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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

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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.

RECORD ON APPEAL - VOLUME 2 OF 10

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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, Clarendon School District One, and Lee County School District, Petitioners, vs. South Carolina Department of Revenue, Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-CC **FARMERS' RESPONSE IN OPPOSITION TO TAXING ENTITIES' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Respondents Farmers Telephone Cooperative, Inc. ("Farmers Coop"), FTC Communications, LLC ("FTCC") and FTC Diversified Services, LLC ("Diversified") (collectively, "Farmers") hereby submits its response to the Partial Motion for Summary Judgment of Petitioners Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, Williamsburg County School District, Clarendon County School District Two, Florence School District One, Florence School District Three, Sumter County School District, Clarendon County Hospital District, Clarendon School District One and Lee County School District (collectively, the "Taxing Entities").

At the outset, Farmers would note that it has a Motion to Dismiss pending that asserts that this Court has no subject matter jurisdiction to hear this case. This response is being filed subject to and without waiving all arguments set forth in that Motion to Dismiss.

The Taxing Entities make three primary arguments in support of their Motion for Partial Summary Judgment (the "Taxing Entities' Motion"). First, they assert a two-fold argument that the exemption provided under S.C. Code Ann. §12-37-220(B)(10) (the "Rural Telephone Service Exemption") is not applicable here because (a) it only applies to property used "primarily" in providing rural telephone service, and (b) it does not apply to property providing wireless telephone service. Taxing Entities' Motion at p. 2. These arguments are without merit as South Carolina law does not require that the property be used "primarily" in providing rural telephone service. At most, the law requires that the property be used "substantially" for the exempt purpose. See Hercules Contractors and Eng., Inc. v. S.C. Tax Comm'n, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984) (allowing sales tax exemption where property in question was only used 35% for the exempt purpose). As the affidavit of Jeffrey L. Lawrimore ("Lawrimore Aff.") (attached hereto as Ex. A) shows, the property in question was used substantially in providing rural telephone service. Ex. A, Lawrimore Aff. at ¶¶10-16. Furthermore, the statute does not limit the exemption to only telephone service provided by way of a certain type of technology. Thus, assets used for wireless telephone communications are just as exempt as assets used for landline telephone communications.

Second, the Taxing Entities argue that SCDOR's grant of the exemption to Farmers is "illegally retroactive." Taxing Entities' Motion at p. 2. This is not the case. South Carolina law unequivocally allows a taxpayer (except in cases of pollution control) to file a claim for exemption within three years of a timely filed tax return, and Farmers timely filed all claims for exemption

within this timeframe. See S.C. Code Ann. § 12-4-720(A)(1) and § 12-54-85(F). The Taxing Entities' claim that SCDOR's failure to determine the exemption on a yearly basis and give the counties notice of same makes the grant of exemption "illegally retroactive" is similarly without merit. SCDOR cannot determine an exemption and provide notice of the claim before it is even claimed, and, in fact, the counties had actual notice of the exemption claim annually for most of the years at issue. Ex. A, Lawrimore Aff. at ¶8. To the extent they did not have notice of Farmers' claim for any years, which is unclear at this stage of the case, that should not be held against Farmers, who timely filed its request and who had no duty to notify the counties.

Finally, the Taxing Entities argue that granting the exemption to Farmers "violates Home Rule." Taxing Entities' Motion at p. 2. "Home Rule" refers to a constitutional provision (S.C. Const. art. VIII, § 7) that prohibits the Legislature from enacting "special laws" for a specific County and provides that only general laws that are applicable to all counties may be enacted. Because no special laws pertaining to specific counties are in question, Home Rule simply has no application to this case.

In sum, the arguments raised by the Taxing Entities have no merit. Additionally, the Taxing Entities' Motion well as the supporting affidavits are rife with disputed factual allegations that also make summary judgment improper. Finally, summary judgment is inappropriate because Farmers has not yet had a full and fair opportunity to complete discovery. Accordingly, this Court should deny the Taxing Entities' Motion for Partial Summary Judgment.

FACTS AT ISSUE

Although the parties agree on some of the material facts at issue, there are many disputed issues of material fact that necessarily preclude summary judgment. Farmers will attempt to summarize below the undisputed versus disputed facts.

The parties appear to agree on many of the background facts regarding the Farmers entities including that Farmers Coop was established as a rural telephone cooperative in South Carolina in 1952 in Kingstree, South Carolina; that FTCC was organized in South Carolina on July 1, 2009, as a single-member LLC of Farmers Coop; that FTCC provides various telecommunications services, including wireless telephone services, operator services and answering services; that Diversified was organized in South Carolina on July 1, 2012 as a single-member LLC of Farmers Coop.; that Diversified also provides telecommunications services, including landline telephone services, television services, internet services and security services; and that FTCC and Diversified have provided telecommunications services in the following counties in South Carolina: Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County and Georgetown County. See Farmers' Motion to Dismiss at p. 2 and Taxing Entities' Motion at pp. 5-6.

The parties also appear to agree on the timing of FTCC's letter to SCDOR applying for a property tax exemption under S.C. Code Ann. §12-37-220(B)(10) and requesting a property tax refund for tax years 2010 and 2011; the subsequent protest by Farmers of SCDOR's proposed assessments regarding FTCC assets for tax year 2012-2015, Farmer's protest of SCDOR's proposed assessments regarding Diversified assets for tax years 2013-2015 and that Farmers was granted the property tax exemption for tax years 2016-2017. See Ex. A, Lawrimore at ¶¶4-6; Taxing Entities' Motion at pp. 5-8. They also appear to agree that Farmers was billed by the Counties and paid property taxes on 80% of the original proposed assessments as to (a) FTCC assets for tax years 2012-2015, and (b) Diversified assets for tax years 2013-2015. See Ex. A, Lawrimore Aff. at ¶5; Taxing Entities' Motion at pp. 6-8.

The parties further agree that SCDOR and Farmers entered into a settlement agreement regarding the applications for exemption on or about January 8, 2017 (the "Settlement

Agreement") whereby they agreed that certain property used in FTCC's wireless phone service and in Diversified's landline telephone service qualifies for the Rural Telephone Service Exemption under S.C. Code Ann. §12-37-220(B)(10). See Farmers' Motion to Dismiss at p. 4; Taxing Entities' Motion at p. 8. They also appear to agree that SCDOR granted the exemption as to FTCC and Diversified assets used in providing rural telephone service for tax years 2016-2017. See Lawrimore Aff. at ¶7; Taxing Entities' Motion at p. 23.

However, the parties disagree on most of the remaining facts asserted in the Taxing Entities' Motion and the affidavits attached thereto. The following is a non-exhaustive list of the disputed facts:

- whether Farmers properly applied for the exemption (Taxing Entities assert Farmers did not properly apply (Taxing Entities' Motion at pp. 24-26) while Farmers asserts it did properly apply (Ex. A, Lawrimore Aff. at ¶¶4-7; see also infra Argument, § V(A)(2) at pp. 21-22);
- whether Farmers has requested the exemption for assets that are not used in providing rural telephone service; Taxing Entities appear to claim that they have (Taxing Entities' Motion at pp. 13-19) and Farmers asserts that they have not. See Ex. A, Lawrimore Aff. at ¶¶9-11 and 13.
- whether the Counties received notice annually of Farmers' claim for exemption for FTCC assets for tax years 2012-2015 and Diversified assets for tax years 2013-2015; Taxing Entities claim Counties did not receive notice (Taxing Entities' Motion at p. 8, ¶31), while Farmers contends that they did receive notice (Ex. A, Lawrimore Aff. at ¶¶7-8 and infra at Argument, § V(B) at p. 25);

- the meaning of the terms "telephone" and "telephone service;" the Taxing Entities claim that "telephone" only means a landline telephone and that "telephone service" means only voice telephone service via a landline telephone using the technology that was available in 1978 (Taxing Entities' Motion at pp. 21-23), while Farmers contends that "telephone" includes both wireless and landline phones, that "telephone service" simply means the provision of services that allow people to communicate by telephones over distances and that "telephone service" remains "telephone service" regardless of updates in technology used to provide such service (see Ex. B, F. Bradley Erwin Affidavit ("Erwin Aff.") at ¶¶3-5 and 9 and infra Argument, § IV(B) at pp. 14-18);
- the degree to which the assets Farmers claims as exempt are used in providing rural telephone service; Taxing Entities assert that these assets are only incidentally used to provide rural telephone service based on a 2013 article from a consulting firm that discusses bandwidth usage on a national level and its expert's speculation that these numbers would likely be the same for Farmers (Taxing Entities' Motion at pp. 11-21; Moss Aff. at ¶27), whereas Farmers asserts that its assets are used substantially (and depending on the measure used, primarily) to provide rural telephone services. See Ex. B, Erwin Aff. at ¶¶7-8; Ex. A, Lawrimore Aff. at ¶¶12-16; infra Argument, §IV(A) at pp. 10-14.

Additionally, the primary factual support for the Taxing Entities' Motion is the affidavit of Joe Moss, P.E., which does not even attempt to distinguish between the two entities- FTCC and Diversified- but rather treats them as one, thus incorrectly giving the appearance that they have the same assets and provide the same services. Although providing rural telephone service is the

central reason for both, FTCC and Diversified have different assets, have some services that are the same but are provided using different technology and provide some different services. Ex. B, Erwin Aff. at ¶10. For example, while both entities provide rural telephone services, Diversified does so only via landline telephones while FTCC does so only via wireless telephones. Id. and Ex. A, Lawrimore Aff. at ¶¶11 and 13. Additionally, Diversified does not provide any operator or answering services, while FTCC does not provide any television, high speed internet or security services. See Ex. B, Erwin Aff. at ¶10; Ex. A, Lawrimore Aff. at ¶11 and 13. The assets claimed as exempt also differ for the two entities. Ex. B, Erwin Aff. at ¶10.

Finally, as discussed in more depth in section III below, the parties have not begun discovery in this matter. Because no discovery has yet taken place, Farmers has not had an opportunity to determine if additional factual issues exist but anticipates that many more factual issues will be develop as the case progresses.

ARGUMENT

I. SUMMARY JUDGMENT STANDARD

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is appropriate where there is "no genuine issue as to any material fact," and the moving party shows that it is entitled to judgment as a matter of law. SCRCP Rule 56. See also SCALCR 68 (stating that the South Carolina Rules of Civil Procedure may be applied where the ALC Rules do not address an issue). The burden is on the moving party to establish that, based on the pleadings, affidavits and discovery on file, it is entitled to judgment as a matter of law. Bovain v. Canal Ins., 383 S.C. 100, 678 S.E.2d 422, 424 (2009); Bravis v. Dunbar, 316 S.C. 263, 449 S.E.2d 495, 496 (Ct. App. 1994). In ruling on a motion for summary judgment, the Court should view the evidence

and inferences to be drawn therefrom in the light most favorable to the non-moving party (here, Farmers). Baird v. Charleston Cty., 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

II. RULES OF STATUTORY CONSTRUCTION

When interpreting a statute, the sole function of the Court is to determine and give effect to the intent of the legislature. Hodges v. Rainey, 341 S.C 79, 85, 533 S.E.2d 578, 581 (2000). A statute must be interpreted consistent with its intent and meaning and not so strictly as to defeat its legislative purpose. Hercules Contractors and Eng., Inc. v. S.C. Tax Comm'n, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984); Eargle v. Horry Co., 344 S.C. 449, 545 S.E.2d 276 (2001)(stating that statutory language is to be construed in light of the intended purpose of the statute); Sloan v. City of Conway, 347 S.C. 324, 555 S.E.2d 684 (2001) (holding statute should be construed in a way to give effect to purpose and policy expressed in statute).

The starting point in interpreting a statute should always be the text of the statute itself. Hodges v. Rainey, 341 S.C 79, 85, 533 S.E.2d 578, 581 (2000) (holding that "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will"); Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100 (2003). In interpreting the text, the plain meaning rule requires that "words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand that statute's operation." State v. Leopard, 349 S.C. 467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002). And when the language of the statute is clear, "a court cannot rewrite the statute and inject matters into it which are not in the legislature's language. . . .") Id.; see also Rosmer v. Pfizer, 263 F.3d 263 (4th Cir. 2001) (holding that when a statute is plain on its face, the court's inquiry is at an end).

III. THE PARTIAL MOTION FOR SUMMARY JUDGEMENT IS PREMATURE BECAUSE FARMERS HAS NOT HAD A FULL AND FAIR OPPORTUNITY TO ENGAGE IN DISCOVERY.

Summary judgment "must not be granted until the opposing party has had a full and fair opportunity to complete discovery." Baird v. Charleston Co., 333 S.C. 519, 529-30, 511 S.E.2d 69, 74-75 (1999) (holding summary judgment not appropriate where moving party had not established that there were no genuine issues of fact and the parties had yet to engage in discovery but noting that it could be appropriate at some later stage). The parties have not even begun discovery in this matter. Following the filing of answers and adding of additional petitioners in this matter, Farmers filed a Motion to Dismiss based on lack of subject matter jurisdiction. Petitioner's response to that motion has just been filed today, and the motion has obviously not yet been heard as briefing is not yet complete. Should that motion be denied, the parties would begin written discovery and then would take depositions and retain experts. The scheduling order, which was entered on November 27, 2017, provides for an expert disclosure deadline of March 30, 2018 a rebuttal expert witness deadline of May 30, 2018 and a discovery deadline of August 17, 2018. This schedule should allow the parties sufficient time to complete full and fair discovery.

However, as of the present time, Farmers has not had sufficient time to complete full and fair discovery. Farmers has not been able to obtain documents from the Taxing Entities or SCDOR regarding the disputed facts and to depose witnesses of these parties regarding the same. See supra pp. 5-7 (for a non-exhaustive summary of the disputed facts). Farmers also has not had adequate time to retain an expert to examine Mr. Moss's affidavit to be able to fully rebut the allegations made therein, some of which are supported only by hearsay and pertain only to the industry as a whole and not to Farmers or the State of South Carolina in particular and some of which are based on an incorrect understanding of the facts. See Ex. B, Erwin Aff. at ¶10. Until Farmers is given

an opportunity to complete full and fair discovery, partial summary judgment is premature. Baird, 333 S.C. at 529-30, 511 S.E.2d at 74-75.

IV. FARMERS' ASSETS QUALIFY FOR THE RURAL TELEPHONE SERVICE EXEMPTION.

Farmers' assets at issue in this case clearly qualify for the Rural Telephone Service Exemption. At the very least, the Taxing Entities cannot show that summary judgment is appropriate on this issue because there are numerous issues of material fact, and it cannot show that it is entitled to judgment as a matter of law particularly when all facts must be viewed in the light most favorable to the non-moving party. SCRCP Rule 56; Bovain v. Canal Ins., 383 S.C. 100, 678 S.E.2d 422 (2009); Baird v. Charleston Cty., 333 S.C. 519, 511 S.E.2d 69 (1999).

A. The Rural Telephone Service Exemption Does Not Require that the Property Subject to the Exemption be Used "Primarily" or "Exclusively" in Providing Rural Telephone Service.

The Taxing Entities argue that the Rural Telephone Service Exemption only applies to property used "primarily" or perhaps even "exclusively" in providing rural telephone service. Taxing Entities' Motion at pp. 19-21. However, this is not the law in South Carolina. The clear and plain language of the exemption statute provides that it applies to ". . . the property of telephone companies and rural telephone companies . . . used in providing rural telephone service . . . ." S.C. Code Ann. §12-37-220(B)(10). The statute contains no requirement that the property be used "primarily" or "exclusively" to provide rural telephone service, and, similarly, it does not contain any limitations or restrictions prohibiting the property from being used for other purposes. The plain language of the statute simply says that it applies to property "used in providing rural telephone service," which the property Farmers has claimed as exempt clearly is. Hodges v. Rainey, 341 S.C 79, 85, 533 S.E.2d 578, 581 (2000)(holding that "[w]hat a legislature says in the

text of a statute is considered the best evidence of the legislative intent or will"); State v. Leopard, 349 S.C. 467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002)(when interpreting the text of a statute, the plain meaning rule requires that "words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand that statute's operation.").

This situation is in sharp contrast to the case cited in the Taxing Entities' Motion (Charleston Co. Aviation Authority v. Wasson), which involved an exemption statute (S.C. Code Ann. §12-37-220(A)(1)) that specifically provided that it applied to property only if exclusively used for the exempt purpose. More specifically, the statute stated that it applied only to "property of the State, counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions, *if the property is used* ***exclusively*** *for public purposes*, and it shall be the duty of the Tax Commission and county assessor to determine whether such property is used ***exclusively*** for public purposes; . . ." S.C. Code Ann. §12-37-220(A)(1)(emphasis added); Taxing Entities' Motion at pp. 20-21, citing Charleston Co. Aviation Authority v. Wasson, 277 S.C. 480, 482-483, 289 S.E. 2d 416, 418 (1982). The Legislature knew how to draft a statute that restricted an exemption to property used **exclusively** for a particular purpose and did so in S.C. Code Ann. §12-37-220(A)(1). The Rural Telephone Service Exemption statute contains no such language.

Should this Court determine that the Legislature must have intended that an asset meet some threshold level of use for the exempt purpose in order to qualify, the only analogous case in South Carolina would support the conclusion that the property be used "substantially" (not primarily or exclusively) for the exempt purpose and that it not be used only "incidentally." See Hercules Contractors & Eng., Inc. v. S.C. Tax Comm'n., 280 S.C. 426, 428, 313 S.E.2d 300, 302 (Ct. App. 1984). In Hercules, the taxpayer sued to recover sales taxes paid in connection with the construction of three waste treatment facilities. Hercules, 280 S.C. at 439-40, 313 S.E.2d at 308-

9. One of the facilities at issue treated both manufacturing and municipal waste. Id. 280 S.C. at 439, 313 S.E.2d at 308. It was undisputed that the exemption would apply if the facility treated only manufacturing waste. The tax commission argued that if the facility was used for anything other than manufacturing waste, the exemption should not apply at all. Id. In rejecting this argument, the Court of Appeals stated as follows:

> The exemption of section 12-35-550(17) extends to the sale of machines used in the manufacture of tangible personal property. It does not provide that the manufacturing use has to be exclusive. Neither does it require that the manufacturing use must be the primary purpose to which the facility is devoted. It is undisputed that the Burlington manufacturing plant uses the facility in manufacturing textiles. The fact that others also use it obviously cannot cause it not to be a machine used in the manufacture of tangible personal property as prescribed by this section.

Id., 280 S.C. at 439, 313 S.E.2d at 308.

The Court then stated that, nevertheless, it would not be reasonable to find that "only a minimum use" would be sufficient to make a machine tax exempt and looked to other states for guidance on this issue. Id., 280 S.C. at 439-40, 313 S.E.2d at 308-9. After discussing cases from Arkansas and Massachusetts, it held that property that is used substantially in the manufacture of tangible personal property (35% in that case) is sufficient to qualify for an exemption. Id., 280 S.C. at 439-40, 313 S.E.2d at 308-9.

Applying the Hercules analysis here, the property at issue would clearly meet this test as it is substantially (and, depending on the measure used, primarily), and certainly not incidentally, used for providing rural telephone service. The primary purpose for establishing FTCC and Diversified (via predecessor entities) was to provide rural telephone services. Ex. B, Erwin Aff. at ¶8. Both have eligible telecommunications carrier status with the Federal Communications Commission and the South Carolina Public Service Commission, a status that is reserved for

providers who serve rural, high-cost areas. Id. at ¶7. FTCC's assets claimed as exempt are used solely for providing rural telephone service (including voice and data).[1] Ex. A, Lawrimore Aff. at ¶¶9 and 11. The FTCC assets are also substantially used for voice rural telephone service. Id. at ¶12. While the Taxing Entities complain that Diversified offers services besides landline telephone service, it still substantially uses its assets for the exempt purpose of providing rural telephone service (far more than the waste treatment facility in Hercules, which used 65% of its assets for a non-exempt purpose).[2] Id. at ¶13-14. It has more telephone accounts than all other type of accounts (where assets are jointly used). Id. at 14 and n. 2. And for fiscal year 2017, almost 60% of Diversified's revenue came from landline telephone services. Id. at ¶14. Similarly, the consolidated revenue from telephone services for fiscal year 2017 for the Coop (which, for tax purposes, is considered to own all FTCC and Diversified assets) is substantially more than the revenue from all other services. Id. at ¶15.

The Taxing Entities' expert (Joe Moss, P.E.) discusses "Plain Old Telephone Service" or "POTS," which he describes as being understood in 1978 to be "voice traffic via an electrical circuit over a pair of copper wires" (i.e. the type of telephone communications that existed at the time of the telephone's invention) (Moss Aff. at ¶15), and the Taxing Entities then argue that the exemption statute only covers this type of service. While Farmers disagrees that the statute is so

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[1] In response to the Taxing Entities' complaint that texting/data services were not around in 1978, Farmers would assert that the statute does not restrict "telephone service" to voice only. Moreover, even if it did, FTCC's assets still qualify because they were used substantially for voice services. For example, for fiscal year 2017, FTCC's revenue associated with its voice services was approximately 79% of its total revenue, while revenue from its data services was only approximately 21%. Ex. A, Lawrimore Aff. at ¶11-12.

[2] Diversified does not claim as exempt any assets that are used solely for non-exempt purposes. Ex. A, Lawrimore Aff. at ¶10.

limited, it would note that for fiscal year 2017, FTCC's revenue from POTS was 75%, while 52% of Diversified's revenue is from POTS and 69% of the Farmers' consolidated revenue is from POTS. See Ex. A, Lawrimore Aff. at ¶16.

Moreover, the only "evidence" cited by the Taxing Entities in support of their allegation that the Farmers' assets are only used incidentally for providing rural telephone service is the affidavit of Joe Moss, P.E. who incorrectly treats FTCC and Diversified as one in the same (both for assets and services) (see Ex. B, Erwin Aff. at ¶10) and whose primary support for his assertion that the assets are used incidentally is a 2013 article by a consulting firm (clearly hearsay), which discusses measuring use of assets via bandwidth on a national level. See Moss Aff. at ¶¶25-27. His affidavit contains no research or data specific to Farmers' service area in South Carolina or South Carolina generally other than his speculation that South Carolina probably does not differ much from national averages. Moreover, Farmers has not had sufficient time to retain an expert to examine and rebut these or the other allegations in his affidavit. Ex. B, Erwin Aff. at ¶10.

In sum, the Taxing Entities' Motion sets forth an improper legal standard (primarily used in providing rural telephone service versus simply "used" or "substantially and not incidentally used" in providing rural telephone service), fails to establish that there are no disputed facts as to whether the assets at issue are used substantially in providing rural telephone service, and fails to show that they are entitled to judgment as a matter of law on this issue.

B. The Rural Telephone Service Exemption Applies to All Property Used in Providing Rural Telephone Service Regardless of what Type of Technology is Used to Provide it.

The Taxing Entities claim that the exemption does not apply to assets providing wireless telephone service because in 1978 (when the statute was last amended), wireless telephone service did not exist. Taxing Entities' Motion at p. 21. First, Farmers would note that this argument,

although without merit, could only apply to FTCC assets (FTCC provides wireless telephone services) and would not apply to Diversified's assets, which only provide telephone service via landlines. Lawrimore Aff. at ¶11 and 13.

Additionally, even as to FTCC, the plain language of the statute containing the Rural Telephone Service Exemption (S.C. Code Ann. §12-37-220(B)(10)) reveals that it covers all property used in providing rural telephone services, no matter what technology is used to provide such services. In relevant part, the statute simply states that "the property of telephone companies and rural telephone companies operating in this State **used in providing rural telephone service. . . .**" is exempt. S.C. Code Ann. §12-37-220(B)(10)) (emphasis added). The statute contains no requirement as to how such services must be provided. Interpreting the statute to mean that the exemption only applies if the equipment used to provide the services is that same as that used in 1978, as the Taxing Entities suggest, would require inserting language into the statute to the effect of the following: "telephone service as it existed in 1978." The statute contains no such language, and this Court should not re-write the statute to add a requirement that the Legislature did not see fit to add. State v. Leopard, 349 S.C. 467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002) (holding that when the language of the statute is clear, "a court cannot rewrite the statute and inject matters into it which are not in the legislature's language. . . .").

Additionally, where a statute fails to define a term, the Court "must interpret the term in accord with its usual and customary meaning." Strother v. Lexington Co. Rec. Comm'n, 332 S.C. 54, 504 S.E.2d 117 (1998). "Telephone" is defined as "an instrument for reproducing sounds at a distance; specifically: one in which sound is converted into electrical impulses for transmission (as by wire or radio waves)." See Merriam-Webster's Online Dictionary, http://www.merriam-webster.com/dictionary/telephone. As Mr. Moss' affidavit states, wireless telephones use radio

waves to provide service to the end user. Moss Aff. at ¶13. Thus, the usual and customary meaning of telephone includes both landline and wireless telephones. See also Ex. B, Erwin Aff. at ¶¶4-5 (stating that modern day cell phones and landlines are considered to be telephones in the telephone business and that wireless phones and landlines perform the same function of allowing people to communicate over distances).

It makes perfect sense that the statute does not require that telephone service be provided by a particular type of technology as (a) the Legislature is not in the business of providing telephone services and would not likely know what type of technology would be used, and (b) would have no reason to care what technology was used so long as providers are encouraged to serve rural areas (where the cost is higher to provide service), as otherwise rural folks might not be served. That important legislative purpose would be met no matter what type of technology is used. Hercules Contractors and Eng., Inc. v. S.C. Tax Comm'n, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984) (stating that a statute must be interpreted consistent with its intent and meaning and not so strictly as to defeat its legislative purpose). A cell phone provides telephone service to rural areas just as well as a landline phone (and perhaps even better due to mobility and the ability to also communicate via texts). The purpose of the exemption remains the same and is just as applicable to a farmer with a cell phone in his hands as a farmer with a landline in his home.

The Taxing Entities cite several cases that stand for the proposition that the history of the time that a statute was enacted *may* be considered in interpreting that statute. Taxing Entities' Motion at pp. 21-22. It is true that the time period of a statute's enactment is one factor that may be considered by a court. However the paramount concern of statutory construction is determining legislative intent, and more particularly the purpose of the statute. Judson Mills v. South Carolina Unemployment Comp. Comm'n, 204 S.C. 37, 28 S.E.2d 535 (1944) (stating that a statute must

be construed in the light of the evil which it seeks to remedy and in the light of conditions obtaining at the time of its enactment). Denying Farmers (and all other rural telephone service providers, which all use similarly updated technology) the exemption would clearly defeat the legislative purpose of encouraging the provision of telephone service to rural areas.

Additionally, the meaning of the terms "telephone" and "telephone services" are disputed facts in this case. While the Taxing Entities argue that the definition of a telephone is strictly a landline telephone and that telephone service is restricted to service provided by landlines, Farmers contends that a telephones include both wireless and landline phones and that telephone service simply means the provision of services that allow people to communicate by telephones over distances whether by landline or wireless phone. Ex. B, Erwin Aff. at ¶4 and 9. It further contends that "telephone service" does not refer to the type of technology that is used (i.e. whether landline phones using analog, digital or IP technology or whether by wireless phones). Id. Thus, summary judgment is improper on the basis of these disputed facts alone.

Additionally, the result that the Taxing Entities argue for as to wireless, i.e. to tax all property used in providing wireless rural telephone service simply because technology has changed since 1978 makes no sense. The Taxing Entities apparently wish to limit the exemption to, in Mr. Moss's words, "voice traffic via an electrical circuit over a pair of copper wires" (see Moss Aff. at ¶15), but such a frozen in time approach, when taken to its faulty conclusion, would call for the termination of all tax exemptions except to the extent the assets in question may have existed in the exact same form at the date the exemption was enacted or amended. This would wreak havoc with property tax as well as sales tax exemptions. For example, with property taxes, one would be hard pressed to find a motor vehicle (automobiles and trucks), aircraft, machinery and equipment used in manufacturing establishments (including pollution control machinery), or

research and development equipment that has not changed over time with advancements in technology. The Taxing Entities' argument would mean that none of these items would qualify for exemptions once their technology changed following the enactment of the statute. Even landline technology has changed over time. See Ex. B, Erwin Aff. at ¶6 (discussing changes from analog to digital to ISP technology). The frozen in time approach is simply untenable. Although technology has clearly changed, a telephone is still a telephone and conveys communications from one person to another over distances whether done via landlines or wireless telephones.[3]

In sum, the Taxing Entities' Motion argues for an interpretation of the Rural Telephone Exemption statute that is inconsistent with both the plain language therein and the legislative purpose, fails to establish that there are no disputed facts as to the meaning of the term "telephone service," and fails to show that they are entitled to judgment as a matter of law on this issue.

V. THE GRANT OF THE RURAL TELEPHONE SERVICE EXEMPTION TO FARMERS IS NOT AN ILLEGAL RETROACTIVE GRANT.

The Taxing Entities claim that the grant of the Rural Telephone Service Exemption to Farmers is an illegal retroactive exemption based on two arguments: (a) they contend that Farmers did not properly apply for the exemption, and (b) they argue that SCDOR failed to make property

[3] The Taxing Entities also cite Home Medical Sys., Inc. v. South Carolina Dept. of Rev., 382 S.C. 556, 677 S.E.2d 582 (2009) in support of its "frozen in time" argument. However, that case is not applicable here. In Home Medical, the lower court had changed the statutory definition of "prosthetic device" from one that replaces a missing part of the body (as the statute read) to also include one that replaces a missing function based on changes in medical technology and in how that word is now used. In this case, Farmers is not seeking to change the definition of a word defined by statute. The statute does not define telephone service. Instead it is the Taxing Entities who seek to change or add to the statutory language by inserting the phrase "as it existed in 1978" after the term "telephone service."

tax exemption determinations on an annual basis and to notify county auditors by June 1st of each year. Neither of these arguments has any merit.

A. Farmers Was Not Required to Claim the Exemption on its Original Returns, and it Timely and Properly Claimed the Exemption for All Tax Years.

The Taxing Entities concede that a refund of property taxes may be made (and is not illegal) if "the statutory requirements for claiming the refund are satisfied." Taxing Entities' Motion at p. 24. They must concede this because the law is clear that, with the exception of the pollution control exemption, a taxpayer has three years within which to make a claim for exemption and, if necessary, a refund. See S.C. Code Ann. § 12-4-720(A)(1) (which provides that applications for exemption must be filed within the time period provided in § 12-54-85(F) for refund claims); § 12-54-85(F) (which states that "claims for credit or refund must be filed within three years from the time the return was filed . . . ."); and § 12-4-720(A)(2) (which provides that the pollution control exemption is subject to a shorter time frame of one year).

The Taxing Entities then claim that the grant of Farmers' claim for exemption is "illegally retroactive" because Farmers did not apply for the exemption on its original tax returns. However, this argument is premised entirely on their incorrect belief that the law requires a taxpayer to claim the exemption on its original returns in order to seek an exemption. See Taxing Entities' Motion at p. 2. In fact, the law has no such requirement, and Farmers properly claimed the exemption for all tax years at issue.[4]

[4] Farmers would note that even if it had not met all statutory requirements for applying for an exemption, by granting the exemptions, SCDOR waived any deficiencies that existed (although Farmers is not aware of any such deficiencies). As set forth in more detail in Farmers' Motion to Dismiss, the Code provides very limited avenues for counties to request a contested case hearing on a property tax matter, and failure of a taxpayer to comply with the requirements for an exemption application where the matter is then settled or SCDOR grants the exemption is not one

1. Farmers Is Not Required to Claim the Exemption on its Original Returns but Rather Must Only File a Timely Request for Exemption.

The Taxing Entities rely on S.C. Code Ann. § 12-4-720(C) and TNS Mills, Inc. v. S.C. Dept. of Rev., 331 S.C. 611, 503 S.E.2d 471 (1998) for their faulty assertion that Farmers must request property tax exemptions on its original returns. However, neither supports this interpretation.

Section 12-4-720(C) provides that "[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." S.C. Code Ann. § 12-4-720(C). This simply means that certain taxpayers must request the exemption on their returns each year versus being able to claim once and have that carry forward for all ensuing years (as certain taxpayers may do per § 12-4-720(D) when there are no changes in circumstances). This statute does not say that taxpayers who must claim exemptions on their tax returns each year cannot file timely amended returns, make applications for refund or claim exemptions by timely filed protests. Instead, all that is required for taxpayers to claim a refund is that they file a timely application for exemption. See S.C. Code Ann. § 12-4-720(A)(1)(stating that "[e]xcept as otherwise provided any property owner whose property may qualify for an exemption shall file an application for exemption with the department within the period provide in Section 12-54-85(F) for claims for refund"); see also S.C. Code Ann. § 12-54-85(F) (stating that "claims for credit or refund must be filed within three years from the time the return was filed). Likewise, § 12-54-85(F) does not state that taxpayers who are required to request exemptions each year are barred from claiming refunds. S.C. Code Ann. § 12-54-85(F). The only property

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of them. See Farmers' Motion to Dismiss at pp. 6-12. This corresponds to the purpose behind requiring a taxpayer to apply with the tax return is for SCDOR's benefit, i.e. so that it has the information needed to properly assess and determine property tax exemption requests.

exemption that is not entitled to a three year time period to file a claim for refund is pollution control. See S.C. Code Ann. § 12-4-720(A)(2) (stating that pollution control exemption must be claimed "before the first penalty date for payment of property taxes," i.e. within one year).

As to the TNS Mills case, it was decided under "old law." That matter involved applications made on amended returns for tax years 1986-1991, with amended returns filed in 1992, all well before the 1995 amendment adding the three year time period for refund claims, and it involved the pollution control exemption, which, even after the three year refund amendment, would only have one year to request a refund. TNS Mills, 331 S.C at 615-16, 503 S.E.2d at 473-74. Thus, the law and analysis contained therein do not apply here because the law has changed to allow taxpayers three years to apply for a refund. Thus, neither S.C. Code § 12-4-720(C) nor TNS Mills can be read to undo the three year period to apply for a refund.

2. Farmers Timely and Properly Claimed the Exemption for All Tax Years at Issue.

In this case, following a South Carolina Supreme Court decision clarifying that property titled in the name of wholly owned LLCs (such as FTCC and Diversified) is to be treated for property tax purposes as if it is titled in the name of its owner (here, Farmers Coop), Farmers became entitled to claim an exemption for assets of a rural telephone cooperatives (i.e. Farmers Coop) that are used in providing rural telephone services. See CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011); Lawrimore Aff. at ¶4. Thus, Farmers timely filed claims for exemption for tax years 2010-2011 for certain FTCC assets used in providing rural telephone service. Ex. A, Lawrimore Aff. at ¶4. This claim was filed on December 28, 2012, which was within three years of the date the timely tax returns were filed. Farmers also timely filed amended PT-427 schedules and supporting documentation regarding FTCC assets, which

provided all information necessary to claim the assets used in providing rural telephone services as exempt. Id. Thus, Farmers complied with all statutory requirements for applying for the exemption and the refund related to same for tax years 2010-2011. See also supra n. 4.

For tax years 2012 through 2015 for FTCC assets and 2013 through 2015 for Diversified assets, Farmers timely filed protests annually to the proposed property tax assessments claiming the exemption. Ex. A, Lawrimore Aff. at ¶5. Farmers also timely filed amended PT-427 schedules and supporting documentation, which provided all information necessary to claim the assets used in providing rural telephone services as exempt. Id. Thus, Farmers complied with all statutory requirements for applying for the exemption or tax years 2012-2015. See also supra n. 4.

In January of 2017, SCDOR and Farmers entered into a Settlement Agreement regarding the timely filed applications for exemption for tax years 2010-2015 for FTCC assets and tax years 2013-2015 for Diversified assets whereby they agreed that certain assets of FTCC and Diversified used in providing rural telephone services qualify for the Rural Telephone Service Exemption. Ex. A, Lawrimore Aff. at ¶6. Thus, for tax years 2016-2017, Farmers simply filed PT-420 property tax returns with their PT-427 schedules and supporting data regarding FTCC and Diversified assets, which, once again, provided all information necessary to claim the assets used in providing rural telephone services as exempt. Ex. A, Lawrimore Aff. at ¶7. See also supra n. 4. SCDOR accepted the filed tax returns and granted the requested property tax exemption for FTCC and Diversified assets used to provide rural telephone service. Id.

In sum, Farmers complied with all statutory requirements for applying for the exemption for all tax years at issue. At a bare minimum, there are issues of disputed fact that would preclude summary judgment on this issue.

B. SCDOR Need Not and Cannot Notify the Counties of Property Tax Exemptions that Have Not Yet Been Claimed, the Counties Had Actual Notice of the Exemptions Claimed for All Assets at Issue for Tax Years 2012-2017, and Even if SCDOR Did Not Notify Counties for Tax Years 2010-2011, that Should Not Bar Farmers' Refund Claim where Farmers Complied with all Statutory Requirements.

The Taxing Entities assert that even if Farmers properly applied for the exemption, the exemptions are nevertheless unlawful because SCDOR failed to comply with the statutory notice requirements of S.C. Code Ann. § 12-4-710. That code section reads as follows:

> Except for the exemption provided by Section 12-37-220(A)(9), the department shall determine if any property qualifies for exemption from local property taxes under Section 12-37-220 in accordance with the Constitution and general laws of this State. This determination must be made on an annual basis and the appropriate county official so advised by June first of each year by the department.

S.C. Code Ann. § 12-4-710. After citing to this section, the Taxing Entities appear to abandon their earlier concession that taxpayers have three years to apply for a refund (which is what the law provides), and state that this statute "imposes a duty on the Department to prohibit granting retroactive exemptions. Instead property tax exemptions must be resolved by the deadline. . . ." Taxing Entities' Motion at p. 26. The Taxing Entities then quote a section from the TNS Mills case, which discusses the Court's belief under the law that existed at that time that the policy reason behind having a June 1st deadline is to allow counties to plan their budgets and that allowing the Department to grant exemptions after that deadline would negate that plan. Id.

First, where two statutes conflict, the later enacted statute prevails over the earlier one based on the principle that the last expression of the legislative will is the law. Jolly v. Atlantic Greyhound Corp., 207 S.C. 1, 35 S.E.2d 42 (1945); Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943). Here, because § 12-4-720(A) and § 12-54-85(F), which allow a taxpayer

three years to file for exemption, are later in time than § 12-4-710, which contains the annual reporting and notice directives, the later statutory provisions must control. Id. Thus, the three year time to file exemptions would trump the annual determination and notice provision.

In addition, if the provisions of two statutes can be construed so that both can stand, the Court will so construe them because the repeal of a statute by implication is disfavored and is a last resort only where there is irreconcilable conflict between the two. In the Interest of Shaw, 274 S.C. 534, 539, 265 S.E.2d 522, 524 (1980) citing City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 361 (1953). The refund statute and the annual determination and notification statute can be viewed consistently when the latter is interpreted to apply when a taxpayer requests an exemption with its original return. It makes sense that SCDOR should notify counties annually by the June 1st deadline when they have that information. Presumably many exemptions are requested on original returns, which are generally filed in April, thus allowing counties to have as much information by June 1st as possible regarding property tax revenue for use in preparing their budgets. However, if a taxpayer has not yet requested an exemption resulting in a refund for a particular year on its original return in April, then the June 1st deadline cannot apply as SCDOR does not have any information to give. Obviously SCDOR can only make determinations on exemptions and provide notice regarding a claim once an application for exemption is made.

Additionally, as previously stated, TNS Mills is inapplicable here because it was decided prior to the enactment of the three year exemption statute. The Legislature, whether in response to TNS Mills or for some other reason, decided to allow taxpayers three years to file an exemption request (except for pollution control). The Court could not make the statements made in TNS Mills now in light of the three year period to claim exemptions.

Because no discovery has yet been conducted in this matter, Farmers does not know what notice the taxing entities received as to the 2010-2011 refund years. However, the county auditors and treasurers did, in fact, receive actual notice for the 2012-2015 tax years via SCDOR's certification of protested assessment to the county auditors. Ex. A, Lawrimore Aff. at ¶¶ 5 and 8. The county auditors then acted on protested certifications and caused county treasurers to issue 80% bills to Farmers. Id. These facts are curiously absent from the county auditors' affidavits. Additionally, upon information and belief, the counties would have received notice of the 2016 and 2017 exemption claims either via receipt of the Settlement Agreement or other notice from SCDOR.

Finally, there is no requirement under South Carolina law that taxpayers provide notice to counties of refund claims based on SCDOR assessments. Thus, to the extent that SCDOR was required to provide notice and did not (which is denied at this time based on the information available), that should not be held against the taxpayer, which complied with all requirements of making an exemption request.

In sum, the Taxing Entities' attempt to undo the three year period for claiming exemptions must fail based on the rules of statutory construction and the clear language of the relevant statutes. Because of this misunderstanding of the law, the Taxing Entities have not established that they are entitled to judgment as a matter of law. Additionally, there are disputed issues of facts related to whether the counties received notice as to certain tax years, and Farmers has had insufficient time to engage in discovery on the notice issue as to these tax years such that summary judgment is inappropriate on that basis as well.

VI. Home Rule Does Not Apply

The Taxing Entities contend that imposing a duty upon the Taxing Entities to issue refunds would violate Home Rule. This is incorrect as Home Rule has absolutely nothing to do with the facts of this case. The constitutional provision referred to as Home Rule reads as follows:

§ 7. Organization, powers, and duties of counties; special laws prohibited.

> The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided. Alternate forms of government, not to exceed five, shall be established. No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.

South Carolina Constitution at Art. VIII, Sec. 7.

This section prohibits the Legislature from enacting "special laws" for a specific County that seek to govern the powers and activities of specific counties and provides that only general laws that are applicable to all counties may be enacted. Because no special laws pertaining to specific counties are in question, that portion of the Home Rule provision has nothing to do with this case. The Counties also may be relying on the portion of the Home Rule provision that states that the Legislature shall provide by law for the counties to have certain powers, duties and responsibilities, including the power to tax different areas at different rates, and they point to S.C. Const. art. X, § 5 (sic, now § 6) which grants the counties the power to assess and collect taxes.

However, the counties' power to tax is subject to the statutory powers granted to SCDOR to levy taxes against certain classes of taxpayers, including manufacturers and utilities. See S.C. Const. art. X, § 1 (specifically authorizing the General Assembly to provide for ad valorem (property) taxation by the State (i.e. by SCDOR). This specifically includes manufacturers and

utilities (such as Farmers). It cannot be seriously argued that the Legislature did not have the authority under the South Carolina Constitution to set forth a system governing taxation of utilities. This it has done, and this does not violate the provisions of the Home Rule prohibitions on special legislation for specific counties. The tax laws in question are general laws.

The Counties also appear to argue that the Settlement Agreement under which the counties must refund tax for some of the tax years at issue prevents county officials from establishing a budget. However, this completely ignores the fact that for all but two of the years where refunds are due, the property tax in question was paid under protest and the county auditors were notified and instructed to prepare 80% tax bills. Ex. A, Lawrimore Aff. at ¶¶5 and 8. Tax bills in the amount of 80% are billed when the SCDOR receives a protest which is "reasonably expected will not resolved by December 31st of the tax year." See S.C. Code Ann. § 12-60-2140. The statutory framework allows for refunds and provides the counties as much information as can be given in light of taxpayers' rights to file refund claims within three years and to protest tax assessments with which they disagree. The counties were, therefore, fully aware of the fact that Farmers was claiming the exemption for tax years 2012-2015 at least. The fact that they apparently did nothing with that knowledge to prepare for a refund is no fault of the taxpayer or SCDOR and cannot be used as a reason for avoiding payment of a tax refund. In any case, the fact that the Taxing Entities argue that to make the refund payment would cause undue hardship clearly has nothing to do with the Home Rule provision. Nothing in the Home Rule provision is applicable to this matter.

CONCLUSION

For the reasons set forth above, Farmers respectfully requests that this Court deny the Taxing Entities' Motion for Partial Summary Judgment.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC

January 23, 2018
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **FARMER'S RESPONSE IN OPPOSITION TO TAXING ENTITIES' MOTION FOR PARTIAL SUMMARY JUDGMENT**

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January 23, 2018

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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 Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-CC **SECOND AFFIDAVIT OF JEFFREY L. LAWRIMORE**

PERSONALLY APPEARED before me, the undersigned, who, being duly sworn states as follows:

1. My name is Jeffrey L. Lawrimore, and I am over eighteen years old and am competent to provide testimony in this case based on my personal knowledge regarding the matters addressed herein.

2. I am the Chief Financial Officer ("CFO") of Farmers Telephone Cooperative ("Farmers Coop") and its two wholly owned LLCs: FTC Communications, LLC ("FTCC") and FTC Diversified Services, LLC ("Diversified") (collectively "Farmers"). I have served as CFO continuously from 1998 to present.



3. In my capacity as CFO, I am responsible for the filing of the property tax returns for Farmers Coop, which since 2012 has included the assets of its two wholly owned LLCs, FTCC and Diversified. These entities are taxed as a utility for South Carolina property tax purposes, and, therefore, Farmers files a PT-420 property tax return along with PT-427 and/or PT-429 schedules as appropriate. PT-427 and PT-429 schedules allow a taxpayer to provide information regarding its assets such that the South Carolina Department of Revenue ("SCDOR") can determine taxable versus exempt assets. Additional supporting documentation is provided as needed.

4. For tax years 2010 and 2011, Farmers filed a claim for exemption for certain assets used in providing rural telephone service titled in the name of FTCC. This claim was filed on December 28, 2012, which is within thirty-six months of the date the timely tax returns were filed. The filing was based on the South Carolina Supreme Court's decision in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011). This case, I understand, held that property titled in the name of wholly owned LLCs (such as FTCC and Diversified) is to be treated for property tax purposes as if it is titled in the name of its owner (here, Farmers Coop), thereby equating property owned by FTCC and Diversified to property owned by Farmers Coop. Farmers also timely filed amended PT-427 schedules and supporting documentation for 2010-2011 regarding FTCC and Diversified assets thereby providing all information necessary to claim the assets used in providing rural telephone services as exempt.

5. For tax years 2012 through 2015 for FTCC assets and 2013 through 2015 for Diversified assets, Farmers timely filed protests to the proposed property tax assessments claiming the exemption. Farmers also timely filed PT-420 property tax returns as well as amended PT-427 schedules and supporting documentation, which provided all information

necessary to claim the assets used in providing rural telephone services as exempt. Based on the protests (and the claimed exemptions), Farmers received bills from the respective county auditors of the taxing entities based on 80% of the assessment. Farmers paid these amounts to the county treasurers.

6. SCDOR and Farmers entered into a settlement agreement regarding the timely filed applications for exemption for tax years 2010-2015 for FTCC assets and tax years 2013-2015 for Diversified assets on or about January 8, 2017 ("Settlement Agreement") whereby they agreed that certain assets of FTCC and Diversified used in providing rural telephone service qualify for the Rural Telephone Service Exemption under S.C. Code Ann. §12-37-220(B)(10).

7. For tax years 2016-2017, Farmers timely filed PT-420 property tax returns as well as PT-427 schedules and supporting documentation regarding FTCC and Diversified assets, which again provided all information necessary to claim the assets used in providing rural telephone services as exempt. SCDOR accepted the filed tax returns and granted the requested property tax exemption for FTCC and Diversified assets used to provide rural telephone service. Farmers paid the tax bills for these years in full to the county treasurers.

8. The county auditors received actual notice annually of the exemptions claimed for FTCC assets for tax years 2012-2015 and Diversified assets for tax years 2013-2015. Because of the protested assessments (which were properly filed within ninety days of the proposed assessments), the county auditors issued 80% tax bills to Farmers for each of those years. The county treasurers also had actual notice each year of the exemptions claimed regarding FTCC and Diversified assets via Farmers' protests through the 80% tax bills and the payments to them of those property tax bills.

9. In its application for exemption for tax years (a) 2010-2011 (made via Farmers' amended PT-427s and refund request); (b) 2012-2015 (made via Farmers' amended PT-427s and protests of assessments); and (c) 2016-2017 (made via Farmers' original PT-427s), Farmers claimed exemptions only for those assets of FTCC that were used in providing rural telephone services (provided via wireless technology).

10. In its applications for exemption for tax years (a) 2013–2015 (made via Farmers' amended PT-427s and protests of assessments); and (b) 2016-2017 (made via Farmers' original PT-427s), Farmers claimed exemptions only for those assets of Diversified that were used in providing rural telephone services (provided via land-lines) and did not claim exemption for any assets used only for providing television services, internet services or security services.

11. FTCC is primarily a wireless telephone services company.[1] FTCC provides voice telephone services to all customers and data telephone services (such as texting and internet access) to some of these customers. Whether customers are using voice or data, FTCC's telephone service allows them to communicate over distances in rural areas.

12. FTCC's assets that are the subject of the exemption requests at issue are substantially, and not incidentally, used in providing rural telephone services. In addition, although the FTCC assets that Farmers has claimed as exempt are also used for telephone data services, they are used substantially, and not incidentally, for voice telephone services. For fiscal year 2017, FTCC's revenue associated with its voice services was approximately 79% of its total revenue, while revenue from its data services was only approximately 21% of its total revenue.

[1] FTCC also provides answering services and operator services to some customers, but none of the assets used for these services have been claimed as exempt. In other words, 100% of these assets are taxable, and they are not at issue here.

13. Diversified is a land-line telephone services company, which provides voice telephone services to its customers. It also provides some television, internet and security services, but no exemption has been claimed for any assets used solely for these services. These additional services are typically offered by providers of land-line telephone services today.

14. Diversified's assets that are the subject of the exemption requests at issue are substantially, and not incidentally, used in providing rural telephone services. Diversified has more telephone services accounts than television, internet accounts or security services accounts.[2] Additionally, revenue from telephone services is greater than revenue from all other services. For example, for fiscal year 2017, almost 60% of its revenue came from telephone services.

15. As previously stated, Farmers Coop files a consolidated return, which includes its wholly owned LLCs. FTCC and Diversified are viewed as disregarded entities for tax purposes. The revenue from telephone services in the Farmers Coop consolidated return for fiscal year 2017 is approximately 73% versus 27% for all other services.

16. In the telephone business, the type of telephone communications that existed at the time of the telephone's invention is often referred to as "Plain Old Telephone Service" or "POTS." For fiscal year 2017, 75% of FTCC's revenue is from POTS, 52% of Diversified's revenue is from POTS and 69% of the Farmers' consolidated revenue is from POTS.

[2] As of December 31, 2017, Diversified had approximately 7,067 telephone services accounts versus approximately 4,325 internet accounts, 1,832 television accounts and 851 alarm services accounts.

FURTHER AFFIANT SAYETH NOT.

JEFFREY L. LAWRIMORE, CPA, CGMA
Chief Financial Officer for Farmers Telephone Cooperative

SWORN to and subscribed before me
this 22 day of January, 2018

Diane Marie Banar (L.S.)
Notary Public for the State of South Carolina

My Commission Expires
June 20, 2018

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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 Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-CC **AFFIDAVIT OF F. BRADLEY ERWIN**

PERSONALLY APPEARED before me, the undersigned, who, being duly sworn states as follows:

1. My name is F. Bradley Erwin, and I am over eighteen years old and am competent to provide testimony in this case based on my personal knowledge regarding the matters addressed herein.

2. I am the Chief Executive Officer ("CEO") of Farmers Telephone Cooperative ("Farmers Coop") and its two wholly owned LLCs: FTC Communications, LLC ("FTCC") and FTC Diversified Services, LLC ("Diversified") (collectively, "Farmers"). I have been employed for Farmers for approximately 30 years and have served as CEO from 2006 to present.



3. Wireless or cellular telephones have existed and been in use in this State for many years.

4. The basic concept of a telephone as a method of receiving and sending voice communications did not change with the advent of the wireless cell phone. The cell phones of today and of recent years perform the same function as the original land line telephones of yester year, that is to allow people to communicate over distances. Although modern day cell phones carry additional features (such as texting and internet connection), their primary function is still to enable people to communicate with each other over distances.

5. Modern day cell phones are still considered to be telephones in the telephone business just as land-line telephones are.

6. The technology of telephone communications is constantly changing and evolving. Even the technology for land-line telephones has changed over the years. For example, a change that is common to both landline and wireless is the transition from analog (original technology of landlines whereby voice communications are translated into electrical pulses and then back to audio), to digital (technology implemented by Farmers beginning in the early 1990s, whereby voice communications are translated into binary code and then back to audio), to Internet Protocol ("IP") (technology implemented by Farmers around 2010, whereby voice communications are translated to packetized data and then back to audio using the existing telephone networks). As technology has changed, numerous additional services can now be provided over the same facilities that are used for land-line telephone services.

7. Per the Federal Communications Commission ("FCC") and the South Carolina Public Service Commission ("SCPSC"), wireless communications (both voice and data) is classified as a "telecommunications service" just as landline service is. FTCC has eligible

telecommunication carrier status with both the FCC and the SCPSC, as does Farmers Coop. That designation is reserved for providers who serve rural, high-cost areas. It is also noteworthy that wireless does not operate independent of landline. The interconnection between wireless tower equipment and its switching functions is transported via landline. The only true wireless function occurs between the tower and the user device (i.e. the wireless phone).

8. FTCC and Diversified were both established (via predecessor entities) for the primary purpose of providing rural telephone services in underserved markets. As competition for business has increased over the years, both entities have added other services in order to remain competitive and viable businesses.

9. The term "telephone service" in common usage and in the telephone business means the provision of services that allow people to communicate by telephones over distances. The term "telephone service" does not refer to the type of technology that is used (i.e. whether land-line phones using analog, digital or IP technology or whether by wireless phones) nor does it restrict the method of communication to only voice communications.

10. I have reviewed the affidavit of Joe Moss, PE, which is attached as Exhibit B to the Taxing Entities' Motion for Partial Summary Judgment. There are numerous factual inaccuracies contained therein, including but not limited to his treatment of FTCC and Diversified as if they own the same assets (they do not) and as if they provide all of the same services (they do not). Mr. Moss's affidavit also contains assertions regarding (a) measuring network capacity and usage via total bandwidth, and (b) estimating Farmers' network usage based on purported national numbers taken from a 2013 article by a consulting firm. See Moss Aff. at ¶¶ 24-26. Farmers has not had sufficient time to retain an expert to review and rebut these statements. It plans to retain an expert to examine these assertions as well as all other

assertions in the Moss Affidavit per the deadlines for experts set forth in the operative scheduling order in this matter.

FURTHER AFFIANT SAYETH NOT.

F. BRADLEY ERWIN
Chief Executive Officer for Farmers Telephone Cooperative

SWORN to and subscribed before me
this 22 day of January, 2018

Diane Marie Banar (L.S.)
Notary Public for the State of South Carolina

My Commission Expires
June 20, 2018

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, Williamsburg County School District, Clarendon County School District Two, Florence School District One, Florence School District Three, Sumter County School District, Clarendon County Hospital District, and Lee County School District, Petitioners, vs. South Carolina Department of Revenue; Farmers Telephone Cooperative, Inc.; FTC Communications, LLC; and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-CC **RESPONDENT SOUTH CAROLINA DEPARTMENT OF REVENUE'S RESPONSE TO PETITIONERS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 19(A) of the Rules of Procedure for the Administrative Law Court and Rule 56 of the South Carolina Rules of Civil Procedure, the South Carolina Department of Revenue ("Department") files this Response to Petitioners' Motion for Partial Summary Judgment. For the following reasons, this Court should deny the Petitioners' Motion.

INTRODUCTION AND PROCEDURAL BACKGROUND

This matter is before the Administrative Law Court ("ALC") after Clarendon County filed a request for contested case hearing with the ALC on July 10, 2017. In the request, Clarendon County named the Department as the Respondent because the Department was the "agency that issued the decision." Subsequently, this Court added eleven other local governmental entities as Petitioners (collectively the twelve local governmental entities are the "Taxing Entities"). This Court also added three affected taxpayers, Farmers Telephone Cooperative, Inc. ("Farmers

Coop"), FTC Communications, LLC ("FTCC"), and FTC Diversified Services, LLC ("Diversified") (collectively the "Farmers Entities"), as Respondents.

Although Clarendon County initiated this contested case in July 2017, this matter arose from earlier refund requests and protests by the Farmers Entities for tax years 2010 through 2015.[1] The refund requests and protests related to property taxes assessed by the Department and billed by the applicable counties on property of FTCC and Diversified that was located in multiple South Carolina counties. In their refund requests and protests, the Farmers Entities sought a property tax exemption for certain property owned and used by FTCC and Diversified in providing rural telephone service and a refund of property taxes paid based on that exemption. The Farmers Entities provided telephone service, including wireless telephone service provided by FTCC, in all of the South Carolina counties represented by the Taxing Entities. The Department and the Farmers Entities entered into a Settlement Agreement effective on January 8, 2017 that resolved the issues surrounding exemptions, assessments, and refunds for property of FTCC and Diversified for 2010 through 2015.

The Farmers Entities have filed a Motion to Dismiss. The Taxing Entities have filed a Motion for Partial Summary Judgment ("Petitioners' Motion") seeking that this Court grant partial summary judgment in favor of the Taxing Entities on the following:

1. Whether the exemption provided by S.C. Code Ann. § 12-37-220(B)(10) (2014) ("Rural Telephone Service Exemption") applies to property that is used primarily in providing non-exempt (non-telephone) services and is used only incidentally in providing telephone services, as "telephone service" is defined by the Taxing Entities;

[1]In their Prehearing Statement, the Taxing Entities "challenge the property tax exemptions granted . . . for the tax years 2010 through 2017." (Taxing Entities Prehearing Statement, p. 2.) However, the Taxing Entities acknowledge that the Settlement Agreement entered into between the Department and the Farmers Entities addressed only 2010 through 2015. (Req. for a Contested Case Hearing.) Therefore, the Taxing Entities did not request a contested case hearing regarding the 2016 and 2017 property tax years, so tax years 2016 and 2017 are not part of this contested case.

2. Alternatively, whether property used in providing wireless telephone service is not eligible for the Rural Telephone Service Exemption because wireless service may not have been a feature of the rural telephone service within the meaning of section 12-37-220(B)(10);

3. Whether the Department's grant of the Rural Telephone Service Exemption is illegally retroactive; and

4. Whether the Department's grant of the Rural Telephone Service Exemption violated Home Rule.

This Court should deny Petitioners' Motion. First, Petitioners' Motion is premature, as the parties have had no opportunity to conduct discovery that the scheduling order in this case permits. Second, the Farmers Entities have filed a Motion to Dismiss this case for lack of subject matter jurisdiction, and dismissing this case would make the Petitioners' Motion moot. Third, Petitioners' Motion should be denied because:

1. There are material facts at issue regarding the property of the Farmers Entities, how it is used, and for what service(s) each item of property is used. The telephone industry is complex and how the technology works is fact intensive. Additionally, there are material facts at issue regarding how wireless telephone service differs from old-school telephone service, as defined by the Taxing Entities.

2. The plain, ordinary language of the Rural Telephone Service Exemption does not mandate that an item of property be used exclusively for an exempt purpose for the exemption to be granted.

3. Pursuant to the Telephone Cooperative Act, "telephone service" is defined to include wireless telephone and other services provided by the Farmers Entities, which would make the property used to provide wireless telephone service exempt under section 12-37-220(B)(10).

4. The refunds due to the Farmers Entities and the granting of the exemption in the Settlement Agreement are not illegally retroactive.

5. The Department's decision in the Settlement Agreement to grant the exemptions for 2010 through 2015 do not violate Home Rule and the Department gave notice to the appropriate county officials of the appeals filed by the Farmers Entities.

FACTUAL BACKGROUND

The following are the material undisputed facts in this case:

1. Farmers Coop was incorporated in South Carolina in 1952. Pursuant to section 12-37-220(B)(10), it has utilized the property tax exemption for property of rural telephone cooperatives operating in South Carolina used in providing rural telephone service.

2. FTCC was organized as a limited liability company ("LLC") in South Carolina on July 1, 2009. FTCC is a single-member LLC of Farmers Coop.

3. Diversified was organized as a LLC in South Carolina effective July 1, 2012. Diversified is a single-member LLC of Farmers Coop.

4. The two LLCs chose not to be taxed as a corporation for South Carolina income tax purposes during the applicable tax years.

5. FTCC and Diversified were disregarded entities pursuant to S.C. Code Ann. § 12-2-25(B)(1) (2014) during the applicable tax years.

6. Each of the Farmers Entities filed property tax returns for the applicable tax years as a "telephone" business.

7. During the applicable tax years, FTCC and Diversified provided a range of services that included telephone-related service and other services. FTCC provided wireless telephone service, operator service, and answering services. Diversified provided land-line telephone service, television services, Internet service, and security service.

8. Regarding FTCC's property for 2010 and 2011:
    a. For property tax year 2010:
        i. FTCC filed its property tax return, Form PT-420, Form PT-427, and supplemental data, with the Department's Property Division on or about April 29, 2010. FTCC claimed that it owned property in Clarendon, Florence, Lee, Sumter, and Williamsburg counties. In this 2010 property tax return, FTCC identified certain property in each of the five counties exempt from property taxation by labeling that property as being in a "RURAL" tax district. (Brewer Affidavit, ¶ 8.)

        ii. The Property Division issued a proposed assessment to FTCC on or about May 28, 2010 and issued certified assessments to the applicable counties on or about August 15, 2010. (Brewer Affidavit, ¶ 10.)

b. For property tax year 2011:
    i. FTCC filed its property tax return, Form PT-420, Form PT-427, and supplemental data, with the Department's Property Division on or about April 14, 2011. FTCC claimed that it owned property in Clarendon, Florence, Lee, Sumter, Williamsburg, and Georgetown counties. In this 2011 property tax return, FTCC identified certain property in each of the six counties exempt from property taxation by labeling that property as being in a "RURAL" tax district. (Brewer Affidavit, ¶ 8.)

    ii. The Property Division issued a proposed assessment to FTCC on or about April 25, 2011 and issued certified assessments to the applicable counties on or about August 15, 2011. (Brewer Affidavit, ¶ 10.)

c. On or about December 28, 2012, Farmers Coop and FTCC sent a letter to the Department requesting a property tax exemption for FTCC's rural telephone property pursuant to section 12-37-220(B)(10) and a related refund for property tax years 2010 and 2011. (Brewer Affidavit, ¶ 14.) FTCC requested a refund of $726,966.53 for 2010 and $827,067.55 for 2011. Farmers Coop and FTCC asserted that property of FTCC also qualified for the rural telephone equipment exemption under section 12-37-220(B)(10).

9. Regarding FTCC's property for 2012, 2013, 2014, and 2015:
    a. For property tax years 2012 through 2015, FTCC filed Form PT-420, Form PT-427, and other supplemental data. (Brewer Affidavit, ¶ 8.) On each of these property tax returns, FTCC indicated that certain property was exempt from property taxation by labeling that property as being in a "RURAL" tax district. (Brewer Affidavit, ¶ 8.)

    b. FTCC filed its property tax return, Form PT-420, Form PT-427, and supplemental data, with the Department's Property Division for property tax year 2012 on or about April 2, 2012, for property tax year 2013 on or about April 30, 2013, for property tax year 2014 on or about April 28, 2014, and for property tax year 2015 on or about April 24, 2015.

    c. For property tax year 2012, the Property Division issued a proposed assessment to FTCC on or about July 13, 2012 and issued certified assessments to the applicable counties on or about August 15, 2012. For property tax year 2013, the Property Division issued a proposed assessment to FTCC on or about January 15, 2014 and issued certified assessments to the applicable counties on or about January 16, 2014. For property tax year 2014, the Property Division issued a proposed assessment to FTCC on or about August 12, 2014 and issued certified assessments to the applicable counties on or about August 15, 2014. For property tax year 2015, the Property Division issued a proposed assessment to FTCC and the certified assessments to the applicable counties on or about August 24, 2015. (Brewer Affidavit, ¶ 11.)

d. In letters dated October 1, 2012, February 18, 2014, November 6, 2014, and October 8, 2015, FTCC protested the proposed assessments for 2012, 2013, 2014, and 2015, respectively, for failure to exempt FTCC's assets under section 12-37-220(B)(10). (Brewer Affidavit, ¶ 15.)

e. Because of the unresolved protests by FTCC, the Property Division sent an 80% assessment to the applicable counties for FTCC's property for 2012, 2013, 2014, and 2015. (Brewer Affidavit, ¶ 17.) The Counties then billed and FTCC paid property taxes on 80% of the original proposed assessment for 2012, 2013, 2014, and 2015.

10. Regarding Diversified's property for 2013, 2014, and 2015:

a. For 2013 through 2015, Diversified filed Form 420, Form 427, and other supplemental data. (Brewer Affidavit, ¶ 8.) On each of these property tax returns, Diversified indicated that certain property was exempt from property taxation by labeling that property as being in a "RURAL" tax district. (Brewer Affidavit, ¶ 8.)

b. Diversified filed its property tax return, Form PT-420 and supplemental data, with the Department's Property Division for property tax year 2013 on or about April 30, 2013, for property tax year 2014 on or about April 28, 2014, and for property tax year 2015 on or about April 24, 2015.

c. For property tax year 2013, the Property Division issued a proposed assessment to Diversified on or about January 15, 2014 and issued certified assessments to the applicable counties on or about January 16, 2014. For property tax year 2014, the Property Division issued a proposed assessment to Diversified on or about August 12, 2014 and issued certified assessments to the applicable counties on or about August 15, 2014. For property tax year 2015, the Property Division issued a proposed assessment to Diversified and certified assessments to the applicable counties on or about on or about August 24, 2015. (Brewer Affidavit, ¶ 12.)

d. In letters dated February 18, 2014, November 6, 2014, and October 8, 2015, Diversified protested the proposed assessments for 2013, 2014, and 2015, respectively, for failure to exempt and Diversified's assets under section 12-37-220(B)(10). (Brewer Affidavit, ¶ 16.)

e. Because of the unresolved protests, the Property Division sent an 80% assessment to the applicable counties for Diversified's property for 2013, 2014, and 2015. (Brewer Affidavit, ¶ 17.) The counties then billed and Diversified paid property taxes on 80% of the original proposed assessment for 2013, 2014, and 2015.

11. Effective January 8, 2017, the Department and the Farmers Entities entered into a written Settlement Agreement regarding all claims and matters arising regarding property taxes for tax years 2010 through 2015 for FTCC and for tax years 2013 through 2015 for Diversified (together, the "Audit Period"). (Exhibit A to Petitioners' Request for Contested Case Hearing.)

12. In Section 3.3 of the Settlement Agreement, the Department and the Farmers Entities agreed that the Settlement Agreement "represents a full, complete, final, and binding settlement" of all property tax claims for 2010 through 2015 for FTCC and 2013 through 2015 for Diversified. The Department and the Farmers Entities also agreed that the Settlement Agreement "shall not be construed by either the Taxpayers or the Department as an admission by either party concerning any claims or issues asserted with respect to the tax or fees for the Audit Period." (Exhibit A to Petitioners' Request for Contested Case Hearing.)

13. After the Settlement Agreement was executed, FTCC and Diversified submitted amended property tax returns for 2010 through 2015, as appropriate, to the Property Division. The amended property tax returns identified exempt property pursuant to the Settlement Agreement. (Brewer Affidavit, ¶ 18.)

14. On July 6, 2017, the Property Division's Utility Assessment Coordinator sent a memorandum with revised assessments for 2010 through 2016 for FTCC and Diversified, as applicable, to the county auditors of Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County. These revised assessments for 2010 through 2015 are referenced herein as "Post-Settlement Assessment Certifications." (Brewer Affidavit, ¶ 19.)

15. The Department did not issue a Department Determination as described in S.C. Code Ann. § 12-60-450(E)(1), (2) (2014) in this matter.

ARGUMENTS

The Department did not issue a Department Determination regarding the Farmers Entities' request for refunds and protests of property tax assessments for 2010 through 2015 because the Department and the Farmers Entities entered into a written Settlement Agreement resolving the matter. The issues now to be decided are whether the Petitioners' Motion is premature as Petitioners are relying on an affidavit by an expert when the Department has not had the opportunity to conduct discovery as envisioned by the applicable scheduling order in this case and whether this Court lacks subject matter jurisdiction over this case when the Department did not

issue a Department Determination or when the Department lawfully settled the matter with the Farmers Entities. If this Court does not have subject matter jurisdiction, this Court should dismiss this case and find that the Petitioners' Motion is moot. If this Court decides that it does have subject matter jurisdiction or that Petitioners' Motion should be decided, this Court should deny the Petitioners' Motion for the following reasons.

I. The Petitioners' Motion for Summary Judgment Is Premature Because It Seeks to Prevent the Respondents from Having a Full and Fair Opportunity to Conduct Discovery; Hence, this Court Should Deny Petitioners' Motion.

This Court should deny the Petitioners' Motion as premature because the Department has not had the opportunity to conduct discovery, including identifying and retaining an expert to respond to the Taxing Entities' expert affidavit of Joe Moss. Summary judgment is a drastic remedy and "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543–44 (1991). "This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Id.*

The Taxing Entities filed this Motion less than three weeks after the parties entered a Consent Scheduling Order on November 27, 2017. Among other things, the Scheduling Order gave the parties until August 17, 2018 to conduct discovery, until March 30, 2018 to identify their experts, and until May 30, 2018 to identify any rebuttal experts. In support of the present motion, the Taxing Entities provide the expert testimony of Joe Moss, whose affidavit includes numerous conclusory statements of law or fact:

- "In 1978, the term 'telephone service' as commonly used, was generally understood to mean voice traffic via electrical circuit over a pair of copper wires." (Moss Affidavit, ¶ 15.)
- Voice services in 1978 were limited compared to the services offered by the Farmers Entities. (Moss Affidavit, ¶ 18.)

- Engineers and specialists in the telecommunications industry in 1978 would not have understood "telephone services" to include some of the services provided by Farmers Entities. (Moss Affidavit, ¶ 19.)

- A standard measure exists for determining the percentage of a telecommunications system that is used for providing a particular service, and that less than 5% of the Farmers Entities' property is used for voice services while 95% or more is used for mobile data and broadband data services. (*See* Moss Affidavit, ¶¶ 24, 25.)

The Department was unable to locate and engage an expert and present an affidavit from an expert to oppose Petitioners' Motion in the short time following the filing of Petitioners' Motion, especially since no discovery at all has occurred in this case. The nature of the telephone industry, its evolution, and the technologies involved are too complex to obtain quickly an affidavit needed to oppose Petitioners' Motion. Moreover, the Department has not yet had the opportunity to depose Mr. Moss to examine fully the grounds for his opinions, as is typically done during discovery and as envisioned by the Consent Scheduling Order in this case. When a premature motion for summary judgment occurs and, as is the case here, an opposing party cannot obtain an affidavit to oppose the motion, the South Carolina Rules of Civil Procedure provide a remedy. This Court may deny a motion for summary judgment or order a continuance to permit affidavits to be obtained, depositions to be taken, or other discovery to be had in cases such as this. *See* S.C. R. Civ. P. 56(f); *Baughman*, 306 S.C. at 112, 410 S.E.2d at 543-44 n. 4. If the Court does not dismiss this case, the Department believes that the parties need to conduct discovery as set forth in the Consent Scheduling Order.

By granting summary judgment at this premature point, the Department would be deprived of the opportunity to conduct discovery and particularly would be deprived of the opportunity to depose Mr. Moss and conduct discovery on the conclusory and other facts underlying his affidavit. To comply with the statements in *Baughman* and in accordance with SCRCP 56(f), this Court

should deny Petitioners' Motion because it is premature and allow all parties to have a full and fair opportunity to conduct discovery in accordance with the existing scheduling order.

II. The Petitioners' Motion for Partial Summary Judgment Is Moot Because this Court Lacks Subject Matter Jurisdiction Over this Case.

The Farmers Entities have filed a motion to dismiss this case, which contends that this Court lacks subject matter jurisdiction over this case because (1) the Department did not issue a Department Determination, which is a prerequisite for the Taxing Entities to request a contested case hearing, and (2) the Settlement Agreement dated January 8, 2017 between the Department and the Farmers Entities is final and conclusive and may not be reopened by this Court.

Local governing bodies, like the Taxing Entities, may request a contested case hearing before the ALC if they disagree with a Department Determination. S.C Code Ann. §§ 12-60-2130, 12-60-2150(H) (2014). Accordingly, the issuance of a Department Determination by the Department is a prerequisite for a local governing body to request a contested case hearing; however, the Department did not issue a Department Determination to the Farmers Entities regarding their refund requests and protests for 2010 through 2015. Further, effective on January 8, 2017 the Department and the Farmers Entities entered into a written Settlement Agreement resolving all property tax matters for 2010 through 2015. (Exhibit A to Petitioners' Request for Contested Case Hearing.) The General Assembly has expressly granted the Department the authority to enter into such a settlement agreement before and without a Department Determination being issued, *see* S.C. Code Ann. § 12-60-450(D), (E) (2014); *see also* S.C. Code Ann. § 12-4-320(4) (2014), and Title 12 plainly provides that no administrative or judicial action may reopen the settlement agreement, except in limited circumstances that do not apply here, section 12-4-320(4). This provision is important, not only because it authorizes the Department to resolve disputed tax matters with taxpayers, but because it also allows taxpayers to rely on the terms of

such an agreement based on the legal, statutory assurance that the agreement will not be undone at a later date.

Because the Department did not issue a Department Determination in this matter and this Court may not reopen the Settlement Agreement, there is no statutory basis for the Taxing Entities to seek this contested case hearing. Accordingly, this Court lacks subject matter jurisdiction. Lacking subject matter jurisdiction, this Court should dismiss this case leaving the Petitioners' Motion moot.

III. The Property Used in FTCC's Wireless Telephone Service and Diversified's Land-Line Telephone Service Qualified for the Rural Telephone Service Exemption Because this Property Was Used to Provide Rural Telephone Service.

Based on its review of the relevant facts and law, the Department properly concluded the subject property qualified for the Rural Telephone Service Exemption as the property was used to provide rural telephone service. In addition to the property being used to provide rural telephone service, the plain and ordinary language of the exemption statute does not impose a requirement that the property must be used primarily for rural telephone service as the Taxing Entities claim. Additionally, wireless service is a subset of telephone service, so property used in providing wireless service qualified for the Rural Telephone Service Exemption. Alternatively, there are material facts at issue that prevent the granting of Petitioners' Motion.

A. South Carolina law does not require that a property taxpayer use property eligible for the Rural Telephone Service Exemption exclusively or even primarily in providing rural telephone service in order to qualify the property for the Rural Telephone Service Exemption.

The language of the Rural Telephone Service Exemption does not impose a requirement that a rural telephone cooperative use the subject property primarily in providing rural telephone service, and the Taxing Entities' expert confirmed that the Taxing Entity uses the subject property in providing rural telephone service.

The language of the Rural Telephone Service Exemption statute must be given its plain and ordinary meaning, and, because the statute does not include the words "exclusively" or "primarily" to quantify the level of rural telephone usage of the applicable property, all of FTCC's and Diversified's property used in providing rural telephone service qualified for the exemption.[2]

First, the plain language of the exemption statute does not require that the taxpayer use the property "primarily" in providing rural telephone service in order to qualify for the exemption. The Rural Telephone Service Exemption statute provides a property tax exemption to "the property of telephone companies and rural telephone cooperatives operating in this State used in providing rural telephone service." S.C. Code Ann. § 12-37-220(B)(10) (2014). The Taxing Entities urge the Court to re-write this exemption statute in a manner than injects a new requirement that the property must be "used [**primarily**] in providing rural telephone service." However, "[t]he language of a tax exemption statute must be given its plain, ordinary meaning." *John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer*, 276, S.C. 314, 317, 278 S.E.2d 340, 342 (1981). Here, the statute does not impose upon the taxpayer a required level of rural-telephone-service usage of the property to qualify for the exemption. The text of the statute did not include words such as "primarily" or "exclusively," so the plain, ordinary meaning of the statute does not impose such a standard. *See* S.C. Code Ann. § 12-37-220(B)(10) (2014). The Taxing Entities acknowledge that their position is novel (Petitioners' Motion, p. 20), and urge this Court—for the first time—to adopt a rule regarding property tax exemptions that has never been

[2]Pursuant to the Settlement Agreement, only property used in providing rural telephone service was identified as exempt. Property used for FTCC's operator service and answering service and property used in Diversified's television service, Internet service, and security service were not identified as exempt. (Exhibit A to Petitioners' Request for Contested Case Hearing.)

adopted by any South Carolina court: that property is exempt from ad valorem taxation only if its primary use of the property is exempt.

Second, the General Assembly has used language quantifying the required use of property, but it chose not to use such quantifying language here. The Taxing Entities relied on the use of the word "exclusively" in S.C. Code Ann. § 12-37-220(A)(1) (2014) to support its argument against the exemption here (Petitioners' Motion, pp. 20-21 (citing *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 289 S.E.2d 416 (1982))), but (1) the General Assembly chose not to use such quantifying language in the Rural Telephone Service Exemption stature and (2) in the *Charleston County Aviation Authority* case, the issue was interpreting the meaning of "used exclusively," not interpreting the omission of such quantifying language. The General Assembly also used quantifying language—the word "primarily"—in at least one exemption statute when it wanted to impose a required level of usage. The General Assembly exempted from property taxes "the property of any fraternal society, corporation, or association, when the property is used *primarily* for the holding of its meetings and the conduct of its business." S.C. Code Ann. § 12-37-220(B)(12) (2014) (emphasis added); *Hibernian Society v. Thomas*, 282 S.C. 465, 469, 319 S.E.2d 339, 341-42 (Ct. App. 1984). The General Assembly's use of the word "primarily" to impose a certain level of usage was instrumental in the *Hibernian* decision, so the inclusion or exclusion of the word is important to the plain, ordinary meaning of exemption statutes. Here, the General Assembly chose not to include the word "primarily" or any other word imposing a certain level of exempt usage, so exclusion of the word "primarily" must be read not to impose a primary-usage requirement before the exemption may be granted.

Because the plain, ordinary meaning of the Rural Telephone Service Exemption does not impose a certain level of rural-telephone-service usage on the exempt property, the remaining

question is whether the property of FTCC and Diversified that was identified as exempt in the Settlement Agreement is used to provide rural telephone service. The simple answer is that the Taxing Entities' own expert affidavit confirmed that this property is used for rural telephone service. Mr. Moss restricted the definition of "telephone service" to "voice traffic via an electrical circuit over a pair of cooper wires." (Moss Affidavit, ¶ 15 (saying this was the "generally understood" meaning of "telephone service" in 1978)). Under this restricted definition of telephone service, Mr. Moss claimed that voice traffic on telecommunications networks in the United States approximates 5% of total bandwidth and approximates 10% of the total bandwidth of the subject property. (Moss Affidavit, ¶¶ 25, 27.) Therefore, Mr. Moss conceded that FTCC's and Diversified's subject property was used approximately 5% to 10% for rural telephone services, even based on his restricted definition of telephone service. Stated differently, Mr. Moss has admitted that the property at issue was "property used in providing rural telephone services," which is all that the statute requires in order to exempt the property. The fact that this property was also used to provide other services is irrelevant to the statutory analysis.

B. Telephone service includes wireless telephone service, so property used to provide wireless telephone service qualified for the Rural Telephone Service Exemption.

Telephone service includes the transmission of voice through the use of electromagnetic spectrum (e.g., radio waves); therefore, property that FTCC and/or Diversified used from 2010 through 2015 to provide wireless services were used to provide telephone services and were exempt under section 12-37-220(B)(10).

The term "telephone service" is not defined in section 12-37-220(B)(10), but, for several reasons, wireless services are a subset of telephone services. First, although the exemption statute does not define telephone service, when faced with an undefined statutory term, courts interpret the term in accordance with its usual and customary meaning. *Travelscape, LLC v. South Carolina*

Dep't of Revenue, 391 S.C. 89, 99, 705 S.E.2d 28, 33 (2011). Looking to a usual and customary source of definitions, "telephone" is defined as "an instrument for reproducing sounds at a distance; specifically: one in which sound is converted into electrical impulses for transmission (as by wire or radio waves)." Merriam-Webster's Online Dictionary, http://www.merriam-webster.com/dictionary/telephone, last accessed on Jan. 1, 2018. Since wireless communications services are provided through radio waves, *Alltel Communications, Inc. v. South Carolina Dep't of Revenue*, 399 S.C. 313, 316, 731 S.E.2d 869, 871 (2012), the usual and customary definition of "telephone" includes instruments that provide wireless services. Second, although the exemption statute does not define telephone service, a statute in South Carolina's Telephone Cooperative Act defines "telephone services" to include the transmission of voice and other signals through the use of electricity or the electromagnetic spectrum and includes all lines, wires, radio, and other property used to provide such services. S.C. Code Ann. § 33-46-20(5) (2006). Because the electromagnetic spectrum includes radio waves, Introduction to the Electromagnetic Spectrum, https://science.nasa.gov.ems/01_intro, last accessed on Jan. 17, 2018, the Telephone Cooperative Act defines "telephone service" to include wireless service.

Further, there is no reason to believe that the General Assembly intended to limit the exemption to property used in 1973 (e.g., poles, copper lines). If that were the case, we assume that much of the upgraded property used in providing rural telephone service that uses post-1970 technology (e.g., fiber optic cable and digital switches) and that is treated as exempt for Farmers Coop, the actual cooperative and the parent of FTCC and Diversified, would not be exempt.

Based on the above, wireless service is a subset of telephone service for the purposes of the Rural Telephone Service Exemption, and FTCC's and/or Diversified's property used in

providing wireless services are exempt from property tax under this Rural Telephone Service Exemption.

C. Many material facts are at issue regarding telephone service, which prohibit granting the Taxing Entities' Motion on this issue.

As stated above, the Petitioners' Motion is premature because there are facts the Department has not had an opportunity to identify and challenge through discovery. Further, it seems clear that there are already material facts in dispute. We provide two examples below.

First, the Department has provided some evidence above that telephones service includes wireless service because at least two useful definitions of "telephone" and "telephone services" include wireless services provided through the electromagnetic spectrum, including through radio waves. These facts about how wireless service was provided in 2010 through 2015 may be in dispute since the Taxing Entities and its expert do not believe that telephone service included wireless service.

Second, the Taxing Entities' expert affidavit did not provide any assertion about the primary purpose of the subject property, and the Taxing Entities need to present such facts to prevail. In *Hibernian*, the South Carolina Supreme Court used a definition of the word "primarily" to include "of first importance." 282 S.C. at 471, 319 S.E.2d at 342. Therefore, a question in *Hibernian* was whether the use of the subject property was of primary importance to the taxpayer or of secondary importance to the taxpayer. 282 S.C. at 471, 319 S.E.2d at 342-43. Here, the Taxing Entities' expert did not provide any facts concerning the primary or secondary importance of the Farmers Entities' use of their property, but instead merely quantified the multiple uses of the subject property between old-school telephone service (i.e., voice transmission) and other uses of the subject property. If applicable, the Department should be given the opportunity to examine

the primary or secondary purposes of the Farmers Entities' property at trial or answer questions about it in discovery.

Some material facts are in dispute, and the Department believes it is likely to identify other material facts in dispute during discovery regarding this complex telecommunications industry. Also, because no discovery has been taken, it is reasonable to believe that material facts may not have even been identified.

Therefore, this Court should deny Petitioners' Motion. First, the plain, ordinary meaning of the exemptions statute is that the General Assembly has not imposed any requirement that the subject property be used primarily in providing rural telephone service to qualify for the exemption. Second, wireless service is a subset of telephone service, so property used in proving wireless service is exempt as providing telephone service. Third, material facts are in dispute, and others need to be identified and developed.

IV. FTCC and Diversified Timely Applied for the Rural Telephone Service Exemption under Section 12-4-720, and the Department Properly Granted the Exemption for 2010 through 2015 when It Lawfully Entered into the Settlement Agreement. Therefore, the Department Did Not Grant an Illegal Retroactive Exemption.

The grant of the Rural Telephone Service Exemption by the Department for 2010 through 2015 was proper and not illegally retroactive when FTCC and Diversified timely applied for the Rural Telephone Service Exemption for 2010 through 2015, as applicable, and the Department complied with the statutory framework regarding proposed assessments, applications for exemptions, claims for refund, and taxpayer appeals.

The Taxing Entities claim that the Settlement Agreement effective on January 8, 2017 between the Department and the Farmers Entities "imposed a retroactive application of the exemption to 2010 through 2016" (Petitioners' Motion, p. 22) and that the statutory route

governing the granting of the exemption prohibits such retroactive exemptions for 2010 through 2017.[3] Specifically, the Taxing Entities make two claims that they assert create the retroactive exemptions. First, they claim that the Department, through the 2017 Settlement Agreement, granted exemptions for 2010 through 2016 when FTCC and Diversified failed to file timely applications for exemption on each applicable property tax return. Second, the Taxing Entities claim that the Department granted retroactive exemptions when it did not advise the Taxing Entities by June 1 of each tax year of the granting of the exemption. However, for 2010 through 2015 FTCC and Diversified did timely file applications for exemption, as applicable, pursuant to S.C. Code Ann. § 12-4-720 (2014), and because the Department followed the statutory framework regarding claims for refunds (2010 and 2011) and protests of proposed assessments and the denial of exemptions (2012 through 2015).

The entire statutory framework, when understood as a whole, demonstrates why the Department acted properly and did not contravene the overall intent of the statutory process. The Department has the sole responsibility to appraise and assess the property of entities engaged in the telephone business. S.C. Code Ann. § 12-4-540(A)(1)(f) (2014). Taxpayers, including those engaged in the telephone business, must submit to the Department annual property tax returns by April 30 for taxpayers who have a December 31 year-end for income tax purposes. *See* S.C. Code Ann. § 12-37-970 (2014). The Department determines the property tax assessments from the return. *Id.* The Department then forwards the assessments prepared from the returns submitted to the appropriate local taxing authorities by August 15 of the applicable tax year. *Id.*

[3]As previously stated, neither the Taxing Entities' request for a contested case hearing nor the Settlement Agreement addressed 2016 and 2017 property taxes for the Farmers Entities, so they are not at issue here. However, the Taxing Entities discuss those tax years in the Petitioners' Motion and seek this Court to rule on those years too.

Certain property is exempt from property tax in South Carolina, S.C. Code Ann. § 12-37-220 (2014), so property tax returns and exemptions are interrelated. The Department determines whether any property qualifies for an exemption from local property taxes under section 12-37-220. S.C. Code Ann. § 12-4-710 (2014). For many exemptions, property taxpayers are required to submit an application for exemption. When property taxpayers are required to file applications for exemption, the following statutory provisions are applicable:

> (A) Applications for property tax exemptions, other than the exemption provided by Section 12-37-220(A)(9), must be filed as follows:
> (1) Except 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 by Section 12-54-85(F) for claims for refund. This item does not relieve the taxpayer of any responsibility to file timely and accurate property tax returns.
> (2) Owners of property exempt under Section 12-37-220(A)(8) shall file an application for exemption before the first penalty date for payment of property taxes.
> (3) Applications for exemption are not required for properties owned by the United States Government or those exempt properties enumerated in Section 12-37-220(A)(1), (5), (6), (10), and (B)(9), (13), (14), (15), (17), (23), (25), and (30).
>
> (B) If a taxpayer files property tax return listing property as exempt, that listing is considered an application for exemption from property taxes.
>
> (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.

S.C. Code Ann. § 12-4-720(A)-(C) (2014). Upon receipt of an application for exemption and a proper investigation, the Department may declare property to be exempt. S.C. Code Ann. § 12-4-730 (2014). If so, the Department will then certify the exemption to the appropriate taxing authority, who will then void any existing tax notice applicable to the property. *See id.*

As was the case for the Farmers Entities for 2010 through 2015, the South Carolina Revenue Procedures Act gives a property taxpayer the right seek a remedy for property tax matters that the taxpayer disputes. A property taxpayer may appeal a property tax assessment proposed by a division of the Department and may appeal any denial of a tax exemption by the Department. S.C. Code Ann. § 12-60-2120(A), (B) (2014). A property taxpayer may also file a claim for a refund of property taxes assessed by the Department and paid by the taxpayer if the taxpayer believes the property is exempt. S.C. Code Ann. § 12-60-2150(A) (2014).

The administrative remedy process regarding appeals of proposed assessments and denials of tax exemptions begins when the taxpayer files a written protest with the Department. S.C. Code Ann. § 12-60-2120(A), (B) (2014). "After the protest is filed, the taxpayer and [the D]epartment 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), 12-60-2120(D) (2014). If the taxpayer and the Department do not settle the case, the Department will issue a Department Determination. S.C. Code Ann. §§ 12-60-450(D)(2), (E)(1), 12-60-2120(D) (2014). The Department Determination must be in writing and must contain certain specified information. S.C. Code Ann. §§ 12-60-450(D)(2), (E)(1), 12-60-2120(D) (2014). If the resolution of the protests – whether through settlement or a court decision – results in a change to the proposed assessment, the Department will certify a revised assessment to the applicable counties, which may result in an additional tax payment from the taxpayer or in a refund from the applicable local governing bodies. *See* S.C. Code Ann. § 12-60-2140(B)-(D) (2014).

The administrative remedy process regarding refunds of property taxes begins when a property taxpayer files a claim for a refund with the Department if the Department originally assessed the property or if the taxpayer believes the property is exempt from property taxes. S.C.

Code Ann. § 12-60-2150(A) (2014). The claim for a refund is subject to the limitations in S.C. Code Ann. § 12-60-1750 (2014) and must be submitted within the time limitation of S.C. Code Ann. § 12-54-85(F) (2014). *Id.* The limitation in section 12-60-1750 requires that, when the claimed refund relates to a property tax exemption, the application for exemption must be timely filed. S.C. Code Ann. § 12-60-1750(1) (2014). Section 12-54-85(F) provides that the claim for a refund "must be filed within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later." S.C. Code Ann. § 12-54-85(F)(1) (2014). After the claim for refund has been filed, the administrative remedy process described above for protests of proposed assessments and denials of tax exemptions (i.e., stipulating to facts and issues, settling the case, issuing Department Determinations, contested case hearings, and certifying revised assessments) apply to claims for refund too. S.C. Code Ann. §§ 12-60-450(C)-(E), 12-60-2140(B)-(D), 12-60-2150(F) (2014).

A. FTCC and Diversified timely filed their applications for the Rural Telephone Service Exemption for each year from 2010 through 2015.

Although FTCC for 2010 through 2015 property tax years and Diversified for 2013 through 2015 did not file a separate application for the Rural Telephone Service Exemption with each annually-filed property tax return, they included their application for exemption within the filed property tax returns pursuant to section 12-4-720(C). If that was not sufficient, FTCC and Diversified timely applied for the exemption under section 12-4-720(A)(1) when later FTCC filed a request for refund and application for exemption for 2010 and 2011 on December 28, 2012, and when FTCC and Diversified filed protests with the Department of the 2012 through 2015 proposed tax assessments, as applicable.

1. Each year FTCC and Diversified timely filed their applications for exemption on the filed property tax returns.

The Taxing Entities assert that the Department improperly granted the Rural Telephone Service Exemption for 2010 through 2015 because FTCC failed to claim the Rural Telephone Service Exemption on its timely filed annual property tax returns. (Petitioners' Motion, pp. 24-28.) However, FTCC for 2010 through 2015 and Diversified for 2013 through 2015 did claim the exemption on each of its annual property tax returns.

"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." S.C. Code Ann. § 12-4-720(C) (2014). Some property taxpayers do not file property tax returns, so the Department has a form, which a taxpayer must complete and file to constitute an application for exemption. There is not a separate form on which rural telephone companies must apply for the Rural Telephone Service Exemption.

However, rural telephone companies file Form PT-420, Utility and Railroad Companies Property Tax Return, Form PT-427, Distribution Information, and other supplemental information that constitutes the property tax return. (Brewer Affidavit, ¶ 4.) The information reported by a rural telephone cooperative on Form 427 helps the Department prepare the property tax assessment factoring in any property exempt under the Rural Telephone Service Exemption.[4] (Brewer Affidavit, ¶ 6.)

For 2010 through 2015, FTCC annually filed Form PT-420, Form PT-427, and supplemental data, and, for 2013 through 2015, Diversified annually filed Form PT-420, Form PT-

[4]Under the Department's longstanding policy, it does not require that a telephone company or rural telephone cooperative file a separate application for the Rural Telephone Service Exemption. These companies file Form PT-420 and Form PT-427, which provide values by municipality and taxing district that helps the Department calculate the exemption and factor the exemption into the proposed assessment.

427, and supplemental data. (Brewer Affidavit, ¶ 8.) On each of these property tax returns, FTCC and Diversified indicated that certain property was exempt from property taxation by labeling that property as being in a "RURAL" tax district. (Brewer Affidavit, ¶ 8.) Because property located in a municipality is not exempt under the Rural Telephone Service Exemption and municipalities are not considered to be rural areas, labeling certain property as "rural" identified that property as being located in unincorporated areas of each county, which the Department understood to be the act of claiming the exemption on the property in those "RURAL" areas. Because FTCC and Diversified identified property as "rural" on each of its property tax returns, they claimed the exemption on each property tax return in compliance with section 12-4-720(C).

2. Beyond the property tax returns, FTCC and Diversified timely filed its claim for a refund and application for exemption pursuant to section 12-4-720(A)(1).

FTCC and Diversified filed annual property tax returns claiming the exemption for property in rural areas of each county. However, because only telephone companies and rural telephone cooperatives are eligible for the Rural Telephone Service Exemption and FTCC and Diversified are not rural telephone cooperatives but are limited liabilities companies owned by Farmers Coop,[5] the Department denied the exemption and certified the initial assessments (not reduced by the exemption) to the counties. FTCC and Diversified then took action under the applicable administrative remedy provisions by filing claims for refund and request for exemption for 2010 and 2011 and protests of property tax assessments and denials of exemptions for 2012 through 2015. These filings with the Department were filed timely under section 12-4-720(A)(1).

[5]For South Carolina tax purposes, FTCC and Diversified are considered to be disregarded entities and may receive the tax benefits their sole member, Farmers Coop. *See* S.C. Code Ann. § 12-2-25(B)(1) (2014). Section 12-2-25(B)(1) was addressed by the South Carolina Supreme Court in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 75-76, 716 S.E.2d 877, 882 (2011).

Applications for the Rural Telephone Service Exemption "shall file an application for exemption with the department within the period provided by section 12-54-85(F) for claims for refund." S.C. Code Ann. § 12-4-720(A)(1) (2014). This means that a rural telephone cooperative taxpayer may timely file an application for exemption up to three years after the due date of the respective property tax return. S.C. Code Ann. § 12-54-85(F)(1) (2014).

The Department accepted FTCC's claim for refund as valid because it satisfied the two inter-related limitations imposed in section 12-60-2150(A). First, FTCC must timely file its application for exemption. S.C. Code Ann. § 12-60-1750(1) (2014). Second, FTCC must timely file its claim for a refund. Both of these deadlines are governed by section 12-54-85(F)(1). *See* S.C. Code Ann. §§ 12-4-720(A)(1) (2014), 12-60-2150(A) (2014).

FTCC met both of these deadlines. Section 12-54-85(F) requires that FTCC file its application for exemption and claim for a refund "within three years from the time the return was filed." *See* S.C. Code Ann. § 12-54-85(F)(1) (2014). Here, the Department received both the 2010 and 2011 property tax returns before the April 30 due date of each return. Because the due date of the returns was April 30, 2010 and April 30, 2011, respectively, FTCC's filing date is considered to be April 30, 2010 and April 30, 2011. *See* S.C. Code Ann. § 12-54-85(F)(5)(a) (2014) (stating that "[a] return filed before the last day prescribed for the filing is considered as filed on the last day"). Having filed its property tax returns for 2010 and 2011 on April 30, 2010 and April 30, 2011, respectively, FTCC had three years from April 30, 2010 and April 30, 2011 to file the respective application for the Rural Telephone Service Exemption and the respective claim for a refund. The deadlines were therefore April 30, 2013 and April 30, 2014, respectively. Because FTCC filed its combined application for exemption and claim for a refund for both 2010 and 2011 on or about December 28, 2012 (Brewer Affidavit, ¶ 14), it timely filed the applications for the

Rural Telephone Exemption and the claims for a refund for both 2010 and 2011. Therefore, the granting of the exemption for 2010 and 2011 pursuant to the Settlement Agreement, which resulted in refunds being due, is not an illegal retroactive application of the exemption, but is in compliance with the applicable statutory framework for the administrative remedy process available to property taxpayers who claim a refund.

FTCC and Diversified also timely filed their protests of the proposed assessments claiming that the Department did not reduce the assessments by the Rural Telephone Service Exemption. The property tax returns for 2012 through 2015 were due on April 30 of each year. (Brewer Affidavit, ¶ 7.) Three years after each tax return due date was April 30, 2015, April 30, 2016, April 30, 2017, and April 30, 2018, respectively. In letters dated October 1, 2012, February 18, 2014, November 6, 2014, and October 8, 2015, FTCC protested the proposed assessments for 2012, 2013, 2014, and 2015, respectively, for failure to exempt FTCC's assets under section 12-37-220(B)(10). In letters dated February 18, 2014, November 6, 2014, and October 8, 2015, Diversified protested the proposed assessments for 2013, 2014, and 2015, respectively, for failure to exempt Diversified's assets under section 12-37-220(B)(10). These protests were filed because the Department did not reduce the assessments by the exemption, so the protests were treated as exemption requests. Because each protest was filed within three years from the due date of the applicable property tax return, the applications for exemption were timely filed for each year by FTCC and Diversified under section 12-4-720(A)(1).[6]

[6]The filing of each protest invoked the administrative remedy process for appealing proposed assessments and denials or tax exemptions. *See* S.C. Code Ann. § 12-60-2120 (2014). As part of this administrative remedy process, the Department and the Farmers Entities properly settled the case, which resulted in the granting of the exemption for 2012 through 2015 and a resulting refund. *See* S.C. Code Ann. §§ 12-4-320(4) (2014), 12-60-450(C)-(E) (2014), 12-60-2120(D) (2014).

B. The Department complied with the statutory framework regarding proposed assessments, applications for exemptions, claims for refund, and taxpayer appeals, so the granting of the exemption was proper.

The Department complied with the statutory process of preparing and certifying property tax assessments, deciding on exemption requests, engaging in the administrative remedy process including settling cases, and certifying assessments after a settlement agreement. The Taxing Entities, however, assert that the Department failed to comply for all years with the statutory notice requirements of S.C. Code Ann. § 12-4-710 (2014). (Petitioners' Motion, p. 26-28.) The Taxing Entities claim that section 12-4-710 requires the Department to resolve all property tax exemption issues by June 1 of each tax year. (Petitioners' Motion, p. 26.) However, it is impractical for the Department to resolve all exemption issues for a given tax year by June 1 of that tax year when applications for exemptions are not even due by June 1. (Brewer Affidavit, ¶ 20.) *See* S.C. Code Ann. § 12-4-720-(A)(1), (2) (2014). Additionally, the Taxing Entities interpretation of section 12-4-710 would not allow the taxpayer and the Department to engage in the administrative remedy process that can extend far past June 1 of the tax year in question. Therefore, the statutory process recognizes and allows for refunds to be made because of tax exemptions.

The statutory administrative process to resolve disputes regarding claims for a refund may take months or years to resolve. *See, e.g.*, S.C. Code Ann. § 12-60-2150 (2014) (identifying filing a claim for a refund as the starting point for administrative remedies followed by, as appropriate, a decision on the refund by a division of the Department, the filing of a protest by the taxpayer, and the appeals process as stated in section 12-60-450(C) through (E)). In addition to the statutory framework for property tax refunds lasting well beyond the tax year in question, the statutory process also recognizes that refunds will sometimes be due to property taxpayers. Whether disputes are resolved through settlement or litigation, the statutory process foresaw that, whether

because of a settlement or an order from a court, upon conclusion of a dispute the Department would need to issue "corrected property tax assessment[s]" that may result in a refund of property taxes already paid. *See* S.C. Code Ann. § 12-60-2140(C) (2014). Hence, the Department does not interpret section 12-4-710 to require the Department to resolve all issues about property tax exemptions by June 1 of each year. (Brewer Affidavit, ¶ 20.)

The Taxing Entities argue that, if the Department does not make a determination about all exemptions and advise the appropriate county official by June 1 of each year, then any exemption granted after June 1 of the applicable tax year would be an illegal granting of a retroactive exemption. (Petitioners' Motion, pp. 26-28.) Here, the Taxing Entities assert that "property tax exemptions must be resolved by the [June 1] deadline" (Taxing Entities' Motion, p. 26); however, this interpretation is inconsistent with the overall statutory framework.

Several examples of other relevant statutes demonstrate why the Taxing Entities' assertion that if the Department does not resolve all exemption issues by June 1 is inconsistent with the overall statutory administrative process. First, property taxpayers may appeal a proposed property tax assessment and the denial of an application for exemption. S.C. Code Ann. § 12-60-2120(A), (B) (2014). The protest begins a lengthy process just for the taxpayer to exhaust its administrative remedies and then to seek a remedy in the ALC and appellate courts, *see* S.C. Code Ann. §§ 12-60-450(C)-(E), 12-60-2120(D) (2014), so the June 1 deadline would deprive the taxpayer of its administrative remedies. Second, section 12-6-2150 includes several provisions that demonstrate that a June 1 deadline to resolve all exemption issues is not a reasonable interpretation of the statutory framework. The statute directs the Department's Property Division to issue an 80% assessment to the applicable county when a property tax dispute is not expected to be resolved by December 31 of the applicable tax year. S.C. Code Ann. § 12-60-2140(A) (2014). The succeeding

two subsections directs the Department's Property Division to issue corrected property tax assessments when the dispute is finally resolved so that the counties may bill the taxpayer for additional property taxes due or refund overpayment to the taxpayer. S.C. Code Ann. § 12-60-2140(B), (C) (2014). Third, provisions of section 12-4-720(A) allow taxpayers to file their applications for exemption as late as three years after the property tax return was filed. S.C. Code Ann. § 12-4-720(A)(1), (2) (2014). Filing applications for exemption after the close of the applicable tax year surely negates the ability of the Department to resolve all exemption issues and advise the counties of such resolution by June 1 of the applicable tax year.

Further, the Taxing Entities cite *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998) as support for its argument that all property tax exemptions must be resolved by June 1 of each year. (Petitioners' Motion, p. 26.) However, this case is not relevant to this present case because the applicable statutes analyzed by the court in *TNS Mills* have been amended such that taxpayers can now, as opposed to the time period applicable in *TNS Mills*, file applications for exemption long after the so-called June 1 deadline.

The issue in *TNS Mills* was whether certain pollution control equipment qualified for a property tax exemption for tax years 1986 through 1991. *TNS Mills*, 331 S.C. 611, 615-16, 503 S.E.2d 471, 473-74 (1998). For the tax years relevant to *TNS Mills*, the June 1 deadline existed, *see, e.g.*, S.C. Code Ann. § 12-4-710 (Supp. 1991), but the provisions of section 12-4-720 required applications for exemption, depending on the exemption claimed, to be filed by April 15 of the first year for which the exemption was claimed or by the sixteenth day of the fourth month after the close of the accounting period used by the taxpayer for income tax purposes, S.C. Code Ann. § 12-4-720(A)(1), (2) (Supp. 1991).

Regarding the present case, section 12-4-710 still includes the June 1 provision, but as explained above the deadlines to file applications for exemptions have been modified and extended significantly past the June 1 deadline. *See* S.C. Code Ann. § 12-4-720(A)(1), (2) (2014). The June 1 date in section 12-4-710 may have been relevant at the time of *TNS Mills* because of the prior deadlines to file an application for exemption, but it is not relevant now because of the revised deadlines to file applications for exemption.

Finally, exemptions related to property assessed by the Department, like the Rural Telephone Service Exemption and the related telephone property assessed by the Department, are integrally tied to respective property tax assessments. In this case, the Department's Property Division follows section 12-37-970 by forwarding the property tax assessments, as affected by any exemptions, to the appropriate local taxing officials by August 15 of the applicable tax year. *See* S.C. Code Ann. § 12-37-970 (2014). If the Department's Property Division did not grant a requested property tax exemption when it issued the proposed assessment to the local taxing officials, the taxpayer may invoke its administrative remedies under section 12-60-2120. Later, if the taxpayer protested the denial of an exemption and the dispute may not be resolved by December 31 of that tax year, the Department's Property Division will issue an 80% assessment to the applicable county(ies). *See* S.C. Code Ann. § 12-60-2140(A) (2014). Finally, when the dispute is resolved whether by settlement or litigation, the Department issues corrected property tax assessments. *See* S.C. Code Ann. § 12-60-2140(B), (C) (2014). Under these statutes, in this case local governing officials received multiple notices related to the exemption and the assessment of the related property. Local governing officials annually received the initial assessments for that tax year, which in this case was not reduced by the claimed Rural Telephone Service Exemption. Later, and generally during the applicable tax year, the local governing officials annually received

the 80% assessment, which informed the local governing officials of an ongoing property tax dispute. Once the dispute was settled in early 2017, the local governing officials received the Post-Settlement Assessment Certifications.

The Department did not violate the June 1 deadline, which is an impractical deadline to resolve all issues about exemptions for a given year and is inconsistent with the statutory framework that the Department followed. Also, the Department informed the applicable counties of the ongoing property tax dispute for 2012 through 2015 with the Farmers Entities through the 80% assessments that were issued. Therefore, the Department did not illegally grant retroactive exemptions.

V. The Department Did Not Violate the Constitutional and Statutory Provisions regarding Home Rule.

The Taxing Entities seek partial summary judgment because they assert that the Department violated Home Rule and the June 1 deadline provision of section 12-4-710(A). (Petitioners' Motion, p. 31.) The Department has not violated Home Rule by taking away the Taxing Entities' taxing or budgeting power and gave proper notice to the respective counties in accordance with the statutory framework.

A. The Taxing Entities claim that the Department violated Home Rule by following the statutory framework created by the General Assembly; hence, the Taxing Entities claim that those statutes are facially unconstitutional. The ALC has no authority to find those statutes facially unconstitutional.

In this matter, the Department followed the statutory framework for assessing property and exemption requests of rural telephone cooperatives and working with the property taxpayers through their administrative remedies as set forth by the General Assembly. The Department's and its Property Division's actions in this matter were based on statutory authority and include, but may not be limited to, the following:

1. The Department has the sole responsibility to appraise and assess the property of entities engaged in the telephone business. S.C. Code Ann. § 12-4-540(A)(1)(f) (2014).

2. The Department's Property Division must calculate the assessment for property taxation from property tax returns submitted by the taxpayers to the Department. S.C. Code Ann. § 12-37-970 (2014).

3. The Property Division shall forward the assessments prepared from the returns submitted to the Department to the appropriate local taxing authorities no later than August 15 of the applicable tax year. *Id.*

4. The Property Division notified the appropriate official at each county that Farmers Entities had appealed the 2012 through 2015 initial assessments by sending an assessment for 80% of the initial assessments. S.C. Code Ann. § 12-60-2140(A) (2014).

5. After the refund claims and protests were filed with the Department, the Department discussed the facts and issues with the Farmers Entities and ultimately settled the case by a written Settlement Agreement. S.C. Code Ann. §§ 12-4-320(3)-(4) (2014), 12-60-450(D)(1) (2014), 12-60-2120(D) (2014), 12-60-2150(F) (2014).

6. After the Settlement Agreement was executed, the Department's Property Division prepared and issued the Post-Settlement Assessment Certifications to the appropriate county officials under which "[t]he overpayment of tax must be refunded." S.C. Code Ann. § 12-60-2140(C) (2014).

Because these statutes apply to all property taxpayers and affect all local taxing authorities, the Taxing Entities are asserting that the above statutes which give the Department authority over property assessments of certain types of businesses and which requires the Department to work with the property taxpayer in the administrative process are unconstitutional grants of authority to the Department which take away powers from local governments in violation of Home Rule. The Taxing Entities are making a facial challenge to the statutes.

However, the ALC has no authority to pass upon a facial challenge to the constitutionality of a statute or regulation. *Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000). Therefore, the Court should deny the Petitioners' Motion for partial summary judgment on this issue.

B. The Department has not taken away the Taxing Entities' taxing and budgeting powers by following the statutory framework and by giving proper notice to the respective counties of the appeal by the Farmers Entities.

Despite the General Assembly's grant of authority to the Department of the sole responsibility to appraise and assess the property of businesses in certain identified industries, all local governments, including the Taxing Entities, have retained their taxing and budgeting powers. The Home Rule provision of the South Carolina Constitution does not prevent the General Assembly from giving the Department the sole responsibility to assesses property of businesses in certain industries. It says that "[t]he General Assembly shall provide *general* law for the . . . powers . . . of counties, including the power to tax different areas at different rates of taxation." S.C. CONST. art. VIII, § 7. In addition, the Home Rule provision of the Constitution says that the General Assembly may not enact laws for a specific county or exempt a county from the general laws. *Id.*

Here, all of the laws listed above in Part V.A. and followed by the Department in this matter are constitutional. In compliance with the Home Rule provision of the Constitution, these laws are general laws that apply to all relevant taxpayers and to all relevant local taxing authorities. None of these laws are enacted for a specific county or exempt a specific county from the general laws. Further, the counties and other local taxing authorities retain "the power to tax different areas at different rates of taxation" as required by the Home Rule provision of the Constitution. Counties and other local taxing authorities retain the right to set the millage and other taxing powers. The Department has only limited and "general" grants of authority.

The Taxing Entities also have not lost their power to budget. The Taxing Entities essentially assert that because the Department did not resolve all disputes about exemptions and advise the Taxing Entities of those resolutions by June 1 of each tax year, *see* S.C. Code Ann. §

12-4-710 (2014), the Taxing Entities are not able to fully exert their budgeting powers (*see* Petitioners' Motion, pp. 29-31).

That assertion by the Taxing Entities, however, is misleading and fails to recognize the inherent uncertainties in budgeting for property tax revenues because certain events may occur after the counties issue tax bills and taxpayers pay them. As explained above, the Department and its Property Division have followed the statutory framework for the assessment of property taxes and for the conduct of the administrative remedy process that is available to each property taxpayer and these statutory provisions allow property tax disputes to extend into succeeding tax years. The statutory framework inherently and statutorily, but not unconstitutionally, means that the local governing body has some uncertainty about tax revenues to be collected built into the budgeting process.

For instance, taxpayers may file applications for exemption after the applicable tax year ends – even up to three years after the property tax return was filed. S.C. Code Ann. § 12-4-720(A)(1), (2) (2014). This statute means that the Department may not even know about an application for exemption when it issues the initial proposed assessment to the counties. When the application for exemption is filed after the tax year in question, as was done in the instant case, counties will bill and collect property taxes based on the initial certified assessments that are not reduced by any exemption. If the Department approves the later filed exemption, the Department will send a revised certified assessment to the counties that will reflect a lower taxable value because of the exemption. Here, for 2010 and 2011, the Farmers Entities filed a request for the Rural Telephone Service Exemption on or about December 28, 2012. (Brewer Affidavit, ¶ 14.) The Taxing Entities billed and collected property taxes in 2010 and 2011 from the Farmers Entities based on the initial certified assessment. After the Settlement Agreement was executed, the Taxing

Entities received from the Department revised certified assessments that were reduced by FTCC's and Diversified's exempt property.

At approximately the same time in 2012, the FTCC appealed the 2012 initial assessment and sought the exemption. (Brewer Affidavit, ¶ 15.) The Property Division responded by sending an 80% assessment to the applicable counties, indicating that the FTCC appealed the initial assessment for 2012. (Brewer Affidavit, ¶ 17.) The Farmers Entities also appealed the 2013 through 2015 initial assessments and sought the exemption causing the Property Division to send the 80% assessments to each applicable in 2013 through 2015 too. (Brewer Affidavit, ¶¶ 15-17.) Therefore, in 2013 through 2015, the Taxing Entities billed and collected only 80% of the initial assessment, but the Department had notified the appropriate official at each applicable county of the appeal giving each county notice of the uncertainty of those tax receipts.

Neither the Home Rule provision in the Constitution nor the statutory provisions that are applicable here are intended to eliminate uncertainty in a local taxing entities' budgeting process. However, local taxing entities know, or should know, that property taxpayers may apply for exemptions after initial tax bills are sent out resulting in possible claims for refund.

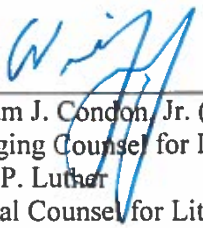
The Department has not taken away the Taxing Entities' taxing and budgeting powers and responsibilities and did appropriately notify appropriate county officials of the appeals filed by the Farmers Entities in accordance with the statutory framework.

CONCLUSION

This Court lacks subject matter jurisdiction over this case for two independent reasons. The Farmers Entities have requested that this Court dismiss this case and granting that motion would make Petitioners' Motion moot.

If this Court does not dismiss this case, it should deny the Petitioners' Motion on all grounds. This is a fact-intensive case about the telephone industry, so the Petitioners' Motion is premature because the parties have not engaged in discovery. Additionally, despite the claims of the Taxing Entities, the Department followed the statutory process for property tax assessments, tax exemptions, claims for refunds, and appeals and exerted only the general authority given to it by the General Assembly.

Respectfully submitted,



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Columbia, South Carolina
January 23, 2018

AFFIDAVIT
OF
CHARLES A. BREWER

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, Williamsburg County School District, Clarendon County School District Two, Florence School District One, Florence School District Three, Sumter County School District, Clarendon County Hospital District, and Lee County School District, Petitioners, vs. South Carolina Department of Revenue; Farmers Telephone Cooperative, Inc.; FTC Communications, LLC; and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-CC **AFFIDAVIT OF CHARLES A. BREWER**

Charles A. Brewer personally appeared before me, who being duly sworn, pursuant to Rule 56(e) of the South Carolina Rules of Civil Procedure, hereby deposes and certifies the following:

1. I am over eighteen years of age, suffer from no known disability, and am competent to testify to the facts set forth herein. The statements in this affidavit are made based on my personal knowledge, including my review of the issues in this case.

2. I am a Program Manager II in the role of Field Manager in the Local Government Section of the South Carolina Department of Revenue ("Department"). I have a B.S. in Business Administration from Newberry College, and I am a Certified General Appraiser in South Carolina licensed by the Real Estate Appraisers Board of the South Carolina Department of Labor, Licensing and Regulation. I have been employed by the Department for twenty-seven years. In my role as Field Operations Manager, I supervise the property tax assessments of utility companies, including telephone companies and rural telephone cooperatives, and property tax assessments of certain other types of companies in South Carolina.

3. In my capacity as a Program Manager II in the role of the Field Operations Manager, I am authorized to make this Affidavit on behalf of myself and the Department. Further, I make this Affidavit from my own personal knowledge and based on the experience that I have gained as an appraiser and in twenty-seven years with the Department.

4. As part of my regular duties with the Department and in accordance with S.C. Code Ann. § 12-4-540, I supervise the appraisals and assessments of the property of utility companies, including the property of water and sewer companies, power companies, cable companies, telephone companies, rural telephone cooperatives, wireless telecommunications companies, railroads, and pipelines for property tax purposes. The Department is responsible for the appraisal and assessment of real and personal property owned by, leased to, and used by these types of businesses. The Department also is responsible for determining exemptions for these types of businesses. In my role at the Department, I am responsible for these activities.

5. Utility companies, like rural telephone cooperatives to which the Rural Telephone Service Exemption under section 12-37-220(B)(10) is applicable, annually file Form PT-420, Utility and Railroad Companies Property Tax Return. As a supplement to Form PT-420, telephone companies and rural telephone cooperatives also file Form PT-427, Distribution Information, which identifies the value of property by municipality or taxing district, and other supplemental data.

6. Pursuant to the Department's longstanding policy regarding telephone companies or rural telephone cooperatives, the Department does not require the filing of an application for exemption. The telephone company or rural telephone cooperative reports gross investment in property by tax district on Form PT-427 or similar utility distribution report. The information reported by a rural telephone cooperative on the distribution report helps the Department prepare the property tax assessment factoring in any property exempt under the Rural Telephone Service Exemption.

7. I am familiar with the property tax filings of Farmers Telephone Cooperative, Inc. ("Farmers"), FTC Communications, LLC ("FTCC"), and FTC Diversified Services, LLC ("Diversified") for the tax years 2010 through 2015. As a rural telephone cooperative in South Carolina, Farmers has been receiving the Rural Telephone Service Exemption under section 12-37-220(B)(10) for years. The property tax returns for these entities are due by April 30 of each year. FTCC first filed a property tax return in South Carolina in 2010. Diversified first filed a property tax return in South Carolina in 2013. Farmers is the sole member of both FTCC and Diversified.

8. For 2010 through 2015, FTCC annually filed Form PT-420, Form PT-427, and other supplemental data, as described above. For 2013 through 2015, Diversified filed Form PT-420, Form PT-427, and other supplemental data, as described above. On each of these property tax returns, FTCC or Diversified, as appropriate, indicated that certain property was exempt from property taxation by labeling that property as being in a "RURAL" tax district.

9. The Department's Property Division mails proposed assessments to the property taxpayer and certified assessments to the counties. The Property Division attempts to mail the annual certified assessment for each taxpayer to the applicable county(ies) by August 15 of each year. Due to various reasons, including incomplete information from the taxpayer, some certified assessments are not mailed by August 15. Supplemental certified assessments are prepared and mailed to the applicable county(ies) when necessary, including when appeals are resolved.

10. For property tax year 2010, the Property Division issued a proposed assessment to FTCC on or about May 28, 2010 and issued certified assessments to the applicable counties on or about August 15, 2010. For property tax year 2011, the Property Division issued a proposed assessment to FTCC on or about April 25, 2011 and issued certified assessments to the applicable counties on or about August 15, 2011.

11. For property tax year 2012, the Property Division issued a proposed assessment to FTCC on or about July 13, 2012 and issued certified assessments to the applicable counties on or about August 15, 2012. For property tax year 2013, the Property Division issued a proposed assessment to FTCC on or about January 15, 2014 and issued certified assessments to the applicable counties on or about January 16, 2014. For property tax year 2014, the Property Division issued a proposed assessment to FTCC on or about August 12, 2014 and issued certified assessments to the applicable counties on or about August 15, 2014. For property tax year 2015, the Property Division issued a proposed assessment to FTCC and the certified assessments to the applicable counties on or about August 24, 2015.

12. For property tax year 2013, the Property Division issued a proposed assessment to Diversified on or about January 15, 2014 and issued certified assessments to the applicable counties on or about January 16, 2014. For property tax year 2014, the Property Division issued a proposed assessment to Diversified on or about August 12, 2014 and issued certified assessments to the applicable counties on or about August 15, 2014. For property tax year 2015, the Property Division issued a proposed assessment to Diversified and certified assessments to the applicable counties on or about on or about August 24, 2015.

13. The Department routinely accepted protests for not granting an exemption from property tax and claims for refund of property taxes regarding the 2010 through 2015 tax years when those documents were filed within the three-year timeframe stated in section 12-54-85(F)(1).

14. Regarding tax years 2010 and 2011, FTCC filed a claim for refund and a request for the Rural Telephone Service Exemption on December 28, 2012.

15. In letters dated October 1, 2012, February 18, 2014, November 6, 2014, and October 8, 2015, FTCC protested the proposed assessments for 2012, 2013, 2014, and 2015, respectively, for failure to exempt FTCC's assets under section 12-37-220(B)(10).

16. In letters dated February 18, 2014, November 6, 2014, and October 8, 2015, Diversified protested the proposed assessments for 2013, 2014, and 2015, respectively, for failure to exempt Diversified's assets under section 12-37-220(B)(10).

17. Because of the unresolved protests, the Property Division sent an 80% assessment to the applicable counties for FTCC's property for 2012 through 2015 and for Diversified's property for 2013 through 2015.

18. After the Settlement Agreement was executed, FTCC and Diversified submitted amended property tax returns for 2010 through 2015, as appropriate, to the Property Division. The amended property tax returns identified exempt property pursuant to the Settlement Agreement.

19. On July 6, 2017, the Property Division's Utility Assessment Coordinator sent a memorandum with revised assessments for 2010 through 2016 for FTCC and Diversified, as applicable, to the county auditors of Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County. These revised assessments for 2010 through 2015 are referenced herein as "Post-Settlement Assessment Certifications."

20. The Department does not consider the June 1 date stated in section 12-4-710 as the date by which it must resolve all issues concerning property tax exemptions for a given tax year. The Department could not notify county officials by June 1 of the tax year of claims for exemptions or its decision on such claims because valid applications for exemption for a tax year could be filed in a subsequent tax year if the application for exemption is filed within the proper time period (i.e., three years from the due date of the return or by the first penalty date for pollution control machinery). It is therefore impossible for the Department to give an annual notification to a county official when no application for exemption has been filed and may not be filed for almost three years. Furthermore, in contested matters, the Department is unable to notify county officials of the final decision on an application for exemption until after a settlement or after a decision by a court, which may take years. Section 12-60-2140 makes it clear that the Department may issue certified assessments long after June 1. Section 12-60-2140(A) allows the Department to issue 80% assessments when a protest will extend into the next property tax year. Section 12-60-2140(B) and (C) allow the Department to issue certified assessment after a dispute is finally resolved including after a decision by the Administrative Law Court or another court.

FURTHER, AFFIANT SAYETH NOT:

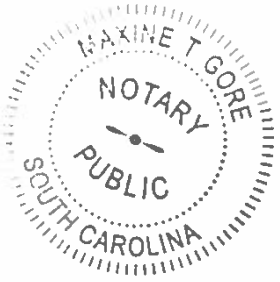
Charles A. Brewer

SWORN and subscribed to before me this
22 day of January, 2018..

Maxine Gore

Notary Public for South Carolina
My Commission Expires: _____

My Commission Expires 3/10/2019



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

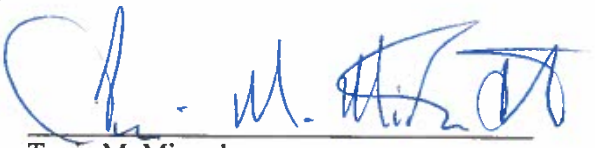
Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, Williamsburg County School District, Clarendon County School District Two, Florence School District One, Florence School District Three, Sumter County School District, Clarendon County Hospital District, and Lee County School District, Petitioners, vs. South Carolina Department of Revenue; Farmers Telephone Cooperative, Inc.; FTC Communications, LLC; and FTC Diversified Services, LLC, Respondents.	)	Docket No. 17-ALJ-17-0237-CC **PROOF OF SERVICE**

I, the undersigned employee of the South Carolina Department of Revenue, Office of General Counsel, do hereby certify that I have served the Respondent South Carolina Department of Revenue's Response to Petitioners' Motion for Partial Summary Judgment in connection with the above-captioned matter by causing a copy of the same to be deposited in the United States Mail on the below date, postage prepaid to the following parties at their address of record:

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Tonie M. Miranda
Legal Assistant, Office of General Counsel
South Carolina Department of Revenue

Columbia, South Carolina
January 23, 2018

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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 Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC Respondents.	Docket No. 17-ALJ-17-0237-CC **TAXING ENTITIES' RESPONSE TO FARMERS' MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF SAME**

INTRODUCTION

The Petitioners, collectively the "Taxing Entities," challenge the South Carolina Department of Revenue's ("Department") actions arising from the Department's attempting to grant property tax exemptions for tax years 2010 through 2017[1] to Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC ("Taxpayers") under South Carolina Code Annotated section 12-37-220(b)(10). That statute allows a property tax exemption for property "used in providing rural telephone service." ("Rural Telephone Service Exemption").

In Farmers' Motion to Dismiss and Memorandum in Support of Same, Taxpayers present two primary arguments asserting this Court lacks subject matter jurisdiction. First, Taxpayers argue the "department determinations" required by South Carolina Code Annotated sections 12-

[1] Tax years 2010 through 2015 are addressed in the Settlement Agreement (as defined in Taxing Entities Prehearing Statement filed with this Court on 7/10/2017). Tax years 2016 and 2017 are addressed by the Assessment Certifications (as defined herein).

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60-2130 and 12-60-2150 are missing. Second, Taxpayers argue the Settlement Agreement "is final and conclusive" under South Carolina Code Annotated section 12-4-320(4) such that this matter "may not be reopened by administrative or judicial action or otherwise, except in cases of fraud, malfeasance, or misrepresentation." These arguments do not deny this Court subject matter jurisdiction.

The requirements for the Court's jurisdiction under South Carolina Code Annotated sections 12-60-2130 and 12-60-2150 for tax years 2010 through 2015 are met because the January 8, 2017, Settlement Agreement memorializes the Department's decision to grant the Rural Telephone Service Exemption and provides the required department determination. The Court also has jurisdiction under South Carolina Code Annotated section 12-4-535(A)-(C) not only over the settlement years 2010 through 2015 but also over newly added tax year 2016 because the Department's July 6, 2017, directive to the Taxing Entities certifying the assessments provides the required Department Determination. Further, the Court has jurisdiction under South Carolina Code Annotated section 12-4-535(A)-(C) over newly added tax year 2017 because the Department's August 24, 2017, directive to the Taxing Entities certifying the assessments provides the required Department Determination.

Taxpayers' "Final and Conclusive" Argument is invalid for four reasons. First, the statutory prohibition on reopening a written agreement does not apply to the Settlement Agreement here. South Carolina Code Annotated section 12-4-320(4) requires the agreement to set a tax liability. Here, the Settlement Agreement expressly and deliberately sets no tax liability. Instead, the agreement acknowledges future discretionary events, such as filing amended returns, attaching and reviewing appropriate data, calculating values, and certifying results, must be performed by the Taxpayers and the Department before a tax liability can be set. *See* Section 2.2 of Settlement Agreement, attached hereto as **Exhibit A**, at page 6.

Second, application of South Carolina Code Annotated section 12-4-320(4) arises only if the agreement is approved by the Director. Here, the Settlement Agreement does not establish it was approved by the Director because the agreement is signed by "Managing Counsel for Litigation," not the Director. Further, even if the Settlement Agreement were approved by the Director, the Director would be required to satisfy his statutory duty to file notice of the settlement with the House Ways and Means Committee and the Senate Finance Committee. However, no notice was filed in either the House or the Senate.

Third, South Carolina Code Annotated section 12-4-320(4) cannot deny jurisdiction to this Court for tax years 2016 and 2017 because the statute applies only to settlement agreements and, on the face of the Settlement Agreement, the years covered are only tax years 2010 through 2015 for FTCC and tax years 2013 through 2015 for Diversified.

Fourth, and in the alternative, even if South Carolina Code Annotated section 12-4-320(4) were to apply to the Settlement Agreement, here, the case may be reopened because of Department misrepresentations. The Department misrepresented its authority by performing the *ultra vires* actions of granting exemptions on property not eligible for the Rural Telephone Service Exemption, granting retroactive refunds, and granting refunds for tax years in which Taxpayers failed to file an application for the Rural Telephone Service Exemption. Further, the Department misrepresented it had the legal authority to bind the Taxing Entities because the Department knew the Taxing Entities were strangers to the Settlement Agreement.

In addition to the Taxpayers' two primary arguments, the Taxpayers also urge this Court to deny jurisdiction to the Taxing Entities because granting jurisdiction allegedly violates the Contract Clauses of both the United States Constitution and the South Carolina Constitution. As developed below, neither clause is violated. Moreover, neither clause is even relevant to the issues before the Court.

Finally, Taxpayers further urge this Court to find no controversy exists such that the Taxing Entities lack standing to request a contested case hearing before this Court. As developed more fully below, the Taxing Entities have standing according to South Carolina Code Annotated sections 12-60-2130 and 12-60-2150(H) and by the "case or controversy" standards of constitutional standing. Moreover, as explained in further detail below, the South Carolina Constitution provides "[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard . . . and he shall have in all such instances the right to judicial review." S.C. Const. art. I, § 22. Under the Taxpayers' view, the Taxing Entities are alleged to be "finally bound" by the Department's decision with that decision affecting the Taxing Entities' rights because the Taxing Entities are alleged to have no right to any administrative or judicial review and must issue millions of dollars in refunds.

Fundamentally, Taxpayers assert the General Assembly designed a property taxation scheme yielding unfettered authority to the Department to write millions of dollars of refund checks drawn from local government funds and to do so with the affected local governments having any right of judicial review by any court anywhere. Taxpayers insist local governments have no rights to participate in disputes over taxation of property located in the local government's own backyard. Further, Taxpayers reach this conclusion by asking the Court to abandon rigorous analysis of the Department's actions and the documents issued by the Department in favor of simply telling this Court it lacks jurisdiction because the documents issued do not carry the magic paper talisman label of "department determination." The law is controlled not by labels but by a document's "real nature." *J.K. Const., Inc. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 169, 519 S.E.2d 561, 565 (1999) ("[T]he question of whether a required payment is a charge or a tax depends on its real nature and not the label assigned to it by the governmental

entity that approved it."). As more fully detailed below, the General Assembly never intended to create a dysfunctional property taxation scheme that denies local governments even the most basic of due process rights and is antithetical to home rule principles. Rather, the General Assembly provided explicit statutory rights to local governments to challenge decisions made by the Department. Those statutory rights have been claimed by the Taxing Entities and this Court's jurisdiction has been properly invoked in this case. Based on the arguments and supporting materials provided by this Memorandum, the Court should deny Taxpayers' Motion to Dismiss.

ARGUMENTS IN RESPONSE

A. The Department's Decision to Grant the Rural Telephone Service Exemption to Taxpayers as Memorialized in the Settlement Agreement and the Department's Directives Requiring the Use of Non-Taxable and Taxable Assessed Values via Assessment Certifications are Department Determinations Conferring Subject Matter Jurisdiction on this Court

This Court has jurisdiction over two different classes of contested cases involving taxation of property. One class allows a contested case to the taxpayer and the local governing body if either "disagrees with the department determination" issued by the Department to the Taxpayer. S.C. Code Ann. §§ 12-60-2130 and 12-60-2150. A second class allows a contested case involving taxation of property when the contested case is requested by a county governing body that "disagrees with . . . the department determination" issued by the Department to the county governing body. S.C. Code Ann. § 12-4-535. Thus, the remedy available depends on the identity of the party to whom the department determination is directed—a Chapter 60 remedy directs the Department determination to the Taxpayer; a Chapter 4 remedy directs the Department determination to the county governing body. In the instant case, the Taxing Entities have invoked this Court's jurisdiction under both remedies because the Department issued both types of Department Determinations.

1. The Department Issued a Chapter 60 Department Determination to Taxpayers on January 8, 2017, With the Issuance Satisfying the Four Criteria of a Department Determination

The remedies of Chapter 60 govern Department Determinations issued to a taxpayer. A "department determination" is "the final determination within the department from which a person may request a contested case hearing before the Administrative Law Court." S. C. Code Ann. § 12-60-30(10). Thus, four criteria must be satisfied.

First, a determination must be made. Second, the determination must be final. Third, the determination must be by the Department. And, fourth, the determination must be a decision "from which a person may request a contested case." Each of the four criteria are satisfied by the Department's actions in relation to the January 8, 2017, Settlement Agreement.

(a) Examination of Criteria One, Two, and Three

The agreement executed on January 8, 2017, is definitive in its making a "determination": it memorializes in unambiguous terms in Section 2.1 the Department's purported granting of the Rural Telephone Service Exemption. That section states "the property used in FTCC's wireless telephone service and Diversified's land-line telephone service qualifies for the exemption in SC Code Ann. § 12-37-220(B)(10)." Likewise, the agreement is unambiguous in establishing the granting of the exemption is final because Section 3.3 unequivocally labels the decision as "final." Likewise, the third criteria of the determination being made by the Department is beyond doubt because the opening statement of the Agreement explains "[t]he parties to this Settlement Agreement . . . include the South Carolina ***Department*** of Revenue" (emphasis added).

(b) Examination of Criterion Four

The fourth criterion asks whether the Department's decision is one "from which a person may request a contested case." In answering this question, it is instructive to examine the

Taxpayers' basis for asserting the Agreement is not a decision "from which a person may request a contested case."

Taxpayers' Motion to Dismiss, page 10, succinctly states:

> If, and only if, the parties do not settle the matter, must SCDOR issue a Department Determination. S.C. Code Ann. §12-60-450(E)(1). In other words, SCDOR has a statutory right to enter into a settlement agreement ending a tax controversy and negating the need for a Department Determination.

Thus, based on the Taxpayer's "in other words" view, Taxpayers believe a need for a Department Determination is negated when the Department meets its statutory duties ending a controversy by settlement. Taxpayers are incorrect for two reasons.

First, a settlement between the Taxpayers and the Department does not negate the statutory duty to issue a department determination. Second, the Settlement Agreement that Taxpayers claim extinguishes all controversy in this case does not actually establish a final tax liability; therefore, the alleged Settlement Agreement is void for indefiniteness and is not a true settlement agreement.

(i) In the Instant Case, Taxpayers' Incorrectly Assert a Settlement with the Department Negates a Need for a Department Determination for Tax Years 2010 Through 2015

The Taxing Entities' statutory review route for the protested years of 2010 through 2015 (FTCC) and for 2013 through 2015 (Diversified) arises from South Carolina Code Annotated section 12-60-2110(C) and (D). Section 12-60-2110(C) and (D) require "[i]f the protest claims the property is exempt, . . . [a]ll appeals must be conducted as provided in Section 12-60-450(C) through (E)." Further, the statutory review route for the refund years of 2010 and 2011 arises from South Carolina Code Annotated section 12-60-2150. That statute requires "appeals before the department must be conducted as provided in Section 12-60-450(C) through (E)." Therefore,

both the protest years of 2012 through 2015 and the refund years of 2010 through 2012 look to the same statutory procedures of section 12-60-450(C), (D), and (E).

South Carolina Code Annotated section 12-60-450(D)(1) ***permits*** "the taxpayer and department . . . [to] attempt to settle the case." However, South Carolina Code Annotated section 12-60-450(E)(1) ***mandates***, "[t]he department ***will make a department determination*** using the information provided by the taxpayer." "Will" means "to express a command, exhortation, or injunction." *Merriam-Webster.com,* https://www.merriam-webster.com/dictionary/will (accessed January 18, 2018). Accordingly, contrary to Taxpayer's assertion in its Motion to Dismiss, South Carolina Code Annotated section 12-60-450(D) does not relieve the Department from its duty to make a department determination even if the Department and taxpayer purport to settle a matter.

Rather, such a settlement agreement with the Department is merely the Taxpayer's acknowledgment it agrees with the Department's final determination of issues originally in dispute. For example, in *Rogers v. Illinois Dep't of Revenue*, 75 N.E.3d 374, 375–76 (Ill. Sept. 27, 2017), the Court affirmed the Illinois Independent Tax Tribunal's conclusion that taxpayer's entering into a settlement agreement with the IRS constituted a final determination of the matters covered by the settlement agreement with the Court's reaching that conclusion by holding "[t]he Tribunal granted the Department's motion for summary judgment, finding that petitioners had agreed to a change in their federal returns when John signed the settlement agreement with the IRS and *that the settlement constituted a final determination of the change*." (emphasis added). Similarly, here, the settlement agreement was entered into between the Department and Taxpayers and should properly be understood to constitute the final determination by the Department of the issues covered by the agreement. As the final determination, the agreement embodies the department's determination to grant the exemption and provides the means for the Taxing Entities to seek a contested case hearing.

(ii) The Agreement Fails to Meet the Statutory Requirements of a Settlement Because the Agreement Lacks the Material Terms Required by the Law of Contracts

Taxpayers assert the statutory duty of South Carolina Code Annotated section 12-60-450(E)(1) to issue a Department Determination has been negated because "FTCC and Diversified's alleged tax liability" was settled according to South Carolina Code Annotated section 12-4-320(4). See Taxpayers' Motion to Dismiss, pp. 9-10.

Taxpayers are in error. Here, the duty to issue a Department Determination has not been negated because the agreement and the undisputed facts show the Department failed to satisfy the statutory duties required for settlement. The agreement—one voluntarily entered into by Taxpayers—unequivocally shows "the parties [did] not settle the matter" but instead produced a Department Determination.

South Carolina Courts interpret Settlement Agreements by applying the law of contracts. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009) ("In South Carolina jurisprudence, settlement agreements are viewed as contracts."); *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 177, 557 S.E.2d 708, 711 (Ct. App. 2001); *Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n*, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001). A basic tenant of contract law is "[a] contract provision leaving material terms open for future agreement is void for indefiniteness." *Ellis v. Taylor*, 316 S.C. 245, 249, 449 S.E.2d 487, 489 (1994). Rather, for a contract to be binding, material terms cannot be left for future agreement. *Aperm of S.C. v. Roof*, 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct.App.1986). Here, the agreement records in unambiguous language the deliberate and intentional decision to leave open settling Taxpayers' tax liabilities by omitting the material term establishing an assessed value for Taxpayers' properties.

First, in provision 2.2, the parties state:

> 2.2 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.

Section 2.2 leaves to future actions the necessary steps to reach an assessed value. The agreement requires the future filing of amended property tax returns for six years for FTCC and three years for Diversified. Then, even after those returns are filed, the settlement still remains a future event because the amended returns must contain "appropriate supplemental data." What constitutes "appropriate" data is wholly within the Department's discretionary judgment. And, even after agreeing on what data is and is not appropriate, Section 2.2 is clear the Department has a-still-further duty to "calculate and certify to the applicable counties a revised assessment." These actions of filing returns, attaching and reviewing appropriate data, calculating values, and certifying results are all future actions requiring discretionary judgments by the Department before establishing an assessed value. Hence, the January 8, 2017, "agreement" is no settlement agreement.

Second, the Agreement underscores no settlement occurred because the plain language in the first double-numbered section 2.3 states:

> 2.3 Parties Will Work Together in Good Faith. The Parties have not agreed to the amount of any revised assessment. FTCC, Diversified, and the Property Division will work together in good faith to determine what information is needed from FTCC and Diversified and the process necessary for the Property Division to make the appropriate assessments.

In this single provision, the parties unambiguously acknowledge the Department and the Taxpayers "have not agreed to the amount of any revised assessment." It is hard to imagine a more material term for a property tax settlement than the assessed value of the taxpayer's property. The assessed value of property is "[not] the actual or real or market value of the taxable property, but . . . the value placed upon property for the purpose of taxation by officials appointed for that purpose." *State v. Cornwell,* 40 S.C. 26, 18 S.E. 184, 185–86 (1893); S.C.

Code §12-60-30(19) ("'Property tax assessment' means a . . . property value . . . arrived at by multiplying the fair market value . . . of the property by the appropriate assessment ratio for the taxable property's classification."). Here, the officials appointed (a) to value and (b) to assess Taxpayers' taxable property are the employees of the Department. *See* S.C. Code Ann. § 12-4-540(A)(1)(f) (holding "[t]he department has the sole responsibility for the appraisal [and] assessment . . . of the taxable values . . . of the real and personal property owned by . . . [telephone] businesses."). Further, the officials appointed to determine which of the Taxpayers' properties are taxable are again the employees of the Department. S.C. Code Ann. § 12-4-710 ("the department shall determine if any property qualifies for exemption from local property taxes under Section 12-37-220.").

Thus, in determining the assessed value of Taxpayers' property, the Department must perform three tasks. First, the Department must value the property. Second, the Department must decide on and apply an assessment ratio to the property. Finally, the Department must determine which of the Taxpayers' properties are "taxable property" and which are exempt. Each task is required. None can be omitted. A tax cannot exist without an assessment. S.C. Const. art. X, § 4 ("The General Assembly shall provide for the assessment of all property for taxation, whether for state, county, school, municipal or any other political subdivision [and a]ll taxes shall be levied on that assessment."); S.C. Code § 12-37-30 ("Taxes for township, school, municipal and all other purposes provided for or allowed by law shall be levied on the same assessment, which shall be that made for county taxes.").

Here, Taxpayers rely upon the settlement authority of South Carolina Code Annotated section 12-4-320(4) as the basis for resolving the "alleged tax liability on the property at issue." Motion to Dismiss, pp. 9-10. Since no tax liability can arise without an assessment and since the

agreement intentionally and deliberately fails to set an assessment, the agreement settles no tax liability; it creates no settlement agreement.

(iii) Summary: The Agreement Is a Department Determination Not a Settlement Agreement

In summary, two reasons show the requirement of issuing a Department Determination is not negated here by the agreement between the Department and Taxpayers.

First, South Carolina Code Annotated section 12-60-450(D)(1) does not relieve the department from its duty to make a department determination even if the department and taxpayer enter into a settlement agreement. Rather, the agreement is merely the Taxpayer's acknowledgment it agrees with the Department's final determination of the issues originally in dispute. The agreement, being the final determination by the Department, is the embodiment of the department determination.

Second, the document presented by the Taxpayers and the Department as a settlement agreement is not an agreement ending any tax liability of Taxpayers. "A contract provision leaving material terms open for future agreement is void for indefiniteness." *Ellis v. Taylor*, 316 S.C. 245, 249, 449 S.E.2d 487, 489 (1994). The agreement here leaves numerous tasks for future development and deliberately and intentionally leaves the assessment issue open. For property of the type owned by Taxpayers, the essence of the Department's authority—the very thing the Taxpayers need for a settlement, the very thing they failed to obtain—is the assessment. *See* S.C. Code Ann. § 12-4-540(A)(1)(f) (where "[t]he department has the sole responsibility for the . . . assessment . . . of the real and personal property owned by . . . [telephone] businesses and used in the conduct of their business."). The provisions required of 2.2 and the actions addressed in 2.3 all occur in the future and require discretionary judgments by the Department. Hence, the January 8, 2017, agreement is no settlement agreement.

Thus, having satisfied the four criteria of a Department Determination, the January 8, 2017, document is not a settlement but is instead a Department Determination granting in part and denying in part the Rural Telephone Service Exemption. From that Department Determination, the Taxing Entities have chosen to invoke this Court's jurisdiction through a contested case as allowed by South Carolina Code Annotated sections 12-60-2130 and 12-60-2150.

2. The Department Issued a Chapter 4 Department Determination to the Taxing Entities on July 6, 2017, and Issued a Second Chapter 4 Department Determination to Taxing Entities on August 24, 2017, With Each Issuance Satisfying the Four Criteria of a Department Determination

In addition to the jurisdiction established through the Chapter 60 Department Determination issued to the Taxpayers, this Court has further jurisdiction for the Audit Period years of 2010 through 2015 (years identified as "Audit Period" in the agreement) and for tax year 2016 due to the Department's July 6, 2017, issuance of a Department Determination under South Carolina Code Annotated section 12-4-535(A)-(C) directing the Taxing Entities to utilize assessments set by the Department. In addition, this Court has further jurisdiction for the 2017 tax year due to the Department's August 24, 2017, issuance of a Department Determination under South Carolina Code Annotated section 12-4-535(A)-(C) directing the Taxing Entities to utilize assessments set by the Department.

(a) Introduction to Jurisdiction Under S.C. Code Ann. § 12-4-535

Under South Carolina Code Annotated section 12-4-535(A) the "department may 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." In a July 6, 2017, directive from the Department's Utility Assessment Coordinator, Taylor Ingram, the Taxing Entities were told to "use the following assessments when billing [FTCC and Diversified] for tax years 2010 through 2016, and . . . take careful notice of the 'exempt' or 'non-exempt' clarification on each line item." Similarly, in an August 24, 2017, directive, the Taxing Entities

were told to "use the following assessments when billing [FTCC and Diversified] for tax year 2017, and . . . take careful notice of the 'exempt' or 'non-exempt' clarification on each line item."

Thus, each directive tells the Taxing Entities to apply the Department's assessments for tax years 2010 through 2017 for the Taxpayers taxable and exempt property. Under South Carolina Code Annotated section 12-4-535(B) and (C), the Counties responded in writing to the Department disagreeing with the department determination. The Counties acted on their disagreement with the department determinations by requesting a contested case hearing before this Court. See Affidavit of Clarendon County Administrator, attached as **Exhibit B**.

(b) The Department Determinations of S.C. Code Ann. § 12-4-535 Provide this Court the Required Jurisdiction

Despite the Taxing Entities raising South Carolina Code Annotated section 12-4-535 as a separate ground for this Court's subject matter jurisdiction in Taxing Entities' Prehearing Statement[2], Taxpayers fail to refute or even address this ground in their Motion to Dismiss. Here, Taxing Entities complied with the requirements of South Carolina Code Annotated section 12-4-535 and thereby triggered this Court's jurisdiction independently of any arguments set forth in Taxpayers' Motion to Dismiss.

First, South Carolina Code Annotated section 12-4-535(A) authorizes the Department 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." Here, the undisputed facts show the department issued such a department determination in the form of the Assessment Certifications "directing the [county auditor] to comply with all applicable state law relating to the valuation, assessment, or taxation of property." *See* Assessment Certifications attached hereto as **Exhibit C**. Specifically, the Assessment Certifications are addressed to the

[2] *See* Taxing Entities Prehearing Statement, filed with this Court on 7/10/2017, at pages 4-5 and footnote #8.

respective County Auditors for the Taxing Entities and explicitly direct the County Auditors to "use the following assessments when billing [Taxpayers] for tax years 2010 through 2016, and in doing so take careful notice of the 'exempt' or 'non-exempt' clarification on each line item . . . [i]f the assessment is labeled as 'exempt,' then the corresponding assessment is exempt from the county portion of the millage." *Id.* Nearly identical language applicable to tax year 2017 appears in the 2017 Assessment Certification. *Id.*

Second, section 12-4-535 requires a county to respond in writing to the Department within 30 days of the date the department determination is mailed or hand delivered and give notice of its disagreement with the department determination. S.C. Code Ann. § 12-4-535(B). Here, the Taxing Entities complied with the 30-day requirement. Specifically, with respect to the 2010-2016 Assessment Certifications (dated July 6, 2017), the Taxing Entities complied by serving supplements to the original request for contested case hearing on the Department on July 17, 2017,[3] and July 26, 2017.[4] In addition, the Taxing Entities complied with the 30-day requirement with respect to the 2017 Assessment Certifications (dated August 24, 2017, but not received by Taxing Entities until August 28, 2017) by serving the Consolidated Supplement to Request for Contested Case Hearing on the Department on September 25, 2017.[5]

Third, section 12-4-535 explicitly grants a county governing body the right to request a contested case hearing before this Court if the county governing body disagrees with a department determination. S.C. Code Ann. § 12-4-535(C). Here, Clarendon County authorized a challenge to the Department's determination. *See* Affidavit of Clarendon County Administrator attached as **Exhibit B**. Following Clarendon County's triggering of this Court's subject matter jurisdiction, each of the remaining Taxing Entities joined by leave to intervene in this case as similarly situated parties.

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[3] Consolidated Supplement to Request for Contested Case Hearing, filed with this Court on July 17, 2017.
[4] Lee County Supplement to Request for Contested Case Hearing, filed with this Court on July 26, 2017.
[5] Consolidated Supplement to Request for Contested Case Hearing, filed with this Court on September 25, 2017.

In light of the above, the directives of July 6, 2017, and of August 24, 2017, are Department Determinations within the meaning of South Carolina Code Annotated section 12-60-30(10). First, each is a determination because each directive requires the Taxing Entities to exempt identified property and employ an assessment on other identified property. Second, the determination is final because each directive carries the finality language of "use the following assessments." Third, the determination is unmistakably issued by the Department because the directive is issued by the Department's Utility Assessment Coordinator, Taylor Ingram. And, fourth, each determination is a decision "from which a person may request a contested case" because South Carolina Code Annotated section 12-4-535(C) authorizes the county governing body to request a contested case hearing before the Administrative Law Court if the county disagrees with the department determination. Hence, this Court has Chapter 4 Department Determination jurisdiction.

3. Taxing Entities Have Met Their Burden of Alleging this Court's Jurisdiction to Hear Taxing Entities' Challenges to Both the Chapter 60 Department Determination and the Chapter 4 Department Determination.

In the Administrative Law Court, a party pleading subject matter jurisdiction has "the burden of presenting facts sufficient to establish jurisdiction." *Gene Hendrix v. Leslie Smith, Lexington Cty. Assessor*, 1996 WL 909386, at 3 (S.C. Admin. L. J. Div.) (Aug. 27, 1996); *Morton and Barbara Hankin v. Charleston Cty. Assessor*, 1997 WL 441733, at 3 (S.C. Admin. L. Judge Div.) (July 15, 1997); *Edward S. Bomar v. Charleston Cty. Assessor*, 1997 WL 436010, at 4 (S.C. Admin. L. Judge Div.) (May 9, 1997) (citing *Yarborough and Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153, 268 S.E.2d 42, 43 (1980). The issue as raised by the Taxpayers is deciding upon what must the Administrative Law Court rely in examining jurisdiction.

The Taxpayer's argue "[i]n this case, [Taxing Entities] failed to allege facts in the Request for Contested Case hearing that are sufficient to establish that this Court has subject matter

jurisdiction of this matter." See Motion to Dismiss, p. 6. In other words, Taxpayers argue this Court is limited to considering the Request for Contested Case when deciding if jurisdiction exists. Taxpayers are incorrect.

The Court is not confined to the factual allegations contained within a Request for Contested Case Hearing Form when analyzing a motion to dismiss for lack of subject matter jurisdiction. See *Haley Farms v. S.C. Dep't of Health and Envtl. Control,* 1997 WL 572271, at 2 (S.C. Admin. L. Judge Div.) (Aug. 19, 1997) ("This tribunal, therefore, must look to the memoranda and supporting affidavits, as well as the testimony presented at the motion hearing, in order to determine whether this matter should be dismissed."); *Ilene Rogers v. S.C. Dep't of Health and Envtl. Control,* 1997 WL 532738, at 4 (S.C. Admin. L. Judge Div.) (Aug. 27, 1997) ("[T]his tribunal must consider the affidavits and memoranda submitted by the Petitioners . . ."); *Mount Pleasant Waterworks and Sewer Comm'n v. S.C. Dep't of Health and Envtl. Control*, 1996 WL 909507, at 1 (S.C. Admin. L. Judge Div.) (Sept. 11, 1996) ("Upon careful consideration of the arguments of the parties, the applicable law, and the affidavits and exhibits submitted by the parties, the Respondents' Motions to Dismiss are granted." (emphasis added)).

Rather, "a motion to dismiss for lack of subject matter jurisdiction may be supported by, and a court may consider, affidavits or other evidence . . . ." *Haley Farms*, 1997 WL 572271 at 2; *Ilene Rogers*, 1997 WL 532738, at 4; *Mount Pleasant Waterworks*, 1996 WL 909507, at 4.

Moreover, "the pleadings presented to [the ALC], i.e., affidavits, memoranda, and exhibits, should be viewed in a light most favorable to . . . the nonmoving party." *Ilene Rogers*, 1997 WL 532738, at 4; *Mount Pleasant Waterworks*, 1996 WL 909507, at 4 (citing *Fuller-Ahrens Partnership v. S.C. Dep't of Highways and Pub. Transp.*, 311 S.C. 177, 427 S.E.2d 920 (Ct. App. 1993)). Here, Taxing Entities have sufficiently alleged this Court's jurisdiction to hear Taxing Entities challenge to both Chapter 60 and Chapter 4 Department Determinations.

B. Taxpayers' Argument that Their Agreement with the Department Is "Final and Conclusive" and thus Denies Jurisdiction to this Court Under S.C. Code Ann. § 12-4-320(4) Is In Error

Taxpayers argue this Court is deprived of jurisdiction by South Carolina Code Annotated section 12-4-320(4). That statute provides that for Taxpayers executing a:

> "written agreement with [the Department] with regard to a tax liability[, 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;

Four reasons demonstrate the Court's jurisdiction is not denied by South Carolina Code Annotated section 12-4-320(4) with those reasons based on the facts here showing the purported settlement agreement is not within the scope of South Carolina Code Annotated section 12-4-320(4). In addition, two further reasons demonstrate the Court's jurisdiction is not precluded by South Carolina Code Annotated section 12-4-320(4) even if South Carolina Code Annotated section 12-4-320(4) were applicable to the agreement here. Each is addressed in turn.

1. The Facts Show the Purported Settlement Agreement Is Not Within the Scope of S.C. Code Ann. § 12-4-320(4) and Therefore the Court's Jurisdiction Is Not Denied by S.C. Code Ann. § 12-4-320(4)

An application of South Carolina Code Annotated section 12-4-320(4) to the instant case requires a minimum of four actions. First, the settling of a tax liability. Second, approval of the settlement by the Director. Third, providing notice of the settlement to both the House Ways and Means Committee and the Senate Finance Committee. And, fourth, due to the circumstances of this case, crafting an agreement seeking to bind nonparties to the agreement. None of the four occurred here. The Court has jurisdiction.

(a) Because No Settlement of a Taxpayers' Tax Liability Has Been Achieved, S.C. Code Ann. § 12-4-320(4) Does Not Deny the Court Jurisdiction

The document Taxpayers represent to the Court as being a "final and conclusive" settlement denying this Court jurisdiction is the agreement dated January 8, 2017, between Taxpayers and the Department. That document is not a settlement agreement.

The analysis of why the January 8, 2017, agreement is not a settlement agreement is explained in detail in section A.1.(b)(ii) of this Memorandum. That explanation is summarized here.

Settlement agreements are interpreted by applying the law of contracts. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009). "A contract provision leaving material terms open for future agreement is void for indefiniteness." *Ellis v. Taylor*, 316 S.C. 245, 249, 449 S.E.2d 487, 489 (1994). To have a binding agreement, material terms cannot be left for future agreement. *Aperm of S.C. v. Roof*, 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct.App.1986). Here, by unambiguous language at provision 2.2 and 2.3, the January 8, 2017, agreement deliberately omits a material term—the assessed value of Taxpayers' property. Such a term is required to establish the Taxpayers' tax liability.

The foundational requirement triggering the "final and conclusive" language of South Carolina Code Annotated section 12-4-320(4) is the settling of a tax liability. The January 8, 2017, agreement, not having established the assessed value, is incapable of settling a property tax liability because no property tax liability can exist without an assessed value. S.C. Const. art. X, § 4 ("The General Assembly shall provide for the assessment of all property for taxation, whether for state, county, school, municipal or any other political subdivision [and a]ll taxes shall be levied on that assessment."); S.C. Code § 12-37-30 ("Taxes for township, school, municipal and all other purposes provided for or allowed by law shall be levied on the same assessment, which shall be that made for county taxes."). Hence, because a tax liability must be fixed before triggering S.C. Code §12-4-320(4)'s "final and conclusive" language and because

the January 8, 2017 document does not fix a tax liability, S.C. Code §12-4-320(4) does not deny this Court jurisdiction.

(b) Because the Purported Settlement Is Not Approved by the Director, S.C. Code Ann. § 12-4-320(4) Does Not Deny the Court Jurisdiction

The authority granted by South Carolina Code Annotated section 12-4-320(4) is not absolute. The portion of the statute that prohibits reopening by administrative or judicial action is only operative "[i]f the agreement is approved by the director." Here, Taxpayers have provided no evidence the Agreement was approved by the Director. The agreement was not signed by the Director but instead is signed by William Condon, Managing Counsel for Litigation. *See* Settlement Agreement, attached hereto as **Exhibit A**, at page 8.

The mandatory duty to unequivocally establish Director approval is established by federal case law interpreting a similar provision of the Internal Revenue Code. The language of IRC§ 7121 ("Federal Closing Agreement Statute") is substantially similar to section 12-3-420(4). *Compare* IRC § 7121 ("The Secretary is authorized to enter into an agreement in writing with any person relating to the liability of such person . . . in respect of any internal revenue tax . . . if such agreement is approved by the Secretary . . . such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact . . . the case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and in any suit, action, or proceeding, such agreement . . . shall not be annulled, modified, set aside, or disregarded.") with S.C. Code Ann. § 12-4-320(4) ("The department may . . . enter into a written agreement with a person with regard to a tax liability. If 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."). Further, pursuant to South Carolina's conformity

statutes, courts in this state routinely apply internal revenue code provisions to South Carolina cases by construing the words "Secretary, Secretary of the Treasury, or Commissioner" to mean the "Director of the Department of Revenue." S.C. Code Ann. § 12-6-40(A)(2)(a)(i). Given the similarity in the statutory language, federal case law interpreting IRC § 7121 is instructive when interpreting section 12-4-320(4).

Federal case law interpreting the federal closing agreement statute of IRC § 7121 and its predecessors has long held an agreement must be approved by the Secretary of the Treasury to prevent the underlying issues from being reopened by a court. *Edmonds v. United States*, 148 F. Supp. 185, 186 (E.D. Wis. 1957) ("There is *no allegation or indication that the Secretary of the Treasury*, the Undersecretary or an Assistant Secretary *approved* the Form 870 Agreement, under the provisions of 26 U.S.C.A. § 3760(b) of the tax code then in force . . . [and] it is the opinion of this Court that the Form 870 Agreement executed by the plaintiffs herein *is not a bar to the bringing of an action for refund of taxes*."); *John v. United States*, 138 F.Supp. 89 (E.D. Wis. 1956) (Holding a Form 870 Agreement, which was *not signed by the proper statutory authorities*, binds neither the Government nor the taxpayer, and *may not be used as a bar to the bringing of an action for the refund of taxes*.); *Bank of New York v. US*, 141 F. Supp. 364, 367 (S.D.N.Y. 1956) ("We think that Congress intended by the statute to prescribe the exclusive method by which tax cases could be compromised, requiring therefor the concurrence of the Commissioner and the Secretary, and prescribing the formality with which, as a matter of public concern, it should be attested in the files of the Commissioner's office; and did not intend to [e]ntrust the final settlement of such matters to the informal action of subordinate officials in the Bureau . . . . Applying this language, inasmuch as *there is nothing to indicate that any of the persons specified by the statute ever approved the instant compromise, the waiver in and of itself is not a bar to the prosecution of this suit*."); *Joyce v. Gentsch*, 141 F.2d 891, 895 (6th Cir. 1944)

("*the consent of the Secretary of the Treasury* has been considered by circuit courts of appeal *as essential to the validity of a stipulation concerning tax liability*, where such stipulation is in the nature of a compromise."); *Leach v. Nichols*, 23 F.2d 275, 277 (1927) ("It is plain that *no compromise is authorized by this statute which is not assented to by the Secretary of the Treasury*.").

Here, section 12-4-320(4) requires approval by the Director. The document on its face shows no such approval. Accordingly, the purported settlement agreement cannot deprive this Court of jurisdiction.

(c) Because the Purported Settlement Is Not Filed with the House Ways and Means Committee or with the Senate Finance Committee, S.C. Code Ann. § 12-4-320(4) Does Not Deny the Court Jurisdiction

Further, evidence the Agreement is not a settlement within the scope of section 12-4-320(4) is section 12-4-380. Section 12-4-380 requires "[w]ithin thirty days of final settlement, the department shall report to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee, the details of all tax liabilities reduced by order of the director." That action has not occurred in this case.[6]

Thus, given the lack of filing with the House Ways and Means and with the Senate Finance Committee, the Settlement Agreement was not approved by the Director of the Department and given that no notice of the settlement was timely delivered to the House Ways and Means Committee and the Senate Finance Committee, this Court should reject Taxpayers' argument this Court lacks jurisdiction.

(d) Because the Purported Settlement Seeks to Bind Non-Parties to the Agreement, S.C. Code Ann. § 12-4-320(4) Does Not Deny the Court Jurisdiction

[6] Taxing Entities are not aware of any notice related to Taxpayers being filed with either the House Ways & Means Committee or the Senate Finance Committee within the statutory thirty day time period. Taxing Entities are willing to revisit this statement in the event either the Department or the Taxpayers provide evidence of such notice being timely delivered.

Even if the Settlement Agreement could be found to have been approved by the Director and if notice thereof could be shown to have been timely delivered to the House Ways and Means Committee and the Senate Finance Committee, the Settlement Agreement is nevertheless unenforceable against Taxing Entities under the general law of contracts. Consequently, it cannot bind Taxing Entities and cannot deny this Court's jurisdiction to hear Taxing Entities timely challenge to department determinations.

General contract principles apply in the construction of a purported settlement agreement because a settlement agreement is reviewed as a contract under South Carolina law. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009). A fundamental tenet of contract law is a contract cannot bind a nonparty. *In re Joseph Walker & Co., Inc.*, 522 B.R. 165, 194 (Bankr. D.S.C. 2014) (holding because "Earlam and Kirby were not parties to the Ginner Contracts" they were not bound by the contracts); *see, e.g., Drafts v. Shull Sausage Co.*, 276 S.C. 52, 54, 275 S.E.2d 577, 578 (1981) ("[S]ince [third-party defendant] was not a party to the original contract, . . . it owed no duty or obligation thereunder.").

South Carolina Code Annotated section 12-4-320(4) permits the Department to "enter into a written agreement with a person." The intent of such language is to bind the Department and the person entering the written agreement to any and all final determinations contained in the agreement. The statute does not permit the Department to "enter into a written agreement with a person" *that binds third party strangers to the agreement*. Federal Courts have held that strangers to an IRS Closing Agreement cannot enforce the Closing Agreement nor benefit from it. *Ellinger v. United States*, 470 F.3d 1325 (11th Cir. 2006) (citing *Phillips v. Comm'r*, 178 F.2d 270, 271 (3d Cir. 1949) (per curiam) (declining to enforce a closing agreement where the plaintiffs were "strangers to [the] agreement," and stating that they could neither be "bound by it nor [could] they take advantage" of it)). Thus, the permissive authority granted in section 12-4-

320(4) cannot transform a settlement agreement that is otherwise unenforceable against a non-party stranger into an enforceable contract against such non-party stranger. Absent clear authorization from the General Assembly permitting the Department to enter into settlement agreements that would not otherwise be enforceable against Taxing Entities under the law of contracts, this Court should reject Taxpayer's argument and interpret section 12-4-320(4) accordingly.

2. Even if S.C. Code Ann. § 12-4-320(4) Were Applicable to the Purported Settlement Agreement, that Statute Does Not Deny This Court's Jurisdiction

The Taxing Entities urge the Court to find section 12-4-320(4) is inapplicable to the instant case for the reasons identified above. However, even if section 12-4-320(4) were applicable, this Court would not be deprived of jurisdiction for two reasons. First, the Court has jurisdiction over all tax years not covered by the purported settlement. Second, the Court has jurisdiction because the purported settlement agreement was obtained through misrepresentations.

(a) Because the Purported Settlement Addresses Only Tax Years 2010 through 2015, S.C. Code Ann. § 12-4-320(4) Does Not Deny the Court's Jurisdiction

The purported settlement agreement addresses only tax years 2010 through 2015, identified in the agreement as the "Audit Period." See Recital 28 of Agreement. The Agreement makes no reference to nor does it cover tax years 2016 or 2017. Thus, the jurisdiction of this Court for tax years 2016 and 2017 could never be foreclosed by section §12-4-320(4).

(b) Because the Purported Settlement Agreement Results from Misrepresentations, S.C. Code Ann. § 12-4-320(4) Does Not Deny the Court's Jurisdiction

The Taxpayers argue this Court should enforce the purported Settlement Agreement pursuant to the Department's authority to settle tax disputes with taxpayers under section 12-4-320(4). However, the statute's plain language holds the agreement is not "final and conclusive . . . in cases of fraud, malfeasance, or misrepresentation."

Here, the Department's misrepresentations include claiming authority it does not have and misrepresenting its ability to exercise the authority it does have. Its misrepresentations of authority fall into five areas.

First, without authority but professing to have such authority, the Department granted Taxpayers the Rural Telephone Service Exemption for tax years 2010 through 2011 even though no exemption applications were timely filed by Taxpayers as required by section 12-60-1750(1) and even though the Department failed to notify the appropriate county official of the exemption by June 1, 2010, and June 1, 2011, as required by section 12-4-710.

Second, without authority but professing to have such authority, the Department granted Taxpayers the Rural Telephone Service Exemption for tax years 2012 through 2016 without Taxpayers having claimed the exemption on a timely filed application as required by section 12-4-720's duty of an annual, timely filed exemption application and granted the exemption even though the Department failed to notify the appropriate county official of the exemption by June 1, 2012, June 1, 2013, June 1, 2014, June 1, 2015, and June 1, 2016, as required by section 12-4-710.

Third, without authority but professing to have such authority, the Department granted Taxpayers the Rural Telephone Service Exemption for tax year 2017 even though the Department failed to notify the appropriate county official of the exemption by June 1, 2017, as required by section 12-4-710.

Fourth, without authority but professing to have such authority, the Department wrongly represented it could bind the Taxing Entities, admittedly non-parties to any agreement, to issue refunds to Taxpayers by the Department's issuances of certifications of assessed values in July and August 2017 taxing some property but exempting others.

Fifth, under the authority it had to grant the Rural Telephone Services Exemption, the Department misrepresented the scope of that authority by wrongly granting the exemption to property used primarily for data-intensive, Non-Telephone Services and used only incidentally for rural telephone services.

Each position is more fully developed and explained in Taxing Entities' Motion for Partial Summary Judgment which asserts the Department lacks statutory authority to take any of these actions and which is incorporated as if set forth fully herein. Fundamentally, the Department cannot be allowed to accomplish via a settlement agreement that which it is prohibited by law from doing on its own account.

A brief example is presented to illustrate that merely including a provision in a purported settlement agreement cannot be viewed as *a priori* foreclosing a review of that agreement. For example, here, the Department did not grant the Taxpayers' requested exemption in full. Rather, the Department and the Taxpayers agreed some portion of the Taxpayers' property would be exempt and other portions would be taxable. Thus, using the Taxpayers' flawed logic, rather than engaging in the precise analysis needed to identify which properties were in use for exempt purposes and which were not, the Department's "settlement agreement" could simply direct the Counties and school districts to reduce by 75% the millage rate on all of Taxpayers' property. Under the Taxpayers view, such a "settlement agreement" could not be challenged by any affected local government and this Court's jurisdiction would be denied by section 12-4-320(4).

However, no one would seriously argue the Department could enter into this type of millage arrangement because the Department has no authority over the imposition of millage rates. Similarly, in the instant case, the Department has no authority to (1) grant retroactive refunds, (2) grant exemptions for which no timely applications were filed, (3) grant exemptions despite failing to notify the appropriate county officials by the annual deadline, (4) bind the Taxing

Entities as non-parties to the Settlement Agreement, or (5) grant exemptions for property used primarily for data-intensive, Non-Telephone Services and used only incidentally for rural telephone services.

Accordingly, even if section 12-4-320(4) were to apply to the purported settlement agreement here, this Court has jurisdiction over this controversy because of the Department misrepresentations of its authority made in pursuing the purported settlement agreement.

C. Taxpayers' Reliance on the Contracts Clause of both the United States Constitution and the South Carolina Constitution is Misplaced

Taxpayers seek to invoke the restrictions of the Contract Clauses of both the United States Constitution and the South Carolina Constitution. Neither is relevant to the issues before the Court.

1. The Contracts Clause of the United States Constitution Does Not Apply Here Because the Settlement Agreement Was Entered After the Enactment of S.C. Code Ann. §§ 12-60-2130 or 12-60-2150(H)

The Contracts Clause of the United States Constitution ("US Contracts Clause") restricts *legislative acts* enacted subsequent to the entering into of a particular contract from impairing obligations undertaken in the pre-legislation contract. U.S. Const., Art. I, Section 10 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts"). The only legislative enactments alleged by Taxpayers to violate the US Contracts Clause are sections 12-60-2130 and 12-60-2150(H). Here, the purported Settlement Agreement was fully executed as of January 8, 2017; whereas both of the statutes allegedly violating the US Contracts Clause were enacted in 1995.[7] Neither of the statutes allegedly violating the US Contracts Clause has been amended since 1997.[8] In summary, Taxpayers allege this Court is powerless to construe two jurisdictional statutes enacted by the General Assembly more than twenty years ago because this Court's

[7] 1995 S.C. Act No. 60, Section 4A.
[8] The most recent amendment of S.C. Code Ann. § 12-60-2130 was 1996 S.C. Act No. 456, Section 11. The most recent amendment of S.C. Code Ann. § 12-60-2150 was 1997 S.C. Act No. 106, Section 5.

construction would upset a settlement agreement entered into in the year 2017, well after the passage of those two laws.

It is axiomatic that the US Contracts Clause can apply only to a subsequent legislative enactment. *Cross Lake Club v. Louisiana*, 224 U.S. 632 (1912). Even where the United States Supreme Court has held that a state court's construction of a statute is reviewable under the US Contracts Clause, the United States Supreme Court has required the statute in question to be one that was enacted *subsequently* to the affected contract. In *Cross Lake Club*, the US Supreme Court explained:

> *This clause, as its terms disclose, is not directed against all impairment of contract obligations, but only against such as results from a subsequent exertion of the legislative power of the state.* It does not reach mere errors committed by a state court when passing upon the validity or effect of a contract under the laws in existence when it was made. And so, while such errors may op[e]rate to impair the obligation of the contract, they do not give rise to a Federal question. But when the state court, either expressly or by necessary implication, gives effect to a subsequent law of the state whereby the obligation of the contract is alleged to be impaired, a Federal question is presented. In such a case it becomes our duty to take jurisdiction and to determine the existence and validity of the contract, what obligations arose from it, and whether they are impaired by the subsequent law. But if there be no such law, or if no effect be given to it by the state court, we cannot take jurisdiction, no matter how earnestly it may be insisted that that court erred in its conclusion respecting the validity or effect of the contract; and this is true even where it is asserted, as it is here, that the judgment is not in accord with prior decisions on the faith of which the rights in question were acquired.")

Cross Lake Club v. Louisiana, 224 U.S. 632 (1912) (emphasis added); *see New Orleans Water Works v. Louisiana Sugar Refining Co.*, 125 U.S. 18 (1888) ("In order to come within the provision of the constitution of the United States which declares that no state shall pass any law impairing the obligation of contracts, not only must the obligation of a contract have been impaired, but it must have been impaired by a law of the state. *The prohibition is aimed at the legislative power of the state, and not at the decisions of its courts, or the acts of administrative or executive boards or officers, or the doings of corporations or individuals*.")

Because the statutes alleged to infringe on the US Contracts Clause were enacted before the Settlement Agreement, Taxpayers' argument lacks merit and should be ignored.

2. The Contracts Clause of the South Carolina Constitution Does Not Apply Here Because the Settlement Agreement Was Entered After the Enactment of S.C. Code Ann. §§ 12-60-2130 or 12-60-2150(H)

The Contracts Clause of the South Carolina Constitution ("SC Contracts Clause"), like the US Contracts Clause, prohibits the passing of a law impairing the obligation of contracts. S.C. Const., Art. I, § 4 ("No . . . law impairing the obligation of contracts . . . shall be passed."). Similar to the US Contracts Clause, the SC Contracts Clause does not apply to a legislative enactment that occurred prior to the execution of a contract. *Harleysville Mut. Ins. Co. v. State*, 401 S.C. 15, 736 S.E.2d 651 (2012). In *Harleysville*, the Court struck down only the retroactive portion of a legislative enactment that changed the definition of "occurrence" under the State's laws on commercial general liability policies.

"To establish a Contract Clause violation, the Court must examine '(1) whether there is a contractual relationship; (2) whether *the change in the law* impairs that contractual relationship; and whether the impairment is substantial.'" *Harleysville Mut. Ins. Co. v. State*, 401 S.C. 15, 736 S.E.2d 651 (2012) (emphasis added) (quoting *Hodges v. Rainey*, 341 S.C. 79, 93, 533 S.E.2d 578, 585 (2000) (citing *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 112 S.Ct. 1105, 117 L.Ed.2d 328 (1992)). Fundamentally, for there to be a violation of the SC Contracts Clause there must be a change in the law occurring after the allegedly impacted contract was entered into.

Further, the change in the law must apply retroactively for the SC Contracts Clause to be implicated. "It is undisputed a contractual relationship existed . . . [t]hus, we must ask whether the statute, *as applied retroactively*, substantially impairs insurance contracts." *Id.* (emphasis added).

Here, no retroactive portion of the statutes is alleged by Taxpayers to violate the SC Contracts Clause because those very statutes were enacted over twenty years *before* the purported Settlement Agreement was entered. Thus, no violation of the SC Contracts Clause exists. Taxpayers' argument lacks merit and should be ignored.

D. Taxpayers' Argument Is in Error When Asserting No Controversy Exists in this Case and in Error When Implying Taxing Entities Lack Standing

Taxpayers argue the Court has no controversy to resolve. *See* Taxpayers Motion to Dismiss at page 10. Effectively, Taxpayers argue no case or controversy exists here and thus the Taxing Entities lack standing to request a contested case hearing before this Court. Standing can arise in three ways: (1) by statute; (2) through what is called "constitutional standing," and (3) under the public importance exception.[9] *Bodman v. State*, 403 S.C. 60, 742 S.E.2d 363, (2013). Two reasons demonstrate why the Taxing Entities have standing in this case.

1. The General Assembly Granted Statutory Standing to Taxing Entities to Challenge Property Tax Disputes in the Administrative Law Court.

The General Assembly in property tax cases grants statutory standing to local governing bodies such as the Taxing Entities to request a contested case hearing before this Court. *See* S.C. Code Ann. § 12-60-2130 ("[T]he local governing body who disagrees with the department determination may request a contested case hearing."); *see* S.C. Code Ann. § 12-60-2150(H) ("[T]he local governing body who disagrees with the department determination may request a contested case hearing.").

Here, the Taxing Entities exercised their statutory right to a contested case hearing before this Court after discovering the Department and the Taxpayers had, by purported agreement,

[9] Taxing Entities do not address the public importance exception in greater detail here because both "statutory standing" and "constitutional standing" appear to provide a well-founded and broad basis supporting standing. However, Taxing Entities note for the Court's consideration the premise of "public importance" standing is "standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007). Taxing Entities suggest it is hard to imagine a more important public issue for the Taxing Entities than resolving the limits upon the Department's ability to compel the issuance of millions of dollars of refunds with no participation by the Taxing Entities in that decision followed by an absolute denial of the fundamental right to challenge that decision in Court.

determined certain properties owned by the Taxpayers were exempt from *ad valorem* property taxation. By explicitly creating a statutory right to request a contested case hearing under these circumstances, the General Assembly anticipated precisely the kind of controversy Taxing Entities have alleged here. Furthermore, not only did the General Assembly anticipate this kind of controversy, the General Assembly explicitly granted the right to request a contested case hearing where local governing bodies, like the Taxing Entities, disagree with the Department's determination as to whether certain property is exempt from *ad valorem* property taxation. The General Assembly's creation of statutory rights to request a contested case hearing removes all doubt as to whether Taxing Entities have standing to bring this controversy to the Court.

Moreover, the South Carolina Constitution provides "[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard . . . and he shall have in all such instances the right to judicial review." S.C. Const. art. I, § 22. Each of the Taxing Entities are "persons" and also "parties" entitled to judicial review via a "contested case," all within the meaning of Article 5 (Administrative Law Court), Chapter 23 (State Agency Rule Making and Adjudication of Contested Cases), Title I (Administration of the Government) of the South Carolina Code, specifically South Carolina Code Annotated sections 1-23-310(6), 1-23-505(3), and 1-23-505(6). Under the Taxpayers' view, the Taxing Entities are alleged to be "finally bound" by the Department's decision with that decision affecting the Taxing Entities' rights because the Taxing Entities are alleged to have no right to any administrative or judicial review and must issue millions of dollars in refunds, all in clear violation of Article I, Section 22 of the South Carolina Constitution.

The General Assembly provided explicit statutory rights to local governments to challenge decisions made by the Department. Those statutory rights have been claimed by the Taxing Entities and this Court's jurisdiction has been properly invoked.

2. Taxing Entities Have Alleged a Justiciable Case or Controversy in Which Taxing Entities Have Rights at Stake

"South Carolina courts, like federal courts, require a justiciable case or controversy before any decision on the merits can be reached." *Lennon v. South Carolina Coastal Council*, 498 S.E.2d 906, 330 S.C. 414 (S.C. App. 1998). To establish standing, a plaintiff must (1) allege a controversy, (2) have a personal stake in the controversy (i.e. have rights which are injuriously affected by resolution of the controversy), and (3) the controversy must be real, not merely theoretical or imaginary.

Here, the Taxing Entities have alleged a controversy concerning the Department's grant of property tax exemptions to Taxpayers. The Taxing Entities are injured by the Department's actions because the Taxing Entities are alleged to owe substantial refunds to the Taxpayers for tax years 2010 through 2017. If this case is resolved in favor of the Taxpayers, the Taxing Entities will be required to divert resources budgeted for public services to instead be used to fund substantial refunds. The Taxing Entities assert the properties in dispute are not exempt from *ad valorem* property taxation and dispute any refunds are due. The estimated dollar amount in dispute is approximately six to seven million dollars. Thus, the controversy is not "merely abstract or theoretical;" the controversy is real.

Taxpayers argue the Department and Taxpayers extinguished the controversy in this case by entering into the Settlement Agreement. Taxpayers Motion to Dismiss at page 10. However, Taxpayers argument disregards the fact the Taxing Entities were not parties to the Settlement Agreement; they did not consent to the Settlement Agreement. At most, the Settlement Agreement prohibits the Taxpayers and the Department from subsequently challenging the

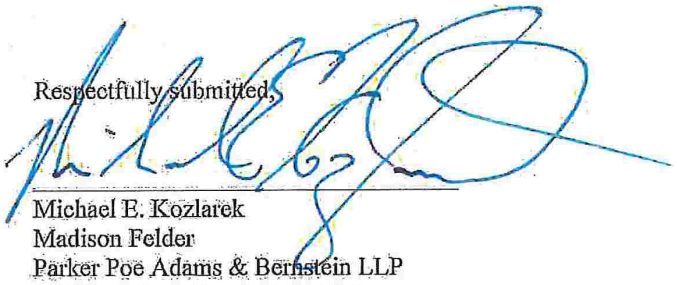
Settlement Agreement. However, the Settlement Agreement has no effect on the Taxing Entities standing or on the underlying controversy alleged by the Taxing Entities.

CONCLUSION

For over four years the Department and the Taxpayers excluded Taxing Entities from any conversations, meetings, and negotiations regarding the Rural Telephone Service Exemption. Only after signing a purported Settlement Agreement to which Taxing Entities are utter strangers, did the Department notify Taxing Entities of the removal of certain taxable property from the tax rolls triggering substantial refund liabilities allegedly owed to Taxpayers. Now, only after Taxing Entities have challenged the Department's grant of the Rural Telephone Service Exemption in this Court, have Taxpayers and Department spoken to Taxing Entities, through counsel, regarding the Rural Telephone Service Exemption.

None of the Taxpayer conversations are conciliatory toward the Taxing Entities. Instead, Taxpayers assert the Taxing Entities have no grievance; Taxing Entities have no remedy; Taxing Entities have only duties—duties to both issue millions of dollars in refunds reaching seven years into the past and to give up substantial future revenues. Taxing Entities believe this gross inequity is entitled to a remedy in this Court with the jurisdictional authority and support for that remedy having been established by this memorandum. Accordingly, the Taxing Entities believe they are entitled to an Order from this Court Denying Taxpayers' Motion to Dismiss.

Respectfully submitted,



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Columbia, South Carolina
January 23, 2018

EXHIBIT A

SETTLEMENT AGREEMENT

PARTIES

The parties to this Settlement Agreement ("Agreement") include the South Carolina Department of Revenue ("Department") and the following entities: Farmers Telephone Cooperative, Inc. ("Farmers Coop"); FTC Communications, LLC ("FTCC"); and FTC Diversified Services, LLC ("Diversified") (these three entities are collectively referred to as "Taxpayers"). The Department and the Taxpayers are collectively referred to as the "Parties."

RECITALS

1. Farmers Coop was incorporated in South Carolina in 1952. Pursuant to S.C. Code Ann. § 12-37-220(B)(10), it has utilized the property tax exemption for property of rural telephone cooperatives operating in South Carolina used in providing rural telephone service.

2. FTCC was organized as a limited liability company ("LLC") in South Carolina on July 1, 2009. FTCC is a single-member LLC of Farmers Coop.

3. Diversified was organized as a limited liability company in South Carolina effective July 1, 2012. Diversified is a single-member LLC of Farmers Coop.

4. The basis of this case is whether property used in providing rural telephone service that is owned by FTCC and Diversified, as single-member LLCs of Farmers Coop, should be exempt from property tax under S.C. Code Ann. § 12-37-220(B)(10). Under that exemption, property used to provide rural telephone service is exempt from all ad valorem property tax when located in unincorporated areas (sometimes referred to as "County-Wide") and exempt from all ad valorem property tax other than municipal or town ad valorem taxes when located in a municipality or town.

5. S.C. Code Ann. § 12-2-25(B)(1) says that a single-member LLC that is not taxed as a corporation for South Carolina tax purposes is disregarded as an entity separate from its single member.

6. FTCC and Diversified each file property tax returns as a "telephone" business under S.C. Code Ann. § 12-4-540(A)(1)(f).

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7. Both FTCC and Diversified provide a range of services that include telephone-related service and other services. FTCC provides wireless telephone service, operator service, and answering services. Diversified provides land-line telephone service, television services, Internet service, and security service.

8. FTCC filed its property tax return, Form PT-420 and supplemental data, for property tax year 2010 with the Department's Property Division on April 29, 2010.

9. The Property Division issued a proposed assessment to FTCC for property tax year 2010 on May 28, 2010. In this proposed assessment, the Property Division identified the taxable value of FTCC's property to be $23,399,118 and an assessed value of $2,456,910. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in five South Carolina counties: Clarendon, Florence, Lee, Sumter, and Williamsburg. FTCC received and paid the related property tax bills.

10. FTCC filed its property tax return, Form PT-420 and supplemental data, for property tax year 2011 with the Department's Property Division on April 14, 2011.

11. The Property Division issued a proposed assessment to FTCC for property tax year 2011 on April 25, 2011. In this proposed assessment, the Property Division identified the taxable value of FTCC's property to be $26,658,177 and an assessed value of $2,799,110. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in six South Carolina counties: Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg. FTCC received and paid the related property tax bills.

12. On or about December 28, 2012, FTCC sent a letter to the Department requesting a property tax exemption for FTCC's rural telephone property pursuant to section 12-37-220(B)(10) and a related refund for property tax years 2010 and 2011. FTCC requested a refund of $726,966.53 for 2010 and $827,067.55 for 2011. The basis for FTCC's requests is section 12-2-25(B)(1), which provides that a single-member LLC that is not taxed as a corporation for South Carolina income tax purposes is disregarded as an entity separate from its owner; hence, the single-member LLC qualifies for any tax benefits available to its single member. Here,

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FTCC asserts that it qualifies for the rural telephone equipment exemption under section 12-37-220(B)(10).

13. FTCC filed its property tax return, Form PT-420 and supplemental data, for property tax year 2012 with the Department's Property Division on April 2, 2012.

14. The Property Division issued a proposed assessment to FTCC for property tax year 2012 on July 13, 2012. In this proposed assessment, the Property Division identified the taxable value of FTCC's property to be $28,804,604 and an assessed value of $3,024,480. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in six South Carolina counties: Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg. In a letter dated October 1, 2012, FTCC protested the 2012 proposed assessment for failure to exempt FTCC's assets under section 12-37-220(B)(10). Due to the protest, FTCC was billed and paid property taxes on 80% of the original proposed assessment.

15. FTCC filed its property tax return, Form PT-420 and supplemental data, for property tax year 2013 with the Department's Property Division on April 30, 2013.

16. The Property Division issued a proposed assessment to FTCC for property tax year 2013 on January 15, 2014. In this proposed assessment, the Property Division identified the taxable value of FTCC's property to be $37,417,582 and an assessed value of $3,928,850. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in six South Carolina counties: Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

17. The Property Division issued a proposed assessment to Diversified for property tax year 2013 on January 15, 2014. In this proposed assessment, the Property Division identified the taxable value of Diversified's property to be $28,031,561 and an assessed value of $2,943,310. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in five South Carolina counties: Clarendon, Florence, Lee, Sumter, and Williamsburg.

18. In a letter dated February 18, 2014, FTCC and Diversified protested the respective 2013 proposed assessments for failure to exempt FTCC's and Diversified's assets

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under section 12-37-220(B)(10). Due to the protest, FTCC and Diversified were billed and paid property taxes on 80% of the original proposed assessment.

19. FTCC filed its property tax return, Form PT-420 and supplemental data, for property tax year 2014 with the Department's Property Division on April 28, 2014.

20. The Property Division issued a proposed assessment to FTCC for property tax year 2014 on August 12, 2014. In this proposed assessment, the Property Division identified the taxable value of FTCC's property to be $41,705,750 and an assessed value of $4,379,100. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in six South Carolina counties: Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

21. The Property Division issued a proposed assessment to Diversified for property tax year 2014. In the distribution report, the Property Division allocated the assessed value of $2,767,670 to the applicable taxing districts (i.e., municipalities and unincorporated areas) in five South Carolina counties: Clarendon, Florence, Lee, Sumter, and Williamsburg.

22. In a letter dated November 6, 2014, FTCC and Diversified protested the respective 2014 proposed assessments for failure to exempt FTCC's and Diversified's assets under section 12-37-220(B)(10). Due to the protest, FTCC and Diversified were billed and paid property taxes on 80% of the original proposed assessment.

23. FTCC filed its property tax return, Form PT-420 and supplemental data, for property tax year 2015 with the Department's Property Division on or about April 24, 2015.

24. The Property Division issued a proposed assessment to FTCC for property tax year 2015 on August 24, 2015. In this proposed assessment, the Property Division identified the taxable value of FTCC's property to be $41,009,667 and an assessed value of $4,306,020. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in six South Carolina counties: Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

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25. Diversified filed its property tax return, Form PT-420 and supplemental data, for property tax year 2015 with the Department's Property Division on or about April 24, 2015.

26. The Property Division issued a proposed assessment to Diversified for property tax year 2015 on August 24, 2015. In this proposed assessment, the Property Division identified the taxable value of Diversified's property to be $24,349,220 and an assessed value of $2,556,670. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in five South Carolina counties: Clarendon, Florence, Lee, Sumter, and Williamsburg.

27. In a letter dated October 8, 2015, FTCC and Diversified protested the respective 2015 proposed assessments for failure to exempt FTCC's and Diversified's assets under section 12-37-220(B)(10). Due to the protest, FTCC and Diversified were billed and paid property taxes on 80% of the original proposed assessment.

28. The Parties now seek to settle all claims and matters arising regarding property taxes for tax years 2010 through 2015 for FTCC and for tax years 2013 through 2015 for Diversified (together, the "Audit Period") in accordance with the provisions of this Agreement.

29. The settlement is reasonable and desirable to avoid the on-going costs, expense, and uncertainty of litigation and is a means for ending the existing disputes without any party admitting or conceding any point or principle of law or fact or in any way creating any precedent with regard to such matters of law or fact.

NOW, THEREFORE, in consideration of these recitals, for the mutual benefits accruing to the Taxpayers and the Department from the execution of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with no admission of liability on the part of any party – each balancing the hope of gaining against the risk of losing with respect to the taxes, fees, interest, and penalties described above, and each preferring compromise and settlement to resolve their claims, disputes and defenses relating to any lawsuit – the Department and the Taxpayers hereby agree as follows:

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1. RELEASES

1.1 Releases by Taxpayers. The Taxpayers forever release the Department from any and all past, present, or future claims (including claims for refunds or protests of property tax assessments) in connection with the Audit Period.

1.2. Releases by the Department. The Department forever releases the Taxpayers from any and all past, present, or future claims (including assessments of taxes which could have been asserted or assessed by the Department) in connection with property taxes for the Audit Period, except as contemplated in Section 2 below.

2. AMENDED RETURNS, AMENDED ASSESSMENTS, REFUNDS, AND OTHER ITEMS

2.1 Property Tax Exemptions. The Parties agree that the property used in FTCC's wireless telephone service and Diversified's land-line telephone service qualifies for the exemption in SC Code Ann. § 12-37-220(B)(10). The Parties agree that such property properly allocated to a municipality or town is subject to municipal or town property tax. Further the Parties agree the property of FTCC and Diversified used to provide other services is not exempt from property taxes at any level.

2.2 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.

2.3 Parties Will Work Together in Good Faith. The Parties have not agreed to the amount of any revised assessment. FTCC, Diversified, and the Property Division will work together in good faith to determine what information is needed from FTCC and Diversified and the process necessary for the Property Division to make the appropriate assessments.

2.3 Certification. Once the Property Division has made the appropriate assessments the Department will certify the final assessments for the Audit Period to each applicable county. Such assessments will exempt FTCC's wireless telephone service and Diversified's land-line telephone service under S.C. Code Ann. § 12-37-220(B)(10).

2.4 Payments or Refunds. After the counties receive the certified final assessments for the Audit Period, each respective county then will calculate a revised property tax amount for each tax year. For each county, if the net adjustment to property taxes for the Audit Period for FTCC or Diversified results in a payment due from FTCC or Diversified, FTCC

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or Diversified will make that payment in a timely manner. If the net adjustment to property taxes for the Audit Period for FTCC or Diversified results in an overpayment of property taxes, 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. The forgoing provision shall not prevent FTCC, Diversified, and a county from mutually agreeing to refund an overpayment in another manner or in a different time period.

3. OTHER MATTERS

3.1. Confidentiality. The Department and the Taxpayers and their respective attorneys and representatives agree that they will keep each and every term of this Agreement confidential and will not disseminate information relating to the substance or contents of this Agreement to any person, unless (a) required by law, (b) disclosed pursuant to the South Carolina Freedom of Information Act (c) necessary to effect compliance with the law, (d) disclosed to a local governing body affected by this Agreement, (e) ordered by a court of competent jurisdiction, (f) requested by a Taxpayer's or the Department's independent accounting firm, or (g) agreed in writing by the Parties.

3.2 Warranties. Each Party represents and warrants that it has the full and complete legal authority to enter into this Agreement, that the individuals executing this Agreement have the legal authority to do so, and that this Agreement shall be binding and enforceable in accordance with its terms when duly executed by the Parties.

3.3 Final Settlement; No Admissions. This Agreement represents a full, complete, final, and binding settlement. If any portion of this Agreement is found to be invalid for any reason, such portion shall be severed from the Agreement, and the remainder of the terms and conditions of this Agreement shall be binding on the Parties. This Agreement shall not be construed by either the Taxpayers or the Department as an admission by either party concerning any claims or issues asserted with respect to the tax or fees for the Audit Period.

3.4 Binding Agreement; Successors and Assigns. This Agreement is binding on the Department and its successor agencies and on the Taxpayers and their successors in interest.

3.5 Duplicate Originals. This Agreement may be executed in duplicate originals, all of which shall have the same effect as if the signature hereto and thereto were upon the same instrument.

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3.6 Entire Agreement. This Agreement supersedes all prior and contemporaneous oral and written agreements, understandings, negotiations, and discussions among the Parties relating to the Audit Period covered by this Agreement.

3.7 Governing Law. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of South Carolina.

3.8 Cooperation. The Parties agree to cooperate fully and to execute any and all supplementary documents and take all actions that may be necessary or appropriate to give full force and effect to the terms of this Agreement.

FTC Communications, LLC

Signature

F. Bradley Ezell
Print Name

Chief Executive Officer
Title

1/6/17
Date

FTC Diversified Services, LLC

Signature

F. Bradley Ezell
Print Name

Chief Executive Officer
Title

1/6/17
Date

South Carolina Department of Revenue

Signature

William J. Condon, Jr.
Print Name

Managing Counsel for Litigation
Title

1/4/17
Date

Initial

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EXHIBIT B

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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 Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC Respondents.	Docket No. 17-ALJ-17-0237-CC **AFFIDAVIT OF CLARENDON COUNTY ADMINISTRATOR**

Personally appeared before me David Epperson, who, being duly sworn, pursuant to Rule 56(e) of the South Carolina Rules of Civil Procedure, hereby deposes and certifies as follows:

1. I am over eighteen (18) years of age, suffer from no known disability and am competent to testify to the facts set forth herein. The statements in this affidavit are made based upon my personal knowledge, including my review of the issues in this case.

2. I am currently the County Administrator ("Administrator") of Clarendon County, South Carolina (the "County").

3. Consistent with S.C. Code Ann. § 4-9-630, my duties as Administrator include, but are not limited to:

   a. serving as the chief administrative officer of the county government;

   b. executing the policies, directives and legislative actions of the county council;

   c. directing and coordinating operational agencies and administrative activities of the county government;

d. preparing annual operating and capital improvement budgets for submission to the council;

e. supervising the expenditure of appropriated funds;

f. preparing annual, monthly and other reports for council on finances and administrative activities of the county;

g. maintaining responsibility for the administration of county personnel policies including salary and classification plans approved by council;

h. maintaining responsibility for employment and discharge of personnel subject to the provisions of subsection (7) of Section 4-9-30 of the South Carolina Code of Laws and subject to the appropriation of funds by the council for that purpose; and

i. performing such other duties as may be required by the council.

4. As part of my official duties as Administrator, I am familiar with the property tax dispute ("Matter") currently pending at the South Carolina Administrative Law Court involving as parties the 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, Clarendon School District One (collectively, the "Taxing Entities"), the South Carolina Department of Revenue ("Department"), Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC (collectively, the "Taxpayers").

5. I understand the Matter is identified by Docket No. 17-ALJ-17-0237-CC.

6. I understand the Matter involves a dispute over certain property tax exemptions granted by the Department to Taxpayers.

7. I am aware that on July 6, 2017, the Department of Revenue sent assessment certification notices to the respective County Auditors for the Taxing Entities, including the Clarendon County Auditor, regarding certain property tax exemptions granted by the Department to the Taxpayers for tax years 2010 through 2016 in this Matter ("2010-2016 Assessment Certifications").

8. With respect to this Matter, the Clarendon County Council, at a duly called meeting held on July 10, 2017, resolved to (a) request a contested case hearing before this Court to challenge certain property tax exemptions granted by the Department to Taxpayers, and (b) authorize the engagement of Parker Poe Adams & Bernstein LLP for legal representation in this Matter as counsel ("Counsel").

9. I am aware that, on July 10, 2017, Counsel filed a request for contested case hearing ("Request") with this Court on behalf of the County and served the Request on both Taxpayers and the Department.

10. I am aware that, on July 17, 2017 and July 26, 2017, Counsel filed supplements to the Request with this Court challenging and providing copies of the 2010-2016 Assessment Certifications and served the same on both Taxpayers and the Department.

11. I am aware that on August 24, 2017, the Department of Revenue sent additional assessment certification notices to the respective County Auditors for the Taxing Entities, including the Clarendon County Auditor, regarding certain property tax exemptions granted by the Department to the Taxpayers for tax year 2017 in this Matter ("2017 Assessment Certifications").

12. I am aware that subsequently, on September 25, 2017, Counsel filed a Consolidated Supplement to Request for Contested Case Hearing with this Court challenging and providing copies of the 2017 Assessment Certifications and served the same on both Taxpayers and the Department.

FURTHER, affiant sayeth naught.

This 21 day of December, 2017

Name: David W. Epperson

Title: Co. Administrator

SWORN to before me this

21st day of December, 2017

Notary Public for South Carolina

My Commission Expires: 4/21/2027

EXHIBIT C

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

July 6, 2017

MEMORANDUM

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **Utility Appeal Resolution Certifications for:**

FTC Communications, LLC
FTC Diversified Services, LLC

We've made a correction and clarification to the assessment certifications revolving around the rural telephone exemption appeal for FTC Communications, LLC, and FTC Diversified Services, LLC. As mentioned in the earlier memo dated June 14th, 2017, a settlement agreement was reached and signed by both SCDOR and the taxpayer(s) on January 8th, 2017. Per the signed settlement agreement, both FTC Communications and FTC Diversified Services will now be subject to the rural telephone exemption just as Farmers Telephone Cooperative has been in years prior. Furthermore, the agreement states that wireless telephone service property, as well as land-line telephone service property qualifies for the exemption per SC Code Ann. 12-37-220(B)(10). However, for some property reported by and assessed to FTC Communications and FTC Diversified Services, the exemption does not apply. 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.

Should you have any questions, please feel free to contact me at (843) 953-8371.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2010

County Name CLARENDON

FTC COMMUNICATIONS, LLC.
Jeffrey Lawimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Manning (exempt)	7,540
Total for FTC COMMUNICATIONS, LLC,		7,540
TOTAL FOR CLARENDON COUNTY		7,540

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2011

County Name CLARENDON

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC. 29556

		Assessment
DISTRICT:	Manning (exempt)	10,620
Total for FTC COMMUNICATIONS, LLC.		10,620
TOTAL FOR CLARENDON COUNTY		10,620

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2012

County Name CLARENDON

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Manning (exempt)	14,910
Total for FTC COMMUNICATIONS, LLC.		14,910
TOTAL FOR CLARENDON COUNTY		14,910

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2013

County Name CLARENDON

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Manning (exempt)	16,380
Total for FTC COMMUNICATIONS, LLC.		16,380

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Summerton (exempt)	41,730
DISTRICT:	Manning (exempt)	283,610
Total for FTC DIVERSIFIED SERVICES, LLC.		325,340
TOTAL FOR CLARENDON COUNTY		341,720

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2014

County Name CLARENDON

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Manning (exempt)	16,140
Total for FTC COMMUNICATIONS, LLC.		16,140

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Summerton (exempt)	45,820
DISTRICT:	Manning (exempt)	262,290
Total for FTC DIVERSIFIED SERVICES, LLC.		308,110

TOTAL FOR CLARENDON COUNTY 324,250

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2015

County Name CLARENDON

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 568
Kingstree, SC 29556

		Assessment
DISTRICT:	Manning (exempt)	16,720
Total for FTC COMMUNICATIONS, LLC.		16,720

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 568
Kingstree, SC 29556

		Assessment
DISTRICT:	Summerton (exempt)	47,180
DISTRICT:	Manning (exempt)	259,100
Total for FTC DIVERSIFIED SERVICES, LLC.		306,280

TOTAL FOR CLARENDON COUNTY 323,000

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2016

County Name CLARENDON

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Manning (exempt)	19,700
Total for FTC COMMUNICATIONS, LLC.		19,700

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Summerton (exempt)	44,780
DISTRICT:	Manning (exempt)	252,940
Total for FTC DIVERSIFIED SERVICES, LLC.		297,720
TOTAL FOR CLARENDON COUNTY		317,420

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

August 24, 2017

MEMORANDUM

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **2017 Utilities Supplemental Certification - Revision**

FTC Communications, LLC
FTC Diversified Services, LLC

We've made a correction and clarification to the 2017 assessment certifications for FTC Communications, LLC and FTC Diversified Services, LLC. Please use the following assessments when billing these companies for tax year 2017, 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.

Should you have any questions, please feel free to contact me at (843) 953-8371.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2017

DISTRICT:	Manning Town SD 9	64,730
Total for FRONTIER COMMUNICATIONS OF THE CAROLINAS,		107,720

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Manning	18,560
Total for FTC COMMUNICATIONS, LLC.		18,560

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Summerton	44,050
DISTRICT:	Manning	238,060
Total for FTC DIVERSIFIED SERVICES, LLC.		282,110

FTC MANAGEMENT GROUP, INC.
Louis Brockinton
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Final Return Filed - $0	0
Total for FTC MANAGEMENT GROUP, INC.		0

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

July 6, 2017

MEMORANDUM

To: County Auditors

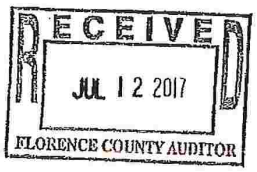
From: Taylor Ingram
Utility Assessment Coordinator

RE: **Utility Appeal Resolution Certifications for:**

FTC Communications, LLC
FTC Diversified Services, LLC

We've made a correction and clarification to the assessment certifications revolving around the rural telephone exemption appeal for FTC Communications, LLC, and FTC Diversified Services, LLC. As mentioned in the earlier memo dated June 14th, 2017, a settlement agreement was reached and signed by both SCDOR and the taxpayer(s) on January 8th, 2017. Per the signed settlement agreement, both FTC Communications and FTC Diversified Services will now be subject to the rural telephone exemption just as Farmers Telephone Cooperative has been in years prior. Furthermore, the agreement states that wireless telephone service property, as well as land-line telephone service property qualifies for the exemption per SC Code Ann. 12-37-220(B)(10). However, for some property reported by and assessed to FTC Communications and FTC Diversified Services, the exemption does not apply. 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.

Should you have any questions, please feel free to contact me at (843) 953-8371.



South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2010

County Name FLORENCE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Coward (exempt)	19,680
DISTRICT:	Johnsonville (exempt)	2,090
DISTRICT:	Lake City (exempt)	110
DISTRICT:	Florence (exempt)	210
Total for FTC COMMUNICATIONS, LLC.		22,090
TOTAL FOR FLORENCE COUNTY		22,090

RECEIVED
JUL 12 2017
FLORENCE COUNTY AUDITOR

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2011

County Name FLORENCE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Coward (exempt)	20,550
DISTRICT:	Johnsonville (exempt)	2,180
DISTRICT:	Lake City (exempt)	110
DISTRICT:	Florence (exempt)	220
Total for FTC COMMUNICATIONS, LLC.		23,060
TOTAL FOR FLORENCE COUNTY		23,060

RECEIVED
JUL 12 2017
FLORENCE COUNTY AUDITOR

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2012

County Name FLORENCE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Coward (exempt)	20,430
DISTRICT:	Johnsonville (exempt)	1,420
DISTRICT:	Lake City (exempt)	110
DISTRICT:	Florence (exempt)	210
Total for FTC COMMUNICATIONS, LLC.		22,170
TOTAL FOR FLORENCE COUNTY		22,170

RECEIVED
JUL 12 2017
FLORENCE COUNTY AUDITOR

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2013

County Name FLORENCE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Florence (exempt)	220
DISTRICT:	Lake City (exempt)	120
DISTRICT:	Coward (exempt)	29,610
DISTRICT:	Johnsonville (exempt)	7,940
Total for FTC COMMUNICATIONS, LLC.		37,890

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	County Wide (non-exempt)	1,510
DISTRICT:	Olanta (exempt)	39,960
DISTRICT:	Lake City (exempt)	288,110
DISTRICT:	Olanta (non-exempt)	2,980
Total for FTC DIVERSIFIED SERVICES, LLC.		332,560

TOTAL FOR FLORENCE COUNTY **370,450**

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FLORENCE COUNTY AUDITOR

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2014

County Name FLORENCE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Florence (exempt)	220
DISTRICT:	Lake City (exempt)	120
DISTRICT:	Coward (exempt)	29,470
DISTRICT:	Johnsonville (exempt)	8,090
Total for FTC COMMUNICATIONS, LLC.		37,900

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	County Wide (non-exempt)	1,390
DISTRICT:	Olanta (exempt)	36,610
DISTRICT:	Lake City (exempt)	267,510
DISTRICT:	Olanta (non-exempt)	6,980
Total for FTC DIVERSIFIED SERVICES, LLC.		312,490

TOTAL FOR FLORENCE COUNTY 350,390

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FLORENCE COUNTY AUDITOR

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2015

County Name FLORENCE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Coward (exempt)	27,980
DISTRICT:	Johnsonville (exempt)	9,820
DISTRICT:	Lake City (exempt)	110
DISTRICT:	Florence (exempt)	210
Total for FTC COMMUNICATIONS, LLC.		38,120

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Olanta (non-exempt)	4,220
DISTRICT:	Olanta (exempt)	38,040
DISTRICT:	Lake City (exempt)	267,090
DISTRICT:	County Wide (non-exempt)	1,370
DISTRICT:	Johnsonville (exempt)	1,780
Total for FTC DIVERSIFIED SERVICES, LLC.		312,500

TOTAL FOR FLORENCE COUNTY 350.620

RECEIVED
JUL 12 2017
FLORENCE COUNTY AUDITOR

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2016

County Name FLORENCE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Florence (exempt)	220
DISTRICT:	Coward (exempt)	31,210
DISTRICT:	Johnsonville (exempt)	10,740
DISTRICT:	Lake City (exempt)	120
Total for FTC COMMUNICATIONS, LLC.		42,290

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Olanta (exempt)	37,720
DISTRICT:	Lake City (exempt)	259,410
DISTRICT:	Johnsonville (exempt)	1,790
DISTRICT:	County Wide (non-exempt)	1,290
DISTRICT:	Olanta (non-exempt)	3,950
Total for FTC DIVERSIFIED SERVICES, LLC.		304,160

TOTAL FOR FLORENCE COUNTY 346,450

RECEIVED
JUL 12 2017
FLORENCE COUNTY AUDITOR

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

August 24, 2017

MEMORANDUM

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **2017 Utilities Supplemental Certification - Revision**

FTC Communications, LLC
FTC Diversified Services, LLC

We've made a correction and clarification to the 2017 assessment certifications for FTC Communications, LLC and FTC Diversified Services, LLC. Please use the following assessments when billing these companies for tax year 2017, 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.

Should you have any questions, please feel free to contact me at (843) 953-8371.

RECEIVED
AUG 28 2017
FLORENCE COUNTY AUDITOR

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

Bill Municipality only.

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Scranton	223,770
DISTRICT:	Coward	83,150
DISTRICT:	Lake City	56,460
Total for FARMERS TELEPHONE COOPERATIVE, INC.		363,380

FLORENCE MSA LP CO 282

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2017

County Name FLORENCE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

Bill Municipalities Only!!

		Assessment
DISTRICT:	Coward (exempt)	29,080
DISTRICT:	Johnsonville (exempt)	9,640
DISTRICT:	Lake City (exempt)	110
DISTRICT:	Florence (exempt)	200
Total for FTC COMMUNICATIONS, LLC.		39,030
TOTAL FOR FLORENCE COUNTY		39,030

RECEIVED
AUG 28 2017
FLORENCE COUNTY AUDITOR

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2017

County Name FLORENCE

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Johnsonville (exempt)	1,770
DISTRICT:	County Wide (non-exempt)	1,200
DISTRICT:	Lake City (exempt)	243,790
DISTRICT:	Olanta (exempt)	35,760
DISTRICT:	Olanta (non-exempt)	3,670
Total for FTC DIVERSIFIED SERVICES, LLC.		286,190
TOTAL FOR FLORENCE COUNTY		286,190

RECEIVED
AUG 28 2017
FLORENCE COUNTY AUDITOR

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

July 6, 2017

MEMORANDUM

RECEIVED
JUL 13 2017
WILLIAMSBURG COUNTY
AUDITOR

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **Utility Appeal Resolution Certifications for:**

FTC Communications, LLC
FTC Diversified Services, LLC

We've made a correction and clarification to the assessment certifications revolving around the rural telephone exemption appeal for FTC Communications, LLC, and FTC Diversified Services, LLC. As mentioned in the earlier memo dated June 14th, 2017, a settlement agreement was reached and signed by both SCDOR and the taxpayer(s) on January 8th, 2017. Per the signed settlement agreement, both FTC Communications and FTC Diversified Services will now be subject to the rural telephone exemption just as Farmers Telephone Cooperative has been in years prior. Furthermore, the agreement states that wireless telephone service property, as well as land-line telephone service property qualifies for the exemption per SC Code Ann. 12-37-220(B)(10). However, for some property reported by and assessed to FTC Communications and FTC Diversified Services, the exemption does not apply. 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.

Should you have any questions, please feel free to contact me at (843) 953-8371.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2010

County Name WILLIAMSBURG

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	County (non-exempt)	240
DISTRICT:	Lane (exempt)	11,750
DISTRICT:	Kingstree (exempt)	22,800
DISTRICT:	Hemingway (exempt)	14,140
Total for FTC COMMUNICATIONS, LLC.		48,930
TOTAL FOR WILLIAMSBURG COUNTY		**48,930**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2011

County Name WILLIAMSBURG

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Lane (exempt)	12,260
DISTRICT:	County (non-exempt)	250
DISTRICT:	Kingstree (exempt)	23,800
DISTRICT:	Hemingway (exempt)	14,760
Total for FTC COMMUNICATIONS, LLC.		51,070
TOTAL FOR WILLIAMSBURG COUNTY		**51,070**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2012

County Name WILLIAMSBURG

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Lane (exempt)	13,420
DISTRICT:	Kingstree (exempt)	30,610
DISTRICT:	Hemingway (exempt)	15,830
DISTRICT:	County (non-exempt)	250
Total for FTC COMMUNICATIONS, LLC.		60,110

TOTAL FOR WILLIAMSBURG COUNTY 60,110

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2013

County Name WILLIAMSBURG

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Hemingway (exempt)	20,400
DISTRICT:	Kingstree (exempt)	33,210
DISTRICT:	Lane (exempt)	23,920
DISTRICT:	County (non-exempt)	330
Total for FTC COMMUNICATIONS, LLC.		77,860

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	County Wide (non-exempt)	8,760
DISTRICT:	Kingstree (exempt)	348,070
DISTRICT:	Hemingway (exempt)	3,000
Total for FTC DIVERSIFIED SERVICES, LLC.		359,830

TOTAL FOR WILLIAMSBURG COUNTY **437,690**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2014

County Name WILLIAMSBURG

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Hemingway (exempt)	36,760
DISTRICT:	Kingstree (exempt)	34,990
DISTRICT:	Lane (exempt)	24,210
DISTRICT:	County (non-exempt)	250
Total for FTC COMMUNICATIONS, LLC.		96,210

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	County Wide (non-exempt)	12,310
DISTRICT:	Kingstree (exempt)	317,790
DISTRICT:	Hemingway (exempt)	7,370
Total for FTC DIVERSIFIED SERVICES, LLC.		337,470

TOTAL FOR WILLIAMSBURG COUNTY 433.680

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2015

County Name WILLIAMSBURG

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	County (non-exempt)	240
DISTRICT:	Hemingway (exempt)	40,330
DISTRICT:	Kingstree (exempt)	34,440
DISTRICT:	Lane (exempt)	23,000
Total for FTC COMMUNICATIONS, LLC.		98,010

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	County Wide (non-exempt)	12,740
DISTRICT:	Kingstree (exempt)	313,060
DISTRICT:	Hemingway (exempt)	11,200
Total for FTC DIVERSIFIED SERVICES, LLC.		337,000

TOTAL FOR WILLIAMSBURG COUNTY **435,010**

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2016

County Name WILLIAMSBURG

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment	
DISTRICT:	Hemingway (exempt)	46,030	Forged to Hemingway 6-22-17
DISTRICT:	Kingstree (exempt)	38,210	001 550-16-6 6-26-17
DISTRICT:	Lane (exempt)	25,960	0015 46-16-6 6-30-17
DISTRICT:	County Wide (non-exempt)	260	
Total for FTC COMMUNICATIONS, LLC.		110,460	

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment	
DISTRICT:	County Wide (non-exempt)	13,320	
DISTRICT:	Kingstree	286,890	0015 49-16-6 6-26-17
DISTRICT:	Hemingway	13,430	Forged to Hemingway 6-22-17
Total for FTC DIVERSIFIED SERVICES, LLC.		313,640	

TOTAL FOR WILLIAMSBURG COUNTY **424,100**

Felder, Madison

From: Billy Jenkinson <billy@jenkinsonlaw.com>
Sent: Wednesday, September 27, 2017 8:54 AM
To: Felder, Madison
Subject: FW: Scanned from a Xerox Multifunction Printer
Attachments: Scanned from a Xerox Multifunction Printer.pdf

Follow Up Flag: FollowUp
Flag Status: Flagged

Caution: External email

Just got this

W. E. Jenkinson, III
Jenkinson, Jarrett & Kellahan, PA
P. O. Drawer 669
120 W. Main Street
Kingstree, SC 29556
Phone: 843-355-2000
Fax: 843-355-2010

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-----Original Message-----
From: Powell, Crystal [mailto:Crystal.Powell@wc.sc.gov]
Sent: Wednesday, September 27, 2017 8:36 AM
To: Billy Jenkinson <billy@jenkinsonlaw.com>
Subject: FW: Scanned from a Xerox Multifunction Printer

Mr. Jenkinson,

I talked with DOR and I received a copy of the letter by email this morning. I have attached a copy for you.

Crystal

-----Original Message-----
From: Taylor Ingram [mailto:Taylor.Ingram@dor.sc.gov]
Sent: Wednesday, September 27, 2017 8:31 AM
To: Powell, Crystal <Crystal.Powell@wc.sc.gov>
Subject: FW: Scanned from a Xerox Multifunction Printer

Crystal,

Please see attached, and let me know if you need anything else.

Thanks,
Taylor

Taylor R. Ingram
Utility Assessment Coordinator
843-953-8371
Taylor.Ingram@dor.sc.gov

South Carolina Department of Revenue
Government Services/ Property
Two South Park Circle, Suite 100
Charleston, SC 29407
dor.sc.gov

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State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

August 24, 2017

MEMORANDUM

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **2017 Utilities Supplemental Certification - Revision**

FTC Communications, LLC
FTC Diversified Services, LLC

We've made a correction and clarification to the 2017 assessment certifications for FTC Communications, LLC and FTC Diversified Services, LLC. Please use the following assessments when billing these companies for tax year 2017, 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.

Should you have any questions, please feel free to contact me at (843) 953-8371.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2017

County Name WILLIAMSBURG

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	County Wide (non-exempt)	240
DISTRICT:	Lane (exempt)	24,370
DISTRICT:	Kingstree (exempt)	34,970
DISTRICT:	Hemingway (exempt)	42,260
Total for FTC COMMUNICATIONS, LLC.		101,840

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	County Wide (non-exempt)	12,380
DISTRICT:	Kingstree (exempt)	290,610
DISTRICT:	Hemingway (exempt)	14,240
Total for FTC DIVERSIFIED SERVICES, LLC.		317,130

TOTAL FOR WILLIAMSBURG COUNTY **418,970**

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

July 6, 2017

MEMORANDUM

RECEIVED
JUL 11 2017
SUMTER COUNTY AUDITOR

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **Utility Appeal Resolution Certifications for:**

FTC Communications, LLC
FTC Diversified Services, LLC

We've made a correction and clarification to the assessment certifications revolving around the rural telephone exemption appeal for FTC Communications, LLC, and FTC Diversified Services, LLC. As mentioned in the earlier memo dated June 14th, 2017, a settlement agreement was reached and signed by both SCDOR and the taxpayer(s) on January 8th, 2017. Per the signed settlement agreement, both FTC Communications and FTC Diversified Services will now be subject to the rural telephone exemption just as Farmers Telephone Cooperative has been in years prior. Furthermore, the agreement states that wireless telephone service property, as well as land-line telephone service property qualifies for the exemption per SC Code Ann. 12-37-220(B)(10). However, for some property reported by and assessed to FTC Communications and FTC Diversified Services, the exemption does not apply. 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.

Should you have any questions, please feel free to contact me at (843) 953-8371.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

JUL 11 2017

Utilities Supplemental Certification

Tax Year 2010

County Name SUMTER

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Sumter (non-exempt)	360
DISTRICT:	Countywide (non-exempt)	69,220
DISTRICT:	Sumter (exempt)	51,690
DISTRICT:	Rembert	16,900
Total for FTC COMMUNICATIONS, LLC.		138,170

TOTAL FOR SUMTER COUNTY **138,170**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2011

County Name SUMTER

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

JUL 11 2017

		Assessment
DISTRICT:	Countywide (non-exempt)	71,210
DISTRICT:	Sumter (non-exempt)	580
DISTRICT:	Sumter (exempt)	94,940
DISTRICT:	Rembert (exempt)	17,640
Total for FTC COMMUNICATIONS, LLC.		184,370

TOTAL FOR SUMTER COUNTY **184,370**

JUL 11 2017

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2012

County Name SUMTER

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Sumter (non-exempt)	71,990
DISTRICT:	Sumter (exempt)	100,430
DISTRICT:	Rembert (exempt)	17,530
Total for FTC COMMUNICATIONS, LLC.		189,950
TOTAL FOR SUMTER COUNTY		**189,950**

JUL 11 2017

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2013

County Name SUMTER

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Rembert	28,910
DISTRICT:	Sumter (exempt)	107,600
DISTRICT:	Sumter (non-exempt)	74,760
Total for FTC COMMUNICATIONS, LLC.		211,270

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Sumter (exempt)	902,520
DISTRICT:	Sumter (non-exempt)	650,440
Total for FTC DIVERSIFIED SERVICES, LLC.		1,552,960

TOTAL FOR SUMTER COUNTY **1,764,230**

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2014

County Name SUMTER

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Rembert (exempt)	28,440
DISTRICT:	Sumter (exempt)	110,420
DISTRICT:	Sumter (non-exempt)	73,240
Total for FTC COMMUNICATIONS, LLC.		212,100

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Sumter (exempt)	834,560
DISTRICT:	Sumter (non-exempt)	618,110
Total for FTC DIVERSIFIED SERVICES, LLC.		1,452,670

TOTAL FOR SUMTER COUNTY **1,664,770**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

JUL 11 2017

Tax Year 2015

County Name SUMTER

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Sumter (non-exempt)	69,190
DISTRICT:	Rembert (exempt)	26,070
DISTRICT:	Sumter (exempt)	134,900
Total for FTC COMMUNICATIONS, LLC.		230,160

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Rembert (exempt)	1,740
DISTRICT:	Sumter (exempt)	836,460
DISTRICT:	Sumter (non-exempt)	349,440
Total for FTC DIVERSIFIED SERVICES, LLC.		1,187,640

TOTAL FOR SUMTER COUNTY **1,417,800**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2016

County Name SUMTER

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Sumter (non-exempt)	30,620
DISTRICT:	Rembert (exempt)	29,140
DISTRICT:	Sumter (exempt)	324,250
Total for FTC COMMUNICATIONS, LLC.		384,010

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Sumter (exempt)	805,620
DISTRICT.	Rembert	2,090
DISTRICT:	Sumter (non-exempt)	378,100
Total for FTC DIVERSIFIED SERVICES, LLC.		1,185,810

TOTAL FOR SUMTER COUNTY **1,569,820**

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

August 24, 2017

RECEIVED
AUG 2 8 2017
SUMTER COUNTY AUDITOR

MEMORANDUM

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **2017 Utilities Supplemental Certification - Revision**

FTC Communications, LLC
FTC Diversified Services, LLC

We've made a correction and clarification to the 2017 assessment certifications for FTC Communications, LLC and FTC Diversified Services, LLC. Please use the following assessments when billing these companies for tax year 2017, 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.

Should you have any questions, please feel free to contact me at (843) 953-8371.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2017

County Name SUMTER

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT	Sumter (exempt)	330,500
DISTRICT	Rembert (exempt)	26,920
DISTRICT:	Sumter (non-exempt)	28,070
Total for FTC COMMUNICATIONS, LLC.		385,490

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Sumter (non-exempt)	429,450
DISTRICT:	Rembert (exempt)	2,310
DISTRICT:	Sumter (exempt)	754,240
Total for FTC DIVERSIFIED SERVICES, LLC.		1,186,000

TOTAL FOR SUMTER COUNTY **1,571,490**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2017

	Assessment
REPORT TOTAL	1,571,490

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

July 6, 2017

MEMORANDUM

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **Utility Appeal Resolution Certifications for:**

FTC Communications, LLC
FTC Diversified Services, LLC

We've made a correction and clarification to the assessment certifications revolving around the rural telephone exemption appeal for FTC Communications, LLC, and FTC Diversified Services, LLC. As mentioned in the earlier memo dated June 14th, 2017, a settlement agreement was reached and signed by both SCDOR and the taxpayer(s) on January 8th, 2017. Per the signed settlement agreement, both FTC Communications and FTC Diversified Services will now be subject to the rural telephone exemption just as Farmers Telephone Cooperative has been in years prior. Furthermore, the agreement states that wireless telephone service property, as well as land-line telephone service property qualifies for the exemption per SC Code Ann. 12-37-220(B)(10). However, for some property reported by and assessed to FTC Communications and FTC Diversified Services, the exemption does not apply. 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.

Should you have any questions, please feel free to contact me at (843) 953-8371.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2016

County Name LEE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Bishopville (exempt)	32,210 OZ
Total for FTC COMMUNICATIONS, LLC.		32,210

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Bishopville (exempt)	143,010 OZ
Total for FTC DIVERSIFIED SERVICES, LLC.		143,010

TOTAL FOR LEE COUNTY **175.220**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2015

County Name LEE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Bishopville (exempt)	28,900 02
Total for FTC COMMUNICATIONS, LLC.		28,900

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Bishopville (exempt)	144,020 02
Total for FTC DIVERSIFIED SERVICES, LLC.		144,020

TOTAL FOR LEE COUNTY **172.920**

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2014

County Name LEE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Bishopville (exempt)	30,440 02
Total for FTC COMMUNICATIONS, LLC.		30,440

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Bishopville (exempt)	136,400 02
Total for FTC DIVERSIFIED SERVICES, LLC.		136,400

TOTAL FOR LEE COUNTY **166.840**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2013

County Name LEE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Bishopville (exempt)	30,170 02
Total for FTC COMMUNICATIONS, LLC.		30,170

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Bishopville (exempt)	146,760 02
Total for FTC DIVERSIFIED SERVICES, LLC.		146,760

TOTAL FOR LEE COUNTY **176,930**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2012

County Name LEE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Bishopville (exempt)	21,490 02
Total for FTC COMMUNICATIONS, LLC.		21,490
TOTAL FOR LEE COUNTY		**21,490**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2011

County Name LEE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Bishopville (exempt)	21,440 02
Total for FTC COMMUNICATIONS, LLC.		21,440
TOTAL FOR LEE COUNTY		**21,440**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2010

County Name LEE

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Bishopville (exempt)	19,760
Total for FTC COMMUNICATIONS, LLC.		19,760
TOTAL FOR LEE COUNTY		**19,760**

Certificate of Service

I certify that a copy of the foregoing ***TAXING ENTITIES' RESPONSE TO FARMERS' MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF SAME*** has been served on the following counsel of record on January 23, 2018, by placing same in the United States mail, postage prepaid, addressed as follows:

Counsel for the South Carolina Department of Revenue
Jason Luther, Esquire
William Condon, Esquire
South Carolina Department of Revenue
300A Outlet Pointe Boulevard (29210)
Post Office Box 12265
Columbia, South Carolina 29211-9979

and by e-mailing same to jason.luther@dor.sc.gov and william.condon@dor.sc.gov.

In addition, I certify that a copy of the foregoing ***TAXING ENTITIES' RESPONSE TO FARMERS' MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF SAME*** has been served on the following counsel of record on January 23, 2018, by placing same in the United States mail, postage prepaid, addressed as follows:

Counsel for Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC

John C. von Lehe, Jr., Esquire
Bryson Geer, Esquire
Liberty Center, Suite 600
151 Meeting Street
Charleston, SC 29401

William E. Durant, Jr.
Attorney at Law
1170 Old West Liberty St., Suite 1
Sumter, SC 29150

and by e-mailing same to john.vonlehe@nelsonmullins.com; bryson.geer@nelsonmullins.com; and gdurant@legaloff.net.

Kristen Cuza

Kristen Cuza

FILED
JAN 23 2018
SC ADMIN LAW COURT

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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 Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-CC **REPLY IN SUPPORT OF FARMERS' MOTION TO DISMISS**

Respondents Farmers Telephone Cooperative, Inc. ("Farmers Coop"), FTC Communications, LLC ("FTCC") and FTC Diversified Services, LLC ("Diversified") (collectively, "Farmers") hereby submit their Reply in support of their Motion to Dismiss and in response to Petitioners Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, Williamsburg County School District, Clarendon County School District Two, Florence School District One, Florence School District Three, Sumter County School District, Clarendon County Hospital District, Clarendon School District One and Lee County School District's (collectively, the "Taxing Entities") Response to Farmers' Motion to Dismiss ("Taxing Entities' Response").

ARGUMENT

As set forth in Farmers' Motion to Dismiss, this Court does not have subject matter jurisdiction of this matter because (a) no Department Determination was issued, and, thus, the Taxing Entities have no right under the Revenue Procedures Act to request a contested case hearing; and (b) the South Carolina Department of Revenue ("SCDOR") has absolute authority to enter into settlements with taxpayers, and such agreements may not be re-opened by the courts except under extenuating circumstances (which have not been properly alleged and do not exist).

In response, the Taxing Entities recite a litany of reasons why this Court cannot grant Farmers' Motion to Dismiss. However, the reasons given are not supported by the facts or the law. The bottom line question is does SCDOR have the authority to settle a property tax liability in the form of granting an exemption with regard to property within its jurisdiction to assess without obtaining approval from the counties. Clearly, it does have that authority, and it exercised it here. Farmers will address the primary legal arguments advanced by the Taxing Entities in their Response below.

I. This Court Does Not have Subject Matter Jurisdiction of this Case Because the Revenue Procedures Act Only Allows Local Governing Bodies to Request a Contested Case Hearing After a Department Determination Is Issued, and No Determination was Issued Here.

First, it is important to remember that the burden to establish subject matter jurisdiction is on the plaintiff (here, the Taxing Entities). *Richmond, Fredericksburg & Potomac R. Co. v. U.S.*, 945 F.2d 765, 766 (4th Cir.1991) (holding that when a Rule 12(b)(1) motion challenges the factual basis for subject matter jurisdiction, the plaintiff bears the burden of proving jurisdiction exists); *see also Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (1996)(holding that the plaintiff bears the burden to establish personal jurisdiction). In addition, to avoid dismissal, "'the nonmoving party must set forth specific facts beyond the pleadings to show that a genuine issue

of material fact exists.'" *Upstate Forever v. Kinder Morgan Energy Partners, L.P.*, 252 F.Supp.3d 488, 492 (D.S.C. 2017) (quoting *Richmond, Fredericksburg & Potomac R.R. Co.*, 945 F.2d 765, 768 (4th Cir. 1991)).

As explained in detail in Farmers' Motion to Dismiss, the Taxing Entities have failed to show that this Court has subject matter jurisdiction over their request for a contested case hearing. The Revenue Procedures Act only allows a local governing body to request a contested case hearing regarding a property tax assessment if SCDOR issues a Department Determination. S.C. Code Ann. §§12-60-2130 and 2150. Here, SCDOR exercised its statutory right to settle the matter, and, therefore, no Department Determination was either issued or could have been issued. *See* Farmers' Mot. to Dismiss at pp. 5-12.

In response to this argument, the Taxing Entities first argue that SCDOR must issue a Department Determination in all cases even if a case is settled, and that the certifications of assessment to the counties are somehow Department Determinations. They also argue that the Settlement Agreement between Farmers and SCDOR is void for indefiniteness because the tax liability is not for a specific amount such that the agreement must be a Department Determination. None of these arguments has any merit.

A. SCDOR Need Not Issue a Department Determination when a Case is Settled, and the Certifications are Not Department Determinations.

1. SCDOR Need Not Issue a Department Determination when a Case is Settled.

The Taxing Entities' claim that a Department Determination must be issued even if a case is settled makes no sense and is contrary to the statutory framework. Section 12-60-2120 of the South Carolina Code addresses property taxpayer appeals. It states that all appeals of an SCDOR property tax assessment by a taxpayer "must be conducted as provided in Section 12-60-450(C)

through (E). S.C. Code Ann. §12-60-2120(D).[1] The Taxing Entities point to subsection (E)(1), which states that "[t]he department will make a determination using the information provided by the taxpayer" as support for their contention that SCDOR must always issue a Determination even if a case is resolved. However, a review of the surrounding subsections as well as common sense reveals that this is not the case.

As the introductory statement of legislative intent in the 1995 Revenue Procedure Act sets forth in § 12-60-20: "It is the intent of the General Assembly to provide a straight forward procedure to determine a dispute with the Department of Revenue and a dispute concerning property taxes." S.C. Code Ann. § 12-60-20. The Legislature has done so, but the Taxing Entities do not want to follow it.

The procedural framework is laid out sequentially. After a protest is filed, the taxpayer and SCDOR are required to stipulate as to any facts or issues in dispute and "**may attempt to settle the case.**" S.C. Code Ann. §12-60-450(D)(1) (emphasis added). If the taxpayer does not participate in this process or if the case is otherwise not settled, then SCDOR makes "a determination using information provided in accordance with Section 12-60-30(15)(c)(iii)." S.C. Code Ann. §12-60-450(D)(2) and (E)(1). Thus, the statutory framework makes clear that a Department Determination need not be issued if a case is resolved by settlement. And common sense dictates that there is no need for SCDOR to make and issue a Determination if it has reached a mutually agreed upon settlement with a taxpayer.

[1] The procedure under S.C. Code Ann. § 12-60-2150, which occurs when the taxpayer is seeking a refund, is the same as the procedure for protesting assessments under § 12-60-2120.

2. The Settlement Agreement is Not a Department Determination.

The Settlement Agreement between Farmers and SCDOR is not a Department Determination. South Carolina law provides that a Department Determination is a determination or decision made by the Department based on information provided by the taxpayer. S.C. Code Ann. § 12-60-30(10) (defining it as "the final determination ***within the department*** from which a person may request a contested case hearing before the Administrative Law Court") (emphasis added); and S.C. Code Ann. §12-60-450(D)(2) and (E)(1) (describing a Determination as being ***made by SCDOR*** with information provided by the taxpayer). The Determination is then issued *to the taxpayer*. *See* S.C. Code Ann. §12-60-450(E)(2). A settlement agreement is the complete opposite of this; it is an agreement negotiated by and agreed upon by all parties (here, SCDOR and Farmers) regarding a disputed matter, not a decision made and issued by one party (SCDOR) to the other (Farmers). Once a case is settled, there is no reason for SCDOR to issue a Determination.

The only case cited by the Taxing Entities for the proposition that a settlement agreement is equivalent to a Department Determination is an Illinois Court of Appeals case. Taxing Entities' Response at p. 8, citing *Rogers v. Illinois Dept' of Rev.*, 75 N.E.3d 374, 375-376 (Ill. Ct. App. 2017). However, that case did not so hold choosing instead to affirm the Tribunal's decision on other grounds. *Rogers*, 75 N.E.3d at 381 (emphasis in original) (stating that because the issue in that case (deadline for notification to the Department of any recalculation of loss on an adjustment) was triggered from the time the adjustment "has been agreed to ***or*** finally determined" and because the Tribunal properly found that the adjustment was "agreed to," it was "not necessary to consider the Tribunal's alternative ground for summary judgment, that the adjustment was 'finally determined.'"). First, the statute at issue here requires a "Determination" not something that is agreed upon. Moreover, as stated above, the relevant South Carolina statutes are clear that a Determination is not the same as a settlement, and IRC Code § 506(b) recognizes this by setting

out a settlement and a determination as two different grounds. Therefore, if anything, *Rogers* supports Farmers' position that a settlement agreement is not equivalent to a Determination.

3. SCDOR Did Not Issue a Department Determination to the Counties.

The Taxing Entities claim that SCDOR issued a Department Determination to the counties and point to S.C. Code Ann. § 12-4-535 as support for their contention that the Revenue Procedures Act provides them with a right to a contested case hearing. Taxing Entities' Response at pp. 14-16. However, the Taxing Entities are misinterpreting this statute, which is not applicable here, and they are mistaken as to the facts, as SCDOR did not issue a Department Determination to the counties.

First, S.C. Code Ann. 12-4-535 is not even in the Revenue Procedures Act and has nothing to do with SCDOR's authority to settle a case or issue a Department Determination in a contested matter with a taxpayer. Instead, this statute (and surrounding sections) relate to SCDOR's authority and responsibility over county tax assessment officials. Section 12-4-535 empowers SCDOR to require a county to "comply with all applicable state laws relating to the valuation, assessment, or taxation of property." S.C. Code Ann. § 12-4-535. It follows § 12-4-520, which gives SCDOR oversight of county assessment programs and actions of county officials and § 12-4-530, which addresses investigation and prosecution of violations by county tax officials. *See* S.C. Code Ann. §12-4-520 and 530.

The Taxing Entities are attempting to convert the "certification process" (in which SCDOR notifies a county of real or personal property tax exemptions for taxpayers whose property is within the county's jurisdiction to assess) into a Department Determination. However, the law is clear that these certifications are merely notices to a county for which the county has no right to object. *See* S.C. Code Ann. § 12-4-740 (stating that once a county receives the certification from SCDOR "the auditor shall void any tax notice applicable to the property" and providing no mechanism for

the county to object). The certifications to county auditors show that SCDOR is simply notifying the county auditor of the assessment and the exemptions, and there is no allegation in any of the certifications of a failure to comply with applicable state law. *See* Ex. C to Taxing Entities' Response. This certification process has nothing to do with the Department Determinations that SCDOR is authorized to issue in order to make a county official "comply with all applicable state law."[2] S.C. Code Ann. § 12-4-535. This case is not about a county official failing to follow state law and therefor necessitating SCDOR force their compliance. This is an exemption case, and SCDOR has the unbridled right to decide these questions. S.C. Code Ann. §12-4-710.

B. The Settlement Agreement between SCDOR and Farmers is not Void for Indefiniteness because the Parties Agreed on the Terms of the Exemption and on the Steps for Determining the Amount of the Exemption.

The Taxing Entities argue that the Settlement Agreement is not valid because it is allegedly missing a material term, and, thus, the Taxing Entities claim that SCDOR still needed to issue a Department Determination and/or they claim that because the agreement is allegedly void, it must be a Determination. Taxing Entities' Response at p. 10. The Taxing Entities claim that the missing term is the amount of the settlement because "Section 2.2 leaves to future actions the necessary steps to reach an assessed value." *Id.* However, the fact that a settlement agreement allows for subsequent steps to be taken to determine the precise amount of the settlement does not render the amount a missing term, nor does it somehow void the entire Settlement Agreement.

Although a contract must contain all material terms to be binding, only reasonable certainty as to those terms is required. *See Aperm of South Carolina v. Roof*, 290 S.C. 442, 447, 351 S.E.2d 171, 173 (Ct. App. 1986). As the District Court of South Carolina explained in *Southern Fire &*

[2] An example of when a Department Determination to a county would be issued under S.C. Code Ann. § 12-4-535 would be if a county failed to conduct a reassessment program as required by applicable state law. SCDOR could then compel compliance by issuing a Department Determination per § 12-4-535 to the county. This is not such a case.

Cas. Co. v. Teal, "[i]f the contract is silent on price, for instance, the agreement is not indefinite if a formula or method for ascertaining the price is understood and agreed upon. Nor will a contract fail for indefiniteness when the gaps that the parties have left may be implied from custom and usual forms and former course of dealing." 287 F. Supp. 617, 621–622 (D.S.C.1968). As to "gaps" in terms of an agreement, "it is only when the 'gaps' are intended to be the subjects of future negotiations and the intention of the parties is that a completed contract shall await the completion of such negotiations that the contract will fail for indefiniteness...." *Compare Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct. App. 2010) (finding a contract enforceable despite the fact that price term was based on net profits calculated in accordance with a formula that was left out of contract on the basis that the payor had calculated the net profits and paid for eighteen months without objection and never expressed difficulty in determining the net profits), with *Ellis v. Taylor*, 316 S.C. 245, 249, 449 S.E.2d 487, 489 (1994) (finding a contract provision stating that "[a]s each child begins college, the parties shall agree to an amount for support of the home while said child is in college," to be "too indefinite and uncertain to be enforceable.").

Here, the parties reached a clear and definite agreement as to the property that would qualify for the rural telephone service exemption and the property that would not qualify:

> 2.1 Property Tax Exemptions. The Parties agree that the property used in FTCC's wireless telephone service and Diversified's landline telephone service qualifies for the exemption in SC Code Ann. § 12-37-220(B)(10). The Parties agree that such property properly allocated to a municipality or town is subject to municipal or town property tax. Further the Parties agree the property of FTCC and Diversified used to provide other services is not exempt.

Settlement Agreement, Ex. A to Farmers' Mot. to Dismiss, at p. 6 at § 2.1. The parties also agreed on the basic steps for ascertaining the amount of the tax liability so that SCDOR could issue revised assessments. *Id.* at p. 6, §2.2 (providing that "FTCC and Diversified shall file amended property

tax returns with appropriate supplemental data with the Property Tax Division for every applicable tax year during the Audit Period so that the Property Division may calculate and certify to the applicable counties a revised assessment"). Additionally, as in *Consignment Sales,* the parties had a custom and course of dealing regarding determining the amount of exemptions because Farmers Coop (the parent company of FTCC and Diversified) has claimed the exemption for many years without issue. *Consignment Sales,* 391 S.C. at 271, 705 S.E.2d at 76; and Lawrimore Aff., Ex. A to Farmers' Motion to Dismiss, at ¶ 7. The act of filing an amended return showing the assets as exempt was basically ministerial once the exemption was granted via the Settlement Agreement. Although the Taxing Entities correctly point out that the Agreement contains a section requiring the parties to work in good faith because a specific amount had not yet been determined (Settlement Agreement at p. 6, § 2.3), this does not alter the above conclusion. All contracts have an implied duty of good faith and fair dealing. *See* 30 S.C. Jur. Contracts § 47 (2017). Stating this explicitly does not render the contract void for indefiniteness as to the amount. This settlement does not involve a complex or contested valuation issue where parties could differ on what the value is. It is nothing like the *Ellis* case where the parties simply agreed to try to agree on an amount with absolutely no parameters, process or course of dealing to guide them. *Ellis*, 316 S.C. at 249, 449 S.E.2d at 489. Instead, this is an exemption case where all that had to be determined were the assets used in providing rural telephone service, an issue that has been dealt with by the parties without issue as to Farmers Coop for many years, and, in fact, this process was successfully completed without any issues as to FTCC and Diversified, as the final amount was determined based on the amended returns and SCDOR then certified the amounts to the counties. *See* Second Lawrimore Aff., Ex. A to Farmers' Response to Taxing Entities Mot. for Partial Summ. J., at ¶¶ 4-8; Certifications, Ex. C to Taxing Entities Response.

Finally, Farmers would note that under S.C. Code Ann. §12-4-320(4), SCDOR is authorized to "enter into a written agreement with a person with regard to a tax liability. If 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[.]" *Id.* Thus, the statute addresses a "written agreement **with regard to** a tax liability." It does not say "written agreement "**setting forth the amount of** a tax liability." It cannot be seriously argued that this Settlement Agreement is not an agreement **with regard to** a tax liability. There is no need to chase after contract law principals related to settlements as the statute clearly states what is required.

II. SCDOR Has Absolute Authority to Enter into a Settlement Agreement with a Taxpayer regarding Tax Liability, and a Court May Not Reopen such an Agreement Absent Fraud or other Similar Conduct not Alleged Here.

As set forth in Farmers' Motion to Dismiss, S.C. Code Ann. §12-4-320(4) authorizes SCDOR to "enter into a written agreement with a person with regard to a tax liability. If 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); Farmers' Mot. to Dismiss at p. 12. In response, the Taxing Entities argue that the Settlement Agreement between Farmers and SCDOR does not fall within the scope of this statute because (a) no settlement agreement has actually been achieved due to the amount not being stated in the Agreement; (b) the Settlement Agreement does not appear on its face to have been authorized by the Director; (c) SCDOR allegedly did not report the details of the settlement to the Chairman of the House Ways and Means Committee within thirty days of the settlement; and (d) the Settlement Agreement allegedly seeks to bind non-parties. *See* Taxing Entities' Response at pp. 18-24. None of these arguments has any merit.

A. A Settlement Agreement Has been Achieved as No Material Term is Missing.

The Taxing Entities argue that no settlement has been achieved because the amount of the tax liability is not specified. As discussed above in section I(B), this argument has no merit as the parties agreed as to what type of property was exempt and non-exempt and set forth a process for determining the exact amount, which was followed and successfully concluded. *See supra* § I(B) at pp. 7-10.

B. The Settlement Agreement was Approved by the Director.

The Taxing Entities contend that the Settlement Agreement was not approved by the Director because it was signed by William Condon, Managing Counsel for Litigation. *See* Taxing Entities' Response at p. 20. First, as the Taxing Entities concede, the statute does not require the Director to sign the Settlement Agreement, it only requires that it be authorized by the Director. S.C. Code Ann. § 12-4-380; Taxing Entities' Response at p. 20. Second, the Settlement Agreement makes clear that Mr. Condon had obtained the requisite authority:

> 3.2 Warranties. Each Party represents and warrants that it has the full and complete legal authority to enter into this Agreement, that the individuals executing this Agreement have the legal authority to do so, and that this Agreement shall be binding and enforceable in accordance with its terms when duly executed by the Parties.

Settlement Agreement, Ex. B to Farmers' Mot. to Dismiss, at p. 7, § 3.2.

SCDOR has adopted a revenue procedure for the settlement of cases based on the hazards of litigation, which outlines the procedures for such settlements:

> Because settlements based on the hazards of litigation must be uniformly made, to settle a case based on the hazards of litigation, the Department representative must send a recommendation to the Department's General Counsel for litigation or his designee. This recommendation must be based on the principles in this Revenue Procedure. The Department's General Counsel for Litigation or his designee will review the settlement and advise the Director or his designee who may authorize the settlement."

S.C. Rev. Proc. #06-2 at § III(C)(3). SCDOR has affirmed in the Settlement Agreement that this procedure was followed and that Mr. Condon had the requisite legal authority, i.e. approval from the Director. Settlement Agreement, Ex. B to Farmers' Mot. to Dismiss, at p. 7, § 3.2. The Taxing Entities have provided no evidence via documents or testimony to counter this; they have only offered erroneous speculation. As the parties asserting that this Court has subject matter jurisdiction, the Taxing Entities bear the burden to show that such jurisdiction exists, and, to avoid dismissal, they "must set forth specific facts beyond the pleadings to show that a genuine issue of material fact exists.'" *Richmond, Fredericksburg & Potomac R.R. Co.*, 945 F.2d 765, 768 (4th Cir. 1991)); *Upstate Forever v. Kinder Morgan Energy Partners, L.P.*, 252 F.Supp.3d 488, 492 (D.S.C. 2017). The Taxing Entities have failed to meet their burden.

Moreover, even though it is not Farmers burden to show that this Court does not have subject matter jurisdiction, the affidavits of Jeffrey T. Allen and Rick Reames, III, also show that the Settlement Agreement was authorized by the Director. *See* Ex. A, Aff. of Jeffrey T. Allen ("Allen Aff.") and Ex. B, Aff. of Rick Reames, III ("Reames Aff."). Mr. Allen, the attorney for Farmers at the time the Settlement Agreement was negotiated and executed, first requested a property tax exemption on October 11, 2012. Allen Aff. at ¶¶ 2-3. He then had discussions with SCDOR concerning qualification for the property tax exemption and provided requested information to SCDOR. *Id.* at ¶ 3. In November 2014, Timothy C. Thompson, Managing Counsel for Litigation for SCDOR, advised Mr. Allen that William J. Condon, Counsel for Litigation for SCDOR, was assigned to the matter (and he was soon thereafter promoted to Managing Counsel for Litigation). *Id.* Negotiations continued between Mr. Allen and Mr. Condon through March 2016. *Id.* at ¶ 4. In March 2016, Mr. Allen attended a meeting with Mr. Condon and Milton Kimpson, then General Counsel for Litigation for SCDOR, to discuss resolution of the matter. *Id.* In August 2016, Mr. Condon informed Mr. Allen that a settlement agreement was forthcoming but

needed to be reviewed by Mr. Kimpson before distribution. *Id.* at ¶ 5. The settlement agreement was subsequently distributed by Mr. Condon and signed on January 8, 2017. *Id.* Although Mr. Allen does not have personal knowledge of whether Mr. Kimpson received the approval of the Director of SCDOR, based on his experience with SCDOR, he understood (and still believes) that Mr. Condon and Mr. Kimpson had secured all necessary approvals to authorize the settlement. *Id.* at ¶ 6.

Rick Reames, III, the Director of SCDOR from approximately June 2014 through January 2017, states that to the best of his recollection, during his tenure as Director, the Department followed S.C. Rev. Proc. #06-2 for settlements based on the hazards of litigation for all contested tax cases. Reames Aff., Ex. B, at ¶¶ 2-5. As Director, he participated in discussions regarding numerous settlements (based on the hazards of litigation) of contested tax cases. *Id.* at ¶ 6. The Department's General Counsel at that time was extremely diligent in following the requirements of Rev. Proc. #06-2 and would request his approval for even minimal dollar amount settlements. *Id.* Moreover, Mr. Reames is not aware of any contested tax cases being settled during his tenure without his approval. *Id.* Although he does not have a specific recollection at this time of meeting with the then General Counsel for Litigation to authorize the Farmers settlement, he states that it was the General Counsel's practice to always seek his authorization prior to entering a settlement of a tax dispute. *Id.* He would then review and approve or not approve such settlements, and, to the best of his knowledge, they followed this procedure in the Farmers matter. *Id.*

Based on all of the above, the Taxing Entities have not established that the Director did not authorize the Settlement Agreement and have nothing more than erroneous speculation that he did not. To the contrary, all evidence supports that the Director did, in fact, authorize the Settlement Agreement, and the law does not require that he sign it. S.C. Code Ann. § 12-4-380.

C. Even if SCDOR Did Not Report the Details of the Settlement with Farmers to the Chairmen of the Senate Finance and House Ways and Means Committees, That Does Not Render the Settlement Agreement Void.

The Taxing Entities assert that they are not aware of SCDOR filing reports regarding the details of the settlement with Farmers with the Chairmen of the Senate Finance and House and Ways Committees within thirty days per S.C. Code Ann. § 12-4-380. Taxing Entities' Response at p. 22 and n. 6. Farmers is similarly without knowledge as to whether SCDOR provided these reports. However, the Taxing Entities cite no law, and Farmers is not aware of any, that would support a finding that a Settlement Agreement is somehow void if SCDOR does not file these reports. At most, failure to file the reports could give the Committees grounds to compel such reports being filed. Voiding the Settlement Agreement on this ministerial ground could not be justified, and this Court should reject the Taxing Entities' argument to this effect.

D. The Settlement Agreement Does Not Improperly Seek to Bind Non-Parties.

The Taxing Entities argue that the Settlement Agreement is not enforceable because it seeks to bind non-parties. Taxing Entities' Response at pp. 22-24. Their argument appears to stem from the fact that any property taxes owed by Farmers would be county revenue based on county property taxes and, thus, the Settlement Agreement impacts them. But all property is located in some county. With very few exceptions (not in issue here), all property taxes are county property taxes. However, what is at issue here is the property of Farmers in the form of monies it dutifully paid, but which were not, in fact, owed, and thus were monies in which the Taxing Entities had no interest.

The Taxing Entities also base this argument on "general contract principles," but the SCDOR's authority to settle matters and determine exemptions is statutory. SCDOR has the exclusive authority to (a) assess property of utilities; (b) grant property tax exemptions; and (c) settle property tax cases within its jurisdiction. S.C. Code Ann. §§ 12-4-540, 12-4-710 and 12-60-

450 (D)(1). This case has nothing to do with general contract law principles and binding non-parties. The legislative framework is set. If the counties object, they should go to the General Assembly. And, in fact, it appears that the General Assembly is considering the type of revisions that the Taxing Entities would like this Court to read into the current law. *See* Ex. C, S.C. Bill S. 793 (2018) (which, *inter alia,* seeks to revise S.C. Code Ann. § 12-60-30(10), which currently defines a Department Determination as the final determination from which a *person* may request a contested case hearing to a determination from which a *taxpayer or a local governing body* may request a contested case hearing and to revise § 12-60-450(E) to require notice of Department Determinations *to any affected county* and *to allow a local governing body to request a contested case hearing*) (emphasis added).

E. The Settlement Agreement was Not Procured by Misrepresentation and the Court Does Not Have Jurisdiction over Later Years.

The Taxing Entities argue that even if S.C. Code Ann. § 12-4-320 regarding settlements not being able to be re-opened is applicable, this Court still has jurisdiction in this matter of certain tax years because tax years 2016-17 were not part of the settlement and because the Settlement Agreement was obtained through misrepresentations. Taxing Entities' Response at pp. 24-27.

First, the Court does not have subject matter jurisdiction over tax years 2016-17 any more than it does for prior years. Although the Settlement Agreement does end with tax year 2015, the Taxing Entities likewise do not have the ability to object to later years under the Revenue Procedures Act. The law is clear that SCDOR is vested with the authority to make exemption decisions for certain taxpayers (including telephone utilities). S.C. Code Ann. § 12-4-710. Applications for exemption are filed with SCDOR, not the counties. S.C. Code Ann. § 12-4-720(A)(1). Here, Farmers filed for exemption for years after 2015 by filing tax returns listing exempt and non-exempt properties using the same parameters that SCDOR approved for 2010 through 2015 via the Settlement Agreement, and SCDOR accepted the returns as applications for

exemption and exempted the property. *See* Ex. A to Farmers' Mot. to Dismiss, Second Aff. of Jeffrey L. Lawrimore at ¶ 7. Again, qualification for an exemption is an SCDOR decision not a county decision, and the law provides no avenue for the counties to appeal such decisions. *See also supra* Argument at § I, pp. 2-9; Farmers' Mot. to Dismiss, Argument at § I, pp. 5-12.

The Taxing Entities' argument that the Settlement Agreement was procured through misrepresentation is also without merit. A misrepresentation in the context of a contract is a false or misleading statement of fact made by one party to another, which then induces the other party into the contract. *See Gilliland v. Elmwood Properties*, 301 S.C. 295, 301, 391 S.E.2d 577, 580 (1990) (citations omitted); *Evans v. Rite Aid Corp.*, 324 S.C. 269, 274, 478 S.E.2d 846, 848 (1996). Here, the Taxing Entities state that SCDOR's misrepresentations "include claiming authority it does not have and misrepresenting its ability to exercise the authority it does have" as well as "misrepresenting the scope of [its] authority by wrongly granting the exemption . . . ." *See* Taxing Entities' Response at pp. 25-26. The Taxing Entities fail to point to a particular representation and fail to state who made any such statements, to whom they were made, when or where they were made, whether they were oral or in writing, or how they were false.[3] Instead, the Taxing Entities claims are based on conclusory statements of what the Taxing Entities hope is the law, i.e. that SCDOR does not have authority to enter a settlement with a taxpayer without county approval. These are not claims of misrepresentation but claims that SCDOR exceeded the scope of its authority. No factual misrepresentations are alleged, and even if the Court construed their Response to allege a misrepresentation, the Taxing Entities have failed to carry their burden to

[3] Farmers would also note that the Taxing Entities have not shown how any party relied on the alleged false representation to their detriment. *See Gilliland*, 301 S.C. at 301, 391 S.E.2d at 580 (stating that "recovery of damages may be predicated upon a negligently made false statement where a party suffers either injury or loss as a consequence of relying upon the misrepresentation). They appear to be asserting some sort of third party reliance claim, but even this is not clearly alleged.

establish that there is a material factual dispute because they have not provided any evidence to support a claim of misrepresentation.

F. The Taxing Entities' Arguments regarding Whether a Controversy Exists and Whether the Counties have Standing or have a Justiciable Case or Controversy are Misplaced.

The Taxing Entities' arguments regarding whether a controversy exists and whether the counties have standing or have a justiciable case or controversy are misplaced. First, the question here is whether the ALC has subject matter jurisdiction over this matter, which was settled between Farmers and SCDOR. The ALC only has subject matter jurisdiction over such matters as the Legislature grants it. *See Howard v. South Carolina Dept. of Corrections*, 399 S.C. 618, 627, 733 S.E.2d 211, 216 (2012), citing *Black v. Town of Springfield*, 217 S.C. 413, 415, 60 S.E.2d 854, 855 (1950) (stating that "[t]he jurisdiction of a Court of the subject matter of an action depends upon the authority granted to it by the Constitution and laws of the State and is fundamental."); S.C. Code Ann. §§ 1–23–500 et seq. (creating the ALC and outlining the extent of its jurisdiction). While a party must always have standing and a justiciable controversy, such does not confer subject matter jurisdiction on any court. As previously stated, the ALC does not have subject matter of this case. *See supra* Argument at § I, pp. 2-9; Farmers' Mot. to Dismiss, Argument at § I, pp 4-12.

In addition, the Taxing Entities do not, in fact, have standing to challenge an SCDOR settlement with a taxpayer because no statute grants them that right. Determining exemptions and settling tax controversies is affirmatively and exclusively in the hands of SCDOR. The Taxing Entities do have the right to challenge or intervene in a tax dispute that results in a "Department Determination," but no such Determination was issued here. A Determination is the antithesis of a settlement. One is a disputed matter while the other is not disputed. *See supra* Argument at § I, pp. 2-9; Farmers' Mot. to Dismiss, Argument at § I, pp. 4-12.

CONCLUSION

Based on the above and the arguments set forth in its Motion to Dismiss, Farmers respectfully requests that its Motion to Dismiss be granted on the basis that the Court does not have subject matter jurisdiction to hear this case.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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February 9, 2018
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **FARMER'S REPLY IN SUPPORT OF MOTION TO DISMIS**

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Administrative Assistant

February 9, 2018

EXHIBIT A
Affidavit of Jeffrey T. Allen

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Affidavit of Jeffrey T. Allen

PERSONALLY APPEARED before me, Jeffrey T. Allen, who first being duly sworn, deposes and states:

1. My name is Jeffrey T. Allen. I am older than 18 years of age and make this affidavit freely and of my own free will. There has been no pressure or coercion to make any statement in this affidavit.

2. I am a lawyer licensed in South Carolina and a shareholder at McNair Law Firm, P.A. and in that capacity represented Farmers Telephone Cooperative, Inc. and its wholly owned LLCs, FTC Communications, LLC and FTC Diversified Services, LLC, before the South Carolina Department of Revenue (SCDOR) in a tax matter related to the qualification of certain of its assets for a property tax exemption.

3. The first request for a property tax exemption was filed on October 11, 2012. Discussions concerning qualification for the property tax exemption ensued and requested information was provided to SCDOR. In November 2014 I was informed by Timothy C. Thompson, Managing Counsel for Litigation for SCDOR, that William J. Condon, Counsel for Litigation for SCDOR, was assigned to the matter. William J. Condon was soon thereafter promoted to Managing Counsel for Litigation.

4. Requested information was provided to Mr. Condon and discussions of the matter continued through March 2016. In March 2016 a meeting was held with both Mr. Condon and Milton Kimpson, General Counsel for Litigation for SCDOR, to discuss resolution of the matter.

5. In August 2016 Mr. Condon informed me that a settlement agreement was forthcoming but needed to be reviewed by Mr. Kimpson before distribution. The settlement agreement was subsequently distributed by Mr. Condon and signed on January 8, 2017.

6. I am without knowledge of whether Milton Kimpson received the approval of the Director of SCDOR, however, based on my experience with SCDOR, I understood that Mr. Condon and Mr. Kimpson had secured all necessary approvals to authorize the settlement agreement and this is still my belief.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Further the affiant sayeth not.

Jeffrey T. Allen

SWORN to and SUBSCRIBED before me
this 6th day of February, 2018

Jennifer L. Rath
Notary Public for South Carolina
My Commission Expires: November 29, 2027



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EXHIBIT B

Affidavit of Rick Reames, III

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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 Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-CC **AFFIDAVIT OF RICK REAMES, III**

PERSONALLY APPEARED before me, the undersigned, who, being duly sworn states as follows:

1. My name is Rick Reames, III, and I am over eighteen years old and am competent to provide testimony in this case based on my personal knowledge regarding the matters addressed herein.

2. I served as the Director of the South Carolina Department of Revenue (the "Department") from approximately June of 2014 to January of 2017.

3. While serving as Director, I was aware of the settlement procedures at SCDOR as set forth in S.C. Rev. Proc. #06-2.

4. Among other things, this procedure discusses settlement of cases based on the hazards of litigation. S.C. Rev. Proc. #06-2 at § III(C). The subsection that addresses the procedures for such settlements provides as follows:

> Because settlements based on the hazards of litigation must be uniformly made, to settle a case based on the hazards of litigation, the Department representative must send a recommendation to the Department's General Counsel for litigation or his designee. This recommendation must be based on the principles in this Revenue Procedure. The Department's General Counsel for Litigation or his designee will review the settlement and advise the Director or his designee who may authorize the settlement."

S.C. Rev. Proc. #06-2 at § III(C)(3).

5. To the best of my recollection, during my tenure as Director, the Department followed the above procedure for settlements based on the hazards of litigation for all contested tax cases.

6. As Director, I participated in discussions regarding numerous settlements (based on the hazards of litigation) of contested tax cases. The Department's General Counsel at that time was extremely diligent in following the requirements of S.C. Rev. Proc. #06-2 and would request my approval for even minimal dollar amount settlements. I am not aware of any contested tax cases being settled during my tenure without my approval.

7. 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 Farmers Telephone Cooperative, Inc. and its wholly owned LLCs, FTC Communications, LLC and FTC Diversified Services, LLC (collectively, "Farmers") in a property tax matter related to the qualification of certain Farmers' assets for the rural telephone service exemption. However, as previously stated, it was his practice to always seek such authorization from me prior to entering a settlement of a tax dispute, it was my practice to review and approve or not approve such settlements after

meeting with him, and, to the best of my knowledge, we followed this procedure in the Farmers matter.[1]

FURTHER AFFIANT SAYETH NOT.

RICK REAMES, III

SWORN to and subscribed before me
this 7th day of February, 2018

(L.S.)
Notary Public for the State of South Carolina

[1] I do recall discussing within the Department issues related to a parent company with wholly owned subsidiaries and the impact of *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) on state and local taxes. It is possible that this could have been in conjunction with a discussion regarding approval of the Farmers settlement.

EXHIBIT C

S.C. Bill S. 793(2018)

South Carolina General Assembly
122nd Session, 2017-2018

Download This Bill in Microsoft Word format

~~Indicates Matter Stricken~~
Indicates New Matter

S. 793

STATUS INFORMATION

General Bill
Sponsors: Senator Sheheen
Document Path: l:\council\bills\bh\7138sa18.docx

Introduced in the Senate on January 9, 2018
Introduced in the House on February 7, 2018
Last Amended on February 1, 2018
Currently residing in the House Committee on **Ways and Means**

Summary: Property Tax Procedure Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/6/2017	Senate	Prefiled
12/6/2017	Senate	Referred to Committee on **Finance**
1/9/2018	Senate	Introduced and read first time (Senate Journal-page 53)
1/9/2018	Senate	Referred to Committee on **Finance** (Senate Journal-page 53)
1/24/2018	Senate	Committee report: Favorable with amendment **Finance** (Senate Journal-page 6)
2/1/2018	Senate	Committee Amendment Adopted (Senate Journal-page 10)
2/1/2018	Senate	Read second time (Senate Journal-page 10)
2/1/2018	Senate	Roll call Ayes-39 Nays-0 (Senate Journal-page 10)
2/6/2018	Senate	Read third time and sent to House (Senate Journal-page 20)
2/7/2018	House	Introduced and read first time
2/7/2018	House	Referred to Committee on **Ways and Means**

View the latest legislative information at the website

VERSIONS OF THIS BILL

12/6/2017
1/24/2018
2/1/2018

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

February 1, 2018

S. 793

Introduced by Senator Sheheen

S. Printed 2/1/18--S.

Read the first time January 9, 2018.

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "PROPERTY TAX PROCEDURE ACT"; TO AMEND SECTION 12-60-30, RELATING TO SOUTH CAROLINA REVENUE PROCEDURES DEFINITIONS, SO AS TO PROVIDE DEFINITIONS; TO AMEND SECTION 12-60-450, RELATING TO APPEALS OF PROPOSED ASSESSMENTS, SO AS TO REQUIRE THE DEPARTMENT TO NOTIFY AFFECTED COUNTIES IN CERTAIN INSTANCES; TO AMEND SECTION12-60-2120, RELATING TO PROPERTY TAX APPEALS BY WRITTEN PROTEST, SO AS TO PROVIDE THAT THE DEPARTMENT SHALL NOTIFY ANY AFFECTED COUNTIES OF A WRITTEN PROTEST; TO AMEND SECTION 12-60-2140, RELATING TO CERTAIN PAYMENTS AND REFUNDS, SO AS TO PROVIDE THAT NO REFUND IS DUE FOR ANY TAX YEAR BEFORE THE THREE TAX YEARS IMMEDIATELY PRECEDING THE FINAL DETERMINATION; AND TO AMEND SECTION 12-60-2150, RELATING TO FILING A CLAIM FOR A REFUND, SO AS TO PROVIDE FOR CERTAIN NOTIFICATIONS AND TO PROVIDE THAT A FAILURE TO TIMELY ISSUE A WRITTEN NOTICE IS CONSIDERED A DENIAL.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the "Property Tax Procedure Act".

SECTION 2. Section 12-60-30 of the 1976 Code is amended by adding appropriately numbered items to read:

"( ) 'Local governing body' means, for property tax purposes, the governing body of a county, municipality, or other political subdivision that is entitled to receive any portion of the tax revenue generated from a property tax assessment.

( ) 'Affected county' means, for property tax purposes, a county that administers property tax collections for its own jurisdiction or for another local governing body and is in a property tax dispute with a taxpayer.

( ) 'Chief executive officer' means, for property tax purposes, the official identified in Section 8-13-1110(B)(5).

( ) 'Chief administrative official' means, for property tax purposes, the official identified in Section 8-13-1110(B)(6)."

SECTION 3. Section 12-60-30(10) of the 1976 Code is amended to read:

"(10) 'Department determination' means the final determination within the department from which a ~~person~~ taxpayer or a local governing body, as applicable, may request a contested case hearing before the Administrative Law Court."

SECTION 4. Section 12-60-450(E) of the 1976 Code is amended to read:

"(E)(1) The department ~~will~~ shall make a department determination using the information provided by the taxpayer in accordance with Section 12-60-30(15)(c)(iii).

(2) A department determination ~~adverse to the taxpayer~~ must be in writing and must:

(a) be sent by first class mail or delivered to the taxpayer and any affected county;

(b) explain the basis for the department's determination;

(c) inform the taxpayer and any affected county of ~~his~~ the right to request a contested case hearing; and

(d) if a proposed assessment was protested, explain that the taxes will be assessed in thirty days and payment demanded unless the taxpayer or any local governing body requests a contested case hearing.

(3) The department must issue the department determination ~~on a proposed assessment~~ not later than ~~nine months~~ one year after the date the written protest or claim was filed with the department by the taxpayer unless the department requests and is granted an extension of time not to exceed six months from the Administrative Law Court. Upon failure of the department to timely issue the department determination, the ~~taxpayer may~~ department shall notify the taxpayer and any affected county of the right to request a contested case hearing before the Administrative Law Court for a determination of the tax controversy. A request for a contested case hearing before the Administrative Law Court must be made in accordance with its rules and must be made within thirty days after the date the department's notice was sent by first class mail or delivered to the taxpayer or any affected county.

(4) In order to comply with the provisions of this section requiring the department to notify affected counties, the department shall notify the chief executive officer, auditor, assessor, and treasurer of each affected county. The county auditor, upon notification, shall notify any local governing bodies by notifying the chief administrative official of each local governing body."

SECTION 5. Section 12-60-2120(A) and (B) of the 1976 Code is amended to read:

"(A)(1) A property taxpayer may appeal a property tax assessment proposed by a division of the department by filing a written protest with the department.

(2) The department shall notify any affected counties of the written protest.

(B)(1) A property taxpayer may protest any denial of a tax exemption by the department for property he believes is exempt from property tax by filing a written protest with the department.

(2) If a written protest is filed by a taxpayer, other than an individual, then the department must notify any affected counties of the written protest."

SECTION 6. Section 12-60-2140(C) of the 1976 Code is amended to read:

"(C) After a final determination, if the property tax assessment is less than the adjusted property tax assessment, a corrected property tax assessment must be made and entered, provided that a refund is not due for any tax year before the three tax years immediately preceding the final determination unless the Administrative Law Court approves the refund. The overpayment of tax must be refunded together with interest determined in accordance with Section 12-54-25 on the overpayment."

SECTION 7. Section 12-60-2150(B), (D), and (F) of the 1976 Code is amended to read:

"(B) The department shall notify the counties affected by the claim for refund by notifying the chief executive officer, auditor, assessor, and treasurer of each affected county. A county auditor, upon notification, shall notify ~~any affected municipalities or other political subdivisions~~ the chief administrative official of any local governing bodies affected by the claim for refund.

(D) The appropriate division of the department shall determine what refund is due, if any, and give the taxpayer written notice of its determination as soon as practicable after a claim has been filed, but not later than six months after the date the claim for refund was filed with the department. If the department fails to timely issue a written notice of its determination, that failure is considered a written denial of the claim for refund.

(F) The department shall consider the ~~claim~~ written protest, determine the correct property tax assessment, and issue ~~any necessary orders~~ a department determination in accordance with the provisions of Section 12-60-450(E). All appeals before the department must be conducted as provided in Section 12-60-450(C) through (E)."

SECTION 8. This act takes effect upon approval by the Governor.

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This web page was last updated on February 7, 2018 at 11:14 AM

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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 Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC Respondents.	Docket No. 17-ALJ-17-0237-CC **TAXING ENTITIES' REPLY TO FARMERS' RESPONSE TO TAXING ENTITIES' MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. Introduction

The Petitioners, collectively the "Taxing Entities," challenge the South Carolina Department of Revenue's ("Department") actions arising from the Department's attempting to grant property tax exemptions for tax years 2010 through 2017[1] to Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC ("Taxpayers") under South Carolina Code Annotated section 12-37-220(b)(10). That statute allows a property tax exemption for property "used in providing rural telephone service." ("Rural Telephone Service Exemption").

Taxing Entities filed a Motion for Partial Summary Judgment and A Memorandum in Support of Motion for Partial Summary Judgment ("Motion") on December 18, 2017. On

[1] Tax years 2010 through 2015 are addressed in the Settlement Agreement (as defined in Taxing Entities Prehearing Statement filed with this Court on 7/10/2017). Tax years 2016 and 2017 are addressed by the Assessment Certifications (as defined herein).

January 23, 2018, Taxpayers filed its Response in Opposition to Taxing Entities' Motion for Partial Summary Judgment ("Response"). In the Response, Taxpayers raise four primary objections in response to the Motion.

First, Taxpayers assert the Motion is premature because Taxpayers have not had a full and fair opportunity to engage in discovery. Second, Taxpayers argue its assets qualify for the Rural Telephone Service Exemption. Third, Taxpayers argue the Department's grant of the Rural Telephone Service Exemption is not an illegal retroactive grant. Fourth, Taxpayers argue Home Rule does not apply in this case. None of the four objections advanced by Taxpayers, either individually or collectively, warrant denying the Motion.

Each objection is addressed below. However, in addition, and before addressing the objections raised by Taxpayers, Taxing Entities assert a fundamental and overriding principle justifies partial summary judgment in this case: an order from this Court denying the Motion would reward Taxpayers and the Department for failing to timely perform their respective duties.

In this case, year after year Taxpayers failed to timely file applications for the Rural Telephone Service Exemption by not timely claiming the Rural Telephone Service Exemption on their annual property tax returns filed with the Department by the April 30 deadline. Moreover, year after year the Department failed to timely determine whether Taxpayers' property was eligible for the Rural Telephone Service Exemption and failed to annually notify the appropriate county official of the Department's determination by the June 1 deadline. This Court should not reward either Taxpayers' or the Department's failures to follow the procedures prescribed by the General Assembly for property tax exemptions. Consequently, the Taxing Entities respectfully request this Court grant the Motion.

II. Reply to Objections Raised in Taxpayers' Response

A. Propriety of Summary Judgment

Taxpayers assert summary judgment is premature where the opposing party has not had a full and fair opportunity to complete discovery. *See* Taxpayers' Response at pp. 9-10. Taxing Entities agree that an order granting full summary judgment disposition in this case would be premature because the parties have not yet completed discovery. However, Taxing Entities have not moved this Court to grant full summary judgment disposition. Rather, Taxing Entities have moved this Court to grant partial summary judgment on fundamental legal issues which must be decided in order for the Court to reach its decision in this case, leaving remaining factual issues to be decided at trial.

These fundamental legal issues require this Court decide: (1) what the legal standard is for determining whether a particular property qualifies for the Rural Telephone Service Exemption, (2) whether the Department's or the Taxpayers' multiple, repeated failures to meet the statutory deadlines required under chapter 4 of Title 12 render the exemptions granted in this case illegally retroactive, and (3) whether principles of Home Rule protect the budget-making and revenue-raising powers of the Taxing Entities from the illegal retroactive grants of exemptions in this case. By deciding these legal issues via partial summary judgment at this time, this Court will narrow the issues remaining to be disputed by the parties and aid in the economical adjudication of this dispute. Partial summary judgment is proper when a claim raises issues of law devoid of disputed material facts while other issues remain requiring factual determinations for resolution. *See e.g. Weston v. Kim's Dollar Store*, 399 S.C. 303, 731 S.E.2d 864, (2012) (where the Court found "the partial grant of summary judgment was entirely proper" for "a challenge [to] the sufficiency of the FDA-approved requirements" while holding "any claim that parallels applicable federal requirements may proceed [to trial].").

B. Whether Property Qualifies for Rural Telephone Service Exemption

1) *Legal Standard for Determining Whether Property Qualifies for Rural Telephone Service Exemption*

Taxpayers assert there is no legal test for determining whether the use of their property qualifies under the Rural Telephone Service Exemption and that any use whatsoever of the property for that purpose renders the property exempt. *See* Taxpayers' Response at p. 10 This conclusion conflicts with the long-standing rule of construction that "[t]he language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption." *TNS Mills Inc. v. South Carolina Department of* Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998) (citing *John D. Hollingsworth On Wheels, Inc. v. Greenville County Treasurer*, 276 S.C. 314, 278 S.E.2d 340 (1981)). Under Taxpayers' "any use" standard, a single 20 second phone call taking place via Taxpayers' property would instantaneously trigger exemptions on property spanning and hundreds of miles across six counties. Taxpayers have provided no evidence of such a taxpayer-friendly legislative intent for the Rural Telephone Service Exemption. This Court should interpret the Rural Telephone Service Exemption narrowly against the granting of the exemption and find a rigorous standard that can be applied in future cases to determine whether property qualifies on a case-by-case basis.

In the Response, Taxpayers also argue the appropriate legal test should be whether the use of their property is "substantial" pursuant to *Hercules Contractors and Eng., Inc. v. S.C. Tax Comm'n*, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984). Taxing Entities disagree. *Hercules* involved the interpretation of a sales tax exemption, not a property tax exemption like the Rural Telephone Service Exemption, and is thus distinguishable from this case. The sales tax principally raises revenue for the State of South Carolina; whereas, property taxes raise revenue exclusively for county and local governments. When property tax exemptions (and thus,

impacted county and local budgets) are in dispute, unique Home Rule considerations must be considered by the Courts. These considerations are not present when a sales tax exemption is in dispute. The Taxing Entities urge this Court to find that when the General Assembly does not define the extent of the use required for a property tax exemption, a more exacting legal test than "substantial use" is required of taxpayers to establish their eligibility for the exemption. This more exacting legal test provides an additional layer of protection to local and county budgets, in recognition of the Home Rule revenue raising and budget-setting powers of such entities. Thus, Taxing Entities urge this Court to adopt the prevailing rule in other jurisdictions which requires the exempt use identified by statute to be the "primary" use of property in order for property to be eligible for exemption from property taxes. *See* Taxing Entities Motion at p. 9.

2) *Taxpayers Have Presented No Evidence Showing Actual Use of Taxpayers' Property*

In any event, Taxpayers have provided no evidence showing the extent to which their property is actually used to provide rural telephone service. Rather, Taxpayers have only presented facts showing (a) the original intent for establishing FTCC and Diversified, (b) the regulatory label attached by the Federal Communications Commission and the South Carolina Public Service Authority, (c) the relative number of telephone accounts of Diversified, and (d) various percentages of the total revenue or profits generated by their property is labeled (by Taxpayers) as "voice", "telephone", or "POTS." Thus, even if the "substantial" standard from *Hercules* is applied in this case (rather than the "primarily" test favored by other jurisdictions for property tax exemptions), Taxpayers have not provided any evidence that would support "substantial" actual use here.

Taxpayers allege the original intent of establishing FTCC and Diversified was to provide rural telephone service. *See* Taxpayers' Response at p. 12. Taxpayers also allege both FTCC and

Diversified "have eligible telecommunications carrier status with the Federal Communications Commission and the South Carolina Public Service Commission." Nevertheless, neither Taxpayers' original intent nor Taxpayers' status as "eligible telecommunications carriers" has any bearing on whether Taxpayers' property is eligible for the Rural Telephone Service Exemption. Rather, the relevant criteria under South Carolina Code of Laws Annotated Section 12-37-220(B)(10) is the actual use of Taxpayer's property.

Taxpayers additionally allege the following statistics support their argument that Taxpayers' property is actually used to provide rural telephone service: (a) the number of Diversified's telephone *accounts* exceeds the number of all other accounts of Diversified, (b) "for fiscal year 2017, almost 60% of Diversified's *revenue* came from landline telephone service," (c) the consolidated *revenue* from telephone services for fiscal year 2017 for Taxpayers "is substantially more than the revenue from all other services," (d) for fiscal year 2017, FTCC *revenue* from Plain Old Telephone Service ("POTS") was 75%, (e) for fiscal year 2017, 52% of Diversified *revenue* is from POTS, and (f) for fiscal year 2017, 69% of Taxpayers consolidated *revenue* is from POTS. While these statistics may be meaningful to an accountant tasked with preparing annual financial statements for Taxpayers, these statistics provide no evidence of how Taxpayers' property was actually used. Rather, these figures merely provide evidence of how Taxpayers label their customers' accounts, how Taxpayers prepare the bills they send to their customers, and how Taxpayers account for the revenues they receive from their customers. Simply put, Taxpayers' billing idiosyncrasies cannot form the sole evidentiary basis upon which millions of dollars' worth of property is ruled exempt from property taxes.

As admitted on Taxpayers website, Taxpayers require every single customer to have a phone line because "[t]he Universal Service Fund cost recovery methodology, as mandated by the FCC, would result in SIGNIFICANT reduction in USF receipts to FTC if we provided even a single

non-voice line." *See* "Why is a land line phone required to get FTC Internet?" listed under the heading "Frequently Asked Questions" under the category "Internet" and the subcategory "Basics," available at https://web.archive.org/web/20170614211940/http://www.ftc-i.net/support-tools/faqs/internet/basics/[2] (last accessed on February 6, 2018) (emphasis in original). Thus, regardless of whether a customer ever actually uses a land line phone, Taxpayers will nevertheless charge the customer for the land line phone in order to claim federal subsidies under the Universal Service Fund ("USF") program. Given this background information, Taxpayers statistics showing the number of Diversified's telephone accounts and the percentage of Taxpayers' revenue labeled as "landline" or "telephone service" or "POTS" sheds absolutely no light on how Diversified's property is actually used.

In summary, Taxpayers would have this Court believe the best evidence of how their property is actually used is revenue data based on billing practices which the Taxpayers freely and openly admit are intentionally skewed to enable Taxpayers to chase federal subsidies. Such evidence cannot be sufficient to establish Taxpayers property is actually used in providing rural telephone service and cannot provide a basis for either "substantial" or "primary" use.

In contrast, Taxing Entities have provided evidence that the actual, demonstrated use of modern telecommunications infrastructure for voice traffic is a miniscule fraction of the actual, demonstrated use of the very same infrastructure for wired and wireless data traffic. This evidence was measured by total bandwidth usage – a robust, independent, scientific measure ideal for measuring the use of a network. *See* Affidavit of Joe Moss, PE at ¶24. Conspicuously

[2] Prior to the filing of Taxing Entities' Motion on December 18, 2017, the above quoted language appeared on Taxpayers' website at http://www.ftc-i.net/support-tools/faqs/internet/basics/. *See* Affidavit of Joe Moss, PE at p. 5, subitem iv., previously filed with this Court on December 18, 2017 as **Exhibit A** to Taxing Entities' Motion. However, as of February 6, 2018, the above quoted language no longer appears on Taxpayers' website at http://www.ftc-i.net/support-tools/faqs/internet/basics/.

absent from the Response are any such measures of the actual *use* of Taxpayer's property for providing rural telephone service.

C. Illegal Retroactive Grants of Rural Telephone Service Exemptions

1) TNS Mills Has Not Been Repealed, Abrogated by Statute, or Otherwise Overturned

Taxpayers claim *TNS Mills, Inc. v. S.C. Dept. of Rev.*, 331 S.C. 611, 503 S.E.2d 471 (1998), is no longer good law and the statute the Supreme Court interpreted in *TNS Mills* no longer applies because of amendments made by the General Assembly. Taxpayers' Response at p. 20. Taxpayers are incorrect. Repeals by implication are "not favored and will not be applied if there is any other reasonable construction of the statute." *State v. Bodiford*, 282 S.C. 378, 379 318 S.E.2d 567, 568 (1984); *Pearson v. Mills Mfg. Co.*, 82 S.C. 506, 64 S.E. 407, 409 (1909) ("A later statute on a given subject, not repealing an earlier one in terms, is not to be taken as a repeal by implication, unless it is plainly repugnant to the former, or unless it fully embraces the whole subject-matter . . . to effect a repeal by implication on account of repugnancy, the repugnancy must not only be plain, but the provisions of the two statutes must be incapable of any reasonable reconcilement."); *State v. Corley*, 13 S.C. 1 (1880) ("[T]o repeal a statute by implication, there must be such a positive repugnancy between the provisions of the new law and of the old, that they cannot be reconciled.").

The fundamental holding of *TNS Mills* is that the General Assembly "intended to set clear deadlines for applying for exemptions as part of an overall plan to enable counties and school districts to plan budgets for each fiscal year. *Any interpretation allowing the Department to grant exemptions after the deadline would negate the benefit of this plan.*" *TNS Mills*, 331 S.C. at 621, 503 S.E.2d at 476 (emphasis added). Although the various deadlines for taxpayers to apply for exemptions have been amended since the tax years in dispute in *TNS Mills*, those application

deadlines still exist. In addition, the deadlines for the Department to both make determinations and provide annual notice of its determinations to the appropriate county official by June 1 have remained unchanged since the tax years in dispute in *TNS Mills*. Thus, the fundamental holding of TNS Mills, that the General Assembly established a system of deadlines (whatever those deadlines may be) that both taxpayers and the Department must adhere to in order for a grant of an exemption from property tax to be legally valid, remains the law in South Carolina. The question for this Court is whether both Taxpayers and the Department complied with their respective deadlines in this case.

The facts in *TNS Mills* related only to tax years 1985-1991. For those tax years, South Carolina Code of Laws Annotated Sections 12-4-710 and 720 provided (1) a general rule deadline for all taxpayers to apply by, (2) a specific rule deadline for only certain specific taxpayers to apply by, (3) annual deadlines for the Department of Revenue to both make its department determination and provide notice of such determination to the appropriate county official, and (4) a listing of certain exemptions for which no applications are required to be filed with the Department. The Supreme Court, in *TNS Mills*, interpreted these provisions as a whole and held the deadlines were put in place to protect the budgets of County and local governmental entities. Thus, failure of either the taxpayer to adhere to its application deadline or of the Department to adhere to its determination deadline or its notification deadline is fatal to the claim for exemption.

Taxing Entities concede the statutory scheme interpreted by the Supreme Court in *TNS Mills* was amended by the General Assembly in 1994 and again in 1995. In fact, the Supreme Court's opinion in *TNS Mills* cites to both amendments. *TNS Mills*, 331 S.C. at 618, 503 S.E.2d at 475. However, those amendments do not amount to the sea change Taxpayers would have this Court believe.

Following the 1994 and 1995 amendments, the statutory scheme continued to provide (1) a general rule deadline for all taxpayers to apply by, (2) specific rule deadlines for certain specific taxpayers to apply by, (3) annual deadlines for the Department to make its department determination and provide notice of such determination to the appropriate county official, and (4) a listing of exemptions for which no application was required to be filed with the Department. The 1994 and 1995 amendments changed the various deadline dates and changed the specific exemptions to which the application deadlines applied, but kept the overall scheme intact and did nothing to disturb the requirement that the Department make its determination on an annual basis and provide notice thereof to the appropriate county officials by June 1.

To re-cap, the pre-1994 statutory scheme divided taxpayers into three camps: (1) those who are not required to file any applications for exemption with the Department (applicable to those taxpayers claiming the specific exemptions listed in the statute), (2) those who must file applications for exemption "before the sixteenth day of the fourth month following the close of the accounting year" which is April 15th of the tax year for many taxpayers (applicable to those taxpayers claiming the specific exemptions listed in the statute), and (3) those who must file applications for exemption before the general deadline (applicable to everyone else). In all cases, a taxpayer was not required to file "an additional application" in future tax years if the underlying facts did not change.[3]

Specifically, the 1994 amendment (a) removed the application requirement for taxpayers claiming exemption on personal property with no situs in South Carolina, (b) clarified the specific rule deadline requirement (the provision interpreted by the Supreme Court in *TNS* Mills) is an annual requirement, (c) added additional exemptions to the list of exemptions requiring an

[3] S.C. Code Ann. § 12-4-720(A)(Supp. 1991-1992) ("Thereafter, the owner is not required to file an additional application unless there is a change in the status of the property as reported on the initial application or unless requesting an exemption for property which was not included on the initial or subsequent application.").

annual application, (d) changed the deadline for the annual application from "before the *sixteenth* day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes . . ." to "before the *last* day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes . . .", and (e) clarified that only those taxpayers claiming exemptions not listed in the annual application provision are not required to file an "additional application" unless there is a change in the underlying facts related to the exemption. *See* 1994 S.C. Act 516, § 28.

In summary, the 1994 amendment continued the division of taxpayers into three camps: (1) those who are not required to file any applications for exemption with the Department (applicable to those taxpayers claiming the specific exemptions listed in the statute), (2) those who must file applications for exemption on an annual basis (applicable to those taxpayers claiming the specific exemptions listed in the statute), and (3) those who must file applications for exemption before the general deadline (April 29 of the tax year for many taxpayers) and only have to file additional applications if the underlying facts change (applicable to everyone else).

Subsequently, The 1995 amendment (a) changed the general rule deadline from "between January first and April fifteenth of the first year for which the exemption is claimed" to "within the period provided in Section 12-54-85(F) for claims for refund," (b) changed the specific rule deadline from "before the *last* day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes . . ." to "before the first penalty date for payment of property taxes" and removed all exemptions but the pollution control exemption from this specific deadline provision, (c) added a new specific rule deadline applicable to all taxpayers that file annual returns with the Department, and (d) clarified that taxpayers claiming the homestead exemption do not have to comply with the filing requirements (because the homestead exemption must be applied for with the local auditor's office, not the Department) but

otherwise did not alter the provision requiring annual determination and annual notification to the counties. *See* 1995 S.C. Act 125, §§ 1 and 2.

In summary, the 1995 amendment broadened the division of taxpayers into four camps: (1) those who are not required to file any applications for exemption with the Department (applicable to those taxpayers claiming the specific exemptions listed in the statute or those claiming the homestead exemption), (2) those who must file applications for exemption on an annual basis before the first penalty date for payment of property taxes (applicable only to taxpayers claiming the pollution control exemption), (3) all others who must file applications for exemption on an annual basis (applicable to all taxpayers who are required to file annual property tax returns with the Department), and (4) those who must file applications for exemption before the general deadline and do not have to file additional applications in future tax years unless the underlying facts change (applicable to everyone else).

The taxpayer in *TNS Mills* fell within the specific rule and failed to meet the statutory deadline of April 15. Taxpayers here also fall within a specific rule and repeatedly failed to meet the annual statutory deadline of April 30, the deadline for the annual property tax return required to be filed with the Department. *See* S.C. Code Ann. § 12-37-970. In *TNS Mills*, the Department failed to meet its annual determination deadline and its annual notice deadline. Here, the Department also repeatedly failed to meet its annual determination deadline and its annual notice deadline. Because the holding in *TNS Mills* is alive and well and continues to operate to protect the budgets of local governments throughout the State of South Carolina, Taxing Entities urge this Court to apply that holding here and find both Taxpayers and the Department failed to meet their respective statutory deadlines.

> 2) *South Carolina Code of Laws Annotated Section 12-4-710, When Read in Conjunction with South Carolina Code of Laws Annotated Section 12-4-720(C) and 12-37-970, Requires the Department to Make its Determination of Whether*

Property Qualifies for the Rural Telephone Service Exemption by June 1 of Each Tax Year

As outlined above, the General Assembly relaxed the general rule deadline in 1995 to allow for applications for exemption to be filed within the statute of limitations period for claims for refund. Practically, this extended the application deadline from April 15th of the tax year in question (for example, for tax year 2018 the deadline under the prior law would have been April 15th, 2018) to January 15th of the tax year three years after the tax year in question (for example, for tax year 2018, the deadline under current law is January 15th, 2021).[4] However, in that same act, the General Assembly created a new annual deadline for those taxpayers that file annual returns with the Department. *See* 1995 S.C. Act 125, § 2.

Despite being a taxpayer that is indisputably required to file annual returns with the Department pursuant to South Carolina Code of Laws Annotated Section 12-37-970, Taxpayers assert they are only subject to the general rule deadline and are not subject to the annual deadline. Moreover, Taxpayers assert that the only taxpayers not subject to the general rule deadline are those claiming the pollution control exemption. Both the plain text of the statute and a close reading of its legislative history leads to a different conclusion.

Specifically, legislative history shows the General Assembly intended its 1995 amendment to establish different rules for different types of taxpayers. The caption of 1995 S.C. Act 125, in relevant part, describes the legislation as "AN ACT TO AMEND SECTIONS 12-4-710 AND

[4] S.C. Code Ann. § 12-4-720(A)(1) is the general rule deadline, which applies to all taxpayers that do not fall under a more specific rule. S.C. Code Ann. § 12-4-720(A)(1)("*Except as otherwise provided* any property owner . . . shall file an application for exemption . . . within the period provided in Section 12-54-85(f) for claims for refund"); S.C. Code Ann. § 12-4-720(C) "otherwise provides" a mandatory annual deadline for taxpayers who are "required to file property tax returns with the department" and requires such taxpayers "shall claim any exemption on the return each year the property is exempt."). Thus, the general rule in S.C. Code Ann. § 12-4-720(A)(1) applies to property taxpayers that are not required to file property tax returns with the Department. For all such taxpayers, the application deadline is two years from the "last day" (which term is generally understood to be January fifteenth of the year following the tax year), yielding a deadline of January 15th 2021 for tax year 2018. S.C. Code Ann. § 12-54-85(F)(1)("If no return was filed, a claim for credit or refund must be filed within two years from the date the tax was paid); S.C. Code Ann. § 12-54-85(F)(5)(b) ("For purposes of this subsection: . . . payment of any portion of the tax made before the last day prescribed for the payment of tax is considered made on the last day).

12-4-720, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE POWERS OF THE DEPARTMENT OF REVENUE AND TAXATION WITH RESPECT TO PROPERTY TAX EXEMPTIONS AND THE METHOD OF APPLYING FOR THE EXEMPTIONS, . . . *TO REQUIRE PROPERTY TAXPAYERS FILING PROPERTY TAX RETURNS TO CLAIM THE EXEMPTION ON THE RETURN FOR EACH YEAR THE PROPERTY IS EXEMPT; AND TO PROVIDE WHEN ADDITIONAL APPLICATIONS MUST BE FILED BY TAXPAYERS NOT REQUIRED TO FILE ANNUAL PROPERTY TAX RETURNS*." The legislative intent of the 1995 amendment is clear in both the plain language of the statute and in the language of the caption: the General Assembly requires those taxpayers who file annual property tax returns with the Department to claim property tax exemptions each year (annually) and only requires other taxpayers (those who don't file annual property tax returns with the Department) to file additional applications when the underlying facts supporting their respective exemptions change.

Legislative history also shows the pre-1995 general rule deadline applied "except as otherwise provided *in items (2) and (3) of this subsection*." S.C. Code Ann. § 12-4-720(A) (Supp. 1994) (emphasis added). Formerly, items (2) and (3) contained the specific exemptions (such as the pollution control exemption) for which a different deadline applied and the list of exemptions for which no application was required. The 1995 amendment struck the "in items (2) and (3) of this subsection" limitation, thus allowing for exceptions located elsewhere in the law. Simultaneously, the 1995 amendment created a new exception in a separately enumerated subsection "C" for all taxpayers required to file annual returns with the Department. S.C. Code Ann. § 12-4-720(C). Had the General Assembly chosen to keep the "items (2) and (3) of this subsection" language in the statute following the 1995 amendment, then South Carolina Code of Laws Annotated Section 12-4-720(C) could be interpreted as Taxpayers argue; but because the

General Assembly chose to remove that limitation, South Carolina Code of Laws Annotated Section 12-4-720(C) must be interpreted as an additional exception to the general rule deadline. In construing statutory language, the statute "must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." *TNS Mills*, 331 S.C. at 620, 503 S.E.2d at 476 (citing *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992)).

Pursuant to *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011), FTCC and Diversified are disregarded entities for property tax purposes. *See* Taxpayers' Response at p. 21. Thus, Farmers Telephone Cooperative, Inc., a utility and the 100% owner of both FTCC and Diversified, must file annual property tax returns with the Department listing its property in addition to the property of both FTCC and Diversified. S.C. Code Ann. § 12-37-970. Consequently, Taxpayers must claim the Rural Telephone Service Exemption on their annual returns each year by the property tax return filing deadline of April 30 of the relevant tax year.

Taxpayers assert they are not required to meet the annual April 30 deadline and instead, "all that is required for taxpayers to claim a refund is that they file a timely application for exemption." Taxing Entities concede the issue is whether Taxpayers filed a timely application for exemption. However, Taxpayers attempt to show their timely filed application for exemption by reference to the wrong deadline – the deadline applicable to taxpayers who are not required to file annual property tax returns with the Department. Moreover, Taxpayers assert the statute in question does not say that taxpayers "cannot file timely amended returns, make applications for refund or claim exemptions by timely filed protests." *See* Taxpayers Motion at p. 20. However, this amended return procedure was explicitly rejected by our Supreme Court in *TNS Mills*. "The circuit court failed to recognize the distinction between amended returns and applications for exemptions. [S.C. Code Ann. § 12-37-975 (Supp. 1992)] 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." *TNS Mills*, 331 S.C. at 624, 503 S.E.2d at 478.

> 3) *The Department's practice of sending 80% bill notices to the County Auditors does not accomplish notice to the Taxing Entities that an exemption has been granted and thus fails to satisfy the statutory notice requirement.*

At most, a notice to a County Auditor that a tax assessment has been disputed, an 80% bill is required to be generated, and the underlying dispute is not expected to be resolved by December 31 of the tax year notifies the County Auditor that a taxpayer has challenged the value of its property for tax purposes. S.C. Code Ann. § 12-60-2140(A). However, the June 1 Deadline requires the Department to do more than just provide notice that a dispute is ongoing and is not expected to be resolved by December 31. Specifically, the June 1 Deadline requires "[t]he determination must be made on an annual basis and the appropriate county official so advised by June first of each year by the department." S.C. Code Ann. § 12-4-710. Providing notice that a protest is ongoing and that no resolution is expected by December 31 of the tax year is plainly insufficient to satisfy the June 1 Deadline.

Here, the Department did not notify the appropriate county officials of its determination because it did not make a determination until, at the earliest, it signed the Settlement Agreement on January 8, 2017.[5] At the earliest, copies of the Settlement Agreement were received by the respective county auditors for the Taxing Entities on June 22, 2017. Because the Department failed to notify the appropriate county officials for the Taxing Entities by the June 1 deadline for

[5] The Department insists it never made any department determinations in this case. Taxing Entities assert the Department has made department determinations in this case. *See* Taxing Entities Response to Taxpayers' Motion to Dismiss. However, assuming *arguendo* the Department is correct that it never made any department determinations here, then the Department has admitted that it failed to comply with both the June 1 Deadline and the nine month limitation of S.C. Code Ann. § 12-60-450(E)(3).

tax years 2010 through at least 2016, the Department's grants of the Rural Telephone Service Exemption are illegally retroactive and are void for failing to comply with the June 1 Deadline.

D. Home Rule Principles

Taxpayers assert Home Rule is inapplicable to this case. Taxpayers Response at pp. 26-27. Taxing Entities admit this case does not involve application of the ban on "special legislation" codified in Article VIII, Section 7 of the South Carolina Constitution, but assert principles of Home Rule are unquestionably applicable to this case. The purpose of Home Rule is "that county government should function in the county seats rather than at the State Capitol [such that i]f the counties are to remain units of government, the power to function must exist at the county level. *Knight v. Salisbury*, 262 S.C. 565, 206 S.E.2d 875 (1974). Consistent with that purpose, Home Rule "does not allow the [G]eneral [A]ssembly to repeatedly inject its will into operation of county government." *Van Fore v. Cooke*, 273 S.C. 136, 139, 255 S.E.2d 339, 340 (1979). Given the above principles of leaving local fiscal affairs with the Counties, in the instant case, the Department violates Home Rule by imposing its authority over the Taxing Entities' budgeting powers by ordering the Taxing Entities (with no input from or notice to the Taxing Entities and, most egregiously, no right to judicial review in any court anywhere) to issue millions of dollars to cover seven years of retroactive property tax refunds.

More specifically, Taxing Entities assert Home Rule principles of local financial decision-making authority are relevant to the issues in this case. Multiple statutory provisions dealing with the powers of local governments explicitly place financial decision-making and budget-making authority in the hands of local governments on issues of annual revenue-raising, taxes, tax millage, and budgetary provisions. *See e.g.* § 4-9-55 (general laws affecting counties expenditures and revenue raising); § 4-9-640 (county budgeting is an annually required process);

§ 4-9-140 (approval of county budgets is an annually required process); *see also* Taxing Entities Motion at pp. 28-31.

Despite the clear local authority over annual taxation, budgeting, and financial matters, in this case Taxpayers assert a single, centralized state agency, the Department, has the power to order millions of dollars of refund checks retroactive to long-closed county budget years to be issued by Taxing Entities without the Taxing Entities having a seat at the table, without Taxing Entities consent to the terms of the Settlement Agreement, and without the Taxing Entities having any right to request a contested case hearing or otherwise exercise rights to judicial review. Taxpayers' notion completely contradicts the sovereignty local governments have been granted over fiscal affairs. Moreover, Taxpayers' notion ignores (a) the statutory rights Taxing Entities have under chapters 4 and 60 of Title 12 of the South Carolina Code of Laws to challenge department determinations and (b) the protection offered to the annual budget and revenue-raising process by the June 1 Deadline. *See* Taxing Entities' Response to Taxpayers' Motion to Dismiss at pp. 13-16. Thus, Taxpayers' arguments in this case are antithetical to long-standing principles of Home Rule and should be rejected by this Court.

IV. Conclusion

Based on the foregoing, Taxing Entities respectfully request this Court grant the Motion.

Respectfully submitted,

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February 9, 2018

Certificate of Service

I certify that a copy of the foregoing ***TAXING ENTITIES' REPLY TO FARMERS' RESPONSE TO TAXING ENTITIES' MOTION FOR PARTIAL SUMMARY JUDGMENT*** has been served on the following counsel of record on February 9, 2018, by placing same in the United States mail, postage prepaid, addressed as follows:

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and by e-mailing same to jason.luther@dor.sc.gov and william.condon@dor.sc.gov.

In addition, I certify that a copy of the foregoing ***TAXING ENTITIES' REPLY TO FARMERS' RESPONSE TO TAXING ENTITIES' MOTION FOR PARTIAL SUMMARY JUDGMENT*** has been served on the following counsel of record on February 9, 2018, by placing same in the United States mail, postage prepaid, addressed as follows:

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Kristen Cuza

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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 Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC Respondents.	Docket No. 17-ALJ-17-0237-CC **TAXING ENTITIES' REPLY TO DEPARTMENT OF REVENUE'S RESPONSE TO TAXING ENTITIES' MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. Introduction

The Petitioners, collectively the "Taxing Entities," challenge the South Carolina Department of Revenue's ("Department") actions arising from the Department's attempting to grant property tax exemptions for tax years 2010 through 2017[1] to Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC ("Taxpayers") under South Carolina Code Annotated section 12-37-220(b)(10). That statute allows a property tax exemption for property "used in providing rural telephone service." ("Rural Telephone Service Exemption").

Taxing Entities filed a Motion for Partial Summary Judgment and A Memorandum in Support of Motion for Partial Summary Judgment ("Motion") on December 18, 2017. On

[1] Tax years 2010 through 2015 are addressed in the Settlement Agreement (as defined in Taxing Entities Prehearing Statement filed with this Court on 7/10/2017). Tax years 2016 and 2017 are addressed by the Assessment Certifications (as defined herein). Contrary to the Department's assertions, all tax years from 2010 to 2017 are properly before this Court.

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January 23, 2018, the Department filed its Response in Opposition to Taxing Entities' Motion for Partial Summary Judgment ("Response"). In the Response, the Department raises five primary objections to the Motion.

First, the Department asserts the Motion is premature because the Department has not had a full and fair opportunity to engage in discovery and material facts related to the nature of the telephone industry remain at issue. Second, the Department argues any use of property for providing rural telephone service, no matter how miniscule, qualifies such property for the Rural Telephone Service Exemption. Third, the Department argues the definition of "telephone service" under the Telephone Cooperative Act includes wireless services provided by Taxpayers. Fourth, the Department argues its grants of the Rural Telephone Service Exemption are not illegally retroactive. Fifth, the Department argues Home Rule does not apply in this case. None of the five objections advanced by the Department, either individually or collectively, warrant denying the Motion.

In addition, the Department asserts the Motion is moot because this Court lacks subject matter jurisdiction over this case. As explained more fully in Taxing Entities' Response to Taxpayers' Motion to Dismiss, filed with this Court on January 23, 2018, this Court has subject matter jurisdiction over all tax years in dispute in this case.

Each of the five objections is addressed below. However, in addition, and before addressing the objections raised by the Department, Taxing Entities assert a fundamental and overriding principle justifies partial summary judgment in this case: an order from this Court denying the Motion would reward Taxpayers and the Department for failing to timely perform their respective duties.

In this case, year after year Taxpayers failed to timely file applications for the Rural Telephone Service Exemption by not timely claiming the Rural Telephone Service Exemption on

their annual property tax returns filed with the Department by the April 30 deadline. Moreover, year after year the Department failed to timely determine whether Taxpayers' property was exempt under the Rural Telephone Service Exemption and failed to annually notify the appropriate county official of the Department's determination by the June 1 deadline. This Court should not reward either Taxpayers' or the Department's failures to follow the procedures prescribed by the General Assembly for property tax exemptions. Consequently, the Taxing Entities respectfully request this Court grant the Motion.

II. Reply to Objections Raised in Department's Response

A. Propriety of Summary Judgment

Taxpayers assert summary judgment is premature where the opposing party has not had a full and fair opportunity to complete discovery. *See* Department's Response at pp. 8-10. Taxing Entities agree that an order granting full summary judgment disposition in this case would be premature because the parties have not yet completed discovery. However, Taxing Entities have not moved this Court to grant full summary judgment disposition. Rather, Taxing Entities have moved this Court to grant partial summary judgment on fundamental legal issues which must be decided in order for the Court to reach its decision in this case, leaving remaining factual issues to be decided at trial. These fundamental legal issues require this Court decide: (1) what the legal standard is for determining whether a particular property qualifies for the Rural Telephone Service Exemption, (2) whether the Department's or the Taxpayers' multiple, repeated failures to meet the statutory deadlines required under chapter 4 of Title 12 renders the exemptions granted in this case illegally retroactive, and (3) whether principles of Home Rule protect the budget-making and revenue-raising powers of the Taxing Entities from the illegal retroactive grants of exemptions in this case. By deciding these legal issues via partial summary judgment at this time, this Court will narrow the issues remaining to be disputed by the parties and aid in the

economical adjudication of this dispute. Partial summary judgment is proper when a claim raises issues of law devoid of disputed material facts while other issues remain requiring factual determinations for resolution. *See e.g. Weston v. Kim's Dollar Store*, 399 S.C. 303, 731 S.E.2d 864, (2012) (where the Court found "the partial grant of summary judgment was entirely proper" for "a challenge [to] the sufficiency of the FDA-approved requirements" while holding "any claim that parallels applicable federal requirements may proceed [to trial].").

B. Whether Property Qualifies for Rural Telephone Service Exemption

1) *Legal Standard for Determining Whether Property Qualifies for Rural Telephone Service Exemption*

The Department asserts any use whatsoever of property for providing rural telephone service renders the property exempt under the Rural Telephone Service Exemption. *See* Department's Response at p. 11. This conclusion conflicts with the long-standing rule of construction that "[t]he language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption." *TNS Mills Inc. v. South Carolina Department of* Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998) (citing *John D. Hollingsworth On Wheels, Inc. v. Greenville County Treasurer*, 276 S.C. 314, 278 S.E.2d 340 (1981)). Under the Department's "any use" standard, a single 20 second phone call taking place via Taxpayers' property would instantaneously trigger exemptions on property spanning hundreds of miles across six counties. The Department has provided no evidence of such a taxpayer-friendly legislative intent for the Rural Telephone Service Exemption. This Court should interpret the Rural Telephone Service Exemption narrowly against the granting of the exemption and find a rigorous standard that can be readily applied in future cases to determine whether property qualifies.

In the Response, the Department argues the lack of quantifying language, such as "exclusively" or "primarily," in South Carolina Code of Laws Annotated Section 12-37-

220(B)(10) indicates the General Assembly intended any use whatsoever, no matter how miniscule, of property in providing rural telephone service to qualify the property for the Rural Telephone Service Exemption. The Department is incorrect because it ignores the context within which the Rural Telephone Service Exemption was enacted in 1978.

The Department's argument that any use whatsoever of property in providing rural telephone service qualifies such property for the Rural Telephone Service Exemption effectively writes the "use" requirement out of the law, leaving a mere ownership test. In other words, if property is owned by a rural telephone cooperative and it is used for even one second in providing rural telephone service, then such property is exempt under the Department's view.

This flawed view of the Rural Telephone Service Exemption is incompatible with the legislative history of the statute because the predecessor to the Rural Telephone Service Exemption was, in fact, a mere ownership test. S.C. Code Ann. § 12-37-220(40) (1976) ("*All property of every kind owned by rural telephone cooperatives* organized under the provisions of Chapter 45 of Title 33 . . ."). This predecessor exemption statute was repealed in 1977 and subsequently the General Assembly enacted the current Rural Telephone Service Exemption in 1978. 1976 S.C. Act 750 (Proposal of Amendment to SC Constitution Repealing Certain Property Tax Exemptions); 1977 S.C. Act 71 (Ratification of Amendment to SC Constitution Repealing Certain Property Tax Exemptions); 1978 S.C. Act 621 (Enactment of Rural Telephone Service Exemption). In passing the Rural Telephone Service Exemption, the General Assembly added the "used in providing rural telephone service" requirement to the law. When interpreting a statute, the sole function of the Court is to give effect to the intent of the legislature. *Hodges v. Rainey*, 342 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The Department's minimalist interpretation of the use requirement is unreasonable, incompatible with the legislature's intent because it nullifies the use requirement, and should be rejected by this Court.

2) *Definition of Telephone Service for Purposes of the Rural Telephone Service Exemption*

The Department asserts the definition of telephone service is broad enough to include wireless telephone service for two reasons. First, the Department asserts a January 1, 2018 internet dictionary definition of "telephone" proves the General Assembly intended, in 1978 when it enacted the Rural Telephone Service Exemption, the definition of "telephone service" to include wireless communication by radio waves. *See* Department's Response at p. 15. Second, the Department asserts the definition of telephone service found in South Carolina Code of Laws Annotated Section 33-46-20(5), which was enacted in 1994, proves the General Assembly intended, in 1978 when it enacted the Rural Telephone Service Exemption, the definition of "telephone service" to include wireless communication by radio waves. *See* Department's Response at p. 15. Neither argument is persuasive.

First, the 2018 definition of "telephone" is irrelevant for this Court's analysis of what the General Assembly intended when it enacted the Rural Telephone Service Exemption in 1978. More appropriately, according to a dictionary that was both published and in circulation at the time the Rural Telephone Service Exemption was enacted in 1978, "telephone" is defined as "an instrument for reproducing sounds and esp. spoken words transmitted from a distance *by electrical means over wires*." *Telephone, The Merriam-Webster Dictionary for Large Print Users* (copyright 1975). This Court should construe the Rural Telephone Service Exemption accordingly.

Second, the statutory definition of "telephone service" cited by the Department does not apply to the Rural Telephone Service Exemption for two reasons. First, by the plain language of the definitional statute, its definitions apply "[i]n this chapter," meaning chapter 46 of Title 33 of the South Carolina Code of Laws. S.C. Code Ann. § 33-46-20(5) ("*In this chapter*, unless the

context otherwise requires: (5) '[t]elephone service' means . . .") (emphasis added). Because the Rural Telephone Service Exemption is codified in a different chapter (chapter 37) of a different Title (Title 12), the definition relied upon by the Department has no application to the Rural Telephone Service Exemption.

Second, the Telephone Cooperative Act, the source of the definition of "telephone service" relied upon by the Department, unequivocally makes all telephone cooperatives "subject to the tax laws *as written* or thereafter amended *for cooperatives organized pursuant to Title 33, Chapter 45*," S.C. Code Ann. § 33-46-80. This provision shows the General Assembly intended to leave the tax laws applicable to rural telephone cooperatives undisturbed by the passage of the Telephone Cooperative Act, whether such tax laws were passed before (i.e. "as written") or after (i.e. "thereafter amended") the Telephone Cooperative Act. The Rural Telephone Service Exemption is indisputably a "tax law" applicable to "telephone cooperatives organized pursuant to Title 33, Chapter 45.[2]" Thus, the General Assembly intended for nothing in the Telephone Cooperative Act to modify the meaning of the Rural Telephone Service Exemption.

C. Illegal Retroactive Grants of Rural Telephone Service Exemptions

1) The Provision Mandating the Department to Issue a Department Determination is Not Conditioned on the Department's Failure to Reach a Settlement With a Taxpayer

[2] After an exhaustive search the Taxing Entities have only been able to identify one "tax law . . . for cooperatives organized pursuant to Title 33, Chapter 45" in the entire South Carolina Code of Laws. This lone provision is the Rural Telephone Service Exemption. Specifically, the Rural Telephone Service Exemption incorporates by reference its predecessor exemption statute by stating, "the property of telephone companies and rural telephone cooperatives operating in this State used in providing rural telephone service, *which was exempt from property taxation as of December 31, 1973*, shall be exempt from such property taxation . . . property . . . added after December 31, 1973, shall likewise be exempt from property taxation . . ." That predecessor exemption statute, which was both in effect as of December 31, 1973 and codified in the 1976 South Carolina Code of Laws at the time the Rural Telephone Service Exemption was enacted in 1978. The predecessor exemption applied to property "owned by rural telephone cooperatives *organized under the provisions of Chapter 45 of Title 33*." S.C. Code Ann. § 12-37-220(40) (1976). Consequently, the Rural Telephone Service Exemption must have been included in the "tax laws" which the General Assembly intended to leave undisturbed by the Telephone Cooperative Act under S.C. Code Ann. § 33-46-80.

A fundamental building block of the Response is the Department's claim that the mandatory requirement of South Carolina Code of Laws Annotated Section 12-60-450(E)(1) is only operative "[i]f the taxpayer and the Department do not settle the case." *See* Department's Response at p. 20. However, nothing in the plain language of that statutory provision conditions the Department's mandate to issue a department determination on the failure to reach a settlement. On the contrary, the mandatory requirement in South Carolina Code of Laws Annotated Section 12-60-450(E)(1) states, "The department *will make* a department determination using the information provided by the taxpayer in accordance with Section 12-60-30(15)(c)(iii)." The provision's citation to South Carolina Code of Laws Annotated Section 12-60-30(15)(c)(iii), which defines "exhaustion of the taxpayer's prehearing remedy," requires the taxpayer to provide "the facts, the law, and other authority supporting the taxpayer's position to . . . the department representative . . . within thirty days after filing the protest." There is no mention of chronology or a condition that a department determination may only be issued if no settlement agreement is entered into. Consequently, the Department is required to make its department determination using the information provided by the taxpayer and the existence of a settlement agreement does nothing to mute this statutory mandate.[3]

The Department also cites to South Carolina Code of Laws Annotated Section 12-60-450(D)(2) as authority for its argument that the Department is only required to issue a department determination if a settlement agreement is not reached. The Department is incorrect. The plain language of South Carolina Code of Laws Annotated Section 12-60-450(D)(2) *permits* the Department to treat an appeal as abandoned and make a department determination "*if* the taxpayer fails to respond or participate in this process with the department." The phrase "this process" refers to the *mandatory* stipulation of facts *required by* and the *voluntary* settlement of

[3] Taxing Entities have argued the Department's actions in signing the Settlement Agreement amount to a department determination. *See* Taxing Entities Response to Taxpayers' Motion to Dismiss.

the case *permitted by* South Carolina Code of Laws Annotated Section 12-60-450(D)(2). This provision clarifies the Department has discretion to make its department determination in the case where a taxpayer is uncooperative. This provision allows the Department to "fast track" a case to the department determination stage, at which point the taxpayer may request a contested case hearing with the Administrative Law Court, but only where a taxpayer is being uncooperative with the Department. Taxing Entities are not aware of any allegation the Taxpayers have been uncooperative in this matter and nothing about this case can be reasonably described as "fast track." Thus, South Carolina Code of Laws Annotated Section 12-60-450(D)(2) has no application to this case and the mandatory provisions of South Carolina Code of Laws Annotated Section 12-60-450(E)(1) control.

Moreover, the Department conspicuously omits South Carolina Code of Laws Annotated Section 12-60-450(E)(3), which explicitly mandates the Department issue its department determination "*not later than nine months* after the date the written protest or claim was filed with the department by the taxpayer." Taxing Entities assert the Department made its department determination, at the earliest, when it signed the Settlement Agreement on January 8, 2017, which is well beyond nine months after (a) the date the refund claim was filed on December 28, 2012 for tax years 2010 and 2011 and (b) the date written protests were filed by Taxpayers for tax years 2012, 2013, 2014, and 2015. Thus, the Department has admitted it is in clear violation of the nine month limitation codified in South Carolina Code of Laws Annotated Section 12-60-450.

2) TNS Mills Has Not Been Repealed, Abrogated by Statute, or Otherwise Overturned

The Department claims *TNS Mills, Inc. v. S.C. Dept. of Rev.*, 331 S.C. 611, 503 S.E.2d 471 (1998), is irrelevant to this case because the statute the Supreme Court interpreted in *TNS Mills*

has been amended by the General Assembly to allow a taxpayer to submit an application "long after the so-called June 1 deadline." *See* Department's Response at p. 28. The Department is referring to 1995 S.C. Act 125 and is effectively arguing South Carolina Code of Laws Annotated Section 12-4-720 has been repealed. However, the Department is incorrect.

First, the fundamental holding of *TNS Mills* is that the General Assembly "intended to set clear deadlines for applying for exemptions as part of an overall plan to enable counties and school districts to plan budgets for each fiscal year. *Any interpretation allowing the Department to grant exemptions after the deadline would negate the benefit of this plan.*" *TNS Mills*, 331 S.C. at 621, 503 S.E.2d at 476 (emphasis added).

Second, repeals by implication are "not favored and will not be applied if there is any other reasonable construction of the statute." *State v. Bodiford*, 282 S.C. 378, 379 318 S.E.2d 567, 568 (1984); *Pearson v. Mills Mfg. Co.*, 82 S.C. 506, 64 S.E. 407, 409 (1909) ("A later statute on a given subject, not repealing an earlier one in terms, is not to be taken as a repeal by implication, unless it is plainly repugnant to the former, or unless it fully embraces the whole subject-matter . . . to effect a repeal by implication on account of repugnancy, the repugnancy must not only be plain, but the provisions of the two statutes must be incapable of any reasonable reconcilement."); *State v. Corley*, 13 S.C. 1 (1880) ("[T]o repeal a statute by implication, there must be such a positive repugnancy between the provisions of the new law and of the old, that they cannot be reconciled.").

Third, 1995 S.C. Act 125, the very act that changed the general application deadline from "between January first and April fifteenth of the first year for which the exemption is claimed" to "within the period provided in Section 12-54-85(F) for claims for refund" also amended the June 1 provision by adding an exception for taxpayers claiming the homestead exemption, *but otherwise made no changes to the June 1 deadline*. *See* 1995 S.C. Act 125, §§1-2 (adding

"Except for the exemption provided by Section 12-37-220(A)(9)" to S.C. Code Ann. § 12-4-710). Why did the General Assembly add new language to South Carolina Code of Laws Annotated Section 12-4-710 without deleting the June 1 deadline language ("June 1 Deadline") *if its intent was to repeal the June 1 Deadline*? Such a repeal by implication is disfavored in the law and is inappropriate unless the two provisions are so repugnant of each other that they cannot be reconciled.

Taxing Entities assert the June 1 deadline is not repugnant or irreconcilable with the relaxed general rule deadline for applying for exemptions, particularly in light of the fact that 1995 S.C. Act 125 also created a new class of taxpayers who are required to file applications for exemptions with the Department on an annual basis: those taxpayers who were already required to file annual property tax returns with the Department. Taxing Entities assert a reasonable construction of the June 1 Deadline is as follows:

1. The Department must make its determination as to whether property is exempt from property tax by June 1 of each tax year and give annual notice to the appropriate county official by June 1 of each tax year.

2. For all taxpayers who are required to file annual returns with the Department, the Department will have all of the information it needs to determine whether property is exempt by the June 1 deadline because all taxpayers who are required to file annual returns with the Department are also required to include on those annual returns their claims for exemption and to file those returns with the Department by April 30th of the tax year, at the latest.

    a. April 30th is the applicable deadline for taxpayers with an income tax year ended December 31st. For those taxpayers with income tax years ending at any point earlier in the year, the deadline falls earlier (and thus, earlier in time than the June 1 deadline). For example, a taxpayer with an income tax year ending September 30, 2017 is required to file its property tax return for tax year 2018 by January 31, 2018. *See* S.C. Rev. Rul. #16-12 (2016), chart on page 10 (excerpt below), attached hereto as **Exhibit A.**

Manufacturer's Income Tax Year End[22]	Lien Date for Property Tax Year 2018[23]	Return Due Date for Property Tax Year 2018[24]	County Billing Date for Property Tax Year 2018	Payment Due Date for Property Tax Year 2018[25]
1/31/2017*	1/31/2017	5/31/2017	Fall 2018	1/15/2019
2/28/2017	2/28/2017	6/30/2017	Fall 2018	1/15/2019
3/31/2017	3/31/2017	7/31/2017	Fall 2018	1/15/2019
4/30/2017	4/30/2017	8/31/2017	Fall 2018	1/15/2019
5/31/2017	5/31/2017	9/30/2017	Fall 2018	1/15/2019
6/30/2017	6/30/2017	10/31/2017	Fall 2018	1/15/2019
7/31/2017	7/31/2017	11/30/2017	Fall 2018	1/15/2019
8/31/2017	8/31/2017	12/31/2017	Fall 2018	1/15/2019
9/30/2017	9/30/2017	1/31/2018	Fall 2018	1/15/2019
10/31/2017	10/31/2017	2/28/2018	Fall 2018	1/15/2019
11/30/2017	11/30/2017	3/31/2018	Fall 2018	1/15/2019
12/31/2017 (Calendar Year TP)*	12/31/2017	4/30/2018	Fall 2018	1/15/2019

*See examples below.

3. The June 1 deadline applies to the following taxpayers:

Taxpayer	Citation
manufacturers	S.C. Code Ann. § 12-4-540(a)
railroads	S.C. Code Ann. § 12-4-540(b)
private carlines	S.C. Code Ann. § 12-4-540(c)
airlines	S.C. Code Ann. § 12-4-540(d)
water, heat, light, and power companies	S.C. Code Ann. § 12-4-540(e)
telephone businesses	S.C. Code Ann. § 12-4-540(f)
cable television providers	S.C. Code Ann. § 12-4-540(g)
sewer companies	S.C. Code Ann. § 12-4-540(h)
pipeline companies	S.C. Code Ann. § 12-4-540(i)
mining companies	S.C. Code Ann. § 12-4-540(j)

4. Each of the types of taxpayers identified in item 3 above are (a) likely to own a significant amount of taxable property due to the inherent capital-intensive nature of their lines of business and (b) likely to own property located in multiple taxing jurisdictions throughout this state due to the inherent logistical, mechanical, industrial, and supply chain interconnectivity inherent in their lines of business.

Thus, a department determination rendering their property exempt would be very likely to cause substantial hardship to and intervention in the budget-making processes of local governing bodies throughout this State. Consequently, the types of taxpayers identified above are precisely the types of taxpayers for which the Supreme Court's decision in *TNS Mills* is most needed to protect local governments from untimely filed for untimely granted property tax exemptions.

5. For taxpayers who are not required to file annual returns with the Department, the Department will not necessarily have the information it needs to determine whether property is exempt by the June 1 deadline because such taxpayers are permitted to file applications for exemption within the statute of limitations period for income tax purposes.

6. However, this relaxed time period to file applications for exemptions only applies to the following taxpayers:

Taxpayer	**Citation**
disabled veterans	S.C. Code Ann. § 12-37-220(B)(3)
disabled law enforcement officers	S.C. Code Ann. § 12-37-220(B)(1)
disabled firefighters	S.C. Code Ann. § 12-37-220(B)(1)
medal of honor recipients	S.C. Code Ann. § 12-37-220(B)(26) and (43)
prisoners of war	S.C. Code Ann. § 12-37-220(B)(43)
paraplegics	S.C. Code Ann. § 12-37-220(B)(2)
wheelchair users	S.C. Code Ann. § 12-37-220(B)(27) and (37)
charitable organizations in the nature of hospitals	S.C. Code Ann. § 12-37-220(A)(2)
churches	S.C. Code Ann. § 12-37-220(A)(3) and (B)(31)
parsonages	S.C. Code Ann. § 12-37-220(A)(3)
burying grounds	S.C. Code Ann. § 12-37-220(A)(3)
public libraries	S.C. Code Ann. § 12-37-220(A)(3)
schools	S.C. Code Ann. § 12-37-220(A)(2)
colleges	S.C. Code Ann. § 12-37-220(A)(2)

charitable trusts and foundations	S.C. Code Ann. § 12-37-220(A)(4)
public benefit corporations	S.C. Code Ann. § 12-37-220(A)(11)
non-profit water or sewer corporations	S.C. Code Ann. § 12-37-220(B)(4)
American legion posts	S.C. Code Ann. § 12-37-220(B)(5)
VFW posts	S.C. Code Ann. § 12-37-220(B)(5)
other veteran organizations such as DAV, Fleet Reserve Association, and Marine Corps League	S.C. Code Ann. § 12-37-220(B)(5)
YMCA	S.C. Code Ann. § 12-37-220(B)(6)
YWCA	S.C. Code Ann. § 12-37-220(B)(6)
Salvation Army	S.C. Code Ann. § 12-37-220(B)(6)
Boy Scouts	S.C. Code Ann. § 12-37-220(B)(7)
Girl Scouts	S.C. Code Ann. § 12-37-220(B)(7)
South Carolina Association of Future Farmers of America	S.C. Code Ann. § 12-37-220(B)(8)
nonprofit housing corporations devoted to providing below cost housing to aged or handicapped persons, elderly persons, persons with disabilities, or low or very low income residents	S.C. Code Ann. § 12-37-220(B)(11)
fraternal societies	S.C. Code Ann. § 12-37-220(B)(12)
religious, charitable, eleemosynary, educational , or literary societies, corporations, or other associations	S.C. Code Ann. § 12-37-220(B)(16)
taxpayers who lease their property to a state agency, county, municipality, or other political subdivision	S.C. Code Ann. § 12-37-220(B)(18)
volunteer fire departments and rescue squads	S.C. Code Ann. § 12-37-220(B)(19)
nonprofit museums	S.C. Code Ann. § 12-37-220(B)(20)
South Carolina Public Service Authority for the generation or transmission of electric power	S.C. Code Ann. § 12-37-220(B)(21)

community owned recreation facilities	S.C. Code Ann. § 12-37-220(B)(22)
nonprofit community theaters or symphony orchestras or county arts councils or commissions	S.C. Code Ann. § 12-37-220(B)(24)
taxpayers loaning or leasing their property on a nonprofit basis to a state agency, county, municipality, or other political subdivision	S.C. Code Ann. § 12-37-220(B)(25)
taxpayers owning carnival equipment	S.C. Code Ann. § 12-37-220(B)(28)
taxpayers owning land subject to perpetual easement	S.C. Code Ann. § 12-37-220(B)(36)
taxpayers owning property via a charitable trust or foundation	S.C. Code Ann. § 12-37-220(B)(42)

7. Each of the types of taxpayers identified in item 6 above are either (a) not likely to own a substantial amount of taxable property due to the non-capital intensive nature of their activities or (b) not likely to own property located in multiple taxing jurisdictions throughout this state due to the inherently local nature of their activities. Thus, a department determination rendering their property exempt would be unlikely to cause any substantial hardship to or interference with the budget-making processes of local governing bodies throughout this State.

Thus, the fundamental holding of TNS Mills, that the General Assembly established a system of deadlines that both taxpayers and the Department must adhere to in order for a grant of an exemption from property tax to be legally valid, remains the law in South Carolina. The question for this Court is whether both Taxpayers and the Department complied with their respective deadlines in this case.

In-Depth Analysis of TNS Mills and Legislative History

The facts in *TNS Mills* related only to tax years 1985-1991. For those tax years, South Carolina Code of Laws Annotated Sections 12-4-710 and 720 provided (1) a general rule deadline for all taxpayers to apply by, (2) a specific rule deadline for only certain specific taxpayers to apply by, (3) annual deadlines for the Department of Revenue to both make its

department determination and provide notice of such determination to the appropriate county official, and (4) a listing of certain exemptions for which no applications are required to be filed with the Department. The Supreme Court, in *TNS Mills*, interpreted these provisions as a whole and held the deadlines were put in place to protect the budgets of County and local governmental entities. Thus, failure of either the taxpayer to adhere to its application deadline or of the Department to adhere to its determination deadline or its notification deadline is fatal to the claim for exemption.

Taxing Entities concede the statutory scheme interpreted by the Supreme Court in *TNS Mills* was amended by the General Assembly in 1994 and again in 1995. In fact, the Supreme Court's opinion in *TNS Mills* cites to both amendments. *TNS Mills*, 331 S.C. at 618, 503 S.E.2d at 475. However, those amendments do not amount to the sea change the Department would have this Court believe.

Following the 1994 and 1995 amendments, the statutory scheme continued to provide (1) a general rule deadline for all taxpayers to apply by, (2) specific rule deadlines for certain specific taxpayers to apply by, (3) annual deadlines for the Department to make its department determination and provide notice of such determination to the appropriate county official, and (4) a listing of exemptions for which no application was required to be filed with the Department. The 1994 and 1995 amendments changed the various deadline dates and changed the specific exemptions to which the application deadlines applied, but kept the overall scheme intact and did nothing to disturb the requirement that the Department make its determination on an annual basis and provide notice thereof to the appropriate county officials by June 1.

To re-cap, the 1991 legislation divided taxpayers into three camps: (1) those who are not required to file any applications for exemption with the Department (applicable to those taxpayers claiming the specific exemptions listed in the statute), (2) those who must file

applications for exemption "before the sixteenth day of the fourth month following the close of the accounting year" which is April 15th of the tax year for many taxpayers (applicable to those taxpayers claiming the specific exemptions listed in the statute, such as pollution control), and (3) those who must file applications for exemption before the general deadline (applicable to everyone else). In all cases, a taxpayer was not required to file "an additional application" in future tax years if the underlying facts supporting the exemption did not change.[4]

Specifically, the 1994 amendment (a) removed the application requirement for taxpayers claiming exemption on personal property with no situs in South Carolina, (b) clarified the specific rule deadline requirement (the provision which would later be interpreted by the Supreme Court in *TNS* Mills) is an annual requirement, (c) added additional exemptions to the list of exemptions requiring an annual application, (d) changed the deadline for the annual application from "before the *sixteenth* day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes . . ." to "before the *last* day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes . . .", and (e) clarified that only those taxpayers claiming exemptions not listed in the annual application provision are not required to file an "additional application" unless there is a change in the underlying facts related to the exemption. *See* 1994 S.C. Act 516, § 28.

In summary, the 1994 amendment continued the division of taxpayers into three camps: (1) those who are not required to file any applications for exemption with the Department (applicable to those taxpayers claiming the specific exemptions listed in the statute), (2) those who must file applications for exemption on an annual basis (applicable to those taxpayers

[4] S.C. Code Ann. § 12-4-720(A)(Supp. 1991-1992) ("Thereafter, the owner is not required to file an additional application unless there is a change in the status of the property as reported on the initial application or unless requesting an exemption for property which was not included on the initial or subsequent application.").

claiming the specific exemptions listed in the statute), and (3) those who must file applications for exemption before the general deadline (April 29 of the tax year for many taxpayers) and only have to file additional applications if the underlying facts supporting the exemption change (applicable to everyone else).

Subsequently, The 1995 amendment (a) changed the general rule deadline from "between January first and April fifteenth of the first year for which the exemption is claimed" to "within the period provided in Section 12-54-85(F) for claims for refund," (b) changed the specific rule deadline from "before the *last* day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes . . ." to "before the first penalty date for payment of property taxes" and removed all exemptions but the pollution control exemption from this specific deadline provision, (c) added a new specific rule deadline applicable to all taxpayers that file annual returns with the Department, and (d) clarified that taxpayers claiming the homestead exemption do not have to comply with the filing requirements (because the homestead exemption must be applied for with the local auditor's office, not the Department) but otherwise did not alter the provision requiring annual determination and annual notification to the counties. *See* 1995 S.C. Act 125, §§ 1 and 2.

In summary, the 1995 amendment broadened the division of taxpayers into four camps: (1) those who are not required to file any applications for exemption with the Department (applicable to those taxpayers claiming the specific exemptions listed in the statute or those claiming the homestead exemption), (2) those who must file applications for exemption on an annual basis before the first penalty date for payment of property taxes (applicable only to taxpayers claiming the pollution control exemption), (3) all others who must file applications for exemption on an annual basis (applicable to all taxpayers who are required to file annual property tax returns with the Department), and (4) those who must file applications for

exemption before the general deadline and do not have to file additional applications in future tax years unless the underlying facts change (applicable to everyone else).

Application of TNS Mills to this Case

The taxpayer in *TNS Mills* fell within the specific rule and failed to meet the statutory deadline of April 15. The taxpayers here also fall within a specific rule and repeatedly failed to meet the annual statutory deadline of April 30, the deadline for the annual property tax return required to be filed with the Department. *See* S.C. Code Ann § 12-4-720(C); S.C. Code Ann. § 12-37-970. In *TNS Mills*, the Department failed to meet its annual determination deadline and its annual notice deadline. Here, the Department also repeatedly failed to meet its annual determination deadline and its annual notice deadline for at least tax years 2010, 2011, 2012, 2013, 2014, 2015, and 2016. Because the holding in *TNS Mills* is alive and well and continues to operate to protect the budgets of local governments throughout the State of South Carolina, Taxing Entities urge this Court to apply that holding here and find both Taxpayers and the Department failed to meet their respective statutory deadlines, thereby invalidating the exemptions granted by the Department in this case.

3) *The Procedural Requirements of the Revenue Procedures Act Have Not Repealed, Abrogated, or Otherwise Invalidated the June 1 Deadline*

The Department claims various procedural provisions of the Revenue Procedures Act, 1995 S.C. Act 60, prove the General Assembly intended to repeal the June 1 Deadline. *See* Department's Response at pp. 18, 20, 26. Once again, the Department argues a statute has been repealed by mere implication and, once again, the Department is incorrect.

The General Assembly, when it last amended the June 1 Deadline provision, provided a contingency plan for the June 1 Deadline in the event the Revenue Procedures Act was enacted during 1995. 1995 S.C. Act 125, § 2(A)("Section 12-4-720 of the 1976 Code, as last amended by

Act 516 of 1994, is further amended to read: 'Section 12-4-720(A) Applications for property exemptions, other than the exemption provided by Section 12-37-220(A)(9), must be filed as follows: (1) Except as otherwise provided, any property owner . . . shall file an application for exemption with the department *within the period provided in Section 12-47-440* for claims for refund."); 1995 S.C. Act 125, § 2(B) ("*If the South Carolina Revenue Procedures Act is enacted during the 1995 Session of the General Assembly, Section 12-4-720(A)(1) of the 1976 Code, as amended by subsection A of this section, is further amended to read* effective on the effective date of the South Carolina Revenue Procedures Act: 'Except as otherwise provided any property owner . . . shall file an application for exemption with the department *within the period provided in Section 12-54-85(F)* for claims for refund.").

This contingency plan provided for a correction to the citation to the statute of limitations period, which without the contingency plan, would have made reference to a statute of limitation that was subsequently repealed by the Revenue Procedures Act. 1995 S.C. Act 60, § 4(I) ("*The following* sections, articles, and *chapters of the 1976 code are repealed*: . . . *Chapter 47 of Title 12* . . ."). If the General Assembly intended the passage of the Revenue Procedures Act to effect the sea change argued by the Department, the General Assembly would have provided for this change in its contingency plan. Because the General Assembly did not alter the June 1 Deadline in light of the passage of the Revenue Procedures Act, the most logical conclusion is the General Assembly intended the June 1 Deadline to persist and to be interpreted harmoniously with the Revenue Procedures Act.

The Department argues "the Taxing Entities interpretation of Section 12-4-710 would not allow the taxpayer and the Department to engage in the administrative remedy process that can extend far past June 1 of the tax year in question." *See* Department's Response at p. 26. The Department's argument that the June 1 Deadline has been repealed by implication must be

rejected unless the Revenue Procedures Act is so repugnant to the June 1 Deadline that the two are completely incapable of being reconciled. The most logical reconciliation of the Revenue Procedures Act and the June 1 Deadline is as follows:

1. The longest period allowable for the Department to render its department determination under the Revenue Procedures Act is nine months after the protest or refund claim is filed with the Department. S.C. Code Ann. § 12-60-2130; § 12-60-2150; § 12-60-450(E)(3).

2. The only property taxpayers eligible for the Rural Telephone Service Exemption are telephone businesses, who are required to file annual returns with the Department, thus all such property taxpayers are required to claim the Rural Telephone Service Exemption on their annual property tax returns filed with the Department. S.C. Code Ann. § 12-4-720(C).

3. If a property taxpayer has a fiscal year ending December 31 for income tax purposes (the latest possible fiscal year end), its property tax returns must be filed with the Department by April 30th of the property tax year.

4. A property tax return filed before the last day prescribed for the filing is considered as filed on the last day. S.C. Code Ann. § 12-54-85(F)(5)(a). Thus, a property taxpayer with a fiscal year ending December 31 who is eligible for the Rural Telephone Service Exemption, who files its return timely, and who properly claims the Rural Telephone Service Exemption on its return is treated as if the application for the exemption was filed on April 30th of the property tax year.

5. If the Department makes its department determination exactly 9 months after April 30th of the property tax year, the department determination will, at the latest, be made on January 31st of the year following the tax year.

6. Therefore, to reconcile the Revenue Procedures Act (as outlined in steps #1-5 above) with the June 1 Deadline, the June 1 Deadline must be interpreted to mean June 1 of the year following the tax year for a property taxpayer with a fiscal year ending December 31 who files returns annually with the Department.

    a. S.C. Code Ann. § 12-4-710 (the "June 1 Deadline") states, "Except for the exemption provided by Section 12-37-220(A)(9), the department shall determine if any property qualifies for exemption from local property taxes under Section 12-37-220 in accordance with the Constitution and general laws of this State. The determination must be made on an annual basis and the appropriate county official so advised by June first of each year by the department."

    b. In light of the 9 month period outlined in steps #1-5 above , the June 1 Deadline can be interpreted to require the Department to (i) make its department determination on an annual basis (in all events, within the time

> period required by § 12-60-450(E)(3) – i.e. maximum of 9 months after filing of return) and (ii) notify the appropriate county official by June first of each year (the year in which the determination was made by the department – for a property taxpayer with a fiscal year ending December 31 who files annual returns with the Department, this would be June 1 of the year after the tax year).

Even under this reconciled view which gives effect to both statutes, the Department still failed to meet the June 1 deadline because it did not provide notice to the appropriate county official until June 22, 2017 of department determinations related to tax years 2010 (deadline of June 1, 2011), 2011 (deadline of June 1, 2012), 2012 (deadline of June 1, 2013), 2013 (deadline of June 1, 2014), 2014 (deadline of June 1, 2015), 2015 (deadline of June 1, 2016), and 2016 (deadline of June 1, 2017). Under this reconciled view, only the notice of the department determination for tax year 2017 (deadline of June 1, 2018) was timely provided to the appropriate county officials for the Taxing Entities. All other determinations remain invalid for failure of the Department to comply with the June 1 Deadline.

5) *The Department's Practice of Sending 80% Bill Notices to the County Auditors for the Taxing Entities Is Insufficient Notice Under S.C. Code Ann. § 12-4-710*

At most, a notice to a County Auditor that a tax assessment has been disputed, an 80% bill is required to be generated, and the underlying dispute is not expected to be resolved by December 31 of the tax year notifies the County Auditor that a taxpayer has challenged the value of its property for tax purposes. S.C. Code Ann. § 12-60-2140(A). However, the June 1 Deadline requires the Department to do more than just provide notice that a dispute is ongoing and not expected to be resolved by December 31. Specifically, the June 1 Deadline requires "[t]he determination must be made on an annual basis and the appropriate county official so advised by June first of each year by the department." S.C. Code Ann. § 12-4-710. Providing notice that a protest is ongoing and that no resolution is expected by December 31 of the tax year is plainly insufficient to satisfy the June 1 Deadline.

Here, the Department did not notify the appropriate county officials of its determination because it did not make a determination until, at the earliest, it signed the Settlement Agreement on January 8, 2017.[5] At the earliest, copies of the Settlement Agreement were received by the respective county auditors for the Taxing Entities on June 22, 2017. Because the Department failed to notify the appropriate county officials for the Taxing Entities by the June 1 deadline for tax years 2010 through at least 2016, the Department's grants of the Rural Telephone Service Exemption are illegally retroactive and are void for failing to comply with the June 1 Deadline.

D. Home Rule Principles

The Department asserts Home Rule is inapplicable to this case. Department's Response at pp. 30-34. Taxing Entities admit this case does not involve application of the ban on "special legislation" codified in Article VIII, Section 7 of the South Carolina Constitution, but assert principles of Home Rule are unquestionably applicable to this case. The purpose of Home Rule is "that county government should function in the county seats rather than at the State Capitol [such that i]f the counties are to remain units of government, the power to function must exist at the county level. *Knight v. Salisbury*, 262 S.C. 565, 206 S.E.2d 875 (1974). Consistent with that purpose, Home Rule "does not allow the [G]eneral [A]ssembly to repeatedly inject its will into operation of county government." *Van Fore v. Cooke*, 273 S.C. 136, 139, 255 S.E.2d 339, 340 (1979). Given the above principles of leaving local fiscal affairs with the Counties, in the instant case, the Department violates Home Rule by imposing its authority over the Taxing Entities' budgeting powers by ordering the Taxing Entities (with no input from or notice to the Taxing

[5] The Department insists it never made any department determinations in this case. Taxing Entities assert the Department has made department determinations in this case. *See* Taxing Entities Response to Taxpayers' Motion to Dismiss. However, assuming *arguendo* the Department is correct that it never made any department determinations here, then the Department has admitted that it failed to comply with both the June 1 Deadline and the nine month limitation of S.C. Code Ann. § 12-60-450(E)(3).

Entities and, most egregiously, no right to judicial review in any court anywhere) to issue millions of dollars to cover seven years of retroactive property tax refunds.

More specifically, Taxing Entities assert Home Rule principles of local financial decision-making authority are relevant to the issues in this case. Multiple statutory provisions dealing with the powers of local governments explicitly place financial decision-making and budget-making authority in the hands of local governments on issues of annual revenue-raising, taxes, tax millage, and budgetary provisions. *See e.g.* § 4-9-55 (general laws affecting counties expenditures and revenue raising); § 4-9-640 (county budgeting is an annually required process); § 4-9-140 (approval of county budgets is an annually required process); *see also* Taxing Entities Motion at pp. 28-31.

Despite the clear local authority over annual taxation, budgeting, and financial matters, in this case the Department asserts it has the power to order millions of dollars of refund checks retroactive to long-closed county budget years to be issued by Taxing Entities without the Taxing Entities having a seat at the table, without Taxing Entities consent to the terms of the Settlement Agreement, and without the Taxing Entities having any right to request a contested case hearing or otherwise exercise rights to judicial review. The Department's notion completely contradicts the sovereignty local governments have been granted over fiscal affairs by the General Assembly. Moreover, the Department's notion ignores (a) the statutory rights Taxing Entities have under chapters 4 and 60 of Title 12 of the South Carolina Code of Laws to challenge department determinations and (b) the protection offered to the annual budget and revenue-raising process by the June 1 Deadline. *See* Taxing Entities' Response to Taxpayers' Motion to Dismiss at pp. 13-16. Thus, Department's arguments in this case are antithetical to long-standing principles of Home Rule and should be rejected by this Court.

IV. Conclusion

Based on the foregoing, Taxing Entities respectfully request this Court grant the Motion.

Respectfully submitted,

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February 9, 2018

EXHIBIT A

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

SC REVENUE RULING #16-12

SUBJECT:	Manufacturers' Property – Return, Assessment and Payment of Taxes (Property Tax)
EFFECTIVE DATE:	Applies to all periods open under the statute.
SUPERSEDES:	RR #05-20 and all previous advisory opinions and any oral directives in conflict herewith.
REFERENCES:	S.C. Code Ann. Section 12-4-540 (2014) S.C. Code Ann. Section 12-37-610 (2014) S.C. Code Ann. Section 12-37-710 (Supp. 2015) S.C. Code Ann. Section 12-37-715 (Supp. 2015) S.C. Code Ann. Section 12-37-890 (Supp. 2015) S.C. Code Ann. Section 12-37-900 (Supp. 2015) S.C. Code Ann. Section 12-37-905 (2014) S.C. Code Ann. Section 12-37-970 (Supp. 2015) S.C. Code Ann. Section 12-39-140 (2014) S.C. Code Ann. Section 12-39-150 (2014) S.C. Code Ann. Section 12-45-70 (2014) S.C. Code Ann. Section 12-45-180 (Supp. 2015)
AUTHORITY:	S. C. Code Ann. Section 12-4-320(2014) S. C. Code Ann. Section 1-23-10(4)(Supp. 2005) SC Revenue Procedure #09-3
SCOPE:	The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

I. INTRODUCTION

This advisory opinion addresses the property tax rules regarding the return, assessment, and payment of property taxes on manufacturers' real and personal property.[1] Title 12 contains

[1] This advisory opinion is an update of SC Revenue Ruling #05-20. While the information is presented in a different format and provides different scenarios than SC Revenue Ruling #05-20, this advisory opinion is not intended to change the Department's positions in SC Revenue Ruling #05-20.

numerous property tax provisions applicable to manufacturers' property. However, the main focus of this advisory opinion is Code Section 12-37-970, which contains the rules regarding the return and assessment of manufacturers' property.

This advisory opinion is divided into the following parts:

- Part II provides a brief discussion of general property tax rules for the return, assessment and payment of taxes on real and personal property;
- Part III provides a discussion of the general rules for the return, assessment, and payment of property taxes for manufacturers' property under Code Section 12-37-970;
- Part IV discusses the rules for when manufacturers' property is placed in service after the end of the manufacturer's income tax year;
- Part V discusses the special rules for when manufacturers' property is sold during the calendar year;
- Part VI discusses the rules for when a manufacturer begins operations in South Carolina;
- Part VII discusses the rules for when a manufacturer ceases operations in South Carolina;
- Part VIII discusses the rules for when a manufacturer has more than one income tax year end during the calendar year.[2]

II. RETURN AND ASSESSMENT OF PROPERTY - GENERAL PRINCIPLES

The property tax rules discussed in this advisory opinion can be confusing, and while a general discussion of property tax concepts is beyond the scope of this advisory opinion, a basic understanding of some general property tax terms and concepts will be helpful in understanding the rules applicable to manufacturers' property.

A. Law

1. Code Section 12-37-610 – Liability for Taxes on Real Property

Code Section 12-37-610 provides:

> Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, or on the real property that, as of December thirty-first of the year preceding the tax year, he has care of as guardian, executor or committee or may have the care of as guardian, executor, trustee or committee.

[2] Although this advisory opinion does not discuss fee in lieu of property taxes for manufacturers, the statutes regarding the return, assessment and payment of manufacturers' property are applicable to a manufacturer under a negotiated fee in lieu of taxes under Code Sections 4-29-67, 4-12-30, or Chapter 44, Title 12 or a multicounty park fee in lieu of taxes under Code Section 4-1-170. This advisory opinion does not discuss valuation methods for manufacturers' property.

2. **Code Section 12-37-710 – Liability for Taxes on Personal Property**

Code Section 12-37-710 provides:

> Every person shall annually list for taxation the following personal property, to wit:
>
> (1) all the tangible personal property in the State owned or controlled by him . . . .

3. **Code Section 12-37-715 – Personal Property Taxed Only Once a Year**

Code Section 12-37-715 provides:

> Notwithstanding any other provision of law, no personal property may be taxed for ad valorem purposes more than once in any tax year, except as provided for by the provisions of Section 56-3-210.[3]

4. **Code Section 12-37-890 – Property Returned to County Where Property Is Situated**

Code Section 12-37-890 provides:

> All property used in any business, furniture, and supplies used in hotels, restaurants and other houses of public resort, personal property used or in connection with storehouses, manufactories, warehouses, or other places of business, all personal property and merchants' and manufacturers' stock and capital shall be returned for taxation and taxed in the county, city, and town in which it is situated. . . . All other personal property shall be returned for taxation and taxed at the place where the owner thereof shall reside at the time of listing the same, if the owner resides in this State; if not, at the residence of the person having it in charge. And all real estate shall be taxed in the county, city, ward, or town where it is located. . . . .

5. **Code Section 12-37-900 – Returning Real Property to County Assessor**

Code Section 12-37-900 provides:

> Every person required by law to list property shall, annually, between the first day of January and the first day of March, make

[3] Code Section 56-3-210 pertains to time period for registering a newly acquired vehicle.

> out and deliver to the assessor of the county in which the property is by law to be returned for taxation a statement, verified by his oath, of all the real estate which has been sold or transferred since the last listing of the property for which he was responsible and to whom, and of all real property possessed by him, or under his control, on the thirty-first day of December next preceding, either as owner, agent, parent, spouse, guardian, executor, administrator, trustee, receiver, officer, partner, factor, or holder with the value thereof, on such thirty-first day of December, at the place of return, estimating according to the rules prescribed by law.
>
> A manufacturer not under a fee agreement is not required to return personal property for ad valorem tax purposes if the property remains in this State at a manufacturing facility that has not been operational for one fiscal year and the personal property has not been used in operations for one fiscal year. The personal property is not required to be returned until the personal property becomes operational in a manufacturing process or until the property has not been returned for ad valorem tax purposes for four years, whichever is earlier. A manufacturer must continue to list the personal property annually and designate on the listing that the personal property is not subject to tax pursuant to this section.[4]

6. Code Section 12-37-905 – Returning Personal Property to County Auditor

Code Section 12-37-905 provides:

> Notwithstanding any other provision of this title, every person required by law to make a property tax return to the county auditor must file the return with the county auditor on or before April thirtieth for property owned as of the preceding December thirty-first.

7. Code Section 12-45-70 – Due Date for Payment of Property Taxes

Code Section 12-45-70 provides:

> (A) All taxes are due and payable between the thirtieth day of September and the fifteenth day of January after their assessment in each year. . . .

[4] While the property tax exemption provided in the second paragraph of Code Section 12-37-900 applies to certain non-operating manufacturers, these manufacturers are not the focus of this advisory opinion. Accordingly, for purposes of this advisory opinion, assume that this exemption is not applicable unless stated otherwise.

B. Discussion

1. Assessment of Property

In South Carolina, property is taxed at its assessed value. The assessed value is determined by multiplying the property's fair market value, as determined under the law, by an assessment ratio, i.e., "assessing" the property. The assessment ratio varies depending on the type of property. For example, commercial real property is assessed at 6%. Business personal property is assessed at 10.5%. All manufacturers' real and personal property is assessed at 10.5%. This assessed value is then taxed by applying the millage rate determined annually by each taxing jurisdiction.[5]

For example, if a manufacturer owned a piece of property with a fair market value of $10,000, the assessed value of the property would be $1,050 ($10,000 x 10.5%, the assessment ratio for manufacturers' property). If the taxing jurisdiction levied a tax of 275 mills, then the tax owed on the property would be $288.75 ($1,050 x .275).

2. Property Tax Returns and Lien Date

Under general property tax law, real property must be returned to the county in which the property is located.[6] For real property returned to the county assessor, the return is due March 1 of the property tax year.[7] For personal property returned to the county auditor, the return is due April 30 of the property tax year.[8] The return generally must list all the property held by the taxpayer on December 31 of the year preceding the property tax year.[9] This December 31 date is referred to as the "lien date." The lien date is used to determine the person liable for taxes on a particular piece of property and the property's value for property tax purposes.

For example, the person liable for 2018 property taxes on a particular piece of real property would be the person who owned the property on December 31, 2017. The value used to determine the 2018 property taxes on the property would be the property's value as of December 31, 2017. The reporting date for the 2018 property taxes on the property would be March 1, 2018.

3. Property Tax Years and Payment of Tax

Property tax years are always calendar years. Specifically, a property tax year is the calendar year in which the county auditor records the assessed value of taxable property on the county tax

[5] Each taxing jurisdiction determines its tax rate annually by dividing the cost of its annual budget by the total assessed value within the taxing jurisdiction. This results in a fraction in thousandths (mills), known as the millage rate or millage.
[6] Code Section 12-37-890.
[7] Code Section 12-37-900.
[8] Code Section 12-37-905.
[9] Code Sections 12-37-900 and 12-37-905.

books and during which the county treasurer bills the taxpayer for the taxes due.[10] Counties generally bill taxpayers for property taxes during the fall of the property tax year. The taxes must be paid between September 30 of the property tax year and January 15 of the following year.[11] Payments made after January 15 or 30 days after the mailing of a tax notice, whichever occurs later, may be subject to penalty.[12]

III. RETURN AND ASSESSMENT OF MANUFACTURERS' PROPERTY

A. Law

1. Code Section 12-4-540 – Assessment of Manufacturers' Property by Department

Code Section 12-4-540 provides:

> (A)(1) The Department has the sole responsibility for the appraisal, assessment, and equalization of the taxable values . . . of the real and personal property owned by or leased to the following businesses and used in the conduct of their business:
>
> (a) manufacturing . . . .
>
> . . . .
>
> (E) Except as otherwise provided, the department shall assess all real and personal property, leased or used, to the owner.

2. Code Section 12-37-970 – Return and Assessment of Manufacturers' Property

Code Section 12-37-970 is the main focus of this advisory opinion. Code Section 12-37-970 contains the general rules regarding the return and assessment of manufacturers' property and special rules for specific situations. Code Section 12-37-970 provides:

> The assessment for property taxation of . . . manufacturers' real and tangible personal property . . . must be determined by the department from property tax returns submitted by the taxpayers to the department on or before the last day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes in accordance with Chapter 7 [sic][13] of this title. The department by regulation shall prescribe the form of return required by this section, the information to be contained in it, and the manner in which returns must be submitted. Every taxpayer required to make a return to the department of

General Rule for Manufacturers' Property

[10] Code Sections 12-37-610, 12-39-140, and 12-39-150.
[11] Code Section 12-45-70.
[12] Code Section 12-45-180.
[13] In 1995, South Carolina's income tax chapter was moved from Chapter 7, Title 12 to Chapter 6, Title 12.

property for assessment for property taxation must make the return to the department not less than once each calendar year. Whenever by a change of accounting period, or otherwise, more than one accounting period ends within any one calendar year, the taxpayer must make one such return within the prescribed time for filing following the end of each of the accounting periods and the department shall determine the assessment from the return setting forth the greatest value.

More than One Tax Year Ends During Calendar Year

When property required to be returned as herein provided is sold after the end of the seller's accounting year and before January first next ensuing and when the purchaser's accounting year ends after the seller's and before January first next ensuing, the property must be returned by the seller as of the end of his accounting period. The purchaser is not required to list and return property as of the close of his accounting period during the calendar year of the sale. The seller and the purchaser are jointly and singularly liable for the tax that is due and payable by reason of this provision. The provision of this section does not apply to motor vehicles licensed for use on public highways.

First Special Rule for Sales of Manufacturers' Property

When property required to be returned as provided in this section is sold before the end of the seller's accounting year and before January first next ensuing and when the purchaser's accounting year ends before the date of purchase and before January first next ensuing, the property must be listed and returned by the taxpayer holding title as of December thirty-first and is liable for the tax for the ensuing year.

Second Special Rule for Sales of Manufacturers' Property

The Department of Revenue shall forward the assessments prepared as a result of the returns submitted pursuant to this section to the appropriate local taxing authorities no later than August fifteenth of the applicable tax year.

DOR Forwards Assessments

B. Discussion

1. **Assessment of Manufacturers' Property by the Department**

Under general property tax principles property is assessed by the county officials (county assessor or county auditor) of the county in which the property is situated. However, Code Section 12-4-540 provides an exception for manufacturers' property. For manufacturers' property, Code Section 12-4-540 provides that it is the Department's responsibility to value and assess manufacturers' property.[14] The Department does not compute the tax. The Department forwards the assessment to the appropriate local taxing authorities who compute the tax and bill the taxpayer.

[14] This rule does not apply to property not used in the manufacturers business or motor vehicles licensed for use on the public highways.

2. Property Tax Returns and Lien Date for Manufacturers' Property

Under general property tax principles, property must be returned to the county in which the property is located by March 1 (for real property returned to the county assessor) or April 30 (for personal property returned to the county auditor) of the property tax year. Taxpayers are required to list on the return the property held as of December 31 preceding the tax year, i.e., the lien date.[15]

For manufacturers' property, Code Section 12-37-970 provides that property tax returns are due on or before the last day of the fourth month after the close of the manufacturer's income tax accounting year.[16] The lien date for manufacturers' property is the last day of the manufacturer's income tax year next preceding the property tax year.[17]

Ordinarily, related statutes should be construed to give full force and effect to each statute, and to the extent possible, similar statutory provisions should be harmonized and reconciled. When two statutes are capable of co-existence, absent a clear legislative intent to the contrary, each must be regarded as effective, and in interpreting related and co-existing statutes, the statutes must be harmonized unless they are irreconcilable and in hopeless conflict. 73 Am. Jur. *Statutes* Section 168 (2001). Thus, Code Sections 12-37-610, 12-37-900, 12-37-905 and 12-37-970 should be read together and each given effect as much as possible.

Code Section 12-37-970 is a specific provision that addresses property tax returns for manufacturers' property. Where there is a statute dealing with a subject in general terms and another statute dealing with a part of the same subject in a more minute and definite way, the special statute will be considered as an exception to, or qualification of, the general statute and given effect.[18] Accordingly, the provisions in Code Section 12-37-970 that are specific to manufacturers' property take precedence over the general rules contained in Code Sections 12-37-610, 12-37-900 and 12-37-905.[19]

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[15] Code Sections 12-37-610, 12-37-900 and 12-37-905.

[16] Personal property located at the manufacturer's facility does not have to be returned for property tax purposes if the facility has not been operational for one fiscal year and the personal property has not been used in the operations for one fiscal year. A return is not required for the property until it becomes operational in a manufacturing process or until it has not been returned for four years, whichever occurs first. This special rule does not apply to property subject to a fee in lieu of property taxes. Code Section 12-37-900.

[17] See S.C. Atty. Gen. Op. No. 2509 (September 12, 1968) (holding that certain taxpayers (i.e., manufacturers) that close their income tax year on June 30 must list property owned as of that date for the ensuing property tax year).

[18] *Wilder v. South Carolina State Highway Dept.*, 228 S.C. 448, 454, 90 S.E.2d 635, 638 (1955).

[19] See S.C. Atty. Gen. Op. No. 2509 (September 12, 1968), which concludes that Code Section 12-37-970 controls in determining when a manufacturer is required to file a property tax return.

Note: Under Code Section 12-37-970, a manufacturer's lien date and/or property tax return due date for a given property tax year can change depending on when the manufacturer's income tax year ends. But the property tax year itself does not change. It is always a calendar year, regardless of the taxpayer's income tax year. In other words, there is no such thing as a "fiscal" property tax year. All taxpayers have the same property tax year, which is always a calendar year. Property tax year 2018 is January 1, 2018 through December 31, 2018; property tax year 2019 is January 1, 2019 through December 31, 2019, and so on.

3. Payment of Taxes on Manufacturers' Property

Under general property tax principles, property taxes must be paid between September 30 of the property tax year and January 15 following the property tax year.[20] For manufacturers' property, the rule is the same – taxes on manufacturers' property are due on January 15 following the property tax year.[21]

[20] Code Section 12-45-70. Payments made after January 15 may be subject to a penalty. Code Section 12-45-180.
[21] Code Sections 12-45-70 and 12-45-180.

4. Manufacturers' Property Chart – Summary of Important Dates

The following chart illustrates the above rules regarding the return, assessment and payment of property taxes on manufacturers' property for a manufacturer currently operating in South Carolina. The property tax year is 2018.

Manufacturer's Income Tax Year End[22]	Lien Date for Property Tax Year 2018[23]	Return Due Date for Property Tax Year 2018[24]	County Billing Date for Property Tax Year 2018	Payment Due Date for Property Tax Year 2018[25]
1/31/2017*	1/31/2017	5/31/2017	Fall 2018	1/15/2019
2/28/2017	2/28/2017	6/30/2017	Fall 2018	1/15/2019
3/31/2017	3/31/2017	7/31/2017	Fall 2018	1/15/2019
4/30/2017	4/30/2017	8/31/2017	Fall 2018	1/15/2019
5/31/2017	5/31/2017	9/30/2017	Fall 2018	1/15/2019
6/30/2017	6/30/2017	10/31/2017	Fall 2018	1/15/2019
7/31/2017	7/31/2017	11/30/2017	Fall 2018	1/15/2019
8/31/2017	8/31/2017	12/31/2017	Fall 2018	1/15/2019
9/30/2017	9/30/2017	1/31/2018	Fall 2018	1/15/2019
10/31/2017	10/31/2017	2/28/2018	Fall 2018	1/15/2019
11/30/2017	11/30/2017	3/31/2018	Fall 2018	1/15/2019
12/31/2017 (Calendar Year TP)*	12/31/2017	4/30/2018	Fall 2018	1/15/2019

*See examples below.

Example 1: Fiscal Year Manufacturer Currently Operating in South Carolina. Taxpayer is a manufacturer whose income tax year is February 1– January 31, 2017. On January 31, 2017, Taxpayer owns real and personal property in South Carolina. For property tax year 2018, Taxpayer must file a return with the Department listing the real and personal property that it owned on January 31, 2017. Taxpayer must file its 2018 return by May 31, 2017. Taxpayer must pay the 2018 taxes by January 15, 2019.

[22] The manufacturers' income tax year is the accounting period regularly employed by the taxpayer for income tax purposes. It may be a calendar year or a fiscal year. Code Section 12-37-970.

[23] The lien date is the last day of the manufacturer's income tax year next preceding the property tax year. Code Section 12-37-970.

[24] The return due date is the last day of the fourth month after the end of the manufacturer's income tax year. In other words, the return is due on last day of the fourth month after the lien date. Code Section 12-37-970.

[25] Property taxes must be paid between September 30 of the property tax year and January 15 following the property tax year. Code Section 12-45-70. Payments made after January 15 may be subject to a penalty. Code Section 12-45-180.

Note: For fiscal year manufacturers, the time between the return due date and the payment due date may be a year or longer. In this example, property taxes are not due until almost 20 months after the property tax return is due.

Example 2: Calendar Year Manufacturer Currently Operating in South Carolina. Taxpayer is a manufacturer whose income tax year is January 1 – December 31, 2017. On December 31, 2017, Taxpayer owns real and personal property in South Carolina. For property tax year 2018, Taxpayer must file a return with the Department listing the real and the personal property that it owned on December 31, 2017. Taxpayer must file its return by April 30, 2018. Taxpayer must pay the 2018 property taxes by January 15, 2019.

IV. MANUFACTURERS' PROPERTY PLACED IN SERVICE AFTER END OF MANUFACTURER'S INCOME TAX YEAR

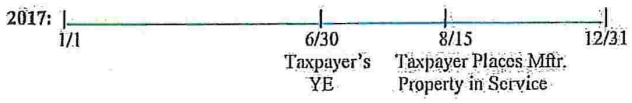
Code Section 12-37-970 has no specific provision relating to how a fiscal year manufacturer currently operating in South Carolina is to return property that is placed in service after the end of its income tax year. Under the general rule of Code Section 12-37-970, the return must list the property held on the last day of the manufacturer's income tax year preceding the property tax year, i.e., the lien date for manufacturers' property. In this case, however, the manufacturer has not placed the property in service as of the end of the income tax year preceding the property tax year.[26]

Code Section 12-37-970 provides that every taxpayer required to make a return to the Department for assessment for taxation must make the return to the Department not less than once each calendar year. However, in such instances, the Department has not required a manufacturer to file a second return reporting property placed in service subsequent to the end of its income tax year but before December 31 of the calendar year. This position is consistent with S.C. Atty. Gen. Op. No. 2509 (September 12, 1968), which found that a taxpayer that lists its property as of the close of its income tax year for the ensuing property tax year is not required to list and to pay property tax on property placed in service after the close of its income tax year but before December 31 of that year. Instead, such property must be listed on the manufacturer's property tax return for the following property tax year if the manufacturer still owns the property at the end of its next income tax year. Below is an example illustrating this rule.[27]

[26] In some instances, the manufacturer may have already filed a property tax return before placing new property in service. This return would list only property that the manufacturer owned as of the end of its income tax year and would not include property placed in service after the return is filed.

[27] See Part V. "Sales of Manufacturers' Property During the Calendar Year" for similar examples (Examples 1 - 3) and exceptions (Examples 4 - 6).

Example: Fiscal Year Taxpayer Currently Operating in South Carolina Places Assets in Service After the End of its Income Tax Year. Taxpayer is a manufacturer whose income tax year is July 1 – June 30. On June 30, 2017, Taxpayer owns real property and personal property. On August 15, 2017, Taxpayer purchases a new machine and places it in service. On June 30, 2018, Taxpayer still owns the new machine.



For property tax year 2018, Taxpayer will file a return with the Department listing the real property and personal property that it owned on June 30, 2017, which is Taxpayer's lien date for property tax year 2018. The 2018 property tax return is due October 31, 2017. The 2018 property taxes are due January 15, 2019. The new machine that was placed in service after the end of Taxpayer's income tax year is not subject to 2018 property taxes. Accordingly, Taxpayer does not list the new machine on its 2018 property tax return.

For property tax year 2019, Taxpayer will file the 2019 property tax return listing the new machine and all other real and personal property that Taxpayer owned on June 30, 2018, which is Taxpayer's lien date for property tax year 2019. The 2019 property tax return is due October 31, 2018. The 2019 property taxes are due January 15, 2020.

V. SALES OF MANUFACTURERS' PROPERTY DURING THE CALENDAR YEAR

In Parts III and IV above, the general rules under Code Section 12-37-970 for manufacturers currently operating in South Carolina were discussed. Under the general rules, property tax returns for manufacturers' property must be filed with the Department on or before the last day of the fourth month after the close of the income tax year preceding the property tax year. The return must list the property held on the last day of the manufacturer's income tax year preceding the property tax year, i.e., the lien date for manufacturers' property. However, Code Section 12-37-970 also provides two special rules for certain scenarios when manufacturers' property is sold during the calendar year.[28]

A. First Special Rule for Sales of Manufacturers' Property During the Calendar Year

The first special rule for manufacturers' property sold during the calendar year is found in the second paragraph of Code Section 12-37-970:

> When property required to be returned as herein provided is sold after the end of the seller's accounting year and before January

[28] Examples 4 - 6 in Part V.C. illustrate these two special rules.

> first next ensuing and when the purchaser's accounting year ends after the seller's and before January first next ensuing, the property must be returned by the seller as of the end of his accounting period. The purchaser is not required to list and return property as of the close of his accounting period during the calendar year of the sale. The seller and the purchaser are jointly and singularly liable for the tax that is due and payable by reason of this provision. The provision of this section does not apply to motor vehicles licensed for use on public highways.

There are two general scenarios in which this rule will apply:

Scenario A: The seller's accounting year ends; the sale occurs; the purchaser's accounting year ends.



Scenario B: The seller's accounting year ends; the purchaser's accounting year ends; the sale occurs.



In either scenario, the manufacturers' property sold is returned by the seller as of the end of the seller's income tax year. However, the seller and the purchaser are jointly liable for the tax due on the manufacturers' property sold.

B. Second Special Rule for Sales of Manufacturers' Property During the Calendar Year

The second special rule for manufacturers' property sold during the calendar year is found in the third paragraph of Code Section 12-37-970:

> When property required to be returned as provided in this section is sold before the end of the seller's accounting year and before January first next ensuing and when the purchaser's accounting year ends before the date of purchase and before January first next ensuing, the property must be listed and returned by the taxpayer holding title as of December thirty-first and is liable for the tax for the ensuing year.

There is one general scenario in which this rule will apply:

Scenario: The purchaser's accounting year ends; the sale occurs; the seller's accounting year ends.



In the second special rule, the manufacturers' property sold must be listed and returned by the taxpayer holding title as of December 31 of the calendar year of the sale. This same taxpayer is liable for the tax on the sold property for the ensuing property tax year.

Code Section 12-37-970, paragraph one, provides that every taxpayer required to make a return to the Department for assessment for taxation must make the return to the Department not less than once each calendar year. Reading the provisions of Code Section 12-37-970 together and consistent with Code Section 12-37-900, the Department's longstanding administrative policy is that the manufacturer holding title as of December 31 of the calendar year of sale must return the property that is the subject of the sale. This assures that the property is taxed for the ensuing property tax year. Since the purchaser is the party holding title on December 31, this requires that the purchaser file a second return reporting the purchased property as of December 31 of the calendar year of the sale. Consistent with Code Section 12-37-970, the manufacturer who is responsible for returning the property must file the return with the Department by April 30 of the next calendar year.

C. Examples

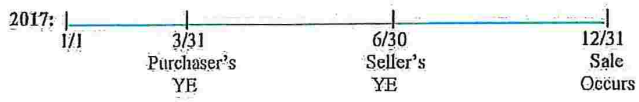
The following examples are intended to illustrate the seller's and purchaser's responsibilities involving sales of manufacturers' property. Examples 1 – 3 illustrate the general rules of Code Section 12-37-970. In these examples, the manufacturer owning the property at the end of its income tax year returns the property and is liable for the property taxes.[29] Examples 4 and 5 illustrate the first special rule under Code Section 12-37-970 for sales of manufacturers' property. Example 6 illustrates the second special rule under Code Section 12-37-970 for sales of manufacturers' property. The following examples assume that both the seller and purchaser are manufacturers currently operating in South Carolina. Unless otherwise stated, the applicable property tax year is 2018.

[29] For these examples it may be helpful to consult the manufacturers' property chart in Part III.B.4.

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Example 1: General Rule of Code Section 12-37-970

Purchaser's Income Tax Year End:	March 31, 2017
Seller's Income Tax Year End:	June 30, 2017
Sale Occurs:	December 31, 2017



Analysis. Under the general rule of Code Section 12-37-970, a manufacturer must return property it holds as of the end of its income tax year. In this example, the seller owns the property as of the end of its income tax year. Therefore, the seller will report the property on its 2018 property tax return. The seller and purchaser have the following responsibilities with respect to the property.

Seller's Responsibilities. For 2018 property tax year, the seller is liable for the property taxes on the property. The return is due October 31, 2017. The 2018 property taxes must be paid by January 15, 2019.

Purchaser's Responsibilities. For 2018 property tax year, none with respect to the property purchased. For 2019 property tax year, the purchaser must report the purchased property on its 2019 property tax return. The 2019 return is due on July 31, 2018. The 2019 property taxes are due by January 15, 2020.

Example 2: General Rule of Code Section 12-37-970

Sale Occurs:	March 31, 2017
Purchaser's Income Tax Year End:	June 30, 2017
Seller's Income Tax Year End:	December 31, 2017



Analysis. Under the general rule of Code Section 12-37-970, a manufacturer must return property it holds as of the end of its income tax year. In this example, the purchaser owns the property as of the end of its income tax year. Therefore, the purchaser will report the property on its 2018 property tax return. The seller and purchaser have the following responsibilities with respect to the property.

Seller's Responsibilities. For the 2018 property tax year, none with respect to the property sold.

Purchaser's Responsibilities. For 2018 property tax year, the purchaser is liable for the property taxes on the property. The return is due October 31, 2017. The 2018 property taxes must be paid by January 15, 2019.[30]

Example 3: General Rule of Code Section 12-37-970

Sale Occurs:	December 31, 2017
Purchaser's Income Tax Year End:	December 31, 2017
Seller's Income Tax Year End:	December 31, 2017

2017: |——————————————————————————————|
1/1 12/31

- Sale Occurs
- Purchaser's YE
- Seller's YE

Analysis. Under the general rule of Code Section 12-37-970, a manufacturer must return property it holds as of the end of its income tax year. In this example, the purchaser owns the property as of the end of its income tax year. Since the sale occurs on the same date as the end of both the seller's and the purchaser's income tax years, the purchaser owns the property as of the end of the day on December 31, 2017. Therefore, the purchaser will report the property on its 2018 property tax return. The seller and purchaser have the following responsibilities with respect to the property.

Seller's Responsibilities. For the 2018 property tax year, none with respect to the property sold.

Purchaser's Responsibilities. For 2018 property tax year, the purchaser is liable for the property taxes on the property. The return is due April 30, 2018. The 2018 property taxes must be paid by January 15, 2019.

[30] If the seller's income tax year end was June 30 and the purchaser's year end was December 31, the purchaser would still be liable for the 2018 property taxes because the purchaser would own the property at the end of its income tax year.

Example 4: First Special Rule – Scenario A[31]

Seller's Income Tax Year End:	March 31, 2017
Sale Occurs:	June 30, 2017
Purchaser's Income Tax Year End:	September 30, 2017



Analysis. Under the general rule of Code Section 12-37-970, a manufacturer must return property it holds as of the end of its income tax year. However, Code Section 12-37-970, paragraph two, provides that if (1) a manufacturer's property is sold after the end of the seller's income tax year and before January 1 of the next calendar year and (2) the purchaser's income tax year ends after the seller's and before January 1 of the next calendar year, then the property must be returned by the seller as of the end of its income tax year. The seller and the purchaser are jointly and singularly liable for the tax. The seller and the purchaser have the following responsibilities with respect to the property.

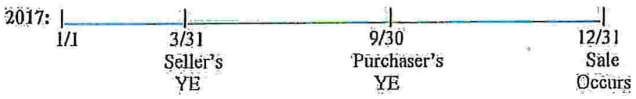
Seller's Responsibilities. For 2018 property tax year, the seller is liable for the property taxes on the property. The seller must list the property on its 2018 return. The 2018 return is due July 31, 2017. The 2018 property taxes must be paid by January 15, 2019.

Purchaser's Responsibilities. For 2018 property tax year, the purchaser is not required to report the purchased property on its 2018 property tax return. However, the purchaser is jointly and singularly liable with the seller for the taxes due. For 2019 property tax year, the purchaser must report the purchased property on its 2019 property tax return. The 2019 return is due on January 31, 2019. The 2019 property taxes are due by January 15, 2020.[32]

[31] See Part V.A. for a discussion of this special rule (Code Section 12-37-970, paragraph two).
[32] Liability for the 2018 property taxes would be the same if the purchaser was a calendar year taxpayer, i.e., if the purchaser's income tax year ended on December 31.

Example 5: First Special Rule – Scenario B[33]

Seller's Income Tax Year End:	March 31, 2017
Purchaser's Income Tax Year End:	September 30, 2017
Sale Occurs:	December 31, 2017



Analysis. Under the general rule of Code Section 12-37-970, a manufacturer must return property it holds as of the end of its income tax year. However, Code Section 12-37-970, paragraph two, provides that if (1) a manufacturer's property is sold after the end of the seller's income tax year and before January first of the next calendar year and (2) the purchaser's income tax year ends after the seller's and before January first of the next calendar year, then the property must be returned by the seller as of the end of its income tax year. The purchaser is not required to list and return the property as of the close of its income tax year during the calendar year of sale. The seller and the purchaser are jointly and singularly liable for the tax. The seller and the purchaser have the following responsibilities with respect to the property.

Seller's Responsibilities. For 2018 property tax year, the seller is liable for the property taxes on the property. The seller must list the property on its 2018 return. The 2018 return is due July 31, 2017. The 2018 property taxes must be paid by January 15, 2019.

Purchaser's Responsibilities. For 2018 property tax year, the purchaser is not required to report the purchased property on its 2018 property tax return. However, the purchaser is jointly and singularly liable with the seller for the taxes due. For 2019 property tax year, the purchaser must report the purchased property on its 2019 property tax return. The 2019 return is due on January 31, 2019. The 2019 property taxes are due by January 15, 2020.

[33] See Part V.A. for discussion of this special rule (Code Section 12-37-970, paragraph two).

Example 6: Second Special Rule[34]

Purchaser's Income Tax Year End:	April 30, 2017
Sale Occurs:	September 30, 2017
Seller's Income Tax Year End:	November 30, 2017



Analysis. Under the general rule of Code Section 12-37-970, a manufacturer must return property it holds as of the end of its income tax year. However, Code Section 12-37-970, paragraph three, provides that if (1) manufacturers' property is sold before the end of the seller's income tax year and before the next January 1 and (2) the purchaser's income tax year ends before the date of the purchase and before the next January 1, then the property must be listed and returned by the taxpayer holding title as of December 31 and that person is liable for the tax for the ensuing year.

In this example, the property sold must be listed and returned by the taxpayer holding title as of December 31. This same taxpayer is liable for the tax on the sold property for the ensuing property tax year. Since the purchaser is the party holding title on December 31, this requires that the purchaser file a second return reporting the purchased property as of December 31. Consistent with Code Section 12-37-970, the manufacturer who is responsible for returning the property must file the return with the Department by April 30 of the next calendar year. The seller and the purchaser have the following responsibilities with respect to the property.

Seller's Responsibilities. For the 2018 property tax year, none with respect to the property sold.

Purchaser's Responsibilities.

Return 1. For 2018 property tax year, the purchaser must file a return for all property it owns as of April 30, 2017. This return is due by August 31, 2017.

Return 2. For 2018 property tax year, the purchaser is also liable for the property taxes on the property it purchased on September 30, 2017, assuming that purchaser is holding title to the property on December 31, 2017. The purchaser must report the purchased property on a separate 2018 return.[35] This return is due on April 30, 2018.

[34] See Part V.B. for a discussion of this special rule (Code Section 12-37-970, paragraph three).
[35] This document does not address multiple sale scenarios. A subsequent purchaser may be required to return the property depending on the facts of the situation.

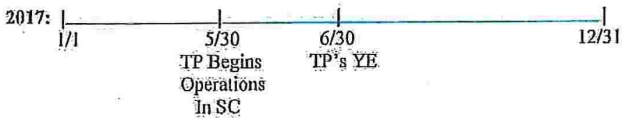
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Payment of Taxes. The purchaser is liable for the 2018 taxes for both property tax returns. All 2018 taxes are due by January 15, 2019.

VI. MANUFACTURER BEGINS OPERATIONS IN SOUTH CAROLINA

Under Code Section 12-37-970, the lien date for manufacturers' property is the last day of the manufacturer's income tax year next preceding the property tax year. Accordingly, a manufacturer that begins operations in South Carolina **before** the end of its income tax year returns the manufacturers' property it owned at the end of its income tax year for the ensuing property tax year.

Example: Fiscal Year Manufacturer Begins Operating in South Carolina **Before** the End of Its Income Tax Year. Taxpayer is a manufacturer whose income tax year is July 1–June 30. Taxpayer begins operating in South Carolina on May 30, 2017.

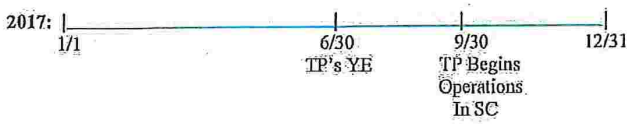


Property tax year 2018 is the first year that the manufacturer's property is subject to property taxes. Taxpayer must file its 2018 property tax return based on the property it holds in South Carolina on June 30, 2017. The 2018 property tax return is due October 31, 2017. The 2018 property taxes are due January 15, 2019.

A manufacturer who begins operations in South Carolina **after** the close of its income tax year would not have any property to return for the ensuing property tax year. However, Code Section 12-37-970 provides that every taxpayer required to make a property tax return to the Department must do so not less than once each calendar year. The longstanding administrative policy of the Department has been to interpret this provision as requiring a property tax return for each year a manufacturer is in business in South Carolina.

Read in conjunction with Code Section 12-37-900, these provisions require a new manufacturer who begins operating in South Carolina **after** the close of its income tax year to list property it holds as of December 31 preceding the first property tax year that the manufacturer's property is subject to property taxes. Therefore, a new manufacturer that begins operating in South Carolina after the end of its income tax year must file a property tax return for the ensuing property tax year based on assets that it owns as of December 31 of the calendar year that it begins operating in South Carolina. The return is due April 30 of the next calendar year.

Example: Fiscal Year Manufacturer Begins Operating in South Carolina After the End of Its Income Tax Year. Taxpayer is a manufacturer whose income tax year is July 1 – June 30. Taxpayer begins operating in South Carolina on September 30, 2017.



Property tax year 2018 is the first year that the manufacturer's property is subject to property taxes. However, since Taxpayer is required to file a return for each property tax year that it is in operation in South Carolina, Taxpayer must file its 2018 property tax return based on the property it holds in South Carolina on December 31, 2017. The 2018 property tax return must be filed with the Department by April 30, 2018. The 2018 property taxes are due January 15, 2019.

For property tax year 2019, Taxpayer must file its return listing the real and personal property it owned on June 30, 2018. Taxpayer must file its 2019 return by October 31, 2018. The 2019 property taxes are due January 15, 2020.

VII. MANUFACTURER CEASES OPERATIONS IN SOUTH CAROLINA

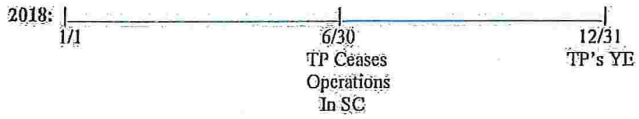
Code Section 12-37-970 has no provision specifically directed at a manufacturer's last year operating in South Carolina. Under the general rule of Code Section 12-37-970, a manufacturer currently operating in South Carolina is liable for property taxes on property it owns on the lien date for the ensuing property tax year. Accordingly, the manufacturer must file a return listing the property owned on the lien date. The return is due on the last day of the fourth month after the lien date.

A manufacturer that ceases operations prior to its lien date is not liable for property taxes on the property it owns on the lien date for the ensuing property tax year. Accordingly, a manufacturer that ceases operations prior to its lien date is not required to list the property for the ensuing property tax year. However, the manufacturer is required to file a final property tax return ("Zero" return) with the Department.[36] The return is due on the last day of the fourth month after the lien date. The following examples illustrate the Department's position.

[36] This final "Zero" return allows the Department to close the manufacturer's account.

Example: Calendar Year Manufacturer Ceases Operations in South Carolina. Taxpayer is a manufacturer currently operating in South Carolina whose income tax year is January 1 – December 31. On December 31, 2017, Taxpayer owns real property and personal property. On June 30, 2018, Taxpayer ceases operations in South Carolina.

TP's Income Tax Year End: December 31
TP Ceases Operations in SC: June 30, 2018

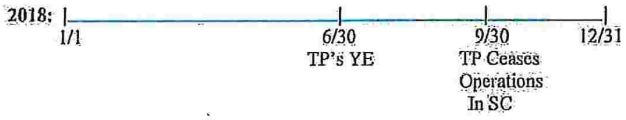


For property tax year **2018**, Taxpayer must file a return with the Department listing the real property and personal property that it owned on December 31, 2017, Taxpayer's lien date. Taxpayer's 2018 return is due April 30, 2018. Taxpayer's 2018 property taxes are due January 15, 2019.

For property tax year **2019**, Taxpayer's lien date is December 31, 2018. Because Taxpayer was no longer operating on that date, Taxpayer does not have a property tax liability for 2019. Nevertheless, Taxpayer must file a 2019 property tax return ("Zero" return). The 2019 property tax return is Taxpayer's final property tax return and is due on April 30, 2019.[37]

Example: Fiscal Year Manufacturer Ceases Operations in South Carolina **After** the End of Its Income Tax Year. Taxpayer is a manufacturer currently operating in South Carolina whose income tax year is July 1 – June 30. On June 30, 2017, Taxpayer owns real property and personal property. On September 30, 2018, Taxpayer ceases operations in South Carolina.

TP's Income Tax Year End: June 30
TP Ceases Operations in SC: September 30, 2018



For property tax year **2018**, Taxpayer must file a return with the Department listing the real property and personal property that it owned on June 30, 2017, Taxpayer's lien date. Taxpayer's 2018 return is due October 31, 2017. Taxpayer's 2018 property taxes are due January 15, 2019.

[37] The result would be the same if the taxpayer was a fiscal year manufacturer that ceased operations before its income tax year end, except that the returns would be due on the last day of the fourth month after the end of the taxpayer's income tax year.

For property tax year 2019, Taxpayer's lien date is June 30, 2018. Taxpayer was operating in South Carolina on that date; therefore, Taxpayer must file a return with the Department listing all the real and personal property that it owned on June 30, 2018. Taxpayer's 2019 return is due October 31, 2018. Taxpayer's 2019 property taxes are due January 15, 2020.

For property tax year 2020, Taxpayer's lien date is June 30, 2019. Because Taxpayer was no longer operating on that date, Taxpayer does not have a property tax liability for property tax year 2020. Nevertheless, Taxpayer must still file a 2020 property tax return. The 2020 property tax return is Taxpayer's final property tax return and is due on October 31, 2019.

VIII. MANUFACTURER HAS MORE THAN ONE INCOME TAX YEAR END DURING THE CALENDAR YEAR

Code Section 12-37-970, paragraph one, provides:

> Whenever by a change of accounting period, or otherwise, more than one accounting period ends within any one calendar year, the taxpayer must make one such return within the prescribed time for filing following the end of each of the accounting periods and the department shall determine the assessment from the return setting forth the greatest value.

Accordingly, if a manufacturer has more than one income tax year that end in the same calendar year, the manufacturer must file a return by the fourth month following the close of each income tax year. The Department will use the return that sets forth the greatest value when assessing the property.

Example: Fiscal Year Manufacturer Changes to Calendar Year. Taxpayer is a manufacturer whose income tax year is July 1 – June 30. In Fall 2017, Taxpayer changes its income tax year to January 1 – December 31.

For the 2017 property tax year, Taxpayer will file one return listing the real and personal property it owned on June 30, 2016, the lien date. The 2017 return is due October 31, 2016. The 2017 property taxes are due January 15, 2018.

For the 2018 property tax year, the manufacturer must file two returns with the Department:

Return 1. Taxpayer will file one 2018 return listing the real and personal property it owned on June 30, 2017, the lien date of the original income tax year. This 2018 return is due October 31, 2017.

Return 2. Taxpayer will file a second 2018 return listing the real and personal property it owned on December 31, 2017, the lien date for the new income tax year. This 2018 return is due April 30, 2018.

The Department will determine the 2018 property tax assessment using the property tax return setting forth the greatest value. The 2018 property taxes are due January 15, 2019.

MANUFACTURERS' PROPERTY CHART
SUMMARY OF IMPORTANT DATES

The following chart illustrates the general rules regarding the return, assessment and payment of property taxes on manufacturers' property for a manufacturer currently operating in South Carolina. The property tax year is 2018.

Manufacturer's Income Tax Year End[1]	Lien Date for Property Tax Year 2018[2]	Return Due Date for Property Tax Year 2018[3]	County Billing Date for Property Tax Year 2018	Payment Due Date for Property Tax Year 2018[4]
1/31/2017	1/31/2017	5/31/2017	Fall 2018	1/15/2019
2/28/2017	2/28/2017	6/30/2017	Fall 2018	1/15/2019
3/31/2017	3/31/2017	7/31/2017	Fall 2018	1/15/2019
4/30/2017	4/30/2017	8/31/2017	Fall 2018	1/15/2019
5/31/2017	5/31/2017	9/30/2017	Fall 2018	1/15/2019
6/30/2017	6/30/2017	10/31/2017	Fall 2018	1/15/2019
7/31/2017	7/31/2017	11/30/2017	Fall 2018	1/15/2019
8/31/2017	8/31/2017	12/31/2017	Fall 2018	1/15/2019
9/30/2017	9/30/2017	1/31/2018	Fall 2018	1/15/2019
10/31/2017	10/31/2017	2/28/2018	Fall 2018	1/15/2019
11/30/2017	11/30/2017	3/31/2018	Fall 2018	1/15/2019
12/31/2017 (Calendar Year TP)	12/31/2017	4/30/2018	Fall 2018	1/15/2019

Notes:

[1] The manufacturers' income tax year is the accounting period regularly employed by the taxpayer for income tax purposes. It may be a calendar year or a fiscal year. Code Section 12-37-970.

[2] The lien date is the last day of the manufacturer's income tax year next preceding the property tax year. Code Section 12-37-970.

[3] The return due date is the last day of the fourth month after the end of the manufacturer's income tax year. In other words, the return is due on last day of the fourth month after the lien date. Code Section 12-37-970.

[4] Property taxes must be paid between September 30 of the property tax year and January 15 following the property tax year. Code Section 12-45-70. Payments made after January 15 may be subject to a penalty. Code Section 12-45-180.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III
Rick Reames III, Director

December 16, 2016
Columbia, South Carolina

Certificate of Service

I certify that a copy of the foregoing ***TAXING ENTITIES' REPLY TO DEPARTMENT OF REVENUE'S RESPONSE TO TAXING ENTITIES' MOTION FOR PARTIAL SUMMARY JUDGMENT*** has been served on the following counsel of record on February 9, 2018, by placing same in the United States mail, postage prepaid, addressed as follows:

Counsel for the South Carolina Department of Revenue
Jason Luther, Esquire
William Condon, Esquire
South Carolina Department of Revenue
300A Outlet Pointe Boulevard (29210)
Post Office Box 12265
Columbia, South Carolina 29211-9979

and by e-mailing same to jason.luther@dor.sc.gov and william.condon@dor.sc.gov.

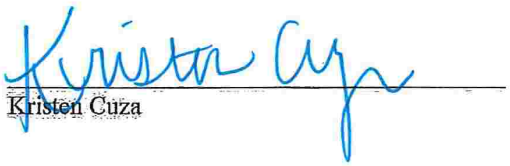
In addition, I certify that a copy of the foregoing ***TAXING ENTITIES' REPLY TO DEPARTMENT OF REVENUE'S RESPONSE TO TAXING ENTITIES' MOTION FOR PARTIAL SUMMARY JUDGMENT*** has been served on the following counsel of record on February 9, 2018, by placing same in the United States mail, postage prepaid, addressed as follows:

Counsel for Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC

John C. von Lehe, Jr., Esquire
Bryson Geer, Esquire
Liberty Center, Suite 600
151 Meeting Street
Charleston, SC 29401

William E. Durant, Jr.
Attorney at Law
1170 Old West Liberty St., Suite 1
Sumter, SC 29150

and by e-mailing same to john.vonlehe@nelsonmullins.com; bryson.geer@nelsonmullins.com; and gdurant@legaloff.net.



Kristen Cuza

PPAB 4109030v6

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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, Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC Respondent.	Docket No. 17-ALJ-17-0237-CC **CONSOLIDATED SUPPLEMENT TO REQUEST FOR CONTESTED CASE HEARING**

The Taxing Entities hereby supplement the request for contested case hearing by providing the enclosed assessment certifications, as Exhibit A, sent by the South Carolina Department of Revenue ("Department") to the respective County Auditors for each of the Taxing Entities.

The enclosed assessment certifications give notice of department determinations for tax year 2018 from which the Taxing Entities have statutory rights to a contested case before this Court pursuant to South Carolina Code Annotated sections 12-60-2130, 12-60-2150, and 12-4-535. By supplementing the record in this case with the attached Exhibit A, the Taxing Entities

FILED
SEP 10 2018
SC ADMIN LAW COURT

are exercising their statutory rights to object to and contest the department determinations for tax year 2018.

Because the issues in dispute are substantially the same for tax year 2018 as the issues already before this Court for tax years 2010-2016 and 2017, the Taxing Entities respectfully request the court add tax year 2018 to the tax years in dispute in this matter.

Respectfully submitted,

Walter H. Cartin, SC Bar #78405
PARKER POE ADAMS & BERNSTEIN LLP
1221 Main Street, Suite 1100 (29201)
Post Office Box 1500
Columbia, South Carolina 29202
(803) 255-8000; (803) 255-8017 (fax)
waltcartin@parkerpoe.com

Madison Felder, SC Bar #100606
PARKER POE ADAMS & BERNSTEIN LLP
110 East Court Street, Suite 200
Greenville, South Carolina 29601
(864) 597-6370; (864) 242-9888 (fax)
madisonfelder@parkerpoe.com

Attorneys for the Taxing Entities

Of Counsel:

Michael E. Kozlarek, SC Bar #69330
KOZLAREK LAW LLC
Post Office Box 565
Greenville, South Carolina 29602-0565
(864) 729-1931
michael@kozlareklaw.com

Columbia, South Carolina
September 10, 2018

Certificate of Service

The undersigned hereby certifies that on September 10, 2018, she caused to be served the foregoing ***Consolidated Supplement to Request for Contested Case Hearing*** on all parties of record via electronic mail and by depositing a copy of the same in the United States Mail, postage prepaid, addressed as follows:

Jason P. Luther, Esquire (jason.luther@dor.sc.gov)
South Carolina Department of Revenue
300A Outlet Pointe Boulevard (29210)
Post Office Box 12265
Columbia, SC 29211-9979

John C. von Lehe, Jr., Esquire (john.vonlehe@nelsonmullins.com)
Bryson M. Geer, Esquire (bryson.geer@nelsonmullins.com)
Liberty Center, Suite 600
151 Meeting Street
Charleston, SC 29401

William E. Durant, Jr., Esquire (gdurant@legaloff.net)
1170 Old West Liberty St., Suite 1
Sumter, SC 29150



Exhibit A

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

August 15, 2018

RECEIVED
AUG 24 2018
Clarendon County Auditor

MEMORANDUM

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **2018 Annual Utility Certification**

You will find the 2018 annual utility certification for your county attached. Please use the following assessments when billing these companies for tax year 2018.

For those counties with Norfolk Southern Railroad property, please note that Norfolk Southern generates an internal distribution report, so that format does look a bit different than our certification sheets. The last column on their distribution sheet labeled as "Total All R.R. Property" is the column that pertains to the assessment amounts for the taxing districts in your county. It should also be noted that Norfolk Southern is currently under appeal for this tax year, so the assessment amounts listed are subject to change once that appeal is resolved.

Should you have any questions, please feel free to contact me at (843) 953-8371.

RECEIVED
AUG 24 2019
Clarendon County Auditor

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2018

Total for FTC COMMUNICATIONS, LLC.	16,760

FTC DIVERSIFIED SERVICES, LLC.

Jeffery Lawrimore

PO Box 588

Kingstree, SC 29556

STATUS	Completed By Due Date	Assessment
DISTRICT:	Summerton (exempt)	36,480 ✓
DISTRICT:	Manning (exempt)	210,610 ✓
Total for FTC DIVERSIFIED SERVICES, LLC.		247,090

FTC MANAGEMENT GROUP, INC.

Louis Brockinton

PO Box 588

Kingstree, SC 29556

STATUS	Completed By Due Date	Assessment
DISTRICT:	Final Return Filed - $0	0
Total for FTC MANAGEMENT GROUP, INC.		0

GOAT ISLAND WATER & SEWER CO.

Tim Oliver

2039 Lake Marion Shores Rd.

Summerton, SC 29148

STATUS	Completed By Due Date	Assessment
DISTRICT:	FINAL RETURN FILED	0
Total for GOAT ISLAND WATER & SEWER CO.		0

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

RECEIVED
AUG 2 9 2019
Clarendon County Auditor

Utilities Certification
Tax Year 2018

DISTRICT:	21 North Barfield St	50 ✓
DISTRICT:	1431 Meadow Brook Dr	20 ✓
DISTRICT:	2645 Willie G Richburg Rd	20 ✓
DISTRICT:	3455 Hamilton Rd	20 ✓
DISTRICT:	2037 McLeod Rd	20 ✓
DISTRICT:	4475 Turbeville Hwy	20 ✓
DISTRICT:	7408 Raccoon Rd	20 ✓
Total for FRC, LLC		190

FRONTIER COMMUNICATIONS OF THE CAROLINAS, INC
David Spencer
P.O. Box 2629
Addison, TX 75001

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Clarendon SD 2 - O/S	9,090 ✓
DISTRICT:	Clarendon SD 1 - O/S	8,350 ✓
DISTRICT:	Summerton Town SD 22	19,930 ✓
DISTRICT:	Manning Town SD 9	56,080 ✓
Total for FRONTIER COMMUNICATIONS OF THE CAROLINAS,		93,450

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Manning (exempt)	16,760 ✓

State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

August 23, 2018

MEMORANDUM

To: County Auditors

From: Samuel Crowe
Utility Assessment Analyst

RE: **2018 Utilities Supplemental Certification**

We have completed some additional 2018 utility assessments. Please use the following assessments when billing these companies for tax year 2018.

Should you have any questions, please feel free to contact me at (843) 953-8389.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2018

County Name CLARENDON

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Manning	2,370
DISTRICT:	Paxville	51,400
DISTRICT:	Turbeville	144,570
Total for FARMERS TELEPHONE COOPERATIVE, INC.		198,340
TOTAL FOR CLARENDON COUNTY		198.340

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

August 15, 2018

MEMORANDUM

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **2018 Annual Utility Certification**

You will find the 2018 annual utility certification for your county attached. Please use the following assessments when billing these companies for tax year 2018.

For those counties with Norfolk Southern Railroad property, please note that Norfolk Southern generates an internal distribution report, so that format does look a bit different than our certification sheets. The last column on their distribution sheet labeled as "Total All R.R. Property" is the column that pertains to the assessment amounts for the taxing districts in your county. It should also be noted that Norfolk Southern is currently under appeal for this tax year, so the assessment amounts listed are subject to change once that appeal is resolved.

Should you have any questions, please feel free to contact me at (843) 953-8371.

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2018

DISTRICT:	Bishopville Town SD 1	54,080
Total for FRONTIER COMMUNICATIONS OF THE CAROLINAS,		63,830

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

Appeal

		Assessment
DISTRICT:	Bishopville (exempt)	26,830
Total for FTC COMMUNICATIONS, LLC.		26,830

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

Appeal

		Assessment
DISTRICT:	Bishopville (exempt)	123,750
Total for FTC DIVERSIFIED SERVICES, LLC.		123,750

MCI COMMUNICATIONS SERVICES, INC.
Property Tax Department
PO Box 521807
Longwood, FL 32752

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Lynchburg	170
DISTRICT:	Lee County SD - O/S	1,330
DISTRICT:	Bishopville	260
Total for MCI COMMUNICATIONS SERVICES, INC.		1,760

State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

August 23, 2018

MEMORANDUM

To: County Auditors

From: Samuel Crowe
Utility Assessment Analyst

RE: **2018 Utilities Supplemental Certification**

We have completed some additional 2018 utility assessments. Please use the following assessments when billing these companies for tax year 2018.

Should you have any questions, please feel free to contact me at (843) 953-8389.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2018

County Name LEE

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Lynchburg	122,950 03
DISTRICT:	Bishopville	9,550 02
Total for FARMERS TELEPHONE COOPERATIVE, INC.		132,500
TOTAL FOR LEE COUNTY		**132,500**

NO County TAX on TTC

RCD on 8-27-18

South Carolina
Department of Revenue

P.O. Box 125, Columbia, SC 29214

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DEPARTMENT OF REVENUE

ANNUAL UTILITY CERTIFICATIONS

&

RAILROADS

8/20/18

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

AUG 20 2018

August 15, 2018

MEMORANDUM

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **2018 Annual Utility Certification**

You will find the 2018 annual utility certification for your county attached. Please use the following assessments when billing these companies for tax year 2018.

For those counties with Norfolk Southern Railroad property, please note that Norfolk Southern generates an internal distribution report, so that format does look a bit different than our certification sheets. The last column on their distribution sheet labeled as "Total All R.R Property" is the column that pertains to the assessment amounts for the taxing districts in your county. It should also be noted that Norfolk Southern is currently under appeal for this tax year, so the assessment amounts listed are subject to change once that appeal is resolved.

Should you have any questions, please feel free to contact me at (843) 953-8371.

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2018

FRONTIER COMMUNICATIONS OF THE CAROLINAS, INC
David Spencer
P.O. Box 2629
Addison, TX 75001

Real + Personal sent #21

STATUS **Completed By Due Date**

		Assessment
DISTRICT: #1	SD #01 - Outside	50,710
DISTRICT: #2	Sumter City (2)	13,170
DISTRICT: #2	SD #2 Outside	3,790
DISTRICT: #17	Sumter City SD #17	503,290
Total for FRONTIER COMMUNICATIONS OF THE CAROLINAS,		570,960

Sumter
Dem. 229-02-02-002 #17
GTE - 250.02-04-077 #17
New - 229-08-03-061 #17
New - 228-12-03-008 #17
New - 206-12-02-040 #17
New - 249-10-02-008 #17
New 251-08-02-060 #1
GTE. 248-01-01-018 #1 15/30

Kaw Court Affidavit of Sumter County Docket #17-ALJ-17-0237-IJ Signed-Dec 7 2017 (Ms Jacobs)

FTC COMMUNICATIONS, LLC. Appeal
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT: #17	Sumter (exempt)	305,330
DISTRICT: #2	Rembert (exempt)	24,310
DISTRICT: #1	Sumter (non-exempt)	24,820
Total for FTC COMMUNICATIONS, LLC.		354,460

Sumter
#2- 086-00-01-019 47.0
#2- 150-00-03-062 57.3
#2- 168-00-03-020 68.48
#2 - 177-00-01-118 20.63
#2 - 219-00-02-050 36.94
#2 - 244-00-01-029 15.30
#1 - 251-00-03-025 44.55
#2 - 263-00-02-046 36.85
#2 - 331-00-01-014 35.21
#2 - 283-00-02-020 35.17

Kaw Court Affidavit of Sumter County Docket #17-ALJ-17-0237-IJ Signed Dec 7, 2017 (Ms Jacobs)

FTC DIVERSIFIED SERVICES, LLC. Appeal
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT: #1	Sumter (non-exempt) Pay #1 TAX Millages	388,530

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2018

#17 - 229-19-01-043

DISTRICT: #2	Rembert (exempt)	Qualified-exempt from county tax	2,750
DISTRICT: #17	Sumter (exempt)	Code UCD-exempt from county tax	668,760
Total for FTC DIVERSIFIED SERVICES, LLC.			1,060,040

LEVEL 3 COMMUNICATIONS, LLC
Attn: Tax Department
1025 Eldorado Blvd
Broomfield, CO 80021

	STATUS	Completed By Due Date	Assessment
DISTRICT:	Sold to CenturyLink in 2017		0
Total for LEVEL 3 COMMUNICATIONS, LLC			0

LMK COMMUNICATIONS, LLC
Attn: Property Tax Department
One Lumos Plaza
Waynesboro, VA 22980

	STATUS	Completed By Due Date	Assessment
DISTRICT: #17	Sumter		3,820
Total for LMK COMMUNICATIONS, LLC			3,820

MCI COMMUNICATIONS SERVICES, INC.
Property Tax Department
PO Box 521807
Longwood, FL 32752

	STATUS	Completed By Due Date	Assessment
DISTRICT: #2	SD2 O/S		2,350
DISTRICT: #1	SD 1 O/S		1,000
DISTRICT: #18	Mayesville		170

State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

August 23, 2018

MEMORANDUM

AUG 29 2018

To: County Auditors

From: Samuel Crowe
Utility Assessment Analyst

RE: **2018 Utilities Supplemental Certification**

We have completed some additional 2018 utility assessments. Please use the following assessments when billing these companies for tax year 2018.

Should you have any questions, please feel free to contact me at (843) 953-8389.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2018

County Name SUMTER

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT	Mayesville	182,780
DISTRICT	Sumter - City	508,780
DISTRICT	Pinewood	131,450
Total for FARMERS TELEPHONE COOPERATIVE, INC.		823,010

TOTAL FOR SUMTER COUNTY **823.010**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2018

County Name SUMTER

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Sumter (exempt)	305,330
DISTRICT:	Rembert (exempt)	24,310
DISTRICT:	Sumter (non-exempt)	24,820
Total for FTC COMMUNICATIONS, LLC.		354,460
TOTAL FOR SUMTER COUNTY		354,460

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2018

	Assessment
REPORT TOTAL	354,460

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2018

County Name SUMTER

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Sumter (non-exempt)	388,530
DISTRICT:	Rembert (exempt)	2,750
DISTRICT	Sumter (exempt)	668,760
Total for FTC DIVERSIFIED SERVICES, LLC.		1,060,040

TOTAL FOR SUMTER COUNTY **1,060,040**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2018

	Assessment
REPORT TOTAL	1,060,040

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214

original

August 15, 2018

RECEIVED
AUG 20 2018
WILLIAMSBURG COUNTY AUDITOR

MEMORANDUM

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **2018 Annual Utility Certification**

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RECEIVED
AUG 2 0 2018
WILLIAMSBURG COUNTY AUDITOR

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2018

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS Assessment to Follow

		Assessment
DISTRICT:	Greeleyville	0
DISTRICT:	Lane	0
Total for FARMERS TELEPHONE COOPERATIVE, INC.		0

Tax Year 2018

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS Completed By Due Date

		Assessment
DISTRICT:	Hemingway (exempt)	38,170
DISTRICT:	Kingstree (exempt)	31,580
DISTRICT:	Lane (exempt)	21,780
DISTRICT:	County Wide (non-exempt)	210
Total for FTC COMMUNICATIONS, LLC.		91,740

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS Completed By Due Date

		Assessment
DISTRICT:	Hemingway (exempt)	15,190
DISTRICT:	County Wide (non-exempt)	11,030
DISTRICT:	Kingstree (exempt)	263,880
Total for FTC DIVERSIFIED SERVICES, LLC.		290,100

State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

August 23, 2018

RECEIVED
AUG 2 9 2018
WILLIAMSBURG COUNTY AUDITOR

MEMORANDUM

To: County Auditors

From: Samuel Crowe
Utility Assessment Analyst

RE: **2018 Utilities Supplemental Certification**

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Should you have any questions, please feel free to contact me at (843) 953-8389.

RECEIVED
AUG 29 2018
WILLIAMSBURG COUNTY AUDITOR

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

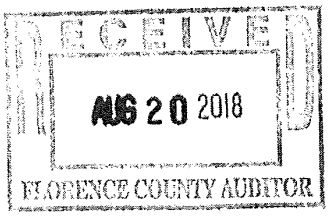
Tax Year 2018

County Name WILLIAMSBURG

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Lane	90,410
DISTRICT:	Greeleyville	132,590
Total for FARMERS TELEPHONE COOPERATIVE, INC.		223,000
TOTAL FOR WILLIAMSBURG COUNTY		223,000

State of South Carolina
Department of Revenue
P.O. Box 125, Columbia, South Carolina 29214



August 15, 2018

MEMORANDUM

To: County Auditors

From: Taylor Ingram
Utility Assessment Coordinator

RE: **2018 Annual Utility Certification**

You will find the 2018 annual utility certification for your county attached. Please use the following assessments when billing these companies for tax year 2018.

For those counties with Norfolk Southern Railroad property, please note that Norfolk Southern generates an internal distribution report, so that format does look a bit different than our certification sheets. The last column on their distribution sheet labeled as "Total All R.R. Property" is the column that pertains to the assessment amounts for the taxing districts in your county. It should also be noted that Norfolk Southern is currently under appeal for this tax year, so the assessment amounts listed are subject to change once that appeal is resolved.

Should you have any questions, please feel free to contact me at (843) 953-8371.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2018

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Assessment to Follow**

		Assessment
DISTRICT:	Coward	0
DISTRICT:	Scranton	0
DISTRICT:	Lake City	0
Total for FARMERS TELEPHONE COOPERATIVE, INC.		0

ENT'D AUG 28 2018

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2018

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Johnsonville (exempt)	8,700
DISTRICT:	Florence (exempt)	180
DISTRICT:	Lake City (exempt)	100
DISTRICT:	Coward (exempt)	26,270
Total for FTC COMMUNICATIONS, LLC.		35,250

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Olanta (exempt)	32,730
DISTRICT:	Lake City (exempt)	250,740
DISTRICT:	County Wide (non-exempt)	1,070
DISTRICT:	Johnsonville (exempt)	1,630

ENT'D AUG 2 8 2018

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2018

DISTRICT:	Olanta (non-exempt)	3,270
Total for FTC DIVERSIFIED SERVICES, LLC.		289,440

FTC MANAGEMENT GROUP, INC.
Louis Brockinton
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Final Return Filed - $0	0
Total for FTC MANAGEMENT GROUP, INC.		0

State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

August 23, 2018

MEMORANDUM

To: County Auditors

From: Samuel Crowe
Utility Assessment Analyst

RE: **2018 Utilities Supplemental Certification**

We have completed some additional 2018 utility assessments. Please use the following assessments when billing these companies for tax year 2018.

Should you have any questions, please feel free to contact me at (843) 953-8389.

RECEIVED
AUG 29
FLORENCE COUNTY

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Supplemental Certification

Tax Year 2018

County Name FLORENCE

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

		Assessment
DISTRICT:	Coward	59,820
DISTRICT:	Lake City	41,800
DISTRICT:	Scranton	161,850
Total for FARMERS TELEPHONE COOPERATIVE, INC.		263,470
TOTAL FOR FLORENCE COUNTY		263,470

RECEIVED
AUG 29
REVENUE

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, Williamsburg County School District, Clarendon County School District Two, Florence School District One, Florence School District Three, Sumter County School District, Clarendon County Hospital District, and Lee County School District, Petitioners, vs. South Carolina Department of Revenue; Farmers Telephone Cooperative, Inc.; FTC Communications, LLC; and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-IJ **RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

In accordance with the Second Amended Notice of Hearing and Consent Scheduling Order dated January 24, 2019, the South Carolina Department of Revenue respectfully moves this Court for partial summary judgment, pursuant to SCALC Rules 19 and 68 and Rule 56, SCRCP. As explained more fully in the supporting memorandum filed with this motion, the Department contends that it is entitled to partial summary judgment as a matter of law because no genuine issues of material fact exist as to the following: (a) South Carolina law (§ 12-4-320(4)) provides that a settlement agreement approved by the Department's Director is final and conclusive and cannot be opened by administrative or judicial action absent fraud, malfeasance, or misrepresentation; (b) the Settlement Agreement at issue in this case was approved by the Director; (b) and the Settlement Agreement was not the product of fraud, malfeasance, or misrepresentation.

FILED
MAY 09 2019
SC ADMIN LAW COURT

Respectfully submitted,

Jason P. Luther
General Counsel for Litigation (Bar No. 78021)
PO Box 12265
Columbia, SC 29211-9979
803-898-5785
Jason.Luther@dor.sc.gov
CourtOrders@dor.sc.gov

Columbia, South Carolina
May 9, 2019

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, Williamsburg County School District, Clarendon County 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, Petitioners, vs. South Carolina Department of Revenue; Farmers Telephone Cooperative, Inc.; FTC Communications, LLC; and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-IJ **MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Respondent South Carolina Department of Revenue ("Department"), by and through the undersigned counsel, respectfully submits this Memorandum in Support of Respondent's Motion for Partial Summary Judgment. For the reasons set forth below, the Department respectfully contends that partial summary judgment is proper because there is no genuine issue of material fact that (a) South Carolina law (§ 12-4-320(4)) provides that a settlement agreement approved by the Department's Director is final and conclusive and cannot be opened by administrative or judicial action absent fraud, malfeasance, or misrepresentation; (b) the Settlement Agreement at issue in this case was approved by the Director; and (c) and the Settlement Agreement was not the product of fraud, malfeasance, or misrepresentation.

FILED
MAY 09 2019
SC ADMIN LAW COURT

INTRODUCTION

The Department has the statutory authority to settle disputed tax matters, and routinely does so. It is critical to the Department's efficient administration of its statutory duties, and to taxpayers' reliance on the Department's representations regarding settled disputed tax controversies, that any settlement agreement the Department enters be final and not subject to being set aside at a future date, either at the request of the Department, the taxpayer, or a third-party who was not a party to the settlement. For this reason, the Legislature statutorily mandated that a settlement agreement entered into by the Department is deemed final and conclusive and cannot be opened by administrative or judicial action, provided the settlement meets certain requirements. S.C. Code Ann. § 12-4-320(4) (2014).

Moreover, the Department has established longstanding administrative procedures for ensuring that it meets the requirements for executing a valid and final settlement agreement. *See* Revenue Procedure #06-2 (January 11, 2007), a copy of which is attached hereto as Exhibit A. Those requirements were met with respect to the Settlement Agreement that is at issue in this case. For these reasons, and in the interest of efficiency, judicial economy, and to narrow the scope of issues to be determined by this Court in the hearing of this contested case, the Department respectfully requests this Court grant partial summary judgment that the Settlement Agreement with the taxpayer in this matter is final and conclusive as to the specific property and specific tax years covered by the Settlement Agreement.[1]

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[1] This Court partially addressed the import of the Settlement Agreement in its Order denying the Farmers Entities Motion to Dismiss. *See* Order Denying Motion to Dismiss, dated April 3, 2018. The Court's holding regarding the Settlement Agreement was limited to the specific question of jurisdiction and whether the Settlement Agreement constituted a Department Determination from which the Taxing Entities could seek review of the underlying tax exemption. Because the Court ultimately concluded that its jurisdiction over the parties and subject matter in this contested case derived from the Supplemental Certifications and not the Settlement Agreement, the Court concluded it was not necessary to address Farmers' argument that § 12-4-320(4) bars judicial review of settlement

FACTS & PROCEDURAL BACKGROUND

South Carolina law provides that "the property of telephone companies and rural telephone cooperatives operating in this State used in providing rural telephone service . . . shall be exempt from such property taxation." S.C. Code Ann. § 12-37-220(B)(10) ("Rural Telephone Service Exemption"). Farmers Telephone Cooperative, Inc. ("Farmers") is a rural telephone cooperative incorporated in South Carolina in 1952 that has been eligible for and utilized the Rural Telephone Service Exemption for decades.

During tax years 2010 through 2015, Farmers was the sole member of two limited liability companies, FTC Communications, LLC ("FTCC") and FTC Diversified Services, LLC ("Diversified"). FTCC and Diversified provided a range of services that included telephone-related services and other services in rural areas of South Carolina. FTCC provided wireless telephone service, operator services, and answering services. Diversified provided land-line telephone service, television services, Internet service, and security services.

FTCC filed property tax returns and supplemental data with the Department for tax years 2010–2015. In a letter dated October 11, 2012, FTCC protested the Department's proposed assessment of its property for tax year 2012 on the grounds that the assessment did not exempt FTCC's property pursuant to the Rural Telephone Service Exemption. (See Letter dated October 11, 2012, attached hereto as Exhibit B). In a second letter to the Department two months later,

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agreements between the Department and a taxpayer. *See* Order, n.5. Here, the Department is not challenging the Court's jurisdiction to hear this contested case; rather, the Department is merely seeking a partial summary judgment ruling that the specific negotiated terms of the Settlement Agreement that exempted only certain property (wireless telephone) for a certain and limited period (2010–2015) are final and conclusive. If the Department's motion is granted, the issue(s) to be decided in the hearing of this case would thus be limited primarily to whether certain assets of the Farmers Entities are exempt under the Rural Telephone Service Exemption for those tax years not covered by the Settlement Agreement.

FTCC requested a refund of property taxes it paid for 2010–2011 because it claimed its property is exempt under the Rural Telephone Service Exemption. (See Letter dated December 28, 2012, attached hereto as Exhibit C). In particular, FTCC relied on the South Carolina Supreme Court's recent decision in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) in which the Supreme Court determined that a disregarded entity, like many LLCs, is entitled to receive any tax benefit for which its single member qualifies. Thus, FTCC claimed that it was eligible to receive the Rural Telephone Service Exemption that its sole member, Farmers Coop, received. FTCC subsequently filed protests of the Department's 2013, 2014, and 2015 proposed assessments on the same grounds.

Similarly, Diversified also filed property tax returns and supplemental data with the Department for tax years 2013–2015. In a letter dated February 18, 2014, Diversified protested the Departments proposed assessment for tax year 2013 on the same grounds as FTCC, claiming that the assessments did not exempt Diversified's property from tax pursuant to the Rural Telephone Service Exemption. (See Letter dated February 18, 2014, attached hereto as Exhibit D). Diversified subsequently filed protests of the Department's 2014 and 2015 proposed assessments on the same grounds.

After extensive discussions and negotiations between the Farmers Entities and the Department, on January 8, 2017, the Department, FTCC and Diversified entered into Settlement Agreement that "represent[ed] a full, complete, final, and binding settlement" of all property tax claims for FTCC (2010–2015) and Diversified (2013–2015). (See Settlement Agreement, attached hereto as Exhibit E). In the Settlement Agreement, the parties agreed that for the tax years at issue the property used to provide FTCC's wireless telephone service and Diversified's land-line telephone service qualified for the Rural Telephone Service Exemption, but the property of FTCC and Diversified that was used to provide services other than wireless telephone and land-line telephone

service was not exempt from property taxes. The Settlement Agreement was limited to tax years 2010 through 2015. After being approved by the Department's Director and General Counsel for Litigation, the Settlement Agreement was signed by the Department's attorney, Bill Condon.

On July 10, 2017, Clarendon County filed a request for contested case hearing with the Administrative Law Court ("ALC"), in which they challenged, *inter alia*, the terms of the Settlement Agreement that allowed the Farmers Entities to claim the Rural Telephone Service Exemption for property used to provide wireless telephone services. Subsequently, this Court added twelve other local governmental entities as Petitioners (collectively the thirteen local governmental entities are the "Taxing Entities"). This Court also added the three affected taxpayers—Farmers, FTCC, and Diversified—as Respondents.

LEGAL STANDARD

Motions for summary judgment are properly brought in the Administrative Law Court. SCALC Rule 68 provides that "[t]he South Carolina Rules of Civil Procedure . . . may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by [the SCALCR]." Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner."

David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Thus, "summary judgment is appropriate when it is clear there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006); *see* SCRCP 56(c). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 355, 559 S.E.2d 327, 336 (Ct. App. 2001); *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 782 S.E.2d 590 (2016).

ARGUMENT

1. Under South Carolina law, a settlement agreement entered into by the Department may not be reopened by administrative or judicial action.

The Department has the sole responsibility to assess property of rural telephone companies like the Farmers Entities, *see* S.C. Code Ann. § 12-4-540(A)(1)(f) (2014), and the authority to determine if FTCC and Diversified qualified for the property tax exemption for property used in providing rural telephone service, *see* S.C. Code Ann. § 12-4-710 (2014).

Further, the Department has the authority to enter into a written settlement agreement with a person, like the Farmers Entities, who has requested a refund or protested a proposed assessment or denial of a tax exemption. *See* S.C. Code Ann. §§ 12-4-320(3)-(4) (2014). In fact, Title 12 gives the Department the explicit authority to "compromise *any tax* imposed by [Title 12]." S.C. Code Ann. § 12-4-320(3) (2014) (emphasis added). Moreover, the Revenue Procedures Act specifically permits the Department to enter into a settlement agreement with a taxpayer regarding the precise dispute at issue in this case—the protest of property taxes. *See* S.C. Code Ann. § 12-60-2120, -2150 (providing that appeals of property taxes must be conducted in accordance with § 12-60-450(C)-(E)); *see also* § 12-60-450(C)-(E) (providing that the Department "may attempt to settle the case" after the property taxpayer has filed its protest).

Importantly, if a written settlement agreement is approved by the Department's 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) (2014).

2. The record evidence establishes that the Settlement Agreement was approved by the Director.

In accordance with the mandate of § 12-4-320(4), the Department's Revenue Procedure #06-2, which was in effect at the time the Settlement Agreement was executed, permits the Department representative (the Department's attorney assigned to a particular tax controversy) to settle disputed tax matters. *See* Rev. Proc. #06-2, p. 7–8. The Department representative must make any settlement recommendations to the Department's General Counsel for litigation, who will then "advise the Director or his designee who may authorize the settlement." *Id.*

On its face, the Settlement Agreement unequivocally states that the Department's representative in this matter, Bill Condon, had followed this policy by obtaining the necessary approval authority: "Each Party represents and warrants that it has the full and complete legal authority to enter into this Agreement [and] that the individuals executing this Agreement have the legal authority to do so." (*See* Exhibit D, ¶ 3.2). Thus, the executed Settlement Agreement is *prima facie* evidence that it was approved by the Director.

Moreover, the witnesses with first-hand knowledge of execution of the Settlement Agreement have uniformly testified that the Settlement Agreement was approved by the Director.

Jeffrey Allen, the attorney for Farmers at the time the Settlement Agreement was signed, testified that he met with Bill Condon and Milton Kimpson to discuss a resolution of this case, and that based on his experience with the Department he understood and believes that Bill Condon and Milton Kimpson had secured all necessary approvals to authorize the settlement. (See Jeff Allen

Depo., 37:19–38:1, relevant portions of which are attached hereto as Exhibit F; see also Affidavit of Jeffrey T. Allen, attached hereto as Exhibit G).

Rick Reames, the Department's Director from June 2014 to January 2017, participated in numerous settlement discussions of contested tax matters. (*See* Rick Reames Depo., 25:23–27:3, relevant portions of which are attached hereto as Exhibit H; *see also* Affidavit of Rick Reames, III, attached hereto as Exhibit I). He stated that during his tenure the Department followed Revenue Procedure #06-2 for settlements of contested tax cases, that the General Counsel for Litigation at that time (Milton Kimpson) was "extremely diligent" in following the requirements of Revenue Procedure #06-2, and that it was Mr. Kimpson's customary practice "to always seek such authorization from me prior to entering into a settlement of a tax dispute, and it was my practice to review and approve or not approve such settlements after meeting with him." (*See* Reames Aff.). He is not aware of any contested cases settled during his tenure that were settled without his approval, and to the best of his knowledge this procedure was followed in this case.[2] *Id.; see also* Reames Depo., 166:15–168:8 ("Q. And your testimony and recollection is that customary practice was followed in this case, to the best of your knowledge. A. Yes, yes. Q. And you have no reason to believe otherwise. A. No, I do not.").

Likewise, Milton Kimpson, the General Counsel for Litigation at the time the Settlement Agreement was signed, stated that the Settlement Agreement was approved and signed in accordance with the Department's procedures and his customary practice. (*See* Affidavit of Milton Kimpson, attached hereto as Exhibit J). Mr. Kimpson reviewed the Settlement Agreement between the Department and Farmers Entities, and "is confident" that he advised the Director of the settlement

[2] Mr. Reames also testified that it was typically the attorney who was handling the matter—and not the Director—that would sign and execute any settlement agreement on behalf of the Department. (Reames Depo., 166:15–168:8)

agreement and that "the Director approved the settlement agreement before the Department Representative signed it on behalf of the Department." (*See* Kimpson Aff., ¶¶ 4, 7).

Thus, the undisputed evidence in the record establishes that the Settlement Agreement was approved by the Department's Director.

3. There is no evidence in the record that the Settlement Agreement was the result of fraud, malfeasance, or misrepresentation.

As noted above, a settlement agreement approved by the Director cannot be reopened except in cases of fraud, malfeasance, or misrepresentation. S.C. Code Ann. § 12-4-320(4). Importantly, in their Request for Contested Case Hearing, the Taxing Entities do not allege a single instance of fraud, malfeasance, or misrepresentation with respect to the Settlement Agreement. *But see* Rule 9(b), SCRCP (requiring that "in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.").

A person alleging fraud based on misrepresentation must prove the elements of fraud or misrepresentation by clear, cogent, and convincing evidence. *Schnellmann v. Roettger*, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007).[3] The failure to prove any element of fraud or misrepresentation is fatal to the claim. *Id.*

Malfeasance, as it relates to public officers, is defined as doing a wholly wrong and unlawful act. 67 C.J.S. Officers § 235. It is the doing of an act which a person ought not to do at all. 63 C Am. Jur. 2d Public Officers and Employees § 182. "It has been said that in order to constitute malfeasance or misfeasance, the wrongful act must be accompanied by some evil intent or motive, or with such gross negligence as to be equivalent to fraud." *Id.*

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[3] The elements of fraud are (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Kahn Constr. Co. v. S.C. Nat'l Bank of Charleston*, 275 S.C. 381, 271 S.E.2d 414 (1980).

Importantly, the party asserting the affirmative issue in an adjudicatory administrative proceeding generally has the burden of proof. *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 78, 804 S.E.2d 633, 643 (Ct. App. 2017). Similarly, a party who attacks a settlement bears the burden of showing that the contract is tainted. *Bean v. S.C. Cent. R. Co.*, 392 S.C. 532, 555, 709 S.E.2d 99, 111 (Ct. App. 2011). It is presumed that a contract only involves the doing of a lawful and proper act; "illegality is never presumed but must be proved, or must clearly appear upon the face of the contract." *Romanus v. Biggs*, 214 S.C. 145, 152, 51 S.E.2d 503, 505 (1949) (citation omitted). "[I]f the illegality does not appear on its face, it must be proved by the person who asserts it." *Id.*

Therefore, to the extent the Taxing Entities seek to set aside the terms of the Settlement Agreement with respect to exemption of certain Diversified and FTCC assets for 2010–2015, the Taxing Entities bear the burden of proving that the Settlement Agreement falls within the narrow set of circumstances in § 12-4-320(4). In other words, because § 12-4-320(4) presumptively deems final an executed settlement agreement, the Taxing Entities can only rebut that presumption with clear, cogent, and convincing evidence that the Settlement Agreement was the product of fraud, malfeasance, or misrepresentation on the part of Jeffrey Allen, Bill Condon, Milton Kimpson, Rick Reames, or any other representative of the Farmers Entities or the Department who participated in the negotiation and execution of the agreement.

However, the record is devoid of any evidence or testimony that would remotely establish that the Settlement Agreement was the result of fraud, malfeasance, or misrepresentation. *See Rountree v. Fairfax Cnty. Sch. Bd.*, 933 F.2d 219, 223 (4th Cir. 1991) ("The arguments of counsel, absent any evidence such as sworn affidavits accompanying objections to a motion for summary judgment, fail to meet the evidentiary standard necessary to create a genuine issue of material fact."). In fact, the only witnesses to testify regarding this issue—Jeff Allen and Lauretha McCants (the Auditor for

Sumter County who reviewed the Settlement Agreement and submitted an affidavit in support of the Taxing Entities in this matter)—both testified that they have no knowledge or evidence that the settlement agreement was the result of fraud, malfeasance, or misrepresentation. (*See* Allen Depo., 119:8–15; Lauretha McCants Depo., 87:20–88:20, relevant portions of which are attached hereto as Exhibit K).

CONCLUSION

Accordingly, because the evidence and testimony demonstrates that the Settlement Agreement at issue in this case was approved by the Director, because there is no evidence or testimony that the Settlement Agreement was the product of fraud, malfeasance, or misrepresentation, and for the reasons stated above, the Department is entitled to partial summary judgment as a matter of law that the Department's Settlement Agreement in this case is final and conclusive as mandated by §12-4-320(4).

Respectfully submitted,

for

Jason P. Luther, Esquire
General Counsel for Litigation (Bar No. 78021)
PO Box 12265
Columbia, SC 29211-9979
803-898-5785
Jason.Luther@dor.sc.gov
CourtOrders@dor.sc.gov

Columbia, South Carolina
May 9, 2019

EXHIBIT A

State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 12265, Columbia, South Carolina 29211
Website Address: http://www.sctax.org

SC REVENUE PROCEDURE #06-2

SUBJECT:	Department of Revenue Internal Appeals Process and Procedure
EFFECTIVE DATE:	Applies to all appeals received by the Department on or after December 6, 2006 and to all appeals that are unresolved as of December 6, 2006.
SUPERSEDES:	SC Revenue Procedure #04-1, SC Revenue Procedure #95-6, SC Revenue Procedure #95-3, SC Revenue Procedure #92-1 and all previous advisory opinions and any oral directives in conflict herewith.
REFERENCES:	Chapter 60 of Title 12
AUTHORITY:	S. C. Code Ann. Section 12-4-320 (2000) S. C. Code Ann. Section 1-23-10(4) (Supp. 2005) SC Revenue Procedure #05-2
SCOPE:	The purpose of a Revenue Procedure is to provide procedural guidance to the public and Department personnel. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

I. INTRODUCTION

This document contains the Department of Revenue's ("Department") internal procedures for handling disputed matters within the jurisdiction of the Department. Disputed matters include disputes involving taxes and penalties (including property tax assessments issued by the Department); denials, suspensions and revocations of licenses; and, other matters handled by the Department.

These procedures are intended to ensure public confidence in the integrity and fairness of the Department, to comply with both the letter and the spirit of the South Carolina Taxpayers Bill of Rights and the Revenue Procedures Act, and to resolve disputes where possible without the expense of going to a formal hearing or court.

ROA 000828

All time limits contained in this Revenue Procedure, except those mandated by statute or regulation, may be extended by mutual agreement of the taxpayer appealing and the appropriate Department employee. To the extent that the taxpayer requests an extension of time to file a document or submit additional information, the Department may require as a condition of granting the extension, that the taxpayer agree to an equal time extension for the Department to prepare or issue any document or determination it is required to issue.

To understand the appeals process, this Revenue Procedure must be read in conjunction with the South Carolina Revenue Procedures Act, Chapter 60, Title 12 of the S. C. Code, and the Rules of Procedure of the Administrative Law Court. The Rules of Procedure are available from the Administrative Law Court, Edgar A. Brown Building, Second Floor, 1205 Pendleton Street, Columbia, SC 29201, or on its website at www.scalc.net.

If the taxpayer fails to make a timely response or fails to comply with the procedures outlined in this Revenue Procedure, the Department may decide the appeal against the taxpayer and immediately issue the Department determination. If an appeal is filed with the Administrative Law Court, the Department may argue that the taxpayer failed to "exhaust his pre-hearing remedy." See Section 12-60-30(15) of the South Carolina Code of Laws ("Code") for a definition of "exhaustion of a taxpayer's pre-hearing remedy."

II. DEFINITIONS

A. **Contested Case Hearing** - A hearing defined in Section 1-23-310 of the Code, and conducted pursuant to Article 3, Chapter 23 of Title 1, the South Carolina Administrative Procedures Act. For purposes of this Revenue Procedure, it involves hearings by the Administrative Law Court where the Department is a party.

B. **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.

C. **Department Representative** - The person appointed by the Department to prepare the Department determination and represent the Department at the contested case hearing.

D. **Director** - The director of the Department.

E. **Division** - An organizational unit within the Department.

F. **Final Assessment or Assessment** - For the purpose of this Revenue Procedure:

1. Except for property taxes, an assessment is the determination of any tax due.

2. For property tax purposes, for those property tax assessments issued by the Department, an assessment is the determination of the value of the property multiplied by the assessment ratio. The property tax due is later determined by multiplying the assessment by the millage rate levied by the applicable taxing authority. In the case of the motor carrier property tax, the final notice that a property tax is due in accordance with Section 12-37-2850 of the Code is considered the assessment. An assessment for property taxes of airlines and private car lines will include determination of the equalized assessment ratio, the millage and the tax due. For property tax exemptions, it is the denial of an exemption.

3. Assessments include the determination of any penalty or interest due and owing to the extent that such amounts can be determined at the time of issuance of the assessment.

G. **Proposed assessment** - The first written notice sent or given to a person stating that a division within the Department has concluded that any tax is due or an exemption has been denied or any license is to be suspended or revoked, or an application for a license is denied. In addition, a proposed assessment also includes a division decision which is an action or finding adverse to the taxpayer other than an assessment of taxes, a regulatory violation, or the denial, suspension, or revocation of a regulatory license. For property tax purposes, it includes the first notice stating the value and/or assessment ratio of certain property as determined by the Property Division. The term proposed assessment does not include an auditor's work papers or draft audit reports, or any document that specifically states it is not intended as a proposed assessment.

If a document is consistent with this definition, it will be deemed to be a proposed assessment for purposes of this Revenue Procedure, even if it is called something else. For example, even if it is called an assessment, notice of assessment, assessment notice and tax bill, notice of appraisal and assessment, property assessment notice, notice of adjustment, notice of action on license, regulatory violation and proposed assessment report, or if it looks like an invoice, it will be deemed to be a proposed assessment.

H. **Regulatory License** - Means a license that is issued under the South Carolina alcoholic beverage laws or the South Carolina bingo laws.

I. **Regulatory Violation** - A violation of a statute or regulation which controls the conduct of alcoholic beverage licensees or bingo licensees, including a violation which may result in the assessment of a monetary penalty, or suspension or revocation of a license. It does not include taxes, interest on taxes, or monetary penalties in Chapter 54 of Title 12.

J. **Tax or Taxes** - Unless the context clearly requires otherwise, taxes include all taxes, licenses, permits, fees, or other amounts, including interest and penalties, imposed by Title 12 of the Code, or subject to assessment or collection by the Department.

K. **Taxpayer** - Means any person or entity liable for, or required to pay, any tax or fee to the Department who has been issued a proposed assessment or a Department determination. It also includes licenses and license applicants for those licenses issued by the Department.

L. **Waiver of Restrictions on Assessments** - Waiver of restrictions on assessments is achieved through the filing of a Form SC870 or SC870AD.

1. Form SC870 – A taxpayer may sign this form if he or she wants the Department to generate a final assessment showing the total tax, interest, and penalty (if any) due so the taxpayer can pay the proposed assessment and stop the accumulation of interest.

2. Form SC870AD – A taxpayer may sign this form when he wants to resolve a dispute. It is not effective until it is accepted by a division administrator or his designee. If accepted by the Department, the taxpayer cannot file or prosecute a claim for refund or credit and the Department will not reopen the case, except for fraud, malfeasance, concealment, or misrepresentation of material fact, or an important mistake in mathematical calculation.

III. PRE-HEARING PROCEDURES FOR TAXES AND LICENSES ADMINISTERED BY THE DEPARTMENT OTHER THAN REGULATORY LICENSES AND REGULATORY VIOLATIONS

A. *Issuance of a Proposed Assessment, Filing a Protest, Collection of the Tax and Division Review*

1. *Issuance of Proposed Assessment* – Either an auditor, tax technician, examiner or analyst (hereinafter referred to as auditor) in the appropriate division of the Department will issue a proposed assessment indicating that a tax is due, an assessment of property has been made, a property tax exemption has been denied, or another action adverse to the taxpayer has been taken. The proposed assessment will explain the basis for the proposed assessment and state that a final assessment will be made or other appropriate action will be taken unless the taxpayer pays the tax or files a protest within 90 days of the issuance of the proposed assessment. The proposed assessment will also provide the taxpayer with sufficient information to enable the taxpayer to file a protest.

2. *Filing of Protest by Taxpayer* - In order to protest a proposed assessment, the taxpayer must file a written protest within 90 days of the issuance of the proposed assessment. The written protest must contain:

(a) the name, address, and telephone number of the taxpayer;

(b) the appropriate taxpayer identification number(s);

(c) the tax period or date for which the tax was proposed;

(d) the nature and kind of tax in dispute;

(e) a statement of facts supporting the taxpayer's position;

(f) a statement outlining the reasons for the appeal, including any law or authority upon which the taxpayer relies; and

(g) any other relevant information the Department may reasonably prescribe.

See Sections 12-60-450 and 12-60-1310 of the Code for further information as to the rules regarding the filing of a protest.

3. *Collection Efforts - Protest Filed* - If the taxpayer does file a written protest, for a tax which has not been assessed, the Department will not make any effort to collect the tax or take other action until the matter is resolved within the Department or, if appropriate, a contested case hearing has been held and a decision has been rendered by an administrative law judge.

If the matter involves property taxes assessed by the Department and is unlikely to be resolved by December 31 of the same year, the amount of tax owed will be calculated and the taxpayer will receive a tax bill based upon 80% of the disputed assessed value, or a greater amount if the taxpayer agrees in writing. Additional taxes will be billed or a refund made after the matter is resolved.

Any suspension of collection efforts does not apply to jeopardy assessments or termination assessments, or if the Department determines that public safety or health requires emergency action, in which case the Department may seek an emergency revocation of the taxpayer's license in accordance with Section 12-60-1340 of the Code.

4. *Collection Efforts - No Protest Filed* - If the taxpayer does not file a written protest with the Department within 90 days of the proposed assessment, the Department will make a final assessment and begin collection activities if payment is not made. If the matter involves property taxes (except for those which the Department administers and bills), the Department will certify its assessment to the appropriate county or counties who will issue the tax bill. A suspension of collection activities may be ordered by the Taxpayers' Rights Advocate pursuant to Code Section 12-58-30, in which event no collection will be made until the matter is resolved or the Taxpayers' Rights Advocate allows collection to proceed.

5. *Protest filed* - If the taxpayer protests, the auditor will send notice to the taxpayer offering a conference. This notice may also request any additional information that might be needed from the taxpayer, and will advise the taxpayer that if the taxpayer fails to respond or to request a conference within 30 days, the matter will be forwarded to the Office of General Counsel for Litigation for the issuance of a Final Agency Determination.

6. *Conference not requested* – Within 30 days, if the taxpayer does not respond or request a conference, the auditor's supervisor will the review the file for correctness and forward the file to the Office of General Counsel for Litigation.

7. *Conference requested* – If the taxpayer requests a conference, the conference should be conducted within thirty days of the request. If due to workload it cannot be conducted within thirty days of the request, it must be conducted within ninety days of the request. If the taxpayer will not agree to a conference within ninety days of the request, the taxpayer will have waived the conference, and the file will be reviewed for correctness by the auditor's supervisor, and will be forwarded to the Office of General Counsel for Litigation. The conference may be conducted telephonically at either the auditor's or taxpayer's request. The auditor's supervisor or his or her designee will participate in the conference.

8. *Protest not resolved* - If the conference does not resolve the protest, the auditor will so notify the taxpayer, and the matter will be forwarded to the Office of General Counsel for Litigation. Prior to forwarding the file, the auditor's supervisor will review the file for correctness.

B. ***The Department Representative***

1. *Receipt of the Appeal by the Department's Office of General Counsel for Litigation* - Upon receipt of the file by the Office of General Counsel for Litigation, a Department representative will be assigned. The Department representative will review the file and either:

> (a) Prepare the Department's determination and submit it for approval to the General Counsel for Litigation or his designee and the Director or his designee;
>
> (b) Discuss the file with the auditor, auditor's supervisor, or the audits administrator, and, if necessary, return the file for further development; or
>
> (c) Meet with the taxpayer or the taxpayer's representative if the Department's representative believes such a meeting would assist in the resolution of the dispute.

2. *Department Representative Review of the File* - 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. At any time, the Department representative may request additional information from the taxpayer if he believes it would be helpful in resolving the appeal. As part of its review of the file, the Department representative may choose to meet with the taxpayer.

3. *Issuance of the Department Determination* - If the Department representative determines that the proposed assessment was correct or determines a matter adverse to the taxpayer, a Department determination will be issued. The Department determination must contain a statement explaining that a request for a contested case hearing must be made to the Administrative Law Court within 30 days of the date the Department determination is sent to the taxpayer, and an explanation of how to request a hearing.

C. ***Settling of a Case Based on Hazards of Litigation***

1. *Conditions of Settlement* - Subject to the procedures and limitations set forth in this Revenue Procedure, the Department representative has the authority to settle cases based upon the hazards of litigation. The Department representative should refuse to settle a case based upon the hazards of litigation if he or she believes that state tax policy would be better served with a judicial resolution. Settlements based on the hazards of litigation should reflect, on an issue by issue basis, the probable result in the event of litigation, or mutual concessions for the purpose of settlement based on the relative strength of the opposing positions where there is substantial uncertainty of the result in the event of litigation.

2. *Factors to Be Considered in Settlement Based on Hazards of Litigation* - The Department representative will consider:

(a) the quality of the evidence likely to be presented,

(b) the credibility and availability of witnesses,

(c) the ability of the taxpayer to carry his burden of going forward with the evidence,

(d) the likelihood that the evidence the taxpayer can present will carry his burden of proof,

(e) the doubt as to an issue of fact,

(f) the doubt as to a conclusion of law, and

(g) the desirability of a judicial decision.

3. *Procedure for Hazard of Litigation Settlements* - If the settlement is based on the hazards of litigation, it must be approved in the manner described herein. Because settlements based on the hazards of litigation must be uniformly made, to settle a case based on the hazards of litigation, the Department representative must send a recommendation to the Department's General Counsel for Litigation or his designee. This recommendation must be based on the principles in this Revenue Procedure. The Department's General Counsel for Litigation or his designee will review the settlement and advise the Director or his designee who may authorize the settlement. If the

settlement is rejected, the Department's General Counsel for Litigation, or his designee, the Director, or his designee may make changes which would make it acceptable. If appropriate, the taxpayer will sign a Waiver of Restriction on Assessments to complete the settlement.

D. ***Miscellaneous Appeals***

1. *Procedure for Claims for Refunds* - The denial of a claim for refund by the Department will be treated the same as a proposed assessment and the taxpayer's appeal is handled in a matter identical to a proposed assessment.

2. *Procedure for Denial of an Installment Agreement* - The appeal of a denial to pay a tax in installments will be treated in the same manner as a proposed assessment.

3. *Procedure for Denial, Suspension or Revocation of a Retail Sales License or other License issued by the Department other than a Regulatory License* - The appeal of the notice of denial, suspension or revocation of a retail sales license or other license issued by the Department, other than a regulatory license, will be handled in the same manner as a proposed assessment.

4. *Procedure for Appeal of a Denial to Release a Lien* - If a division of the Department denies a request to release a lien, the appeal of the denial of such a request will be handled in the same manner as a proposed assessment.

5. *Procedure for Jeopardy Assessments* - Jeopardy assessments will not be handled in accordance with the procedures set forth in this Revenue Procedure, rather the appeal of jeopardy assessments will be handled in accordance with Sections 12-60-910 and 12-60-920 of the Code. Unless specifically directed otherwise, a taxpayer subject to a jeopardy assessment should deal directly with the Department's Chief Counsel for Litigation.

IV. PRE-HEARING PROCEDURE FOR THE DENIAL, SUSPENSION, OR REVOCATION OF A REGULATORY LICENSE OR HANDLING OF A REGULATORY VIOLATION

If a regulatory violation may result in the suspension or revocation of the taxpayer's regulatory license, the appeal will be treated as an appeal of the "Denial, Suspension, or Revocation of a Regulatory License" as provided in Part IV.A below.

A. ***Appeal of a Denial, Suspension or Revocation of a Regulatory License (Whether or not a Monetary Penalty is also Imposed)***

1. *Issuance of a Proposed Assessment* - An employee within the Division will issue a proposed assessment setting forth information containing the basis for the denial, suspension or revocation of the license, and providing that the matter will be considered closed and the regulatory license will not be issued, or will be suspended or revoked, unless the taxpayer files a written protest within 90 days of the date of the proposed

assessment. If a proposed assessment includes a regulatory violation that may result in a penalty being imposed as well as the regulatory license being suspended or revoked, the regulatory violation will be handled under this section IV.A. The employee will provide sufficient information so as to inform the taxpayer as to how to file a protest with the Department.

2. *Filing of Protest by Taxpayer* - The taxpayer may file a written protest within 90 days of the proposed assessment appealing the proposed assessment. The written protest must contain:

(a) the name, address, and telephone number of the taxpayer;

(b) the appropriate taxpayer identification number(s);

(c) the kind of license in dispute;

(d) a statement of facts supporting the taxpayer's position;

(e) a statement outlining the reasons for the appeal, including any law or authority upon which the taxpayer relies; and

(f) any other relevant information the Department may reasonably prescribe.

See Code Section 12-60-1310 for further information as to the rules regarding the filing of a protest.

3. *Suspension or Revocation of License - Protest Filed* - If the taxpayer does file a written protest, the Department will not make any effort to revoke or suspend the Taxpayer's regulatory license or to impose any penalty resulting from a regulatory violation that is appealed pursuant to IV.A, until the matter is resolved within the Department or a contested case hearing has been held and a decision has been rendered by an administrative law judge.

However, the Department is not restricted from seeking an emergency revocation pursuant to Section 12-60-1340 of the Code. If a written protest is filed, the Division will forward the file on to the Department representative.

4. *Suspension or Revocation of License - No Protest Filed* - If the taxpayer does not file a written protest with the Department within 90 days of the proposed assessment, the Department will suspend or revoke the taxpayer's regulatory license and if applicable, will impose any penalty that has been proposed. A stay of the revocation or suspension of a regulatory license, or the imposition of the penalty, or both, may be ordered by the Taxpayers' Rights Advocate pursuant to Code Section 12-58-30, in which event no action will be taken until the matter is resolved or the Taxpayers' Rights Advocate lifts any stay on suspension or revocation of the license.

5. *Department Representative Receipt of File* - If a written protest is filed, a Department representative will receive the file and may contact the taxpayer to request additional information. The Department representative may then:

(a) agree with the taxpayer and close the file and notify all pertinent parties that the file has been closed; or,

(b) issue a Department determination. In the event a Department determination is issued, the Department representative will inform the taxpayer that if the taxpayer does not request a contested case hearing within 30 days of the Department's determination, the regulatory license will not be issued or the existing license will be suspended or revoked and any applicable penalty will be imposed.

B. ***Appeals of Regulatory Violations Which Do not Involve the Denial, Suspension or Revocation of a Regulatory License***

1. *Determination of a Regulatory Violation* - Either the Division or the State Law Enforcement Division ("SLED") will cite taxpayer for a regulatory violation. The citation of the violation will be forwarded on to the Division for processing. The Division will issue taxpayer a proposed assessment setting forth the information containing the basis for the violation and indicate that the violation will become final and nonappealable unless the taxpayer files a written protest protesting the violation within 90 days of the date of the proposed assessment. An employee of the Division will provide sufficient information informing the taxpayer how to file a protest with the Department.

2. *Filing of Protest by Taxpayer* - The taxpayer may file a written protest within 90 days of the proposed assessment appealing the proposed assessment. The written protest must contain:

(a) the name, address, and telephone number of the taxpayer;

(b) the appropriate taxpayer identification number(s);

(c) the nature and kind of issue in dispute;

(d) a statement of facts supporting the taxpayer's position;

(e) a statement outlining the reasons for the appeal, including any law or authority upon which the taxpayer relies; and

(f) any other relevant information the Department may reasonably prescribe.

See Code Section 12-60-450 for further information as to the rules regarding the filing of a protest.

3. *Regulatory Violation - No Protest Filed* - If the taxpayer does not file a written protest with the Department within 90 days of the proposed assessment, the Department will assess any monetary penalty associated with the violation. A suspension of such action may be ordered by the Taxpayer's Rights Advocate pursuant to Code Section 12-58-30, in which event no action will be taken until the matter is resolved or the Taxpayers' Rights Advocate lifts the suspension.

4. *Regulatory Violation - Protest Filed* - If the taxpayer does file a written protest, the Department will not assess any penalty until the matter is resolved within the Department or a contested case hearing has been held and a decision has been rendered by an administrative law judge. If a written protest is filed, the Division employee will forward the file on to the Department Representative.

5. *Department Representative Review of File* - If a written protest is filed, a Department representative will receive the file and may contact the taxpayer to request any additional information. The Department may then:

(a) agree with the taxpayer and close the file and notify all pertinent parties that the file has been closed; or,

(b) issue a Department determination. In the event a Department determination is issued, the Department representative will inform the taxpayer that if the taxpayer does not request a contested case hearing within 30 days of the Department's determination, the violation will be nonappealable and any penalties associated with the regulatory violation will be considered immediately due and owing. Such penalties, with interest if applicable, shall then be immediately assessed against the taxpayer.

C. ***Emergency Suspension or Revocation of a Regulatory License***

If the Department determines that public health, safety or welfare requires emergency action, the appeal provisions set forth in this Revenue Procedure will be bypassed and the Department will seek an emergency revocation order in accordance with the provisions set forth in Code Section 12-60-1340.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens
Ray N. Stevens, Director

January 11, 2007
Columbia, South Carolina

EXHIBIT B

MCNAIR
ATTORNEYS

Jeffrey T. Allen

jtallen@mcnair.net
T (803) 799-9600
F (803) 933-1522

October 11, 2012

Via U.S. Mail

South Carolina Department of
Revenue
Property Division - Utilities
P.O. Box 125
Columbia, SC 29214

Re: Protest of:

FTC Communications, LLC
1101 E. Main Street
PO Box 588
Kingstree, SC 29556
EIN [redacted]
Ph: (843) 382-2333)

Tax Type: Property
Tax Year: 2012

Dear Sir/Madam:

We represent the above-referenced taxpayer. A copy of our Form SC 2848, Power of Attorney and Declaration of Representative, authorizing our representation is enclosed.

FTC Communications, LLC hereby protests the PT-422, Proposed Assessment, for tax year 2012, a copy of which is enclosed. The basis of the protest is the Department's failure to exempt the company's assets which are exempt under S.C. Code § 12-37-220(B)(10).

Please contact me to discuss this protest at your earliest convenience.

Sincerely,

McNAIR LAW FIRM, P.A.

Jeffrey T. Allen

Enclosures

McNair Law Firm, P. A.
1221 Main Street
Suite 1700
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

COLUMBIA 1094061v2

EXHIBIT C

MCNAIR
ATTORNEYS

December 28, 2012

Jeffrey T. Allen

jtallen@mcnair.net
T (803) 799-9800
F (803) 933-1522

Via Certified Mail

South Carolina Department of Revenue
Property Division - Utilities
P.O. Box 125
Columbia, SC 29214

Re: Exemption Request and Refund Claim of:

FTC Communications, LLC
1101 E. Main Street
PO Box 588
Kingstree, SC 29556
EIN: [redacted]
Ph: (843) 382-2333)

Farmers Telephone Cooperative, Inc.
1101 E. Main Street
PO Box 588
Kingstree, SC 29556
EIN: [redacted]
Ph: (843) 382-2333)

Tax Type: Property
Tax Years: 2010, 2011

Dear Sir/Madam:

We represent the above-referenced taxpayers. A copy of our Form SC 2848, Power of Attorney and Declaration of Representative, authorizing our representation is enclosed.

FTC Communications, LLC ("FTC") is a single-member limited liability company owned by Farmers Telephone Cooperative, Inc. ("Farmers"). FTC is not taxed as a corporation for South Carolina income tax purposes. S.C. Code § 12-2-25(B) provides that "[f]or South Carolina tax purposes: (1) a single-member limited liability company, which is not taxed for South Carolina income tax purposes as a corporation, is not regarded as an entity separate from its owner." In CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 716 S.E.2d 877 (SC 2011), the South Carolina Supreme Court ruled that a single member LLC is disregarded for property tax purposes and that a single member

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LLC qualifies for any tax benefits available to its member.

S.C. Code § 12-37-220(B)(10) exempts:

> ...the property of telephone companies and rural telephone cooperatives operating in this State used in providing rural telephone service, which was exempt from property taxation as of December 31, 1973, shall be exempt from such property taxation: provided, however, that the amount of property subject to ad valorem taxation of any such company or cooperative in any tax district shall not be less than the net amount to which the tax millage was applied for the year ending December 31, 1973. Any property in any tax district added after December 31, 1973, shall likewise be exempt from property taxation in the proportion that the exempt property of such company or cooperative as of December 31, 1973, in that tax district was to the total property of such company or cooperative as of December 31, 1973, in that tax district.

SC Technical Advice Memorandum #90-3 addressed the exemption under S.C. Code § 12-37-220(B)(10). The TAM concludes that "[a]ll property of rural telephone cooperatives, added after December 31, 1973 and used in providing rural telephone service, is exempt from property taxation, except city and town taxes." The Department has recognized that Farmers is entitled to the exemption in S.C. Code § 12-37-220(B)(10).

The Forms PT-422 and distribution reports issued by the Department for tax years 2010 and 2011 show that FTC's telephone property was subject to county tax. For unknown reasons, the assessments were issued in the name of FTC Communications, Inc. As indicated in the returns filed with the taxpayer's returns, FTC Communications, Inc. transferred all of its assets to FTC Communications, LLC in 2009. The exemption in S.C. Code § 12-37-220(B)(10) should have applied to all of FTC property allocated to a county because it was a single-member LLC disregarded for South Carolina tax purposes and its assets were used to provide rural telephone service. The following charts summarize the Department's assessments made against FTC's property that were allocated to a county and the related bills received and paid by FTC:

2010		
County	Assessment	Bill Amounts
Clarendon	$ 406,670.00	$ 143,290.81
Florence	$ 242,950.00	$ 68,142.10
Lee	$ 231,900.00	$ 82,165.48
Sumter	$ 510,320.00	$ 158,134.58
Williamsburg	$ 839,840.00	$ 275,233.56
Totals	$ 2,231,680.00	$ 726,966.53

2011		
County	Assessment	Bill Amounts
Clarendon	$ 462,220.00	$ 163,034.67
Florence	$ 242,370.00	$ 68,219.05
Lee	$ 228,080.00	$ 74,986.19
Sumter*	$ 628,420.00	$ 202,964.08
Williamsburg	$ 937,130.00	$ 313,324.95
Georgetown	$ 21,100.00	$ 4,538.61
Totals	$ 2,519,320.00	$ 827,067.55

*Included bills have assessed value of $619,670. Remaining bills for certified assessment could not be identified.

FTC hereby requests that the Department determine that its property in a county is exempt and that a refund in the amount of $726,966.53 for tax year 2010 and $827,067.55 for tax year 2011 be granted, together with interest as allowed by law. Copies of the proposed assessment notices and bills referenced in the preceding charts are enclosed for reference.

Please contact me to discuss this refund claim at your earliest convenience.

Sincerely,

McNAIR LAW FIRM, P.A.

Jeffrey T. Allen

Enclosures

EXHIBIT D

MCNAIR
ATTORNEYS

February 18, 2014

Jeffrey T. Allen

jtallen@mcnair.net
T (803) 799-9800
F (803) 933-1522

Via Certified Mail

South Carolina Department of
Revenue
Property Division - Utilities
P.O. Box 125
Columbia, SC 29214

Re: Protest of:

Farmers Telephone Cooperative, Inc. (EIN: [redacted])
FTC Communications, LLC (EIN: [redacted])
FTC Diversified Services, LLC (EIN: [redacted]
1101 E. Main Street
PO Box 588
Kingstree, SC 29556
Ph: (843) 382-2333

Tax Type: Property
Tax Year: 2013

Dear Sir/Madam:

We represent the above-referenced taxpayers. Copies of our Forms SC 2848, Power of Attorney and Declaration of Representative, authorizing our representation are enclosed.

Farmers Telephone Cooperative, Inc. ("Farmers"), FTC Communications, LLC ("FTC"), and FTC Diversified Services, LLC ("Diversified") hereby protest the Forms PT-422, Proposed Assessment, for tax year 2013, copies of which are enclosed. The basis of the protest is the Department's failure to exempt the assets of FTC and Diversified under S.C. Code § 12-37-220(B)(10).

FTC is a single-member limited liability company owned by Farmers that provides wireless telephone service. FTC is not taxed as a corporation for South Carolina income tax purposes.

Diversified is a single-member limited liability company owned by Farmers that provides competitive local exchange telephone service.

McNair Law Firm, P.A.
1221 Main Street
Suite 1700
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

Diversified is not taxed as a corporation for South Carolina income tax purposes.

S.C. Code § 12-2-25(B) provides that "[f]or South Carolina tax purposes: (1) a single-member limited liability company, which is not taxed for South Carolina income tax purposes as a corporation, is not regarded as an entity separate from its owner." In *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (SC 2011), the South Carolina Supreme Court ruled that a single member LLC is disregarded for property tax purposes and that a single member LLC qualifies for any tax benefits available to its member.

S.C. Code § 12-37-220(B)(10) exempts:

> ...the property of telephone companies and rural telephone cooperatives operating in this State used in providing rural telephone service, which was exempt from property taxation as of December 31, 1973, shall be exempt from such property taxation: provided, however, that the amount of property subject to ad valorem taxation of any such company or cooperative in any tax district shall not be less than the net amount to which the tax millage was applied for the year ending December 31, 1973. Any property in any tax district added after December 31, 1973, shall likewise be exempt from property taxation in the proportion that the exempt property of such company or cooperative as of December 31, 1973, in that tax district was to the total property of such company or cooperative as of December 31, 1973, in that tax district.

SC Technical Advice Memorandum #90-3 addressed the exemption under S.C. Code § 12-37-220(B)(10). The TAM concludes that "[a]ll property of rural telephone cooperatives, added after December 31, 1973 and used in providing rural telephone service, is exempt from property taxation, except city and town taxes."

The Department has recognized that Farmers is entitled to the exemption in S.C. Code § 12-37-220(B)(10). Assets held by FTC and Diversified are also entitled to the exemption in S.C. Code § 12-37-220(B)(10) because their sole member is Farmers and their assets are used to provide rural telephone service.

The basis of the claim for exemption which underlies this protest is pending before the Department for tax years 2010-2012 in protests and refund claims of Farmers and FTC. A letter dated September 27, 2013, a copy of which is attached, summarizes the application of the exemption. Diversified was not included in the 2010-2012 tax years because it was not a single-member LLC on or before December 31, 2011.

Please contact me to discuss this protest at your earliest convenience.

Sincerely,

McNAIR LAW FIRM, P.A.

Jeffrey T. Allen

Enclosures

cc: Taylor Ingram *(via email)*

EXHIBIT E

SETTLEMENT AGREEMENT

PARTIES

The parties to this Settlement Agreement ("Agreement") include the South Carolina Department of Revenue ("Department") and the following entities: Farmers Telephone Cooperative, Inc. ("Farmers Coop"); FTC Communications, LLC ("FTCC"); and FTC Diversified Services, LLC ("Diversified") (these three entities are collectively referred to as "Taxpayers"). The Department and the Taxpayers are collectively referred to as the "Parties."

RECITALS

1. Farmers Coop was incorporated in South Carolina in 1952. Pursuant to S.C. Code Ann. § 12-37-220(B)(10), it has utilized the property tax exemption for property of rural telephone cooperatives operating in South Carolina used in providing rural telephone service.

2. FTCC was organized as a limited liability company ("LLC") in South Carolina on July 1, 2009. FTCC is a single-member LLC of Farmers Coop.

3. Diversified was organized as a limited liability company in South Carolina effective July 1, 2012. Diversified is a single-member LLC of Farmers Coop.

4. The basis of this case is whether property used in providing rural telephone service that is owned by FTCC and Diversified, as single-member LLCs of Farmers Coop, should be exempt from property tax under S.C. Code Ann. § 12-37-220(B)(10). Under that exemption, property used to provide rural telephone service is exempt from all ad valorem property tax when located in unincorporated areas (sometimes referred to as "County-Wide") and exempt from all ad valorem property tax other than municipal or town ad valorem taxes when located in a municipality or town.

5. S.C. Code Ann. § 12-2-25(B)(1) says that a single-member LLC that is not taxed as a corporation for South Carolina tax purposes is disregarded as an entity separate from its single member.

6. FTCC and Diversified each file property tax returns as a "telephone" business under S.C. Code Ann. § 12-4-540(A)(1)(f).

Initial _____

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7. Both FTCC and Diversified provide a range of services that include telephone-related service and other services. FTCC provides wireless telephone service, operator service, and answering services. Diversified provides land-line telephone service, television services, Internet service, and security service.

8. FTCC filed its property tax return, Form PT-420 and supplemental data, for property tax year 2010 with the Department's Property Division on April 29, 2010.

9. The Property Division issued a proposed assessment to FTCC for property tax year 2010 on May 28, 2010. In this proposed assessment, the Property Division identified the taxable value of FTCC's property to be $23,399,118 and an assessed value of $2,456,910. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in five South Carolina counties: Clarendon, Florence, Lee, Sumter, and Williamsburg. FTCC received and paid the related property tax bills.

10. FTCC filed its property tax return, Form PT-420 and supplemental data, for property tax year 2011 with the Department's Property Division on April 14, 2011.

11. The Property Division issued a proposed assessment to FTCC for property tax year 2011 on April 25, 2011. In this proposed assessment, the Property Division identified the taxable value of FTCC's property to be $26,658,177 and an assessed value of $2,799,110. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in six South Carolina counties: Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg. FTCC received and paid the related property tax bills.

12. On or about December 28, 2012, FTCC sent a letter to the Department requesting a property tax exemption for FTCC's rural telephone property pursuant to section 12-37-220(B)(10) and a related refund for property tax years 2010 and 2011. FTCC requested a refund of $726,966.53 for 2010 and $827,067.55 for 2011. The basis for FTCC's requests is section 12-2-25(B)(1), which provides that a single-member LLC that is not taxed as a corporation for South Carolina income tax purposes is disregarded as an entity separate from its owner; hence, the single-member LLC qualifies for any tax benefits available to its single member. Here,

Initial

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FTCC asserts that it qualifies for the rural telephone equipment exemption under section 12-37-220(B)(10).

13. FTCC filed its property tax return, Form PT-420 and supplemental data, for property tax year 2012 with the Department's Property Division on April 2, 2012.

14. The Property Division issued a proposed assessment to FTCC for property tax year 2012 on July 13, 2012. In this proposed assessment, the Property Division identified the taxable value of FTCC's property to be $28,804,604 and an assessed value of $3,024,480. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in six South Carolina counties: Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg. In a letter dated October 1, 2012, FTCC protested the 2012 proposed assessment for failure to exempt FTCC's assets under section 12-37-220(B)(10). Due to the protest, FTCC was billed and paid property taxes on 80% of the original proposed assessment.

15. FTCC filed its property tax return, Form PT-420 and supplemental data, for property tax year 2013 with the Department's Property Division on April 30, 2013.

16. The Property Division issued a proposed assessment to FTCC for property tax year 2013 on January 15, 2014. In this proposed assessment, the Property Division identified the taxable value of FTCC's property to be $37,417,582 and an assessed value of $3,928,850. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in six South Carolina counties: Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

17. The Property Division issued a proposed assessment to Diversified for property tax year 2013 on January 15, 2014. In this proposed assessment, the Property Division identified the taxable value of Diversified's property to be $28,031,561 and an assessed value of $2,943,310. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in five South Carolina counties: Clarendon, Florence, Lee, Sumter, and Williamsburg.

18. In a letter dated February 18, 2014, FTCC and Diversified protested the respective 2013 proposed assessments for failure to exempt FTCC's and Diversified's assets

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under section 12-37-220(B)(10). Due to the protest, FTCC and Diversified were billed and paid property taxes on 80% of the original proposed assessment.

19. FTCC filed its property tax return, Form PT-420 and supplemental data, for property tax year 2014 with the Department's Property Division on April 28, 2014.

20. The Property Division issued a proposed assessment to FTCC for property tax year 2014 on August 12, 2014. In this proposed assessment, the Property Division identified the taxable value of FTCC's property to be $41,705,750 and an assessed value of $4,379,100. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in six South Carolina counties: Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

21. The Property Division issued a proposed assessment to Diversified for property tax year 2014. In the distribution report, the Property Division allocated the assessed value of $2,767,670 to the applicable taxing districts (i.e., municipalities and unincorporated areas) in five South Carolina counties: Clarendon, Florence, Lee, Sumter, and Williamsburg.

22. In a letter dated November 6, 2014, FTCC and Diversified protested the respective 2014 proposed assessments for failure to exempt FTCC's and Diversified's assets under section 12-37-220(B)(10). Due to the protest, FTCC and Diversified were billed and paid property taxes on 80% of the original proposed assessment.

23. FTCC filed its property tax return, Form PT-420 and supplemental data, for property tax year 2015 with the Department's Property Division on or about April 24, 2015.

24. The Property Division issued a proposed assessment to FTCC for property tax year 2015 on August 24, 2015. In this proposed assessment, the Property Division identified the taxable value of FTCC's property to be $41,009,667 and an assessed value of $4,306,020. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in six South Carolina counties: Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

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25. Diversified filed its property tax return, Form PT-420 and supplemental data, for property tax year 2015 with the Department's Property Division on or about April 24, 2015.

26. The Property Division issued a proposed assessment to Diversified for property tax year 2015 on August 24, 2015. In this proposed assessment, the Property Division identified the taxable value of Diversified's property to be $24,349,220 and an assessed value of $2,556,670. In the distribution report, the Property Division allocated the assessed value to the applicable taxing districts (i.e., municipalities and unincorporated areas) in five South Carolina counties: Clarendon, Florence, Lee, Sumter, and Williamsburg.

27. In a letter dated October 8, 2015, FTCC and Diversified protested the respective 2015 proposed assessments for failure to exempt FTCC's and Diversified's assets under section 12-37-220(B)(10). Due to the protest, FTCC and Diversified were billed and paid property taxes on 80% of the original proposed assessment.

28. The Parties now seek to settle all claims and matters arising regarding property taxes for tax years 2010 through 2015 for FTCC and for tax years 2013 through 2015 for Diversified (together, the "Audit Period") in accordance with the provisions of this Agreement.

29. The settlement is reasonable and desirable to avoid the on-going costs, expense, and uncertainty of litigation and is a means for ending the existing disputes without any party admitting or conceding any point or principle of law or fact or in any way creating any precedent with regard to such matters of law or fact.

NOW, THEREFORE, in consideration of these recitals, for the mutual benefits accruing to the Taxpayers and the Department from the execution of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with no admission of liability on the part of any party – each balancing the hope of gaining against the risk of losing with respect to the taxes, fees, interest, and penalties described above, and each preferring compromise and settlement to resolve their claims, disputes and defenses relating to any lawsuit – the Department and the Taxpayers hereby agree as follows:

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1. RELEASES

1.1 Releases by Taxpayers. The Taxpayers forever release the Department from any and all past, present, or future claims (including claims for refunds or protests of property tax assessments) in connection with the Audit Period.

1.2. Releases by the Department. The Department forever releases the Taxpayers from any and all past, present, or future claims (including assessments of taxes which could have been asserted or assessed by the Department) in connection with property taxes for the Audit Period, except as contemplated in Section 2 below.

2. AMENDED RETURNS, AMENDED ASSESSMENTS, REFUNDS, AND OTHER ITEMS

2.1 Property Tax Exemptions. The Parties agree that the property used in FTCC's wireless telephone service and Diversified's land-line telephone service qualifies for the exemption in SC Code Ann. § 12-37-220(B)(10). The Parties agree that such property properly allocated to a municipality or town is subject to municipal or town property tax. Further the Parties agree the property of FTCC and Diversified used to provide other services is not exempt from property taxes at any level.

2.2 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.

2.3 Parties Will Work Together in Good Faith. The Parties have not agreed to the amount of any revised assessment. FTCC, Diversified, and the Property Division will work together in good faith to determine what information is needed from FTCC and Diversified and the process necessary for the Property Division to make the appropriate assessments.

2.3 Certification. Once the Property Division has made the appropriate assessments the Department will certify the final assessments for the Audit Period to each applicable county. Such assessments will exempt FTCC's wireless telephone service and Diversified's land-line telephone service under S.C. Code Ann. § 12-37-220(B)(10).

2.4 Payments or Refunds. After the counties receive the certified final assessments for the Audit Period, each respective county then will calculate a revised property tax amount for each tax year. For each county, if the net adjustment to property taxes for the Audit Period for FTCC or Diversified results in a payment due from FTCC or Diversified, FTCC

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or Diversified will make that payment in a timely manner. If the net adjustment to property taxes for the Audit Period for FTCC or Diversified results in an overpayment of property taxes, 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. The forgoing provision shall not prevent FTCC, Diversified, and a county from mutually agreeing to refund an overpayment in another manner or in a different time period.

3. OTHER MATTERS

3.1. Confidentiality. The Department and the Taxpayers and their respective attorneys and representatives agree that they will keep each and every term of this Agreement confidential and will not disseminate information relating to the substance or contents of this Agreement to any person, unless (a) required by law, (b) disclosed pursuant to the South Carolina Freedom of Information Act (c) necessary to effect compliance with the law, (d) disclosed to a local governing body affected by this Agreement, (e) ordered by a court of competent jurisdiction, (f) requested by a Taxpayer's or the Department's independent accounting firm, or (g) agreed in writing by the Parties.

3.2 Warranties. Each Party represents and warrants that it has the full and complete legal authority to enter into this Agreement, that the individuals executing this Agreement have the legal authority to do so, and that this Agreement shall be binding and enforceable in accordance with its terms when duly executed by the Parties.

3.3 Final Settlement; No Admissions. This Agreement represents a full, complete, final, and binding settlement. If any portion of this Agreement is found to be invalid for any reason, such portion shall be severed from the Agreement, and the remainder of the terms and conditions of this Agreement shall be binding on the Parties. This Agreement shall not be construed by either the Taxpayers or the Department as an admission by either party concerning any claims or issues asserted with respect to the tax or fees for the Audit Period.

3.4 Binding Agreement; Successors and Assigns. This Agreement is binding on the Department and its successor agencies and on the Taxpayers and their successors in interest.

3.5 Duplicate Originals. This Agreement may be executed in duplicate originals, all of which shall have the same effect as if the signature hereto and thereto were upon the same instrument.

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3.6 Entire Agreement. This Agreement supersedes all prior and contemporaneous oral and written agreements, understandings, negotiations, and discussions among the Parties relating to the Audit Period covered by this Agreement.

3.7 Governing Law. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of South Carolina.

3.8 Cooperation. The Parties agree to cooperate fully and to execute any and all supplementary documents and take all actions that may be necessary or appropriate to give full force and effect to the terms of this Agreement.

FTC Communications, LLC

Signature

F. Bradley Ervin

Print Name

Chief Executive Officer

Title

1/6/17

Date

FTC Diversified Services, LLC

Signature

F. Bradley Ervin

Print Name

Chief Executive Officer

Title

1/6/17

Date

South Carolina Department of Revenue

Signature

William J. Condon, Jr.

Print Name

Managing Counsel for Litigation

Title

1/4/17

Date

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EXHIBIT F

Q. Okay. Did you draft this yourself or did someone else draft it for you?

A. I drafted it myself.

Q. Did anyone else have any input into editing it?

A. I spoke with Ms. Greer and Mr. Vaughn Lee.

Q. Is there anything now after reviewing it and after the passage of time that you felt needs to be added to this affidavit or is this testimony complete with regard to the subject matters that's discussed in the affidavit?

A. Well, as to the subject matters in the affidavit, it is accurate. There are other facts throughout the course of the audit. Of course there are many, many communications through the audit, but just it's the -- it's the high points of the beginning and ending of the audit -- or request for an exemption rather.

Q. Okay. In the last paragraph you mention that -- your belief that "Mr. Kimpson has secured all necessary approvals to authorize the settlement agreement."

What were the necessary approvals Mr. Kimpson had to get in your mind?

A. My understanding is the director would need

to approve the settlement.

Q. Okay.

MR. CARTIN: 36.

(Allen Exhibit 36, E-Mail String Beginning With Monday, May 13, 2013, E-Mail From Taylor Ingram to Jeff Allen, Bates Stamped Farmers 0006441 Through Farmers 0006444, marked for identification.)

BY MR. CARTIN:

Q. I'll let you go ahead and go through that -- sort of just review that e-mail string.

A. Okay.

Q. Before I kind of get into the questions about some of the things that are referenced in this e-mail, my -- my understanding of how tax practices in South Carolina works is this. There are very few people, relatively few, that -- that actually participate -- do the kind of work that you do. Is that a fair statement?

A. I believe so.

Q. Okay. And as I've been pleasantly surprised to find, it is very -- a collegial group of people that are fairly easy to get along with and most things are -- are amicably resolved without too much controversy. Is that fair?

the internal approval including approvals from the director and other any other person, administrator that they needed to to be able to sign this agreement and have it be binding on the Department.

Q. And do you have any reason to believe that those authorities and approval were not secured?

A. Do not.

Q. Do you have any knowledge to know that in this case that this settlement agreement contains any kind of fraud?

A. Do not.

Q. How about malfeasance?

A. Do not.

Q. How about misrepresentation?

A. Do not.

Q. I think you've discussed this in a little bit piecemeal form throughout your deposition, but what is your deposition of a Department determination?

A. My understanding of a Department determination, it is the final decision of the Department of Revenue that sets forth its position in a disputed matter.

Q. And in your experience in dealing with the Department, is the determination typically issued when the Department disagrees with the position taken by the

EXHIBIT G

STATE OF SOUTH CAROLINA)
) **Affidavit of Jeffrey T. Allen**
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me, Jeffrey T. Allen, who first being duly sworn, deposes and states:

1. My name is Jeffrey T. Allen. I am older than 18 years of age and make this affidavit freely and of my own free will. There has been no pressure or coercion to make any statement in this affidavit.

2. I am a lawyer licensed in South Carolina and a shareholder at McNair Law Firm, P.A. and in that capacity represented Farmers Telephone Cooperative, Inc. and its wholly owned LLCs, FTC Communications, LLC and FTC Diversified Services, LLC, before the South Carolina Department of Revenue (SCDOR) in a tax matter related to the qualification of certain of its assets for a property tax exemption.

3. The first request for a property tax exemption was filed on October 11, 2012. Discussions concerning qualification for the property tax exemption ensued and requested information was provided to SCDOR. In November 2014 I was informed by Timothy C. Thompson, Managing Counsel for Litigation for SCDOR, that William J. Condon, Counsel for Litigation for SCDOR, was assigned to the matter. William J. Condon was soon thereafter promoted to Managing Counsel for Litigation.

4. Requested information was provided to Mr. Condon and discussions of the matter continued through March 2016. In March 2016 a meeting was held with both Mr. Condon and Milton Kimpson, General Counsel for Litigation for SCDOR, to discuss resolution of the matter.

5. In August 2016 Mr. Condon informed me that a settlement agreement was forthcoming but needed to be reviewed by Mr. Kimpson before distribution. The settlement agreement was subsequently distributed by Mr. Condon and signed on January 8, 2017.

6. I am without knowledge of whether Milton Kimpson received the approval of the Director of SCDOR, however, based on my experience with SCDOR, I understood that Mr. Condon and Mr. Kimpson had secured all necessary approvals to authorize the settlement agreement and this is still my belief.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Further the affiant sayeth not.

Jeffrey T. Allen

SWORN to and SUBSCRIBED before me
this 6th day of February, 2018

Jennifer L. Rath
Notary Public for South Carolina
My Commission Expires: November 29, 2027



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EXHIBIT H

A. Uh-huh.

Q. And in item 5 you say, To the best of my recollection, during my tenure as director, the department followed the above procedure for settlements based on the hazards of litigation for all contested tax cases.

Is it possible that the department, under your tenure, did not, in an isolated incident or two, follow this procedure?

A. I'm not aware of a single case where it was not followed.

Q. But it is possible.

A. I mean, Walt, I'm not sure I'm willing to even go that far knowing what I know about Milton and the way that he handled the cases.

Q. You don't even think there's even a possibility at all that one slipped through the cracks.

A. I'm not -- Milton was incredibly diligent, to the point of annoyance to me, of following this procedure, to the point that I had to be involved in minimal tax controversy amounts solely because of this policy document.

Q. Tell me -- and I don't want to know any specifics about any particular cases you would have discussed with Mr. Kimpson, now Judge Kimpson, but I am

curious to know what the typical process was for reviewing settlement agreements and what level of detail Mr. Kimpson would have provided you about the settlement agreements.

A. So the Office of General Counsel for Litigation had, at any one time, a number of cases going on.

And to the extent that a settlement offer was made by a taxpayer or to the extent that the lawyers for the Department of Revenue wanted to settle a case, Milton would reach out to me, schedule some time to talk with me about it. We would talk about the case, and then I would either approve or disapprove of the settlement.

Q. So to the extent a settlement came before you, you would be directly and substantially involved in that settlement.

A. To the extent a settlement came to me, I would have had a conversation with the lawyers involved on the matter, yes.

Q. So you would have had to understand the substance of that settlement agreement or to approve or disapprove it?

A. Yeah. I was involved in approving or disapproving it, in every case that I'm aware of.

Q. And you are not specifically aware of doing that in this particular case.

A. I don't recall it.

Q. Typically, when he would sit down with you, how many settlement agreements would you have? Is it a stack of 150 or a stack of 10, or how does it work?

A. It varied. It might be one case, or there might be a handful that they wanted to talk about at any one time.

Q. Okay. Do you ever recall, during your tenure as director, denying a settlement agreement?

A. Yes.

Q. And how often did that happen?

A. Rarely.

Q. Okay. What percentage of the time -- could you give a rough percentage, 5 percent of the time, 1 percent?

A. I don't know that I'm comfortable giving a percentage, but it was rare, and it was an exception, not a rule.

Q. And just to be clear, at the time you drafted this affidavit, before you became involved in this case, could you have articulated the terms of the settlement agreement between Farmers and DOR?

A. All right. I think I need you to rephrase

have several follow-up questions. I won't say a couple. I want to go back to your affidavit, which I believe is Exhibit 2.

A. Okay.

Q. And paragraph 7 -- 4 through 7, you are talking about the general procedures for settling cases, I think, that were in place when you were the director.

But in paragraph 7, you say it was -- let me find it. However, as previously stated, it was his practice -- meaning Milton Kimpson, the general counsel's practice -- to always seek authorization from me prior to entering a settlement of a tax dispute.

Do you see that?

A. Yes.

Q. When Mr. Kimpson would seek that authorization from you, would he typically do that in a personal discussion, a face-to-face meeting, as opposed to over the phone or via e-mail?

A. I would agree that generally it was face-to-face, yes.

Q. That was the customary practice, I guess.

A. Correct.

Q. And once you had had that discussion and you then went on to review and approve or not approve the settlement, was it the customary practice for you to

sign the settlement agreement or someone else?

A. I would say that the custom and practice was for someone else to sign the settlement agreement.

Q. And was that typically the attorney who was handling the matter, to your knowledge?

A. It would either be the attorney handling the matter or Milton himself. I think it probably varied, and, of course, Milton was personally involved in a lot of cases.

Q. So if we had a settlement agreement that was not signed by you, would that in any way indicate that you had not approved the settlement agreement?

MR. CARTIN: Object to the form.

THE WITNESS: State it one more time.

BY MR. LUTHER:

Q. Yeah. Let me rephrase it.

Does the fact that a settlement agreement has a signature from an attorney at the Department of Revenue and not you give you reason to think that it was not approved by you?

MR. CARTIN: Object to the form.

THE WITNESS: I would say that it would be rare for me to have personally signed a settlement agreement. But to the best of my knowledge, I either approved or rejected every settlement discussion on

contested tax cases.

BY MR. LUTHER:

Q. And your testimony and recollection is that customary practice was followed in this case, to the best of your knowledge.

A. Yes, yes.

Q. And you have no reason to believe otherwise.

A. No, I do not.

Q. You've given some testimony about what is good tax policy, efficient administration, fairness, et cetera. And so I want to talk about that with respect to the subject of technological changes that you were asked about. Okay?

A. (Nodding head.)

Q. And I think you said it's important for DOR to be consistent and uniform in its positions, correct?

A. Correct.

Q. And when it comes to the interpretation of a term or phrase in statute that is, let's just say undefined, would it be -- would you expect the department -- would it be reasonable for the department to look to other similar definitions and separate code sections to try to make sense of what that term means?

A. I would say that the department, in carrying out its job to administer and implement and enforce the

EXHIBIT I

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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 Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-CC **AFFIDAVIT OF RICK REAMES, III**

PERSONALLY APPEARED before me, the undersigned, who, being duly sworn states as follows:

1. My name is Rick Reames, III, and I am over eighteen years old and am competent to provide testimony in this case based on my personal knowledge regarding the matters addressed herein.

2. I served as the Director of the South Carolina Department of Revenue (the "Department") from approximately June of 2014 to January of 2017.

3. While serving as Director, I was aware of the settlement procedures at SCDOR as set forth in S.C. Rev. Proc. #06-2.

4. Among other things, this procedure discusses settlement of cases based on the hazards of litigation. S.C. Rev. Proc. #06-2 at § III(C). The subsection that addresses the procedures for such settlements provides as follows:

> Because settlements based on the hazards of litigation must be uniformly made, to settle a case based on the hazards of litigation, the Department representative must send a recommendation to the Department's General Counsel for litigation or his designee. This recommendation must be based on the principles in this Revenue Procedure. The Department's General Counsel for Litigation or his designee will review the settlement and advise the Director or his designee who may authorize the settlement."

S.C. Rev. Proc. #06-2 at § III(C)(3).

5. To the best of my recollection, during my tenure as Director, the Department followed the above procedure for settlements based on the hazards of litigation for all contested tax cases.

6. As Director, I participated in discussions regarding numerous settlements (based on the hazards of litigation) of contested tax cases. The Department's General Counsel at that time was extremely diligent in following the requirements of S.C. Rev. Proc. #06-2 and would request my approval for even minimal dollar amount settlements. I am not aware of any contested tax cases being settled during my tenure without my approval.

7. 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 Farmers Telephone Cooperative, Inc. and its wholly owned LLCs, FTC Communications, LLC and FTC Diversified Services, LLC (collectively, "Farmers") in a property tax matter related to the qualification of certain Farmers' assets for the rural telephone service exemption. However, as previously stated, it was his practice to always seek such authorization from me prior to entering a settlement of a tax dispute, it was my practice to review and approve or not approve such settlements after

meeting with him, and, to the best of my knowledge, we followed this procedure in the Farmers matter.[1]

FURTHER AFFIANT SAYETH NOT.

RICK REAMES, III

SWORN to and subscribed before me
this 7th day of February, 2018

Sharon Rodgers (L.S.)
Notary Public for the State of South Carolina

[1] I do recall discussing within the Department issues related to a parent company with wholly owned subsidiaries and the impact of *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) on state and local taxes. It is possible that this could have been in conjunction with a discussion regarding approval of the Farmers settlement.

EXHIBIT J

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, Williamsburg County School District, Clarendon County School District Two, Florence School District One, Florence School District Three, Sumter County School District, Clarendon County Hospital District, and Lee County School District, Petitioners, vs. South Carolina Department of Revenue; Farmers Telephone Cooperative, Inc.; FTC Communications, LLC; and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-CC **AFFIDAVIT OF MILTON G. KIMPSON**

Milton G. Kimpson personally appeared before me, whom being duly sworn, pursuant to Rule 56(e) of the South Carolina Rules of Civil Procedure, hereby deposes and certifies the following:

1. I am over eighteen years of age, suffer from no known disability, and am competent to testify to the facts set forth herein. The statements in this affidavit are made based on my personal knowledge, including my review of the issues in this case.

2. I have practiced an attorney, licensed in South Carolina, since 1986. I served as the General Counsel for Litigation in the Office of the General Counsel for Litigation ("OGC") at the South Carolina Department of Revenue ("Department") for many years, including the time relevant to this affidavit. In this position, I managed attorneys who litigated complex tax matters, including property tax matters, and routinely engaged in settling such matters through written settlement agreements.

3. In addition to various statutes, South Carolina Revenue Procedure # 06-2 (Exhibit 1) governs the Department's procedures for handling appeals by taxpayers, including settlement procedures.

4. As the General Counsel for Litigation, I reviewed the settlement agreement for tax years 2010 through 2015 between the Department and the Farmers Entities concerning a property tax exemption for property used in providing rural telephone service and the related tax assessments.

5. The customary practice within OGC for a case like this was for the General Counsel for Litigation and often the attorney serving as the Department Representative on the matter to have a personal discussion about a proposed settlement agreement with the Director before executing a settlement agreement.

6. Customary practice at the Department was for the Department Representative, not the Director, to sign settlement agreements for the Department. Department Representatives would not sign a settlement agreement until after he/she received the Director's approval in a meeting with the Director and the General Counsel for Litigation or received notice from the General Counsel of Litigation that the Director had approved the settlement agreement.

7. I am confident that, as the General Counsel for Litigation, I advised the Director of this settlement agreement and that the Director approved the settlement agreement before the Department Representative signed it on behalf of the Department.

FURTHER, AFFIANT SAYETH NOT:

Milton G. Kimpson

SWORN and subscribed to before me this
5 day of April, 2019.

Notary Public for South Carolina
My Commission Expires: 2/23/2028

EXHIBIT K

--

Q. Authorizes the department to enter into written settlement agreements with personal and business taxpayers to resolve tax liability disputes?

A. As an auditor?

Q. No, ma'am. Just the department in general. Are we able to enter into an agreement with a taxpayer who has received an assessment for a tax liability, and, for some reason or another, argues that, Well, this tax liability has no basis, we don't owe this; the department says that they do. In those instances, are we able to enter into written settlement agreements with taxpayers --

MR. CARTIN: Object to the form.

Q. -- as far as you're aware, that South Carolina states?

A. As far as I'm aware, yes.

Q. Thank you. Do you have reason to believe that the department acted in an illegal manner by entering into a Settlement Agreement with the Farmers entities in this case?

A. Illegally?

Q. Yes, ma'am.

A. No.

Q. Do you have any knowledge or evidence that the department or the director of the department did not approve the Settlement Agreement?

MR. CARTIN: Object to the form.

A. I have no knowledge.

Q. Do you have any knowledge or evidence that the Settlement Agreement was the result of fraud?

A. No knowledge.

Q. Do you have any knowledge or evidence that the Settlement Agreement was the result of malfeasance?

A. No knowledge.

Q. And this is the last one, I promise. Do you have any knowledge or evidence that the Settlement Agreement was a result of any misrepresentations?

A. I have no knowledge of all of the above.

Q. Great. Thank you. Do you know of any other property taxpayers in Sumter County who receive exemptions that are determined by the Department of Revenue?

A. Offhand, if I had to name them, I might

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, Williamsburg County School District, Clarendon County 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,	)	Docket No. 17-ALJ-17-0237-CC
Petitioners,	)	**PROOF OF SERVICE**
vs.	)	
South Carolina Department of Revenue, Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC,	)	
Respondents.	)	

I, the undersigned employee of the South Carolina Department of Revenue, Office of General Counsel, do hereby certify that I have served the following: **South Carolina Department of Revenue's Motion for Partial Summary Judgment and Memorandum in Support of Respondent's Motion for Partial Summary Judgment**, in connection with the above-captioned matter by causing a copy of the same to be deposited in the United States Mail on the below date, postage prepaid to the following parties at their address of record:

Attorneys for Farmers Telephone Cooperative, Inc.; FTC Communications, LLC; and FTC Diversified Services, LLC – Respondents:

Bryson M. Geer, Esquire
John C. von Lehe, Jr., Esquire
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 1806
Charleston, SC 29402-1806

FILED
MAY 09 2019
SC ADMIN LAW COURT

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Columbia, SC 29202

Michael Kozlarek, Esquire
Kozlarek Law LLC
Post Office Box 565
Greenville, SC 29602

Amber N. Hogan
Paralegal to the General Counsel for Litigation
South Carolina Department of Revenue

Columbia, South Carolina
May 9, 2019

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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 Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-CC **MOTION TO JOIN MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT OF SAME FILED BY SOUTH CAROLINA DEPARTMENT OF REVENUE**

Pursuant to SCALC Rules 19 and 68 and SCRCP Rule 56, Respondents Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC (collectively, "Farmers") hereby joins the Motion for Partial Summary Judgment and Memorandum in Support of Same filed by the South Carolina Department of Revenue (the "Department") this same date. As explained more fully in the Department's supporting memorandum, the Department contends, and Farmers by this Motion also contends, that they are entitled to partial summary judgment as a matter of law because no genuine issues of material fact exist as to the following: (a) South Carolina law (§ 12-4-320(4)) provides that a settlement agreement approved by the Department's Director is final and conclusive and cannot be opened by administrative or judicial action absent fraud, malfeasance, or misrepresentation; (b) the Settlement Agreement at issue in this case was

approved by the Director; (c) and the Settlement Agreement was not the product of fraud, malfeasance, or misrepresentation.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

John C. von Lehe, Jr.
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Charleston, SC (29401-2239)
(843)843-5200

Attorneys for Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC

May 9, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by electronic mail and United States mail, postage prepaid, to the following address(es):

Pleadings: **FARMERS' MOTION TO JOIN SOUTH CAROLINA DEPARMENT OF REVENUE'S MOTION FOR PARTIAL SUMMARY JUDGEMENT AND MEMORANDUM IN SUPPORT OF SAME**

Counsel Served:

Madison Felder
Parker Poe Adams & Bernstein, LLP
110 East Court Street, Suite 200
Greenville, SC 29601

Jason P. Luther
South Carolina Department Of Revenue
P.O. Box 12265
Columbia, SC 29211-9979

Walter H. Cartin
Parker Poe Adams & Bernstein, LLP
Post Office Box 1500
12221 Main Street, Suite 1100
Columbia, SC 29202

Michael E. Kozlarek
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Post Office Box 565
14 South Main Street, Suite 130
Greenville, SC 29602-0565

Bryson M. Geer

May 9, 2019

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Clarendon County, Florence County, Lee County, Sumter County, Williamsburg County, Williamsburg County School District, Clarendon County School District Two, Florence School District One, Florence School District Three, Sumter County School District, Clarendon County Hospital District and Lee County School District, Petitioners, vs. South Carolina Department of Revenue; Farmers Telephone Cooperative, Inc.; FTC Communications, LLC; and FTC Diversified Services, LLC, Respondents.	)	Docket No. 17-ALJ-17-0237-IJ **FARMERS' SUPPLEMENT TO PRE-HEARING STATEMENT**

To: The Honorable Ralph K. Anderson, III, Presiding Judge

Pursuant to ALC Rule 14, Respondents Farmers Telephone Cooperative, Inc. ("Farmers Coop"), FTC Communications, LLC ("FTCC") and FTC Diversified Services, LLC ("Diversified") (collectively "Farmers") submit this supplement to the Pre-Hearing Statement filed on September 27, 2017 in the above matter.

As this Court is aware, this matter began when certain of the above-named Petitioners requested a contested case hearing on July 10, 2017 to challenge a settlement entered into by the South Carolina Department of Revenue (the "Department") and Farmers in January of 2017 regarding a property tax matter (the "Settlement Agreement"). The Settlement Agreement provided that FTCC and Diversified assets that were used in providing rural telephone service

qualify for the property tax exemption under S.C. Code Ann. § 12-37-220(B)(10), that FTCC is entitled to a refund for tax years 2010 through 2015, and that Diversified is entitled to a refund for tax years 2013 through 2015. After the Request for Contested Case Hearing was filed, Petitioners filed supplemental requests to add later tax years. See Petitioners' Consolidated Supplement to Request for Contested Case Hearing dated July 17, 2017 (adding tax year 2016), September 25, 2017, (adding tax year 2017) and September 10, 2018 (adding tax year 2018), and Lee County's Supplement to Request for Contested Case Hearing dated July 26, 2017.

Farmers may raise many of the same defenses asserted in its Pre-Hearing Statement as to these later tax years, including that this Court does not have subject matter jurisdiction to hear this matter and that the exemption was properly granted by the Department. First, this Court does not have subject matter jurisdiction to grant Petitioners' request for contested case hearing under S.C. Code Ann. § 12-60-2130 and § 12-60-2150(H) of the Revenue Procedures Act because no Department Determinations are at issue. *See* S.C. Code Ann. §12-60-2130 (allowing taxpayer or local governing body to request a contested case hearing regarding a property tax assessment only where such a party "disagrees with the department determination"); S.C. Code Ann. §12-60-2150(H) (same as to property tax refund claims). A "department determination" is a term of art and is defined as "the final determination within the department from which a person may request a contested case hearing before the Administrative Law Court." S.C. Code Ann. § 12-60-30(10). The relevant statutes as well as the testimony of the Department witnesses and Department policies, practices and procedures will show that certifications issued by the Department to the Taxing Entities are not Department Determinations. Therefore, the Court does not have subject matter jurisdiction to grant Petitioners' request for a contested case hearing.

Additionally, the Department properly granted the exemption to FTCC and Diversified for all tax years at issue. The property tax exemption statute for providing rural telephone service contained in S.C. Code Ann. §12-37-220(B)(10) applies to all assets used to provide rural telephone services,

whether provided by landlines or wireless telephones and the statute requires no particular level of use. Even if the Court determines that some particular level of use is required, the Farmers' assets at issue were used primarily to provide telephone services as measured by the minutes of use those assets were used or were used substantially to provide telephone services as measured by the bandwidth used. These arguments will be supported by the plain meaning of the relevant statutes, longstanding Department policies and procedures interpreting same, good tax policy considerations, factual and engineering testimony regarding what the assets are and how they are used, and expert testimony regarding what rural telephone service is, that wireless and landline telephones provide equivalent services, and that the Federal Communications Commission ("FCC") and the South Carolina Public Service Commission ("SCPSC") rulings view them as such.

Finally, as to all tax years at issue, in addition to the arguments set forth in the initial Pre-Hearing Statement, Farmers will argue (as it did in response to the Taxing Entities' earlier motion for partial summary judgment) that the granting of the exemption to FTCC and Diversified in each tax year at issue was not an illegal, retroactive grant as the Taxing Entities claim, but, to the contrary, each application was timely and authorized by statute; Farmers properly applied for the exemption in all tax years; and the Settlement Agreement is not void for indefiniteness. Farmers requests that the ALC dismiss this case as to both the tax years covered by the Settlement Agreement (2010-2015) as well as the later tax years in which the Department granted the exemption (2016-2018).

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:_____

John C. von Lehe, Jr.
S.C. Bar no. 5719
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Bryson M. Geer
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151 Meeting Street
P.O. Box 1806 (29402-1806)
Charleston, SC (29401-2239)
(843)843-5200

Attorneys for Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC

May 15, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by electronic mail and United States mail, postage prepaid, to the following address(es):

Pleadings: **FARMERS TELEPHONE COOPERATIVE, INC., FTC COMMUNICATIONS, LLC AND FTC DIVERSIFIED SERVICES, LLC'S SUPPLEMENT TO PRE-HEARING STATEMENT**

Counsel Served:

Madison Felder
Parker Poe Adams & Bernstein, LLP
110 East Court Street, Suite 200
Greenville, SC 29601

Jason P. Luther
South Carolina Department Of Revenue
P.O. Box 12265
Columbia, SC 29211-9979

Walter H. Cartin
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Columbia, SC 29202

Michael E. Kozlarek
Kozlarek Law LLC
Post Office Box 565
14 South Main Street, Suite 130
Greenville, SC 29602-0565

Grace Hamill

May 15, 2019

South Carolina Administrative Law Court (SC ALC)

Request for Contested Case Hearing FORM

Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name: First: Middle:	☐ Mr. ☐ Mrs.	☐ Miss ☐ Ms.	Docket No. (To Be Completed by ALC)
Filing on behalf of Petitioners listed on the attached Request for Contested Case Hearing			

Mailing Address:	City:	State and Zip:

Home Number:	Work Number:	Cell Number:	*E-Mail Address:

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

REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No

Are you represented by an Attorney? ☒ Yes ☐ No	Name of Attorney: 1-Walter H. Cartin, Esq.; 2-Madison Felder, Esq.; 3-Michael E. Kozlarek, Esq.
Attorney Mailing Address: 1-Parker Poe Adams & Bernstein LLP, 1221 Main St., Ste. 1100; 2-Parker Poe Adams & Bernstein LLP, 110 E. Court St., Ste. 200; 3-Kozlarek Law, LLC, PO Box 565	City, State and Zip: 1-Columbia, SC 29201; 2-Greenville, SC 29601; 3-Greenville, SC 29602-0565
Attorney Work Number and Cell Number: 1-(803) 255.8000 (wk); 2-(803) 597.6370 (wk); 3-(803) 729-1931 (wk)	Attorney E-Mail Address: 1-waltcartin@parkerpoe.com; 2-madisonfelder@parkerpoe.com; 3-michael@kozlareklaw.com

CASE INFORMATION

Name of Agency that Issued the Decision: South Carolina Department of Revenue
(Example – Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, **you must attach the agency decision.** Is it attached?: ☒ Yes ☐ No	If no, please explain:
Date the decision was issued: 08/15/2019	Date the decision was received: Not applicable.

Please provide a brief statement regarding why the hearing is being requested and the relief sought:

See attached Request for Contested Case Hearing.

Payment via ☐ Check ☐ Money Order ☐ Cash for $ (applicable **filing fee pursuant to** ALC Rule 71) is being submitted today to the Administrative Law Court via ☐ U.S. Postal Service ☐ Hand-delivery

Filing fee not applicable per SCALC Rule 71.A.

X *Your Signature or Signature of Attorney*

September 12, 2019
Date

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: Walter H. Cartin, Esquire	Date: September 12, 2019	City: Columbia	State: SC

I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing **on all other parties** to this matter by hand delivering the same addressed as follows (use the reverse side for any additional names):

Jason P. Luther, Esquire South Carolina Department of Revenue	300A Outlet Point Boulevard	Columbia, SC 29210
Name and/or Agency Name	Address	City, State and Zip
Name and/or Agency Name	Address	City, State and Zip

FILED
SEP 12 2019
SC ADMIN LAW COURT

X *Your Signature or Signature of Attorney*

September 12, 2019
Date

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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, Petitioners, vs. South Carolina Department of Revenue Respondent.	Docket No. 19-ALJ-__-____-CC **REQUEST FOR CONTESTED CASE HEARING**

The above-captioned Petitioners (hereafter "Taxing Entities") hereby request a contested case hearing regarding the assessment certifications attached as **Exhibit A**, which were sent by the South Carolina Department of Revenue ("Department") to the respective County Auditors for each of the Taxing Entities. The assessment certifications give notice of Department determinations for tax year 2019, from which the Taxing Entities have statutory rights to a contested case hearing before this Court pursuant to South Carolina Code Annotated sections 12-60-2130, 12-60-2150, and 12-4-535. The Taxing Entities are exercising their statutory rights to object to, and contest, the Department determinations for tax year 2019. More specifically, the Taxing Entities request that the Court deny the exemption set forth in South Carolina Code Annotated section 12-37-220(B)(10), which Respondent granted to FTC Communications, LLC and FTC Diversified Services, LLC.

[SIGNATURE PAGE FOLLOWS]

FILED
SEP 12 2019
SC ADMIN LAW COURT

Respectfully submitted,

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Attorneys for the Taxing Entities

Of Counsel:

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Greenville, South Carolina 29602-0565
(864) 729-1931
michael@kozlareklaw.com

Columbia, South Carolina
September 12, 2019

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 12, 2019, she caused to be served the foregoing ***Request for Contested Case Hearing*** on all parties of record via hand delivery, addressed as follows:

Jason P. Luther, Esquire
South Carolina Department of Revenue
300A Outlet Pointe Boulevard
Columbia, SC 29210

Christine Davis

Columbia, South Carolina

EXHIBIT A

To Request for Contested Case Hearing

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

8/15/2019

MEMORANDUM

To: County Auditor

From Utility Assessment Group

RE: 2019 Annual Utility Certification

You will find the 2019 annual utility certification for your county attached. Please use the following assessments when billing these companies for tax year 2019.

Should you have any questions, please feel free to contact us at (843) 953-8371 or (843) 953-8389.

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS	Completed By Due Date	Assessment	
DISTRICT:	Bishopville (exempt)	26,970	01
Total for FTC COMMUNICATIONS, LLC.		26,970	

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS	Completed By Due Date	Assessment	
DISTRICT:	Bishopville (exempt)	119,550	01
Total for FTC DIVERSIFIED SERVICES, LLC.		119,550	

[redacted]

STATUS	Completed By Due Date	Assessment	
DISTRICT:	Bishopville	220	02
DISTRICT:	Lee County SD - O/S	1,280	01
DISTRICT:	Lynchburg	170	03
Total for [redacted]		1,670	

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

	STATUS	Completed By Due Date	Assessment	
DISTRICT:	Lynchburg		119,360	03
DISTRICT:	Bishopville		9,600	02
Total for FARMERS TELEPHONE COOPERATIVE, INC.			128,960	

01 exempt.

[redacted]

	STATUS	Completed By Due Date	Assessment	
DISTRICT:	863 Scotsville Rd		10	01
DISTRICT:	1225 SC Hwy 341		10	01
Total for [redacted]			20	

[redacted]

	STATUS	Completed By Due Date	Assessment	
DISTRICT:	SD 1 Outside		8,320	01
DISTRICT:	Bishopville Town SD 1		45,440	02
Total for [redacted]			53,760	

STATE OF SOUTH CAROLINA

DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210

P.O. Box 125, Columbia, South Carolina 29214

AUG 20 2019

8/15/2019

MEMORANDUM

To: County Auditor

From Utility Assessment Group

RE: 2019 Annual Utility Certification

You will find the 2019 annual utility certification for your county attached. Please use the following assessments when billing these companies for tax year 2019.

Should you have any questions, please feel free to contact us at (843) 953-8371 or (843) 953-8389.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

DISTRICT:	Mayesville	59,330
DISTRICT:	Dist. No. 1	3,283,310
DISTRICT:	Sumter	2,095,950
Total for [redacted]		8,306,400

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Sumter - City	506,590
DISTRICT:	Pinewood	128,320
DISTRICT:	Mayesville	177,870
Total for FARMERS TELEPHONE COOPERATIVE, INC.		812,780

[redacted]

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	150 S Pike East	20
DISTRICT:	3595 Access Lane	10
DISTRICT:	2190 Tubeville	10
DISTRICT:	7185 Skinner Rd	10
DISTRICT:	12370 Hwy 301	10
Total for [redacted]		60

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

[redacted]

	STATUS	Completed By Due Date	Assessment
DISTRICT:	SD #01 - Outside		42,950
DISTRICT:	Sumter City SD #17		422,940
DISTRICT:	Sumter City (2)		11,220
DISTRICT:	SD #2 Outside		3,230
Total for [redacted]			480,340

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

	STATUS	Completed By Due Date	Assessment
DISTRICT:	Rembert (exempt)		23,550
DISTRICT:	Sumter (non-exempt)		23,140
DISTRICT:	Sumter (exempt)		304,680
Total for FTC COMMUNICATIONS, LLC.			351,370

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

	STATUS	Completed By Due Date	Assessment
DISTRICT:	Sumter (exempt)		648,950

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

DISTRICT:	Sumter (non-exempt)	371,620
DISTRICT:	Rembert (exempt)	4,390
Total for FTC DIVERSIFIED SERVICES, LLC.		1,024,960

[redacted]

STATUS	Completed By Due Date	Assessment
DISTRICT:	Sumter	4,050
Total for [redacted]		4,050

[redacted]

STATUS	Completed By Due Date	Assessment
DISTRICT:	SD2 O/S	2,270
DISTRICT:	SD 1 O/S	970
DISTRICT:	Mayesville	160
DISTRICT:	Sumter City Sd 17	8,360
Total fo [redacted]		11,760

[redacted]

STATUS	Completed By Due Date	Assessment

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

8/15/2019

MEMORANDUM

To: County Auditor

From Utility Assessment Group

RE: 2019 Annual Utility Certification

You will find the 2019 annual utility certification for your county attached. Please use the following assessments when billing these companies for tax year 2019.

Should you have any questions, please feel free to contact us at (843) 953-8371 or (843) 953-8389.

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS	Completed By Due Date	
		Assessment
DISTRICT:	Lane	88,380
DISTRICT:	Greeleyville	129,160
Total for FARMERS TELEPHONE COOPERATIVE, INC.		217,540

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS	Completed By Due Date	
		Assessment
DISTRICT:	Kingstree (exempt)	31,360
DISTRICT:	Lane (exempt)	21,830
DISTRICT:	Hemingway (exempt)	35,680
DISTRICT:	County Wide (non-exempt)	200
Total for FTC COMMUNICATIONS, LLC.		89,070

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS	Completed By Due Date	
		Assessment
DISTRICT:	County Wide (non-exempt)	13,060
DISTRICT:	Kingstree (exempt)	254,850
DISTRICT:	Hemingway (exempt)	14,570
Total for FTC DIVERSIFIED SERVICES, LLC.		282,480

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

8/15/2019

MEMORANDUM

To: County Auditor

From Utility Assessment Group

RE: 2019 Annual Utility Certification

You will find the 2019 annual utility certification for your county attached. Please use the following assessments when billing these companies for tax year 2019.

Should you have any questions, please feel free to contact us at (843) 953-8371 or (843) 953-8389.

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

County Name **CLARENDON**

[redacted]

		STATUS	Completed By Due Date	Assessment
DISTRICT:	Summerton			40
Total for [redacted]				40

[redacted]

		STATUS	Completed By Due Date	Assessment
DISTRICT:	1			339,940
DISTRICT:	2			483,130
DISTRICT:	3			28,100
Total for [redacted]				851,170

[redacted]

		STATUS	Completed By Due Date	Assessment
DISTRICT:	2037 Mcleod Rd			31,590
DISTRICT:	21 N Barfield St			28,760

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

DISTRICT:	1499 Bay Shadow Rd	24,540
DISTRICT:	Hwy 304 & 49	32,510
DISTRICT:	2645 Willie G Richburg Rd	27,170
DISTRICT:	3455 Hamilton Rd	20,210
DISTRICT:	7408 Racoon Rd	24,080
DISTRICT:	Rt 1 Racoon Rd	1,950
DISTRICT:	12370 Hwy 301	32,880
DISTRICT:	9294 Alex Harvin Hwy	39,170
DISTRICT:	Hwy 15 & 366	10,210
DISTRICT:	1431 Meadow Brook Dr	33,510
DISTRICT:	4475 Turbeville Hwy	21,830
Total for [redacted]		328,410

[redacted]

STATUS	Completed By Due Date	Assessment
DISTRICT:	21	1,040
DISTRICT:	10	319,100
DISTRICT:	20	64,990
DISTRICT:	30	84,790
Total for [redacted]		469,920

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

[redacted]

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	#20 Not Inc.	440
Total for [redacted]		440

[redacted]

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Turbeville	59,840
DISTRICT:	Rural Fire Dist. 10	166,600
DISTRICT:	Rural Fire District 20	99,170
DISTRICT:	Summerton	97,170
DISTRICT:	St. Pauls	3,090
DISTRICT:	Paxville	35,410
DISTRICT:	Manning	499,080
DISTRICT:	Dist. No. 3	292,690
DISTRICT:	Dist. No. 2	408,510
DISTRICT:	Dist. No. 1	308,610
DISTRICT:	Rural Fire Dist. 30	99,170
Total for [redacted]		2,069,340

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

	STATUS	Completed By Due Date	Assessment
DISTRICT:	Paxville		49,720
DISTRICT:	Turbeville		140,980
DISTRICT:	Manning		2,380
Total for FARMERS TELEPHONE COOPERATIVE, INC.			193,080

[redacted]

	STATUS	Completed By Due Date	Assessment
DISTRICT:	3455 Hamilton Rd		10
DISTRICT:	1716 Wilson Rd		10
DISTRICT:	1431 Meadow Brook Dr		10
DISTRICT:	4475 Turbeville Hwy		10
DISTRICT:	2645 Willie G Richburg Rd		10
DISTRICT:	21 North Barfield St		20
DISTRICT:	7408 Raccoon Rd		10
DISTRICT:	2037 McLeod Rd		10
Total for [redacted]			90

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

[redacted]

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Summerton Town SD 22	16,640
DISTRICT:	Clarendon SD 2 - O/S	7,740
DISTRICT:	Manning Town SD 9	47,120
DISTRICT:	Clarendon SD 1 - O/S	7,110
Total for [redacted]		78,610

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Manning (exempt)	18,250
Total for FTC COMMUNICATIONS, LLC.		18,250

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Manning (exempt)	202,030
DISTRICT:	Summerton (exempt)	32,780
Total for FTC DIVERSIFIED SERVICES, LLC.		234,810

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

[redacted]

STATUS	Completed By Due Date	Assessment
DISTRICT:	District 1	1,222,730
DISTRICT:	District 2	1,080,970
DISTRICT:	District 3	297,430
Total for [redacted]		2,601,130

[redacted]

STATUS	Completed By Due Date	Assessment
DISTRICT:	TD 30	100
Total for [redacted]		100

[redacted]

STATUS	Completed By Due Date	Assessment
DISTRICT:	#1 Not Inc.	174,620
DISTRICT:	#1 Manning	61,120
Total for [redacted]		235,740

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

[redacted]

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	1890 Bethune	4,970
DISTRICT:	1001 Mcelveen Rd	4,880
DISTRICT:	101 Meadows Rd	9,360
DISTRICT:	1300 Lawrence Tindal Rd	8,540
Total for [redacted]		27,750

[redacted]

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Manning	4,780
DISTRICT:	County Wide	1,110
DISTRICT:	Summerton	270
Total for [redacted]		6,160

[redacted]

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Summerton	20,690

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

DISTRICT:	o/s Manning	210,720
DISTRICT:	Manning	82,930
DISTRICT:	169-05-00-002-00	2,790
Total for [redacted]		317,130

[redacted]

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	2053 Chestnut Rd	2,190
DISTRICT:	2278 Manning Hwy	1,800
DISTRICT:	1208 Plumleaf Ln	1,870
DISTRICT:	7185 Skinner Rd	2,090
DISTRICT:	1743 Crossroads Church Rd	2,440
DISTRICT:	6671 Saint Paul Rd	2,430
DISTRICT:	4475 Turbeville Hwy #E911	3,650
DISTRICT:	9850 Silver Rd	3,120
DISTRICT:	12322 Black River Rd	2,510
DISTRICT:	8759 Greeleyville Hwy	3,050
DISTRICT:	1062 Cummings Rd	2,460
DISTRICT:	4104 Willie G Richburg Rd	1,320
DISTRICT:	1570 Trinity Church Rd	1,500
DISTRICT:	2909 Cecil McFaddin Rd	1,290
DISTRICT:	1711 Wash Davis Rd	2,220

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

Total for [redacted]		33,940

[redacted]

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	County Wide	3,230
DISTRICT:	Manning	1,910
Total for [redacted]		5,140

TOTAL FOR CLARENDON COUNTY **7,471,250**

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification

Tax Year 2019

	Assessment
REPORT TOTAL	7,471,250

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

8/15/2019

MEMORANDUM

To: County Auditor

From Utility Assessment Group

RE: 2019 Annual Utility Certification

You will find the 2019 annual utility certification for your county attached. Please use the following assessments when billing these companies for tax year 2019.

Should you have any questions, please feel free to contact us at (843) 953-8371 or (843) 953-8389.

South Carolina Department of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

FTC COMMUNICATIONS, LLC.
Jeffrey Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Coward (exempt)	24,190
DISTRICT:	Johnsonville (exempt)	8,020
DISTRICT:	Lake City (exempt)	90
DISTRICT:	Florence (exempt)	170
Total for FTC COMMUNICATIONS, LLC.		32,470

FTC DIVERSIFIED SERVICES, LLC.
Jeffery Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Lake City (exempt)	247,900
DISTRICT:	Olanta (non-exempt)	3,030
DISTRICT:	County Wide (non-exempt)	2,600
DISTRICT:	Olanta (exempt)	31,350
DISTRICT:	Johnsonville (exempt)	1,590
Total for FTC DIVERSIFIED SERVICES, LLC.		286,470

South Carolina Department
of Revenue
P.O. Box 125
Columbia SC 29214

Utilities Certification
Tax Year 2019

FARMERS TELEPHONE COOPERATIVE, INC.
Jeffrey L. Lawrimore
PO Box 588
Kingstree, SC 29556

STATUS **Completed By Due Date**

		Assessment
DISTRICT:	Lake City	42,030
DISTRICT:	Coward	58,180
DISTRICT:	Scranton	157,700
Total for FARMERS TELEPHONE COOPERATIVE, INC.		257,910

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

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, Petitioners, vs. South Carolina Department of Revenue and Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, Respondents.	Civil Action No. 17-ALJ-17-0237-CC **MOTION FOR RECONSIDERATION**

Pursuant to Rule 29(D) of the Rules of Procedure for the Administrative Law Court and Rule 59(e) of the South Carolina Rules of Civil Procedure, Farmers Telephone Cooperative, Inc. ("Farmers Co-Op"), FTC Communications, LLC ("FTCC") and FTC Diversified Services, LLC ("Diversified") (collectively, "Farmers") respectfully request that this Court reconsider and amend its Final Order and Decision dated February 24, 2020 (the "Order"), a copy of which is attached hereto as Ex. A. This motion is based upon the grounds that the Court may have overlooked, misinterpreted or failed to apply South Carolina law and/or overlooked or failed to consider certain evidence and arguments presented, which, when considered, necessitate reconsidering the Order.

A. The Court Misinterpreted and/or Misapplied the Relevant Statutes in Determining that it has Subject Matter Jurisdiction to Hear this Matter and that the Taxing Entities Have Standing to file a Request for Contested Case Hearing.

The Court held that it had subject matter over this matter based on S.C. Code Ann. §12-60-2130 and 2150, which allow taxpayers or local governing bodies to file a request for contested case hearing based on their disagreement with a "department determination." Order at pp. 34-44. It also concluded that the supplemental certifications issued by the Department to the Taxing Entities constituted department determinations. *Id.* The Court agreed that the definition of department determination in the aforementioned statutes (something from which one can request a contested case hearing) was circular, but still found that the statutes resolved the issue, concluding that the phrase "is simply an affirmation of the finality of the decision." Order at p. 37. In reaching this conclusion, the Court may have misinterpreted, overlooked or failed to consider the following:

- The statutory scheme as a whole, S.C. Code Ann. §§12-60-450 (E)(2), 12-4-730, and 12-4-540(F), Department policies and procedures, and testimony which indicate that a department determination is a specific document that informs the taxpayer of the Department's decision in a matter contested by the taxpayer while a certification is a mere ministerial act whereby the Department notifies counties of property tax assessments made by the Department.

- S.C. Code Ann. §12-4-730, which states that upon receipt of a certification, the county auditor "shall void any tax notice applicable to the property" and does not grant or reference any right of appeal to the local governing bodies of a certification and instead mandates that the county auditor void the tax notice.

- S.C. Code Ann. §12-60-450(A), which expressly gives taxpayers the right to appeal an assessment by filing a written protest with the Department within ninety days of the assessment but does ***not*** give local governing bodies the same right to appeal assessments. Thus, if a taxpayer agrees with an assessment and does not protest it, then that assessment would be "final" and not further appealable. The Court's ruling would render this statute meaningless as counties could simply wait until the certification is issued and then appeal that. In addition, interpreting certifications as department determinations would mean that counties could challenge each and

every one of the thousands of certifications that are issued by the Department each year, which would lead to uncertainty and chaos for the Department and taxpayers.

- S.C. Code Ann. §12-60-450(D)(1), which authorizes the Department to compromise disputes with taxpayers and enter into written agreements with taxpayers regarding a tax liability.

- S.C. Code Ann. §12-4-320(3) and (4), which provides that such settlement agreements, if approved by the Director, are final and conclusive and may not be reopened absent fraud, malfeasance or misrepresentation.

- S.C. Code §12-60-20, which provides that the Department is a state-created agency and an arm of the state and relevant case law providing that the Taxing Entities, as counties, are also creatures of the state, and that as such they do not have standing to sue a state agency. *See Georgetown County v. Davis & Floyd, Inc.*, 426 S.C. 52, 59, 824 S.E.2d 471 (Ct. App. 2019); *Hibernian Soc'y v. Thomas*, 282 S.C. 465, 472-73, 319 S.E.2d 339 (Ct. App. 1984).

See Farmers' Proposed Order at pp. 42-49 and 79 for a full discussion of these issues.

Based on the above, Farmers respectfully requests that the Court reconsider the above facts and arguments and amend its order to conclude that the Court does not have subject matter jurisdiction to hear this matter and that the Taxing Entities do not have standing to file a request for contested case hearing in this matter.

B. The Court Misinterpreted and/or Failed to Properly Apply S.C. Code Ann. §12-4-320(3) and (4) in Determining that the Taxing Entities could Unwind and Negate the Settlement Agreement between Farmers and the Department.

The Court found that the Settlement Agreement between Farmers and the Department could not bind the Taxing Entities who were not parties to the agreement. Order at pp. 44-48. In reaching this conclusion, however, the Court may have misinterpreted, overlooked or failed to consider the following:

- S.C. Code Ann. §12-4-320(3) and (4), which provides that settlement agreements, if approved by the Director, are final and conclusive and may not be reopened by anyone, including judicial process, absent fraud, malfeasance or misrepresentation. The Court's Order would mean that the Department could not settle any matter with a taxpayer without county approval.

- S.C. Code Ann. §12-4-730, which would require the Taxing Entities to void the tax notices related to the supplemental certifications issued by the Department post-settlement, and §12-60-2140(C), which would require the Taxing Entities to make and enter a corrected property tax assessment and refund any overpayment to Farmers. These statutes are what bind the Taxing Entities to the exemption decisions agreed to in the settlement. Thus, the Taxing Entities are bound to follow the Settlement Agreement by operation of law.

Based on the above, Farmers respectfully requests that the Court reconsider the above facts and arguments and amend its order to conclude that the Settlement Agreement cannot be undone and that Farmers is entitled to the exemption for tax years 2010-2015 and to refunds from the Taxing Entities for all overpayments.

C. In Finding that Only 75% of the FTCC and Diversified Assets are Exempt, the Court Misinterpreted the Relevant Law and Failed to Consider all Testimony on this Issue.

The Court held that only 75% of the FTCC and Diversified assets are entitled to the exemption. Order at pp. 59-60. The Court determined that neither minutes of use ("MOU") nor bandwidth are the proper way to measure the use of the network for property tax purposes and found instead that a proper measure is on the basis of the cost to establish the rural telephone network. *Id.* at 60. The Court then concluded that a voice-only network would cost 25% less than the current network and thus the exemption should be limited to 75% of the cost of FTCC and Diversfied's assets. Order at pp. 21-22 and 59-60.

In reaching these conclusions, the Court may have misinterpreted, overlooked or failed to fully consider the following:

- S.C. Code Ann. §12-37-220(B)(10), the plain language of which provides that the exemption applies to all assets used in providing rural telephone service and does not contain any requirements as to the level of use, does not contain any limitations for dual use assets (as some other property exemption statutes do), and does not authorize the discounting of dual use assets;

- The Department's longstanding practice and policy of interpreting the exemption statute at issue to apply to 100% of landline assets used to provide rural telephone service. The Court should have given deference to this practice and policy as well as to its decision to exempt 100% of Diversified's landline telephone assets. *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 530–31 (2010) ("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 . . . ."); *Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-844 and 865-866 (1984) (recognizing deference that should be given to agency's construction of statute it is charged with administering and Court should only examine whether agency's interpretation was reasonable and noting the constitutional concerns raised when a court does not defer to the agency's policy choice).

- Testimony regarding the primacy of MOU, that the network is designed, built and maintained on that basis and that 90-99% of the traffic on the Farmers network for the years in question was voice traffic based on MOU.

- Farmers' expert's testimony that if Diversified ceased to provide IPTV, internet and security services, the components of the landline system that exist would still be needed. *See* Hr'g Tr. at 808:2-811:18. *See also id.* at 1033:7-13 (Farmers CEO testifying similarly that if Farmers removed non-voice services, the infrastructure of the landline network would remain the same.)

- Testimony of the Taxing Entities' expert that a telecommunications system reconfiguring itself today to provide only voice landline services would utilize most of its existing equipment and remain configured in the same manner it already exists. Hr'g Tr. at 979:25-980:15, 980:20, 1021:14-1022:10.

- The absence of any testimony in the record as to any specific cost-savings that could be realized if the Farmers' network was voice-only. While the Taxing Entities expert did speculate that some costs could be saved if a carrier only provided voice services because he believed the capacity required of some equipment would diminish (*Id.* at 979:22-981:7), he stated that he had not pulled *any* pricing information or otherwise researched at all the actual cost-savings, if any, that could be realized from making this change. *Id.* at 1020:24-1021:11. The only concrete example he gave was that a landline provider could replace its 10 gigabit per second line card with one that has a 1 gigabit per second capacity. *Id.* at 983:13-18. However, Farmers CEO testified that this would not be possible for Diversified because the amount of voice traffic on Farmers' network would require at least two 1 gigabit cards, which would cost more than one 10 gigabit card. *Id.* at 1035:24-1036:16 (Farmers' CEO testifying two 1 gigabit cards cost $228,000 while one 10 gigabit card costs $150,000). Thus, the Taxing Entities presented no evidence of *any* actual cost savings that could be realized, while, as previously stated, Farmers presented evidence that all assets currently in place would still be needed if non-

voice services were discontinued.

See Farmers' Proposed Order at pp. 17-18 and 49-53 for a full discussion of these issues.

In the alternative, as the Court's novel cost methodology that discounts dual use assets is new and has never been applied to any taxpayer applying for the rural telephone service exemption, the Court should amend its order to make clear that this 75% applies only to tax years for which the three-year time to amend has not passed such that Farmers can file amended returns on prior years and original returns on future years as appropriate to provide the Department with cost-specific information on the assets that would be necessary for a voice-only network.

Farmers respectfully requests that the Court reconsider the above facts and arguments and amend its Order to find that FTCC and Diversified are entitled to the exemption on 100% of their assets.

D. The Court Misinterpreted South Carolina Law as Requiring that Farmers File Amended Returns in Order to Claim the Exemption and Failed to Give Deference to the Department as to what Constituted a Timely Filed Exemption Application.

The Court held that FTCC and Diversified did not properly apply for the exemption at issue for certain years because they did not file amended returns clearly claiming the exemption. Order at pp. 60-77. In reaching this conclusion, the Court may have misinterpreted, overlooked or failed to fully consider the following:

- S.C. Code Ann. §12-4-720(C), which provides that "[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" but does **not** say that taxpayers who must claim exemptions on their tax returns each year cannot claim exemptions via a timely filed refund claim, protest or other written application. Instead, as recognized by the Court, §12-4-720(A)(1) specifically states that taxpayers may file an application for exemption within the time period provided in the three-year refund statute. *See* S.C. Code Ann. §12-4-720(A)(1)(stating that "[e]xcept as otherwise provided any property owner whose property may qualify for an exemption ***shall file an application for exemption with the department within the period provide in Section 12-54-85(F) for claims for refund***") (emphasis added)

and S.C. Code Ann. §12-54-85(F) (stating that "claims for credit or refund must be filed within three years from the time the return was filed). While the Court correctly acknowledges that Farmers has three years to file an application for exemption, it incorrectly states that it may only do so by filing an amended return. No statute so states.

- S.C. Code Ann. §12-60-1750, which provides 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…." but does not say that exemptions may only be requested via a property tax return versus a refund request, protest letter or other written application.

- *TNS Mills, Inc. v. S.C. Dept. of Rev.*, 331 S.C. 611, 503 S.E.2d 471 (1998), which states that a taxpayer may apply for property tax exemptions either by applying separately for the exemption or by applying on its tax returns.

- Testimony that FTCC and Diversified applied for the exemption both separately via refund claims and protests and on their tax returns.

- Testimony of the Department's utility assessment coordinator that he believed FTCC and Diversified's claims for exemption made for tax years 2012-2018 were timely filed. Ingram Dep. at 45:1-22.

- Testimony that the Department had a long-standing practice and procedure regarding the type of forms and manner of completing those forms necessary to constitute an application for the exemption at issue. This Court should have given deference to the Department's determination that FTCC and Diversified had properly applied for the exemption. *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 530–31 (2010) ("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 . . . ."); *Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-844 and 865-866 (1984) (recognizing deference that should be given to agency's construction of statute it is charged with administering and Court should only examine whether agency's interpretation was reasonable and noting the constitutional concerns raised when a court does not defer to the agency's policy choice). The fact that the Department does not have written guidelines on this is not determinative, and the Department has followed its practices and procedures in all cases except when it did not understand FTCC to be claiming the exemption prior to 2012.

See Farmers' Proposed Order at pp. 68-72 and 77-79 for a full discussion of these issues.

Based on the above, Farmers respectfully requests that the Court reconsider the above facts and arguments and amend its Order to conclude that filing an amended return is not required if the

taxpayer claims the exemption via a timely refund claim or protest and that, in any event, Farmers properly applied for the exemption on its returns.

CONCLUSION

Based on the foregoing, Farmers respectfully requests that this Court reconsider its Order and amend it to find in favor of FTCC and Diversified on all of the above issues.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC

Charleston, South Carolina
March 5, 2020

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by emailing and mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

MOTION FOR RECONSIDERATION

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Greenville, SC 29602-0565

Kina M. Pederson
Administrative Assistant

March 5, 2020

Exhibit A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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, Petitioners, vs. South Carolina Department of Revenue, Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, Respondents.	Docket No. 17-ALJ-17-0237-CC **FINAL ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) on a Request for Contested Case filed by Petitioner Clarendon County on July 10, 2017. Thereafter, other parties moved to intervene as Petitioners, and their requests were granted. The Court refers to Petitioners, collectively, as the Taxing Entities. Taxing Entities contest the decision of the South Carolina Department of Revenue (Department) to grant FTC Communications, LLC (FTCC) and FTC Diversified Services, LLC (Diversified, and collectively with FTCC, Taxpayers) a property tax exemption pursuant to S.C. Code Ann. § 12-37-220(B)(10) (the Rural Telephone Service Exemption) for tax years 2010-2018.[1] On December 15, 2017, Taxpayers filed a Motion to Dismiss on the ground that this Court did not have subject matter jurisdiction to grant Taxing Entities a Contested Case. Shortly thereafter, on December 18, 2017, Taxing Entities filed a Motion for Partial Summary Judgement. A consolidated hearing on both motions took place

[1] Taxing Entities originally contested the Department's decision in tax years 2010 through 2016 but later supplemented their request to also include tax years 2017 and 2018.

FILED
February 24, 2020
SC ADMIN. LAW COURT

before this Court on February 13, 2018. The Court denied both motions in separate orders. Consequently, four primary issues remain to be considered in the merits hearing: (1) whether Taxing Entities have standing to contest the Settlement Agreement and/or the Supplemental Certifications; (2) whether Taxpayers' property qualifies for the Rural Telephone Service Exemption for tax years 2010 through 2018; (3) whether Taxpayers properly applied for the exemption; and (4) whether the Department's granting of the exemption was illegally retroactive.

Answering these questions is anything but simple. The Rural Telephone Service Exemption merely states that property "used in providing rural telephone service" is exempt, but it does not define any of the operative terms such as "used," "rural," or "telephone service." It also does not explain what percentage of assets might be exempt for a telephone company created after 1973, such as FTCC or Diversified, and how that percentage might be calculated when the telephone company is a single member LLC and, therefore, an entity that assumes the tax benefits of its single member. In addition, Farmers, FTCC, and Diversified all share a common telephone network infrastructure, but each entity also separately owns a number of different assets. The network and assets are used by each entity to provide a variety of services, including both landline telephone service, wireless voice services, and data service. Thus, in order to answer the ultimate issue in this case, the Court must resolve numerous factual questions that are intertwined with a variety of legal issues.

PROCEDURAL BACKGROUND

On July 10, 2017, Clarendon County filed a request for contested case and attached a settlement agreement (the Settlement Agreement) between the Department and Taxpayers as the contested "agency decision." Clarendon County had received the Settlement Agreement on June 21, 2017. Thereafter, Clarendon County, along with intervenors Florence County, Sumter County, Williamsburg County, and Williamsburg County School District, filed a Consolidated Supplement to Request for Contested Case Hearing (Supplement). In the Supplement, the Counties declared: "Together with the Settlement Agreement previously filed with this Court, the enclosed [Supplemental Certifications][2] constitute department determinations from which the Taxing Entities have statutory rights to a contested case before this Court pursuant to South Carolina Code

[2] The Supplemental Certifications refer to supplemental property tax assessment certifications sent to the counties from the Department after the Department determined Taxpayers were entitled to the Rural Telephone Service Exemption.

Annotated sections 12-60-2130 and 12-60-2150." Florence County received a Supplemental Certification on July 12, 2017, and presumably the other counties received Supplemental Certifications around the same time.

Farmers Telephone Cooperative, Inc. (Farmers), the parent company of Taxpayers (and together with Taxpayers, Farmers Entities), was thereafter added as a Respondent and entered a Notice of Appearance on August 15, 2017. The remaining intervenors, including Lee County, became part of the Taxing Entities and joined in the request for a contested case challenging the Settlement Agreement and the Supplemental Certifications.

On September 25, 2017, the Taxing Entities filed a Consolidated Supplement to Request for Contested Case Hearing pursuant to sections 12-60-2130 and 12-60-2150 challenging the Department's Certifications for tax year 2017, which also granted FTCC and Diversified the property tax exemption under section 12-37-220(B)(10). Sumter County received notice of the 2017 Supplemental Certification on August 28, 2017, and it is understood the Department sent out similar letters to the remaining Taxing Entities around the same time. Later, Taxing Entities again supplemented their request to also contest the Department's decision to grant the exemption to Taxpayers in tax year 2018.

STIPULATIONS OF FACT[3]

At the hearing in this matter and pursuant to SCALC Rule 25(c), the parties entered the following written stipulations of facts into the Record:

Overview

1. Farmers Telephone Cooperative, Inc. (Farmers) was incorporated in South Carolina in 1952. The Department of Revenue has granted the Rural Telephone Service Exemption codified in section 12-37-220(B)(10) of the South Carolina Code to Farmers to exempt it from property taxes for property it owns and uses to provide rural telephone service in South Carolina.

2. FTC Communications, LLC (FTCC) was organized as a limited liability company in South Carolina on July 1, 2009, and is a single-member LLC of Farmers.

3. FTC Diversified Services, LLC (Diversified) was organized as a limited liability company in South Carolina effective July 1, 2012, and is a single-member LLC of Farmers.

[3] The Stipulations of Fact are set forth as the parties presented them to the Court without any grammatical revisions.

4. FTCC provides wireless service, operator service, and answering services. Diversified provides land-line telephone service, television services, internet service, and security services.

5. For the purposes of this Joint Stipulation of Facts, Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County are each a "County," and collectively, the "Counties."

6. For the purposes of this Joint Stipulation of Facts, 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 are each a "District," and collectively, the "Districts," and together with the Counties, the "Taxing Entities."

Property tax returns, refund claims, protests, assessments, and certifications

Farmers

7. For all years relevant to this matter, Farmers timely filed property tax returns.

FTCC

8. On April 29, 2010, FTCC filed a property tax return and supplemental data for property tax year 2010 with the South Carolina Department of Revenue (Department). On May 28, 2010, the Department issued a proposed property tax assessment to FTCC and determined the assessed value of FTCC's property was $2,456,910. In its Distribution Report, the Department allocated the assessed value of FTCC's property to the applicable taxing districts, including the counties of Clarendon, Florence, Lee, Sumter, and Williamsburg. The applicable Taxing Entities issued property tax bills based on this assessed value, which FTCC received and paid.

9. On April 14, 2011, FTCC filed a property tax return and supplemental data with the Department for tax year 2011. On April 25, 2011, the Department issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of $2,799,110. The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg. FTCC paid the assessed property tax.

10. On April 2, 2012, FTCC filed a property tax return for tax year 2012. On July 13, 2012, the Department issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of $3,024.480. The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

11. In a letter dated October 11, 2012, FTCC protested the 2012 proposed assessment because the assessment did not exempt FTCC's property pursuant to section 12-37-220(B)(10).

12. As a result of the protest, on October 16, 2012, the Department issued a revised proposed assessment to FTCC representing 80% of the original 2012 property tax assessment. Also on October 16, 2012, the Department sent a Memorandum to the county auditors for the Taxing Entities advising that FTCC had protested the 2012 assessment. The Memorandum provided a copy of the revised proposed assessment. The County Auditors for the Taxing Entities received this revised proposed assessment. As a result of the protest, FTCC was billed for 80% of the assessment, which it paid.

13. On December 28, 2012, FTCC sent a letter to the Department requesting a property tax exemption for FTCC's rural telephone property pursuant to section 12-37-220(B)(10). FTCC further requested the exemption be applied to tax years 2010 and 2011 and that it be issued a refund of its property taxes for these years. Specifically, FTCC requested a refund of $726,966.53 for tax year 2010 and $827,067.55 for tax year 2011. FTCC claimed it was not aware it could qualify for the exemption as a single-member limited liability company until the 2011 decision in *CFRE, LLC v. Greenville County Assessor*[4] clarified the tax status of a single-member limited liability company.

FTCC and Diversified

14. On April 30, 2013, FTCC filed a property tax return for tax year 2013. On January 14, 2014, the Department issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of $3,928,850. The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

15. On or about April 30, 2013, Diversified filed a property tax return for tax year 2013. On January 15, 2014, the Department issued a Proposed Assessment to Diversified for tax year 2013. The Department determined Diversified's property had an assessed value of $2,943,310. The Department allocated the assessed value to the counties of Clarendon, Florence, Lee, Sumter, and Williamsburg.

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4 *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 71, 716 S.E.2d 877, 879 (2011).

16. In a letter dated February 18, 2014, FTCC and Diversified protested the proposed assessments from the Department for tax year 2013 because the assessments did not exempt FTCC's and Diversified's properties from property tax pursuant to Section 12-37-220(B)(10).

17. As a result of the protest, on February 27, 2014, the Department issued a revised proposed assessment to FTCC and Diversified representing 80% of each entities' original 2013 property tax assessment. Also on February 27, 2014, the Department sent a Memorandum to the county auditors for the Taxing Entities advising that FTCC and Diversified had protested the 2013 assessments. The Memorandum provided a copy of the revised proposed assessments. The County Auditors for the Taxing Entities received these revised proposed assessments. As a result of the protest, FTCC and Diversified were billed for 80% of the assessments, which they paid.

18. On April 25, 2014, Diversified filed a property tax return for tax year 2014. On August 12, 2014, the Department issued a Proposed Assessment to Diversified, proposing a property tax assessment of $2,767,670 against Diversified's property for tax year 2014. The Proposed Assessment included a Distribution Report, in which the Department allocated the assessed value to the counties of Clarendon, Florence, Lee, Sumter, and Williamsburg.

19. On April 28, 2014, FTCC filed a property tax return for tax year 2014. On August 12, 2014, the Department issued a proposed assessment to FTCC and determined FTCC's property had an assessed value of $4,379,100. The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

20. In a letter dated November 6, 2014, FTCC and Diversified protested the proposed assessments from the Department for tax year 2014 because the assessments did not exempt FTCC's and Diversified's properties from property tax pursuant to Section 12-37-220(B)(10).

21. As a result of the protest, on December 16, 2014, the Department issued a revised proposed assessment to FTCC and Diversified representing 80% of each entities' original 2014 property tax assessments. Also on December 16, 2014, the Department sent a Memorandum to the county auditors for the Taxing Entities advising that FTCC and Diversified had protested the 2014 assessments. The Memorandum provided a copy of the revised proposed assessments. The County Auditors for the Taxing Entities received these revised proposed assessments. As a result of the protest, FTCC and Diversified were billed for 80% of the assessments, which they paid.

22. On April 24, 2015, FTCC filed a property tax return for tax year 2015. On August 24, 2015, the Department issued a proposed assessment to FTCC and determined FTCC's property

had an assessed value of $4,306,020. The Department allocated the assessed value to the counties of Clarendon, Florence, Georgetown, Lee, Sumter, and Williamsburg.

23. On April 24, 2015, Diversified filed a property tax return for tax year 2015. On August 24, 2015, the Department issued a proposed assessment to Diversified for tax year 2015. The Department determined Diversified's property had an assessed value of $2,556,670. The Department allocated the assessed value to the counties of Clarendon, Florence, Lee, Sumter, and Williamsburg.

24. In a letter dated October 8, 2015, FTCC and Diversified protested the proposed assessments from the Department for tax year 2015 because the assessments did not exempt FTCC's and Diversified's properties from property tax pursuant to Section 12-37-220(B)(10). As a result of the protest, FTCC and Diversified were billed for 80% percent of their respective assessments for tax year 2015, which they paid.

25. As a result of the protest, on October 26, 2015, the Department issued a revised proposed assessment to FTCC and Diversified representing 80% of the original 2015 property tax assessments. Also on February 27, 2014, the Department sent a Memorandum to the county auditors for the Taxing Entities advising that FTCC and Diversified had protested the 2015 assessment. The Memorandum provided a copy of the revised proposed assessments. The county auditors for the Taxing Entities received these revised proposed assessments. As a result of the protest, FTCC and Diversified were billed for 80% of the assessments, which they paid.

26. On April 25, 2016, FTCC and Diversified filed property tax returns for tax year 2016. On August 16, 2016, the Department sent a memorandum to the county auditors for the Taxing Entities with utility certifications for the 2016 tax year. The certifications for FTCC and Diversified for tax year 2016 showed an assessed value for each of $0 and noted the status as "under appeal."

27. On April 25, 2017, FTCC and Diversified filed property tax returns for tax year 2017.

28. On April 23, 2018, FTCC and Diversified filed a property tax return for tax year 2018.

The Counties

29. Each County has retained the law firms of Parker Poe Adams & Bernstein LLP and Kozlarek Law LLC (collectively "Counsel") to represent the Counties in this matter in compliance

with all applicable policies and procedures of each County for the retention of outside counsel. Each County took all necessary steps to authorize Counsel to file appeals for tax years 2010-2018, which appeals form the basis of this case.

30. In accordance with State law, the Counties are each required to adopt their annual budgets before the fiscal year begins on July 1. Consequently, June 30 is the deadline for the County to adopt its budget for the ensuing July 1 – June 30 fiscal year.

31. The Counties' property tax revenues are managed by each County's respective County Assessor, county auditor, and County Treasurer. The County Assessor values and assesses certain real property located in the County. The county auditor values and assesses certain personal property located in the County and coordinates with certain governmental bodies authorized to impose millage to ensure the millage rate is correct. The County Treasurer issues and collects tax bills on behalf of the County, the Districts, and other local governmental entities. For utility taxpayers, like the Taxpayers in this Matter, the Department communicates directly with the county auditor by providing assessment notifications and certifications, which the county auditor enters onto the tax duplicate and uses to apply the appropriate millage rates for the various governmental bodies authorized to impose millage.

32. For tax years 2010-2011, the county auditor for each County received formal notice from the Department via a memo dated June 14, 2017 that the appeals involving the rural telephone service exemption for Farmers Coop, FTCC, and Diversified had been resolved and that pursuant to the January 8, 2017 settlement agreement FTCC and Diversified will now be subject to the rural telephone service exemption just like Farmers Coop has been in prior years.

33. For tax years 2012–2015, the county auditor for each County received notifications from the Department each year that Taxpayers had protested the assessments for those years and received revised certifications assessing Farmers at 80%. The County Auditor of each County received formal notice from the Department via a memo dated June 14, 2017 that the appeals involving the rural telephone service exemption for Farmers,[5] FTCC, and Diversified had been resolved and that pursuant to the January 8, 2017 settlement agreement FTCC and Diversified will now be subject to the rural telephone service exemption just like Farmers has been in prior years.

[5] The Court notes that although Farmers was a party to the settlement agreement, their tax returns were not appealed nor are those tax returns at issue in this case.

The Districts

34. Each District has retained Counsel to represent the District in this matter in compliance with all applicable policies and procedures of each District for the retention of outside counsel. Each District took all necessary steps to authorize Counsel to file appeals for tax years 2010-2018, which appeals form the basis of this case.

35. The Districts' property tax revenues are managed by each District's respective county assessor, county auditor, and county treasurer. The county assessor values and assesses certain real property located in the County. The county auditor values and assesses certain personal property located in the County and coordinates with certain governmental bodies authorized to impose millage to ensure the millage rate is correct. The county treasurer issues and collects tax bills on behalf of the County, the Districts, and other local governmental entities. For utility taxpayers, like the Taxpayers in this Matter, the Department communicates directly with the county auditor by providing assessment notifications and certifications, which the county auditor enters onto the tax duplicate and uses to apply the appropriate millage rates for the various governmental bodies authorized to impose millage.

Settlement Agreement and Revised Certifications

36. On January 8, 2017, the Department, FTCC and Diversified entered into Settlement Agreement, wherein the Department granted FTCC and Diversified a property tax exemption pursuant to section 12-37-220(B)(10) for tax years 2010–2015. In the Settlement Agreement, the parties agreed that property used to provide FTCC's wireless telephone service and Diversified's land-line telephone service qualified for the property tax exemption pursuant to section 12-37-220(B)(10). The parties also agreed that property of FTCC and Diversified that was used to provide services other than wireless and land-line telephone service is not exempt from property taxes at any level. None of the Taxing Entities were a party to the Settlement Agreement.

37. Pursuant to the Settlement Agreement, FTCC and Diversified filed amended property tax returns for every applicable year.

38. The Department reviewed the filed amended property tax returns for FTCC and Diversified and calculated revised assessments. In the revised assessments, the Department exempted FTCC's wireless telephone service and Diversified's land-line telephone service under section 12-37-220(B)(10).

39. On June 14, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of $236,490 for tax year 2010.

40. On June 14, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of $290,560 for tax year 2011.

41. On June 14, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of $308,630 for tax year 2012.

42. On June 14, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of $373,570 for tax year 2013.

43. On June 14, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of $392,790 for tax year 2014.

44. On June 14, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of $411,910 for tax year 2015.

45. On June 14, 2017, the Department certified the final revised assessments to Diversified proposing a property tax assessment of $2,717,450 for tax year 2013.

46. On June 14, 2017, the Department certified the final revised assessments to Diversified proposing a property tax assessment of $2,547,140 for tax year 2014.

47. On June 14, 2017, the Department certified the final revised assessments to Diversified proposing a property tax assessment of $2,287,440 for tax year 2015.

48. The respective county auditors for Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County received formal notice of the Settlement Agreement in a memo from the Department dated June 14, 2017.

49. On July 6, 2017, the Department certified the final revised assessments to FTCC proposing a property tax assessment of $588,670 for tax year 2016.

50. On July 6, 2017, the Department certified the final revised assessments to Diversified proposing a property tax assessment of $2,287,440 for tax year 2016.

51. The respective county auditors for Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County received a revised notice of the Settlement Agreement in a memo from the Department dated July 6, 2017.

FINDINGS OF FACT

Having listened to the testimony, and after reviewing the Record, I make the following findings of fact based upon a preponderance of the evidence.

History of Telephone Service and Telecommunications Industry

Technological History

The earliest telephone systems used a one-to-one physical connection between end-users to complete a call. One user's handset was connected to another user's handset by two copper wires that carried an electrical current through the central switching office and over the Public Switched Telephone Network. The telephone handset allowed the electrical current to be modulated to carry sound (or voice) over the connection. The central switching office had a manual switchboard (the switch) that allowed the switchboard operator to connect two electric circuits to complete a telephone call from one end-user to another. This rudimentary analog system is commonly referred to as "plain old telephone service" or POTS. Additionally, each pair of copper wires could handle only a single voice telephone call at a time. This type of network design is known as a "circuit-switched network" and remained the standard architecture through the 1980s.

As technology advanced, the manual switchboard (and the switchboard operator) were replaced by a mechanical switch. The two copper wires (two voice channels) were replaced with twisted pairs, or bundles, of copper wires to provide multiple lines. Then, in the early 1980s, the deployment of digital technology significantly changed telephone networks. Mechanical switches were replaced by electronic switches, and the sections of the system between the central switching office and the remote terminals moved from analog to digital. Digital technology allowed copper wire pairs to provide twenty-four voice channels instead of two voice channels.

In the mid to late 1980s, telephone networks underwent another significant change with the advent of fiber-optic technology. Copper wires were replaced with glass fiber, which transported laser light instead of electrical currents. The deployment of fiber-optic networks coincided with the arrival of the Internet and the ability to "packetize" data by assembling little bits of information into packets that could be routed through a network to an Internet Protocol (IP) address. This type of network design is known as a "packet-switched network."

Although the evolution to fiber-optic telephone networks was initially driven by the increasing need for additional telephone lines, the exponential increase in bandwidth capacity (i.e. the amount of information that can be transported over a network) that came with fiber-optic lines allowed telephone networks to be utilized for much more than POTS.

Another technological development important to this case is the development of wireless or cellular telephone service. The first wireless telephone systems were deployed in the United States in the 1980s. Up to this point, telephone networks had always required a physical connection between end users. In wireless systems, the end users connect to the network over the radio spectrum using cell towers. The cell towers are deployed in a patchwork, or mesh design, in a geographical area allowing an end user to make a voice call while traveling between multiple towers with minimal interruptions in service.

However, the concept of a "wireless network" is somewhat of a misnomer because all "wireless networks" still require a landline (physical) network in order to function. More specifically, although wireless technology allows users to connect to cell towers, in order for the data collected by the tower to be transmitted to another user, the cell towers must be connected to the landline network via a "backhaul" system that allows the transmission of the data over the network. Consequently, cellular networks are dependent on the "backbone" landline networks to complete calls and transmit other data.

The first generation (1G) cellular wireless systems were analog and only allowed voice transmissions. However, subsequent generations of wireless networks (2G and 3G) offered digital voice and limited data service. The modern 4G systems allow voice and full internet access.

Modern Networks

Most modern telecommunications networks (including the Farmers Entities' network) are designed using four categories of equipment that scale down in size, speed, and capability as the data moves through the core network toward individual end users. These four categories include core equipment, access equipment, edge equipment, and "last mile" equipment that connects the edge equipment to the subscriber's premises via Consumer Premises Equipment (CPE) (e.g. telephones, computers, televisions). Specifically, end users connect to the last mile with their CPE, the last mile connects to an edge router, the edge routers are then aggregated into an access device, and the access devices are aggregated to connect into the core network, which connects to the public switches. Thus, while modern networks take advantage of increased capacities and efficiencies to carry more than voice traffic over the network, the network itself still operates on the principle of a one-to-one connection.

What is the Definition of Telephone Service?

A central factual issue in this case is the meaning of the statutory term "telephone service."[6] From a telephone engineering and provider perspective, the parties agree that landline voice calls are within the meaning of "telephone service," but they disagree whether wireless telephone service and other services that are provided over modern networks should be included in that definition. Taxing Entities and Taxpayers introduced expert testimony on the topic. Taxing Entities presented the expert testimony of Joe Moss, II, who is a professional engineer. The Court qualified him as an expert in the area of telecommunications. Mr. Moss has over thirty-seven years of experience in his field, including experience with landline telephone networks and wireless cellular networks. The Court found him to be very credible. On behalf of Taxpayers, George Wyatt, a professional engineer, was also qualified in the area of telecommunications. Mr. Wyatt also had experience in the telecommunications industry, but the Court found his testimony to be less convincing than Mr. Moss's.[7]

Mr. Moss explained that rural telephone service, as with any telephone service, "is providing service—voice service over a landline network that's . . . routed to the public switch telephone network." In 1980, telephone service meant "just voice service" and consisted of a device the user spoke into that was routed to the public switch telephone network and allowed communication with another user.[8] But, despite changes in technology since the 1980s, the telephone industry's definition of telephone service remains grounded in the service that is provided—voice communication—rather than the technology used to deliver it. For example, a smart phone is a telephone when it is used for voice communication although it can now be used for many other things because of advances in technology. Therefore, both a landline telephone and a wireless telephone that provide voice communication from one user to another over distance provide telephone service.

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[6] This issue is a mixed question of law and fact because the statute that uses the term "telephone service" was enacted in 1978, a time when what constituted "telephone service" was much different from today's telephone service from a technological perspective. Thus, while the Court recognizes the importance of the factual inquiry into the definition of "telephone service," the Court must also engage in statutory construction to try to ascertain the intent of the legislature in 1978 as applied to future technologies.

[7] Overall, 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.

[8] Mr. Moss further explained that in 1980 there were some specialized services that could be provided over the voice network, which included a fax line or a burglar alarm. These were known as "special circuits." However, the primary function of the network was to provide voice services.

Nevertheless, the more difficult question is whether telephone service includes the transmission of non-voice-related data. After 1978, providers of landline telephone service began adding other services, including call forwarding, call blocking, and caller ID. These services appear to be directly related to voice communications, but they are not actually voice communications. Currently, telephone service providers are also providing services such as internet access and streaming video services like Netflix. These services do not involve voice communications and are also available through smart phones. However, as explained by Mr. Moss, telephone service is defined in the industry by its application or the purpose for which is being used. Thus, since streaming video services like Netflix, etc., do not provide voice communication, they are not within the industry's definition of "telephone service."

Types of Telephone Carriers

Farmers and FTCC are classified as "incumbent local exchange carriers" or ILECs. South Carolina law defines an ILEC as "a telecommunications company . . . which provide[s] local exchange service[9] pursuant to a certificate of public convenience and necessity issued by the commission before July 1, 1995 or operating as a local exchange carrier before that date pursuant to commission authority, to provide local exchange service within a certificated geographic service area of the State." S.C. Code Ann. § 58-9-10(11) (2015). By virtue of its status as the incumbent, an ILEC receives some protections from competition, but it also has certain obligations and duties under the Federal Telecommunications Act of 1996 and under state law. An ILEC can only operate within its designated territory.

An ILEC is also a "carrier of last resort," which means it is a "facilities-based local exchange carrier . . . which has the obligation to provide basic local exchange telephone service, upon reasonable request, to all residential and single-line business customers within a defined service or geographic area." S.C. Code Ann. § 58-9-10(10) (2015). A carrier of last resort may meet its obligation "by using any available technology of equal or greater service quality than is required by applicable commission regulations . . . including, but not limited to, the provision of a

[9] Under South Carolina law, "basic local exchange telephone service" means "for residential and single-line business customers, access to basic voice grade local service, access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or equivalent)." S.C. Code Ann. § 58-9-10(9).

broadband connection that allows the customer to access basic voice grade local service from the carrier of last resort or other available voice provider of the customer's choice." *Id.*

In contrast, Diversified is classified as a "competitive local exchange carrier" or CLEC. A CLEC is a carrier that receives a certificate of public convenience from a state commission authorizing it to operate in a particular geographic area in the state. Because a CLEC is not the incumbent, it does not have the same obligations and duties to provide certain services that an ILEC provides. Additionally, a CLEC can operate in any territory—including an ILEC's territory—in which the state has authorized it to operate. Diversified was created as a CLEC to fill in certain donut holes in Farmers' ILEC territory. It is possible for a CLEC to also be designated as a carrier of last resort. *Office of Regulatory Staff v. S.C. Pub. Serv. Comm'n*, 374 S.C. 46, 62, 647 S.E.2d 223, 231 (2007).

Receipt of Universal Service Funds

The Universal Service Fund (Federal USF) was established pursuant to the Telecommunications Act of 1996 and was "intended, in part, to promote an initiative of universal service" that "would ensure access to basic telephone service at affordable rates for all Americans." *Office of Regulatory Staff v. S.C. Pub. Serv. Comm'n*, 374 S.C. 46, 50–53, 647 S.E.2d 223, 225–27 (2007). The Federal USF requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute . . . to preserve and advance universal service." 47 U.S.C. § 254(d) (West). In practice, this means a fee is assessed on every telephone line and remitted to the federal government to be redistributed to subsidize providers serving high cost areas. "The [Federal Communications] Commission may exempt a carrier . . . from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis." 47 U.S.C.A. § 254 (West).

The Telecommunications Act of 1996 also gave states "authority to adopt their own approaches for encouraging universal service." *Office of Regulatory Staff*, 374 S.C. at 50–53, 647 S.E.2d at 225–27. Accordingly, the General Assembly authorized the South Carolina Public Service Commission (SCPSC) to establish a state universal service fund (State USF). *See* S.C. Code Ann. § 58-9-280(E) (2015 & Supp. 2019). The State USF is available to carriers in South Carolina who undertake the obligations of being a "carrier of last resort." *Id.*; *Office of Regulatory Staff*, 374 S.C. at 62, 647 S.E.2d at 232. Pursuant to section 58-9-280(E)(3), the SCPSC must

require wireless carriers to contribute to the State USF if it determines the wireless carriers compete with basic local exchange companies for local telephone service.

Both Farmers and FTCC are carriers of last resort that receive USF funds from to assist them provisioning service in high-cost areas. FTCC was the first provider to receive high cost support through the Federal USF and the SCPSC for wireless telephone service.

Role of Rural Telephone Cooperatives

Rural telephone cooperatives have historically filled the need for telephone service (universal service) in rural communities where it was too cost prohibitive for larger, national telephone companies to do so. Consistent with this purpose, Farmers was established as a rural telephone cooperative with a mission to provide telephone service to underserved, rural areas. Importantly, Farmers Entities allow people in the communities they serve, including anyone driving through Farmers' service area, reliable access to emergency services. Farmers has customers who have landline or wireless service solely for emergency purposes.

Having reliable access to the voice telephone network has been mandated by the Federal Communications Commission (FCC). This mandate is known as the "Five Nines of Reliability" and requires that the network be available 99.999% of the time. To meet this level of reliability, the Farmers Entities' network prioritizes voice traffic. This means voice traffic travels through the system first, data moves second, and television is third. Putting voice through first ensures emergency services are always available.

Farmers Entities' Network, Services, and Assets

Farmers

Farmers provides rural telephone service in Williamsburg, Clarendon, Sumter, and Lee Counties, as well as portions of Florence County. It is organized as a nonprofit that is owned by its members who purchase services from the cooperative. It serves rural, high-cost areas and receives substantial funding from the USF.

When the Rural Telephone Service Exemption was enacted in 1978, Farmers provided voice telephone service to rural communities through analog technology, mechanical switching, and copper wires or POTS. As technology and consumer demands evolved, Farmers upgraded its network to provide new telecommunication services in addition to POTS. Specifically, in the mid-1990s, Farmers began offering dial-up internet access over its telephone network. Then, in the

early 2000s, Farmers began offering security services to its members. Around 2011 it added television services.

Farmers' core network is a well-designed, modern telecommunications network that has been built to meet the "five nines of reliability" requirement. Farmers' core network consists of copper wires and fiber optic cables that connect different transport routers and access routers.[10] The network also contains several tandem locations, which are physical locations containing equipment that connects the local exchange network to the public switch telephone network. Landline voice traffic is routed by the tandems to the public switch network through a "soft switch" or "Metaswitch" that Farmers leases from Horry Telephone Cooperative. Mobile voice traffic is routed on the network to the public switch network through the mobile telephone switching office or "MTSO" owned by AT&T.

All of the services provided by Farmers, FTCC, and Diversified (voice telephone service, wireless telephone service, internet service, television services, operator/answering services, and security alarm services) are provided using the existing, interconnected landline infrastructure.[11]

FTCC

FTCC was organized as a limited liability company in South Carolina on July 1, 2009. It is a wholly owned subsidiary of Farmers. FTCC serves small, rural communities. FTCC has "eligible telecommunications carrier" or "ETC" status with the FCC and the SCPSC, a status that is reserved for providers who serve rural, high-cost areas. FTCC receives support for wireless telephone service through the USF with the approval of the SCPSC.

In 1994, FTCC began to resell wireless services under the umbrella of Bell South Mobility. In approximately 2000, FTCC contracted with AT&T to provide wireless services and, at that time, began building its own independent wireless network. Its wireless services contain two components: voice service and data service. As part of the voice services, a FTCC customer can place and receive telephone calls within FTCC's territory or anywhere the customer has access to

[10] Approximately 68–70% of the Farmers core network is still copper. Diversified's network is approximately 90% copper and only 10% fiber-optic cable.

[11] Farmers and Diversified both provide Internet Protocol Television (IPTV) service, which provides the type of television services that most consumers equate with "cable TV" but which is provided using a different type of technology—an internet protocol transmission path over the Farmers network rather than a coaxial cable (as used by most cable television companies).

an AT&T network. FTCC now provides wireless cellular service, operator service, and answering services. Within its service area, FTCC has approximately 23,000 voice telephone access lines.

FTCC's wireless network depends upon the Farmers' core landline network to operate. Wireless voice traffic on the core network is routed to the public switch network by the MTSO.

FTCC has applied for the tax exemption for assets used in providing wireless rural telephone services, including, but not limited to, the following: wireless towers (including monopole structures, lattice structures, and guidewire structures throughout the wireless network), radios and antennas connected to the towers, and banks that house various electronic elements used in bringing the wireless signal to a mobile telephone switching office.

Since the settlement between Farmers and the Department in 2017, FTCC has segregated the following assets as non-exempt and claims no exemption for them: platforms that provide for operator and answering services.

Diversified

Diversified was organized as a limited liability company in South Carolina on July 1, 2012. It, too, is a wholly owned subsidiary of Farmers.

Diversified was founded in 2001 as a CLEC to provide landline telephone service in certain "donut hole" areas within the geographic ILEC footprint of Farmers but where Farmers is not the ILEC. Like Farmers, Diversified provides landline telephone service, but it also provides internet, television, and security services.

Diversified owns a separate landline system consisting of copper, fiber-optic cable, routers, and other equipment. However, Diversified's network ultimately connects to, and utilizes, Farmers' core network in order to provide its telephone services. It has more telephone service accounts than television, internet, or security service accounts. Specifically, as of December 31, 2017, Diversified had approximately 7,067 telephone service accounts versus approximately 4,325 internet accounts, 1,832 television accounts, and 851 security services accounts.

Diversified has applied for the Rural Telephone Service Exemption for its landline assets, which are the same type of assets Farmers claims. Since the settlement between Farmers and the Department in 2017, Diversified has segregated the following assets as non-exempt: internet service provider equipment and the head end for IPTV.

Measuring the Relative Use of the Network

The parties introduced competing methods for measuring the relative use of the Farmers Entities' network for voice telephone services compared to other services, such as video-streaming. The methods include minutes of use, bandwidth, cost, and revenue.

Minutes of Use

The Farmers Entities advocate for using "minutes of use" to quantify the relative use of the network for voice traffic. "Minutes of use" is a term of art in the telecommunications industry that is used to measure ability of the network to efficiently divide its limited number of connections between a certain number of subscribers. Most telephone networks—both landline and wireless—are designed and built based on the network's anticipated minutes of use to ensure that the network is available to all users no matter how long one user may stay on the line (that user's minutes of use). This measure helps explain why networks are concerned with being available 99.999% of the time for any given user.

The Farmers Entities used, and still use, minutes of use to help them design a network that meets consumer demand for voice traffic during peak times. Farmers' engineers review minutes of use reports on a weekly basis to determine whether Farmers needs to make adjustments to meet capacity and maintain the mandated high reliability of its landline network.

Thus, in the past, the greatest limiting factor to networks was the number of fixed connections and time-use; to grow a network, additional telephones required additional connections. However, because modern networks now utilize fiber-optic cables that have a much greater capacity to transfer data over the network (bandwidth), the number of subscriber lines and connections are not the only limiting factor; the network is also constrained by the amount of bandwidth available. Accordingly, "minutes of use" is no longer an appropriate measure of how a modern network like the Farmers Entities' network is being utilized, particularly when the network is being used for non-telephone services that are not measured using minutes of use.

Bandwidth

Taxing Entities argue bandwidth is the only appropriate measure of the utilization of the Farmers Entities' network. As discussed above, bandwidth refers to the data transfer rate of information transmitted through the network. Because data on packet-switched networks consists of bits, bandwidth is usually stated as bits per second, such as kilobits per second, megabits per

second, or gigabits per second.[12] Bandwidth is the industry standard for measuring the capacity of modern, packet-switched networks. Data usage over modern networks is typically measured by the total amount of data (measured in kilobytes) that is sent and received by a particular subscriber, without any consideration for how long any piece of network equipment, such as a television or a laptop computer, is in use.

Using the data provided by Taxpayers, Mr. Moss analyzed the entire Farmers Entities' network in the aggregate to estimate the percentage of overall network utilization (measured by bandwidth utilization) that was attributable to voice telephone services versus all other services in 2018.[13] Based on his calculations, in 2018 approximately 0.45% of the network's bandwidth was attributable to voice traffic. Applying that calculation to industry trends and growth rates relating to bandwidth utilization for North America from 2010–2017, the voice utilization of the network from 2010–2017 was as follows: 4.75% (2010), 3.16% (2011), 2.19% (2012), 1.08% (2013), 1.32% (2014), 1.01% (2015), 0.83% (2016), and 0.64% (2017).

Mr. Moss's calculations show that less than 5% of the Farmers Entities' overall network utilization was attributable to voice for any of the tax years in dispute. His findings established a clear downward trend towards less and less utilization of the network for voice services over time. This trend is consistent with Taxpayers' internal records, which confirm that despite slow or negative growth in the number of subscribers during the years in dispute, the demand for data services continued to grow aggressively.

Because of the difference in the way voice traffic and data are traditionally calculated (minutes of use versus bandwidth), it is difficult to find a common denominator to accurately compare the two within the same network. To use a simple metaphor of a train carrying data, a two-hour phone call might need one train car full of data to carry the message for the whole two

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[12] According to Mr. Moss, the transport of information across a network in measured in "bits per second." He further explained that while the transport of information is measured in bits, the content made up of that information (like a movie) is typically measured in "bytes." Eight bits make up a "byte."

[13] Taxpayers also calculated voice traffic using bandwidth but only for FTCC. However, Mr. Moss testified, convincingly, that these calculations were flawed due to Taxpayers' failure to properly convert bits to bytes. Because a byte is made up of eight bits, a failure to convert a sum of bits to bytes in the denominator would understate the amount of data in the denominator by a factor of eight, significantly skewing the percentage of data attributable to voice services. After correcting for this conversion error, Mr. Moss testified that the percentage of network utilization attributable to voice services (for FTCC only) was 73.07% for 2010; 36.9% for 2011; 20.9% for 2012; 11.96% for 2013; 6.99% for 2014; 4.24% for 2015; 4.84% for 2016; 2.96% for 2017; and 1.94% for 2018. Even using Taxpayers' calculations, the relative use of the network for voice is low and shows a clear downward trend.

hours, but meanwhile, thousands of train cars full of data for other services traveled the same distance in two minutes. Therefore, even if the phone was in use for two hours, it was not taking up as much space (in this case, bandwidth) on the network, it was just taking up more time. It is hard to compare the two trains, but it is clear that minutes of use is a theoretically unsound way to measure the use and capacity of the entire network and all the services it provides.

Cost

Another way to measure the use of the network is to determine what portion of property (infrastructure) is used to provide telephone service and determine the cost of that portion of the property. This is the way the Department currently assesses rural telephone cooperatives. Specifically, the Department uses the unit valuation method[14] and the cost approach to value (based on the gross investment value) to apply an assessment ratio. The Department then certifies the assessed amount to the appropriate county auditor(s) so that they can attach their local millage rate and bill the taxpayer accordingly. The Department indicated it has begun to reevaluate how it values multi-use property and whether it should incorporate the revenue/income approach in assessing the property of rural telephone cooperatives. Nevertheless, the Department currently has no policy or procedure regarding this issue.

The cost method makes up for a flaw in using bandwidth and minutes of use to calculate "use" —failure to take into account the fact that the bulk of the Farmer Entities' equipment and property would still be needed to provide voice telephone service even if data services, such as TV and Internet, were eliminated. After all, we are dealing with a ***property*** tax exemption, not a time exemption or a bandwidth exemption. Even if many of Taxpayers' customers are not using their phones except for emergency services (and thus would have only de minimus minutes of use or bandwidth on the network), the majority of Taxpayers' assets are still being used to provide the ability to access rural telephone service when needed.

Indeed, if Diversified ceased to provide IPTV, internet, and security services, the components of the landline system that exist would still be needed. As Mr. Moss explained, if a

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[14] The unit valuation concept is a method of valuation that takes into account the value of an entity's entire property as a whole operating unit, regardless of where the property is located. *CSX Transportation, Inc. v. S.C. Dep't of Revenue*, 851 F.3d 320, 323 (4th Cir. 2017). The unit valuation method is useful in valuing the property of companies whose systems are integrated and spread over multiple taxing and assessment districts, and the Department uses this method to value property owned by telecommunications companies, power companies, water and sewer systems, pipelines, and railroads.

telecommunications system reconfigured itself today to provide only voice landline services, it would utilize much of its existing equipment and remain configured much in the same manner. Based on the expert testimony, the Court finds that if the Farmers Entities were to build a landline-only telephone network, that network would be similar to the current Farmers Entities' network. Specifically, a landline-only network would utilize much of the same equipment, be placed in the same geographic locations, and would have evolved to fiber-optic.

Nevertheless, some costs could be saved if a carrier only provided voice telephone services because the network would not need as much capacity. Unfortunately, although Mr. Moss and Farmers' CEO offered some opinions on this subject, the evidence presented did not specifically explain the cost of a voice-only network. Mr. Moss estimated the cost of building a landline-only network would be, "off the top of [his] head," between fifty to sixty percent cheaper. Mr. Moss also testified the incremental cost to build a telecommunications network (which could provide the additional "non-telephone" services the Farmers Entities provide) on top of a basic, voice-only network would be approximately 30–40%, although he conceded that giving such a figure was difficult because it is hard to quantify with so many moving parts. Furthermore, Mr. Moss explained that, in constructing a voice-only network, a landline provider could replace a 10 gigabit per second line card with one 1 gigabit per second capacity for cost-savings. However, Farmers' CEO testified that such a network would require at least two 1 gigabit cards, which would cost more than one 10 gigabit card.

Overall, although Mr. Moss's conclusions were estimations, the Court finds the cost of building a landline-only network with lower capacity equipment would be significantly lower than (1) the cost of the current network (with all its attendant services) or (2) scaling up an existing network.

Revenue

Another way to measure relative use of the network is to determine how much revenue each service produces. For example, in fiscal year 2017, FTCC's revenue associated with voice services accounted for approximately seventy-five percent of its total revenue, and Diversified's revenue associated with voice services accounted for approximately fifty-eight percent of its total revenue. Thus, it would appear subscriptions for voice services are FTCC's and Diversified's greatest source of revenue. However, although this type of revenue information seems probative on the surface, Taxpayers' financial records only establish how Taxpayers bill their subscribers

and bundle their services, not how Taxpayers physically use their property. For example, through most of the tax years in dispute, Taxpayers required every subscriber to have a landline telephone in order to subscribe to internet access, even if the customer never used the landline or did not want the service. This practice artificially inflates the revenue (as a proxy for use) coming from voice subscribers. Furthermore, Taylor Ingram,[15] who reviews utility returns for the Department, explained that the income approach is not necessarily a good way to measure rural telephone cooperatives because, generally, profitability is not their primary goal.

Farmers' Tax Exemption History

Farmers, Taxpayers' parent company, has claimed the Rural Telephone Service Exemption since its inception. Moreover, Farmers has always claimed 100% of its assets as exempt. Each year, Farmers, like other telephone companies and cooperatives, files a property tax return with the Department that consists of the main utility property tax form (PT-420), along with either a Form PT-427 and/or a Form PT-429. Farmers filed all three forms for the tax years at issue. The PT-427 and PT-429 are distribution forms that list out the taxpayer's gross investments by county and taxing district, which the Department uses to determine the distribution of the taxpayer's assets across counties and taxing districts. In addition to the PT forms, Farmers and other telephone companies file copies of their annual reports to the SCPSC, which include an itemization of regulated assets (to include landline assets) and non-regulated assets (to include cable, wireless, and internet assets). The Department utilizes the SCPSC report to cross-reference the gross investment amounts for landline assets that have been reported as exempt assets on the property tax return.

On the front of Form PT-420 the Department requires that

> [t]he following information, where applicable, *must* be filed with the Office Audit Section prior to April 30 annually, after which an appropriate penalty will be applied as provided by law.
>
> * * *
>
> 5) A ***complete explanation*** of the method used to determine exempt property when applicable.

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[15] Taylor Ingram is an appraiser for the Department and has served as the utility assessment coordinator since 2006. He testified in his individual capacity as well as a 30(b)(6) witness on behalf of the Department. By agreement of the parties, Mr. Ingram's Rule 30(b)(6) testimony was presented by way of deposition designations. Mr. Ingram oversaw the tax return process for FTCC and Diversified for tax years 2010–2017.

(emphasis added). The PT-420 has contained this same instruction and language for every tax year at issue.[16]

Additionally, the PT-429 has a column titled "Exempt property (Leave Blank)." Farmers left this column blank on its PT-429's. However, Farmers identified one row of property as "Rural Property." Mr. Ingram testified the exempt column is for the Department's use; however, on Farmers' 2011 PT-429, the Department did not write in the column and, instead, wrote "Exempt" in the margin next to the row labeled as "Rural Property" on the PT-429. Thus, the Court finds nothing on the tax forms submitted by Famers identified certain property as exempt.

Nevertheless, although Farmers' returns do not specifically demarcate which assets are exempt or non-exempt, the Department has allowed Farmers to continuously claim the property tax exemption, in part because Farmers has historically received the exemption. Thus, the Department has always allowed Farmers to claim the exemption and has always interpreted Farmers listing certain property as "rural" on its tax return to indicate it was claiming the exemption for that property.

The Rural Telephone Service Exemption Application

Utilities file property tax returns on an annual basis and are annually appraised and assessed by the Department. The Department does not provide a specific application form for the Rural Telephone Service Exemption or any of the exemptions related to utility property taxes. Historically, only a small number of companies receive the exemption. There are only six rural telephone cooperatives[17] and approximately twenty rural telephone companies that routinely receive the Rural Telephone Service Exemption in South Carolina. Indeed, until this case, Mr. Ingram had never had a company apply for the Rural Telephone Service Exemption that was not already receiving the exemption. Thus, the Department has primarily relied on historic precedent rather than an application to administer the Rural Telephone Service Exemption. Nevertheless, as Mr. Ingram explained, although Taxpayers filed their original returns the same way as Farmers, he would not have interpreted Taxpayers' filings to be an application for exemption since "the

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[16] Curiously, this particular requirement on the front of the PT-420 was not discussed by the parties at trial.

[17] The Telephone Cooperative Act, S.C. Code Ann. §§ 33-46-10 *et seq.*, defines a "telephone cooperative" as a "corporation which is financed . . . in whole or in part by the Department of Agriculture under the provisions of the Rural Electric Act of 1936 . . . for the purposes of owning or operating in this State equipment or facilities for the transmission of intelligence through a communication service system including, but not limited to, telephone service, mobile radio, and cable television on a cooperative basis . . . ." S.C. Code Ann. § 33-46-20(4).

process would be different because Farmers Telephone Cooperative would have been included in the companies that had a rural telephone exemption for years."

Taxpayers' Original Tax Returns

The original tax returns submitted by Taxpayers for tax years 2010-2016 consisted of a PT-420, PT-427, and SCPSC Report. Therefore, unlike Farmers, Taxpayers did not include a PT-429. Taxpayers thus filed their original returns using a form that, unlike the PT-429, does not have a column for exempt property. Moreover, Taxpayers did not include the word "exempt" anywhere on their original returns or within the documents attached to the returns. Nor is there any indication that an exemption was being applied for, claimed, or requested using alternative language on the returns or in the attachments. However, similar to Farmers, Taxpayers listed some of the property on the PT-427 as "Rural." Although Taxpayers claim that there is significance to identifying property as "rural," FTCC identified some property as "rural" on its original 2010 and 2011 returns when it admits it was not claiming the exemption.

Indeed, when Mr. Ingram reviewed Taxpayers' original returns before Taxpayers protested, he did not interpret those returns to be claiming a property tax exemption. In response to a question about FTCC's original 2011 tax return, Mr. Ingram testified that "[u]pon receipt of this return, there would have been no indication that they were asking for any sort of exemption on any property." When he was asked more specifically about the identification of certain property as "rural," Mr. Ingram convincingly explained that the mere inclusion of the word "rural" on Form PT-427 was insufficient to claim the Rural Telephone Service Exemption. In fact, despite Taxpayers filing their returns similarly to Farmers' returns, Mr. Ingram would not have given them the exemption "unless there was some sort of correspondence letting me know they're requesting the exemption." Essentially, Taxpayers' original returns for tax years 2010-2016 were insufficient to inform the Department that an exemption was being claimed.

Taxpayers' Amended Returns

As part of the Settlement Agreement, the parties agreed FTCC and Diversified would submit amended tax returns for tax years 2010-2016 that identified the ***now agreed upon*** categories of exempt and non-exempt assets so the Department could re-assess the property

appropriately. However, neither FTCC nor Diversified filed complete amended returns but rather filed amended PT-427s.[18]

The amended returns for FTCC and Diversified differ from the original returns filed by Taxpayers because the amended returns segregate property by different categories. For example, on FTCC's amended 2010 return, property is split into two categories based upon the heading at the top of each page of the PT 427. These headings are "Wireless-Exempt" and "FTD."[19] Despite the "Wireless-Exempt" heading, FTCC did not intend to claim all of the properties listed in this category as exempt and thus failed to identify the property for which it was seeking an exemption. Interestingly, in the margin next to some of the properties listed under "Wireless-Exempt," the Department wrote "E's" with a circle drawn around them to identify what properties it believed were being claimed as exempt.[20] These hand-written, circled E's correspond with select properties under the Wireless-Exempt heading that FTCC also designated as "rural." Also of note, under the FTD heading, some properties were likewise listed as "rural," but were not being claimed as exempt and do not have an encircled E next to them.

Without the Department's E's written in the margin, FTCC's 2010 amended PT-427 does not set forth which properties listed under the "Wireless-Exempt" heading are being claimed as exempt. Indeed, someone looking at the amended PT-427 would most likely assume, incorrectly, that all the properties listed under the "Wireless-Exempt" heading were being claimed as exempt when only the properties that were also identified as "rural" were being claimed as exempt.[21] FTCC's amended returns for tax years 2011-2016 are similarly filled out, as are its original returns for tax years 2017-2018. I find that only a reviewer with outside knowledge of the parties'

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[18] Mr. Ingram testified in his deposition that a full tax return includes both the PT-420 and the PT-427 (he did not mention the SCPSC Report).

[19] Mr. Ingram testified at his deposition that he was not sure, but he thought FTD stood for Farmers Long Distance.

[20] Mr. Ingram testified the Department made the E notations next to certain lines of property under the Wireless-Exempt headline and these notations identified the properties under that heading which were actually exempt. Specifically, he stated the E's were "something that we [the Department] would have internally written based on the information that came out in the Settlement Agreement." Mr. Ingram further confirmed that anything written in the margins of the returns would have been added by the Department.

[21] In his deposition, Department employee Charles Brewer examined the original and amended tax return for FTCC for tax year 2010. In comparing the two tax returns, he agreed that some property designated as "rural" fell under the non-exempt FTD heading. His testimony revealed the designation of "rural" on the tax return does not always indicate exempt property contrary to Taxpayers' argument.

properties and intentions could discern which properties were being claimed as exempt on FTCC's returns.

Surprisingly, Diversified's amended returns for tax years 2013-2016 have even less specificity. Unlike FTCC's amended returns, Diversified's amended returns for tax years 2013-2016 do not include any headings with the word "exempt." In fact, the word "exempt" does not appear on the amended PT-427s, nor is there any alternative language alluding to an exemption being claimed. Rather, Diversified segregated the properties listed on its PT-427 using headings such as "Voice," "ISP," "WiFi," etc. Diversified used the same headings on its original 2017 tax return. Mr. Ingram explained that the denotation of "Voice" at the top of the PT-427 on Diversified's amended returns was unclear, although he thought the Department probably would have interpreted it as "landline telephone service." He further confirmed the Department wrote an "E" next to certain lines of property in the "Voice" category based, in part, upon the Settlement Agreement even though the Settlement Agreement called for the specific designation of exempt properties. Therefore, it appears the Department assumed that property listed under the "Voice" heading represented property used for landline telephone service, and any properties also listed as "rural" under "Voice" were entitled to the exemption.[22] Properties listed under the other headings were interpreted to be non-exempt.

Then, in tax year 2018, Diversified submitted an original PT-427 in which it included a "Voice-Exempt" heading, but like FTCC's amended tax returns, only the properties also listed as "rural" under this heading were actually intended to be exempt.

The Department's Interpretation of the Rural Telephone Service Exemption

The Department interprets section 12-37-220(B)(10) to provide that the percentage of property that can qualify for the Rural Telephone Service Exemption cannot exceed the percentage of property that qualified for the exemption in 1973 for that particular taxpayer. Accordingly, when reviewing the tax returns for rural telephone cooperatives each year, the Department's practice has been to apply the same percentage that was applied the year before, resulting in the same percentage being carried forward year after year. Historically, the Department has exempted

[22] In his deposition, Mr. Ingram clarified that with respect with the E's written in next to some of the property designated as "rural" on the amended returns, even when no heading indicated an exempt property was being listed, he knew to mark certain property as exempt based on "the context of the previous tax years and per the Settlement Agreement. We would have known to look for the rural property in this particular tax year." However, the Settlement Agreement called for specificity on the amended tax returns.

100% of Farmers' property. However, although the Department continues to exempt 100% of Farmers' property in rural areas, the Department does not have any record of why Farmers was permitted to claim 100% of its assets as exempt or what property Farmers owned on December 31, 1973, nor was that information provided to the Department by Farmers.

Furthermore, prior to this case, the Department never addressed the issue of whether wireless assets are exempt under the Rural Telephone Service Exemption or to what extent multi-use property must be used to provide rural telephone service in order to qualify for the exemption.[23] In fact, the Department's staff initially determined wireless assets are not exempt. Furthermore, it has not been the Department's practice to ask taxpayers who are applying for the Rural Telephone Service Exemption to prorate mixed-use or dual-use assets. Similarly, the Department has not required taxpayers to provide information regarding whether property is being used exclusively or primarily for the exempt purpose (level of use).

The Department's Interpretation of "Department Determination"

The Department's staff maintains only the Department's Office of General Counsel for Litigation can prepare a department determination. The Department's staff also describe a settlement agreement as a mutually created document memorializing an agreement between the Department and a taxpayer. Further, they contend a settlement agreement can be entered into without a department determination ever being issued. The Department's staff assert a property tax assessment certification is only a statement sent from the Department's property division to a county conveying information to assist the county in calculating the taxes owed by a taxpayer.[24] Therefore, the Department does not consider either property tax assessment certifications or settlement agreements to be department determinations. Accordingly, the Department's staff does not consider the Supplemental Certifications issued in this case (which Department staff referred

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[23] It appears there were two primary issues of concern for the Department: whether the *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011), applied to the Farmers Entities for purposes of the Rural Telephone Service Exemption, and, if it did, whether wireless assets qualified for the exemption.

[24] On October 8, 2018, the South Carolina General Assembly enacted Act 265, which amended county notification procedures. The Department must now provide notice to all county auditors, treasurers, assessors, and county administrators regarding any request for a refund, protest of a property tax matter (not involving individual exemptions), or department determinations. S.C. Code Ann. §§12-60-450(E)(4), 12-60-2120(A) and (B), §12-60-2150(B). In the case of a refund request or department determination, the county auditor is then required to notify other affected taxing entities. S.C. Code Ann. §12-60-2150(B); and S.C. Code Ann. §12-60-450(E)(4). However, none of these statutory amendments have changed the Department's view that settlement agreements are not department determinations and counties have no right to appeal settlements.

to as final assessment certifications) to be subject to an appeal to the ALC.[25] However, none of the staff's interpretations have been formally memorialized by the Department.

Interaction Between the Department and Counties

General Practice

According to the Department, its Property Division does not send a formal department determination to counties concerning the grant or denial of an exemption application for utility companies. Instead, the Property Division notifies counties of exemption decisions through its certification of the property tax assessment for each utility company (the certified assessment factors the exemption decision into the assessed amount). However, under the facts of this case, the Department's certification is the final decision in the Department's review of the utility's property tax return assessment and exemption request.[26]

The annual certified assessment is the document counties use to issue property tax bills to utility taxpayers. Pursuant to South Carolina law, the Department forwards its certified property tax assessments to the taxing authorities no later than August 15 of the applicable tax year. S.C. Code Ann. § 12-37-970 (2014). The Department complies with this requirement by mailing the annual utility certifications in early August to every county in which each utility company operates.

Although the Department adheres to the statutory August 15 deadline, they do not adhere to the statutorily required June 1st deadline to notify counties of property exemption decisions related to manufacturers or utilities. *See* S.C. Code Ann. § 12-4-710 (2014). The Department disregards that deadline because the Property Division receives hundreds of filings in late April or early May each year,[27] and it would be impossible for the Property Division to review the returns, render an opinion of value for an appraisal, issue a proposed assessment, and then certify that assessment to counties within a three to four-week period.

The Department generally sends its correspondence, including notices of a taxpayer protest, to the county auditor, who it understands to be the county representative for property tax

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[25] In fact, it is referred to by the Department as a final assessment certification.

[26] The Court recognizes there may be instances in which the Department specifically issues a final decision and, thus, the certification in those instances would not be the Department's final decision.

[27] The assessment for property taxation is determined from information on the property tax returns submitted by the taxpayer on or before the last day of the fourth month after the close of the accounting period regularly employed by the taxpayer for income tax purposes. S.C. Code Ann. § 12-37-970. According to the Department staff, most utilities and manufacturers have a calendar accounting period that closes on December 31, so their property tax returns are not due under law until April 30th of the following year.

purposes. If a taxpayer protests an assessment, the Department will send the County Auditor a memorandum containing information about the taxpayer and indicating a protest has been filed, but the memorandum usually does not include an explanation for the protest. It has not been the Department's practice to include in these memoranda the details of whether the dispute is over valuation or exemptions, or the specific dollar amount that is in dispute.

This Case

In this case, once the Department received Taxpayers' protest, the Department sent a memorandum to each County Auditor indicating that FTCC and/or Diversified had protested the assessment. Notably, the memorandum included a copy of Taxpayers' letter of protest, which provided a more detailed explanation of the nature and basis of the protest and appeal. The memorandum also included a revised assessment for 80% of the assessed value and advised the County Auditor that he would receive a final assessment certification from the Department once the protest was resolved. The Department sent this memorandum to each County Auditor for each tax year at issue.

Although county auditors were notified of the protests, the Clarendon County Auditor did not pass this information on to Clarendon County's CFO.[28] Importantly, the CFO's role, in part, is to develop the County's budget. In that role, the CFO projects each year's budget based on historical data from the year before and historical trends. In other words, the CFO examines the revenue collected in prior years and prior expenditures to project what the revenues and expenditures will be for the county in the coming year. As for projected revenue, the CFO relies on what the county has "collected in the prior year and in years past." As for refunds, the county relies "almost exclusively" on its historical refund activity.

Clarendon County's Budget Process

Clarendon County's CFO testified 75% of Clarendon County's annual budget is funded from ad valorem property tax revenues. These tax revenues account for a majority of Clarendon County's total annual budget. Clarendon County is required to have its budget finalized by June 30th of each year. Finalizing the budget is an extended process, which spans approximately four months, three council readings, and a public hearing. The CFO testified that without a finalized

[28] The testimony on the county budget process came from the CFO for Clarendon County, and the Taxing Entities presented no other fact witnesses (such as an auditor or CFO for any other county).

and effective budget beginning on July 1, 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. He further testified that, had the Department timely notified Clarendon County about the property tax exemption, Clarendon County would have been able to revise and adjust its budget prior to it being finalized.

Notification to the Counties

The respective county auditors for Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County received notice of the Settlement Agreement in a memorandum from the Department dated June 14, 2017. Thereafter, in memorandums entitled "Utility Appeal Resolution Certification[s]" and dated July 6, 2017, the Department advised Clarendon County, Florence County, Lee County, Sumter County, and Williamsburg County that, in relevant part:

> 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.

To each respective County's memorandum, the Department attached the "Utilities Supplemental Certification[s]" (Supplemental Certifications) for FTCC for tax years 2010-2016 and for Diversified for tax years 2013-2016. Based on the Supplemental Certifications, Taxpayers had substantial overpayments for each tax year in question which the counties are required to refund.

ISSUES

1. Whether Taxing Entities have standing to contest the Settlement Agreement and/or the Supplemental Certifications.

2. Whether Taxpayers' property qualifies for the Rural Telephone Service Exemption for tax years 2010 through 2018.

3. Whether Taxpayers properly applied for the exemption.

4. Whether the Department's granting of the exemption was illegally retroactive.

CONCLUSIONS OF LAW

I make the following conclusions of law based on a preponderance of the evidence.

Standard of Review

The hearing before the ALC is a contested case hearing and is heard ***de novo***. *Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control*, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (2004). This Court must make its factual findings based on the preponderance of the evidence. *See* S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2019); *see also Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998); *Nat'l Health Corp. v. Dep't of Health and Envtl. Control*, 298 S.C. 373, 379, 380 S.E.2d 841, 844 (Ct. App. 1989).

Burden of Proof

"In general, the party asserting the affirmative issue in an adjudicatory administrative proceeding has the burden of proof." *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 78, 804 S.E.2d 633, 643 (Ct. App. 2017). The Taxing Entities contend the Settlement Agreement and the Supplemental Certifications constitute department determinations from which Taxing Entities can appeal to the Administrative Law Court. By challenging the Department's decision to exempt certain assets via the Supplemental Certifications for tax years 2010–2018, Taxing Entities are asserting the affirmative issue in this case and have the burden to prove by a preponderance of the evidence that the Department's decision(s) was in error. *See id.* at 78, 804 S.E.2d at 643 (upholding the ALC's decision that burden of proof lies with the person challenging the Department's determination).

However, although the burden of proof is on Taxing Entities as the parties asserting the affirmative issue, under that umbrella is a countervailing burden on Taxpayers to establish they are entitled to this tax exemption. *See TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) ("The burden is on claimants to prove their rights to an exemption by bringing themselves clearly within the conditions imposed by the statute."). Similarly, Taxpayers have the burden to show they are entitled to a refund. *Asmer v. Livingston*, 225 S.C. 341, 82 S.E.2d 465, 466 (1954) (holding a refund of taxes is solely a matter of governmental grace, and taxpayers seeking such relief must bring themselves clearly within the terms of the statute authorizing a refund). I find these interwoven burdens to be similar to the burden of proof discussed by the Supreme Court in *Sierra Club v. S.C. Dep't of Health and Envtl. Control*, 426 S.C. 236, 826 S.E.2d 595 (2019). Specifically, in that case the Sierra Club was challenging a permit the Department issued to Chem-Nuclear, and the Supreme Court held:

> Although Sierra Club undoubtedly bore the burden of proving its case, Chem-Nuclear nevertheless bore an overarching burden to satisfy the regulatory requirements necessary for Chem-Nuclear to earn its license. We do not read the court of appeals' conclusion that there was no evidence to show Chem-Nuclear's compliance with subsections 7.11.11.1 and 7.11.11.2 to be an impermissible shift in the burden of proof. The court of appeals applied the facts established at the hearing to the legal requirements set forth in the regulations and concluded substantial evidence did not support the ALC's findings as to subsections 7.10.7, 7.11.11.1, and 7.11.11.2.

Id. at 258–59, 826 S.E.2d at 67. Accordingly, although Taxing Entities must show how the Department's decision to grant Taxpayers the exemption was incorrect, Taxpayers also have an overarching burden to establish that they are entitled to the exemption. *See id.*

Adding to this conundrum is the fact that Farmers Entities are the parties who should possess clear knowledge of the facts and control the evidence regarding the property that was exempted pursuant to the Rural Telephone Service Exemption in 1973. *See Roberts v. Roberts*, 296 S.C. 93, 99, 370 S.E.2d 881, 884 (Ct. App. 1988) ("The general rule is that the burden of evidence is imposed on the party best able to sustain it; so the party having peculiar knowledge of the facts or control of evidence, relating to an issue, has the burden of evidence as to it." (citation omitted)). Therefore, although the Taxing Entities have the burden of proof to establish the Department's decision regarding the exemption was erroneous, once Taxing Entities establish a prima facie case that the decision was in error, the burden of production shifts to Taxpayers to establish their right to the Rural Telephone Service Exemption. *Daisy Outdoor Adver. Co., Inc. v. S.C. Dep't of Transp.*, 352 S.C. 113, 118, 572 S.E.2d 462, 465 (Ct. App. 2002) ("Once a party establishes a prima facie case, the burden of proof shifts to the opposing party."); *Arkwright Mills v. Clearwater Mfg. Co.*, 217 S.C. 530, 539, 61 S.E.2d 165, 168-69 (1950) ("It is the settled rule of law that once a party establishes a prima facie case, judgment will go in his favor unless the opposite party produces evidence sufficient to overcome the prima facie presumption.").

Finally, Respondents' assertion that the Settlement Agreement bars consideration of this case is in the nature of an affirmative defense and, thus, the burden is upon Respondents to establish that defense. *Hoffman v. Greenville Cty.*, 242 S.C. 34, 39, 129 S.E.2d 757, 760 (1963) ("One who pleads an affirmative defense has the burden of proving it."); *Cole v. S.C. Elec. & Gas, Inc.*, 355 S.C. 183, 195, 584 S.E.2d 405, 412 (Ct. App. 2003), *aff'd as modified*, 362 S.C. 445, 608 S.E.2d 859 (2005) ("When a defendant interposes an affirmative defense, he becomes as to that matter the actor in the suit, and the burden of proof rests upon him to establish his affirmative

defense by the preponderance of the evidence." (citation omitted)); *see also Earthscapes Unlimited, Inc. v. Ulbricht*, 390 S.C. 609, 615, 703 S.E.2d 221, 224 (2010) ("Statutory prohibition is in the nature of an affirmative defense[.]" (quoting *Madren v. Bradford*, 378 S.C. 187, 193, 661 S.E.2d 390, 393 (Ct. App. 2008))).

Standing

Before the merits hearing in this case, Taxpayers filed a Motion to Dismiss on the ground that this Court does not have subject matter jurisdiction to grant Taxing Entities a contested case hearing. In their motion, Taxpayers were more concerned with whether Taxing Entities met the factual requirements for statutory standing than whether this Court has subject matter jurisdiction. In their proposed order, Taxpayers now frame the issue as whether Taxing Entities have a "right to seek a contested case hearing."

Initially, the Court finds it has subject matter jurisdiction over this case because this Court has the "power to hear and determine cases of the general class to which the proceedings in question belong." *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004) (quoting *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994)). This case involves a county government contesting a Department decision; generally, this Court is authorized to hear such cases pursuant to sections 12-60-2130 and 12-60-2150 of the South Carolina Code (2014) and section 1-23-600(A) of the South Carolina Code[29]; *see also* S.C. Code Ann. § 12-4-535(C) (2014) ("If the county disagrees with, or fails to respond to, the department determination, the department by its director or designee or the county governing body by resolution may request a contested case hearing before the Administrative Law Court within thirty days after the date the county disagreement notice was, or should have been, mailed or hand delivered."). Therefore, this Court has subject matter jurisdiction over this matter.

Moreover, the statutes giving this Court subject matter jurisdiction also function to give local governing bodies, such as the Taxing Entities, statutory standing to bring a contested case before this Court. *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515,

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[29] Regarding section 1-23-600, the Court specifically finds its jurisdiction would stem from the definition of contested case as defined in Section 1-23-505 and not Article I, Section 22, Constitution of the State of South Carolina, 1895, since the counites represent public rights, not private rights.

Additionally, Taxing Entities argue this Court has jurisdiction over this case pursuant to section 12-4-535 of the South Carolina Code (2014). The Court agrees that section 12-4-535 indicates this Court has subject matter jurisdiction over these types of cases, it does not agree that this statute give the Taxing Entities standing in this case.

518 (2013) ("Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation."). To acquire statutory standing, Taxing Entities must meet certain prerequisites in the statutes. *Bevivino v. Town of Mount Pleasant Bd. of Zoning Appeals*, 402 S.C. 57, 64, 737 S.E.2d 863, 867 (Ct. App. 2013) ("All Appellants, having satisfied the prerequisites for statutory standing, were entitled to maintain this action in the circuit court."); *see also Freemantle v. Preston*, 398 S.C. 186, 194, 728 S.E.2d 40, 44 (2012) ("The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute.").

One of the prerequisites in the statutes that confer standing here is the issuance of a "department determination." Specifically, section 12-60-2130, which is entitled "Taxpayer or local governing body may request contested case hearing," provides, in relevant part:

> A property taxpayer[30] or the ***local governing body***[31] who disagrees with the ***department determination*** may request a contested case hearing before the Administrative Law Court if he files an action within thirty days of the date of the department's determination. . . . If a taxpayer requests a contested case hearing before the Administrative Law Court without exhausting his prehearing remedy because he failed to file a protest, the administrative law judge shall dismiss the action without prejudice.

S.C. Code Ann. 12-60-2130 (2014) (emphasis added). The preceding section, section 12-60-2120, governs how a ***taxpayer*** may protest a property tax assessment by a division of the department and requires all internal Department appeals to "be conducted pursuant to section 12-60-450(E), which in turn provides that the Department "***will make a department determination*** using the information provided by the taxpayer" and delineates the information to be included in the department determination. S.C. Code Ann. § 12-60-2120(D) (2014); S.C. Code Ann. § 12-60-450(E) (2014) (emphasis added).

Section 12-60-2150(H) describes a similar process for a taxpayer to request, protest, and contest a refund. It provides, in relevant part:

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[30] "Taxpayer" means "a person who is liable for a tax or who is responsible for collecting and remitting a tax" and includes "a licensee and an applicant for a license, issued by or administered by the department." S.C. Code Ann. § 12-60-30(29) (2014).

[31] "Local governing body" is not defined in Title 12. However, it is defined in Title 6, which governs local government. In Title 6, "local governing body" is defined to mean "the governing body of a county, municipality, or special purpose district." S.C. Code Ann. § 6-1-300 (2004).

> (C) The claim for refund under this section must be mailed or delivered to the department . . . . If the claim for refund states the property is exempt, the claim for refund must state the basis on which exemption is claimed.
>
> (D) The appropriate division of the department shall determine what refund is due, if any, and give the ***taxpayer*** written notice of its determination as soon as practicable after a claim has been filed.
>
> (E) A ***taxpayer*** may appeal the division's decision by filing a written protest with the department following the procedures provided in Section 12-60-2110. For purposes of complying with the provisions of Section 12-60-2110, the written denial of any part of a claim for refund is the equivalent of a property tax assessment notice.
>
> (F) The department shall consider the claim, determine the correct property tax assessment, and issue any necessary orders. ***All appeals before the department must be conducted as provided in Section 12-60-450(C) through (E).***[32]
>
> (H) A property ***taxpayer*** or ***the local governing body*** who disagrees with the ***department determination*** may request a contested case hearing before the Administrative Law Court by filing the request in accordance with the Administrative Law Court rules within thirty days of the date of the department determination.

S.C. Code Ann. § 12-60-2150 (2014) (emphasis added). Similar to section 12-60-2120(D), section 12-60-2150(F) requires that all appeals be conducted as provided in sections 12-60-450(C)-(E).

Therefore, both section 12-60-2130 and section 12-60-2150 provide that a local governing body can appeal a department determination that it disagrees with. However, under both these statutes, the only procedural steps described for eliciting a department determination are procedural steps a taxpayer can take, not a local governing body.[33] Although there are no procedural steps delineated for a local governing body to elicit a department determination, they nevertheless have the right to appeal from a department determination. Therefore, to determine

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[32] Section 12-60-450(E) provides that the Department "will make a department determination using the information provided by the taxpayer" and delineates the information to be included in the Department Determination. S.C. Code Ann. § 12-60-450(E) (2014).

[33] The only statute that comes close to describing procedural steps for a local governing body to take is section 12-4-535(D), which provides that a county governing body (by resolution) can request the Department to issue "a department determination on any state law regarding the valuation, assessment, or taxation of real property"; however, the Department is not required to issue a department determination in response. Rather, the Department "may issue, in its discretion, the determination" from which the local governing body can request a contested case hearing before this Court. *Id.* Although there are no procedural steps through which a county can force the Department to issue a department determination, it would be absurd to suggest a county can challenge a department determination but it cannot challenge the Department's refusal to honor a county's governing board's request for a determination.

whether Petitioners have standing, the Court must determine whether a department determination was made.[34]

What is a Department Determination?

The Revenue Procedures Act defines "department determination" as "the final determination ***within*** the department from which a person may request a contested case hearing before the Administrative Law Court." S.C. Code Ann. 12-60-30(10) (2014) (emphasis added).[35] Respondents contend the meaning of "final determination" is modified by the adjectival phrase "from which a person may request a contested case hearing before the Administrative Law Court." *See id.* Therefore, a "final determination" involves only matters in which a party may request a contested case before the Administrative Law Court. Following that reasoning, a "department determination" is something from which you can "request a contested case hearing before the Administrative Law Court," but also, the right to a contested case in these circumstances is based, in part, on the existence of a department determination pursuant to section 12-60-2130 and section 12-60-2150(H).[36] Thus, the definition of "department determination" is circular.

I find 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." Furthermore, the terms within section 12-60-30(10) provide clarity as to the overall meaning of the statute. Since neither "final" nor "determination" are defined in the statutory scheme, the court generally looks to their usual definitions to determine their meanings. *See 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

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[34] Implicit in this question is also the issue of whether, in absence of a taxpayer-elicited department determination, a local governing body must rely on other principles of law to show standing. *See S.C. Pub. Interest Found. v. S.C. Dep't of Transportation*, 421 S.C. 110, 117, 804 S.E.2d 854, 858 (2017) ("A plaintiff must have standing to institute an action."); *id.* ("We recognize three types of standing: (1) standing conferred by statute; (2) 'constitutional standing'; and (3) public importance standing.").

[35] Oddly, despite this specific statutory definition, Taxpayers contend "department determination" is a term of art, the meaning of which is made clear by the statutory scheme as well as Department policies and procedures. *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 228 (2012) ("It is very rare that a defined meaning can be replaced with another permissible meaning of the word on the basis of the other textual indications; the definition is virtually conclusive.").

[36] *See* S.C. Code Ann. § 12-60-30(4) (defining "contested case hearing" to have "the same meaning as it has in Section 1-23-310" and also defining it as "a hearing conducted pursuant to Article 3, Chapter 23, Title 1, the South Carolina Administrative Procedures Act, and includes the hearings conducted by the Administrative Law Court to review . . . department determinations"); S.C. Code Ann. § 1-23-310(3) (defining "contested case" to mean "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party ***are required by law*** to be determined by an agency after an opportunity for hearing" (emphasis added)).

a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning."). Generally, "determination" is defined as "the resolving of a question by argument or reasoning." *Determination*, WEBSTER'S ONLINE DICTIONARY, http://www.merriam-webster.com/dictionary/determination (last visited February 14, 2018). In this case, the Department entered into a Settlement Agreement with Taxpayers, and it did not issue a separate or distinct document(s) entitled "department determination." Yet, to reach a decision regarding whether Taxpayers were initially exempt from property tax necessarily involved a determination since factual and legal reasoning was necessary to reach such a decision. Therefore, the Settlement Agreement was a determination by the Department as to whether Taxpayers' property was taxable. But, as will be explained below, the Settlement Agreement was only a final determination as between the Department and Taxpayers; it was not the final determination that bound Taxing Entities—the final determinations that bound the Taxing Entities were the Supplemental Certifications.

Based on the above analysis, I find the factual determination of whether a particular Department decision was "final" is the controlling issue as to whether a department determination was issued. The Settlement Agreement resolved the dispute between the Department and Taxpayer as to the tax liability of Taxpayer. However, that resolution was meaningless until the Department determined the value of the property at issue in the revised property assessments and then required the Taxing Entities to comply with the terms of Settlement Agreement by issuing subsequent determinations—the Supplemental Certifications. In other words, for the Settlement Agreement to have any meaning for the Taxpayers, there had to be a separate and subsequent implementation of that decision. In fact, the Department acknowledged its decision to exempt Taxpayers was not "final" until it sent the Supplemental Certifications to Clarendon County and the other Taxing Entities. Thus, after the Settlement Agreement was ratified, the Department sent a memorandum with the Supplemental Certifications to the Taxing Entities, which corrected and clarified the assessments previously sent to Taxing Entities. Moreover, the Supplemental Certifications did not request or allow comment by the counties, which also indicated the finality of the Supplemental Certifications. Therefore, while nothing in the statutory scheme describes property tax assessment certifications as "department determinations," the finality achieved by the certifications establishes, in part, that they served as the Department's final determination

requiring Taxing Entities to issue refunds. *See* § 12-60-30(10). The Supplemental Certifications were thus ***de facto*** department determinations.

Taxpayers nevertheless contend the Department did not make a final determination because "[n]either the Revenue Procedure Act nor Revenue Procedure #06-2 require the Department to issue a department determination when a taxpayer and the Department settle a case." This argument implies that a department determination is a term of art that means something else besides merely a final determination. Obviously, when the Department enters into a settlement agreement, there is no need to make a separate department determination because the settlement agreement ends the conflict between the parties and acts as the final determination by the Department. There is thus no real distinction between a "department determination" and a "settlement agreement" in terms of the finality of the decision. The finality of a settlement agreement is underscored by the statutory prohibition against re-opening a settlement agreement unless there is fraud, malfeasance, or misrepresentation. *See* S.C. Code Ann. § 12-4-320(4). If a settlement is not a final determination, no such limitations would be placed upon it. In fact, the Department cannot even enter into a settlement agreement unless the Department's director agrees to its terms, which certainly reflects the finality of the process. *See id.*

Next, as previously stated, a "department determination" is defined as "the final determination ***within*** the department from which a person may request a contested case hearing before the Administrative Law Court." § 12-60-30(10) (emphasis added). The statute does not require the department determination be labeled "department determination" or issued in a particular form, which is reflected by the definition of "department determination" found in South Carolina Revenue Procedure #06-2:

> 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.***

(SC Rev. Proc. #06-2, II(B)) (emphasis added). Therefore, the Department's own Revenue Procedure undermines its argument that a department determination must be titled as such or issued in a particular form. To allow the Department to dictate whether something is a department determination based upon what it labels a certain decision, rather than the substance of the decision, would set a dangerous precedent that is illustrated by what happened in this case.

Specifically, Taxpayers' tax attorney, Jeffrey Allen, testified that on the first draft of the Settlement Agreement, Taxpayers included a provision which required the Department to issue a "department determination." Taxpayers wanted to include this provision in order to ensure those potentially affected by the exemption of Taxpayers' assets had a right to appeal. However, the Department disagreed, and specifically insisted that the provision requiring the issuance of a department determination be stricken in order to foreclose any right of appeal. These actions against another branch of government demonstrate the danger of Respondent's interpretation of "department determination." Accordingly, the Department's decision not to label its final determination as a "department determination" should not shield the Department's decision from judicial review. *See Hodges*, 341 S.C. at 91, 533 S.E.2d at 584 ("The goal of statutory construction is . . . to prevent an interpretation that would lead to a result that is plainly absurd.").

Also, if the Settlement Agreement is not considered a department determination, then the statutory scheme implies that a local governing body is precluded from requesting a contested case under section 12-60- 2130 and 12-60-2150 unless a taxpayer protests a decision, does not settle, and forces the Department to issue a statutorily required "department determination." Under this view, the counties' rights to challenge a decision that clearly affects them financially would be dependent upon whether a taxpayer initiated the administrative review process and the taxpayer's subsequent decision not to settle.

To find that counties do not have a right to challenge a Department decision unless the taxpayer forces a department determination is troublesome because the statutes reflect that the General Assembly intended to grant local governing bodies an ***independent*** right to request a contested case. Specifically, sections 12-60-2130 and 12-60-2150 provide that either the taxpayer **or** the local governing body can request a contested case after a department determination is issued. These statutes do not require that a taxpayer must request a contested case for the local governing body to have the right to request a contested case, so why would the Court condition a local governing body's appeal rights on the taxpayer's actions up to that point?

In sum, based upon a plain reading of these sections, this Court concludes the General Assembly intended counties and local governments to have the right to seek review of department determinations affecting the counties. To find that the Settlement Agreement and Supplemental Certifications are not department determinations would also create conflict with the statutory scheme because local governments would have the statutory right to appeal but no means by which

to procedurally accrue 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."). The Department's own testimony illustrates the absurd result created by such an interpretation. In the 30(b)(6) deposition of the Department, the Department'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 a result of a disputed issue being resolved by a settlement agreement between a taxpayer and the Department. The Department's official position: if the $50,000,000 disputed issue was resolved by a settlement agreement and no "department determination" was issued from within the Office of General Counsel, then the county would have no right to appeal that decision.

Division Decision

Taxpayers also argue the Supplemental Certifications are not "department determinations" because they are "division decisions." A "division decision" is defined as "a decision by a division of the department that affects the rights or obligations of a person for which no specific appeals rights are provided by this act." S.C. Code Ann. § 12-60-31(13) (2014).

Reading this definition in isolation could lead to the conclusion that any decision labeled a "division decision" forecloses appeal rights by any party whom the decision affects. However, the statute could also be read as defining a certain level of decision within the internal administrative process. When we look at the statutory scheme as a whole, it describes different levels of the administrative process and what rights accrue at each level. *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486, 126 S. Ct. 1252, 1257 (2006) ("The definition of words in isolation, however, is not necessarily controlling in statutory construction. Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis."); *see also CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) ("We therefore should not concentrate on isolated phrases within the statute. . . . Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose.").

Read in the context of the statutory scheme, the definition of "division decision" means that a "division decision" is a lower-level decision within the administrative process from which appeal rights do not immediately accrue; but, if the "division decision" is protested in the administrative process, it may eventually lead to an appealable decision in the form of a department

determination. Here, the Supplemental Certifications resulted from the resolution of a protest and the resolution of the internal administrative review process, at which point they would be department determinations or final decisions, not "division decisions." Additionally, if "division decisions" foreclose appeal rights as Respondents argue, then the Department could easily manipulate the local governing bodies' legal rights. For example, the Department could classify a decision as "division decision" to circumvent a local governing body's right to review under section 12-60-2130 or section 12-60-2150(H). As this Court previously discussed, allowing the Department to label its own decisions would lead to an absurd result. *See Hodges*, 341 S.C. at 91, 533 S.E.2d at 584 ("The goal of statutory construction is . . . to prevent an interpretation that would lead to a result that is plainly absurd.").

Statutory Requirements for a Department Determination

Taxpayers further argue that the Supplemental Certifications cannot be department determinations because they do not meet the statutory requirements. Specifically, section 12-60-450(E)(2) requires that a

> department determination ***adverse to the taxpayer*** must be in writing and must: (a) be sent by first class mail or delivered to the taxpayer; (b) explain the basis for the department's determination; (c) inform the taxpayer of his right to request a contested case hearing; and (d) if a proposed assessment was protested, explain that the taxes will be assessed in thirty days and payment demanded unless the taxpayer requests a contested case hearing.

(emphasis added). The Supplemental Certifications and attached memorandums do not meet these requirements because they are not intended for the taxpayer—they were sent to the counties—and therefore the certifications do not "inform the taxpayer of his right to request a contested case hearing." *Id.* Similarly, neither the Settlement Agreement nor the Supplemental Certifications were "adverse to the taxpayer," but it is not the taxpayer who is at issue in this case, it is the counties. Moreover, whether the certifications adequately "explain the basis for the department's determination" is a requirement for the sufficiency of the department determination, but it is not a requirement for the existence of a department determination. *Id.* If the Department fails to explain the basis of its decision in a department determination, it does negate the existence of a determination, it merely makes it defective. Therefore, this provision is not pertinent to the issue of whether the counties have a right to a contested case hearing to challenge the Department's determination.

Department Representative

The Department contends that a department determination can only be issued by an attorney because only an attorney within the Department's Office of General Counsel can represent the Department at a contested case hearing. The Department bases this interpretation, in part, on section 12-60-30(11), which defines a "department representative" 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) (emphasis added). The Department then further relies on Rule 8 of the Rules of Procedure for the Administrative Law Court (SCALC Rules), which provides that the Department must be represented by an attorney in proceeding before the Court. SCALC Rule 8. Therefore, taking the statute and Court rule together, the Department argues the person who prepares the department determination must be an attorney; accordingly, any document that is not issued by an attorney cannot be a department determination.

The courts must interpret statutes in a manner that ascertains and effectuates the intent of the legislature, and in doing so, words must be given their "plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881. In this instance, it is difficult to believe the General Assembly, by using the term "represent" in a definition, meant to insulate the Department from any contested case review unless the contested decision was drafted by the Department's attorneys. Moreover, such an interpretation would add another element to the definition of "department determination." I find the Department's construction is based upon an inference that is simply not supported in the statutory definition of "department determination."

In fact, neither statutory law nor Revenue Procedure #06-2 require a department determination to be produced in a specific form, prepared by an attorney, or issued from the Department's Office of General Counsel. Instead, a "department determination" only requires that a final determination be made ***within*** the Department. *See* § 12-60-30(10) (emphasis added). Accordingly, the logical interpretation of section 12-60-30(11) is that a "department representative" is an individual within the Department who is tasked with (1) preparing a final decision of the Department and (2) who will also stand behind the position taken in the department determination through testimony at a contested case hearing. Nevertheless, simply because that task is fulfilled by other means does not negate the creation of a Department decision.

Additionally, considering the procedural process leading up to a department determination or a settlement agreement (i.e., a protest), it is unsurprising that a department determination or settlement agreement would be reviewed by, or executed with the approval of, the Department's legal office to ensure any legal issues involved in the protest were properly resolved. For instance, in this case, the Department attorney, Bill Condon, signed off on the Settlement Agreement. Moreover, the Supplemental Certifications were issued pursuant to the Settlement Agreement (and therefore with the approval of a Department attorney). Accordingly, the Court does not find section 12-60-30(11)'s definition of "department representative" precludes a finding that a department determination was issued in this case.

Conclusion

The Department's decision to exempt Taxpayers' assets from property tax became the Department's "final determination" once the Supplemental Certifications were sent to the Taxing Entities. In fact, the Department conceded that its decision was final once it sent the Supplemental Certifications. Although the typical process for arriving at a department determination was not followed in this case, this fact does not mean that a department determination was not issued. Moreover, the Supplemental Certifications were necessary for Taxing Entities to generate revised tax bills exempting Taxpayers' assets. Therefore, the Supplemental Certifications were reviewable "department determinations." In sum, simply because there is no delineated procedure to challenge the Department's final decision does not vitiate the counties' right to challenge the decision.

Does the Settlement Agreement Bar Review of the Department Determination?

The Department is statutorily authorized to settle a case with a taxpayer and "enter into a written agreement with a person with regard to a tax liability." S.C. Code Ann. § 12-4-320(4) (2014); *see also* § 12-60-450. 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." § 12-4-320(4). Therefore, a settlement agreement resolving a disputed tax liability is "final and conclusive" with respect to the Department and the taxpayer, and cannot be reopened by this Court absent fraud, malfeasance, or