, which is titled “General Powers and Duties.” In addition to these General Powers and Duties, the General Assembly also established in Article 5 certain specific “Powers and Duties with Respect to Property Taxes” that are granted to DOR. Article 5 is silent as to DOR’s authority to enter into written agreements with a taxpayer with respect to property taxes. Consequently, many of the provisions of Title 12,

Chapter 4, have no logical application to the property tax¹⁵ and should be construed to apply only to “state taxes” as defined in section 12-60-30(26). Instead, Article 5 authorizes DOR to “issue a department determination directing the appropriate county official to comply with all applicable state law relating to the valuation, assessment, or taxation of property.” S.C. Code Ann. § 12-4-535(a). This language is so broad that it conceivably covers any directive from DOR to a county official regarding property taxation, including the Supplemental Certifications. The General Assembly chose to grant an immediate appeal right to any affected county as a means to ensure DOR’s property tax related directives did not escape the possibility of judicial review.

Simply put, the General Assembly could not have simultaneously intended that (1) every property tax related directive from DOR to a county taxing official would be accompanied by an immediate right for the affected county to appeal a department determination to the ALC, and (2) DOR and a taxpayer could avoid ever having to participate in an appeal to the ALC by entering into a settlement agreement that excludes the affected county. Taxpayers’ interpretation of section 12-4-320(4) is incompatible with the remainder of Chapter 4 of Title 12 and, more importantly, is incompatible with the statutory appeal rights granted to local governing bodies by sections 12-60-2130 and 2150.

¹⁵ See S.C. Code Ann. §§ 12-4-380 (requiring DOR to provide the details of “all tax liabilities” reduced by order of the director to the budget-making committees of the General Assembly, whose budget includes zero property tax revenue); 12-4-387 (requiring DOR to conduct audits involving “all taxes” to promote voluntary compliance “and to collect revenues *for the general fund of the State*,” despite the State’s budget including zero property tax revenue) (emphasis added); 12-4-320(3) (authorizing DOR to compromise “any tax, interest, or penalty imposed by this title” despite DOR’s lack of statutory authority over property taxes imposed on agricultural property, commercial property, or legal residences); and 12-4-320(7) (authorizing DOR to “enter into an installment payment agreement with a taxpayer” despite DOR’s lack of statutory authority over property taxes imposed on agricultural property, commercial property, or legal residences).

C. Taxing Entities are Afforded the “Due Process” Rights Granted to them by the General Assembly in Sections 12-60-2130 and 12-60-2150.

Taxpayers argue that the ALC incorrectly held that Taxing Entities have due process rights. However, Taxpayers misapprehend the finding actually made by the ALC. The ALC did not—as Taxpayers argue—find that Taxing Entities have all of the due process rights afforded to private citizens under the Due Process Clause of the United States Constitution. Rather, the ALC was merely referencing the “due process” rights the General Assembly has granted to local governing bodies. (*See* Order 54–56; R.__). That is, the General Assembly granted local governing bodies “due process” rights when it granted them the right to request a contested case hearing when they disagree with a department determination. S.C. Code Ann. §§ 12-60-2130 & -2150(H).¹⁶ Therefore, to the extent Taxpayers argue that the ALC’s conclusions in this respect deprive the ALC of jurisdiction, the Court should disregard Taxpayers’ interpretation and find that the ALC had subject matter jurisdiction pursuant to sections 12-60-2130 and 12-60-2150.

III. THE ALC DID NOT FIND THAT TAXPAYERS’ PROPERTY WAS ENTITLED TO A PARTIAL EXEMPTION.

Taxpayers argue that the ALC incorrectly provided a partial exemption for Taxpayers’ property that the ALC determined qualified for the Exemption. Although Taxing Entities do not entirely agree with the ALC’s ultimate conclusion, Taxing Entities desire to specifically address a number of Taxpayers’ assertions.¹⁷

¹⁶ *See also* Section II(A), *supra*.

¹⁷ Taxing Entities maintain the position that the use of Taxpayers’ network to provide an exempt service (i.e., landline telephone service) is so *de minimis* that none of Taxpayers’ property qualifies for the Exemption. Taxpayers provided no evidence which would aid the ALC in accurately separating out or specifically delineating the network’s use for any specific services—whether exempt or non-exempt. To the extent the services can be separated, the only evidence on this issue in the record was presented to the Court by Taxing Entities’ expert, Joe Moss. Based upon Mr. Moss’s testimony, the ALC concluded “the relative use of Taxpayers’ network for voice telephone service is declining and is becoming more and more **de minimis**.” (Order 67; R.__) (emphasis in original).

First, Taxpayers misapprehend the ALC's finding in this regard. The ALC did not grant any partial exemptions. Taxpayers failed to present evidence to the ALC separating individual property items that were specifically used to provide rural telephone service (which would have potentially been eligible for the Exemption) versus those that were not specifically used to provide rural telephone service (which would not have been eligible for the Exemption). (Order __; R.__). Based on the evidence presented, the ALC concluded that only 75% of FTCC's and Diversified's assets were actually used to provide rural telephone service. (Order 71; R.__). The ALC granted a 100% exemption for those assets and denied the Exemption for the remaining 25% of FTCC's and Diversified's assets, which the ALC found were *not* used to provide rural telephone service. (*Id.*; R.__).

Second, Taxpayers failed to present sufficient evidence to resolve the ambiguity of section 12-37-220(B)(10). To establish that section 12-37-220(B)(10) does not require a specific level of use, Taxpayers focus heavily on sections 12-37-220(A)(1), 12-37-220(B)(16)(a), and 12-37-220(A)(4), which provide tax exemptions to property used "exclusively" or "primarily" for a certain purpose. Although these particular statutes require property to be used exclusively or primarily for a certain purpose in order to qualify for the respective exemptions, Taxpayers fail to establish how these sections resolve the question of the level of use required under section 12-37-220(B)(10). The ALC did not find that Taxpayers' property does not qualify for the Exemption because the property is not used "exclusively" or "primarily" in providing rural telephone service. Instead, the ALC simply found that only 75% of FTCC's and Diversified's assets were actually *used* to provide rural telephone service. (Order 69–71; R.__).

Third, Taxpayers incorrectly argue that the ALC ignored Taxpayers' expert witness testimony regarding the percentage of Taxpayers' current assets that would be needed for a voice-only network that did not provide the myriad other services Taxpayers provide to their customers.

However, the ALC did not ignore this testimony; rather, the ALC gave greater weight to Taxing Entities' expert, Mr. Moss, because, as the ALC stated, "[o]verall, I find Mr. Moss was more convincing and credible than Mr. Wyatt based upon the breadth of knowledge, detail, and candor with which he testified." (Order 15, n.7; R.____).

Fourth, Taxpayers incorrectly state that "Farmers, on the other hand, presented evidence that all assets currently in place would still be needed if non-voice services were discontinued." (Respondents/Appellants' Initial Brief 38 (citing Tr. 979:25–980:20 & 1021:14–1022:10)). For one, the testimony Taxpayers attribute to Farmers was actually provided by Taxing Entities' expert, Mr. Moss. Additionally, while Mr. Moss did state that a voice-only network "would look a lot like it is now," (Tr. 980:12; R.____), Mr. Moss explained that "the big difference would be that the -- the capacity of the equipment would not need to be as large as it is now. Just by the very simple fact that it would not be carrying as much data, as much capacity." (Tr. 980:21–25; R.____). Mr. Moss further stated that "the cost would be significantly lower just by the fact that you would not need . . . as much capacity and electronics." (Tr. 981:14–16; R.____).

Fifth, the ALC *actually* did give *some* weight to Taxpayers' testimony on this issue. Specifically, the ALC recognized that Taxing Entities' expert's testimony that "a voice-only network would be between **fifty to sixty percent** cheaper is probative." (Order 71; R.____) (emphasis added). The ALC also recognized that "Farmers' CEO indicated using lower-capacity equipment would not result in cost-savings" and "[b]ased upon this evidence as a whole, I find that a voice-only network would cost 25% less than the current network." (*Id.*; R.____). Accordingly, Taxpayers' argument that the ALC did not consider Taxpayers' testimony on the issue is simply incorrect.

Finally, under the cost method of valuation, Taxing Entities continue to assert that the ALC should have chosen a different value for the percentage of Taxpayers' property used to provide

rural telephone service—specifically, no more than 50%. The ALC chose to reject the valuations proposed by the parties. Although it is permissible to choose a value different than the specific value proposed by the parties, the ALC was required to choose a value within the range of values supported by the evidence. *See Charleston Cty. Assessor v. University Ventures, LLC*, 427 S.C. 273, 831 S.E.2d 412 (2019); *Smith v. Newberry Cty. Assessor*, 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002); *Hearn v. Laurens Cty. Assessor*, No. 2013-000753, 2014 WL 368912 (S.C. Ct. App. July 23, 2014). Taxing Entities’ expert witness, Mr. Moss, provided testimony that a voice-only network would be between fifty and sixty percent cheaper than Taxpayers’ current network. (Tr. 985:3–17; R.__). Taxpayer’s expert witness did not render an opinion regarding the value of a voice only network.¹⁸ Therefore, if the Court accepts the ALC’s cost method of valuation, the **maximum amount** of Taxpayers’ property that could be exempt is 50%.

IV. THE ALC CORRECTLY FOUND THAT DIVERSIFIED FAILED TO PROPERLY APPLY FOR THE EXEMPTION FOR TAX YEARS 2013 TO 2017 AND FTCC FAILED TO PROPERLY APPLY FOR AND TIMELY CLAIM THE EXEMPTION FOR TAX YEARS 2010 TO 2013.

A retroactive refund of property taxes can be obtained only if the statutory requirements are satisfied, and the requirements to obtain the refund must be strictly construed against the taxpayer. *Asmer v. Livingston*, 225 S.C. 341, 344, 82 S.E.2d 465, 466 (1954) (finding that the weight of authority holds that refund statutes “are to be strictly construed against the taxpayer”). Strict construction is required for the demands of a property tax refund statute because tax refunds are “solely a matter of governmental grace.” *Id.* “[A]ny person seeking such relief must bring himself clearly within the terms of the statute authorizing the same.” *Id.* The refund statutes clearly

¹⁸ The only testimony Taxpayers provided on this issue was by Farmers’ CEO, Brad Erwin, who simply provided his belief about how a single piece of equipment—10-gig vs. 1-gig cards—may impact value, but he provided no testimony regarding the value of Taxpayers’ vast, interconnected network. (Tr. 1035:24–1036:16; R.__). Therefore, it is impossible to make any supportable conclusions about valuation based on Mr. Erwin’s testimony.

state “a property taxpayer may seek a refund of property taxes paid and assessed by the department by filing a claim for refund with the department if . . . the taxpayer believes the property is exempt” but only “[s]ubject to the limitations in section 12-60-1750, and within the time limitation of section 12-54-85(F).” S.C. Code §12-60-2150(A).

The limitations of section 12-60-1750 state that “[n]otwithstanding any other provision of law, **no refund of property taxes must be given for a property tax exemption requiring an application, unless the application was timely filed.**” S.C. Code §12-60-1750(1) (emphasis added). Thus, the question is whether an application is required to obtain the Exemption, and if so, whether the application was timely filed.

In this case, the Exemption requires an application. Section 12-4-720(A) imposes on taxpayers a duty to file an application for property tax exemptions. In pertinent part, section 12-4-720(A)(1) states that “[e]xcept as otherwise provided, any property owner whose property may qualify for property exemption shall file an application for exemption with the department within the period provided in section 12-54-85(F) for claims for refund.” Section 12-4-720(A)(3) lists numerous property tax exemptions which are excluded from this application filing requirement. However, the Exemption is not one of the listed exceptions. Therefore, a taxpayer must file an application to receive the Exemption.

Furthermore, section 12-4-720 imposes an additional filing requirement that is only applicable to taxpayers who must file annual property tax returns with the Department, like Taxpayers in this case. *See* S.C. Code Ann. § 12-4-720(C) (“A taxpayer who is required to file property tax returns with the department shall claim any exemption on the return each year the property is exempt.”); *see also Bradley v. Doe*, 374 S.C. 622, 634, 649 S.E.2d 153, 160 (Ct. App. 2007) (“Under the rules of statutory interpretation, use of words such as ‘shall’ or ‘must’ indicates the legislature's intent to enact a mandatory requirement.”).

South Carolina law requires utilities—like Taxpayers—to file annual property tax returns by April 30th of the tax year. S.C. Code Ann. §§ 12-37-970 & 12-4-540. DOR’s witness, Charles Brewer, a retired program manager and certified appraiser employed by DOR from 1998 until June of 2018, agreed that section 12-4-720(C) requires “every year you’re going to claim an exemption, it has to be claimed on the property tax returns for that year.” (Brewer Dep. Designations 59:16–22; R.__).

Further, “[i]f a taxpayer files a property tax return listing property as exempt, that listing is considered an application for exemption from property taxes.” S.C. Code § 12-4-720(B). In addition, although a taxpayer typically is only required to file an application for exemption once, that general rule is **not** the case for taxpayers required to file annual property tax returns with DOR—such filers must file the application for exemption every year on the tax return. *See* S.C. Code § 12-4-720(D) (stating that “[e]xcept for the requirement in subsection (C) [the provision requiring taxpayers who file annual property tax returns with DOR to claim the exemption on the returns each year], the owner is not required to file more than one application for each exemption”).

Applying the principles above, utilities, like Taxpayers, must clearly claim property tax exemptions on their timely filed annual property tax returns, which are due by April 30th of the tax year. Failure to do so by April 30th of the tax year disqualifies a taxpayer from receiving a property tax exemption for that tax year. “One is estopped to claim an exemption with respect to property included in the list of taxable properties and for which no exemption has been claimed before the taxing officers.” *TNS Mills, Inc. v. S.C. Dep’t of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (citing 84 C.J.S. Taxation § 226 (1954)).

Moreover, a taxpayer cannot simply file amended property tax returns after the original property tax returns are due and claim property tax exemptions on the amended returns. Such an action would improperly circumvent the timely application requirements. *See* S.C. Code Ann. §§

12-60-2150(A), 12-60-1750(1), & 12-4-720. This approach was attempted by the taxpayer in *TNS Mills* and struck down as unlawful by the South Carolina Supreme Court. *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998). In *TNS Mills*, the taxpayer failed to claim property tax exemptions for pollution control equipment on the face of its originally filed property tax returns for tax years 1986 through 1991. *Id.* at 616, 503 S.E.2d at 474. In 1992, over six years after the first tax year in dispute, the taxpayer in *TNS Mills* filed amended property tax returns with the Department claiming property tax exemptions for pollution control equipment for each of tax years 1986 through 1991. *Id.*

Similarly, in this case, Taxpayers failed to claim the Exemption on its originally filed property tax returns for tax years 2010 through 2016. Then, in 2017—seven years after the first tax year in dispute—Taxpayers filed amended property tax returns with DOR claiming the Exemption for tax years 2010 through 2016. As explained by the Supreme Court in *TNS Mills*, this was improper. *Id.* at 624–25 (“The circuit court failed to recognize the distinction between amended returns and applications for exemptions. [S.C. Code Ann. Section 12-37-975] may allow the Department to accept an amended tax return, but to interpret it to allow them to grant a retroactive exemption effectively writes the deadlines for applying for an exemption out of the Code.”). The Supreme Court further clarified “the circuit court’s interpretation creates an absurd distinction; the deadlines for applying for exemptions would apply to taxpayers who applied on separate forms, but the deadlines would not apply to taxpayers who applied on their tax returns.” *Id.*

In summary, the question here is not whether Taxpayers’ amended property tax returns complied with the statutory requirement to file an application for exemption. Rather, the question here is whether Taxpayers’ original property tax returns satisfy this requirement. The record shows that Taxpayers’ originally filed property tax returns did not.

A. Tax Years 2010 and 2011

Taxpayers filed property tax returns consisting of Forms PT-420, PT-427, and PT-429 for tax years 2010 and 2011. However, an examination of the original returns filed by the Taxpayers for tax years 2010 and 2011 reveals Taxpayers did not claim the Exemption on the face of the returns or any of the accompanying schedules. (Trial Exs. 9 & 13; R. __).¹⁹

Taxpayers allege that merely writing the word “rural” into a column on Form PT-427 or PT-429, as applicable, was sufficient to claim the Exemption. (Brewer Dep. Designations 17:3–16; R. __). However, this argument misconstrues the very nature of the Exemption and must be rejected as an unreasonable reading of the statute. The Exemption is an exemption for all property used in providing rural telephone service, regardless of whether each particular piece of property is, in fact, located in a rural area. Property located within the jurisdictional boundaries of a municipality may still be eligible for the Exemption, with the exception of millage imposed by that municipality. Therefore, merely classifying property as “rural” on Form PT-427 or PT-429 is insufficient to claim the Exemption. (Order 79 (“The plain meaning of section 12-4-720 is clear and unambiguous—it requires the taxpayer to list the property as ‘exempt’ not ‘rural.’”); R. __).

Indeed, DOR’s witnesses confirmed the insufficiency of Taxpayers’ original returns. Taylor Ingram testified that merely writing in the word “rural” on the originally filed Form PT-427 did not convey to DOR that Taxpayers were claiming that particular property as exempt under the Exemption. (Tr. 167; R. __). Charles Brewer also testified that simply writing in “rural” on Form PT-427 would not be sufficient to inform DOR how property was being used. (Brewer Dep. Designations 42:14–43:16; R. __).

¹⁹ DOR’s designated 30(b)(6) witness testified that in a situation where a taxpayer protested the denial of an exemption for several tax years and the annual property tax returns never indicated what specific property was exempt, “it would then be a factual question as to whether the returns adequately requested the exemption.” (Ruple Dep. Designations 89:3–89:16).

DOR and Taxpayers both recognized in the Settlement Agreement that Taxpayers' original filings did not contain sufficient information to accurately inform DOR of the use of Taxpayers' property. Specifically, section 2.1 of the Settlement Agreement states the following:

2.1 Amended Property Tax Returns. FTCC and Diversified shall file amended property tax returns with appropriate supplemental data with the Property Division for every applicable year during the Audit Period so that the Property Division may calculate and certify to the applicable counties a revised assessment.

(Trial Ex. 91 § 2.1). If Taxpayers' original returns contained sufficient information, as Taxpayers argue, there would have been no reason for DOR to require Taxpayers to submit amended PT-427 forms.

Given the forms provided by DOR for the tax years in dispute in this case, Taxpayers could have satisfied the statutory application requirements by filling out separate PT-427 forms or PT-429 forms, as applicable. On the applicable forms, Taxpayers could have segregated (a) the property they were claiming as exempt from (b) the property they were not claiming as exempt, and clearly identify on the face of the form that Taxpayers were claiming the exemption.

This is in fact what DOR and Taxpayers agreed to do **after** entering into the Settlement Agreement in this case. (*Compare* Trial Ex. 9 *with* Trial Ex. 11; *Compare* Trial Ex. 13 *with* Trial Ex. 16). **These amended PT-427 forms were submitted on January 20, 2017, (Trial Ex. 92), which is clearly beyond the statutory due date of April 30th of the respective tax year for each of tax years 2010 and 2011. See S.C. Code Ann. § 12-30-970.**

Applying these principles to the undisputed facts shows Taxpayers did not claim, on its original PT-420, PT-427, or PT-429 forms, the Exemption for tax years 2010 and 2011. Having not done so, Taxpayers failed to meet the requirements of section 12-4-720 and failed to timely file the exemption application for those years. Accordingly, no refunds can be issued to FTCC for 2010 and 2011. S.C. Code Ann. § 12-4-720.

B. Tax Years 2012 through 2017

Similar to tax years 2010 and 2011, the record shows FTCC's original property returns for tax years 2012–2016 and Diversified's original property returns for tax years 2013–2017²⁰ failed to clearly claim the Exemption. (See Trial Exs. 18, 31, 39, 44, 49, 55, 60, 65, & 70; R.____).²¹ Taxpayers eventually filed amended PT-427s for tax years 2012 through 2016 on January 20, 2017 (Trial Ex. 92; R.____). However, this was clearly beyond the April 30th statutory deadline for tax years 2012 through 2016. See S.C. Code Ann. §§ 12-37-970 & 12-4-540. FTCC's failure to claim the Exemption on its original returns for tax years 2012 through 2016 and Diversified's failure to claim the Exemption on its original returns for tax years 2013 through 2017 is a failure to timely file applications for exemptions each year as mandated by section 12-4-720(C). Therefore, no refund can be issued to FTCC for tax years 2012 through 2016 or to Diversified for tax years 2013 through 2017. See S.C. Code Ann. § 12-4-720.

C. The ALC correctly rejected DOR's interpretation.

Taxpayers argue that because Farmers has always listed all of its assets on its distribution forms with its property tax returns, the ALC erred by not deferring to the DOR's historic practice of always granting the Exemption to Farmers. However, the ALC's analysis of this issue is sound and should be upheld. (See Order 80–84; R.____).

As explained above, the relevant statutes clearly set forth the proper procedure for a taxpayer to apply for a property tax refund. Taxpayers specifically argue that because *TNS Mills*

²⁰ With respect to Diversified's returns for tax year 2017, the ALC correctly found that Diversified's 2017 original return did not claim the Exemption. (Order 86; R.____). Diversified never filed an amended return for tax year 2017. Therefore, Diversified failed to claim the Exemption for tax year 2017, and the Department erred when it granted Diversified the Exemption for this year. (*Id.* at 87; R.____).

²¹ See also Order 84 (“[B]ecause neither FTCC (for tax years 2010-2016) nor Diversified (for tax years 2013-2017) listed their property as exempt on these original tax returns, the Court finds Taxpayers **did not apply for the exemption on their original returns for the years indicated.**”) (emphasis added); R.____.

indicates that methods other than a tax return are acceptable, the ALC erred when it failed to consider other methods. However, Taxpayers fail to acknowledge that for the tax years in dispute in *TNS Mills*, there was no statutory requirement for any property taxpayer to claim exemptions annually on their property tax returns. This annual requirement to claim any exemption on the property tax return, now codified in S.C. Code Ann. § 12-4-720(C), was not enacted until 1995. See 1995 S.C. Act 125, §§ 1 and 2. The tax years in dispute in *TNS Mills* were tax years 1985 through 1991. Thus, for the years in dispute in *TNS Mills*, it was acceptable for a taxpayer that files annual returns with DOR to “apply for exemptions separately from their tax returns . . . [o]r, as most taxpayers do, . . . apply for an exemption on their tax returns.” *TNS Mills*, 331 S.C. at 618, 503 S.E.2d at 475. Since 1995, such taxpayers no longer have a choice—they must claim any exemption annually on their property tax returns.

Additionally, DOR’s interpretation is not entitled to deference because DOR has never actually interpreted the application requirements for the Exemption. DOR has never issued any policy or procedure interpreting the application requirements, and only has a routine administrative practice of granting the Exemption to a small, discrete number of taxpayers year after year.

“An agency’s long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons, but the interpretation will not be sustained if it contradicts a statute’s plain language.” *Media Gen. Commc’ns, Inc. v. S.C. Dept. of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 530–31 (2010); see also *Sierra Club v. S.C. Dep’t of Health & Envtl. Control*, 426 S.C. 236, 265, 826 S.E.2d 595, 606 (2019) (quoting *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003)) (stating that although the courts generally give “deference to an administrative agency’s interpretation of an applicable statute[,] . . . where the plain language of a statute [] is contrary to the agency’s interpretation, the Court will reject the agency’s interpretation”) (quoting *Brown v. Bi-Lo, Inc.*,

354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003)). Thus, courts may “defer to an agency interpretation unless it is arbitrary, capricious, or manifestly contrary to the statute. . . .” *Sierra Club*, 426 S.C. at 265, 826 S.E.2d at 606 (quoting *Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Envtl. Control*, 411 S.C. 16, 34–35, 766 S.E.2d 707, 718 (2014)) (internal quotations omitted).

Section 12-37-970 requires that DOR “by regulation *shall* prescribe the form of return required by this section, the information to be contained in it, and the manner in which the returns must be submitted.” Yet, DOR admitted that it has no separate form for the Exemption and it has no written policy or procedure related to determining one’s eligibility for the Exemption. (Ingram Dep. Designations 11:25–12:22, 41:6–16, 44:5–8, 49:19–23 R.____).

Further, DOR’s historical administrative practice of granting the Exemption to the same, small number of discrete companies year after year, including Farmers, without any reference to the underlying requirements of section 12-4-720 is not an “interpretation” at all. *Neal v. Brown*, 383 S.C. 619, 682 S.E.2d 268, 270 (2009) (holding “an agency’s Appellate Panel, not its staff, is typically entitled to deference in interpreting agency regulations”). If DOR truly had an interpretation, one would expect that interpretation to be memorialized somewhere in DOR’s policies and procedures so that taxpayers are put on notice and to ensure the interpretation is consistently applied to all applicable taxpayers. (Order 82; R.____).

The record shows that DOR has never interpreted the application requirements for the Exemption until this case. Further, the staff initially found that Taxpayers were **not** entitled to the Exemption. The interpretation now advanced by DOR (and Taxpayers) is contrary to the plain language of the statutory scheme. Therefore, it is not entitled to deference. *See, e.g., Sierra Club*, 426 S.C. at 265, 826 S.E.2d at 606; *Kiawah Dev. Partners, II*, 411 S.C. at 34–35, 766 S.E.2d at 718; *Brown*, 354 S.C. at 440, 581 S.E.2d at 838.

CONCLUSION

The ALC correctly found that (1) it had subject matter jurisdiction pursuant to sections 12-60-2130 and 2150 of the South Carolina Code; (2) the Settlement Agreement is not effective to bind a non-party to its terms; (3) only some of Taxpayers' property was entitled to the Exemption; and (4) Diversified failed to properly apply for the Exemption for tax years 2013 to 2017 and FTCC failed to properly apply for and timely claim the Exemption for tax years 2010 to 2013.

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February 12, 2021
Columbia, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2020-000983
Trial Court Case No. 17-ALJ-17-0237-CC

Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County,
Williamsburg County School District, Clarendon School District Two, Florence School District
One, Florence School District Three, Sumter County School District, Clarendon County Hospital
District, Lee County School District, and Clarendon School District
One Appellants-Respondents,

v.

South Carolina Department of Revenue, Farmers Telephone Cooperative, Inc., FTC
Communications, LLC, and FTC Diversified Services, LLC, ... Respondents.

Of Which, Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC
Diversified Services, LLC, are the Respondents-Appellants

PROOF OF SERVICE

The undersigned hereby certifies that on February 12, 2021, a copy of the **APPELLANTS-RESPONDENTS' INITIAL RESPONDENT BRIEF** was served on all counsel of record via electronic mail containing the above-referenced document to each counsel's individual AIS email address pursuant to SC Supreme Court COVID Order 2020-05-29-02 as follows:

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Columbia South Carolina