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**Jul 28 2021**

**SC Court of Appeals**

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Ennis M. Fant,

Docket No. 20-ALJ-17-0126-CC

Petitioner,

vs.

**FINAL ORDER**

Anderson County Assessor,

Respondent.

**APPEARANCES:** For the Petitioner: Randall S. Hiller, Esq.

For the Respondent: Kimila L. Wooten, Esq.

**STATEMENT OF THE CASE**

This matter is before the Administrative Law Court (ALC or court) pursuant to a request for a contested case filed by Ennis M. Fant (Petitioner). The Petitioner challenges the Anderson County Assessor's (Assessor's or Respondent's) determination that: (a) he claimed and received the four percent (4%) legal residence assessment on a property in Anderson County over a ten (10) year period during which it did not qualify; (b) the legal residence classification of that property was properly revoked for ineligibility; (c) the property was correctly reassessed at the six percent (6%) ratio in accordance with the classification change; and (d) the applicable statute of limitations in this case is ten (10) years.<sup>1</sup>

After proper notice to the parties, a hearing was held on January 27, 2021, at the ALC in Columbia, South Carolina. After careful consideration of the evidence, the parties' arguments, and the applicable law, the court finds that the subject property became ineligible for the special assessment ratio beginning November 13, 2008, and that the Assessor determined and assessed taxes and penalties during the subsequent period accordingly.

**FINDINGS OF FACT**

Pursuant to Section 12-60-3320 of the South Carolina Code,<sup>2</sup> the parties stipulated to the following facts prior to the hearing:

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<sup>1</sup> As explained *infra*, the tax bills, and the issuance thereof, are also a point of contention for the Petitioner.

<sup>2</sup> S.C. Code Ann. § 12-60-3320 (2014).

**SC ADMIN. LAW COURT**

1. Dr. Fant, the taxpayer, now resides in Greenville County, South Carolina.
2. On September 10, 1999, Dr. Fant purchased property in Anderson County located at 150 Gareloch Lane., Anderson, South Carolina 29625.<sup>3</sup>
3. On December 10, 1999, Dr. Fant applied for and was granted primary legal residence status for himself at 150 Gareloch Lane., Anderson, South Carolina 29625 as a result of separating from his wife. Dr. Fant paid all real estate property taxes billed for this property through tax year 2018.
4. On the form with which he applied for legal residence status on December 10, 1999, Dr. Fant listed his previous address as 137 Cleveirvine Avenue, Greenville, South Carolina 29607.
5. On July 30, 2001, Renda Fant, Dr. Fant's then spouse, purchased a home located at 4 Smokerise Court, Greenville, South Carolina 29607.
6. On February 8, 2007, Renda Fant deeded 4 Smokerise Court, Greenville, South Carolina 29607 to Dr. Fant as part of their divorce settlement.
7. On November 13, 2008, Dr. Fant applied for and received legal residence status for 4 Smokerise Court, Greenville, South Carolina 29607.
8. On April 18, 2012, Dr. Fant deeded 4 Smokerise Court, Greenville, South Carolina 29607 to 4 Smokerise Court, Greenville, South Carolina Land Trust with Dr. Fant's mother, Sarah L. Fant, as Trustee. Dr. Fant was listed as the Income Beneficiary on the Certification of Trust.
9. On November 5, 2013, Dr. Fant made application again for legal residence status at 4 Smokerise Court, Greenville, South Carolina 29607 and listed his previous residence as "Cleveirvine Avenue."
10. On March 16, 2016, Dr. Fant filled out a Statement of Candidacy and Party Pledge for the Greenville County Election Commission, in which he listed his address as "11 Ghana Drive." This property is located in Greenville, South Carolina within the 29605 zip code.
11. Dr. Fant filed income tax documentation for the years 2012 through 2017. Those filings list Greenville County as his mailing address.
12. On May 23, 2019, the Assessor sent a letter to Dr. Fant notifying him of the change in classification of legal residence dating back to 2008. Along with the letter, Dr. Fant was sent

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<sup>3</sup> This property is referred to in the record interchangeably as the "lake house."

bills for the difference between the 4% legal residence assessment and the 6% tax assessment charged for properties that are not a legal residence.<sup>4</sup>

13. On May 28, 2019, Dr. Fant appealed the Assessor's May 23, 2019, decision.
14. On June 20, 2019, Dr. Fant met with representatives of the Assessor's office to discuss the appeal and the parties were unable to reach a resolution. Dr. Fant admitted that he failed to notify the Assessor of his change of residence within six (6) months as required by Section 12-43-220(c)(vii)<sup>5</sup> and offered to pay the penalty for tax years 2017 and 2018.
15. On June 24, 2019, Dr. Fant filed an "Application of Review of Real Property Appraisal."
16. On July 29, 2019, Robert L. McLean, then Deputy Assessor for Anderson County, sent a letter to Dr. Fant notifying him that no change was being made to the revised assessment issued on May 23, 2019.
17. Dr. Fant appealed that decision to the Anderson County Board of Assessment Appeals, which rendered its decision on May 11, 2020.
18. Dr. Fant timely appealed that decision to this court.

Having carefully considered all testimony, exhibits, and arguments presented at the hearing in this matter, and considering the credibility and accuracy of the evidence, the court makes the following additional findings of fact by a preponderance of the evidence:

19. At the hearing, Dr. Fant testified that he lived at the Gareloch Lane property from 1999 until 2016. He stated that, since deeding the Gareloch Lane property to a trust, his son now lives at the property and claims it as his primary residence, although he occasionally stays at his mother's house in Greenville, where he works.<sup>6</sup> He testified that his daughter has only been to the Gareloch Lane property once or twice in her whole life.
20. Dr. Fant stated that he applied for legal residency status on the Smokerise Ct. property in 2008 while still living at the Gareloch Lane property because his elderly grandmother and children, who were traumatized and upset at the time from his divorce, were comfortably living in the

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<sup>4</sup> According to the Assessor, Dr. Fant's total tax liability amounts to \$80,097.86. This figure includes: a purported bill differential of \$55,629.61; \$16,123.81 in penalties, which the Assessor determined is the aggregate amount of taxes actually paid by Dr. Fant during this period; and an \$8,344.44, or fifteen percent (15%), late fee levied by the Assessor. As Dr. Fant has already paid the \$16,123.81, the Assessor contends the total outstanding tax balance is \$63,974.05.

<sup>5</sup> S.C. Code Ann. § 12-43-220(c)(2)(vii) (Supp. 2020).

<sup>6</sup> In her deposition, Dr. Fant's ex-wife conversely stated that their son lives with her full time. Dr. Fant retorted that his ex-wife is just upset that she can no longer claim their son as a dependent on her taxes.

home. He testified that he has used the Smokerise Court property as his mailing address since he acquired it but that, apart from staying with his children when his grandmother would go home on the weekends, he has never physically lived at the Smokerise Ct. property himself. To that end, he stated that he listed “Cleveirvine Avenue” as his previous address because that is where his children and grandmother formerly lived. He testified that he was later advised that the Smokerise Court property needed to be deeded to a trust, which he then did and reapplied for legal residency status under the trust. He stated that, currently, his daughter resides at the Smokerise Court property.

21. Dr. Fant testified that, in order to run for Greenville County Council, he then changed his address to the Ghana Drive property in the spring of 2016, though he continued to use the Smokerise Court property as his mailing address for convenience. He stated that, since he has lived at the Ghana Drive property, his daughter has only been to the property once or twice, but that she had frequently visited the house prior to that because it was previously his grandmother’s house.

22. Dr. Fant conceded, however, that his driver’s license has listed his Greenville County since 1999. Likewise, all of his vehicles are registered in Greenville County and tax records reflect that he paid taxes on those vehicles to Greenville County from 1999 until 2019. From 2012 until 2017, his income taxes were also filed using his Greenville mailing address.<sup>7</sup> Dr. Fant further acknowledged that his ex-wife testified in her deposition that she believed he moved into the Smokerise Court property after it was deeded to him in the divorce and that their daughter did not live at the Smokerise Court property until she moved in with him well after that. Additionally, he agreed that his daughter testified in her deposition that she has never been to the Ghana Drive property.

23. The Anderson County Assessor, Robert McLean, testified at the hearing. Mr. McLean has been with the Assessor’s office since 1994, becoming the Deputy Assessor in 2014, and assuming the role of Assessor in 2019. Mr. McLean stated that he first became involved with the instant assessment issue after receiving an email from a concerned citizen enquiring how a

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<sup>7</sup> Testimony at the hearing revealed apparent discrepancies with Dr. Fant’s filing status for income tax purposes. Specifically, after separating from his wife, Dr. Fant’s 2012 income taxes were filed under the filing status of single, his 2013 and 2014 taxes were filed as married filing separately, and from 2015-2017 as single again. Dr. Fant acknowledged that he divorced in 2007 and has not remarried since, but explained that his tax filings are entrusted to his accountant and that he only reviews his returns to see what is owed. Nevertheless, any purported issues with the filing status of Dr. Fant’s income taxes are beyond the scope of this hearing.

Greenville County Council candidate and citizen could be receiving the four percent assessment ratio in Anderson county. At the time of the call, Anderson County was conducting an internal audit of residency issues.<sup>8</sup> After an investigation, Mr. McLean notified Dr. Fant by letter that he had determined that the Gareloch Lane property did not qualify for the four percent assessment ratio. He explained that \$55,629.61 represents the tax differential between the four percent assessment ratio and the six percent ratio for the Gareloch Lane property from 2009 to 2018. Mr. McLean stated that the penalty is determined by the amount of taxes actually paid, which amounts to \$16,123.81. Additionally, because Dr. Fant's taxes were paid more than thirty days from when they were due, a fifteen percent late fee of \$8,344.44 was levied as well. As the \$16,123.81 had already been paid, the Assessor testified that \$63,974.05 is the current amount owed by Dr. Fant.

24. With respect to the relevant time frame, Mr. McLean stated that he relies on his training with the Department of Revenue (DOR) to determine how far back to go with tax issues.<sup>9</sup> Mr. McLean testified that in the past, his office has reassessed properties for periods beyond thirty-six months when the violation exceeds thirty-six months. He testified that he relied on his DOR training, spoke with several individuals at DOR, and consulted the relevant statutes before determining how far back to look in this case. Mr. McLean conceded, however, that only the auditor can generate and issue tax bills.

### CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the court concludes the following as a matter of law:

1. The court has jurisdiction over this matter pursuant to Sections 1-23-600 and 12-60-2540(A) of the South Carolina Code. S.C. Code Ann. § 1-23-600 (Supp. 20); S.C. Code Ann. § 12-60-2540(A) (2014).
2. The proceeding before this court is a *de novo* contested case hearing to determine the appropriate assessment ratio for the Gareloch Lane property, any resulting tax liability, and the

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<sup>8</sup> According to the Assessor, as part of the audit 284 other individuals were found to be similarly ineligible for their residency status. He further testified that, like Dr. Fant, all those property owners were "back billed" for taxes and penalties.

<sup>9</sup> Mr. McLean stated that DOR conducts yearly training and will work directly with his office when the need arises.

statute of limitations therefor based upon the evidence presented at the hearing. *See Smith v. Newberry Cnty. Assessor*, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002)

3. Dr. Fant, the taxpayer, bears the burden of proving, by a preponderance of the evidence, that the taxing authority's determination is incorrect. *See* S.C. Code Ann. § 12-43-220(c)(2)(iv) (2014 & Supp. 2020). *Anonymous v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998); *Newberry Mills, Inc. v. Dawkins*, 259 S.C. 7, 15-16, 190 S.E.2d 503, 507 (1972); *Cloyd v. Mabry*, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988).
4. Each county is required to have a full-time assessor. S.C. Code Ann. § 12-37-90 (2014). The assessor is the "county officer or official who issues an official property tax assessment for real property." S.C. Code Ann. § 12-60-30(5) (2014). A "[p]roperty tax assessment" means a valuation or determination of property value for annual property tax purposes arrived at by multiplying the fair market value . . . of the property by the appropriate assessment ratio for the taxable property's classification." S.C. Code Ann. § 12-60-30(19) (2014).
5. In South Carolina, when a property is classified as residential, it receives a special assessment ratio of four-percent (4%), rather than the default six-percent (6%) ratio. *See* S.C. Code Ann. § 12-43-220(c), (e) (2014 & Supp. 2020). The four-percent ratio applies in the following circumstance, among others:

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

S.C. Code Ann. § 12-43-220(c)(1) (Supp. 2020).

6. Crucially, "[f]or purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant." *Id.* Accordingly, "the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year." S.C. Code Ann. § 12-43-220(c)(2)(i) (Supp. 2020).
7. Thus, in order to obtain the special assessment ratio, a property owner must certify that he or she meets several additional requirements, including that: (a) "the residence which is the subject of [the] application is [the applicant's] legal residence and where [the applicant] [is] domiciled at the time of [the] application"; (b) "neither [the applicant], nor any member of [the

applicant's] household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose"; and (c) "neither [the applicant], nor a member of [the applicant's] household, claim the special assessment ratio allowed by this section on another residence." S.C. Code Ann. § 12-43-220(c)(2)(ii) (2014). In this context, "a member of [the applicant's] household" means: (a) "the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant"; and (b) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return." S.C. Code Ann. § 12-43-220(c)(2)(iii) (2014).

8. Once eligibility is determined, "[n]o further applications are necessary from the current owner while the property for which the initial application was made continues to meet the eligibility requirements." S.C. Code Ann. § 12-43-220(c)(2)(vi) (2014). If, after the special assessment ratio is obtained, "a change in ownership or use occurs, the owner who had qualified for the special assessment ratio allowed by this section shall notify the assessor of the change in classification within six months of the change." *Id.* However,

If a person signs the certification, obtains the four percent assessment ratio, and is thereafter found not eligible, or thereafter loses eligibility and fails to notify the assessor within six months, a penalty is imposed equal to one hundred percent of the tax paid, plus interest on that amount at the rate of one-half of one percent a month, but in no case less than thirty dollars nor more than the current year's taxes.

S.C. Code Ann. § 12-43-220(c)(2)(vii)(A) (Supp. 2020).

9. To that end, if "the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title." S.C. Code Ann. § 12-43-220(c)(2)(iv); *see also* S.C. Code Ann. § 12-60-1730 (2014) ("A property taxpayer may appeal any property tax assessment . . ."); S.C. Code Ann. § 12-60-2510(A)(4) (2014) ("In years when there is no notice of property tax assessment, the property taxpayer may appeal the fair market value, the special use value, the assessment ratio, and the property tax assessment of a parcel of property at any time.").
10. "After final review of the protest or appeal, if the property tax assessment is greater than the adjusted property tax assessment, a corrected property tax assessment must be made and entered. Interest determined in accordance with Section 12-54-25 must be collected in the same manner as the tax." S.C. Code Ann. § 12-60-2550(B) (2014).

11. Generally, “taxes must be determined and assessed within thirty-six months from the date the return or document was filed or due to be filed . . . .” S.C. Code Ann. § 12-54-85(A) (2014). However, taxes may be determined and assessed after the thirty-six month-limitation if “there is fraudulent intent to evade the taxes” or “the taxpayer failed to file a return or document as required by law.” *See* S.C. Code Ann. § 12-54-85(C)(1) & (2) (2014).

### OPINION

As an initial matter, after the Petitioner had rested his case at the hearing,<sup>10</sup> the Assessor moved for judgment as a matter of law on the basis that the Petitioner had not met his burden of demonstrating that he was entitled to the special residential assessment ratio on the Gareloch Lane property. Specifically, the Assessor argued that Dr. Fant presented no evidence showing that he actually owned, occupied, and was domiciled at the Gareloch Lane property during the relevant tax years. The court granted the Assessor’s motion with respect to 2017 and 2018, but denied it as to years 2009 through 2016, the remaining years at issue.

The court is therefore left to determine whether the Assessor is permitted to assess taxes for 2009 to 2016 under the facts of this case. The Assessor contends that, at a minimum, taxes may be determined and assessed “within thirty-six months from the date the return or document was filed or due to be filed, whichever is later.” *See* S.C. Code Ann. § 12-54-85(A). However, because there is evidence of a fraudulent intent to evade the taxes and/or a failure to file required documentation in this case, the assessor argues that it may look back further than thirty-six months, in accordance with Section 12-54-85(C). *See* S.C. Code Ann. § 12-54-85(C)(1) & (2). Dr. Fant does not dispute that he applied for legal residency status on the Smokerise Court property in 2008 and failed to file the required documentation notifying the Assessor of his change in primary residence. However, Dr. Fant asserts that Section 12-54-85 pertains only to the Department of Revenue and is, therefore, wholly inapplicable in this county property tax matter. Dr. Fant argues that the relevant statute of limitations is two (2) years under Section 15-3-550.<sup>11</sup> *See* S.C. Code Ann. § 15-3-550 (2005) (stating that “an action upon a statute for a forfeiture or penalty to the State” must be brought within two years).

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<sup>10</sup> The Petitioner did not introduce any evidence or testimony during his case-in-chief at the hearing, relying instead on the joint stipulations of fact.

<sup>11</sup> The court notes, however, that in his initial application for review of real property appraisal, Dr. Fant asserted that the statute of limitations prohibits collection “beyond 36 months.”

The issue of whether Section 12-54-85 applies to county tax matters was addressed in at least one prior decision from this court. In that case, the taxpayer sought a refund of taxes paid during a five (5) year period. *See Harry E. Thornley v. Charleston Cnty. Assessor and Charleston Cnty. Auditor*, Docket No. 02-ALJ-17-0260-CC (S.C. Admin. Law Ct. March 19, 2003). The county argued that the taxpayer was subject to the time limitations set forth in Section 12-54-85, which would serve to limit recovery to two years under the facts of that case. *See id.* The court found Section 12-54-85 limited recovery of the refund to two years, noting that Section 12-60-2560 explicitly incorporates the time limitation in Section 12-54-85 for county property tax refund matters. *See id.* (“[Section 12-60-2560] makes the statutory limitations of § 12-54-85(F), which apply to taxes collected by the Department of Revenue, also applicable to the property taxes owed to the county and sets the procedure and time limits for such actions.”); *see also* S.C. Code Ann. § 12-60-2560 (2014) (stating that a property taxpayer may seek a refund of real property taxes assessed by the county assessor “within the time limitation of Section 12-54-85(F)”; *Am. Legion Post 15 v. Horry Cnty.*, 381 S.C. 576, 582, 674 S.E.2d 181, 183-84 (Ct. App. 2009) (holding that an action seeking a refund of county hospitality admissions fees was barred by the three-year statute of limitations in Section 12-54-85).

Additionally, in 2012, the Office of the South Carolina Attorney General issued a formal opinion in response to an inquiry from the Jasper County Attorney regarding how many years of property taxes may be recovered by the county for a parcel that had avoided taxation for thirteen years due to an error by the county. After going through an analysis on statutory construction, the opinion determined that a court would likely limit the county’s ability to recover property taxes to thirty-six (36) months under Section 12-54-85. *See* Op. S.C. Att’y Gen., 2012 WL 5376056 (October 23, 2012). In doing so, the opinion noted that the *Thornley* case had found that the time limits in Section 12-54-85 applied to county property tax refund matters and reasoned that “[e]quity would not allow one interpretation of the same language for when a taxpayer owes money (at no fault of the taxpayer) and a different interpretation when a taxpayer is owed a refund.” *See id.* Thus, the opinion concluded that the determination and assessment of taxes is likely subject to the time limitations of Section 12-54-85(A).<sup>12</sup> *See id.*

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<sup>12</sup> The opinion noted that Section 12-54-85(A) serves as a limitation on the determination and assessment of taxes by a county assessor, while Section 12-54-85(E) is a statute of limitations on the collection of those taxes. *See* Op. S.C. Att’y Gen., 2012 WL 5376056, at \*4 (October 23, 2012).

The court is persuaded by the reasoning in *Thornley* and in the Attorney General's opinion; if Section 12-54-85 is to apply to county tax refund matters, applying it to county tax recovery matters is clearly the sounder approach.<sup>13</sup> It would be illogical and inequitable to apply the shorter, generic statute of limitations suggested by the Petitioner, particularly where, as here, there is evidence to suggest that the taxpayer is not without fault in bringing about the underlying tax issue. Such a finding is further supported when considering that, generally, "tax exemption statutes are strictly construed against the taxpayer." *Se. Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981).

Having concluded, as a matter of law, that Section 12-54-85 is the operative statute of limitations governing this matter, the court must determine whether there is evidence of a "fraudulent intent to evade the taxes," or a "fail[ure] to file a return or document as required by law" such that the Assessor may determine and assess taxes beyond thirty-six months. *See* S.C. Code Ann. § 12-54-85(C)(1) & (2). As stated *supra*, although Dr. Fant contends that he did not change his residence from the Gareloch Lane address until he moved to the Ghana Dr. property in 2016, he does not dispute that he applied for legal residency status on the Smokerise Court property on November 13, 2008, and declared under penalty of perjury that: (a) the Smokerise Court property was his legal residence at the time; (b) he was domiciled there; and (c) neither he nor any member of his household occupied another residence qualifying for the special residential assessment ratio.<sup>14</sup> While Dr. Fant may ultimately have done so on behalf of his children living in the home, he was nevertheless required to notify the Assessor within six months of the change. *See* S.C. Code Ann. § 12-43-220(c)(2)(vi). Dr. Fant acknowledges, however, that he failed to tender such notice. Therefore, in accordance with Section 12-54-85(C)(2), the Assessor may determine and assess taxes beyond the thirty-six-month-limitation under the facts of this case.<sup>15</sup> More specifically – in the absence of any evidence that Dr. Fant owned, occupied, and was domiciled at the Gareloch Lane property to the exclusion of any other during the relevant time

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<sup>13</sup> In support of his argument that Section 12-54-85 is inapplicable in this matter, Dr. Fant cites to another case from this court in which the ALJ held that "[a]rguably, Section 12-54-85 does not apply in this case and Section 12-39-220 stands alone, allowing the Assessor to correct the taxes for each year the property has escaped taxation." *See Margaret C. Stoneburner v. Richland Cnty. or Richland Cnty. Treasurer*, Docket No. 12-ALJ-17-0383-CC at \*6 n.16 (S.C. Admin. Law Ct. May 15, 2013). However, because the applicability of Section 12-54-85 was conceded by the parties in that case, the court's comment amounts to mere dictum.

<sup>14</sup> In his application, Dr. Fant listed his date of occupancy at the Smokerise Court property as "08/2001."

<sup>15</sup> Because Dr. Fant's failure to file the documentation required by law is dispositive of the issue of whether the Assessor may determine and assess taxes beyond thirty-six months under Section 12-54-85(C), the court declines to address the same argument from a fraud perspective under Section 12-54-85(C)(2).

frame – the Assessor may determine and assess taxes on the Gareloch Lane property through November 13, 2008, when the property’s legal residency status was plainly invalidated by Dr. Fant’s legal residency application for the Smokerise Court property.

There remains, however, the dispute regarding the tax bills in this case. Dr. Fant argues that the Assessor does not possess the authority to modify or issue tax bills, particularly after the tax has been paid. Counsel for the Assessor argue that, pursuant to a catchall provision in Section 12-37-90, the Assessor is required to “perform duties relating to the office of tax assessor required by the laws of this State,” and that issuing the tax bills in this case is simply another part of the job of a county assessor. *See* S.C. Code Ann. § 12-37-90(g) (2014). Additionally, the Assessor asserts that because only the value of the property is applied to the county duplicate by the auditor, as opposed to the assessment ratio, there is nothing for the auditor to update in this case.<sup>16</sup> *See* S.C. Code Ann. § 12-39-150 (2014) (stating that a county duplicate is “a complete list or schedule of all taxable property in his county and the value of it as equalized”). At the hearing in this matter, however, Mr. McLean testified to his understanding that, while his office is involved in preparing tax bills, the duty is ultimately that of the Auditor. More precisely, he testified that his office “start[s] the process” by “giv[ing] them the information to do it.” When asked specifically whether the tax bills in this case were “created, produced, and sent by the auditor’s office,” he stated that it would depend on the definition of the word “create.” It is unclear from the Assessor’s testimony who ultimately issued the tax bills in this case.

The court recognizes that the process of determining property taxes is somewhat circuitous; it involves numerous steps handled by different jurisdictional authorities, culminating in a tax bill that can carry significant impositions for a taxpayer. By way of background, after assessing real property, a county assessor generally furnishes a list of the newly assessed values to the county auditor. S.C. Code Ann. § 12-37-90(c) (2014). The county auditor must adopt the assessor’s valuations as provided. S.C. Code Ann. § 12-39-350 (2014). The auditor then applies the millage rate<sup>17</sup> to the assessed values. *See* S.C. Code Ann. § 12-43-285 (2014). County auditors then compile the taxable property in the county, and the equalized values thereof, into a list called a “duplicate.” S.C. Code Ann. § 12-39-150 (2014). Thereafter, the auditor furnishes a copy of the

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<sup>16</sup> Because a property’s tax bill cannot be determined without its assessment ratio, the court rejects the idea that a property’s value for tax purposes and its assessment ratio are somehow wholly independent concepts.

<sup>17</sup> Millage rates are determined by the governing body of a county, municipality, or special purpose district. *See generally* S.C. Code Ann. § 6-1-320 (Supp. 2020); S.C. Code Ann. § 6-1-300(3) (2004).

duplicate to the county treasurer. *Id.* Finally, the county treasurer is responsible for collecting the taxes entered upon the tax duplicate of their county, or otherwise ordered to be collected by the auditor. S.C. Code Ann. § 12-45-60 (2014).

Further complicating matters, the Attorney General's office has previously opined that "the county auditor is the only person authorized to assess back taxes and requires adequate statutory authority to do so." *See* Op. S.C. Att'y Gen., 2012 WL 5376056 at \*1 (October 23, 2012); *see also* S.C. Code Ann. § 12-39-220 (Supp. 2020) (providing that "the auditor shall charge [omitted property] on the duplicate with the taxes of the current year and the simple taxes of each preceding year it may have escaped taxation"); S.C. Code Ann. § 12-39-250 (2014) (providing that "the county auditor shall correct upon the duplicate for any tax year the assessment of real property on which the valuation of the real property was so excessive as to constitute an invalid assessment"). Nevertheless, in *Mitul Enterprises, L.P. v. Beaufort County Assessor*, the Court of Appeals held that, despite the language in Section 12-39-220 directing the auditor to do so, a county assessor had the authority to order the collection of an otherwise properly assessed tax. *See Mitul Enter. 's, L.P. v. Beaufort Cnty. Assessor*, 410 S.C. 430, 433-34, 764 S.E.2d 720, 722 (Ct. App. 2014). Acknowledging that "a strict construction of Section 12-39-220 may result in [the taxpayer] avoiding the tax at issue," the Court of Appeals found that the "purpose of the statute is to collect taxes that inadvertently escaped taxation." *Id.* Additionally, it noted that, according to testimony at the hearing before the ALC, "some of the terminology in Section 12-39-220 is outdated in light of the technology now employed by the taxing offices." *Id.* Specifically, the Court of Appeals observed that:

Both parties acknowledge that the language of Section 220, and indeed several other code sections, is obsolete because it refers to the county auditor performing functions related to the taxation of real property that are now routinely performed by the assessor in each county. Section 220 speaks of the Auditor maintaining the duplicate, charging the real property taxes, and appraising the real property. All those are duties which currently fall under the authority and duties of the Beaufort County Assessor.

*Id.* Thus, the Court of Appeals held that the county assessor was the appropriate party to levy the additional tax on a property inadvertently omitted from the tax rolls, and that such a construction was "reasonable and furthers the legislative intent of collecting duly owed taxes." *Id.*

Here, the purpose of Section 12-43-220(c) is to ensure that the 4% special assessment ratio is only available to those who actually own, occupy, and are domiciled at their property to the exclusion of any other. Stated differently, its purpose is to make certain that those who do not otherwise qualify for the special assessment ratio are taxed at the standard 6% assessment ratio. Therefore, to the extent that the tax bills in this case were issued under order of the Assessor, the court finds that, like that in *Mitul Enterprises*, permitting the Assessor to order the collection of the instant tax resulting from the property's ineligibility – which was otherwise properly assessed by his office – is a reasonable construction of Section 12-43-220(c) that further serves its purpose.<sup>18</sup> See S.C. Code Ann. § 12-43-220(c); *Mitul Enter. 's, L.P. v. Beaufort Cnty. Assessor*, 410 S.C. at 433-34, 764 S.E.2d at 722; see also S.C. Code Ann. § 12-37-90(g); *Se. Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. at 489, 280 S.E.2d at 58.

Notwithstanding the above, even if the court were to accept his argument that the Assessor usurped the auditor's authority in this case, the Assessor testified at the hearing that his office works in tandem with the auditor's office to issue tax bills, with his office supplying all the relevant substantive assessment information needed to generate the final tax bills. Dr. Fant does not argue, and this court does not find, that there are any substantive inaccuracies or discrepancies in the disputed tax bills. To that end, they appear to accurately reflect the updated assessments using the 6% assessment ratio, as appropriately determined by the Assessor. Thus, there is simply no evidence that Dr. Fant was prejudiced by the Assessor performing the clerical act of processing the tax bills in this case. See *Gardner v. S.C. Dep't of Rev.*, 353 S.C. 1, 14, 577 S.E.2d 190, 197 (2003) (“As a general rule, a party must establish prejudice as the result of another's failure to follow mandatory statutory procedure.”). Accordingly, reversing this case or remanding it simply to reissue the bills for an otherwise properly assessed tax would not serve the interests of justice or judicial economy.

In sum, the court finds that Dr. Fant failed to carry his burden of establishing that he was entitled to the special 4% assessment ratio on the Gareloch Lane property after November 13, 2008, when he applied for legal residency on the Smokerise Court property. Because of Dr. Fant's

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<sup>18</sup> Notably, when seeking a refund of property taxes overpaid because the property was eligible for the special assessment ratio, a taxpayer must file a claim with the county assessor who made the property tax assessment. See S.C. Code Ann. § 12-43-220(c)(3) (Supp. 2020); See S.C. Code Ann. § 12-60-2560(A) (2014). It reasonably follows that the official responsible for handling overpayments related to the special assessment ratio would be best suited for handling balances related to the same.

failure to notify the Assessor following that change, the Assessor was permitted to determine and assess taxes beyond the standard thirty-six month-limitation under the facts of this case. Therefore, the tax differentials in this case – meaning the difference between the taxes Dr. Fant paid at the special 4% assessment ratio and those owed at the 6% ratio – were properly determined and assessed for the period beginning November 13, 2008. As was the penalty levied under Section 12-43-220(c)(2)(vii)(A) for Dr. Fant’s failure to notify the assessor within six months of his application for legal residency on the Smokerise Ct. property. However, the court does not find support for the fifteen percent (15%), or \$8,344.44, late fee levied by the Assessor.<sup>19</sup>

**ORDER**

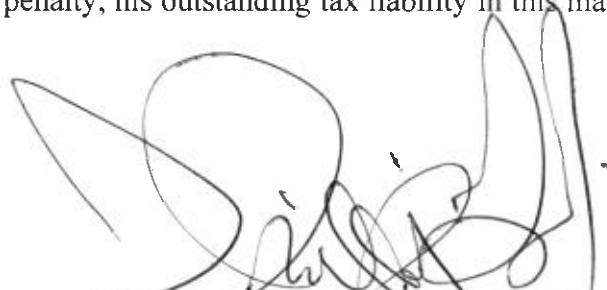
Based upon the foregoing findings of fact and conclusions of law,

**IT IS HEREBY ORDERED** that the Petitioner’s property located at 150 Gareloch Lane, Anderson, South Carolina 29625 is ineligible for the 4% special assessment ratio as of November 13, 2008.

**IT IS FURTHER ORDERED** that the Petitioner’s total tax liability amounts to \$71,753.42, which includes \$55,629.61 for the tax differential and \$16,123.81 in penalties. As the Petitioner has already paid the funds for the penalty, his outstanding tax liability in this matter is \$55,629.61.<sup>20</sup>

**AND IT IS SO ORDERED.**

May 27, 2021  
Columbia, South Carolina

  
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S. Phillip Lenski  
Administrative Law Judge

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<sup>19</sup> Section 12-43-220(c)(2)(vii)(A) provides that the penalty for not notifying the assessor after becoming ineligible for the special assessment ratio is “one hundred percent of the tax paid, plus interest on that amount at the rate of one-half of one percent a month, but in no case less than thirty dollars nor more than the current year’s taxes.” See S.C. Code Ann. § 12-43-220(c)(2)(vii)(A).

<sup>20</sup> To the extent that effectuating this determination requires input from or action by a different taxing authority, the Assessor shall confer with those officials, as necessary.

CERTIFICATE OF SERVICE

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Erika S. Easler  
Judicial Law Clerk

May 27, 2021  
Columbia, South Carolina

**FILED**

MAY 27 2021

SC ADMIN. LAW COURT