The State of South Carolina
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2020-000983
Civil Action No. 2017-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 Dept. of Revenue, Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC, ...Respondents,

of whom

Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC, Diversified Services, LLC, are ..... Respondents/Appellants.

FINAL REPLY BRIEF OF RESPONDENTS/APPELLANTS FARMERS TELEPHONE COOPERATIVE, INC., FTC COMMUNICATIONS, LLC, AND FTC DIVERSIFIED SERVICES, LLC

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I. The ALC did not have subject matter jurisdiction over this matter.

As explained in Farmers Entities' primary brief, the ALC erred by entertaining this matter based on a jurisdictional analysis that disregarded and effectively rewrote the relevant statutory texts, substituted the court's own policy preferences for the plain meaning of the texts, and resulted in an outcome that conflicts with and disrupts the application of other statutes. *See* Farmers Brief at 13–29. As explained below, Taxing Entities' arguments to the contrary are unavailing.

A. Limiting the ALC's jurisdiction to review of Department Determinations is consistent with the relevant statutes and would not condition Taxing Entities' right to review solely on Taxpayers' actions, permit SCDOR to dictate whether its final decisions are judicially reviewed, or create absurd results.

Taxing Entities argue that Farmers Entities' jurisdictional argument would condition their right to judicial review "solely on Taxpayers' actions," permit SCDOR to dictate if its decisions are judicially reviewed, and create absurd results. TE Resp. at 10–13. They also repeatedly ask when, if not here, could they exercise the appeal rights they claim are so "clearly" given to them? *See id*. at 9, 11, 13, 28. Their complaints have no merit, and their question is answered by the clear language of the statute—any time a Department Determination ("DD") is issued.

First, limiting jurisdiction to review of DDs does not condition it solely on a taxpayer's actions. Rather, per the statute, it is conditioned on the issuance *by SCDOR* of a DD, which SCDOR does after a taxpayer files a protest if they are unable to settle the case. S.C. Code Ann. § 12-60-450(D) and (E). Taxing Entities may appeal all such DDs. *Id*. §§ 12-60-2130 and 2150. Thus, review is conditioned on actions of both the taxpayer and SCDOR as they follow the steps outlined in the Revenue Procedures Act, and, if anything, the final step of SCDOR issuing a DD.

Second, SCDOR cannot "shield" a decision from judicial review by manipulatively labeling it a "settlement" rather than a DD. Taxing Entities point to the testimony of Jeff Allen (counsel for Farmers Entities at that time), who claims he had suggested the Settlement Agreement require

SCDOR to issue a DD to ensure Taxing Entities had a right to appeal. *See* TE Resp. at 12.[1] They allege Allen further stated that "DOR specifically decided to exclude the provision requiring the issuance of a [DD] *in order to foreclose any right of appeal*." *Id.* (emphasis added). This is incorrect. While SCDOR did not agree to issue a DD, **their reason for doing so was not to foreclose appeal rights**. Allen stated that ***his*** *reason* for requesting a DD related to appeal rights, but then he said, "the Department ultimately disagreed and said that there wasn't going to be a [DD]." Tr. at 708:1–6 (R. 2221:1-6). He had previously explained that *SCDOR's reason* for not including that requirement was that the parties had entered a settlement. *See id.* 703:16- 704:2 (R. 2216:16- 2217:2). He never stated or implied that SCDOR wanted to foreclose appeal rights, and no evidence supports such a statement. In fact, Allen testified that in his ten years of practice, SCDOR had *never* issued a DD following a settlement, and he had *never* requested that it do so. *See* Tr. 681:18–25 (R. 2194:18-25) and 706:3–8 (R. 2219:3-8). This is because (as Allen and SCDOR agreed), a DD only issues when SCDOR does not settle with a taxpayer and disagrees with its protest position. *See* Tr. 680:11–19 (R. 2193:11-19); Ruple Dep. at 25:4- 28:17 (R. 1384:4- 1387:17) and 30:2–9 (R. 1389:2-9); *see also* S.C. Rev. Pr. #06-02 (R. 4138- 4148). SCDOR and Farmers reached a settlement, and, thus, a DD was not appropriate. If the settlement had required SCDOR to issue a DD, *that* would be a "manipulation" as it would be inconsistent with the relevant statutes and longstanding SCDOR policy/practice. *See* Farmers Brief at 16–23. Whether Allen truly wanted to try to provide appeal rights to Taxing Entities (a motive unknown to Farmers Entities at the time) where no such rights are provided by law or whether he was trying to obtain certainty for subsequent years (as settlements, unlike DDs, do not bind SCDOR for future years), SCDOR simply followed the statutory requirements and longstanding policy in refusing to do both simultaneously.

[1] Notably, Taxing Entities' argument on this point undercuts and is contrary to their argument that the Settlement Agreement was *itself* a DD. If the Agreement was a DD, it would be nonsensical and redundant for the Agreement to require SCDOR subsequently to issue a DD.

Third, Taxing Entities fail to demonstrate that absurd results would result from limiting jurisdiction to review of DDs. They claim the statutes "clearly" contemplate local governments having appeal rights and rhetorically inquire when, if not here, could they exercise them? TE Resp. at 9. The statute directly answers their question—any time a DD is issued. SCDOR routinely issues DDs in every case where a taxpayer protests an assessment and no settlement is reached. *See* Ruple Dep. at 65:20- 66:22 (R. 1420:20- 1421:22). Counties are permitted to appeal all such decisions. For example, for the five year period from approximately 2014 to 2019, SCDOR's best estimate was that it settled roughly 80–100 cases with taxpayers. *Id.* at 31:21- 33:11 (R. 1390:21- 1392:11). Local governments would have no right of appeal in those cases but could appeal any remaining cases affecting their interests where a taxpayer filed a protest but did not reach a settlement.

Taxing Entities further argue the Legislature intended to grant them an independent right to judicial review in any case that affects them financially. *See* TE Resp. at 11–13. This is untrue, and they cite nothing that supports this bald assertion.[2] If it had so intended, the Legislature would have used the term "certification" and not DD as *certifications* would be the only way to encompass all decisions that financially impact local governments. The Legislature clearly understood the difference between those two terms, which it used throughout the tax code and which clearly have different meanings. *See* Farmers Brief at 21–23 and § I(B), *infra*. Taxing Entities fail to acknowledge this flaw in the logic of their position and, in fact (at least in this section), seem to realize its absurdity as they refrain from saying all certifications are reviewable but rather argue "the Supplemental Certifications, particularly when viewed in light of the Settlement Agreement, were reviewable [DDs]." TE Resp. at 13. However, as discussed in more detail below, this position has no foundation

[2] This is but one example of Taxing Entities' arguments that (like the ALC's order) rest not on the language the Legislature enacted but on what they feel it *really* meant. That is no way to interpret statutes, both because it invites this Court to substitute Taxing Entities' policy judgments for the Legislature's and because the best evidence of the Legislature's intent is the actual statutory text it enacted. *Hodges v. Rainey*, 341 S.C 79, 85, 533 S.E.2d 578, 581 (2000).

in the relevant statutes and is contrary to long-standing SCDOR policy and practice. *See* § I(B), *infra.*

True absurd results would follow from *Taxing Entities'* interpretation, which would allow counties to appeal thousands of certifications issued by SCDOR each year. Although they imply their redefined DD would expand only to cover settlements followed by certifications, which is problematic on its own (*see* § I(B), *infra*), their reasoning applies much more broadly and would encompass all SCDOR final decisions, including all certifications. Moreover, it would require SCDOR to get county approval for all settlements, which SCDOR's witness testified would be "overwhelming" and would "make it much more difficult to settle cases." Ruple Dep. at 33:17- 35:10 (R. 1392:17- 1394:10).

B. Combining a settlement agreement with a certification does not create a DD.

Neither the Settlement Agreement nor the subsequent supplemental certifications were DDs. *See* Farmers Brief at 19–23. Taxing Entities now argue that a settlement agreement *combined with* a certification creates a DD. TE Resp. at 14. As explained below, the argument has no merit.

Taxing Entities' argument involves a sequence of logical leaps that skip past the statutory definition to land on the result they seek. First, they assert the Court should look at the dictionary definition of "determination," which they define as "the resolving of a question by argument or reasoning." *Id.* at 15–16.[3] Second, they argue that because factual and legal reasoning were necessary to decide whether to enter the settlement, "the Settlement Agreement was a determination by DOR as to whether Taxpayers' property was taxable." *Id*. Third, they conclude this so-called "determination" became final when SCDOR issued certifications of the assessed values to the counties, and (presto!) the certifications became DDs. *Id.* Interestingly, they fail to mention the definitions of the two ingredients that (per their formula) combine to form a DD, namely a settlement agreement and a certification. Had they done so, the differences between the ingredients and the end product would have been difficult to explain, with one (a determination) being a unilateral, official decision on a

[3] A better definition in this context is "an official judgement or decision." Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/determination (last visited March 18, 2021).

disputed matter; one (a settlement) being a bilateral agreement resolving a disputed matter; and one (a certification) being a ministerial notice of an assessment amount that could follow either a unilateral decision or a bilateral agreement.[4] Moreover, even using Taxing Entities' definition, factual and legal reasoning go into many documents. That does not mean, for example, that a complaint and motion are both determinations. And neither is a settlement agreement or a certification a determination, much less a DD. *See* Farmers Brief at § I(A)(2). These documents could hardly be more different.

Taxing Entities also point to a statement in S.C. Rev. Pr. #06-02 that "If a document is consistent with this definition, it will be deemed to be a [DD] even though it may be entitled a final agency determination or some other name." TE Resp. at 29. Thus, they contend that even though the Settlement Agreement and certifications were not titled DDs, they still should be viewed as such. But Revenue Procedure #06-02 does not support that conclusion. Its statement that a "final agency determination" (assuming it is consistent with the definition of a DD) can be deemed a DD makes sense because a DD and a final agency determination are comparable phrases and qualitatively equivalent documents involving similar actions—unilateral, official decisions by SCDOR on contested matters. But a DD is completely *dissimilar* to a certification (ministerial notice) or settlement agreement (bilateral agreement). Accordingly, Revenue Procedure #06-02 does *not* say that certifications or settlement agreements will be deemed DDs.

In sum, the Legislature used the phrase DD, which the statutory scheme, long-standing SCDOR policy/procedure, and SCDOR testimony explained is a document issued by its Office of

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[4] A settlement agreement is the resolution of a disagreement by compromise. *See* Ruple Dep. at 91:23-92:22 (R. 1445:23- 1446:22); 100:15–22 (R. 1453:15-22); Cambridge Dictionary, http://dictionary.cambridge.org/us/dictionary/english/settlement (last visited March 15, 2021) (defining settlement as "an official agreement that finishes an argument").

A certification is a notice to a county of the amount to be assessed on property. Ruple Dep. at 57:19–25 (R. 1412:19-25); Cambridge Dictionary, http://dictionary.cambridge.org/us/dictionary/english/certification (last visited March 15, 2021) ("certification" is "the process of earning an official document, or the act of providing an official document, as proof that something has happened or been done").

General Counsel when a tax controversy exists. *See* Farmers Brief at 16–23. Neither a settlement agreement, certification, or both together constitutes such a document, and, thus, none of them trigger appeal rights for local governments.[5]

C. Settlement Agreements and DDs are indeed mutually exclusive outcomes.

Taxing Entities claim that settlement agreements and DDs are not mutually exclusive outcomes. TE Resp. at 16–19. They point to § 12-60-450(E)(1), which provides that SCDOR "will make a determination using the information provided by the taxpayer in accordance with § 12-60-30(15)(c)(iii)" and allege this is mandatory *even when the case has already settled*. *Id.* However, this argument is incorrect as shown by the relevant statutes and SCDOR testimony. Section 12-60-450 outlines the process that follows a taxpayer's "appeal" of a proposed assessment:

- D(1) states that after the protest is filed, the parties "shall stipulate the facts and issues upon which they can agree and may attempt settle the case." § 12-60-450(D)(1).
- D(2) then states that if the taxpayer fails to respond or participate in that process, "the department may view the appeal as abandoned and make a determination . . . . using the information provided in accordance with § 12-60-30(15)(c)(iii)." § 12-60-450(D)(2).
- E(1) then states: "The department will make a [DD] using the information provided in accordance with § 12-60-30(15)(c)(iii)." § 12-60-450(E)(1).

If issuing a DD was mandatory even for settled cases, D(2) would have no reason to exist as, per the Taxing Entities, E(1) requires one to be issued in *all* cases. The only way to read D(2) such that it has meaning is to read D as addressing two possible outcomes at the settlement stage: (i) for

[5] Taxing Entities also argue the Farmers Entities overstate the holding and relevance of *Amisub v. DHEC*. *See* TE Resp. at 13 n.5. They are incorrect. One cannot read that opinion without being struck by the similarities between the arguments the South Carolina Supreme Court rejected in that case and the arguments made by Taxing Entities here. Indeed, its holding illustrates what should be the holding in this case (substituting the name of the relevant agency and decision):

> Since there was no legal duty owed by [SCDOR] to issue a [DD] in this matter, which is the trigger giving rise to a contested case, there was no corresponding obligation that [Taxing Entities] be afforded a contested case hearing before the ALC. Accordingly, we hold [Taxing Entities] may not utilize the contested case review process where it has not been authorized by the General Assembly.

Amisub of S.C., Inc. v. SCDHEC, 403 S.C. 576, 596, 743 S.E.2d 786, 797 (2013).

a cooperating taxpayer, a possible settlement, and (ii) for a non-cooperating taxpayer, a DD. Only if the case is not resolved under D(1) via settlement or D(2) by a DD, would the case proceed to E, where a DD is to be issued in any remaining cases. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citation omitted) (statutes must be read "so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous[.]")

In addition, Taxing Entities argue that S.C. Rev. Pr. #06-02 requires SCDOR to issue a DD when it disagrees with a taxpayer regarding a proposed assessment and that it should have done so here because the settlement included concessions by Farmers Entities (and was thus adverse). *See* TE Resp. at 18–19. Again, the key predicate is that SCDOR *disagrees* with a taxpayer and issues a DD to set forth its factual and legal positions (that are opposed to the taxpayer's positions) for the administrative appeals process. Here, the parties agreed on a resolution, so no DD was required for tax years 2010–2015. SCDOR also did not issue DDs for tax years 2016–2018 as it simply determined the exemptions and issued certifications. Accordingly, because SCDOR did not issue DDs for any tax years at issue, the ALC did not have subject matter jurisdiction to hear this case.

D. The Settlement Agreement and supplemental certifications do not satisfy the statutory requirements for Department Determinations.

In their effort to stretch the statutory definition of a DD past its plain meaning, Taxing Entities argue a DD need not be in a specific form and that the statutory requirements that it be prepared by the department representative and provide notice of the taxpayer's right to request a contested case hearing are contrary to law, do not make sense, and should be ignored. *Id.* at 19–21. As to the form of a DD, *see* Part I(B), *supra*. Regarding who prepares a DD, the relevant statutory definitions are as follows:

> (10) "Department determination" means the final determination within the department from which a taxpayer or a local governing body, as applicable, may request a contested case hearing before the Administrative Law Court.
>
> (11) "Department representative" means 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(10)–(11) (emphasis added). Thus, a DD must be prepared by the person who will represent SCDOR at the contested case hearing. *See* Farmers Brief at 21–22. Taxing Entities argue that because "department representative" definition is found in an *adjacent* subsection to the one defining DDs (instead of the same one), Farmers Entities are "add[ing] requirements to the statutory definition of [DD]" and that such requirements would be "logically unsound." TE Resp. at 20. To the contrary, Farmers Entities are simply giving effect to both subsections. And their reading of the definitions comports with their plain and ordinary meaning (*i.e.*, one who "represent[s]" a party in court is their attorney) and is logically sound as one would expect an attorney to be charged with creating a document that declares SCDOR's legal position in a contested case that begins the administrative appeals process.

Taxing Entities also try to brush away the fact that certifications do not meet all the statutory requirements for a DD. *See id*. at 21–22. For example, a certification does not inform the taxpayer of its right to request a contested case hearing within 30 days or set forth SCDOR's factual and legal position. *See* Farmers Brief at 21–23. Taxing Entities admit there was no practical reason for SCDOR to have complied with those requirements because the parties had reached a settlement. *See* TE Resp. at 21. Exactly. The parties entered a settlement and thus no DD was needed and none of the requirements of a DD need be met. Taxing Entities' argument that the total absence of the statutory requirements for a DD is "irrelevant" to the question of whether a DD was issued lacks any merit and should be rejected.[6]

II. The ALC erred in reopening the settlement between SCDOR and Farmers Entities.

The ALC erred not only by allowing Taxing Entities to challenge the settlement when no DD was issued and thus no appeal rights were triggered but also because § 12-4-320(4) prohibits reopening settlements approved by the Director[7] absent fraud or other wrongful conduct. *See*

[6] Taxing Entities also argue that a settlement agreement and/or supplemental certifications can be interpreted as a DD without running afoul of § 12-4-320(4). *See* TE Resp. at 22–23. That topic is addressed in the following section of this Reply and in Farmers primary Brief at 27–29.

[7] In a footnote, Taxing Entities erroneously claim there is no evidence the Director approved the

Farmers Brief at 29–34. Taxing Entities agree that statute prohibits the settlement from being reopened as between SCDOR and Farmers Entities but contend it does not apply to them, primarily because they were not parties to it. TE Resp. at 23–31. Their arguments lack merit.

A. Taxing Entities have no right to challenge the Settlement Agreement.

Taxing Entities first argue the Settlement Agreement cannot bind them because they did not sign it. TE Resp. at 24–25. As previously explained, however, non-parties can be bound by agreements when the non-signatory's rights are dependent on or derivative of a signatory's rights. *See* Farmers Brief at 30–32. Such is the case here. It is not the agreement itself, standing alone, that affects them, but rather the statutory framework, which sets forth the sequence of events and division of authority: SCDOR may enter settlements with taxpayers, SCDOR must then issue certifications with the agreed-upon assessed values to the counties, and the counties must then use those certifications in assessing the taxpayers. *See* Farmers Brief at 30–32.

Taxing Entities argue that their right to appeal a DD is not derivative of or dependent on

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settlement. TE Resp. at 25 n.9. However, the following substantial evidence supports that he did: SCDOR's policy and procedure required the General Counsel for Litigation ("GC") to discuss all settlements with the Director, and the Representative could only sign a settlement agreement after receiving his approval; Milton Kimpson (SCDOR's GC) testified he was confident he advised the Director (Rick Reames) of this settlement and that Reames approved it; Reames testified Kimpson's practice, which he believed they followed here, was to *always* seek his authorization before entering a settlement; Reames was not aware of any contested tax cases settled during his tenure without his approval; Farmers' attorney also testified he understood Reames had approved the settlement, which the agreement then memorialized. *See* Trial Ex. 147, Kimpson Aff. at ¶¶ 4–7 (R. 3901); Reames Dep. 25:23- 26:25 (R. 1462:23- 1463:25); Tr. at 674:19- 675:11 (R. 2187:19- 2188:11); S.C. Rev. Pr. #06-02 (R. 4138- 4148); Settlement Agreement at § 3.2 (R. 3539) (stating parties warrant that "the individuals executing the Agreement have the legal authority to do so."). No evidence contradicted this testimony or suggested it was not truthful and credible. While Reames could not specifically recall this settlement meeting amongst the many he would have attended, that is not sufficient to overcome the substantial direct, indirect, and circumstantial evidence regarding SCDOR's written procedures, its GC and Director's universal historical compliance with those procedures, and multiple witnesses' testimony that they believed and understood those procedures were being followed in this case, particularly in the absence of evidence to the contrary. *See United Textile Workers of Am., ALF-CIO, Local Union No. 120 v. Newberry Mills, Inc.,* 238 F. Supp. 366, 372–73 (W.D.S.C. 1965) ("Facts in issue may be proved either by direct evidence, or by indirect, otherwise called circumstantial evidence.").

the rights of either of the parties to the Agreement. TE Resp. at 25. That point, however, is irrelevant. Taxing Entities cannot challenge the settlement because their ability to receive property tax payments from utilities is dependent on/derivative from/subject to SCDOR's exclusive statutory authority to assess property, determine exemptions, enter settlements with taxpayers and issue certifications of assessed values. Farmers Brief at 30–32.

Taxing Entities further claim they can ignore the settlement based on (i) Home Rule, including the broad grant of powers to counties in § 4-9-25; (ii) their "independent statutory authority to levy and collect property tax revenues within their jurisdiction boundaries" found in § 4-9-30(5)(a); and (iii) their "independent statutory appeal rights" found in §§ 12-60-2130 and -2150(H). TE Resp. at 25–27. But neither Home Rule nor general statutes allowing counties to levy and collect taxes give them standing to challenge anything that interferes with expected property tax revenues. If they did, the statutory appeal rights in §§ 12-60-2130 and -2150(H) would be superfluous. Additionally, neither Home Rule nor the aforementioned general statutes grant counties the ability to do whatever they want with respect to taxation. Home Rule prohibits the Legislature from enacting "special laws" that seek to govern the powers and activities of specific counties and provides that only general laws applicable to all counties may be enacted.[8] Because no special laws pertaining to specific counties are at issue, that portion of Home Rule is not relevant here. In fact, it is Taxing Entities who violate Home Rule, as they are trying to exempt themselves from general taxation laws, which is prohibited. *See* S.C. Const., Art. VIII, § 7 ("[N]o county shall be exempted from the general laws . . . ."). *See also* Farmers Brief at 33–34 and n.19.

Moreover, Taxing Entities fail to mention that the home rule statutes expressly state that

[8] The constitutional provision referred to as Home Rule permits the Legislature to enact laws regarding the structure, organization, powers, duties, functions, and responsibilities of counties, including the power to tax. South Carolina Constitution at Art. VIII, Sec. 7. It further states that "[n]o 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." *Id.*

counties' powers are subject to the South Carolina Constitution and general law of the State. *See* S.C. Code Ann. §§ 4-9-25 and -30. Accordingly, the general grants of authority in those statutes must yield to the more specific and detailed statutory scheme for assessing property taxes—a scheme in which the counties' rights are dependent on, derivative from, and subject to SCDOR's exclusive authority to value property, determine exemptions, decide refunds, enter settlements with taxpayers and issue certifications. *See* Farmers Brief at 30–32. Accordingly, neither Home Rule nor the counties' general powers to tax certain property not at issue here relieve Taxing Entities of their obligation to comply with SCDOR certifications following a settlement with taxpayers related to SCDOR-assessed property.

B. Only some decisions of SCDOR are subject to judicial review.

As noted above, the Legislature chose to subject only certain SCDOR directives to judicial review. *See* §§ I and II(A), *supra*. Taxing Entities make the unsupported policy plea that the Legislature could not have meant what it said, as *surely* local governments should be able to appeal any decision impacting their potential property tax revenue. TE Resp. at 26–27. Unlike the prior section of their Response, which asserted the narrower argument of settlement plus certifications create a reviewable DD (*id*. at 14), they now grossly expand their argument to say *every* SCDOR property tax directive should be judicially reviewable. *Id.* at 30. As previously explained, however, this argument is put to rest by the Legislature's choice of the trigger for appeal rights being DDs and not certifications as only the latter would follow all SCDOR directives. *See* § I, *supra*.

Taxing Entities also make several miscellaneous arguments, none of which have any merit. First, they argue that because none of the statutes regarding SCDOR's exclusive authority to assess property or determine exemptions limit or reference the right of local governments to challenge an SCDOR decision, the Legislature must have intended that all decisions be reviewable. TE Resp. at 28–29. But the fact that statutes addressing SCDOR's general powers to perform certain duties do not limit counties' rights to challenge SCDOR directives is not surprising and is irrelevant as

those limitations are contained in §§ 12-60-2130 and -2150. *See* § I, *supra*. Taxing Entities also claim the Legislature cannot grant an agency sole responsibility to do certain things without providing an avenue for judicial review of those actions. TE Resp. at 29. Even if this were a correct statement of the law, which it is not,[9] settlements with SCDOR are subject to judicial review in the event of fraud or other wrongful conduct. *See* S.C. Code Ann. § 12-4-320(4).

Next, Taxing Entities argue that the prohibition on reopening settlements, found in § 12-4-320 (in Article 3, Chapter 4), must not apply to property taxes because (i) some sections in Chapter 4 do not relate to property taxes, and (ii) Article 3 relates to general, not specific, powers of SCDOR regarding property taxes (the latter of which are in Article 5). *See* TE Resp. at 29–30. These claims are baseless as the plain language of the statute clearly covers property taxes. *See* S.C Code Ann. §12-4-320(3) ("The Department may . . . compromise *any* tax . . . imposed by this title or other law assigned to it.") (emphasis added); *id*. § 12-4-320(4) ("The Department may . . . enter into a written agreement with a person with regard to *a tax liability*.") (emphasis added). In addition, it is a non sequitur. Some statutes in Chapter 4 appear to authorize SCDOR to take action (for example to enter installment payment agreements with taxpayers) as to all taxes even though SCDOR is not the sole authority for some taxes (such as commercial property taxes). That, however, does not mean § 12-4-320(4)'s authorization of SCDOR to enter a settlement agreement regarding *any tax liability* does not apply to property taxes of utilities, which SCDOR *does* have sole authority to assess. And Taxing Entities' further argument that the word "tax" as used in § 12-4-320 should be interpreted as "state tax" as defined in § 12-60-30 (*see* TE Resp. at 29–30) defies logic. They also argue that because §12-

[9] Taxing Entities also claim denying them appeal rights would violate *Bauer v. S.C. State Hous. Auth.*, 271 S.C. 219, 233, 246 S.E.2d 869, 876 (1978), which states, "the Legislature may not vest unbridled, uncontrolled or arbitrary power in an administrative agency" with no judicial supervision. *See* TE Resp. at 29. This is a red herring as that passage addresses the "non-delegation" doctrine, which has nothing to do with this case. *Id.* at 232-33, 246 S.E.2d at 876. Further, they omit the next sentence explaining that the rule exists to protect *citizens*' "due process rights under the State and Federal Constitutions." *Id.*

4-320(4) is not contained in Article 5, which addresses the specific powers of SCDOR as to property taxes, that provision must not apply to property taxes. *Id.* But the whole point of a "general powers and duties" section is to contain laws that apply generally (here, to all taxes) such that they need not be repeated in each more specific section (such as property tax, sales tax, income tax, etc.).

Finally, Taxing Entities argue that § 12-4-535(a), which allows SCDOR to issue a DD directing a county official to comply with applicable tax laws, gives counties a right to appeal any tax directive. *See* TE Resp. at 30. As the ALC properly held, that statute does not apply here as it is an enforcement statute establishing a regulatory process whereby a DD can be issued when a county official fails to comply with applicable law. Amended Final Order ("Order") at 39–40, n.30 (R. 45-46, n.30); Farmers Resp. at 58. Taxing Entities' argument to the contrary is unavailing.

C. Taxing Entities have no Due Process rights.

As set forth in Farmers Entities' primary brief, the ALC's ruling that taxpayer settlements deprive local governments of their due process rights rests on the incorrect premise that local governments have due process rights, which they do not. Farmers Brief at 33–34. In response, Taxing Entities argue that the ALC did not find they have "Due Process" rights and instead found they have "due process" rights, the latter being (in their opinion) a correct conclusion. TE Resp. at 31. To the extent the ALC found that local governments have due process rights under the South Carolina Constitution or the United States Constitution (*i.e.*, "Due Process" rights),[10] the ALC erred (*see* Farmers Brief at 33–34), and Taxing Entities concede this (*see* TE Resp. at 31).

Alternatively, if the ALC was referring to the right to request a contested case hearing (*i.e.*, "due process" rights) pursuant to §§ 12-60-2130 and -2150(H), it also erred. DDs trigger these "due process" rights. As explained in § I above, when a taxpayer reaches a settlement with

[10] The ALC certainly seems to say local governments have constitutional Due Process rights. *See* Order at 54–56 (R. 60-62) (repeatedly referring to Taxing Entities' "due process" rights arising from "our system of government" and structure of State government, not §§ 12-60-2130 and -2150(H).

SCDOR, as in this case, no DD issues and therefore those "due process" rights do not arise. In sum, Taxing Entities have no "Due Process" rights, and the facts in this case never gave rise to the "due process" rights provided in §§ 12-60-2130 and -2150(H).

III. The ALC erroneously ruled that property used to provide rural telephone service was entitled only to a partial exemption.

The ALC erred and deviated from the statutory text by granting a *partial* exemption to FTCC's and Diversified's property. *See* Farmers Brief at 34–39. Taxing Entities do not even attempt to explain how the Exemption could be construed to authorize only a partial exemption for assets that everyone agrees are used to provide rural telephone services. *See* TE Resp. at 31–34. Instead, they propose an entirely different understanding of the ALC's ruling, arguing it gave a *complete* exemption to only *some* of FTCC's and Diversified's assets. *Id*. at 32. They further claim the ALC's calculations were too generous in light of their expert's estimations. *Id*. at 32–34.[11] As explained below, Taxing Entities' arguments are contrary to their primary Brief, incorrect, and further demonstrate that the statute does not allow a partial exemption.

A. The ALC did, in fact, conclude that FTCC's and Diversified's property used in providing rural telephone services was eligible for only a partial exemption.

Taxing Entities' latest argument—namely, that the ALC completely exempted some of the property—is a new one. They correctly recognized in their primary Brief that the ALC allowed a partial exemption for FTCC's and Diversified's property used to provide rural telephone services. *See* TE Brief at 18 ("[T]he ALC concluded FTCC and Diversified qualified for only a partial exemption . . . ."); *id*. at 55 (same). In their Response, however, they abruptly flip-flop and assert the ALC granted the Exemption in full (*i.e.*, 100%) to only 75% of FTCC's and Diversified's assets. *See* TE Resp. at 31–32. However, the Order did not find some assets used for rural telephone service were 100% exempt while others were not exempt. Instead, it found a voice-only network "would be similar to the current Farmers Entities' network" and "utilize much of the same equipment," though

[11] Farmers Entities will not repeat their prior response to this argument. *See* Farmers Resp. at 31–35.

it would be "lower capacity equipment," and concluded (without any competent evidence) that "a voice-only network would cost 25% less than the current network." Order at 25, 71 (R. 31, 77).[12] Thus, the ALC applied a partial exemption to all assets based on the estimated cost of building a hypothetical network similar to the existing network but with purportedly cheaper, lower-capacity devices.[13] That ruling erred and diverged from the statutory text. *See* Farmers Brief at 34–39.[14]

B. The plain language of § 12-37-220(B)(10) does not permit a partial exemption.

As previously explained, the ALC's interpretation of § 12-37-220(B)(10) was contrary to its plain language. *See* Farmers Brief at 34–39. In response, Taxing Entities acknowledge that other statutes demonstrate the Legislature uses express qualifying terms (*e.g.*, "primarily" or "exclusively") when an exemption is conditioned on such a requirement but argue the absence of such a qualification in § 12-37-220(B)(10) means the Exemption is "ambiguous" as to whether it is conditioned on such a requirement. Their argument falls flat. Where an exemption statute requires only that property be "used"—and not "exclusively used" or "primarily used"—for a particular purpose, any amount of non-pretextual use for that purpose satisfies the statute's literal wording. *See* Farmers Resp. at 14–15. And as the ALC properly found, the assets at issue are

[12] Taxing Entities admit their expert stated that a voice-only network "would look a lot like it is now" with the only difference being the capacity of the equipment employed. *See* TE Resp. at 33.

[13] It is clear as an evidentiary, statistical, and practical matter that it did not exempt only certain, specific pieces of FTCC's and Diversified's property. First, there was no evidence indicating that exactly 75% of FTCC's unspecified assets and, coincidentally, 75% of Diversified's unspecified assets are used to provide rural telephone service. Second, the statistical improbability of finding identical ratios for different entities with different types and amounts of equipment and offering differing services indicates this is not what the ALC did (or, if it was, that it lacked any reasonable basis and is thus reversible). Third, had the ALC *actually* concluded that only 75% of the eligible assets are exempt, it is unclear how FTCC and Diversified would claim the exemption on their tax returns in subsequent years as no one would know which assets are exempt in full, which assets are not exempt at all, and what to do with new assets or assets that are retired or replaced.

[14] *See also* SCDOR Resp. at 25 ("[T]he ALC ultimately granted only a partial exemption of 75% for Diversified's and FTCC's assets…. The ALC's holding is premised on the conclusion that dual-use property only qualifies for the Exemption in proportion to the cost of the property necessary to provide exempt services.") (citations omitted).

always being "used" to allow rural customers the ability to communicate by telephone (if, when, and as needed). *See* Order at 24–25, 67–68 (R. 30-31, 73-74); Farmers Brief at 36–37. Thus, the use of the assets at issue here for the exempt purpose is significant (and certainly not *de minimis* or pretextual) even though they are also used to provide other non-exempt services. *See id.*

C. The ALC's partial exemption interpretation leads to an absurd, impractical, and unworkable result, thus reinforcing that it conflicts with the statutory text.

Taxing Entities spend the remainder of their Response on this issue attacking Farmers' expert, bolstering their expert's estimations, and alternatively attacking and defending the ALC's application of its novel partial exemption analysis. *See* TE Resp. at 32–34. But their arguments only reinforce that the statute does not authorize a partial exemption. The statutory text shows this, and deviation from the text leads to absurd results. A partial exemption (naturally) requires a methodology for determining the amount thereof. Skipping past the fact that the ALC (and not the Legislature) decided the methodology, and ignoring that the ALC's methodology is unworkable, impractical, and perhaps impossible to implement, the fact that SCDOR needs a telecommunications expert to calculate the partial exemption shows the ALC erred in finding the statute authorizes a partial exemption. If the Legislature actually intended a partial exemption for dual-use property, it would have said so, would have explained how to calculate it, and would have authorized SCDOR to hire an expert—all three of which the pollution control statute (which Taxing Entities continue to ignore) in § 12-37-220(A)(8) does ***expressly***.

Specifically, the ALC's ruling replaces decades of consistent and historic application of the Exemption with a new methodology, yet the ALC did not (and, as a matter of the separation of powers, *cannot*) articulate any clear, reliable, objective formula or methodology for calculating the amount of the partial exemption. As this case shows, the ALC's methodology would require SCDOR to rely on telecommunications experts (which SCDOR does not have) making subjective and speculative judgments, thus rendering the method difficult and impractical to accurately and

fairly implement. As explained above, the ALC gave a partial exemption to the property FTCC and Diversified *actually* own based on the cost of a *hypothetical* voice-only network. But a voice-only network *does not exist anywhere* (and has not for many decades). Consequently, the ALC's interpretation requires SCDOR to hire a telecommunications expert every year (since equipment is replaced, retired, repaired, or acquired each year) who must (1) determine the cost of the assets comprising the current network FTCC and Diversified actually own (and do the same for every other rural telephone provider); (2) imagine a hypothetical voice-only network for each provider's unique geographic service area; and (3) determine the cost to build the imaginary voice-only network—all for the purpose of determining the partial exemption for assets that are used to provide rural telephone services. That exercise, however, is not an exact science, as the facts of this case demonstrate.[15] Hence, it is no surprise SCDOR asks this Court to reverse the ALC's interpretation of § 12-37-220(B)(10) because SCDOR cannot implement it prospectively or treat similarly situated taxpayers fairly and consistently. *See, e.g.*, SCDOR Brief at 25 and 28.[16]

SCDOR offered an analogy. If a statute exempted vehicles "used to transport people to and from school," the ALC's logic would permit only a partial exemption for a Chevrolet Silverado because a lesser vehicle (such as a Yugo) could have sufficed. *See* SCDOR Brief at 28 n.17. The analogy is apt but incomplete in that it only addresses the ALC's initial decision that a partial

[15] The difficulty of constructing a hypothetical voice-only network is illustrated by the testimony of Taxing Entities' expert, who incorrectly opined on the cost savings if a 1-gigabit card was swapped in for the 10-gigabit card FTCC or Diversified currently use. Despite his 37 years of experience, he did not know that a hypothetical voice-only network would require *two* 1-gigabit cards, which would actually be more expensive than the single 10-gigabit card. Tr. at 1036:24-1037:16 (R. 2549:24- 2550:16). This fact-intensive analysis would be required for *thousands* of assets making up the networks of *each* rural telephone service provider in the state.

[16] SCDOR alternatively asks the Court to limit the ALC's holding to the facts of this case because SCDOR cannot implement this methodology to other providers, and even then, it is unsure how to handle FTCC's and Diversified's property for future tax years. *See* SCDOR Brief at 26–28. Farmers Entities are not agreeing with or advocating for SCDOR's alternative request but, instead, merely point out the uncertainty that flows from the ALC's errant partial exemption interpretation.

exemption is authorized. To complete it, the ALC's ruling would improperly (1) interpret the statute as authorizing a partial exemption for the Chevrolet owned by the taxpayer in a world where only Chevrolets exist (because Yugos became extinct many decades ago); (2) decide the partial exemption for the Chevrolet should be based on the costs the taxpayer could have saved by buying a hypothetical Yugo; (3) design its own Yugo without a blueprint and based on guesses from a mechanic who has worked on Chevrolets for 37 years but has never seen or built a Yugo, and using only the "necessary" parts of the Chevrolet, which in turn requires discretion on issues like whether the Chevrolet's engine can be reduced in size when placed in the Yugo and, if so, the resulting cost savings (if any); and, finally, (4) after cobbling together a Yugo of its own design using parts from the Chevrolet that the taxpayer actually owns, determine the cost to build the hypothetical Yugo was exactly 75% of the cost of building the Chevrolet. ***This*** is absurd, especially when done to determine the amount of the exemption for a Chevrolet that everyone agrees is used to transport people to and from school as the plain language of the statute requires.[17]

To be clear, whether the ALC's cost methodology is workable or even possible is not the issue. Rather, the issue is whether § 12-37-220(B)(10) authorizes a *partial* exemption for property that everyone agrees is used to provide rural telephone services, and the answer is unquestionably "no." The absurd results flowing from the ALC's deviation from the statute's plain language only reinforces the point that the statute does not authorize a partial exemption. The Court need not look beyond the relevant statute to see exactly what the Legislature would do had it intended to allow a partial exemption for dual-use property. *See* S.C. Code Ann. § 12-37-220(A)(8). Such decisions

[17] Further, in reality, the final step—determining the cost of building the extinct Yugo—would likely result in a finding that it costs *more* to build the Yugo than it costs to build the Chevrolet built with readily available parts. Nobody manufactures all the antiquated parts that would be necessary to build a voice-only network. It is wrong to assume it is cheaper to build an older model/version of something. The ALC's cost methodology (not found in § 12-37-220(B)(10)) and its conclusion (75% partial exemption) was based on pure speculation, as no party was prepared to introduce evidence on the cost to build an obsolete voice-only network (if even possible).

are for the Legislature, not the courts, to make. Accordingly, FTCC's and Diversified's property used to provide rural telephone services should be exempted in full. *See* Farmer Brief at 34–39.

IV. The ALC assumed the Legislature's role and contradicted clear precedent regarding agency deference by creating and imposing new requirements not found in the relevant statutes governing applications for exemptions.

As previously explained, the ALC erred by (i) ruling a taxpayer can only apply for exemptions on tax returns; (ii) ruling that said returns must contain a listing of property that *a judge* understands; (iii) finding the returns for some years did not satisfy the ALC's subjective, undefined expectations; and (iv) applying an errant view of the agency deference doctrine to ignore SCDOR's decision that FTCC and Diversified properly and timely applied for the Exemption. *See* Farmers Brief at 39–49. Taxing Entities' response primarily addresses errors (i) and (iv).

As to (i), the ALC correctly found that § 12-4-720(A)(1) governs the application deadline but incorrectly found that FTCC and Diversified could only apply on a tax return (and only by "listing property as exempt"). Order at 77.[18] Taxing Entities go two steps farther, arguing § 12-4-720(C)—which has nothing to do with the application process[19]—requires annual filers to apply for exemptions on their *original* tax returns and to *re-apply each year*. TE Resp. at 36–40. However, a correct understanding of § 12-4-720 shows a taxpayer need not apply on its tax return or reapply each year. As to (iv), the ALC incorrectly found, and Taxing Entities argue, that an agency policy/procedure (or an agency interpretation based on an agency policy/procedure) is only worthy of deference if the policy/procedure is published in a formal, written agency policy/procedure. Order at 82–83 (R. 88-89); TE Resp. at 41–42. No legal authority supports these additional requirements, and the ALC should have given deference to SCDOR's policy/procedure regarding applications for the Exemption and its decision that FTCC and Diversified properly and timely applied for it.

[18] *See* Farmers Brief at § IV(A) as to why the ALC erred on these issues.

[19] Rather, § 12-4-720(C) informs taxpayers who file annual property tax returns ("annual filers") whose application has been granted to *claim* the exemption each year moving forward.

A. Taxing Entities' argument that taxpayers must annually apply for exemptions on original tax returns is contrary to the text of § 12-4-720.

Section 12-4-720 sets forth exemption application rules for both annual filers and taxpayers who do not file property tax returns ("non-filers"). S.C. Code Ann. § 12-4-720. Subsection (A) begins with "Applications for property exemptions . . . must be filed as follows," and then (A)(1) states that "any property owner whose property *may qualify* for property exemption *shall file an application*" within the period provided in § 12-54-85(F) for claims for refund. (Emphasis added).[20] Because (A)(1) governs annual filers and non-filers, it specifically reminds annual filers who "file an application for exemption" to *also* file their tax returns because the application does not eliminate their normal responsibilities. *Id.*

Next, (B) *allows* annual filers to apply for an exemption and fulfill their duty to file their tax returns by "listing property as exempt" on a property tax return thereby killing two birds with one stone. Said return is not restricted to an original return, which makes sense as (A)(1) allows annual filers to apply for an exemption within 3 years of the original return's due date.

Subsection (C) has nothing to do with the *application* process governed by (A). Instead, it reminds annual filers to *claim* the exemption on their tax returns for property that *is exempt*. It is no accident that (C) is the only subsection that does not discuss *applications*. Other than the exemptions in (A)(3) where no application is needed (not applicable here), a taxpayer *cannot* claim an exemption for property that *is* exempt until an application is filed and granted. Further, and unlike (A)(1), there is no deadline in (C) for claiming the exemption for property that *is* exempt.

Finally, after (B) and (C) address only annual filers, (D) addresses annual filers and non-filers (as (A) does) and tells annual filers to comply with (C) and tells all taxpayers that only one application is needed absent a change in the status of the property or newly acquired property (in

[20] Section 12-4-720(A)(1) sets forth the general rule for all property tax exemptions in § 12-37-220 (including (B)(10)) except for (A)(9) and the exemptions listed in § 12-4-720(A)(2)–(3). Thus, (A)(1) governs roughly 50 of the approximately 60 exemptions in § 12-37-220.

which case another application is needed so SCDOR can evaluate the changed/new property).

Thus, (A)(1) requires *an application* for property that *may* be exempt; (B) *allows*, but does not require, annual filers to apply on a tax return (by "listing property as exempt"); (C) tells annual filers whose application is granted to *claim* any exemption for property that *is exempt*; and (D) tells all taxpayers only one application is needed unless they have new or changed property.

A correct understanding of § 12-4-720 makes quick work of Taxing Entities' patently erroneous arguments, which (i) ignore *entirely* (A) (the only subsection besides (D)'s reference to new/changed property that contains application *requirements*); and (ii) misconstrue (C) and (D) as imposing a special rule on annual filers requiring them to *apply* for an exemption every year on a tax return filed by April 30th.

1. Section 12-4-720 does not require an application to be made on a property tax return at all, much less on an original *property tax return.*

Contrary to Taxing Entities' argument (and the ALC's ruling),[21] § 12-4-720 does not require applications on a tax return. This is apparent from the statutory text in at least four ways. *First*, and most fundamentally, the statute does not say a taxpayer must apply on a tax return. Subsection (A) governs applications for property exemptions, and (A)(1) governs the Exemption. Nothing in (A) requires or even implies that an application must be made on a tax return. Even (improperly) searching outside of (A) reveals nothing in § 12-4-720 that requires this, and SCDOR has never required it. *Second*, (A)(1) plainly contemplates that applications may be made in ways other than on a tax return. As mentioned above, it applies to more than 50 property tax exemptions, many of which are available to non-filers such as veterans and nonprofits.[22] By necessity, then, the

[21] Notably, the ALC *correctly* harmonized virtually all aspects of § 12-4-720 but for the incorrect final conclusion that FTCC and Diversified could only apply by "listing property as exempt" on a tax return thereby improperly making the option in (B) mandatory. *See* Order at 73–77 (R. 79-83).

[22] Taxing Entities admit as much when they try to assure the Court that ruling in their favor will not affect non-filers saying that "*these* taxpayers would still be able to file within the three year limitations period provided by the general rule of . . . (A)(1)."). TE Brief at 45 n.15. They are

"application" required by (A)(1) contemplates taxpayers applying for exemptions by methods other than a tax return as non-filers would not even have a return form on which to apply. *Third*, (A)(1) tells annual filers that filing the "application" under (A)(1) does not relieve them of their duty to *also* file their tax returns. The statute would not remind taxpayers to *also* file a return in *addition* to an application if the application had to be made on a return. *Fourth*, the plain language of (B) indicates that while it is *possible* to apply for an exemption on a tax return, it is not *mandatory*. It would be nonsensical for (B), which follows (A)'s application *requirements*, to *permit* annual filers to apply on a tax return if they were required to do so. In sum, Taxing Entities' argument (and the ALC's ruling) that taxpayers can apply for exemptions only on property tax returns is contrary to and unsupported by § 12-4-720.

2. Section 12-4-720 does not require a taxpayer to apply for (or SCDOR to determine) eligibility for the same exemption year after year in perpetuity.

Taxing Entities incorrectly argue that annual filers must apply for an exemption every year for the same property based on § 12-4-720(D)'s reference back to (C), which they imply shows that (C), which says to *claim* exemptions for property that *is* exempt, is an annual *application* requirement. *See* TE Resp. at 36.[23] This argument requires the Court to ignore (A)(1) entirely because an annual application requirement is incompatible with (A)(1) (as well as (A)(2)–(3)). Nonetheless, the statutory text shows that (C)—the only subsection that does not say "application"—is not an annual application requirement in at least five ways.

First, as mentioned above, (A)(1) would not tell taxpayers filing an (A)(1) "application" to *also* file tax returns if (C) was the application rule for those same annual filers. *Second*, (B) would

correct that individuals and nonprofits do not file property tax returns. Yet dozens of exemptions in § 12-37-220 are available to them that are subject to (A)(1)'s application requirement.

[23] Taxing Entities regularly imply that only a handful of large taxpayers are annual filers. *See, e.g.*, TE Brief at 45; TE Resp. at 35–36. That is not true. Annual filers include the ten broadly-defined lines of businesses in § 12-4-540(A)(1) and "merchants" in (A)(2). Virtually every business, large and small, with furniture, fixtures, or equipment is required to annually file a Form PT-100 (a property tax return for business personal property).

not *permit* annual filers to apply on a return if (C) *required* them to apply every year on their returns. *Third*, (C) addresses property that *is* exempt—there is no reason to *apply* for an exemption for property that *is* exempt. *Fourth*, if (C) were an exception to (A)(1)'s general rule, presumably it would be (A)(4) (which, of course, does not exist) because (A)(2) and (A)(3) already house the exceptions to (A)(1). *Fifth*, if (C) imposed a strict annual deadline, it would have a deadline like (A)(1), but it does not; it simply says to "claim any exemption on the return each year the property is exempt." An amended return claiming an exemption for a prior year does that.[24]

And as the ALC properly found, an application is simply a request. *See* Order at 76 (R. 82). Here, it is undisputed that FTCC in 2012 and Diversified in 2014 submitted letters to SCDOR, which specified the exemption requested, requested it for all property, and referenced supporting legal authority (with the latter two containing a detailed legal analysis). Trial Ex. 20, Ltr from Baltenbach to Crowe dated July 26, 2012 (R. 2774-2776); Tr. Ex. 15, Ltr from Allen to SCDOR dated Dec. 28, 2012 (R. 2703-2728); Tr. Ex. 80, Ltr from Allen to SCDOR dated Feb. 18, 2014 (R. 3302- 3364). Thus, these letters requesting the Exemption are applications under (A)(1). Moreover, SCDOR deemed the letters proper applications, performed its investigation and settled the matter based on these applications.[25] Additionally, the applications were timely under § 12-4-720(A)(1) for all years at issue. The ALC's Order shows FTCC and Diversified year after year

[24] Further, an annual application requirement would lead to an absurd, impractical, and inefficient result that is contrary to the purpose of the application process. As the ALC correctly recognized, the obvious purpose of the application process is to allow SCDOR to investigate and determine whether property that *may* be exempt *is* exempt. Order at 76 (R. 82). Once done, SCDOR need not investigate and make that determination each year (absent new/changed property).

[25] Moreover, even if § 12-4-720 required applications to contain certain information or list property in a certain way (which it does not), a failure by FTCC or Diversified to comply with such a (non-existent) requirement cannot be challenged by Taxing Entities. *See, e.g.*, *Gardner v. S.C. Dep't of Revenue*, 353 S.C. 1, 14, 577 S.E.2d 190, 197 (2003) ("As a general rule, a party must establish prejudice as the result of another's failure to follow mandatory statutory procedure."). Even viewing the granting of the Exemption as prejudicial to them, that prejudice was not caused by any lack of information in the applications, which SCDOR understood, evaluated and agreed to settle.

requesting the Exemption for property that *may* be exempt (even though yearly applications are not required);[26] shows negotiations and discussions with SCDOR, which was (as the application process envisions) determining what property *was* exempt; and, in 2017 when FTCC and Diversified finally knew what property *was* exempt, they *claimed* the Exemption on amended tax returns. That is exactly what § 12-4-720 tells them to do and is all they could do as they did not know what property w*as* exempt until SCDOR told them in 2017.

B. Taxing Entities misapprehend the holding and application of *TNS Mills*.

In contrast to their primary Brief, Taxing Entities now argue that the enactment of § 12-4-720(C) in 1995 overrules *TNS Mills*' holding that a taxpayer can apply for an exemption separately from its tax return. TE Resp. at 41.[27] But as explained above, (C) has nothing to do with applications and instead tells annual filers to *claim* an exemption for property that *is* exempt. Notwithstanding that § 12-4-720's plain language contemplates applications by means other than on a tax return, the enactment of (C) in 1995 has no bearing on *TNS Mills*' holding related to *applications*. Applications are governed by (A)(1), which today, as in *TNS Mills,* requires any taxpayer whose property may qualify for property exemption to file an application within a specified time frame. *See* 1991 South Carolina Laws Act 50 (S.B. 558). Filing an application apart from a tax return satisfied that in *TNS Mills* and satisfies the same requirement today.

[26] *See*, *e.g.*, Order at 5–8, 80, 84, 88–89 (R. 11-14, 86, 90, 94-95). Further, the Code allows applications to occur via claims for refund and protests, which require a taxpayer to explain why the property qualifies for exemption. *See* §§ 12-60-2150(A) and (C) and -2120(C). It would be nonsensical for a taxpayer to file a protest or refund because its assets should be exempt with an explanation of the basis for the exemption as the Code requires yet then require a separate, simultaneous second exemption request for the same reasons. *See*, *e.g.*, S.C. Code Ann. § 12-60-2150(A) (taxpayer may file refund claim for SCDOR-assessed property or if it believes property is exempt).

[27] Indeed, Taxing Entities explicitly agreed *TNS Mills* allows annual filers to apply for exemptions by means other than a tax return. TE Brief at 4 and 23. This Court should take them at their word.

C. Taxing Entities attempt to insert new factors into the well-established test for when to defer to an agency's interpretation of a statute.

The ALC incorrectly required FTCC and Diversified to apply on a tax return and then applied a flawed application of the agency deference doctrine relying on factors *not* found in the law. *See* Order at 82 (R. 88); Farmers Brief at 44–48. Taxing Entities' argument suffers from these same flaws and argues SCDOR's finding that FTCC and Diversified met the application requirement by requesting the Exemption in writing is not entitled to deference because it has no written policy/procedure and has only a routine administrative practice of granting the Exemption to utilities. TE Resp. at 41. They cite no authority (there is none) supporting their novel assertion that only written agency interpretations are worthy of deference. Rather, agency interpretations are worthy of deference unless there is a "compelling reason to differ" or it is "arbitrary, capricious, or manifestly contrary to the statute" the agency is interpreting. *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34–35, 766 S.E.2d 707, 718 (2014).

Nor is the absence of a written policy regarding the Exemption contrary to § 12-37-970. *See* TE Resp. at 42. That statute requires only that SCDOR promulgate a regulation to "prescribe the form of *return* . . . , the information to be contained in it, and the manner in which the *returns* must be submitted." S.C. Code Ann. § 12-37-970 (emphasis added). It says nothing about prescribing a form, manner, or method by which to *apply* for *exemptions*. Thus, the lack of a written policy or application form does not violate § 12-37-970, particularly when § 12-4-720 and *TNS Mills* allow applications for exemption to be made by methods other than a tax return.

CONCLUSION

For the foregoing reasons as well as those set forth in their primary brief, Farmers Entities respectfully request this Court reverse the ALC's Amended Final Order.

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June 3, 2021
Charleston, South Carolina

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Case No. 17-ALJ-17-0237-CC

Appellate Case No. 2020-000983

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.

Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC, ... Respondents/Appellants,

and

South Carolina Department of Revenue ..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the foregoing Final Reply Brief of Respondents/Appellants Farmers Telephone Cooperative, Inc., FTC Communications, LLC and FTC Diversified Services, LLC complies with Rule 211(b), SCACR.

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June 3, 2021
Charleston, South Carolina