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

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APPELLANTS-RESPONDENTS' REPLY BRIEF TO RESPONDENT SOUTH CAROLINA DEPARTMENT OF REVENUE

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INTRODUCTION

The South Carolina Department of Revenue's ("DOR") Brief offers a detailed description of how DOR likes to conduct business. At its irreducible base, DOR offers a "this is how we have always done it, and it works for us" defense to Taxing Entities' claims about defects in DOR's tax administration process. Although Taxing Entities sincerely appreciate DOR's attempts to create a user-friendly taxation process, DOR's past practices cannot be justified—no matter how well intended—if those processes and practices are contrary to the written law established by the General Assembly of South Carolina. In a match-up between DOR's preferences and the statutes governing South Carolina taxation, the statutes must win, every single time. For the reasons discussed more fully below, DOR's positions should be rejected.

ARGUMENTS

I. DOR's Decision to Grant the Exemption was DOR's Final Decision, and It Was, Therefore, a Department Determination. [1]

DOR, like Taxpayers, asserts that Taxing Entities lacked standing to request a contested case hearing because DOR never issued a department determination that complies with DOR's inordinately narrow concept of what a "department determination" is. Although DOR abandoned its appeal, DOR uses this as an opportunity to explain, at length, why it believes that it acted reasonably when it attempted to engineer a way around issuing a department determination. To avoid unnecessary repetition explaining every reason why a department determination was issued, Taxing Entities direct the Court to pages 9–31 of Taxing Entities' Respondent Brief. (*See also* Order 43–56; R. 49–62). Without rehashing all arguments in DOR's Brief, Taxing Entities address some of the more problematic assertions, and their implications, contained in DOR's filing.

[1] This section responds to DOR's arguments in Section I(A)(1) of DOR's Brief.

DOR unequivocally issued a department determination in this case. To reach that conclusion, Taxing Entities do not have to guess at the meaning of "department determination." The General Assembly gave all South Carolinians a workable, common sense definition: "'Department determination' means 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) (emphasis added). The department determination is simply DOR's final answer about an issue.[2] That is it. All of the other conditions and requirements suggested by DOR and Taxpayers are made up. The facts in this case show that DOR issued a department determination.

This case is ultimately the result of DOR's initial decision that wireless assets do not qualify for the Exemption. When Taxpayers first sought the Exemption for FTCC and Diversified, DOR denied FTCC's and Diversified's eligibility for the Exemption because their assets were used to provide wireless cellular services, which DOR staff did not believe was eligible for the Exemption. (Trial Ex. 21; R. 2777; Tr. 129:10–130:17 & 135:21–136:1; R. 1642–43 & 1648–49; Brewer Dep. Designations 39:1–41:3; R. 1251–53). Then, DOR staff referred the issue to DOR's attorneys, where the issue was further vetted. (Trial Exs. 82 & 83; R. 3388 & 3391 (showing DOR's attorney, Bill Condon, requesting additional information to support Taxpayers' claim of eligibility to the Exemption in 2015)).

[2] This broad definition is consistent with other administrative appeal provisions established by the General Assembly. *See, e.g.*, S.C. Code Ann. § 1-23-380 ("A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a **final decision** in a contested case is entitled to judicial review pursuant to this article and Article 1.") (emphasis added).

In the Introduction section of DOR's Brief, DOR detailed the tax protest process that occurred here:

1. "[DOR's] Property Division reviewed FTCC's and Diversified's exemption and refund requests and protests in accordance with the . . . Revenue Procedures Act ("RPA"). . . ." (DOR's Br. 2).

2. "[DOR's] primary questions were whether Taxpayers qualified for the Exemption by virtue of their legal relationship to Farmers, and whether the Exemption applied to assets used to provide *wireless* telephone service." (*Id.*).

3. "[DOR] held numerous conferences with Taxpayers." (*Id.*).

4. "[DOR] eventually referred the matter to [DOR's] Office of General Counsel." (*Id.*).

5. "Ultimately, [DOR] chose to exercise its statutory authority to settle the tax dispute regarding the Exemption." (*Id.*).

6. "In a Settlement Agreement approved by the Director, the parties agreed Taxpayers' property used to provide landline or *wireless* telephone service was exempt for tax years 2010–2015, but property used to provide other services was not." (*Id.*).

7. "[DOR] then issued supplemental assessment certifications to the affected counties reflecting the change in Taxpayers' assessment because of the granted Exemption." (*Id.*).

In its Brief, DOR argues that "only those decisions that have been fully vetted by agency stakeholders in conjunction with its legal staff become the *final* decision of the Department." (DOR's Br. 8 (citing Trial Ex. 184 at 6–7) (emphasis in original)). If that is the standard DOR wants to use, then this case most definitely involved a department determination. Based on its own recitation of the procedural history, every single level of DOR leadership was involved with DOR's decision to grant the Exemption to Taxpayers.

Further, DOR argues that it has the ability to determine why, when, and how a department determination is issued, without any rational real limitation on DOR's discretion. Essentially, DOR believes that it possesses the unfettered—and judicially unreviewable—power to choose when its

final decisions affecting property tax revenues (revenues which, consequently, belong to counties and local governing bodies) become a "department determination" giving rise to appeal rights. This argument must fail, as the General Assembly cannot grant unbridled and arbitrary powers to an administrative agency. *Bauer v. S.C. State Housing Auth.*, 271 S.C. 219, 233, 246 S.E.2d 869, 876 (1978) ("[T]he Legislature may not vest unbridled, uncontrolled, or arbitrary power in an administrative agency for, otherwise, the courts, when presented with a challenged of the agency's actions, would, there being no limitations on the agency's authority, be unable to judicially review its actions.").

Moreover, DOR argues that it has the ability to short circuit the statutory definition of "department determination" by entering into a settlement agreement with a property taxpayer—regardless of whether all of the parties impacted by DOR's decision consent to the settlement agreement. (*See* DOR's Br. 8–9). DOR argues that it has the authority to decide when to fight a taxpayer on an issue and when to enter into a settlement agreement that (allegedly) forever bars a county or local governing body from challenging the grant of an exemption to a taxpayer—even if the exemption has a devastating impact on local governments' revenues. (*See* Ruple Dep. Designations 79:22–80:14; R. 1433–34 (DOR's 30(b)(6) designee stating that if DOR and a taxpayer entered into a settlement agreement that took $50,000,000 worth of property tax revenue away from a county, then that county would have no right to appeal DOR's decision to the ALC because no "department determination" would have been issued)). DOR's interpretation of its own power violates basic fundamental tenants of the law and must be rejected. *See Bauer*, 271 S.C. 219, 232–35, 246 S.E.2d 869, 876–77; *Hampton v. Haley*, 403 S.C. 395, 406–09, 743 S.E.2d 258, 263–65 (2013).

Therefore, DOR's and Taxpayers' arguments that no department determination was issued in this case should be disregarded, and the ALC's ruling that a department determination was issued by DOR should be upheld.

II. Taxing Entities Established Standing Under Section 12-4-535.[3]

With respect to the specific issue of Taxing Entities' standing under section 12-4-535, DOR avers that Taxing Entities failed to satisfy section 12-4-535(A)–(D). DOR's argument is based on the following incorrect assertions: (1) DOR states no department determination was issued; (2) DOR alleges that no county ever responded in writing to DOR stating whether it agreed with the determination; (3) DOR now asserts, for the first time, that no county governing body timely adopted a resolution to request a contested case hearing; and (4) no county governing body ever adopted a resolution requesting DOR to issue a determination on any state law relating to property taxes. (DOR's Br. 12).[4] DOR is incorrect on all points.

First, subsection (A) states that DOR "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." S.C. Code Ann. § 12-4-535(A) (emphasis added). As stated previously, DOR's Supplemental Certifications were the department determination. The Supplemental Certifications established the final **value** DOR expected Taxing Entities to use in issuing revised tax bills to Taxpayers. More specifically, they directed Taxing Entities to issue refunds to Taxpayers after DOR determined that Taxpayers' assets were exempt pursuant to

[3] This section responds to DOR's arguments in Section I(A)(2) of DOR's Brief and Section V of Taxpayers' Response Brief.

[4] Taxpayers also assert that Taxing Entities lack standing under section 12-4-535 because Taxing Entities' fail specifically to address subsection (A) of section 12-4-535. (*See* Taxpayers' Resp. Br. 59). However, aside from this one critique, it appears that Taxpayers have no other issues with the argument presented by Taxing Entities, as they did not address anything other than subsection (A).

section 12-37-220(B)(10). Thus, the Supplemental Certifications (i.e., the department determination) "directed the appropriate county official to comply with all applicable state laws relating to the **valuation**, assessment or taxation of property." Therefore, subsection (A) of section 12-4-535 is satisfied.[5]

Second, subsection (D) does not require a county governing body to request that DOR issue a determination to establish standing under section 12-4-535. Subsection (D) merely states that "[t]he county governing body by resolution **may** request a department determination on any state law. . . ." S.C. Code Ann. § 12-4-535(D) (emphasis added). Taxing Entities had no reason to request a department determination after one was already issued. Thus, only subsections (B) and (C) remain relevant as to Taxing Entities' standing under section 12-4-535.

Third, as Taxing Entities make clear in their Respondent Brief at pages 55–58, subsections (B) and (C) were satisfied when Taxing Entities, less than 30 days after receiving the department determination on July 6, 2017, filed a request for a contested case hearing (1) in writing; (2) which stated Taxing Entities' disagreement with the department determination; (3) and was delivered by U.S. Mail to DOR. (*See* Consol. Supp. Req. Cont. Case Hr'g (July 17, 2017) R. 341–48; Lee Cty. Supp. Req. Cont. Case Hr'g (July 26, 2017); R. 293–304).

Fourth, to the extent DOR maintains that Taxing Entities did not satisfy subsection (C) because "[n]o county governing body ever adopted a resolution to request a contested case hearing," this argument should be disregarded for two reasons: (1) the parties agreed and stipulated that "[e]ach County took all necessary steps to authorize Counsel to file appeals for tax years 2010-

[5] There is nothing within Title 12 that distinguishes between a department determination for purposes of sections 12-60-2130 and 12-60-2150 and section 12-4-535. Because the ALC concluded a department determination was issued, the ALC erred when it determined that no department determination was issued for purposes of standing under section 12-4-535. DOR's and Taxpayers' arguments in support of the ALC's conclusion fail for the same reason.

2018, which appeals form the basis of this case" (Stip. of Facts ¶ 29; R.4225); and (2) DOR and Taxpayers never raised this issue below (not even in a motion to reconsider), and the issue is, therefore, unpreserved for appeal. *See Miller v. Dillon*, 432 S.C. 197, 206–07, 851 S.E.2d 462, 467 (Ct. App. 2020) ("[I]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). Having already stipulated to the contrary, DOR should not be allowed to change course at this point.

Accordingly, after the department determination was issued and the Taxing Entities, within 30 days of receiving the department determination, filed a written request for a contested case hearing, Taxing Entities had standing under section 12-4-535. Therefore, DOR's and Taxpayers' arguments should be disregarded, and the ALC's finding should be reversed.[6]

III. Taxpayers are Not Entitled to the Exemption Because Taxpayers Failed to Establish What Proportion of Farmers' Property Was Actually Exempt in 1973, which is an Essential Element of the Exemption.[7]

DOR argues that section 12-37-220(B)(10) applies to 100% of Farmers' property because this has been the way DOR has always applied the statute. However, neither Taxpayers nor DOR made any attempt to submit evidence showing what percentage of Farmers' property was actually

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[6] With respect to DOR's request that the Court limit its holding to the facts of this case, this is unnecessary. Determining whether a department determination is issued in *any* case necessarily turns upon the facts of each individual case. The broad definitions of "department determination" provided in both the Revenue Procedures Act and Revenue Ruling #06-2 are what lead to the fact dependent nature of whether a department determination was issued. As Revenue Procedure #06-2 states, "[i]f a document is consistent with [the definition of department determination], it will be deemed the Department determination even though it may be entitled a final agency determination **or some other name.**" (Trial Ex. 184, II(B); R. 4138 (emphasis added)). Therefore, in any case, it is necessary to establish a factual foundation relating to the substance and finality of a DOR decision when determining whether DOR issued a department determination.

[7] This section responds to DOR's arguments in Section II(A) of DOR's Brief and Section I(C) of Taxpayers' Response Brief.

exempt in 1973. Taxpayers plainly failed to satisfy this element of the Exemption. DOR's "interpretation," which glosses over Taxpayers' failure, should be disregarded because it is contrary to the plain language of section 12-37-220(B)(10). A statutory requirement is, in fact, a **requirement**. It is not optional.

DOR and Taxpayers misinterpret what section 12-37-220(B)(10) requires. In pertinent part, the statute provides that "the property of . . . 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; . . . [a]ny property . . . 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*. . . ." S.C. Code Ann. § 12-37-220(B)(10) (emphasis added). Thus, the statute required Taxpayers to establish what percentage of Farmers' property was used to provide rural telephone service in 1973. This is a threshold matter that must be established to determine what part of Taxpayers' property is eligible for the Exemption. It is required by law. There is no way around it.

This is an important and critical distinction, which DOR and Taxpayers fail to recognize. DOR and Taxpayers argue that because an entirely different 1957 statute once exempted "all property of every kind owned by rural telephone cooperatives," *see* S.C. Code Ann. § 65-1522(46)–(47) (1960 Supp.), Farmers is eligible to receive a 100% exemption on its property in perpetuity. The General Assembly did away with the 1957 statute that exempted "all property of every kind" owned by a rural telephone cooperative. In its place, the General Assembly then enacted the Exemption in 1978, which now exempts only property specifically "used in providing rural telephone service." Put plainly, the General Assembly narrowed what property was exempt. Under the 1957 statute, all rural telephone cooperative property was exempt from taxation; under

the 1978 exemption, only a narrow class of rural telephone cooperative property was exempted. If the General Assembly intended for rural telephone cooperatives to continue receiving a 100% exemption on all of their property, then there would be no need to narrow what property is exempt from taxation, as the General Assembly did when it enacted the Exemption in 1978.

DOR's interpretation, which assumes Taxpayers get a complete and total exemption from property taxation, improperly presumes the General Assembly intended a futile act and would render a significant portion of section 12-37-220(B)(10) meaningless. After all, why include the language about what was owned in 1973 if all cooperatives were entitled to a 100% exemption? This interpretation must, therefore, be rejected. *See Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.") (citing *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998)); *Florence Cty. Democratic Party v. Florence Cty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) ("This Court will not construe a statute in a way which . . . renders it meaningless.")

In support of its interpretation, DOR admits that the only reason it has historically determined that 100% of Farmers' property is exempt is because "[f]or years, *Farmers has claimed one hundred percent of its property as exempt* because it believes all of the property is used to provide rural telephone service, even though the infrastructure may also be used to provide other non-telephone services." (DOR's Br. 16) (emphasis added). DOR further admits that it "does not maintain records of what property Farmers owned on December 31, 1973, but it has carried forward a one hundred percent exemption which it applies to all of Farmers' property that is used to provide rural telephone service." (*Id.*). DOR's longstanding practice of assuming 100% of Farmers' property is exempt because Farmers has always claimed 100% of its property as exempt

is not an administrative "interpretation" of a legislative pronouncement that would be entitled to deference; rather, it is a choice to assume a fact that has never been proven.

Moreover, the fact that DOR never fully realized it was applying the Exemption incorrectly does not alter this Court's analysis; it does not change the statutory demands. An interpretation that is clearly contrary to the plain language of the statute is not worthy of any deference at all. *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) ("[W]here, as here, the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation.") (citing *Brown v. S.C. Dep't of Health and Envtl. Control*, 348 S.C. 507, 560 S.E.2d 410 (2002); *Richland Cty. School Dist. Two v. S.C. Dep't of Educ.*, 335 S.C. 491, 517 S.E.2d 444 (Ct. App. 1999)).

Section 12-37-220(B)(10) clearly requires establishing the percentage of Farmers' property that was used to provide rural telephone service in 1973. The burden to establish this fact to DOR and to the ALC was on Taxpayers. *See, e.g., CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Taxpayers failed to meet this burden because they presented **no evidence** (not even a little) related to the property Farmers owned in 1973. DOR, likewise, admitted that it did not have any record of what property Farmers owned in 1973, let alone the amount of Farmer's property which was specifically used to provide rural telephone service at that time.

Indeed, the ALC made an express finding that "the evidence did not establish the specific nature of Farmers' property that was exempted as of December 31, 1973." (Order 68; R. 74). The ALC further found that "although the legislature's language is clear in fixing the proportion of exempt property as it was as of December 31, 1973, discerning what portion Taxpayers are entitled to carry forwarded **is clouded by Taxpayers' failure to identify the Department's original**

determination of what proportion of property was exempt in 1973 and thus its application going forward." (*Id.* at 69 (emphasis added); R. 75).

Taxpayers' failure to establish this fact renders them ineligible for the Exemption because, without this information, it is impossible to determine what proportion of FTCC's and Diversified's property is statutorily eligible for the Exemption. Therefore, DOR's arguments on this issue should be disregarded, and the ALC's decision that Taxpayers were eligible for the Exemption—even though no evidence was presented showing the percentage of Farmers' property used to provide rural telephone service in 1973—should be reversed.

IV. DOR Mischaracterizes its Initial View on the Eligibility of Wireless Assets and the Evidence in the Record Relating to the Circumstances Existing at the Time the Exemption was Enacted.[8]

In an attempt to make its decision seem defensible, DOR paints a distorted picture by claiming that (1) DOR initially considered Taxpayers' wireless assets eligible for the Exemption and (2) the circumstances in 1978 made it likely that the General Assembly contemplated the use of property to provide wireless cellular services when it enacted the Exemption. (*See* DOR's Brief 17–20).

First, DOR initially determined that Taxpayers' assets used to provide wireless cellular services were *not* entitled to the Exemption. (Order 32; R. 38). In fact, the record clearly reflects that the seasoned staff of DOR's Property Tax Division—the administrative agency charged with determining a taxpayer's eligibility for the Exemption—expressly believed Taxpayers' wireless property was **not** used to provide rural telephone service, and, therefore, was **not** exempt. Charles Brewer's testimony on this issue is particularly enlightening.

[8] This section responds to DOR's arguments in Section II(B)(1) of DOR's Brief.

When Mr. Brewer, a property tax management professional with over 30 years of experience at DOR, was asked about his belief regarding whether Taxpayers' property should be exempt from taxation under the Exemption, Mr. Brewer stated that it was his "opinion that **the rural telephone exemption was specifically designed for landlines for rural telephone service**, and the **wireless wasn't** . . . even invented at that point. **It was a different service.**" (Brewer Dep. Designations 39:19–40:3; R. 1251–52 (emphasis added)). Then, when asked whether other DOR staff agreed with his conclusion, Mr. Brewer responded with: "I believe that was the consensus. . . ." (*Id.* at 41:1–6; R. 1253). DOR's initial decisionmakers denied the Exemption. DOR was "against it," before it was "for it."

Second, the "rudimentary wireless network" and the "radio phones" pointed out by DOR were in no way comparable to today's modern wireless cellular network. The rudimentary wireless network DOR references was a wireless microwave network. (*See* Tr. 728; R. 2241). Even Taxpayers' expert admitted that "[i]t wasn't pick up the cell phone wireless." (*Id.* at 729:6–8; R. 2242). The microwave network was **not** capable of providing anything resembling telephone service. In addition, the "radio phones" DOR claims existed prior to 1978 were never available for practical use by the public, they operated entirely differently than the wireless cellular devices of today, and they never became commercially viable. (Tr. 287:2–15; R. 1800). The only fact established in the Record is that the first basic wireless cellular network—which was still rudimentary in nature compared to today's wireless cellular networks—was not deployed in the United States until 1983. (Tr. 288:2–4; R. 1801).

V. There is No Statutory Definition of "Rural Telephone Service" as used in section 12-37-220(B)(10), and the other Statutory Definitions Offered by DOR are Irrelevant.[9]

In an attempt to provide an overly broad definition of "rural telephone service" that would encompass Taxpayers' property, DOR offers definitions of "telephone service" found within another title of the South Carolina Code and within federal statutes. However, DOR has failed to show how or why these statutes are in any way relevant to the definition of "rural telephone service," as used in section 12-37-220(B)(10).

Specifically, DOR relies on the current definition of "telephone service" found in Title 33 of the South Carolina Code. However, section 33-46-20 expressly limits that definition to only Chapter 46 of Title 33. *See* S.C. Code Ann. § 33-46-20 (stating that "*[i]n this chapter* . . . (5) 'Telephone Service' means . . .") (emphasis added). Therefore, the General Assembly has already told us that this definition does not apply to Title 12, and the Court need not (and should not) consider it in this case.

Moreover, section 33-46-20's definition of "telephone service" **was enacted in 1994**—nearly 20 years after the General Assembly enacted the Exemption. (*See* DOR's Br. 21 (citing 1994 S.C. Act No. 392)). The 1994 definition of telephone service reflects the then-current state of technology. It is entirely unhelpful to compare two technology-related statutes enacted nearly two decades apart. Notably, the United States Supreme Court has completely disregarded similar arguments because a later amended statute "tell us nothing about Congress's understanding of the language it enacted . . . in [an earlier period]." *Food Mktg Inst. v. Argus Leader Media*, 139 S.Ct. 2356, 2365–66, 204 L.E.2d 742 (2019).

[9] This section responds to DOR's arguments in Section II(B)(2) of DOR's Brief.

The fact that the General Assembly took the time to amend the definition of telephone service in Title 33 shows (a) that the General Assembly is capable of amending a statute when necessary to accomplish the purposes and objectives of a particular statutory scheme, and (b) that the General Assembly saw that technology had changed drastically and made a conscious decision to expand the Title 33 definition to include this totally different technology. For the purposes of the Telephone Cooperative Act, the General Assembly felt it necessary in 1994 to redefine "telephone service" to also include all telecommunication services, "including, but not limited to, the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds" which were transmitted not only through lines and wires, but also via "radios, lights, [and] electromagnetic impulse." S.C. Code Ann. § 33-46-20(5). For purposes of the Exemption, however, the General Assembly has left section 12-37-220(B)(10) untouched since 1978. The General Assembly did not do this by accident.

The definitions of "telephone service" DOR provided from the Rural Electrification Act of 1936[10] are equally unhelpful. DOR includes a chart showing how the definition of "telephone service" has evolved—via statutory amendment—over multiple decades. (*See* DOR's Br. 21). DOR's illustration is helpful, because it shows one important point: prior to 1990, the earlier definitions of "telephone service" contemplated telephone service being provided by telephone wires, not through wireless cellular networks. The 1949 and 1962 version both reference voice communications transmitted between receiving apparatuses **using electricity**, which requires an actual physical connection. *See* Pub. L. No. 81-423, 63 Stat. 948 (1949) & Pub. L. No. 87-862, 76 Stat. 1140 (1962). It was not until the 1990s that the definition of telephone service was amended

[10] It is important to note that the block quote on page 20 of DOR's Brief is from the most modern version of the Rural Electrification Act.

to include the transmission of "data," among other things, via additional means, such as "radio, light or other visual electromagnetic means." *See* Pub. L. No. 101-624, 104 Stat. 3359 (1990).

Accordingly, the definitions of "telephone service" offered by DOR are irrelevant to determining what the General Assembly meant when it used "rural telephone service" in 1978 in section 12-37-220(B)(10). Therefore, these definitions should be disregarded, and the ALC's finding that Taxpayers' property used to provide wireless cellular services is eligible for the Exemption should be reversed.

VI. DOR Improperly Granted Retroactive Refunds for Tax Years 2012, 2013, and 2014.[11]

A. DOR's and Taxpayers' Interpretation of the Statutory Scheme Renders Both Sections 12-4-710 and Section 12-4-720 Entirely Meaningless.

DOR and Taxpayers argue that DOR properly granted FTCC a retroactive property tax refund for years 2014, 2015, and 2016 and that Taxing Entities are the only party that should suffer the consequences for (1) Taxpayers' failure to comply with section 12-4-720(C)'s annual requirement to claim the Exemption, and (2) DOR's failure to comply with section 12-4-710's annual requirement to notify affected county officials of DOR's property tax exemption decisions.[12] This argument renders both sections 12-4-710 and 12-4-720(C) entirely meaningless. Therefore, DOR's and Taxpayers' interpretation should be rejected. *See Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) ("The goal of statutory construction is to . . . prevent an interpretation that would lead to a result that is plainly absurd.") (citing *Ray Bell Constr. Co. v. School Dist. of Greenville Cty.*, 331 S.C. 19, 501 S.E.2d 725 (1998)).

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[11] This section responds to DOR's arguments in Sections III and IV of DOR's Brief and Section II(B) of Taxpayers' Response Brief.

[12] DOR's arguments on this issue are problematic for a number of reasons, most of which have already been addressed by Taxing Entities at pages 40–51 of Taxing Entities' Brief, pages 34–42 of Taxing Entities' Respondent Brief, and Section III of Taxing Entities' Reply to Taxpayers' Response Brief.

Throughout DOR's extensive discussion of the interplay between sections 12-4-710, 12-4-720, 12-54-85(F), 12-60-1750, and 12-60-2150(A), DOR makes no effort whatsoever to address the effect section 12-4-720(C), which expressly requires Taxpayers to claim the Exemption each and every year on their tax returns, has on DOR's analysis.[13] This is unsurprising given that section 12-4-720(C) exposes the fatal flaw in DOR's and Taxpayers' arguments. DOR's interpretation of its powers to grant property tax refunds to Taxpayers for tax years 2014, 2015, and 2016 renders section 12-4-720(C) entirely meaningless.

To briefly restate, Taxpayers, and other similarly situated large taxpayers such as utilities, manufacturers, airlines, railways, etc. are required to file annual property tax returns with DOR. *See* S.C. Code Ann. §§ 12-37-970 & 12-4-540. These taxpayers are required to claim property tax exemptions on their tax returns each and every year. S.C. Code Ann. § 12-4-720(C) ("A taxpayer who is required to file property tax returns with the department **shall claim any exemption on the return each year the property is exempt**.") (emphasis added). There is no exception to this rule, and DOR would have this Court accept that Taxpayers' failure to comply with section 12-4-720(C) has no consequence.

In addition, DOR also believes that it does not have to comply with statutory requirements imposed on DOR in section 12-4-710. The General Assembly has statutorily mandated that DOR determine whether property qualifies for exemption under section 12-37-220 and notify the

[13] DOR admits that "the cooperative still must *claim* the Exemption on its property tax returns each year thereafter. . . ." (DOR's Br. 30 (citing S.C. Code Ann. § 12-4-720(C)–(D)). However, besides the admission that section 12-4-720(C) requires Taxpayers to claim the Exemption every year on its tax returns, DOR makes no effort to address what results from a taxpayer's failure to comply with this statute, as Taxpayers failed to do in this case. Instead, DOR simply chooses to ignore the remainder of this statute and proposes an interpretation which renders section 12-4-720(C) entirely meaningless.

appropriate county official by June 1st each and every year. S.C. Code Ann. § 12-4-710 ("[T]he department **shall** determine if any property qualifies from local property taxes under Section 12-37-220. . . . 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.") (emphasis added). This is a mandate. It is no more discretionary or "aspirational," as Taxpayers claim, than the commandment "Thou shall not kill." Section 12-4-710 is an **order** from the General Assembly—not a suggestion. Yet, DOR readily admits that it does not comply, and has never complied, with this law. (*See* DOR's Br. 38–40).

Like Taxpayers' failure to comply with section 12-4-720(C), DOR would have this Court accept that DOR's failure to comply with section 12-4-710 has no consequence. None of the reasons offered by DOR justify its failure to comply with section 12-4-710. For example, DOR argues that it is "administratively impossible" to comply with section 12-4-710. (DOR's Br. 39). However, the ALC already explained what the statute actually requires of DOR, and it is not "to resolve all exemption issues for a given tax year" as DOR asserts. Instead, section 12-4-710 "only requires [DOR] to make an initial decision about the exemption that same year it received the application for exemption and notify counties by June 1st after they receive the application." (Order 94; R. 100). DOR presented no evidence to show that analyzing tax returns claiming a property tax exemption under section 12-37-220 and merely making an initial decision about the exemption that same year is administratively impossible.[14]

[14] DOR also incorrectly asserts that the ALC agreed with DOR's justifications for its failure to comply with section 12-4-710. (*See* DOR's Br. 37–38). Instead, however, the ALC found only that "although the Department's decision to disregard section 12-4-710's notification is lamentable, its failure to comply with notice under this statute does not strip Taxpayers of their entitlement to the exemption. . . ." (Order 99; R. 105).

DOR also asserts that Taxing Entities' interpretation of the June 1st deadline in section 12-4-710 conflicts with section 12-37-970. There is no such conflict. Section 12-37-970 requires certain taxpayers (including utilities like Taxpayers) to file their annual property tax returns by **no later than** four months after the close of their income tax accounting year. DOR asserts that this date can fall beyond June 1st for some taxpayers. Thus, DOR asserts that it would not yet have received an exemption application and, therefore, could not make a decision by June 1st. This argument is fundamentally wrong based on DOR's own published policies regarding property tax return filing requirements.

In 2016, DOR published Revenue Ruling #16-12 to provide detailed guidance on property tax return filing requirements and interpreted section 12-37-970. According to Revenue Ruling #16-12, April 30th of any tax year is the *latest* possible date that a property tax return can ever be timely filed by a taxpayer.[15] The due date of April 30th of the tax year is applicable only to a taxpayer with an income tax accounting year that ends December 31st of the prior year. In the event a taxpayer has an income tax year that ends on any date other than December 31st of the prior year, then that taxpayer has to file its property tax return *earlier*, not later, than April 30th of the tax year. (*See* Revenue Ruling #16-12 at 10). Thus, the *minimum* amount of time DOR has between the date the property tax return is due and the date upon which DOR is required by section 12-4-710 to decide whether property is exempt under section 12-37-220 and notify the appropriate county official is approximately one month. The General Assembly established a deadline, and DOR has a duty to make some effort to comply. There is absolutely nothing in South Carolina law that

[15] The chart on page 10 of Revenue Ruling # 16-12 shows all of the possible property tax return due dates for a manufacturer for tax year 2018, based on the income tax year end of the manufacturer. The latest possible property tax return due date shown in the chart is April 30, 2018, which prior to the June 1, 2018 deadline required by section 12-4-710.

prevents DOR from administratively "front-loading" and prioritizing the analysis of exemption requests. Therefore, the alleged conflict between section 12-4-710 and section 12-37-970 does not exist.

Moreover, DOR offers its "longstanding practice" of following "the timeline in section 12-37-970 by notifying the counties of the proposed assessment and any exemptions via the assessment certification by August 15 of the applicable tax year" to rationalize its intentional decision to ignore the statutory mandate that DOR *must* notify county officials by June 1st under section 12-4-710. (*See* DOR's Br. 40–41). Despite the fact that August 15th is clearly after the June 1st deadline, DOR nevertheless asserts that this is sufficient because it sent 80% notices to the county auditors. DOR's arguments are meritless.

First, even if the 80% notices were sufficient notifications (which they are not), the notices were never sent by the annual June 1st deadline, rendering them late under section 12-4-710. (*See, e.g.,* Trial Ex. 94; R. 3597 (80% notice for tax year 2012 dated October 16, 2012); Trial Ex. 99; R. 3625 (80% notice for tax year 2013 dated February 27, 2014); Trial Ex. 103; R. 3646 (80% notice for tax year 2014 dated December 16, 2014; Trial Ex. 110; R. 3706 (80% notice for tax year 2015 dated October 26, 2015)). The June 1st deadline is not an arbitrary date. County budgets must be finalized and fully approved—that is, set in stone—no later than June 30th of each calendar year. S.C. Code Ann. § 4-9-140. The General Assembly intended to give the Counties time to react to decisions that remove revenue from their budgets. The administrative difficulty for DOR should not obviate a deliberate legislative choice.

Second, the text of the 80% notices did not contain the basis of what the dispute involved, nor any indication about what the taxpayer has requested. (Ingram Dep. Designations 47:8–48:9; R. 1325–26 ("Q. And as far as the counties know, it could be any type of dispute? A. Yes.")). The

very information required to be provided to the appropriate county official under section 12-4-710—specifically, whether "any property qualifies for exemption from local property taxes under Section 12-37-220"—is completely absent from the 80% notices. (Tr. 132:23–133:6 & 227:16–228:11; R. 1645–46 & 1740–41; Brewer Dep. Designations 48:9–49:21; R. 1260–61; *see also* Order 96; R. 102 ("The Court agrees with Taxing Entities that since the Department did not send notice of their exemption determination by June 1st of the year in which the Department received the exemption request, the counties did not receive notice of the exemption in time to consider them before finalizing their budgets by July 1st.")).

Both DOR and Taxpayers failed to meet their statutory obligations in this case for Taxpayers lawfully to receive the Exemption. Taxpayers failed to claim the Exemption each year on its tax returns as required under section 12-4-720(C). DOR failed to notify the affected county's appropriate official by June 1st of its property tax exemption determinations as required under section 12-4-710.[16] Therefore, DOR's granting of the Exemption to FTCC for tax years 2014, 2015, and 2016 was illegally retroactive. *See* S.C. Code Ann. §§ 12-4-710 & 12-4-720(C); *see also TNS Mills, Inc.*, 331 S.C. at 620–21; 503 S.E.2d 471, 476 ("The Code requires the Department to make annual determinations concerning exemptions and to notify the appropriate county officials of what property was exempted from taxation by June first.") (citing S.C. Code Ann. § 12-4-710).

B. DOR and Taxpayers Improperly Interpret TNS Mills.

Both DOR and Taxpayers incorrectly assert that Taxing Entities' reliance on *TNS Mills*, 331 S.C. 611, 503 S.E.2d 471, is in error because the specific statutes at issue have been amended

[16] Both Taxpayers and DOR allege that the Taxing Entities should have complained about DOR's failure to meet the June 1st deadline earlier. The fact that the Taxing Entities have suffered for years in silence does not absolve DOR of its statutory duty. This is no different than a serial criminal arguing he should be forgiven of a recent crime because he has gotten away with it for years.

since *TNS Mills* was decided. (*See* DOR's Br. 41–44; Taxpayers' Resp. Br. 42–45). However, the arguments asserted by both DOR and Taxpayers are red-herrings and are without merit.

The June 1st deadline contained in section 12-4-710 is identical to the June 1st deadline the Supreme Court interpreted in *TNS Mills*. Although section 12-4-710 was amended in 1995,[17] which was after the tax years in dispute in *TNS Mills*, that amendment did not do away with the June 1st deadline. *See* 1995 S.C. Act 125, §§ 2A and 2B. In fact, the General Assembly re-enacted *verbatim* the exact same June 1st deadline language the Supreme Court interpreted in *TNS Mills*. *Id.*

Additionally, the requirement imposed on Taxpayers to claim property tax exemptions each and every year on their tax returns was added to section 12-4-720 in 1995. *See* 1995 S.C. Act 125, §§ 2A and 2B (adding subsection (c) to section 12-4-720). Thus, the purpose of the statutory scheme interpreted by the *TNS Mills* Court "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," 331 S.C. at 622, 503 S.E.2d at 476, was further strengthened by the 1995 amendments.

Therefore, no change made by 1995 S.C. Act 125 overturned the *TNS Mills* Court's holding with respect to the mandate imposed on DOR to notify county officials of property tax exemption determinations by June 1st of each year. If anything, the addition of the requirement under section 12-4-720(C) increased *TNS Mills*' applicability to the current case. The fundamental holding of *TNS Mills* is that the General Assembly established a system of deadlines that both taxpayers and DOR must adhere to for a grant of a property tax exemption to be legally valid so that counties' and other local governments' budgets are protected. *See id.* at 619–20, 503 S.E.2d at 476. The *TNS*

[17] The 1995 amendment (1) changed the reference to "commission" to "department" and (2) added an exception for the homestead exemption codified in section 12-37-220(A)(9), which is in the jurisdiction of the local County Auditor rather than DOR. The remainder of section 12-4-710 was reenacted by 1995 S.C. Act 125 without any changes to the prior text.

Mills holding remains controlling law. Permitting the interpretation advanced by DOR and Taxpayers would negate the benefit of the protections established by the General Assembly for the benefit of counties "because the information given [to counties] would be worthless; the amount of exempted property would change every time [DOR] granted a retroactive exemption." 331 S.C. at 621, 503 S.E.2d at 476.

CONCLUSION

For the reasons addressed in this Reply, and in Taxing Entities' Brief, Taxing Entities' Respondent Brief, and Taxing Entities' Reply to Taxpayers' Response Brief, Taxing Entities respectfully ask this Court to reverse the decisions of the ALC, and find:

(1) Taxpayers, including Farmers, are not eligible for the Exemption;

(2) Taxpayers' filing of amended property tax returns in 2017 did not remedy Taxpayers' failure to timely apply for the Exemption for tax years 2014, 2015, and 2016;

(3) DOR's failure to comply with the June 1st notification requirement of section 12-4-710 caused DOR to lose its authority to grant the Exemption;

(4) Farmers' property is only exempt under the Exemption to the same extent that FTCC's and Diversified's property is exempt; and

(5) Taxing Entities have standing to request a contested case hearing pursuant to section 12-4-535.

[SIGNATURES ON FOLLOWING PAGE]

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June __, 2021
Columbia, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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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

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this **Appellants-Respondents' Reply Brief to Respondent South Carolina Department of Revenue** in the above-referenced matter complies with Rule 211(b), SCACR.

Respectfully submitted,

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