RECEIVED
Jun 03 2021
SC Court of Appeals

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.

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.

FINAL BRIEF OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF REVENUE

Jason P. Luther (Bar No. 78021)
Chief Legal Officer
P.O. Box 12265
Columbia, SC 29211
Phone: (803) 898-5785
E-Mail: Jason.Luther@dor.sc.gov
Counsel for Respondent South Carolina Department of Revenue

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Other Authorities:

INTRODUCTION

The General Assembly has given the South Carolina Department of Revenue ("Department") sole responsibility to assess property of rural telephone cooperatives like Farmers Telephone Cooperative ("Farmers"). *See* S.C. Code Ann. § 12-4-540(A)(1)(f). This responsibility includes determining whether the cooperative's property is eligible for the rural telephone service exemption in section 12-37-220(B)(10) (the "Exemption"). If the property of a rural telephone cooperative is "used in providing rural telephone service," the Department must exempt that property from taxation.

There is no specific application process for the Exemption. Instead, for decades Farmers (like the five other rural telephone cooperatives in South Carolina) has annually claimed and received the Exemption by filing property tax returns with the Department along with a number of supplemental forms listing its property by asset type and location. The Department's typical practice is to notify the affected counties of the Exemption decision when it sends the county auditor a utility assessment certification regarding the rural telephone cooperatives in mid-August of each year.

FTC Communications, LLC ("FTCC") and FTC Diversified Services, LLC ("Diversified") (collectively, "Taxpayers") are disregarded entities that receive the tax benefits of Farmers, including the Exemption.[1] Taxpayers and Farmers (collectively, "Farmers Entities") provide a range of telecommunication services in rural areas of South Carolina, including wireless and landline

[1] The ALC referred to FTCC and Diversified collectively as "Taxpayers," but referred to FTCC, Diversified, and Farmers collectively as the "Farmers Entities." *See* Amended Final Order at 1, 3. For sake of ease and consistency, the Department has used the same abbreviations as the ALC. However, in what will almost certainly result in unavoidable confusion, the Department notes that both Appellants in their briefs depart from the ALC's nomenclature and instead use "Taxpayers" to refer collectively to all three entities (Diversified, FTCC, *and* Farmers). *See* Taxing Entities Br. at 1; Farmers Entities Br. at 3.

telephone services, operator services, answering services, television services, Internet service, and security services.

Farmers Entities filed timely property tax returns and supplemental data for each applicable tax year from 2010–2018. Farmers was granted the Exemption each year. FTCC and Diversified were not. FTCC protested the Department's proposed assessment for tax year 2012 because it did not exempt FTCC's property; it also sought a refund for 2010–2011. FTCC renewed this protest and request for the Exemption each subsequent year. Beginning in 2014, Diversified joined FTCC's protests and requests.

The Department's Property Division reviewed FTCC's and Diversified's exemption and refund requests and protests in accordance with the standard internal appeals procedures in the Revenue Procedures Act ("RPA"), *see* S.C. Code Ann. § 12-60-10, and its SC Revenue Procedure #06-2. Its 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. The Property Division notified Taxing Entities of the protest. It issued 80% assessments as required by law because the protest was under appeal. It held numerous conferences with Taxpayers. It eventually referred the matter to the Department's Office of General Counsel.

Ultimately, the Department chose to exercise its statutory authority to settle the tax dispute regarding the Exemption. *See* S.C. Code Ann. §§ 12-4-320(3)-(4). 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. The Department then issued supplemental assessment certifications to the affected counties reflecting the change in Taxpayer's assessment because of the granted Exemption.

The affected counties ("Taxing Entities") filed a request for contested case hearing with the Administrative Law Court ("ALC") to challenge the terms of the Settlement Agreement granting the

Exemption for wireless assets. After two years of litigation and a multi-day trial, the ALC agreed Taxpayers' wireless assets qualify for the Exemption, albeit only partially and only for certain tax years.

In its lengthy Amended Final Order, the ALC exhaustively analyzed the myriad issues and framed this dispute in four general categories: first, did Taxing Entities have standing to contest the Settlement Agreement and/or supplemental assessment certifications? Second, did Taxpayers' property qualify for the Exemption? Third, did Taxpayers properly apply for the Exemption? Finally, did the Department grant the Exemption to Taxpayers in an illegally retroactive manner?

In a Solomon-like manner, the ALC "split the baby" on a number of the parties' competing arguments by narrowly crafting several fact-specific rulings on each of these four substantive or procedural issues. For example, the ALC found that Taxing Entities had standing to contest this matter at the ALC, but not for all of the reasons asserted by Taxing Entities. The ALC disagreed that the Settlement Agreement constituted a "department determination" from which Taxing Entities could appeal to the ALC, but also disagreed that the Settlement Agreement barred any ALC review of the tax years covered by the agreement. The ALC rejected Taxing Entities' claim that dual-use property (which simultaneously provides telephone and non-telephone services) was completely ineligible for the Exemption, but found that under the unique facts of this case only 75% of Taxpayers' property was exempt. Finally, the ALC rejected Taxing Entities' claim that Taxpayers could not receive *any* refund of property taxes for the tax years in dispute, but did not grant the refunds for *every* year as requested by Taxpayers. Throughout these findings, the ALC questioned (and at times chastised) the Department's procedures and practice as it related to the review and resolution of this property tax matter.

Because of the Department's unique position in deciding property tax matters that affect taxpayers and counties, both generally and in this specific case, the Department chose not to appeal

the ALC's final order. The Department does not take a position on all of the issues presented in each Appellant's brief. Nevertheless, in the Department's view, the primary issue in this case has always been whether property used to provide rural *wireless* telephone service qualifies for the Exemption; resolution of that question is of utmost importance. In attempting to resolve this primary issue, the Department submits it acted in accordance with the RPA and its longstanding administrative practice. In the Department's view, its decisions to do (e.g. treat the applications as proper, settle the dispute) or not to do (e.g. issue a determination) certain things during its administrative review and resolution of the matter were within the authority granted to the Department by the legislature.

STATEMENT OF THE ISSUES ON APPEAL

I. Did the ALC err in holding the Taxing Entities lacked standing to request a contested case hearing pursuant to section 12-4-535?

II. Did the ALC err in concluding that certain of Taxpayers' property qualified for the Exemption for tax years 2010 through 2018?

III. Did the ALC err in affirming the Department's decision to grant a refund to FTCC for tax years 2014 through 2016?

IV. Did the ALC err in concluding the Department had the authority to grant the Exemption to Taxpayers for certain tax years, even if the Department had not notified Taxing Entities of the resolution of the Exemption request prior to June 1 of those years?

ARGUMENT

I. The ALC did not err in holding the Taxing Entities lacked standing to request a contested case hearing pursuant to section 12-4-535.

The ALC correctly rejected the Taxing Entities' claim that S.C. Code Ann. § 12-4-535 gave them statutory standing in this case. *See* Amended Final Order at 39 n.30. On appeal, the Taxing Entities' brief fails to provide a compelling reason why the ALC's order in this regard should be reversed. *See* Taxing Entities Br. at 55–58.

A. Section 12-4-535 grants county governing bodies the right to request a contested case hearing to review a Department Determination directing a county official to apply with state tax laws, but no such determination was issued in this matter.

The RPA sets forth the procedures for determining disputes with the Department concerning property taxes—whether assessments, exemptions, or refunds. *See* S.C. Code Ann. § 12-60-20. Although the RPA specifically addresses each of these disputes in separate subsections, the administrative appeals process for these disputes is largely the same and ultimately reverts to the RPA's general appeals procedures set forth in section 12-60-450.[2]

Taxing Entities contend they had standing to request a contested case hearing pursuant to three statutes: sections 12-60-2130 and 12-60-2150(H), both of which are found in the RPA, and section 12-4-535, which is found in Article 5 of Title 12, Chapter 4 dealing with the Department's powers and duties with respect to property taxes. As the ALC explained, whether local governing bodies (like the Taxing Entities) have statutory standing under each of these provisions hinges on

---

[2] *See* S.C. Code Ann. § 12-60-450 (describing general process for appealing a proposed assessment of taxes); *id.* § 12-60-2120(D) (providing that all appeals of *property tax* assessments proposed by a division of the department or denials of a tax exemption by the department "must be conducted as provided in Section 12-60-450(C) through (E)"); *id.* § 12-60-2150 (providing procedure for filing a claim for refund of property taxes and stating that "[a]ll appeals before the department must be conducted as provided in Section 12-60-450(C) through (E)").

whether the Department issued a "department determination." *See* Amended Final Order at 40, 42; *see also* S.C. Code Ann. § 12-4-535 (authorizing county governing body to request a contested case hearing regarding a *department determination* "directing the appropriate county official to comply with" state law); S.C. Code Ann. § 12-60-2130 (authorizing local governing body to seek ALC review of a *department determination* involving property tax assessment); S.C. Code Ann. § 12-60-2150(H) (authorizing local governing body to seek ALC review of a *department determination* involving a claim for refund of property taxes).

Throughout this case, the Department has maintained—and the evidence shows—that it followed both the RPA and its own internal procedures in reviewing and resolving this property tax dispute in a way that neither required nor resulted in the issuance of a Department Determination.[3]

1. The RPA and longstanding Department practice differentiate Department Determinations from settlement agreements and supplemental assessment certifications.

A "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).[4] A Department Determination is different from a "division decision," which is a "decision by a division of the department that affects the rights or obligations of a person for which

---

[3] For sake of ease, the term "Department Determination" is capitalized herein because it has a specific meaning within the RPA and SC Revenue Procedure #06-2.

[4] After this contested case hearing began, the legislature amended the definition of "department determination" by striking the word "person" and replacing it with "taxpayer or a local governing body, as applicable." *See* 2018 S.C. Act No. 265 at § 8a, *codified at* S.C. Code Ann. § 12-60-30(10). The Act also added several new terms in the definitional section, including "local governing body" and "affected county." *Id.* It also amended section 12-60-450 in a number of sections, including subsection (E)(1) ("The department ~~will~~ shall make a department determination") and subsection (E)(2) ("A department determination ~~adverse to the taxpayer~~ must be in writing"). *Id.* at § 8a, *codified at* S.C. Code Ann. § 12-60-450(E). Thereafter, the Department issued SC Revenue Procedure #20-1 (relating to the Department's internal tax appeals process and procedure), which supersedes SC Revenue Procedure #06-2 and incorporates the 2018 amendments to the RPA.

no specific appeals rights are provided by this act." *Id.* § 12-60-30(13). Department Determinations are prepared by a "Department representative" who likewise represents the Department at any subsequent contested case hearing. *Id.* § 12-60-30(11); *see also* SCALC Rule 8 (requiring agency to be represented by attorney during ALC proceeding).[5]

These definitional distinctions are important, and are consistent with the Department's administration of its statutory duties. Every day, hundreds of Department employees in the ordinary course of business make decisions that affect the rights or obligations of taxpayers. It is impractical and inefficient to expect that all (or even most) of those decisions can be immediately appealed to the ALC. By designing an internal appeals procedure and designating only certain people to issue Department Determinations, the RPA and Department practice ensure that most tax disputes (where possible) are resolved without the time and expense of a formal court proceeding, and only those decisions that have been fully vetted internally by agency stakeholders in conjunction with its legal staff become the *final* decision of the Department. *See* Tr. Ex. 184 at 6-7 (R. pp. 4143–44).

Historically, the Department has treated settlement agreements and Department Determinations as separate and distinct documents. The RPA and SC Revenue Procedure #06-2[6]

---

[5] The RPA differentiates between a "division decision" and "department determination," but it also uses the terms "determine" or "determination" in a manner that connotes something other than a "department determination." For example, in section 12-60-420(A), if a "division of the department . . . *determines* there is a [tax] deficiency," the taxpayer may protest this determination, which the RPA then describes as a "division decision." That protest will ultimately lead to either a settlement of the dispute or a "department determination." *See* S.C. Code Ann. § 12-60-420(A). Similarly, the RPA requires the "appropriate division of the department" to *determine* if a property tax refund is due and give the taxpayer written notice of that *determination*, but the next section refers to that determination as a "division decision" which can be appealed for purposes of settling the dispute or receiving a "department determination." *See* S.C. Code Ann. § 12-60-2150(D)–(F).

[6] Revenue Procedure #06-2 governed the Department's internal procedures during the time-period at issue in this appeal, but those procedures date back as early as 1992. *See* S.C. Rev. Procedure #92-1, *available at* https://dor.sc.gov/resources-site/lawandpolicy/Advisory%20Opinions/RP92-1.pdf. The appeal procedures have modified and streamlined over the years, but as early as Revenue Procedure

assume either a settlement agreement or a Department Determination—but not both—will be the end-result of any pre-hearing appeal process. *See* S.C. Code Ann. § 12-60-2120, -2150 (providing protest of exemption or refund will be conducted in accordance with section 12-60-450(C) through (E)). Under those appeal procedures, the Department representative may choose either to (a) agree with the taxpayer and close the file, (b) issue a Department Determination, or (c) "*attempt to settle the case.*" *See id.* § 12-60-450(D)–(E); *see also* Tr. Ex. 184 at 5–8 (R. pp. 4142–45). A settlement is a negotiated resolution of a dispute to which the taxpayer and Department both agree; if it is approved by the Director it is final and conclusive. *See* Tr. Ex. 184 at 7 (R. p. 4144); *see also* S.C. Code Ann. § 12-4-320.[7] By contrast, a Department Determination is "adverse to the taxpayer" and may be appealed to the ALC. *Id.* § 12-60-450(E)(2).

Similarly, the Department has also never considered Supplemental Certifications to be Department Determinations.[8] In a typical utility property tax matter, the Department's Property

---

#92-1 the procedures specifically anticipated the Department's settlement of disputes involving property taxes collected by political subdivisions. *Id.* at 21.

[7] Under South Carolina law, a settlement agreement approved by the Director *may not be reopened by administrative or judicial action* except in cases of fraud, malfeasance, or misrepresentation. S.C. Code Ann. § 12-4-320(4). The record established that the Settlement Agreement was approved by the Director. *See* Hr'g Tr. 674:19–675:11 (R. p. 2187, line 19–p. 2188, line 11); Reames Depo., 25:23–26:25 (R. p. 1462, line 23–p. 1463, line 25); Tr. Ex. 91 at 7, ¶ 3.2 (R. p. 3539, ¶ 3.2); Tr. Ex. 141 (R. pp. 3897–99); Tr. Ex. 147 (R. pp. 3900–01); Tr. Ex. 184 at 7 (R. p. 4144). The record contains no evidence of a single instance of fraud, malfeasance, or misrepresentation with respect to the Settlement Agreement, and Taxing Entities have never alleged such. In light of the record evidence, the ALC correctly concluded the Settlement Agreement was final and conclusive as to the Department and Taxpayes. *See* Amended Final Order at 51–52; *see also* Pre-Hr'g Conference Tr. 10:9–14:4, 17:6–14, 30:7–20 (granting partial summary judgment on this issue) (R. p. 1476, line 9–p. 1480, line 4; p. 1483, lines 6–14; p. 1496, lines 7–20). However, the ALC concluded the Settlement Agreement did not bar Taxing Entities from challenging the legal effect of the Settlement Agreement on them. *See* Amended Final Order at 53.

[8] The ALC used the term "Supplemental Certifications" to refer to the "Utilities Supplemental Certification" that was included with a memorandum Taylor Ingram, the Department's Utility Assessment Coordinator, sent to the county auditors on June 14, 2017 notifying them of the resolution

Division reviews a utility taxpayer's property tax return (along with any exemption or refund claims) and issues a Proposed Assessment listing the assessed value of the taxpayer's property. *See, e.g.*, Tr. Ex. 19 (R. pp. 2271–73) (showing proposed assessment for FTCC for tax year 2012). Thereafter, the Department sends an annual assessment certification to all 46 county auditors, which includes the assessment information for each utility taxpayer's property. *See* Hr'g Tr. 106:2–14 (R. p. 1619, lines 2–14); S.C. Code Ann. § 12-37-970 (requiring Department to forward property assessments to counties by August 15). The county auditor will use the assessment certification to generate the county's tax bill for the utility taxpayer. *See* Hr'g Tr. 106:2–14 (R. p. 1619, lines 2–14).

The taxpayer can protest the Proposed Assessment in accordance with sections 12-60-2120 and 12-60-450 and SC Revenue Procedure #06-2. See Tr. Ex. 22 (R. pp. 2779–82). As discussed above, the appeal will result either in a settlement, closed file, or a Department Determination. See Tr. Ex. 184 at 6-7 (R. pp. 4143–44). If the Department reasonably expects a taxpayer's appeal will not be resolved by December 31 of the tax year, the Department notifies the county auditor that the assessment is under protest so the auditor can adjust the property tax assessment on its tax bills to 80% of the protested proposed assessment amount. *See* S.C. Code Ann. § 12-60-2140; Tr. Ex. 94 (R. pp. 3597–3604). At that time, the Department also issues a revised Proposed Assessment to the taxpayer reflecting the 80% assessment amount. *See* Tr. Ex. 23 (R. pp. 2783–84).

As the name suggests, Supplemental Certifications serve to supplement the information that is included on the annual assessment certification the Department sends to the county auditor. When the Department notifies the county auditor that an assessment is under protest, it includes with that notification a Utilities Supplemental Certification with the assessment calculated at 80% of the original assessment amount. *See* Tr. Ex. 94 at 2 (R. p. 3598). Likewise, when the taxpayer's protest is finally

---

of the Farmers Entities' appeal. *See* Amended Final Order at 1; Tr. Ex. 119 (R. pp. 3776–88). For sake of consistency, the Department has also capitalized this term.

resolved, the Department sends the county auditors an updated Utilities Supplemental Certification that reflects any change to the assessment amount based on the resolution of the appeal. *See* Tr. Ex. 119 at 1–2 (R. pp. 3776–77).

In short, the function of the memorandum and Supplemental Certification is to advise the county auditors of the existence of or resolution of a property tax appeal and the impact—if any—that appeal has on the assessed value of the taxpayer's property in that county. By contrast, a Department Determination is sent or delivered to the *taxpayer*, it explains the basis for the department's determination (as opposed to communicating the change in assessment value as a result of the resolution of a protest), it informs the *taxpayer* of his right to request a contested case hearing, and it explains that taxes will be assessed unless the *taxpayer* requests a contested case hearing. *See* S.C. Code Ann. § 12-60-450(E). In addition, the Supplemental Certification is prepared and issued by staff within the Property Division, not an attorney within the Office of General Counsel.

Because the substance of each document and the manner by which they are prepared and issued are significantly different, the Department historically has not considered a Supplemental Certification to be a Department Determination. *See* Ruple 30(b)(6) Depo., 28:18–29:12 (R. p. 1387, line 18–p. 1388, line 12).

2. The Settlement Agreement and Supplemental Certifications are not Department Determinations for purposes of creating standing under section 12-4-535.

The ALC rightly held that section 12-4-535 does not give the Taxing Entities standing in this case. Section 12-4-535 is located in Article 5 of Title 12, Chapter 40, which sets forth how the Department works with and oversees certain county tax officials. In this regard, the Department's duties include instructing and advising, investigating and examining, and (if necessary) prosecuting county officers or officials who fail to comply with state law relating to the valuation, assessment, or taxation of property within the State. *See* S.C. Code Ann. § 12-4-520 et seq. In addition to directing

criminal prosecutions against county officials, the Department may also issue a Department Determination that directs the relevant county official to comply with state laws relating to property tax matters. *See* S.C. Code Ann. § 12-4-535(A). In that situation, the county may respond to the determination and the county governing body may (not the county official to whom the determination was issued) may request a contested case hearing. *See* S.C. Code Ann. § 12-4-535(B)-(C). Similarly, the county governing body may also request a determination from the Department on any state law regarding the valuation, assessment, or taxation of property. S.C. Code Ann. § 12-4-535(D).

In this case, the elements necessary to trigger ALC review under section 12-4-535 were not met. The Department did not initiate the administrative process by issuing a determination directing a county official to comply with state law. *See* S.C. Code Ann. § 12-4-535(A); *see also* Amended Final Order at 40 n.30 (contrasting Department Determinations issued under section 12-4-353 from those issued under sections 12-60-2130 and 12-60-2150(H)). Neither the Settlement Agreement nor Supplemental Certifications should be construed as Department Determinations within the meaning contemplated by section 12-4-535(A). No county ever responded in writing to the Department stating its agreement or disagreement with the determination prior to requesting a contested case hearing. *See* S.C. Code Ann. § 12-4-535(B). No county governing body ever adopted a resolution to request a contested case hearing within the timeline set forth in subsection (C) of section 12-4-535. Nor did any county governing body ever adopt a resolution requesting the Department to issue a determination on any state law relating to property taxes. *See* S.C. Code Ann. § 12-4-535(D).

Thus, the ALC did not err in concluding that section 12-4-535 does not give the Taxing Entities statutory standing in this case.

B. The Court should limit any holdings regarding standing solely to the unique facts of this case and avoid adopting any test for what constitutes a Department Determination other than the plain language of the RPA and SC Revenue Procedure #06-2.

Although the ALC found section 12-4-535 did not provide Taxing Entities standing to request a contested case hearing, the ALC concluded Taxing Entities had standing to pursue their appeal pursuant to sections 12-60-2130 and 12-60-2150(H). *See* Amended Final Order at 42, 56. The ALC found the prerequisite in both of those statutes—the issuance of a Department Determination—was met because the "Supplemental Certifications were **de facto** department determinations." *Id.* at 45.

In reaching its conclusion, the ALC found that the "controlling issue" in determining whether a Department Determination had been issued was the "finality" of the Department's decision. *Id.* at 44. For the ALC, the "finality achieved" by the Supplemental Certifications in requiring Taxing Entities to issue refunds is what transformed the Supplemental Certifications into Department Determinations. *Id.* at 45. The ALC couched its conclusions in the particular facts of this case. *See, e.g.*, Amended Final Order at 33 ("[U]nder the facts of this case, the Department's certification is the final decision in the Department's review."); *id.* at 44 n.38 ("[T]he Court's conclusion in this case regarding the appealability of the Department's final determination evolves out of the facts of this case."); *id.* at 56 ("I find the Supplemental Certifications are department determinations under the unique circumstances of this case . . .").

The ALC also specifically noted that not every "final" decision by the Department should be considered a Department Determination. *Id.* at 44 n.38. On this latter point, the ALC was correct: Department staff routinely make "final" decisions affecting taxpayers, none of which are intended to be or should be treated as Department Determinations as contemplated under the RPA. For example, Department staff routinely issue "proposed assessments," as defined in the RPA; those decisions by a division are not final when initially made, but can subsequently become "final" if certain actions do not occur after the decision is communicated to the taxpayer. *See* S.C. Code Ann. § 12-60-30(23)

(defining proposed assessment); § 12-60-420 (noting that if taxpayer fails to file a written protest of a division decision, it becomes final). If the taxpayer protests the decision, the appeal follows the procedures in section 12-60-450, which will *lead to* a Department Determination or settlement. If the taxpayer fails to protest, that proposed assessment becomes "final" and cannot be appealed to the ALC absent good cause. *See* S.C. Code Ann. § 12-60-510(A)(2). Either way, that division decision—though final—was never a Department Determination.[9]

The Department contends it did not issue a Department Determination in this matter. However, to the extent this Court disagrees and either adopts or affirms the ALC's conclusion that the "finality" of a decision is what generated a "Department Determination" in this case, the Department respectfully urges this Court to limit narrowly its decision to the unique facts of the instant appeal—as the ALC did—and avoid any broad holdings or tests as to what constitutes a Department Determination as a matter of law. For years, the Department has successfully reviewed taxpayer appeals in accordance with its published procedures and the RPA, which sufficiently define what a Department Determination is and is not. The undersigned is unaware of any other case in which the parties have disputed the existence of a Department Determination or claimed a settlement agreement or supplemental assessment certification constituted Department Determinations. In other words, the standard processes and definitions set forth in the RPA and Revenue Procedure #06-2 are working effectively. Any perceived gaps have adequately been addressed either through administrative or legislative means. *Supra* n.4.

---

[9] Another example is the Taxpayer Rights' Advocate, who is statutorily responsible for facilitating resolutions of taxpayer complaints and problems, particularly when it comes to unsatisfactory treatment by department employees. *See* S.C. Code Ann. § 12-58-30. Although the alleged unsatisfactory treatment often arises from an audit or proposed assessment, the Taxpayer Rights' Advocate's *final* decision regarding those *complaints* is not a Department Determination nor should it give rise to an ALC proceeding.

II. The ALC did not err in concluding that certain of Taxpayers' property qualified for the Exemption for tax years 2010 through 2018.

On appeal, Taxing Entities argue that Farmers Entities' property in ineligible for the Exemption because (a) "telephone service" as contemplated in the Exemption only includes voice services provided over a landline telephone network and (b) in the aggregate, Farmers Entities' property is used only a de minimis amount (as measured by the bandwidth usage of the network) in providing voice services. *See* Taxing Entities Br. at 26, 34–36. The ALC concluded the Exemption is not limited only to traditional landline telephone service, and rejected Taxing Entities' contention that dual-use property cannot qualify for the Exemption. *See* Amended Final Order at 63, 65–66. The ALC's conclusions were not erroneous.

A. The Exemption applies to any property that is "used in providing rural telephone service" in South Carolina.

The current version of the Exemption was enacted in 1978 and provides:

> [N]otwithstanding any other provisions of law, the *property of telephone companies and rural telephone cooperatives operating in this State used in providing rural telephone service*, which was exempt from property taxation as of December 31, 1973, shall be exempt from such property taxation; provided, however, that the amount of property subject to ad valorem taxation of any such company or cooperative in any tax district shall not be less than the net amount to which the tax millage was applied for the year ending December 31, 1973. Any property in any tax district added after December 31, 1973, shall likewise be exempt from property taxation in the proportion that the exempt property of such company or cooperative as of December 31, 1973, in that tax district was to the total property of such company or cooperative as of December 31, 1973, in that tax district.

See 1978 S.C. Acts 621, §2, *codified at* S.C. Code § 12-37-220(B)(10) (emphasis added). The Exemption broadly exempts any property of a rural telephone cooperative or telephone company used to provide a particular service (rural telephone service). By contrast, prior versions of the Exemption provided a blanket exemption of "all property of every kind" (for rural telephone cooperatives) or exempted only a specific type of property or technology ("telephone lines and instruments . . . used in the transmission

of messages, conversation or other means of communication by means of electricity over rural lines"). *See* 1957 S.C. Acts 177, §1, *codified at* S.C. Code § 65-1522.

Because there are only six telephone cooperatives in South Carolina, all of whom have been claiming and receiving the Exemption for many years, there has never been a need for the Department to publish much formal, written guidance regarding the Exemption. *See* Hr'g Tr. 101:14–16, 205:19–22 (R. p. 1614, lines 14–16; p. 1718, lines 19–22). However, the record evidence established the Department has interpreted and applied the Exemption in a consistent manner for decades.

As explained in a 1990 Technical Advice Memorandum, the Department has interpreted the Exemption to exempt *any property* (except from city or town taxes) that is used in providing rural telephone service in any tax district where the cooperative operated in 1973, in the same percentage that property was exempt in 1973 and regardless of when the property was acquired. *See* Tr. Ex. 183 at 1–3 (R. pp. 4135–37). When the Department annually assesses each telephone cooperative's property, it applies the same exempt percentage that was applied the previous tax year, thereby carrying forward that percentage exemption for each cooperative from year to year. *See* Ingram 30(b)(6) Depo., 22:21–23:17 (R. p. 1301, line 21–p. 1302, line 17).

The Department's treatment of Farmers is no different. For 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. *See* Hr'g Tr. 500:9–501:6 (R. p. 2013, line 9–p. 2014, line 6). The Department 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. *See* Hr'g Tr. 118:1–11 (R. p. 1631, lines 1–11). Consistent with its practice for all of the rural telephone cooperatives, each year the Department's Property Division compares Farmers' returns with the annual report it files with the Public Service Commission to

determine what property is "used in providing rural telephone service." The Department applies the one hundred percent exemption calculation *only* to Farmers' regulated assets (e.g. wireline or landline assets), but does not exempt the investments attributable to non-regulated assets (which includes cable, wireless, and ISP). *See* Ingram 30(b)(6) Depo., 22:21–23:23 (R. p. 1301, line 21–p. 1302, line 23).[10]

B. The ALC did not err in finding Taxpayers' property used to provide wireless voice services qualifies for the Exemption because wireless voice services are a type of telephone service.

Despite the Department's consistent application and administration of the Exemption over the years, Taxpayers' exemption requests and protests presented the Department with several novel issues. Prior to this case, the Department had never been squarely presented with determining whether assets used to provide *wireless* service are entitled to the Exemption. *See* Brewer Depo. 45:3–18, 76:25–77:13 (R. p. 1257, lines 3–18; p. 1279, line 25–p. 1280, line 13). The Department was unaware of any other telephone cooperative that has expressly claimed an exemption for wireless assets (or even had wireless assets). *See* Hr'g Tr. 114:22–115:12, 118:18–119:19, 184:11–185:10, 205:23–207:18 (R. p. 1627, line 22–p. 1628, line 12; p. 1631, line 18–p. 1632, line 19; p. 1697, line 11–p. 1698, line 10; p. 1718, line 23–p. 1720, line 18). Thus, the Department's primary focus in reviewing Taxpayers' protest was

---

[10] The ALC's erroneously found that the Department had granted Farmers "a 100% exemption every year even though less than 100% of its property is used to provide rural telephone service," which the ALC characterized as the Department's "misuse of the exemption." *See* Amended Final Order at 68–69. This finding is inconsistent with the record evidence. The Department's utility coordinator specifically testified that the non-regulated assets on the PSC report would *not* be "calculated within that exemption so [Farmers] wouldn't be receiving the exemption and none of the credit for the exemption would be given to that investment." *See* Hr'g Tr. 205:23–207:18 (R. p. 1718, line 23–p. 1720, line 18); Ingram 30(b)(6) Depo. 31:14–33:9 (R. p. 1310, line 14–p. 1312, line 9). The Settlement Agreement and resulting Supplemental Certifications were consistent with this practice: although the Department extended the exemption to wireless telephone services as a result of the settlement, the Department did not exempt property used exclusively to provide Internet, television services (IPTV), or security services. *See* Tr. Ex. 91 at 6 (R. p. 3538); Hr'g Tr. 499:5–500:12; 802:21–803:4 (R. p. 2012, line 5–p. 2013, line 12; p. 2315, line 21–p. 2316, line 4).

whether the Exemption should be interpreted to exempt assets used to provide wireless services. *See* Hr'g Tr. 672:14–673:3 (R. p. 2185, line 14–p. 2186, line 3). The Department ultimately agreed to settle the issue with Taxpayers insofar as it related to tax years 2010–2015. *See* Tr. Ex. 91 at ¶ 7, ¶ 2.1 (agreeing property "used in FTCC's wireless telephone service and Diversified's land-line service" qualified for the Exemption) (R. pp. 3534, 3538).

Likewise, the ALC also found Taxpayers' assets used to provide wireless telephone service qualified for the Exemption because wireless telephone service, like traditional landline telephone service, "connects rural South Carolinians to each other by voice over the public switch telephone network." *See* Amended Final Order at 63. The ALC's finding is supported by the record and analogous statutes and was not clearly erroneous.

1. The ALC did not err in interpreting "telephone service" to apply to the service being provided, not the technology being employed.

Taxing Entities assert that "telephone service" in 1978 meant "voice traffic via an electrical circuit over a pair of copper wires." *See* Tr. Ex. 132 at ¶ 15 (R. p. 3851); *see also* Taxing Entities Br. at 26. According to Taxing Entities, because no reasonable person in 1978 could have contemplated wireless service technologies as we understand them today, property used to provide modern wireless services cannot qualify for the Exemption in 2012 or beyond. *See* Taxing Entities Br. at 26–28.

The ALC correctly concluded that even though the 1978 legislature may not have conceived of a modern wireless network does not mean the application of the Exemption is frozen in time. *See* Amended Final Order at 61. *See Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018) ("While every statute's *meaning* is fixed at the time of enactment, new *applications* may arise in light of changes in the world."); *see also City of Columbia v. Tatum*, 174 S.C. 366, 177 S.E. 541, 549–50 (1934) ("The language of the statute should be construed from a modem viewpoint, and not to prohibit progress in the public interest."); *Brooks v. Northwood Little League Inc.*, 327 S.C. 400, 406–07, 489 S.E.2d 647,

650–51 (Ct. App. 1997) ("[A] statute does not apply only to facts in existence at the time of its adoption. Statutes must be updated functionally to reflect changes in technology, terminology, and the legal landscape."); ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 86 (2012) ("The meaning of rules is constant . . . [o]nly their application to new situations presents a novelty.").

The ALC is not alone; other courts have also found changed circumstances and new technologies that were beyond the conception of the legislature at the time it enacted a statute are to be included within statutory definitions—including in the realm of telephone and telecommunication services. *City of Jefferson v. Cingular Wireless, LLC*, 2005 WL 1384062, at *1 (W.D. Mo. June 9, 2005) (finding ordinance that taxes persons "engaged in the business of supplying telephone and telephonic service" applies to mobile telephone services just as it applies to land line telephone services, even though mobile telephone technology did not exist at the time the ordinance was adopted).

Not only was the ALC's statutory analysis correct, it comports with the evidence presented at trial. Rudimentary wireless networks existed across the county as early as the 1960s, and the first commercial wireless cellular networks were deployed in 1983. *See* Hr'g Tr. 400:12–402:11, 920:14–21 (R. p. 1913, line 12–p. 1915, line 11; p. 2433, lines 14–21). As early as 1974, federal regulators were already laying the regulatory groundwork for wireless telephone networks that would interconnect with existing telephone systems, which they believed were at least three years away from operation. *See Nat'l Ass'n of Regulatory Util. Comm'rs v. F.C.C.*, 525 F.2d 630, 634–35 (D.C. Cir. 1976).[11]

Even Taxing Entities' expert conceded that radio phones existed prior to 1978, and that there were probably regulators and research and development engineers who were aware that the deployment of cellular networks was on the horizon. *See* Hr'g Tr. 388:24–390:12 (R. p. 1901, line **24–**

[11] Notably, the South Carolina Public Service Commission was an intervenor in this case.

p. 1903, line 12). In light of this record evidence, it is impossible to conclude definitively the legislature *did not* have wireless cellular service in mind in 1978. *See* Taxing Entities Br. at 28. Moreover, witnesses for both parties offered similar testimony that, at bottom, "telephone service" has always been understood—both by engineers and customers—to mean the ability of end-users or subscribers to communicate over distance, whether via copper wires or otherwise. *See* Hr'g Tr. 260:13–23, 579:14–21 (R. p. 1773, lines 13–23; p. 2092, lines 14–21).

In light of above case law and testimony, the ALC did not err in concluding the Exemption applies to the service being provided, "not the medium or technology used to provide it." *See* Amended Final Order at 63; *see also* Hr'g Tr. 436:25–438:17, 579:22–580:7 (R. p. 1949, line 25–p. 1951, line 17; p. 2092, line 22–p. 2093, line 7).

2. Related statutes define "telephone service" in broad, evolving terms.

The ALC's interpretation of what constitutes "telephone service" as contemplated in the Exemption is also consistent with other analogous statutory authority.[12] For example, the Telephone Cooperative Act ("TCA"), under which Farmers is organized, defines "telephone service" to mean

> the providing of ***communication service including, but not limited to, the transmission of voice,*** sounds, signals, pictures, writing, or signs of all kinds ***through the use of electricity or the electromagnetic spectrum between the transmitting and receiving apparatus***, together with any communication services requiring band-width capacity, community antenna, and cable television services and including all lines, wires, radio, lights, electromagnetic impulse and all facilities, systems, or other means used in the rendition of such services, but not including message telegram service or radio broadcasting services or facilities within the meaning of Section 3(o) of the Federal Communications Act of 1934, as amended (47 USC Section 153(o)).

[12] For a thorough discussion of various dictionary definitions of "telephone" from 1966, 1969, 1982, and 2000, see *City of Jefferson v. Cingular Wireless, LLC*, 2005 WL 1384062, at *3 (W.D. Mo. June 9, 2005), in which the court concluded that "telephone" has been defined broadly and that being connected to a wire is not an essential characteristic of a telephone. *See also Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005) (noting courts may consult dictionaries when interpreting an undefined statutory term).

S.C. Code Ann. § 33-46-20(5). A South Carolina telephone cooperative is a corporation that was or is financed under the provision of the Rural Electrification Act of 1936, *see* S.C. Code Ann. § 33-46-20, and the above definition of "telephone service" is almost identical to the definition used in the Rural Electrification Act of 1936:

> As used in this title, the term "telephone service" shall be deemed to mean ***any communication service for the transmission or reception of voice, data***, sounds, signals, pictures, writing, or signs of all kinds ***by wire, fiber, radio, light, or other visual or electromagnetic means, and shall include all telephone lines, facilities, or systems used in the rendition of such service***; but shall not be deemed to mean message telegram service or community antenna television system services or facilities other than those intended exclusively for educational purposes, or radio broadcasting services or facilities within the meaning of section 153(o) of Title 47.

7 U.S.C.A. § 924 (West).

These definitions of "telephone service" were enacted or amended after the current version of the Exemption in 1978, but the definitions are still instructive. *See* 1994 S.C. Act No. 392 (enacting TCA); *see also* Food, Agriculture, Conservation, and Trade Act of 1990, PL 101–624, 104 Stat. 3359 (amending definition of "telephone service" in 7 U.S.C. § 924(a)). The TCA links its definition of "telephone cooperatives" to the Rural Electrification Act of 1936 "*and acts amendatory thereto.*" *See* S.C. Code Ann. § 33-46-20 (emphasis added). So, telephone cooperatives organized under the TCA, which are the entities most likely to receive the Exemption, are specifically defined in terms of the "evolving" federal definitions of "telephone services" that date back to 1936.

Each amended definition in the federal amendments since 1936 has tended to further broaden—rather than restrict—the definition of "telephone service," as illustrated by the various definitions of "telephone service" in the Rural Electrification Act of 1936:

"***any communication service whereby voice communication*** through the use of electricity between the transmitting and receiving apparatus, is the principal intended use thereof, and shall include ***all telephone lines, facilities, or systems used in the rendition of such service***...."	"***any communication service for the transmission of voice***, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity between the transmitting and receiving apparatus, and shall include ***all telephone lines, facilities or systems used in the rendition of such service***..."

See Pub. L. No. 81-423, 63 Stat. 948 (1949) (emphasis added)	*See* Pub. L. No. 87-862, 76 Stat. 1140 (1962) (emphasis added)
"***any communication service for the transmission or reception of voice, data***, sounds, signals, pictures, writing, or signs of all kinds ***by wire, fiber, radio, light, or other visual electromagnetic means*** and shall include ***all telephone lines, facilities or systems used in the rendition of such service***..."	"***any communication service for the transmission or reception of voice, data***, sounds, signals, pictures, writing, or signs of all kinds ***by wire, fiber, radio, light, or other visual or electromagnetic means***, and shall include ***all telephone lines, facilities, or systems used in the rendition of such service***..."
See Pub. L. No. 101-624, 104 Stat. 3359 (1990) (emphasis added)	*See* 7 U.S.C.A. § 924 (West) (current version, last amended in 1993)

In the absence of a specific definition within section 12-37-220, these related statutory definitions are informative in interpreting the meaning of "telephone service" in the Exemption. When the Department initially chose to settle this matter with Taxpayers, it specifically considered whether the Exemption was intended to exempt certain functions and services, rather than specific technologies. *See* Tr. Ex. 33 at 6 (R. p. 2865). The ALC correctly affirmed this approach by concluding the term "telephone service" is a flexible concept that should encompass new technologies providing "the same service in substance if not in precisely the same form." *See* Amended Final Order at 61–62.

Accordingly, in the Department's view, the ALC did not err in holding that wireless service, although a different technology, is still "telephone service" as used in section 12-37-220(B)(10). *See* Amended Final Order at 61–63.

C. The plain language of the Exemption does not include a requisite level of "use" in order for property to qualify for the exemption.

Taxing Entities argue the property of rural telephone cooperatives like Farmers Entities is wholly ineligible for the Exemption if its "use" in providing landline telephone service is *de minimis*. *See* Taxing Entities Br. at 24–36. According to Taxing Entities, during the disputed tax years the Farmers Entities' network was used no more than 5% in delivering voice services (as measured by bandwidth utilization), and such *de minimis* use is not sufficient to qualify for the exemption. *See* Taxing

Entities' Br. at 34–36. The ALC agreed the relative use of Farmers Entities' network for voice telephone service is *de minimis*, but declined to hold that such *de minimis* usage rendered the property ineligible for the Exemption. *See* Amended Final Order at 67. By granting Taxpayers a 75% partial Exemption, the ALC effectively rejected Taxing Entities' argument that the primary or dominant use of the property controls whether it is exempt at all. A plain reading of the Exemption supports the ALC's rejection of an "all or nothing" interpretation.

As the ALC noted, the Exemption is conspicuously silent when it comes to defining threshold levels of "use" necessary to qualify for the exemption. Section 12-37-220(B)(10) does not define the word "used" or contain the qualifiers that other property tax exemption statutes expressly contain (e.g. exclusively or primarily), nor does the statute prohibit the exempt property from having a "dual use." *See* Amended Final Order at 65 and n.44. Thus, it is reasonable to construe the absence of such qualifiers in the Exemption to mean the legislature did not intend to impose a primary-usage requirement in order for the property to qualify for the Exemption. *See Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993) (noting the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature).

In addition, assuming the Exemption should be construed to differentiate between property used exclusively to provide telephone voice service and property that provides telephone service plus other telecommunication services, the statute provides no guidance or direction for determining what level of usage is enough to constitute primary versus incidental use. Nor does the plain language of the statute—"the property . . . used in providing rural telephone service . . . shall be exempt"—support an interpretation that if the exempt use is something less than primary then the property is rendered wholly ineligible for the exemption (as Taxing Entities contend). *See Hibernian Society v. Thomas*, 282 S.C. 465, 469, 319 S.E.2d 339, 341–42 (Ct. App. 1984) (analyzing "fraternal order" exemption in

section 12-37-220(B)(12) and concluding property was exempt because it was being used for exempt purposes even if deriving significant income from non-exempt purposes).[13]

Moreover, to the extent the property is uniquely capable of providing a variety of commingled, intangible telecommunication services (telephone service, broadband, television, etc.) through the same tangible assets (cables, wires, routers, and switches), the statute is also silent on how "usage" should be measured. As this case illustrates, there are multiples ways to determine the manner in which property is being "used" (e.g. bandwidth versus minutes-of-use). Even the "usage" of a landline telephone system, which both parties agree indisputably qualifies for the Exemption, is relative to the perspective of the user: the telephone cooperative may view the landline cable as being used primarily to provide reliable access to telephone service, but the rural customer may view that landline cable as primarily providing a broadband connection for her child's virtual classroom. The absence of any clear statutory guidance regarding what manner or measurement of "use" is enough is even more pronounced when compared to the pollution control exemption found in section 12-37-220(A)(8), which *does* include a specific formula for calculating the value of an exemption on property that serves a dual purpose.

Therefore, the ALC did not err in declining to insert into the statute an additional requirement that the property must be *primarily* or *exclusively* used in providing rural telephone service in order to qualify for the exemption. The ALC also rightly rejected the argument that a *de minimis* use of the property for exempt purposes (as qualified and quantified by bandwidth usage) rendered all of the property ineligible for the Exemption. Without any clear, statutory guidance for establishing what

---

[13] The Department has never asked taxpayers who are applying for the Exemption to prorate mixed use or dual use assets. *See* Ingram 30(b)(6) Depo., 29:9–12 (R. p. 1308, lines 9–12). Similarly, the Department has not required taxpayers to provide information on the level of use of the property or whether it is being used exclusively or primarily for the exempt purpose of providing rural telephone service. *See* Ingram 30(b)(6) Depo., 26:9–16 (R. p. 1305, lines 9–16).

constitutes primary versus incidental usage or whether dual-use property is ineligible for the exemption, the ALC was not wrong to decline imposing a threshold requirement where the statute does not. *Hampton v. Haley*, 403 S.C. 395, 403–04, 743 S.E.2d 258, 262 (2013) (noting that public policy decisions should generally be left to the prerogative of the legislature).[14]

D. The ALC erred in calculating a partial exemption based on the cost to build a voice-only network, and this Court should decline to endorse that method as the rule for how the Department administers the Exemption prospectively.

Notwithstanding the ALC's reluctance to apply the Exemption based on a primary versus incidental or *de minimis* analysis, the ALC ultimately granted only a partial exemption of 75% for Diversified's and FTCC's assets. *See* Amended Final Order at 71. 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. *See* Amended Final Order at 68-71. The ALC determined that a voice-only network would cost 25% less than Farmers Entities' current network, so the ALC concluded that only 75% of Diversified's and FTCC's assets are used to provide rural telephone service and therefore entitled to the Exemption. *Id.* at 71.

In a rare moment of consensus, both Taxing Entities and Taxpayers agree the ALC erred in this regard, albeit for different reasons. *See* Taxing Entities' Br. at 38; Farmers Entities' Br. at 34-30. The Department likewise finds the ALC's "cost approach" for granting a partial exemption is

---

[14] Some property tax exemption statutes provide a specific method for determining how to assess property that is used for exempt and non-exempt purposes. *See, e.g., Larimer Cty. Bd. of Commissioners v. Colorado Prop. Tax Adm'r*, 316 P.3d 60, 73 (Co. Ct. App. 2013) (analyzing specific statute and regulations dealing with incidental use of tax-exempt property, which provide specific formulas for calculating partial usage and permit property to maintain full exempt status so long as the usage for non-exempt purposes does not exceed certain hours or gross income thresholds); *6787 Steelworkers Hall, Inc. v. Scott*, 933 N.E.2d 591, 595 (Ind. T.C. 2010) (noting that Indiana code limits the exemption to a specific ratio based on a reconciliation of the property's actual amount of time usage during the year).

problematic; it was unnecessary, and creates an unworkable method for the Department to implement with respect to its prospective administration of the Exemption.

Once the ALC concluded the Exemption did not include a "primary versus incidental" threshold and did not prohibit "dual use" property from receiving the Exemption, the sole dispositive question should have been whether the property at issue is "used in providing rural telephone services." *See* S.C. Code Ann. § 12-37-220(B)(10). This is all that the statute requires, and this is a simple, straightforward method for the Department to apply. The ALC did not need to take the extra step of choosing a method for capturing how much the network is utilized for telephone versus non-telephone services, because the expert testimony from both parties established that Taxpayers' property *is used in providing rural telephone service. See* Hr'g Tr. 406:18–407:1; 434:11–23; 800:11–17; 1017:2–1018:6 (R. p. 1919, line 18–p. 1920, line 1; p. 1947, lines 11–23; p. 2313, lines 11–17; p. 2530, line 2–p. 2531, line 6); Tr. Ex. 132 at ¶ 23 (R. p. 3855); *see also* Amended Final Order at 66 (defining "used" and concluding that under the standard dictionary definition "the [E]xemption would be granted for assets employed to accomplish rural telephone service"); Amended Final Order at 66–68 (finding majority of the property is "physically needed to provide voice telephone service"). The expert testimony also established the Farmers Network would consist of virtually the same infrastructure as is currently in place, even if Taxpayers were to provide only voice service. *See* Hr'g Tr. 1022:14–1023:10, 1034:7–13 (R. p. 2535, line 14–p. 2536, line 10; p. 2547, lines 7–13).

More importantly, the ALC's novel method of exempting a portion of the network based on the cost of establishing a voice-only rural telephone network is problematic as it relates to the Department's future administration of the Exemption. Although the ALC appeared to limit its ultimate finding (a voice-only network would cost 25% less) to the "facts of this case," the ALC's decision is unclear as to whether the Department must continue exempting only 75% of FTCC's and Diversified's property in future tax years. *See* Amended Final Order at 71. Does the 75% partial-

exemption apply to new property acquired by Taxpayers, or only the existing property and network? Does it matter if the newly acquired property is used exclusively for voice-only services versus part of the broader dual-use network? To complicate matters even more, the ALC's finding that "25% of the equipment would not be needed for a telephone-only network" does not appear to be based on any demonstrable evidence or testimony in the record, thereby leaving the Department to guess in the future as to what specific property is or is not essential for a voice-only network and whether that 25% discount should ever increase or decrease as a result. *Id.* at 71 n.55; *see also* Taxing Entities Br. at 38–40; Farmers Entities Br. at 37–38.[15]

Moreover, the ALC's 75/25 partial exemption calculation does not clearly explain how, or to what extent, its decision to grant a partial exemption to FTCC and Diversified applies vis-à-vis the entirety of the Farmers Entities' network, the majority of which is owned by Farmers. *See* Hr'g Tr. 303:9–22, 455:7–15, 520:12–17, 543:4–8, 617:9–17 (R. p. 1816, lines 9–22; p. 1968, lines 7–15; p. 2033, lines 12–17; p. 2056, lines 4–8; p. 2130, lines 9–17). The ALC's analysis regarding the percentage of

---

[15] The ALC's method of calculating the "relative use" of the property appears to be a modified adaptation of the Department's traditional unit valuation concept. *See* Amended Final Order at 70. This is an unusual application of the unit valuation concept, which is typically utilized by the Department for purposes of *valuing* certain property that is *taxable*, not determining whether or to what extent that property is *exempt from taxation*. The Department uses unit valuation to determine the value of property belonging to certain entities (e.g. railroads, utilities, and telecommunications companies) whose property is part of an integrated system that spans multiple tax districts. *See* S.C. Code Ann. § 12-5-540; *CSX Transportation, Inc. v. South Carolina Department of Revenue*, 851 F.3d 320, 323 (4th Cir. 2017). Because the nature of these assets do not lend themselves to traditional fair market value appraisals, unit valuation allows the appraiser to value the property as part of a whole operating unit, regardless of where the property is located. The unit valuation method can value the property based on its gross investment (cost approach), the revenue it generates (income approach), or a combination thereof. The Department historically used the gross investment costs to value the property of utilities like Farmers, although as a result of this case it has begun to reevaluate whether it should also incorporate some aspect of the income approach to assessing multi-use property of rural telephone cooperatives. *See* Hr'g Tr. 201:19–205:8 (R. p. 1714, line 19–p. 1718, line 8). The ALC found the revenue method of unit valuation was not an appropriate measure of "usage" because the ALC believed the revenue from landlines "overrepresents the use of the network for landline services." *See* Amended Final Order at 71 n.52.

exempt property repeatedly discussed both the "interconnected" nature of the "Taxpayers' network" and the "relative use of Farmers Entities' network." *See* Amended Final Order at 66. Indeed, even Taxing Entities acknowledge it is impossible for the Department to "segregate specific assets by use" because of the interconnected nature of the network. *See* Taxing Entities Br. at 32. The ALC applied its cost approach method based on the "current Farmers Entities' network," but discounted the Exemption by 25% only as to Diversified and FTCC. From the Department's perspective, this specific matter and ALC proceeding were only about the applicability and scope of the Exemption as it relates to the assets of FTCC and Diversified; the Exemption as it relates to Farmers' was never considered by the Department as was not before the ALC.[16] However, as evidenced by Taxing Entities initial brief, the ALC's ruling as to Taxpayers based on its analysis of all Farmers Entities' property is not clear on this issue. *See* Taxing Entities Br. at 51-55. The lack of clarity in the ALC's analysis has made it difficult for the Property Division to determine whether the partial exemption must be applied to Farmer Coop (or other rural telephone cooperatives) in the future.

Further, the Department lacks the expertise necessary to apply the ALC's novel cost approach to a partial exemption to the Taxpayers or other rural telephone cooperatives or companies. Among other things, the Department is tasked with administering tax laws—including the Exemption—fairly,

---

[16] The initial exemption and refund request related to FTCC. *See* Tr. Ex. 15 (R. pp. 2703–28). The subsequent protests dealt with the exemption as it related to "the assets of FTCC and Diversified." *See* Tr. Ex. 81 (R. pp. 3365–87). The Settlement Agreement, which the Taxing Entities attached to their request for a contested case hearing as the "department determination," settled the exemption only as it related to FTCC and Diversified. *See* Tr. Ex. 91 at ¶ 2.1 (R. p. 3538). In a July 6, 2017 memorandum, the Property Division notified the county auditors that the property tax appeal had been resolved *regarding FTCC and Diversified*, and attached Supplemental Certifications for those two entities. *See* Tr. Ex. 124 at 1 (R. p. 3799). And the Taxing Entities attached those same Supplemental Certifications as an exhibit to their Consolidated Supplement to Request for Contested Case Hearing, in which they argued these Supplemental Certifications were also "department determinations." *See* Consolidated Supplement to Request for Contested Case Hearing at 1, 4 (filed July 17, 2017) (R. p. 257, 260).

uniformly, and consistently to similarly situated taxpayers. To comply with the ALC's decision in administering the Exemption in future years, the Department must now evaluate the infrastructure of every rural telephone cooperatives' modern telecommunication network in order to determine (a) how much of that network would be necessary if it only provided voice telephone services,[17] and (b) what is the taxable cost of those essential components. Although the Department's Property Division staff are trained and qualified to value property under a variety of appraisal methods, the analysis needed to calculate the Exemption under the ALC's novel cost approach requires an expertise in the telecommunications industry. *See* Amended Final Order at 71 and n.55 (basing its conclusions on the opinions of an expert with 37 years of experience in the telecommunications industry). Yet even the experts were unsure what component assets were essential or what the cost-savings for a voice-only network might be. *Id.* The ALC's methodology imposes on the Department an unrealistic level of expertise for applying the Exemption going forward.[18]

For these reasons, the Department submits this Court should reject the ALC's novel calculation for determining the proportion of property entitled to the Exemption, and instead apply the Exemption based on a straightforward interpretation of the statute that can reasonably be

---

[17] Under the ALC's holding, the core components necessary to build a voice-only network are exempt, but the incremental addition of assets that enable the network also to provide non-exempt services are not—even if those assets are part of the same interconnected network and are still used to provide the exempt service. This is the equivalent of discounting a vehicle property tax exemption (which otherwise exempted the full value of any vehicle used to transport people to or from a school) on the theory the taxpayer should not have bought a fully-loaded Chevrolet Silverado when a Yugo would suffice.

[18] The legislature has recognized certain situations in which the applicability of a property tax exemption requires expertise beyond that of the taxing agency. For example, the pollution control exemption authorizes the Department to request the Department of Health and Environmental Control (presumably experts in matters related to pollution control) to investigate the property to determine the portion of the property that qualifies as pollution control property. *See* S.C. Code Ann. § 12-37-220 (A)(8).

implemented by Department staff: if property (including dual-use property) is *used in providing rural telephone service*, it is exempt. However, to the extent the Court affirms the ALC's conclusions regarding the partial exemption, the Department again respectfully urges this court to limit its holding narrowly to the facts of this case without adopting the ALC's cost approach as the definitive standard for applying the Exemption to these or other taxpayers in future years.

III. The ALC did not err in affirming the Department's decision to grant a refund to FTCC for tax years 2014 through 2016.

One of the primary issues addressed by the ALC was whether FTCC or Diversified properly and timely applied for the Exemption. The ALC once again crafted a narrow ruling on this issue, finding that "under the facts of this case" (a) Taxpayers' tax returns were the only documents that constituted proper "applications" and (b) those applications were timely filed only for tax years 2014–2016. *See* Amended Final Order at 72, 77 n.64. Throughout the pre-hearing administrative appeal and the ALC proceeding, the Department considered the totality of the correspondence and documents submitted by Taxpayers as sufficient exemption applications for all the tax years at issue. Therefore, the ALC did not err in holding that, at a minimum, FTCC and Diversified properly applied for the Exemption in tax years 2014–2016.

A. The application process for the Exemption consists of a combination of statutory requirements and Department practice.

As the ALC observed, "the exact method and timeline for applying for an exemption is somewhat unclear." *See* Amended Final Order at 74. The statutory framework for applying for the Exemption is found in sections 12-4-720 and 12-54-85(F), and has been summarized by the Department in its South Carolina Property Tax Manual. *See* Tr. Ex. 180 at 46, 55–56 (R. pp. 4082, 4091–92). In order to receive the Exemption, a rural telephone cooperative must apply for the Exemption, and do so within three years from the time the return was filed or two years from the date the property tax was paid, whichever is later. *Id.* § 12-4-720(A) (citing the timeline in § 12-54-85(F));

Tr. Ex. 180 at 46, 55 (R. pp. 4082, 4091). One way to apply for the Exemption is to file a property tax return listing property as exempt. *Id.* § 12-4-720(B). Once the Exemption is granted, the rural telephone cooperative does not have to reapply for the Exemption each year unless there is a change in the status of the property, but the cooperative still must *claim* the Exemption on its property tax returns each year thereafter (to give the Department notice to continue granting the exemption to property it previously found exempt). *Id.* § 12-4-720(C)-(D); *see also* Tr. Ex. 180 at 56 (R. p. 4092).

The ALC concluded Taxpayers could have timely applied for the Exemption either by listing list the property as exempt on their original return, or listing the property as exempt on an amended return timely filed pursuant to section 12-54-85(F). *See* Amended Final Order at 77. Both of these methods are correct, but the statute permits a third option: Taxpayers could also have timely applied for the Exemption by filing an application—separate from the return—with the Department within three years of when the original returns were filed or two years of when the tax was paid.[19] As the ALC correctly noted, Section 12-4-720(A)(1) "says nothing about applying for the exemption on the return." *See* Amended Final Order at 74. Rather, subsection (A)(1), when read in conjunction with subsection (B), indicates there are multiple ways to apply for the Exemption, including listing the property as exempt on the return *or* filing an application *after* the return was filed. *See also TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (noting taxpayers may apply for exemptions separately from their tax returns).

The Department does not have a specific application form for the Exemption, nor is there any written instruction or guidance about how to apply for the Exemption other than the Property Tax Manual referenced above. *See* Ingram 30(b)(6) Depo., 11:23–12:22 (R. p. 1290, line 23–p. 1291,

[19] The ALC did acknowledge that taxpayers could generally apply for an exemption through means other than on an original or amended return, but concluded that "under the facts of this case" only Taxpayers' returns could be deemed "applications." *See* Amended Final Order at 77 n.64.

line 22). This is not surprising, because there are only six rural telephone cooperatives in South Carolina (including Farmers) and all of those cooperatives have been receiving the exemption for years and therefore did not need to reapply for the Exemption (or need guidance on how to do so). *See* Hr'g Tr. 101:14–16, 205:13–22 (R. p. 1614, lines 14–16; p. 1718, lines 13–22). Rather than a specific application form, the Department has historically granted the Exemption to rural telephone cooperatives based on several collective filings and the percentage Exemption granted to each cooperative the previous year.[20] *See* Ingram 30(b)(6) Depo., 11:23–12:22, 22:21–23:17 (R. p. 1290, line 23–p. 1291, line 22; p. 1301, line 21–p. 1302, line 17). Farmers has always claimed a 100% exemption by listing its property on its return. *See* Hr'g Tr. 470:23–471:2; 497:22–498:2 (R. p. 1983, line 23–p. 1984, line 2; p. 2010, line 22–p. 2011, line 2).

The relevant timeline for claiming a refund of property taxes is similar to the application for an exemption. A rural telephone cooperative can seek a refund of property taxes paid, so long as the refund claim is filed within three years of when the return was filed or the tax was paid. *Id.* § 12-60-2150(A) (citing the timeline in § 12-54-85(F)). Because the Exemption requires an application, no refund of property taxes may be given unless the application was timely filed. *Id.* § 12-60-1750; *see also* Tr. Ex. 180 at 36, 55–56 (R. pp. 4072, 4091–92) (citing sections 12-4-720 and 12-54-85(F) and advising taxpayers that a claim for refund "based on an exemption requiring an application" will not be granted "unless the application was timely filed"). However, when sections 12-4-720(A)(1), 12-60-1750, and 12-60-2150(A) are read in conjunction with section 12-54-85(F), it appears the statutes contemplate a

[20] Those forms include the main utility property tax form (PT-420), along with either a PT-427 or a PT-429, both of which contain distribution information identifying the taxpayer's gross investments by taxing district. Telephone companies and cooperatives that have received the exemption in the past also file copies of their annual report to the PSC, which the Department uses as a way to crosscheck the value of the taxpayer's gross investments. The Department has historically treated the combined PT-420, PT-427, and PT-429 (along with the PSC report) as the means by which a telephone company or cooperative claims the Exemption. *See* Tr. Ex. 3 (R. pp. 2588–2637); Tr. Ex. 31 (R. p. 2833–2857); Tr. Ex. 55 (R. p. 3091–3107).

scenario in which a taxpayer may properly file an initial application for exemption and a claim for refund of taxes paid on that exempt property at the same time, and *after the return was filed*, provided the application and refund claim are filed within three years from the time the return was filed.

B. The Department treated Taxpayers' collective filings as a proper application for all of the tax years at issue, so the ALC did not err in finding Taxpayers had properly applied for at least some of those tax years.

When Taxpayers filed their initial returns for the tax years in question, they filed the same forms, provided the same information, and listed their property in the same way Farmers had always done. *See* Hr'g Tr. 177:17–178:18, 474:7–24 (R. p. 1690, line 17–p. 1691, line 18; p. 1987, lines 7–24).[21] Farmers Entities' attorney also sent subsequent correspondence to the Department confirming that FTCC and Diversified were claiming the exemption, including a 3-page letter detailing its "Exemption Request and Refund Claim"). *See* Hr'g Tr. 658:20-659:24 (R. p. 2171, line 20–p. 2172, line 24); Tr. Ex. 15 (R. p. 2703–05); Tr. Ex. 18 (R. p. 2740); Tr. Exs. 20–22 (R. p. 2774; p. 2777; p. 2779). Because these collective filings were submitted to the Department within three years from the due date of the applicable property tax returns, the Department believed FTCC had timely requested the Exemption for 2010–2012 as permitted under section 12-4-720(A)(1). *See* Ingram 30(b)(6) Depo, 45:1-22 (R. p. 1323, lines 1–22). The Department's analysis was similar for FTCC's claims for tax years 2013–2015, as well as Diversified's claims for tax years 2013–2015.[22]

---

[21] As the ALC found, listing property as exempt can qualify both as an application and as claiming the exemption for that tax year. *See* Amended Final Order at 74 n.58. The Farmers Entities' CFO testified that when he filed Taxpayers' initial returns, he listed the assets on the returns in exactly the same manner as when Farmers files its returns, and when he requested the exemption for FTCC and Diversified, they were claiming the exemption on 100% of the property, just as Farmers has always done. *See* Hr'g Tr. 498:7–499:4 (R. p. 2011, line 7–p. 2012, line 4); *see also* S.C. Code Ann. § 12-4-720(B) ("If a taxpayer files a property tax return listing property as exempt, *that listing is considered an application for exemption* from property taxes.") (emphasis added).

[22] In letters to the Department dated February 18, 2014, November 6, 2014, and October 8, 2015, FTCC protested the Department's failure to grant the Exemption on FTCC's property for tax years

The ALC concluded section 12-4-720 requires a rural telephone cooperative to list their property or otherwise apply for the Exemption on its return. *See* Amended Final Order at 84. Because the ALC determined neither FTCC nor Diversified applied for the exemption on their returns, the ALC concluded the Department's treatment of FTCC's and Diversified's claim for the Exemption and related refunds was improper for most of the tax years in question (FTCC for 2010-2016, and Diversified for 2013-2017). *Id.* However, the ALC agreed with the Department that an amended return claiming the exemption and seeking a refund it timely—even if the original return had not claimed the exemption—so long as it is filed within the three year time period of section 12-54-85(F). *See* Amended Final Order at 84-91; *see also* Brewer Depo., 60:10–25, 62:19–63:22 (R. p. 1271, lines 10–25; p. 1272, line 19–p. 1273, line 22); Ruple 30(b)(6) Depo.47:5-48:22 (R. p. 1404, line 5–p. 1405, line 22).

Here, after executing the Settlement Agreement FTCC and Diversified filed amended property tax returns for 2010-2016.[23] The purpose of requiring the amended tax returns was *not* to cure any alleged deficiency in the application for or claiming of the Exemption. *See* Hr'g Tr. 178:15–179:11 (R. p. 1691, line 15–p. 1692, line 11). Rather, because FTCC and Diversified had initially claimed the Exemption for 100% of their assets, *see* Hr'g Tr. 497:22–499:20 (R. p. 2010, line 22–p. 2012, line 20); Tr. Ex. 20 (R. p. 2774), the Property Division needed the amended returns to segregate the property

---

2013, 2014, and 2015, respectively. *See* Tr. Ex. 79 (R. pp. 3293–95); Tr. Ex. 81 (R. pp. 3365–67), Tr. Ex. 86 (R. pp. 3474–76). Diversified filed similar protests relating to its property on February 18, 2014, November 6, 2014, and October 8, 2015 for tax years 2013, 2014, and 2015, respectively. *See* Tr. Ex. 80 (R. pp. 3302–04); Tr. Ex. 81 (R. pp. 3365–67); Tr. Ex. 86 (R. pp. 3474–76).

[23] The ALC's conclusions regarding the insufficiency of Taxpayers' application and claim for the Exemption are confusing in light of the ALC's earlier holding that the Settlement Agreement was final and conclusive as to the Taxpayers and Department. By *approving* the Exemption for certain tax years (2010–2015), the Settlement Agreement necessarily established finally and conclusively that Taxpayers had *applied* for the Exemption. Thus, the ALC's holding that Taxpayers' did not properly apply for the Exemption was in fact an administrative or judicial reopening of the settlement agreement. *But see* S.C. Code Ann. § 12-4-320(4) (prohibiting administrative or judicial action that reopens a settlement agreement).

so it could calculate revised assessments and certifications to grant the Exemption only for that property that was deemed exempt as a result of the negotiated Settlement Agreement, *see* Tr. Ex. 91 at ¶2.2 (R. p. 3534); Hr'g Tr. 144:10-145:7 (R. p. 1657, line 10–p. 1658, line 7). [24] In other words, the Department never believed that FTCC and Diversified had *not* applied for the exemption in a timely manner. *See* Ingram 30(b)(6) Depo., 45:1-22 (R. p. 1323, lines 1–22).

Therefore, because Taxpayers took a number of steps to claim or apply for the exemption during the years at issue, the Department considered those various filings as sufficient and timely applications or refund claims and granted the refunds for *all* of the years in question. In light of how it previously treated Taxpayers' exemption and refund requests and its view that a timely filed amended return constitutes a sufficient application, the Department submits the ALC did not err in holding that, at a minimum, FTCC had properly applied for the Exemption for tax years 2014–2016.

C. The ALC erred in its analysis of the agency deference doctrine.

In discussing whether Taxpayers had properly applied for the Exemption, the ALC characterized the Department's explanation of how it typically administers the Exemption as an "implicit" argument that "its interpretation of what constitutes an application for exemption should be entitled to deference." *See* Amended Final Order at 80. With one exception, the Department never invoked the agency deference doctrine during the contested case.[25] However, it did provide testimony

---

[24] The ALC found that Diversified's amended returns for 2013-2016 and its original return for 2017 failed to make a sufficient application for the Exemption. *See* Amended Final Order at 86-87. This is a curious conclusion that appears to elevate form over substance, especially in light of the fact there is not a specific Department form that constitutes an "application" for the Exemption; the amended returns were filed after "it became clear in 2013" that Diversified was attempting to claim the exemption, *id.*; the Settlement Agreement granted the Exemption to Diversified for tax years 2013-2015; and the Department was able to glean from the amended returns and subsequent original returns the information it needed to apply the exemption and certify the property assessments to the Taxing Entities, *see* Hr'g Tr. 195:13–196:19 (R. p. 1708, line 13–p. 1709, line 19).

[25] The only time the Department explicitly mentioned agency deference was in its proposed order, suggesting the Department's longstanding practice of granting Farmers a 100% Exemption on its

and evidence it believed would help the ALC understand why, from the Department's perspective, its review and resolution of this property tax matter complied with the statutory framework and the Department's general practice regarding proposed assessments, applications for exemptions, claims for refund, and taxpayer appeals. Regardless, to the extent the Court finds that agency deference is relevant for deciding this appeal, the Department submits there were at least two errors in the ALC's application and interpretation of the deference doctrine.

First, the ALC incorrectly concluded an agency's longstanding practice or interpretation is only entitled to deference if it is contained in a formal ruling or publication. *See* Amended Final Order at 82 (concluding that in order for the Department to "truly [have] a long-standing interpretation" the interpretation must be recorded in formal rulings or published guidance to put taxpayers on notice). The agency deference doctrine requires a two-step analysis: (1) does the language of the statute or regulation directly speaks to the issue, and (2) if not, is the agency's interpretation of the statute and regulation worthy of deference. *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 32–33, 766 S.E.2d 707, 717 (2014). If the statute is silent on the issue, the reviewing court "*must* give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." *Id.* (citing *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984)); *see also Sierra Club v. S.C. Dep't of Health & Envtl. Control*, 426 S.C. 236, 256, 826 S.E.2d 595, 606 (2019) (same).

A formal ruling or publication may be *sufficient* evidence of an agency's longstanding interpretation of a statute, but it is not *necessary* evidence. Similarly, although a position espoused in a formal document issued by the Department would be entitled to greater weight than an interpretation by Department staff, especially where the two interpretations conflict, *see Neal v. Brown*, 383 S.C. 619,

---

eligible property is entitled to deference, even though the Department does not maintain records of what property Farmers owned or what its exempt percentage was as of December 31, 1973.

682 S.E.2d 268 (2009), the absence of a formal ruling or publication does not mean the Department does not have an interpretation or administrative practice. In fact, the ALC specifically found that "Department staff" *did* have a routine administrative practice. *See* Amended Final Order at 83.[26]

Second, the ALC incorrectly concluded the Department's administrative practice in this case had not been consistently applied to all applicable taxpayers. *See* Amended Final Order at 82–83. The record is devoid of evidence suggesting the Department has ever required an application process different than the one used by Farmers and Taxpayers. The evidence compels an opposite finding: the Department has historically applied the Exemption to Farmers and other rural telephone cooperatives in a consistent manner. *See* Hr'g Tr. 114:22–115:12, 118:18–119:19, 176:25–179:11, 205:19–207:18 (R. p. 1627, line 22–p. 1628, line 12; p. 1631, line 18–p. 1632, line 19; p. 1689, line 25–p. 1692, line 11; p. 1718, line 19–p. 1720, line 18); Ingram 30(b)(6) Depo., 11:23–12:22, 21:21–23:17, 26:9–16, 29:9–12 (R. p. 1290, line 23–p. 1291, line 22; p. 1300, line 21–p. 1302, line 17; p. 1305, lines 9–16; p. 1308, lines 9–12).

In fact, the ALC specifically found the Department did have an "administrative practice" of applying the Exemption to Farmers and other "discrete companies," but concluded it was not applied consistently because the Department did not "historically infer" that FTCC had applied for the Exemption in 2010–2011. *See* Amended Final Order at 79–80, 83. But Department witnesses testified that although they did not initially understand FTCC to be applying for the Exemption on its original returns in 2010 and 2011 (because FTCC had never before applied for the Exemption), they later became aware of the Exemption request through subsequent correspondence from Taxpayers. *See*

---

[26] Department witnesses acknowledged there are no *written* policies of procedures specifically related to the Exemption. *See* Ingram 30(b)(6) Depo., 11:15–12:22 (R. p. 1290, line 15–p. 1291, line 22). But the totality of their testimony established that the Property Division has a consistent administrative practice for accepting, reviewing, and approving applications for the Exemption for all of the rural telephone cooperatives in the State.

Hr'g Tr. 150:5–12, 200:5–13 (R. p. 1663, lines 5–12; p. 1713, lines 5–13); Brewer Depo., 11:4–13, 25:4–13 (R. p. 1225, lines 4–13; p. 1238, lines 4–13); Ingram 30(b)(6) Depo., 45:1-22 (R. p. 1323, lines 1–22).[27] At that point, the Department viewed the correspondence combined with the other filings as a timely application for the exemption as permitted under section 12-4-720(A)(1). The fact that Department staff may initially be uncertain how to apply a routine administrative practice to new taxpayers under new circumstances does not mean there is no longstanding administrative practice—it evidences the existence of such a practice and an attempt by Department personnel to comply with that practice. *See* Amended Final Order at 83. Moreover, the Department's subsequent treatment of Taxpayers' filings the way it treated Farmers' annual returns demonstrates the Department's consistent—not inconsistent—administration of the Exemption.

IV. The ALC did not err in concluding the Department had the authority to grant the Exemption to Taxpayers for certain tax years, even if the Department had not notified Taxing Entities of the resolution of the Exemption request prior to June 1 of those years.

A. The Department notified the Taxing Entities about the property tax dispute in accordance with its standard procedures, which no county had ever previously complained about or challenged.

Section 12-4-710 gives the Department authority to "determine if any property qualifies for exemption from local property taxes" and provides this "determination must be made on an annual basis and the appropriate county official so advised by June first of each year by the department." S.C. Code Ann. § 12-4-710. The Taxing Entities contend section 12-4-710 requires the Department both to *resolve* the exemption decision and *notify* Taxing Entities by June 1, and because the Department did not do so in this case it invalidates the granting of the Exemption to Taxpayers for each of tax years

[27] FTCC claimed it was not aware it could qualify for the Exemption until the Supreme Court clarified that a single-member LLC qualifies "for any tax benefits its member qualifies for." *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 75, 716 S.E.2d 877, 881 (2011); *see also* Joint Stipulation of Facts at ¶ 13 (R. p. 4222).

2010–2016. *See* Taxing Entities Br. at 46, 50.[28] The ALC rejected this argument in part, finding section 12-4-710 does not require a final decision by June 1 each year. *See* Amended Final Order at 92. In addition, the ALC concluded that failure to comply with notice under section 12-4-710 "does not strip Taxpayers of their entitled to the exemption, particularly in the absence of any statutory remedy to that effect." *Id.* at 99.

In light of the Department's longstanding practice regarding when, how, and which county official it notifies regarding property tax disputes, the Department contends it was not error for the ALC grant the Exemption to FTCC even assuming the Department failed to meet the June 1st notification deadline for some of the years at issue. The ALC correctly found that Taxing Entities'

---

[28] Taxing Entities claim they were "kept in the dark for nearly five years and were not given any actionable information about Taxpayers' exemption applications," which prevented them from making appropriate "budget adjustments." *See* Taxing Entities Br. at 51. This exaggerated complaint is completely contrary to the record evidence. During each tax year at issue, the Property Division contacted the counties to let them know Taxpayers were appealing the exemption. Per its standard protocol, the Property Division also sent a memorandum to each county auditor advising them the assessment had been appealed. *See* Hr'g Tr. 222:1–18 (R. p. 1735, lines 1–18). The memorandum included a copy of Taxpayers' letter of protest, which provided a detailed explanation of the nature and basis of the protest and provided Taylor Ingram's contact information and volunteered to answer any questions. Mr. Ingram communicated by telephone with many of the county auditors regarding Taxpayers' exemption appeal. *See* Hr'g Tr. 222:19–224:21 (R. p. 1735, line 19–p. 1737, line 21); Brewer Depo., 48:9–49:21 (R. p. 1260, line 9–p. 1261, line 21); Tr. Ex. 95 (R. p. 3606).

Importantly, the information contained in the Department's memoranda and documents provided to the county auditors is precisely the type of information that Clarendon County's CFO (the only county official to testify on behalf of Taxing Entities) admitted would be helpful information to have for budgeting purposes: the name of the taxpayer, the fact that the taxpayer has protested the Department's denial of a property tax exemption, and the proposed assessment value of the property for the current year. *See* Hr'g Tr. 95:20–97:8 (R. p. 1608, line 20–p. 1610, line 8). Remarkably, although the CFO testified he annually monitored the tax revenues from Taxpayers and would want to know for budgeting purposes whether a taxpayer like Taxpayers were seeking an exemption or protesting a tax assessment, he never asked for that information from the county auditor and apparently the auditor never shared it with him. *See* Hr'g Tr. 69:14–70:15, 86:12–18, 89:6–91:4, 95:20–96:23 (R. p. 1582, line 14–p. 1583, line 15; p. 1599, lines 12–18; p. 1602, line 6–p. 1604, line 4; p. 1608, line 20–p. 1609, line 23). Taxing Entities' ignorance about tax protests that might affect their budgets may have been the result of a communication breakdown at the county level, but it was not due to the absence of "actionable information" from the Department.

interpretation (i.e. section 12-4-710 requires a final determination before June 1) is inconsistent with other aspects of the administrative process for protesting property tax assessments. *Id.* at 92. This interpretation would prevent certain taxpayers from ever receiving the exemption via a timely filed return. *See* S.C. Code Ann. § 12-4-720 (permitting taxpayer to claim Exemption on its return); § 12-37-970 (permitting taxpayer to file return four months after close of taxpayer's accounting period, which could be after June 1); § 12-4-720(A) (permitting taxpayer to file application for exemption up to three years after return was filed). It would also eliminate the administrative appeals process for property tax matters, which can often take months or years to resolve. *See id.* § 12-60-2140 (describing procedures for handling a property tax appeal that is expected to extend into subsequent tax years). Given these apparent conflicts between sections 12-4-710, 12-4-720, and 12-60-2140, the ALC agreed with the Department's position that section 12-4-710 does not require the Department to resolve and notify the counties of all issues about property tax exemptions by June 1 of each year. *See* Amended Final Order at 92.

It is also administratively impossible for the Department to resolve all exemption issues for a given tax year by June 1 of that tax year.[29] Most manufacturers and utilities in South Carolina file their returns claiming property tax exemptions sometime in April of each year. Department witnesses testified that it would be unrealistic, if not impossible, for the Property Division to review hundreds of returns and filings for most of the manufacturing and utility property in the state, render an appraisal

[29] For most exemptions, the Property Division electronically notifies county auditors each month regarding what property the Department has deemed exempt. *See* Ruple 30(b)(6) Depo., 63:8–64:1, 85:22-86:4 (R. p. 1418, line 8–p. 1419, line 1; p. 1438, line 22–p. 1439, line 4). Property assessed by the Property Division's Utilities Section is an exception to this process. *See* Ruple 30(b)(6) Depo., 87:11–16 (R. p. 1440, lines 11–16). Rather than sending the counties by June 1 a specific notification related only to the grant or denial of an exemption application by a manufacturer or utility company, the Property Division provides this notice as part of its certification of the assessments for each utility company. *See* Hr'g Tr. 146:6–147:3, 179:19–181:12 (R. p. 1659, line 6–p. 1660, line 3; p. 1692, line 19–p. 1694, line 12); Brewer Depo., 57:15–58:11 (R. p. 1268, line 15–p. 1269, line 11).

(which includes the exemption decision), issue a proposed assessment, and then certify that assessment to the counties by June 1 of that year. *See* Hr'g Tr. 146:21–147:3 (R. p. 1659, line 21–p. 1660, line 3); Brewer Depo., 30:19–31:23, 57:15–58:11 (R. p. 1243, line 19–p. 1244, line 23; p. 1268, line 15–p. 1269, line 11).

In light of these various concerns, the longstanding practice of the Department has been to follow the timeline in section 12-37-970 by notifying the counties of the proposed assessment and any exemptions via the assessment certification that is sent to the appropriate local taxing officials by August 15 of the applicable tax year. *See* Hr'g Tr. 146:21–147:3 (R. p. 1659, line 21–p. 1660, line 3); Brewer Depo., 30:19–31:23, 57:15–58:11 (R. p. 1243, line 19–p. 1244, line 23; p. 1268, line 15–p. 1269, line 11). The certified assessment factors the exemption decision into the assessed amount. *See* Hr'g Tr. 146:6–147:3, 179:19–181:12 (R. p. 1659, line 6–p. 1660, line 3; p. 1692, line 19–p. 1694, line 12).

The Department has followed this procedure for decades, and at no time prior to this case have any counties or Taxing Entities ever raised any concerns with the Department regarding this process or the June 1st deadline. *See* Brewer Depo., 30:19–31:23, 79:22–80:10 (R. p. 1243, line 19–p. 1244, line 23; p. 1282, line 22–p. 1283, line 10).

In keeping with this practice, the Department sent multiple notices to the county auditors related to FTCC's and Diversified's protest regarding the Exemption and property assessment. The county auditors annually received the initial assessments and later the 80% assessment, along with a memorandum further detailing the nature of the ongoing property tax dispute. Importantly, the memos included the letter of protest and referencing the Exemption in section 12-37-220(B)(10), and specifically advised the county auditors that "once this appeal is resolved, you will receive the finalized assessment certification from our office." *See, e.g.*, Tr. Ex. 94 at 1 (R. p. 3597); Tr. Ex. 99 at 1 (R. p. 3625); Tr. Ex. 106 at 1 (R. p. 3689). Thus, beginning in October 2012, the county auditors were on notice (and annually reminded) that there was an ongoing, unresolved property tax dispute involving

FTCC (and later, Diversified). Once the appeal was resolved, the Department notified the county auditors and provided the finalized assessment certifications. *See* Tr. Ex. 119 (R. p. 3776).

Although the ALC concluded the Department's multiple written notifications, memos, and telephone communications with the county auditors did not satisfy the notice requirements of section 12-4-710, the ALC nevertheless concluded section 12-4-710 was silent as to whether the lack of Department notice to the Taxing Entities renders Taxpayers ineligible for the Exemption. *See* Amended Final Order at 98. Because the Department believed it had gone above and beyond its standard process for notifying the counties of property tax appeals, *see* Hr'g Tr. 220:24–221:10, 222:19–224:21 (R. p. 1733, line 24–p. 1734, line 10; p. 1735, line 19–p. 1737, line 21); Ingram 30(b)(6) Depo., 47:8-48:9 (R. p. 1325, line 8–p. 1326, line 9); Brewer Depo., 48:9–49:21 (R. p. 1260, line 9–p. 1261, line 21) (describing multiple ways the Property Division kept the county auditors informed regarding the status and nature of this dispute), the Department contends the ALC did not err in finding the Department had the authority to grant the Exemption to Taxpayers regardless of whether proper or timely notice had been provided to Taxing Entities.

B. Even if the ALC was correct in finding the Department failed to timely notify Taxing Entities, this notification failure does not eliminate the Department's authority to grant the Exemption to an otherwise eligible Taxpayer.

Taxing Entities assert the Department cannot grant exemptions if it fails to notify Taxing Entities of the exemption decision by June 1 each year. *See* Taxing Entities Br. at 48. Taxing Entities rely on *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998) for the proposition that if a property tax exemption is not resolved and communicated to the counties by June 1 of each year, any subsequent grant of that exemption is "illegally retroactive." Although *TNS Mills* appears to address similar issues at first glance, a close reading of the decision and subsequent statutory amendments demonstrate it is not controlling in this case.

The issue in *TNS Mills* was whether certain property qualified for the pollution control equipment exemption. *Id.* at 615-16, 503 S.E.2d at 473-74. The primary disputes were twofold: did the taxpayer properly apply for the exemption, and did the Department have the authority to grant a retroactive exemption. The Supreme Court held the taxpayer did not clearly comply with the requirements for applying for the exemption, and therefore the Department lacked the authority to retroactively grant the exemption because section 12-4-720 specifically required the taxpayer to apply for the exemption prior to the June 1 notification deadline. *Id.* at 619, 621, 503 S.E.2d at 475-76.

TNS Mills is distinguishable from the instant appeal. First, the facts and circumstances surrounding the application process are significantly different. In *TNS Mills*, there was a specific deadline for filing an application for the exemption each year. The taxpayer admitted that it had originally filed its tax returns without claiming the exemption. *Id.* at 617, 503 S.E.2d at 474. The property tax returns had a line for taxpayers to report exempt pollution control equipment; the taxpayer left those lines blank. *Id.* at 616, 503 S.E.2d at 474. By contrast, in this case a taxpayer can apply for the Exemption within three years after filing its return, *see* § 12-4-720(A)(1). The Taxpayers and Department both believed the application for the Exemption was timely. *See* Brewer Depo., 11:4–13, 25:4–13 (R. p. 1225, lines 4–13; p. 1238, lines 4–13); Ingram 30(b)(6) Depo., 45:1-22 (R. p. 1323, lines 1–22). And because there is no specific application for the Exemption, *see* Hr'g Tr. 205:13–22 (R. p. 1718, lines 13–22), Taxpayers listed their assets on the same return and in the same manner as Farmers had always done, and then separately notified the Department that they were claiming the Exemption. *See* Hr'g Tr. 177:17–178:18, 474:7–24 (R. p. 1690, line 17–p. 1691, line 18; p. 1987, lines 7–24).

Second, the specific statutes analyzed in *TNS Mills* have since been amended. At the time of *TNS Mills*, section 12-4-720(A)(1) and (2) required applications for the pollution control exemption (and certain other exemptions) to be filed by a specific date. *See TNS Mills*, at 620 n.3, 503 S.E.2d at

476; S.C. Code Ann. § 12-4-720(A)(1) (Supp. 1991). However, after the tax years at issue in *TNS Mills*, the General Assembly changed the deadlines for applying for exemptions. *See* 1995 S.C. Act No. 125, § 2, *codified at* S.C. Code Ann. § 12-4-720. As a result of this amendment, taxpayers (including rural telephone cooperatives) now apply for an exemption by filing an application with the Department *or* by listing the property as exempt on its returns, and the timeframe to apply for the exemption was extended to three years *after the return is filed.* In other words, if the language of the 1995 amendments had been in effect at the time of *TNS Mills*, the amended returns the taxpayer filed in 1992 would have constituted proper, timely exemption applications for at least tax years 1989-1991.

Finally, The Taxing Entities overstate the holding in *TNS Mills* as it relates to the June 1 notification deadline. Taxing Entities repeatedly contend the Supreme Court in *TNS Mills* has "clearly" held that "the [Department] cannot grant exemptions if it fails to meet the [June 1 deadline] imposed by 12-4-710. *See* Taxing Entities Br. at 48. But that is not exactly what the *TNS Mills* Court said. The Supreme Court acknowledged that allowing the Department to grant a retroactive exemption undermines the value of the information provided to county officials by June 1, the critical deadline in the Court's analysis was the *application deadline* in section 12-4-720—*not the notification deadline* in section 12-4-710. Taxing Entities conflate the two deadlines. Contrary to their assertion, the Supreme Court has not construed section 12-4-710 to bar the Department from approving an exemption after June 1. *Id.* (citing *TNS Mills* and claiming Supreme Court has held that "any interpretation that allows the Department to approve exemptions after the [June 1] deadline is inconsistent with the General Assembly's intent.")).

Thus, *TNS Mills* is distinguishable from the facts of this case, and does not support Taxing Entities' contention that the Department's granting of the refunds to Taxpayers in this case was illegally retroactive because the Department did not make a final determination and notify Taxing Entities by June 1 of each tax year. In fact, the amendments to section 12-4-720 after *TNS Mills*

eliminated a specific application deadline, demonstrating the General Assembly's intent to create a longer time period for applying for exemptions (up to three years after the return was filed).[30]

Therefore, the ALC did not err in rejecting Taxing Entities' argument that a taxpayer can lose its right to a property tax exemption—for which it was legally entitled—even if the Department subsequently failed timely to notify the counties of the exemption determination.

CONCLUSION

For the reasons stated above, the Department respectfully submits that:

(1) The ALC did not err in rejecting Taxpayers' standing argument based on section 12-4-535;

(2) The ALC did not err in concluding that Taxpayers' property is eligible for the Exemption, although its method of calculating a partial-exemption was flawed and should be rejected;

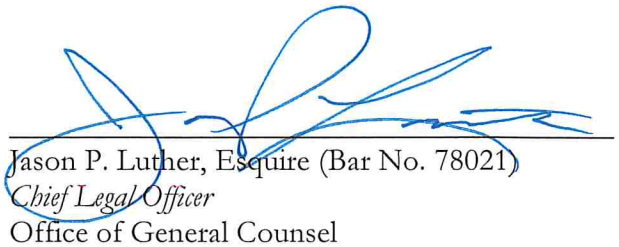
(3) The ALC did not err in affirming the Department's decision to grant a refund to FTCC for tax years 2014 through 2016; and

(4) The ALC did not err in concluding the Department had authority to grant the Exemption to Taxpayers for certain years even if the Department did not adequately notify Taxing Entities by June 1 of those years.

---

[30] Notably, the General Assembly had repeatedly extended the deadline for filing exemption applications in the years leading up to the *TNS Mills* dispute, even though the June 1 deadline was statutorily required during that entire period. *TNS Mills*, 331 S.C. at 623, 503 S.E.2d at 477 (noting that in 1985 the legislature extended the exemption application deadline for tax years 1981–1985 to July 1, 1985; then extended tax years 1985–1987 to July 1, 1987; then extended tax years 1985–1988 to July 1, 1988; and finally extended tax years 1988–1989 to July 1, 1990). Thus, the 1995 amendment to section 12-4-720 effectively granted a perpetual 3-year extension for filing an application for the exemption, in keeping with the clear intent of the General Assembly's prior extensions.

Respectfully Submitted,



Jason P. Luther, Esquire (Bar No. 78021)
Chief Legal Officer
Office of General Counsel
P.O. Box 12265
Columbia, SC 29211-9979
803-898-5576 (Tel.)
Jason.Luther@dor.sc.gov

Attorney for Respondent South Carolina Department of Revenue

June 3, 2021
Columbia, South Carolina

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,

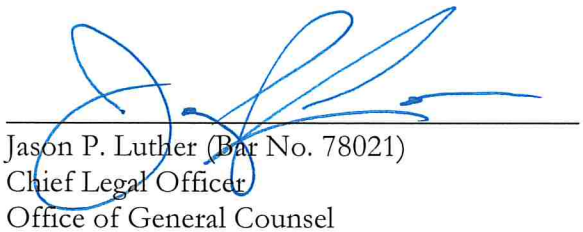
v.

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.

CERTIFICATE OF COUNSEL

The undersigned certifies that Respondent South Carolina Department of Revenue's Final Brief complies with Rule 211(b), SCACR.



Jason P. Luther (Bar No. 78021)
Chief Legal Officer
Office of General Counsel
South Carolina Department of Revenue
P.O. Box 12265
Columbia, SC 29211
Phone: (803) 898-5785
E-Mail: Jason.Luther@dor.sc.gov

Counsel for Respondent South Carolina Department of Revenue

June 3, 2021