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**Jun 17 2022**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

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Appellate Case Nos.: 2021-001528 & 2021-001547

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CDT, Inc., ..... Petitioner,

v.

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

**AND**

Vimlesh V. Patel and Punita Patel ..... Petitioners,

v.

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

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**APPENDIX**

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**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

CDT, Inc.,

Docket No. 19-ALJ-17-0338-CC

Petitioner,

v.

**FINAL ORDER**

South Carolina Department of Revenue,

Respondent.

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Vimlesh V. Patel and Punita Patel,

Docket No. 19-ALJ-17-0339-CC

Petitioners,

v.

South Carolina Department of Revenue,

Respondent.

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**APPEARANCES:** For Petitioner: Scott Talley, Esquire  
Steven Buckingham, Esquire  
For Respondent: Sean G. Ryan, Esquire

**STATEMENT OF THE CASE**

This matter is before the South Carolina Administrative Law Court (ALC or Court) following requests by Vimlesh and Punita Patel, and CDT, Inc. (CDT) for a contested case hearing pursuant to S.C. Code Ann. § 12-60-460 (2014). Vimlesh Patel is the sole owner of CDT, an S Corporation. CDT and the Patels are contesting the decision of the South Carolina Department of Revenue (Department or SCDOR) finding that CDT earned more business income than the amounts reported on its corporate income tax returns for tax years 2012 through 2016 (Audit Period). On September 23, 2020, the two contested cases were consolidated because the same issues and evidence are relevant to both cases.

After notice to the parties, this Court held a hearing in the matter on May 25, 2021, at the ALC in Columbia, South Carolina. The parties appeared and were represented by counsel at the hearing.



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## **STIPULATIONS OF FACT**

On March 15, 2021, the parties executed a Joint Stipulation stipulating to the following facts:

1. There are only two issues in dispute in these matters:
  - a. The amount of income generated by Petitioner CDT, Inc.; and
  - b. The amount of tax, interest, and penalties, if any, that the CDT, Inc., income causes for the Petitioners Vimlesh V. Patel and Punita Patel.
2. The Petitioners Vimlesh V. Patel and Punita Patel have income from sources other than CDT, Inc. for the Audit Period. The amount of income the Petitioners Vimlesh V. Patel and Punita Patel earned from other sources is not in dispute. Furthermore, the expenses of the Petitioners Vimlesh V. Patel and Punita Patel are not in dispute. Because these issues are not in dispute the parties stipulate that such will not be argued at the hearing.
3. Once the Court determines the amount of income generated for Petitioner, CDT, Inc., the Department can then calculate the specific amount of tax and interest and penalties, if any, for the Petitioners Vimlesh V. Patel and Punita Patel.

In addition, at the hearing the parties agreed that there is no dispute as to CDT's deductions and expenses, and that the only issue in dispute is the amount of the gross receipts of the business.

## **ISSUE**

What were the gross receipts of CDT, Inc. for tax years 2012 through 2016?

## **FINDINGS OF FACT**

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of proof and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

During the Audit Period, CDT was a tobacco wholesaler, which supplied tobacco products, soft drinks, and snacks to local convenience stores for resale. The business is located at 3801 Calhoun Memorial Highway, Suite C in Easley, South Carolina. CDT is an S Corporation and therefore its income is not taxed at the corporate level, rather, that income flows through to the shareholders and is taxed at the shareholder level. CDT is solely owned and controlled by Vimlesh Patel (Patel). Therefore, the income of CDT flows through to Mr. Patel, where it is to be

included on his South Carolina individual income tax returns (filed jointly with his wife Punita Patel) and subject to tax. While CDT's income is not taxed, it is still liable for corporate license fees.

CDT has a history as a noncompliant taxpayer. The corporate tax returns at issue for the Audit Period in this case were filed on February 16, 2018, after the corporate income audit was underway. As of the date of the hearing, CDT had not filed its returns for the subsequent years (2017-2020). Patel testified that he was waiting to see the outcome of this litigation before filing those returns. In addition, CDT provided little in the way of corporate financial records to the Department in response to the auditor's request at the outset of the audit process. Some records were, however, provided to the Department during the appeals process at the Department in 2018 and 2019 and further records were provided in response to discovery requests in this litigation following an order of this Court compelling discovery. Patel testified that he did not provide documents to the Department previously because they already had all the records that he could provide. His tax resolution specialist, Zarek Lehl testified that a comprehensive set of sales invoices for the years 2015 and 2016 were produced to the Department during the audit appeal process at the Department in 2019 and were also used in his analysis to determine CDT's gross income for those years. However, a review of those documents, introduced into evidence at the hearing by CDT as Petitioner's Exhibit 6, reveals that these invoices reflect amounts **paid by** CDT for goods sold, not accounts **payable to** CDT reflecting income to the business.

Prior to the audit at issue in this matter, the Department conducted a tobacco audit of CDT to determine if excise taxes on tobacco products had been properly paid. During that audit the Department obtained monthly purchase reports reflecting the amount of tobacco CDT purchased from its suppliers. In conducting the audit now before this Court, the Department utilized these monthly purchase reports to determine the amount of tobacco purchased during the Audit Period. In addition, the Department summoned CDT's bank records directly from CDT's bank.

Sonia Braje testified at the hearing. Braje is the SCDOR auditor who conducted the audit, examining CDT's banking records and the information obtained in the tobacco audit. However, the July 2019 decision letter that was issued to CDT based upon her work in the audit increased CDT's tax burden by \$3 million over the estimates and calculations in her working papers. This was accomplished in part by reducing the

cost of goods sold dramatically from what was reflected in the banking and tobacco records. Braje testified that she believed her working papers included fairly accurate numbers for cost of goods sold. The Department offered no explanation for issuing an initial decision letter reflecting a tax burden so fundamentally at odds with the information in the audit working papers other than Braje's testimony that she was suspicious that not all of the business' receipts were flowing into the bank account. Subsequently, the Department has adopted the cost of goods sold figures reflected in the banking and tobacco records. The cost of goods sold figures now recognized by the Department are not in dispute between the parties.

The Department bases its estimate of gross revenue on three months of tobacco sales invoice data from March, April, and May of 2012. These are the only business records reflecting sales data that Petitioners have provided to the Department and it was the only evidence of income presented at the hearing available to substantiate the bank account numbers. The Department used that data to calculate a markup margin for sales for those three months as 13%, 19% and 23% respectively. It then estimated the total sales revenue by applying the 23% multiplier to the cost of goods sold for tobacco products in all months in the 60-month period. The Department's position at the time of the hearing is based upon estimating gross receipts utilizing a 19% markup over the cost of goods sold for tobacco products and a 14.05% markup for other products. CDT has refused to provide any other business records that would directly reflect the prices charged to its customers for tobacco products, the amounts billed to customers, or amounts collected from customers. CDT did not provide the Department with any sales records related to tobacco other than the three months from 2012. Nor did CDT provide any other documentation (such as customer price sheets) reflecting the pricing of the tobacco products that it sells. CDT provided six months of sales records for non-tobacco related products that it sells, which reflect a markup margin of 14.05% for non-tobacco products. SCDOR used those records to arrive at the 14.05% markup it used to estimate non-tobacco sales revenue. CDT did not provide the Department or this Court with any profit and loss statements or comprehensive records showing its income or expenses, such as customer invoices, W-2's or 1099's related to the employees of CDT. The Department argues that because the taxpayer has refused to provide business records, other than the deposits to

the bank account, to demonstrate its income or profit margin on the cost of goods sold, an inference is created that the records would not support CDT's position that all of the business income was deposited into the bank account.

Patel testified that some sales records from 2012-2013 were lost in a computer crash and that he supplied everything that he understood SCDOR sought, except records that he knew they already had in their possession. Patel testified that the 19% markup figure for tobacco products used by the Department is higher than he has ever realized. He estimates his markup on tobacco products to be six to eight percent. He did not, however, give any explanation as to why his markup on tobacco products for the three months of records that he produced would have been exceptional, nor provide records of any type to support this assertion. Furthermore, he provided no credible explanation for his failure to produce such business records from 2014-2016. Patel admitted that CDT sends out two invoices with each shipment to its customers. One invoice stays with the customer and the other invoice comes back to CDT with payment and is scanned to create an electronic record. Mr. Patel admitted that he did not provide those sales invoices to the Department, claiming the Department did not want such invoices. Patel's assertion that the Department did not seek the sales invoices is contradicted by the Department's Motion to Compel, which was ruled upon by this Court on August 26, 2020, ordering that Petitioners provide such records.

In assessing Patel's credibility, the Court also notes that Petitioners are seemingly disavowing the state and federal tax returns they filed for CDT for each of the years in the Audit Period. The income and expenses reported on those returns are inconsistent with the income and expenses CDT now claims this Court should find. Most notably, for 2015, the banking records would show a loss of almost \$500,000, but the business reported income of \$170,000 on the federal income tax return. Patel could not explain where the amounts of income and expenses reported on those returns originated, nor why those amounts are not accurate. The only explanation he offered was, "[t]hat wasn't me. That was my accountant." There is no evidence Petitioners have filed amended returns with the Department or the Internal Revenue Service (IRS) reflecting the amount of income CDT now asserts it earned. The lack of consistency between the tax returns and the bank account records casts significant doubt on Patel's testimony that the bank account reflects all income and payments made by the business and that all income was deposited into that account. I do not find his testimony that all cash received

was deposited into the First Citizens bank account to be credible. Likewise, I do not find credible his assertion that the markups CDT charges its customers have never been more than six to eight percent. That testimony inexplicably contradicts the only documentary evidence CDT made available showing actual markups of 13%, 19% and 23% during three months in 2012.

CDT presented testimony by Zarek Lehl, who performed an analysis of CDT's records. Lehl is employed by Larson Financial and works as a tax resolution specialist. Lehl's analysis purports to compare the bank deposits and records of sales receipts of the business to demonstrate that the bank deposits reasonably reflect the total receipts of the business. However, a review of the documents relied upon by Lehl reveals that the documents he interpreted as sales invoices reflecting accounts receivable to CDT are actually purchase invoices paid by CDT for tobacco products the business purchased from suppliers. Furthermore, Lehl's conclusion as to the amount of taxes owed by CDT demonstrates a misunderstanding of the tax situation at hand. He calculated the tax owed using the corporate income tax rate, which is inapplicable to an S corporation such as CDT. Because of these fundamental errors, I do not find Lehl's testimony or analysis to be credible or useful in resolving this dispute.

This Court's calculations of CDT's income for each of the years of the Audit Period using the Department's percentage markup methodology is represented in the following table<sup>1</sup>:

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<sup>1</sup> The Court finds errors in the Department's calculations, most notably in its failure to add the Tobacco Excise Taxes paid into the Tobacco Cost of Goods Sold despite its explanation that it should be characterized in that manner.

|                                                         | 2012      | 2013      | 2014       | 2015       | 2016       |
|---------------------------------------------------------|-----------|-----------|------------|------------|------------|
| Tobacco Purchased <sup>2</sup>                          | 4,161,691 | 6,592,943 | 8,145,420  | 11,939,808 | 14,255,260 |
| Tobacco Excise Taxes Paid <sup>3</sup>                  | 195,137   | 309,135   | 455,900    | 427,646    | 1,141,702  |
| Tobacco COGS <sup>4</sup>                               | 4,356,828 | 6,902,078 | 8,601,320  | 12,367,454 | 15,396,962 |
| Tobacco Gross Receipts (19% Markup) <sup>5</sup>        | 5,184,625 | 8,213,473 | 10,235,571 | 14,717,270 | 18,322,385 |
| Non-tobacco COGS <sup>6</sup>                           | 0         | 7,992     | 100,735    | 119,160    | 384,206    |
| Non-tobacco Gross Receipts (14.05% Markup) <sup>7</sup> | 0         | 9,115     | 114,888    | 135,902    | 438,187    |
| Total COGS <sup>8</sup>                                 | 4,356,828 | 6,910,070 | 8,702,055  | 12,486,614 | 15,781,168 |
| Adjusted Gross Income <sup>9</sup>                      | 827,797   | 1,312,518 | 1,648,404  | 2,366,558  | 2,979,404  |
| Total Operating Expenses <sup>10</sup>                  | 292,580   | 405,705   | 615,873    | 588,855    | 1,278,244  |
| Net Income <sup>11</sup>                                | 535,217   | 906,813   | 1,032,531  | 1,777,703  | 1,701,160  |

<sup>2</sup> Petitioners do not dispute the figures estimated by SCDOR for Tobacco Purchased.

<sup>3</sup> Petitioners do not dispute the figures estimated by SCDOR for Tobacco Excise Taxes Paid.

<sup>4</sup> Tobacco COGS (Cost of Goods Sold) equals Tobacco Purchased plus Tobacco Excise Taxes Paid.

<sup>5</sup> Tobacco Gross Receipts (19% Markup) equals Tobacco COGS multiplied by 1.19.

<sup>6</sup> Petitioners do not dispute the figures estimated by SCDOR for Non-tobacco COGS.

<sup>7</sup> Non-tobacco Gross Receipts (14.05% Markup) equals Non-tobacco COGS multiplied by 1.1405.

<sup>8</sup> Total COGS equals Tobacco COGS plus Non-tobacco COGS.

<sup>9</sup> Adjusted Gross Income equals Tobacco Gross Receipts (19% Markup) plus Non-tobacco Gross Receipts (14.05% Markup) minus Total COGS.

<sup>10</sup> Petitioners do not dispute the figures estimated by SCDOR for Total Operating Expenses.

<sup>11</sup> Net Income equals Adjusted Gross Income minus Total Operating Expenses.

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

The Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. §§ 12-60-430 (2014); 1-23-600 (Supp. 2020). In this contested case, the Court serves as the finder of fact, and conducts a *de novo* review. See Reliance Ins. Co. v. Smith, 327 S.C. 528, 534-35, 489 S.E.2d 674, 677 (Ct. App. 1997). As the trier of fact, the weight and credibility assigned to evidence presented at the hearing is within the province of the Court. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). The standard of proof in this case is a preponderance of the evidence. See Anonymous v. Slate Bd. of Med. Exam'rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (quoting 2 Am.Jur.2d Administrative Law § 363 (1994)) ("[T]he standard of proof in administrative hearings is generally a preponderance of the evidence.").

An S corporation is not subject to tax in South Carolina to the extent it would be exempt from federal corporate income tax. S.C. Code Ann. § 12-6-590 (2014). The income of an S corporation is passed through to its shareholders and each shareholder must include its share of South Carolina S Corporation income on that shareholder's individual income tax return. Id. The provisions of the Internal Revenue Code (IRC) apply to determine an S corporation's gross income, adjusted gross income, and taxable income. Id. Because the income of an S corporation is determined pursuant to the provisions of the IRC, cases addressing the IRC, including cases from the United States Tax Court, while not binding, are applicable and instructive in determining any dispute involving the income of an S corporation.

When a taxpayer fails to file a tax return, the Department is authorized to issue that taxpayer a proposed assessment based on the best information available and issue a proposed assessment for the taxes, including penalties and interest. Section 12-60-430. In order to aid in this assessment, the taxpayer is required to keep records or other documents related to his taxes. S.C. Code Ann. § 12-54-210(A) (2014); S.C. Code Ann. Regs. 117-200 - 117-200.1 (2012). As the Eighth Circuit recognized,

[t]he cases are legion which state that the burden of proof is on the taxpayer; that the Commissioner's assessment is *prima facie* or presumptively correct and that such presumption is not overcome by mere book entries, mere

statements in the tax returns, the mere unsupported testimony of the taxpayer, or mathematical calculations involving uncertain facts.

Cleveland Chiropractic College v. Commissioner, 312 F.2d 203, 206 (1963)(internal quotations omitted). Rather, a taxpayer is required to maintain adequate records sufficient to enable the taxing authority to determine the taxpayer's correct tax liability. S.C. Code Ann. § 12-54-210 (2014); Meneguzzo v. Commissioner, 43 T.C. 824, 831-832 (1965); § 1.6001-1(a), Income Tax Regs. A taxpayer's inability to produce records does not relieve the taxpayer of the burden of proof. See Estate of Mason v. Commissioner, 64 T.C. 651 (1975), affd., 566 F.2d 2 (6th Cir. 1977).

In this case, CDT urges the Court to use the total deposits into the business bank account to calculate the revenue of the business. Patel testified that all revenue, including any cash accepted, was deposited into that account and that those deposits reflect the accurate gross revenue of CDT. I conclude that the methodology urged by CDT of using the total deposits into the bank account as the amount of gross revenue is contrary to the evidence before me. Likewise, CDT has not carried its burden of proving that the markup method utilized by the Department is inaccurate. CDT could have provided records showing sales using smaller markup percentages than those used by the Department, but chose not to do so despite admitting that it keeps those records and in defiance of this Court's order compelling discovery responses. The Department's assessment methodology, although based upon assumptions and extrapolated from the data made available, is a reasonable calculation of the likely gross income using the best information available to the Department and this Court. The fact that the Petitioners had control over the business records, and offered no credible explanation for the refusal to produce them, leads this Court to draw the inference that those records would not support the calculations urged by CDT. If a party has relevant evidence within its control which it fails to produce at a hearing, the failure to produce the evidence will give rise to an inference that it is unfavorable to that party. 48A Am.Jur.2d Labor and Labor Relations § 2021.

CDT is in the business of selling goods, therefore its income is realized through sales. The Department utilized the only records Petitioners made available regarding CDT's sales to calculate an average markup margin. The parties are in agreement as to the amount of tobacco and non-tobacco products purchased by CDT. What the parties cannot agree upon is how much CDT received when it sold those goods to its customers. The only sales records

or other documentation in the record regarding the amount CDT charged its customers for tobacco is the three months of sales records from 2012. Absent adequate records, or if the records that are kept do not accurately reflect income, the taxing authority may determine the existence and amount of a taxpayer's income by using any method that clearly reflects income. United States v. Johnson, 319 U.S. 503 (1943); Petzoldt v. Commissioner, 92 T.C. 661, 686-687 (1989). It is proper for the Department to employ an indirect method to calculate income where the method used is reasonable. Holland v. United States, 348 U.S. 121 (1954); Davis v. Commissioner, 239 F.2d 187, 189 (7th Cir. 1956), affg. T.C. Memo. 1955-87; Giddio v. Commissioner, 54 T.C. 1530, 1533 (1970). "The reconstruction need only be reasonable in light of all surrounding facts and circumstances." Petzoldt, 92 T.C. at 687; Giddio, 54 T.C. at 1533. The percentage markup method is well recognized as an appropriate means of reconstructing income where a taxpayer's records are incomplete or inaccurate. Cebollero v. Commissioner, T.C. Memo. 1990-618, affd. 967 F.2d 986 (4th Cir. 1992). Bollella v. Commissioner, 374 F.2d 96 (6th Cir. 1967), affg. T.C. Memo. 1965-162; Kurnick v. Commissioner, 232 F.2d 678 (6th Cir. 1956), affg. T.C. Memo. 1955-31; Stone v. Commissioner, 22 T.C. 893, 905-906 (1954). The purchase markup method is considered particularly appropriate in matters where the amount of goods purchased for sale may be readily computed. Frank v. Commissioner, T.C. Memo. 1982-214, 1982 WL 10540 (Tax Court 1982).

Here, the three months of sales records admitted into evidence reflected monthly average markups of 13.5%, 19%, and 23.5%. It is reasonable to utilize the median markup percentage of 19% to calculate the gross income for the other months of the Audit Period for which no records were provided by Petitioners. The Court finds the case of Webb v. Commissioner, 394 F.2d 366 (5th Cir. 1968), while not binding, shares similarities with the present case and is therefore instructive. In Webb, the United States Court of Appeals for the Fifth Circuit addressed liquor store owners contesting the Commissioner of the IRS' computation of their income using a purchase markup method. Like CDT, the Webbs failed to maintain or provide complete records to the IRS. Id. at 369. The Court noted that Mr. Webb accepted cash and did not deposit all his receipts into his bank account. Id. Moreover, the amount the Webbs reported in gross sales on their tax returns was \$18,000 less than the amount shown in their incomplete records. Id. Because the Webbs failed to maintain

complete records, the IRS determined the Webbs' income using the purchase markup method. The Fifth Circuit recognized that the IRS' determination of taxable income is presumptively correct and the taxpayer has the burden of showing that the assessment is wrong on any proper theory. Id. at 372, quoting Bernstein v. C.I.R., 267 F.2d 879, 881 (5<sup>th</sup> Cir. 1959). The Webb Court held that the purchase markup method was the most reasonable means of computing income because the Webbs' cost of sales each year "were known with certainty." Id. at 373. In addressing the Webbs' complaints that the IRS should have used a different method the Court stated, "Arithmetic precision was originally and exclusively in Webb's hands, and he had a statutory duty to provide it. He did not have to add or subtract; rather, he had simply to keep papers and data for others to mathematici[s]e." Id. at 373, citing Breland v. United States, 323 F.2d 492 (5<sup>th</sup> Cir. 1963); Mendelson v. C.I.R., 305 F.2d 519 (7<sup>th</sup> Cir. 1962). The Webbs then argued that the IRS markup percentage was too high and did not reflect their actual income. In response, the Court stated, "There are X's in the Commissioner's equation, but the formula is reliably correct, and the X's were not filled in by Webb." Id. at 376-377. The Court then went on to uphold the determination of the Webbs' income using the percentage markup method. Similarly in this case, CDT failed to maintain or provide full records to the Department despite a statutory duty to maintain records. Section 12-54-210; Regulation 117-200 - 117-200.1. As the Webb court recognized, the purchase markup method is the most reasonable method when cost of sales each year is known with certainty. CDT's cost of sales for each year of the Audit Period are known and the parties agree on what CDT spent on goods purchased to resell to its customers. Accordingly, the purchase markup method is the most reasonable method to use in this case to estimate income.

Civil penalties are applied to every South Carolina tax that requires a return unless otherwise provided. S.C. Code Ann. § 12-54-43 (2014). Such penalties are considered a tax owed to the State. Id. Further, "[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety." S.C. Code Ann. § 12-54-25(A) (2014). Penalties are applicable to this matter pursuant to § 12-54-43 which states:

In the case of failure to file a return on or before the date prescribed by law... there must be added to the amount required to be shown as tax on the return, a penalty of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or

fraction of the month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43(C)(1) (2014). Additionally, S.C. Code Ann. § 12-54-43(E) (2014) states:

In the case of failure to pay any amount of any tax required to be shown on a return which is not shown, including an assessment within ten days of the date of the notice and demand for payment, there must be added to the amount of tax stated in the notice and demand one-half of one percent of the amount of the tax if the failure is for not more than one month, with an additional one-half of one percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43(E) (2014). Here, CDT admits that it failed to timely file its corporate income tax returns or timely pay its corporate license fees for any of the years in the Audit Period. Therefore, CDT is liable for failure to file and failure to pay penalties pursuant to §§ 12-54-43(C)(1) and 12-54-43(E).

During the Audit Period CDT earned the following net income which flows through to Mr. Patel:

| 2012      | 2013      | 2014        | 2015        | 2016        |
|-----------|-----------|-------------|-------------|-------------|
| \$535,217 | \$906,813 | \$1,032,531 | \$1,777,703 | \$1,701,160 |

Therefore,

- 1) **IT IS ORDERED** that Petitioner CDT is liable for corporate license fees and interest for each of the years of the Audit Period;
- 2) **IT IS ALSO ORDERED** that Petitioners Vimlesh V. Patel and Punita Patel are liable for income taxes on CDT's income as found in this order.
- 3) **IT IS ALSO ORDERED** that Petitioners are liable for failure to file and failure to pay penalties pursuant to §§ 12-54-43(C)(1) and 12-54-43(E).
- 4) **IT IS ALSO ORDERED** that this matter is **REMANDED** to the Department of Revenue to calculate the taxes, penalties, and interest owed by Petitioners as of the date of this order. The Department must provide Petitioners a statement of the amount owed within 15 days from the date of this order. Petitioners may pay the amount owed within 30 days of receipt of the statement without incurring additional penalties or interest.
- 5) **IT IS FURTHER ORDERED** that Petitioners may, within 15 days of receiving the

statement of amounts owed, move this Court for further examination of SCDOR's calculations if there is disagreement.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, reading "Deborah Brooks Durden". The signature is written in a cursive, flowing style.

Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

October 28, 2021  
Columbia, South Carolina

### **CERTIFICATE OF SERVICE**

I, Robin E. Coleman, 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).

*Robin Coleman*

Robin E. Coleman  
Judicial Aide to Judge Deborah Brooks Durden

October 28, 2021  
Columbia, South Carolina



**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

CDT, Inc.,

Petitioner,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 19-ALJ-17-0338-CC

**AMENDED FINAL ORDER**

Vimlesh V. Patel and Punita Patel,

Petitioners,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 19-ALJ-17-0339-CC

**APPEARANCES:** For Petitioner: Scott Talley, Esquire  
Steven Buckingham, Esquire  
For Respondent: Sean G. Ryan, Esquire

**STATEMENT OF THE CASE**

This matter is before the South Carolina Administrative Law Court (ALC or Court) following requests by Vimlesh and Punita Patel, and CDT, Inc. (CDT) for a contested case hearing pursuant to S.C. Code Ann. § 12-60-460 (2014). Vimlesh Patel is the sole owner of CDT, an S Corporation. CDT and the Patels are contesting the decision of the South Carolina Department of Revenue (Department or SCDOR) finding that CDT earned more business income than the amounts reported on its corporate income tax returns for tax years 2012 through 2016 (Audit Period). On September 23, 2020, the two contested cases were consolidated because the same issues and evidence are relevant to both cases.

After notice to the parties, this Court held a hearing in the matter on May 25, 2021, at the ALC in Columbia, South Carolina. The parties appeared and were represented by counsel at the hearing. On October 28, 2021, a Final Order was issued. On November 2, 2021, SCDOR filed a Motion to Reconsider, Alter, or Amend the Final Order. On November 10, 2021, CDT filed a Motion to Alter/Amend the Final Order. The motions are



granted and the October 28, 2021 Final Order is hereby vacated. This Amended Final Order substituted in its place.

### **STIPULATIONS OF FACT**

On March 15, 2021, the parties executed a Joint Stipulation stipulating to the following facts:

1. There are only two issues in dispute in these matters:
  - a. The amount of income generated by Petitioner CDT, Inc.; and
  - b. The amount of tax, interest, and penalties, if any, that the CDT, Inc., income causes for the Petitioners Vimlesh V. Patel and Punita Patel.
2. The Petitioners Vimlesh V. Patel and Punita Patel have income from sources other than CDT, Inc. for the Audit Period. The amount of income the Petitioners Vimlesh V. Patel and Punita Patel earned from other sources is not in dispute. Furthermore, the expenses of the Petitioners Vimlesh V. Patel and Punita Patel are not in dispute. Because these issues are not in dispute the parties stipulate that such will not be argued at the hearing.
3. Once the Court determines the amount of income generated for Petitioner, CDT, Inc., the Department can then calculate the specific amount of tax and interest and penalties, if any, for the Petitioners Vimlesh V. Patel and Punita Patel.

In addition, at the hearing the parties agreed that there is no dispute as to CDT's deductions and expenses, and that the only issue in dispute is the amount of the gross receipts of the business.

### **ISSUE**

What were the gross receipts of CDT, Inc. for tax years 2012 through 2016?

### **FINDINGS OF FACT**

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of proof and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

During the Audit Period, CDT was a tobacco wholesaler, which supplied tobacco products, soft drinks, and snacks to local convenience stores for resale. The business is located at 3801 Calhoun Memorial Highway, Suite C in Easley, South Carolina. CDT is an S Corporation and therefore its income is not taxed at the corporate level, rather, that income flows through to

the shareholders and is taxed at the shareholder level. CDT is solely owned and controlled by Vimlesh Patel (Patel). Therefore, the income of CDT flows through to Mr. Patel, where it is to be included on his South Carolina individual income tax returns (filed jointly with his wife Punita Patel) and subject to tax. While CDT's income is not taxed, it is still liable for corporate license fees.

CDT has a history as a noncompliant taxpayer. The corporate tax returns at issue for the Audit Period in this case were filed on February 16, 2018, after the corporate income audit was underway. As of the date of the hearing, CDT had not filed its returns for the subsequent years (2017-2020). Patel testified that he was waiting to see the outcome of this litigation before filing those returns. In addition, CDT provided little in the way of corporate financial records to the Department in response to the auditor's request at the outset of the audit process. Some records were, however, provided to the Department during the appeals process at the Department in 2018 and 2019 and further records were provided in response to discovery requests in this litigation following an order of this Court compelling discovery. Patel testified that he did not provide documents to the Department previously because they already had all the records that he could provide. His tax resolution specialist, Zarek Lehl testified that a comprehensive set of sales invoices for the years 2015 and 2016 were produced to the Department during the audit appeal process at the Department in 2019 and were also used in his analysis to determine CDT's gross income for those years. However, a review of those documents, introduced into evidence at the hearing by CDT as Petitioner's Exhibit 6, reveals that these invoices reflect amounts **paid by** CDT for goods sold, not accounts **payable to** CDT reflecting income to the business.

Prior to the audit at issue in this matter, the Department conducted a tobacco audit of CDT to determine if excise taxes on tobacco products had been properly paid. During that audit the Department obtained monthly purchase reports reflecting the amount of tobacco CDT purchased from its suppliers. In conducting the audit now before this Court, the Department utilized these monthly purchase reports to determine the amount of tobacco purchased during the Audit Period. In addition, the Department summoned CDT's bank records directly from CDT's bank.

Sonia Braje testified at the hearing. Braje is the SCDOR auditor who conducted the audit, examining CDT's banking records and the information obtained in the tobacco audit. However, the July 2019 decision letter that was issued to CDT based

upon her work in the audit increased CDT's tax burden by \$3 million over the estimates and calculations in her working papers. This was accomplished in part by reducing the cost of goods sold dramatically from what was reflected in the banking and tobacco records. Braje testified that she believed her working papers included fairly accurate numbers for cost of goods sold. The Department offered no explanation for issuing an initial decision letter reflecting a tax burden so fundamentally at odds with the information in the audit working papers other than Braje's testimony that she was suspicious that not all of the business' receipts were flowing into the bank account. Subsequently, the Department has adopted the cost of goods sold figures reflected in the banking and tobacco records. The cost of goods sold figures now recognized by the Department are not in dispute between the parties. I find that the July 31, 2019 Department Determination is not supported by the facts of this case or the documents the Department admits it had complete access to at the time the decision was issued.

The Department bases its estimate of gross revenue on three months of tobacco sales invoice data from March, April, and May of 2012. These are the only business records reflecting sales data that Petitioners have provided to the Department and it was the only evidence of income presented at the hearing available to substantiate the bank account numbers. The Department used that data to calculate a markup margin for sales for those three months as 13%, 19% and 23% respectively. It then estimated the total sales revenue by applying the 23% multiplier to the cost of goods sold for tobacco products in all months in the 60-month period. The Department's position at the time of the hearing is based upon estimating gross receipts utilizing a 19% markup over the cost of goods sold for tobacco products and a 14.05% markup for other products. CDT has refused to provide any other business records that would directly reflect the prices charged to its customers for tobacco products, the amounts billed to customers, or amounts collected from customers. CDT did not provide the Department with any sales records related to tobacco other than the three months from 2012. Nor did CDT provide any other documentation (such as customer price sheets) reflecting the pricing of the tobacco products that it sells. CDT provided six months of sales records for non-tobacco related products that it sells, which reflect a markup margin of 14.05% for non-tobacco products. SCDOR used those records to arrive at the 14.05% markup it used to estimate non-tobacco

sales revenue. CDT did not provide the Department or this Court with any profit and loss statements or comprehensive records showing its income or expenses, such as customer invoices, W-2's or 1099's related to the employees of CDT. The Department argues that because the taxpayer has refused to provide business records, other than the deposits to the bank account, to demonstrate its income or profit margin on the cost of goods sold, an inference is created that the records would not support CDT's position that all of the business income was deposited into the bank account.

Patel testified that some sales records from 2012-2013 were lost in a computer crash and that he supplied everything that he understood SCDOR sought, except records that he knew they already had in their possession. Patel testified that the 19% markup figure for tobacco products used by the Department is higher than he has ever realized. He estimates his markup on tobacco products to be six to eight percent. He did not, however, give any explanation as to why his markup on tobacco products for the three months of records that he produced would have been exceptional, nor provide records of any type to support this assertion. Furthermore, he provided no credible explanation for his failure to produce such business records from 2014-2016. Patel admitted that CDT sends out two invoices with each shipment to its customers. One invoice stays with the customer and the other invoice comes back to CDT with payment and is scanned to create an electronic record. Mr. Patel admitted that he did not provide those sales invoices to the Department, claiming the Department did not want such invoices. Patel's assertion that the Department did not seek the sales invoices is contradicted by the Department's Motion to Compel, which was ruled upon by this Court on August 26, 2020, ordering that Petitioners provide such records.

In assessing Patel's credibility, the Court also notes that Petitioners are seemingly disavowing the state and federal tax returns they filed for CDT for each of the years in the Audit Period. The income and expenses reported on those returns are inconsistent with the income and expenses CDT now claims this Court should find. Most notably, for 2015, the banking records would show a loss of almost \$500,000, but the business reported income of \$170,000 on the federal income tax return. Patel could not explain where the amounts of income and expenses reported on those returns originated, nor why those amounts are not accurate. The only explanation he offered was, "[t]hat wasn't me. That was my accountant." There is no evidence Petitioners have filed amended returns with the Department or the Internal Revenue Service

(IRS) reflecting the amount of income CDT now asserts it earned. The lack of consistency between the tax returns and the bank account records casts significant doubt on Patel's testimony that the bank account reflects all income and payments made by the business and that all income was deposited into that account. I do not find his testimony that all cash received was deposited into the First Citizens bank account to be credible. Likewise, I do not find credible his assertion that the markups CDT charges its customers have never been more than six to eight percent. That testimony inexplicably contradicts the only documentary evidence CDT made available showing actual markups of 13%, 19% and 23% during three months in 2012.

CDT presented testimony by Zarek Lehl, who performed an analysis of CDT's records. Lehl is employed by Larson Financial and works as a tax resolution specialist. Lehl's analysis purports to compare the bank deposits and records of sales receipts of the business to demonstrate that the bank deposits reasonably reflect the total receipts of the business. However, a review of the documents relied upon by Lehl reveals that the documents he interpreted as sales invoices reflecting accounts receivable to CDT are actually purchase invoices paid by CDT for tobacco products the business purchased from suppliers. Furthermore, Lehl's conclusion as to the amount of taxes owed by CDT demonstrates a misunderstanding of the tax situation at hand. He calculated the tax owed using the corporate income tax rate, which is inapplicable to an S corporation such as CDT. Because of these fundamental errors, I do not find Lehl's testimony or analysis to be credible or useful in resolving this dispute.

This Court's calculations of CDT's income for each of the years of the Audit Period using the Department's percentage markup methodology is represented in the following table:

|                                                         | 2012      | 2013      | 2014       | 2015       | 2016       |
|---------------------------------------------------------|-----------|-----------|------------|------------|------------|
| Tobacco Purchased <sup>1</sup>                          | 4,161,691 | 6,592,943 | 8,145,420  | 11,939,808 | 14,255,260 |
| Tobacco Excise Taxes Paid <sup>2</sup>                  | 195,137   | 309,135   | 455,900    | 427,646    | 1,141,702  |
| Tobacco COGS <sup>3</sup>                               | 4,356,828 | 6,902,078 | 8,601,320  | 12,367,454 | 15,396,962 |
| Tobacco Gross Receipts (19% Markup) <sup>4</sup>        | 5,184,625 | 8,213,473 | 10,235,571 | 14,717,270 | 18,322,385 |
| Non-tobacco COGS <sup>5</sup>                           | 0         | 7,992     | 100,735    | 119,160    | 384,206    |
| Non-tobacco Gross Receipts (14.05% Markup) <sup>6</sup> | 0         | 9,115     | 114,888    | 135,902    | 438,187    |
| Total COGS <sup>7</sup>                                 | 4,161,691 | 6,600,935 | 8,246,155  | 12,058,968 | 14,639,466 |
| Adjusted Gross Income <sup>8</sup>                      | 1,022,934 | 1,621,653 | 2,104,304  | 2,794,204  | 4,121,106  |
| Total Operating Expenses <sup>9</sup>                   | 292,580   | 405,705   | 615,873    | 588,855    | 1,278,244  |
| Net Income <sup>10</sup>                                | 730,354   | 1,215,948 | 1,488,431  | 2,205,349  | 2,842,862  |

<sup>1</sup> Petitioners do not dispute the figures estimated by SCDOR for Tobacco Purchased.

<sup>2</sup> Petitioners do not dispute the figures estimated by SCDOR for Tobacco Excise Taxes Paid.

<sup>3</sup> Tobacco COGS (Cost of Goods Sold) equals Tobacco Purchased plus Tobacco Excise Taxes Paid.

<sup>4</sup> Tobacco Gross Receipts (19% Markup) equals Tobacco COGS multiplied by 1.19.

<sup>5</sup> Petitioners do not dispute the figures estimated by SCDOR for Non-tobacco COGS.

<sup>6</sup> Non-tobacco Gross Receipts (14.05% Markup) equals Non-tobacco COGS multiplied by 1.1405.

<sup>7</sup> Total COGS equals Tobacco COGS plus Non-tobacco COGS minus Tobacco Excise Taxes Paid.

<sup>8</sup> Adjusted Gross Income equals Tobacco Gross Receipts (19% Markup) plus Non-tobacco Gross Receipts (14.05% Markup) minus Total COGS.

<sup>9</sup> Petitioners do not dispute the figures estimated by SCDOR for Total Operating Expenses.

<sup>10</sup> Net Income equals Adjusted Gross Income minus Total Operating Expenses.

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

The Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. §§ 12-60-430 (2014); 1-23-600 (Supp. 2020). In this contested case, the Court serves as the finder of fact, and conducts a *de novo* review. See Reliance Ins. Co. v. Smith, 327 S.C. 528, 534-35, 489 S.E.2d 674, 677 (Ct. App. 1997). As the trier of fact, the weight and credibility assigned to evidence presented at the hearing is within the province of the Court. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). The standard of proof in this case is a preponderance of the evidence. See Anonymous v. Slate Bd. of Med. Exam'rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (quoting 2 Am.Jur.2d Administrative Law § 363 (1994)) ("[T]he standard of proof in administrative hearings is generally a preponderance of the evidence.").

An S corporation is not subject to tax in South Carolina to the extent it would be exempt from federal corporate income tax. S.C. Code Ann. § 12-6-590 (2014). The income of an S corporation is passed through to its shareholders and each shareholder must include its share of South Carolina S Corporation income on that shareholder's individual income tax return. Id. The provisions of the Internal Revenue Code (IRC) apply to determine an S corporation's gross income, adjusted gross income, and taxable income. Id. Because the income of an S corporation is determined pursuant to the provisions of the IRC, cases addressing the IRC, including cases from the United States Tax Court, while not binding, are applicable and instructive in determining any dispute involving the income of an S corporation.

When a taxpayer fails to file a tax return, the Department is authorized to issue that taxpayer a proposed assessment based on the best information available and issue a proposed assessment for the taxes, including penalties and interest. Section 12-60-430. In order to aid in this assessment, the taxpayer is required to keep records or other documents related to his taxes. S.C. Code Ann. § 12-54-210(A) (2014); S.C. Code Ann. Regs. 117-200 - 117-200.1 (2012). As the Eighth Circuit recognized,

[t]he cases are legion which state that the burden of proof is on the taxpayer; that the Commissioner's assessment is *prima facie* or presumptively correct and that such presumption is not overcome by mere book entries, mere

statements in the tax returns, the mere unsupported testimony of the taxpayer, or mathematical calculations involving uncertain facts.

Cleveland Chiropractic College v. Commissioner, 312 F.2d 203, 206 (1963)(internal quotations omitted). Rather, a taxpayer is required to maintain adequate records sufficient to enable the taxing authority to determine the taxpayer's correct tax liability. S.C. Code Ann. § 12-54-210 (2014); Meneguzzo v. Commissioner, 43 T.C. 824, 831-832 (1965); § 1.6001-1(a), Income Tax Regs. A taxpayer's inability to produce records does not relieve the taxpayer of the burden of proof. See Estate of Mason v. Commissioner, 64 T.C. 651 (1975), affd., 566 F.2d 2 (6th Cir. 1977).

In this case, CDT urges the Court to use the total deposits into the business bank account to calculate the revenue of the business. Patel testified that all revenue, including any cash accepted, was deposited into that account and that those deposits reflect the accurate gross revenue of CDT. I conclude that the methodology urged by CDT of using the total deposits into the bank account as the amount of gross revenue is contrary to the evidence before me. Likewise, CDT has not carried its burden of proving that the markup method utilized by the Department is inaccurate. CDT could have provided records showing sales using smaller markup percentages than those used by the Department, but chose not to do so despite admitting that it keeps those records and in defiance of this Court's order compelling discovery responses. The Department's assessment methodology, although based upon assumptions and extrapolated from the data made available, is a reasonable calculation of the likely gross income using the best information available to the Department and this Court. The fact that the Petitioners had control over the business records, and offered no credible explanation for the refusal to produce them, leads this Court to draw the inference that those records would not support the calculations urged by CDT. If a party has relevant evidence within its control which it fails to produce at a hearing, the failure to produce the evidence will give rise to an inference that it is unfavorable to that party. 48A Am.Jur.2d Labor and Labor Relations § 2021.

CDT is in the business of selling goods, therefore its income is realized through sales. The Department utilized the only records Petitioners made available regarding CDT's sales to calculate an average markup margin. The parties are in agreement as to the amount of tobacco and non-tobacco products purchased by CDT. What the parties cannot agree upon is how much CDT received when it sold those goods to its customers. The only sales records

or other documentation in the record regarding the amount CDT charged its customers for tobacco is the three months of sales records from 2012. Absent adequate records, or if the records that are kept do not accurately reflect income, the taxing authority may determine the existence and amount of a taxpayer's income by using any method that clearly reflects income. United States v. Johnson, 319 U.S. 503 (1943); Petzoldt v. Commissioner, 92 T.C. 661, 686-687 (1989). It is proper for the Department to employ an indirect method to calculate income where the method used is reasonable. Holland v. United States, 348 U.S. 121 (1954); Davis v. Commissioner, 239 F.2d 187, 189 (7th Cir. 1956), affg. T.C. Memo. 1955-87; Giddio v. Commissioner, 54 T.C. 1530, 1533 (1970). "The reconstruction need only be reasonable in light of all surrounding facts and circumstances." Petzoldt, 92 T.C. at 687; Giddio, 54 T.C. at 1533. The percentage markup method is well recognized as an appropriate means of reconstructing income where a taxpayer's records are incomplete or inaccurate. Cebollero v. Commissioner, T.C. Memo. 1990-618, affd. 967 F.2d 986 (4th Cir. 1992). Bollella v. Commissioner, 374 F.2d 96 (6th Cir. 1967), affg. T.C. Memo. 1965-162; Kurnick v. Commissioner, 232 F.2d 678 (6th Cir. 1956), affg. T.C. Memo. 1955-31; Stone v. Commissioner, 22 T.C. 893, 905-906 (1954). The purchase markup method is considered particularly appropriate in matters where the amount of goods purchased for sale may be readily computed. Frank v. Commissioner, T.C. Memo. 1982-214, 1982 WL 10540 (Tax Court 1982).

Here, the three months of sales records admitted into evidence reflected monthly average markups of 13.5%, 19%, and 23.5%. It is reasonable to utilize the median markup percentage of 19% to calculate the gross income for the other months of the Audit Period for which no records were provided by Petitioners. The Court finds the case of Webb v. Commissioner, 394 F.2d 366 (5th Cir. 1968), while not binding, shares similarities with the present case and is therefore instructive. In Webb, the United States Court of Appeals for the Fifth Circuit addressed liquor store owners contesting the Commissioner of the IRS' computation of their income using a purchase markup method. Like CDT, the Webbs failed to maintain or provide complete records to the IRS. Id. at 369. The Court noted that Mr. Webb accepted cash and did not deposit all his receipts into his bank account. Id. Moreover, the amount the Webbs reported in gross sales on their tax returns was \$18,000 less than the amount shown in their incomplete records. Id. Because the Webbs failed to maintain

complete records, the IRS determined the Webbs' income using the purchase markup method. The Fifth Circuit recognized that the IRS' determination of taxable income is presumptively correct and the taxpayer has the burden of showing that the assessment is wrong on any proper theory. Id. at 372, quoting Bernstein v. C.I.R., 267 F.2d 879, 881 (5<sup>th</sup> Cir. 1959). The Webb Court held that the purchase markup method was the most reasonable means of computing income because the Webbs' cost of sales each year "were known with certainty." Id. at 373. In addressing the Webbs' complaints that the IRS should have used a different method the Court stated, "Arithmetic precision was originally and exclusively in Webb's hands, and he had a statutory duty to provide it. He did not have to add or subtract; rather, he had simply to keep papers and data for others to mathematici[s]e." Id. at 373, citing Breland v. United States, 323 F.2d 492 (5<sup>th</sup> Cir. 1963); Mendelson v. C.I.R., 305 F.2d 519 (7<sup>th</sup> Cir. 1962). The Webbs then argued that the IRS markup percentage was too high and did not reflect their actual income. In response, the Court stated, "There are X's in the Commissioner's equation, but the formula is reliably correct, and the X's were not filled in by Webb." Id. at 376-377. The Court then went on to uphold the determination of the Webbs' income using the percentage markup method. Similarly in this case, CDT failed to maintain or provide full records to the Department despite a statutory duty to maintain records. Section 12-54-210; Regulation 117-200 - 117-200.1. As the Webb court recognized, the purchase markup method is the most reasonable method when cost of sales each year is known with certainty. CDT's cost of sales for each year of the Audit Period are known and the parties agree on what CDT spent on goods purchased to resell to its customers. Accordingly, the purchase markup method is the most reasonable method to use in this case to estimate income.

Civil penalties are applied to every South Carolina tax that requires a return unless otherwise provided. S.C. Code Ann. § 12-54-43 (2014). Such penalties are considered a tax owed to the State. Id. Further, "[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety." S.C. Code Ann. § 12-54-25(A) (2014). Penalties are applicable to this matter pursuant to § 12-54-43 which states:

In the case of failure to file a return on or before the date prescribed by law... there must be added to the amount required to be shown as tax on the return, a penalty of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or

fraction of the month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43(C)(1) (2014). Additionally, S.C. Code Ann. § 12-54-43(E) (2014) states:

In the case of failure to pay any amount of any tax required to be shown on a return which is not shown, including an assessment within ten days of the date of the notice and demand for payment, there must be added to the amount of tax stated in the notice and demand one-half of one percent of the amount of the tax if the failure is for not more than one month, with an additional one-half of one percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43(E) (2014). Here, CDT admits that it failed to timely file its corporate income tax returns or timely pay its corporate license fees for any of the years in the Audit Period. In its motion to Alter/Amend the October 28 Order, Petitioner requests that the Court eliminate the requirement that it pay any penalty and interest due to the fact the cost of goods sold figures in the Department's determination were erroneous and unsupported. Petitioner does not cite legal authority demonstrating that this Court has the authority to waive the penalties and interest established by statute. Therefore, CDT is liable for failure to file and failure to pay penalties pursuant to §§ 12-54-43(C)(1) and 12-54-43(E) and interest calculated as provided in § 12-54-25(A).

During the Audit Period CDT earned the following net income which flows through to Mr. Patel:

| 2012      | 2013        | 2014        | 2015        | 2016        |
|-----------|-------------|-------------|-------------|-------------|
| \$730,354 | \$1,215,948 | \$1,488,431 | \$2,205,349 | \$2,842,862 |

Therefore,

- 1) **IT IS ORDERED** that the October 28, 2021 Final Order issued by this Court is vacated and this order substituted therefore;
- 2) **IT IS ALSO ORDERED** that Petitioner CDT is liable for corporate license fees and interest for each of the years of the Audit Period;
- 3) **IT IS ALSO ORDERED** that Petitioners Vimlesh V. Patel and Punita Patel are liable for income taxes on CDT's income as found in this order;

- 4) **IT IS ALSO ORDERED** that Petitioners are liable for failure to file and failure to pay penalties pursuant to §§ 12-54-43(C)(1) and 12-54-43(E);
- 5) **IT IS ALSO ORDERED** that this matter is **REMANDED** to the Department of Revenue to calculate the taxes, penalties, and interest owed by Petitioners as of the date of this order. The Department must provide Petitioners a statement of the amount owed within 15 days from the date of this order. Petitioners may pay the amount owed within 30 days of receipt of the statement without incurring additional penalties or interest; and
- 6) **IT IS FURTHER ORDERED** that Petitioners may, within 15 days of receiving the statement of amounts owed, move this Court for further examination of SCDOR's calculations if there is disagreement.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, reading "Deborah Brooks Durden". The signature is written in a cursive, flowing style.

Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

November 23, 2021  
Columbia, South Carolina

### **CERTIFICATE OF SERVICE**

I, Robin E. Coleman, 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).

*Robin Coleman*

Robin E. Coleman

Ju "c a " "e to Ju "ge De " orah Brooks Durden

November 23, 2021

Columbia, South Carolina



# The South Carolina Court of Appeals

CDT, Inc., Appellant,

v.

South Carolina Department of Revenue, Respondent.

Appellate Case No. 2021-001528

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## ORDER

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After careful consideration, Respondent's motion to dismiss is granted. *See* S.C. Code Ann. § 12-60-3370 ("Except as otherwise provided, a taxpayer shall pay, or post a bond for, all taxes, not including penalties or civil fines, determined to be due by the administrative law judge before appealing the decision to the court of appeals."). The remittitur will be sent as required by Rule 221(b), SCACR.

  
\_\_\_\_\_  
FOR THE COURT

Columbia, South Carolina

cc:

Scott Franklin Talley, Esquire  
Steven Edward Buckingham, Esquire  
Sean Gordon Ryan, Esquire  
Jason Phillip Luther, Esquire

**FILED**  
**Feb 15 2022**

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# The South Carolina Court of Appeals

Vimlesh V. Patel and Punita Patel, Appellants,

v.

South Carolina Department of Revenue, Respondents.

Appellate Case No. 2021-001547

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## ORDER

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After careful consideration, Respondent's motion to dismiss is granted. *See* S.C. Code Ann. § 12-60-3370 ("Except as otherwise provided, a taxpayer shall pay, or post a bond for, all taxes, not including penalties or civil fines, determined to be due by the administrative law judge before appealing the decision to the court of appeals."). The remittitur will be sent as required by Rule 221(b), SCACR.



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FOR THE COURT

Columbia, South Carolina

cc:

Scott Franklin Talley, Esquire  
Steven Edward Buckingham, Esquire  
Sean Gordon Ryan, Esquire  
Jason Phillip Luther, Esquire

**FILED**  
**Feb 15 2022**

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# The South Carolina Court of Appeals

CDT, Inc., Appellant,

v.

South Carolina Department of Revenue, Respondent.

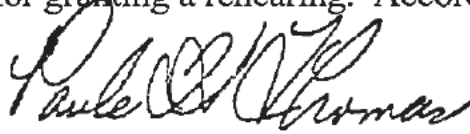
Appellate Case No. 2021-001528

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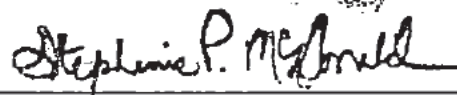
## ORDER

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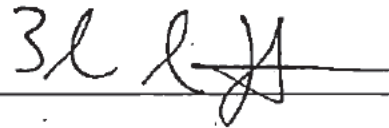
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
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J.

  
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J.

  
\_\_\_\_\_

J.

Columbia, South Carolina

cc:

Scott Franklin Talley, Esquire  
Steven Edward Buckingham, Esquire  
Sean Gordon Ryan, Esquire  
Jason Phillip Luther, Esquire

**FILED**  
**May 19 2022**

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**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

|                                          |   |                                                                                   |
|------------------------------------------|---|-----------------------------------------------------------------------------------|
| CDT, Inc.,                               | ) | DOCKET NO. 19-ALJ-17-0338-CC                                                      |
|                                          | ) |                                                                                   |
| Petitioner,                              | ) |                                                                                   |
|                                          | ) |                                                                                   |
| vs.                                      | ) | <b>RESPONDENT'S MOTION TO<br/>RECONSIDER, ALTER, OR AMEND<br/>THE FINAL ORDER</b> |
|                                          | ) |                                                                                   |
| South Carolina Department of Revenue,    | ) |                                                                                   |
|                                          | ) |                                                                                   |
| Respondent.                              | ) |                                                                                   |
| <hr style="border: 0.5px solid black;"/> |   |                                                                                   |
|                                          | ) |                                                                                   |
| Vimlesh V. Patel and Punita Patel,       | ) | DOCKET NO. 19-ALJ-17-0339-CC                                                      |
|                                          | ) |                                                                                   |
| Petitioners,                             | ) |                                                                                   |
|                                          | ) |                                                                                   |
| vs.                                      | ) |                                                                                   |
|                                          | ) |                                                                                   |
| South Carolina Department of Revenue     | ) |                                                                                   |
|                                          | ) |                                                                                   |
| Respondent.                              | ) |                                                                                   |
| <hr style="border: 0.5px solid black;"/> |   |                                                                                   |

Pursuant to South Carolina Rule of Civil Procedure 59(e) and Rule 29(D) of the Rules of Procedure for the Administrative Law Court, the Respondent, South Carolina Department of Revenue (Department) respectfully requests that this Court reconsider, alter, or amend its Final Order dated October 28, 2021 (the "Order"). This motion is based upon the grounds that the Court appears to have inadvertently or unintentionally allowed the Petitioner double credit for tobacco excise taxes paid during the audit period.

In Footnote 1 on Page 6 of the Order, the Court found that the Department failed to add the Tobacco Excise Taxes paid by the Petitioner into the Tobacco Cost of Goods Sold. Accordingly, the Court added those taxes into the Petitioner's Cost of Goods Sold. Then Footnote 9 explains

that the Court determined the Petitioner's Adjusted Gross Income by adding the Tobacco Gross Receipts, plus Non-tobacco Gross Receipts minus the Total Cost of Goods Sold. The Court then subtracted the Total Operating Expenses from the Adjusted Gross Income. This results in the Net Income for CDT that flows through to the Patel's individually.

By adding the Tobacco Excise Taxes paid by the Petitioner to the Tobacco Cost of Good Sold, the Court inadvertently allowed the Taxpayer to claim those taxes twice. It appears that the Court was unaware that the Total Operating Expenses calculated by the Department already included the Tobacco Excise Taxes paid by the Petitioner. Respondent's Exhibit 5, which was admitted into evidence without objection, shows the Department's calculation of Net Income for each of the years at issue. Within the table for each year in Respondent's Exhibit 5 is a line labeled Taxes. The amount of taxes listed on that line is the amount of Tobacco Excise Taxes paid, and in fact that amount is identical to the amount of Tobacco Excise Taxes paid that the Court added to the Cost of Goods Sold. The Department attempted to explain its inclusion of the excise taxes paid within the Total Operating Expenses in Paragraph 21 on Page 8 of its Proposed Order, stating "[t]he Petitioner's operating expenses, including all excise taxes paid, are subtracted from that gross income in order to calculate net income." It appears the Court inadvertently or mistakenly added the tobacco excise taxes to the Tobacco Cost of Good Sold not realizing those taxes were already accounted for in the Department's calculations.

The Tobacco Excise Taxes paid need to be accounted for in the calculation of the Petitioner's income, this the Department does not dispute. Moreover, it is permissible within the Court's calculation to include those taxes either in the Cost of Goods Sold or the Total Operating Expenses. However, the Petitioner is not entitled to have those same taxes counted twice. Both the Cost of Goods Sold and the Total Operating Expenses are subtracted from the Petitioner's

gross income. Under the methodology used by the Court in the Order, both the Cost of Goods Sold and the Total Operating Expenses include the Tobacco Excise Taxes Paid. Accordingly, this results in the Tobacco Excise Taxes paid being subtracted from the gross income twice. Simply stated, the Petitioner is getting to claim the same taxes paid twice, thereby giving the Petitioner double credit for taxes paid.

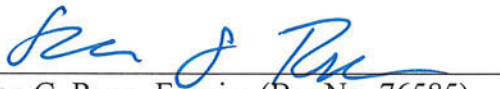
Allowing the Petitioner credit for taxes paid twice results in a \$2,529,520 reduction in the Petitioner's income over the course of the audit period. Specifically, allowing the Petitioner double credit results in an improper reduction of the Petitioner's 2012 income by \$195,137.00; 2013 income by \$309,135.00; 2014 income by \$455,900.00; 2015 income by \$427,646.00; and 2016 income by \$1,141,702.00. The Petitioner is not entitled to reduce its income by these amounts as it did not pay the taxes twice so it is not allowed credit for taxes twice.

Nothing within the Order indicates that the Court intended to give the Petitioner double credit for Tobacco Excise Taxes paid. The Court, apparently thinking the excise taxes had erroneously not been included, added such to the Cost of Goods Sold. The Department respectfully asks that this Court reconsider, alter, or amend its Order to correct the double credit given to the Petitioner for Tobacco Excise Taxes Paid.

The Department submits that the double credit can be corrected in one of two ways, both of which are agreeable with the Department. The Court may continue to include the Tobacco Excise Taxes Paid in the Cost of Goods sold, but then subtract the amount of Tobacco Excise Taxes Paid from the Total Operating Expenses. Alternatively, the Court can remove the Tobacco Excise Taxes Paid from the Cost of Goods Sold and only include those taxes within the Total Operating Expenses. Using either of these methods results in the same amount of Net Income for CDT. Moreover, either method results in the tobacco excises taxes paid only being counted once.

WHEREFORE, as explained above, the Department respectfully moves that the Court reconsider and alter or amend its Final Order and Decision dated October 28, 2021 and enter an Amended Final Order that only allows the Petitioner to claim Tobacco Excise Taxes Paid once rather than twice.

Respectfully Submitted:

  
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Columbia, South Carolina  
November 2, 2021

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

CDT, Inc.,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

---

Vimlesh V. Patel and Punita Patel,

Petitioners,

vs.

South Carolina Department of Revenue,

Respondent.

---

Docket No.19-ALJ-17-0338-CC

**NOTICE OF AND MOTION  
TO ALTER/AMEND FINAL  
ORDER PURSUANT TO  
RULE 59(E) BY  
PETITIONERS**

Docket No.19-ALJ-17-0338-CC

Docket No.19-ALJ-17-0339-CC

**TO: THE RESPONDENT NAMED ABOVE:**

COMES NOW, Petitioners, CDT, Inc., Vimlesh V. Patel and Punita Patel, and submits their Motion to Motion to Alter/Amend Final Order pursuant to Rule 59(e), South Carolina Rules of Civil Procedure, and to respond to the Motion filed by Respondent, respectfully showing the Court as follows:

In arguing against the DOR Motion, Petitioners would point out that the Stipulation of Facts, on page 2 of the Final Order, specifically that sections last paragraph states “the parties agreed that there is no dispute as to CDT’s deductions and expenses, and that the only issue in dispute is the amount of gross receipts of the business”. DOR now seeks to argue against that stipulation by asking the Court to “re-work” expenses of the business, specifically tobacco excise taxes paid by CDT during the audit period. Based on the parties stipulations, and the Court’s

findings as to the deductions and expenses, the DOR's motion to have this recalculated is not proper.

Petitioner would respectfully move the Court to alter/amend its findings and judgment, in particular as it relates to Exhibit 6 and the documents introduced into evidence at the hearing. Apparently, relying on a draft Order provided by DOR, the Final Order incorrectly states that the documents of Exhibit 6, relied upon by Mr. Lehl in his analysis and testimony, are amounts paid by CDT for goods sold, not accounts payable to CDT reflecting income to the business. This is incorrect. Exhibit 6 was offered as an example of documents, according to Patel already in possession of the DOR, which would show income for a particular month. Lehl testified that the document showed individual sales and his review of such records, like Exhibit 6, led him to calculate the invoice total on Exhibit 2 and supported his testimony that the sales total matched up with deposits to the CDT bank account, which Petitioner argued was the reasonable basis for determination of its gross receipts, the only issue before the Court in this matter. Further, the Final Order correctly finds that DOR had already conducted a tobacco audit of CDT, and thus had records in its possession, including monthly purchase reports. The Court also finds in its Final Order that the three months of records, from March, April and May 2012 were the only business records produced to DOR and the only evidence at this hearing. Respectfully, this is incorrect based on Exhibit 6, the information contained therein and the testimony of Mr. Lehl as to records provided to the DOR for the years 2015 and 2016, which apparently the DOR chose to ignore.

Finally, as was correctly pointed out, without dispute, during the hearing, the Department Determination Letter issued to the Petitioner was incorrect. The amounts in said letter were not consistent with the testimony of DOR, or its findings, based on the most recent audit. For that

purpose, and DOR's continued presentation of different "gross receipts" to Petitioner, Petitioner requests that the Court eliminate the requirement that it pay any penalty and/or interest on the ultimate amount found to be due and owing from Petitioner to the DOR for the period in question.

Respectfully submitted,

/s/ Scott F. Talley

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/s/ Steven E. Buckingham

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November 8, 2021  
Spartanburg, SC

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

|                                       |   |                                            |
|---------------------------------------|---|--------------------------------------------|
| CDT, Inc.,                            | ) | DOCKET NO. 19-ALJ-17-0338-CC               |
|                                       | ) |                                            |
| Petitioner,                           | ) |                                            |
|                                       | ) |                                            |
|                                       | ) | <b>RESPONDENT'S RESPONSE IN</b>            |
|                                       | ) | <b>OPPOSITION TO PETITIONERS' MOTION</b>   |
|                                       | ) | <b>TO ALTER, OR AMEND</b>                  |
| vs.                                   | ) | <b>FINAL ORDER PURSUANT TO RULE 59 (E)</b> |
|                                       | ) |                                            |
|                                       | ) |                                            |
| South Carolina Department of Revenue, | ) |                                            |
|                                       | ) |                                            |
| Respondent.                           | ) |                                            |
| <hr/>                                 | ) |                                            |
|                                       | ) |                                            |
| Vimlesh V. Patel and Punita Patel,    | ) | DOCKET NO. 19-ALJ-17-0339-CC               |
|                                       | ) |                                            |
|                                       | ) |                                            |
| Petitioners,                          | ) |                                            |
|                                       | ) |                                            |
|                                       | ) |                                            |
| vs.                                   | ) |                                            |
|                                       | ) |                                            |
| South Carolina Department of Revenue  | ) |                                            |
|                                       | ) |                                            |
| Respondent.                           | ) |                                            |
| <hr/>                                 | ) |                                            |

TO: PETITIONERS NAMED ABOVE:

Comes now the Respondent, the South Carolina Department of Revenue (Department), and pursuant to ALC Rule 29(D), files the following Response in Opposition to the Petitioners' "Motion to Alter/Amend Final Order Pursuant to Rule 59 (E)" (Petitioners' Motion). The Department opposes the Petitioners' Motion because the arguments put forth in the Petitioners' Motion are neither factually accurate nor supported by law. Accordingly, the Department asks that the Court deny the Petitioners' Motion.

In their Motion, the Petitioners ask this Court to alter or amend its findings in regards to Petitioners' Exhibit 6. The Petitioners assert that the Final Order incorrectly states that the documents in Petitioners' Exhibit 6 "are amounts paid by CDT for goods sold, not accounts payable to CDT reflecting income to the business." (Petitioners' Motion p. 2). According to the Petitioners, Exhibit 6 reflects sales made by the Petitioners, not purchases made by the Petitioners. The Petitioners' assertion that Petitioners' Exhibit 6 reflects sales made by CDT rather than purchases made by CDT is completely unsupported by the documents themselves. A simple review of the documents shows the inaccuracy in the Petitioners' argument. The documents within Petitioners' Exhibit 6 are invoices showing the purchase of tobacco by CDT from distributors located throughout the United States. According to the letterheads on the documents, these invoices were issued by such vendors as Great Midwest Tobacco, DBA JNJ Distribution of Cincinnati Ohio, Altadis USA, Inc., of Ft. Lauderdale Florida, HBI International of Phoenix Arizona, Blue Ridge Tobacco of Demorest Georgia, and Global Trading of Enid Oklahoma. Most significantly, all of the documents within Petitioners' Exhibit 6 contain some variation of a "Bill to" address of CDT, Inc., 3801 Calhoun Memorial Hwy, Easley, SC 29640, and a "Ship To" address of CDT, Inc., 3801 Calhoun Memorial Hwy, Easley, SC 29640. Quite clearly, these documents show the purchase of tobacco by CDT that was delivered and billed to CDT so that CDT could then sell that tobacco to its customers. These documents do not show sales from CDT to the customers of CDT. The Petitioners fail to provide any explanation for why the invoices in Petitioners' Exhibit 6 would be issued under the letterheads of other businesses, showing things being shipped to and billed to CDT, if in fact they actually show sales made by CDT. The Petitioners' argument is illogical and not supported by the documents themselves.

Because the documents within Petitioners' Exhibit 6 do not show sales made by the Petitioners, such do not support the testimony of Mr. Lehl regarding his comparison of the Petitioners' sales to the Petitioners' bank deposits. Mr. Lehl claimed to have reviewed sales records of the Petitioners in conducting his analysis of the Petitioners' gross receipts. (Hr'g Tr. 55: 5-25; 56:1-5.). Unfortunately for the Petitioners, Exhibit 6 does not contain any sales records showing sales made by the Petitioners. In the Final Order, the Court properly recognized that the documents that Mr. Lehl testified he interpreted as being sales invoices are not actually sales invoices. Because Mr. Lehl seemingly misunderstood the documents within Petitioners' Exhibit 6, his analysis is fundamentally flawed and the Court properly found his testimony and analysis lacked credibility or usefulness. Because the Petitioners' arguments regarding Petitioners' Exhibit 6 and its impact on the testimony of Mr. Lehl are incorrect, the Court should deny the Petitioners' Motion.

The Petitioners' Motion next asks this Court to eliminate penalties and interest because of the "DOR's continued presentation of different "gross receipts" to Petitioner". The Petitioners provide no authority to support their request to waive penalties or interest. Interest is applicable to the Petitioners pursuant to the South Carolina Code, which provides, "[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety." S.C. Code Ann. § 12-54-25(A) (2014). Even under the Petitioners' calculations of income presented at trial there are amounts outstanding for which interest is due. Furthermore, under the Court's calculations of income there are amounts outstanding and interest is due. As the Administrative Law Court recognized in *Anonymous Taxpayers v. South Carolina Department of Revenue*, 01-ALJ-17-0187-CC, 2001 WL 1744519 (S.C. Admin. L. Ct. Dec. 13, 2001), there is no

South Carolina statute which grants authority to waive interest. Interest is a charge for the time value of money and therefore must be assessed until the tax is paid in full. *Id.*

Contrary to the Petitioners' assertions, the amounts due from the Petitioners are not incorrectly stated within the two Department Determinations. The Petitioners could have paid the amounts stated on those Determinations and stopped the running of interest while the Parties moved forward with litigation. The Petitioners chose not to exercise this option and the interest continues to run until the balance is paid in full. There is no authority to support the proposition that interest can be waived because the Department included an erroneous paragraph within a Determination, particularly when the amounts in dispute, as listed on the fronts of the Determinations, were correct.

The Department assessed penalties against the Petitioners pursuant to S.C. Code Ann. §§ 12-54-43(C)(1), 12-54-43(E) (2014), and S.C. Code Ann. § 12-54-155 (Supp. 2020). Sections 12-54-43(C)(1) and 12-54-43(E) penalize the Petitioners for failing to timely file and failing to timely pay taxes. The Petitioners admitted at trial that they failed to timely file or timely pay taxes, therefore there can be no dispute those penalties apply. Section 12-54-155 creates substantial understatement penalties which apply if the underpayment of tax for a period exceeds the greater of ten percent of the tax required to be shown on its return, or \$5,000.00. This is simply a mathematical calculation based upon the Court's findings. Because the Petitioners reported so little income on their returns, substantial understatement penalties apply.

All three of the different types of penalties that apply in this matter relate to conduct that occurred long before the Department issued its Department Determination. The tax years at issue are 2012 through 2016, therefore the conduct that is being penalized occurred between 2012 and 2017 when the 2016 returns would have been due. The Department issued its Department

Determinations on August 26, 2019. Therefore, it is impossible for the Department's Determinations to have in any way caused the Petitioners to incur the penalties being applied. The facts in this matter, many of which the Petitioners admitted at trial, support the application of penalties. The Petitioners fail to offer any authority to support the proposition that penalties should be waived because the Department included an erroneous paragraph within a Determination, particularly when that amounts in dispute, as listed on the fronts of the Determinations, were correct. To the contrary, the Petitioners are non-compliant taxpayers with a history of repeatedly failing to timely file taxes, pay taxes, or even report the correct amount of taxes on their returns. Accordingly, the Court properly included penalties against the Petitioners.

In addition to asking the Court to alter or amend its Final Order, the Petitioners also ask the Court to deny the Department's Motion to Reconsider (Department's Motion). The Petitioners argue that the Department's Motion should be denied because the parties stipulated that there is no dispute as to CDT's deductions and expenses. The Petitioners then inaccurately assert that the Department is asking the Court to "re-work" the expenses of the business in violation of that stipulation. Contrary to the Petitioners' assertions, the Department is not asking the Court to change or alter the amount of any expense or deduction. What the Department asks in its Motion is that the amount of credit being given for cigarette excise taxes paid only be given once, and not twice as occurred after changes made by the Court. Again, the amount of cigarette excise taxes paid is not being disputed or changed and the Department is not asking the Court to "re-work" that amount. The Department is simply asking that credit for that amount be allowed once rather than twice. This in no way violates the stipulation entered into by the Parties. Because the Department's Motion does not violate the Parties stipulation, the Petitioners' request to deny the Department's Motion should be rejected by this Court.

WHEREFORE, as explained above, the Department respectfully asks that the Court deny the Petitioners' Motion as it makes arguments not supported by the facts of this case. Furthermore, the Petitioners' Motion fails to cite any authority to support the relief that it seeks. To the contrary, the relief the Petitioners seek is not supported by statutory authority or case law. To the extent the Petitioners' Motion seeks to oppose the Department's Motion to Reconsider, the Department asks that the Court reject the arguments made by the Petitioners as they are neither accurate nor persuasive.

Respectfully Submitted:



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Columbia, South Carolina  
November 10, 2021

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

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Case No. 19-ALJ-17-0338-CC

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CDT, Inc., ..... Appellant,

v.

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

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**NOTICE OF APPEAL**

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CDT, Inc. hereby appeals the following Orders of the Honorable Deborah Brooks Durden: (1) an Order dated October 28, 2021, which is attached hereto as **Attachment A**; and (2) an Order dated November 23, 2021, which is attached hereto as **Attachment B**. Appellant received written notice of the entry of each Order via email on the date each respective Order was entered.

Respectfully submitted,

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*Attorneys for Appellant*

Filed this 23rd Day of December, 2021.  
Spartanburg, South Carolina

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*Attorneys for Respondent*

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

---

Case No. 19-ALJ-17-0338-CC

---

Vimlesh V. Patel and Punita Patel ..... Appellants,

v.

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

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**NOTICE OF APPEAL**

---

Vimlesh V. Patel and Punita Patel hereby appeal the following Orders of the Honorable Deborah Brooks Durden: (1) an Order dated October 28, 2021, which is attached hereto as **Attachment A**; and (2) an Order dated November 23, 2021, which is attached hereto as **Attachment B**. Appellant received written notice of the entry of each Order via email on the date each respective Order was entered.

Respectfully submitted,

---

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*Attorneys for Respondent*

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

HONORABLE DEBORAH BROOKS DURDEN, ADMINISTRATIVE LAW JUDGE

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CASE NO. 19-ALJ-17-0338-CC  
APPELLATE CASE NO. 2021-001528

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CDT, Inc.,.....Appellant,

v.

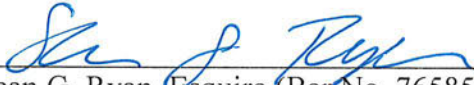
South Carolina Department of Revenue,.....Respondent.

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**MOTION TO DISMISS APPEAL WITH PREJUDICE**

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Pursuant to Rule 240, SCACR, Respondent South Carolina Department of Revenue requests that the Court dismiss Appellant CDT, Inc.'s appeal. Appellant is attempting to appeal proposed tax assessments issued by the Respondent and affirmed by the Administrative Law Court. Appellant, however, has neither paid these taxes nor posted a bond for such taxes as required by S.C. Code Ann. § 12-60-3370 (2014). Appellant's appeal should therefore be dismissed based on a lack of appellate jurisdiction.

  
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Attorneys for Appellant

January 12, 2022

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

HONORABLE DEBORAH BROOKS DURDEN, ADMINISTRATIVE LAW JUDGE

---

CASE NO. 19-ALJ-17-0338-CC  
APPELLATE CASE NO. 2021-001528

---

CDT, Inc.,.....Appellant,

v.

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

---

**MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS APPEAL WITH PREJUDICE**

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On January 6, 2022, Respondent South Carolina Department of Revenue filed with this court and served on counsel of record, its Motion to Dismiss Appeal with Prejudice. Respondent submits that due to Appellant's failure to pay the tax or post bond on such tax found to be due by the Administrative Law Court (ALC) prior to its appeal to this Court, such failure divests this Court of appellate jurisdiction and requires dismissal of the instant appeal.

**ISSUE**

Should this appeal be dismissed because Appellant failed to comply with the requirements of S.C. Code Ann. § 12-60-3370 (2014) by failing to pay the tax or post bond for such tax prior to appealing the matter to the Court of Appeals?

### RELEVANT FACTS

On November 23, 2021, the ALC issued its Amended Final Order (Order) giving rise to the issue herein. In the Order, the ALC determined that Appellant earned more business income than the amounts reported on its corporate income tax returns for tax years 2012 through 2016. (Order attached). In accordance with the Order, on December 2, 2021, the Department notified the Appellant of the amount of tax, interest, and penalties as determined by the ALC. On December 23, 2021, Appellant filed its Notice of Appeal with the Court of Appeals. As of the date of this motion and accompanying memorandum of law, Appellant has not paid the tax or posted a bond for such tax determined to be due by the ALC. See affidavit of Brian Smith, p. 8.

### ARGUMENT IN SUPPORT OF DISMISSAL

Because Appellant failed to pay the tax determined to be due by the ALC or post bond for such tax prior to the appeal filed with the South Carolina Court of Appeals (Court) in this matter, this Court lacks appellate jurisdiction. See State v. Brown, 358 S.C. 382, 596 S.E. 2d 39 (2004).

The Administrative Procedures Act (APA) provides for the appeal of an ALC decision:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2020).

Where an appeal is made of an ALC decision related to taxes, S.C. Code Ann. § 12-60-3370 (2014) provides, in relevant part:

Except as otherwise provided, a taxpayer shall pay, or post a bond for, all taxes, not including penalties or civil fines, determined to be due by the administrative law judge **before appealing the decision to the court of appeals.**

(Emphasis added).

Further, S.C. Code Ann. § 12-60-3380 provides the following:

Appeal of decision to court of appeals.

Except as otherwise provided in this chapter, a party may appeal a decision of the Administrative law Court to the court of appeals. Appeal of a decision of the Administrative Law Court must be made in accordance with Section 1-23-610(B).

In State v. Brown, the South Carolina Supreme Court concluded that the “failure of a party to comply with the procedural requirements for perfecting an appeal may deprive the court of ‘appellate’ jurisdiction over the case, but it does not affect the court’s subject matter jurisdiction.” State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (citing Great Games, Inc. v. S.C. Dep’t of Rev., 339 S.C. 79, 82 at n.5, 529 S.E.2d 6, 7 at n.5 (2000)).<sup>1</sup> The Supreme Court reiterated that holding in Allison v. W.L. Gore & Associates, stating that questions of compliance with rules, regulations, and statutes governing an appeal are questions of appellate jurisdiction. Allison v. W.L. Gore & Associates, 714 S.E.2d 547, 549, 394 S.C. 185, 188 (2011) (citing In re November 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 686 S.E.2d 683 (2009)). In Allison, the

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<sup>1</sup> Although not precedent, in an unpublished decision in Anonymous Taxpayer v. S.C. Dep’t of Rev., 2008-UP-124, available at 2008 WL 9837290, this Court, citing to State v. Brown, found that it lacked appellate jurisdiction in the matter because the Appellant failed to pay the tax or post a bond prior to the appeal to the circuit court pursuant to S.C. Code Ann. § 12-60-3370. At the time the taxpayer in Anonymous appealed the ALC decision, such appeals were taken to the circuit court pursuant to then existing sections 12-60-3370 and 1-23-610. In 2006, these sections, in addition to S.C. Code Ann. § 12-60-3380, were amended to provide that appeals from ALC decisions are to the Court of Appeals. See 2006 Act No. 387, § 5, eff. July 1, 2006 (amending 1-23-610); 2006 Act No. 387, § 12, eff. July 1, 2006 (amending 12-60-3370); and 2006 Act No. 387, § 13, eff. July 1, 2006 (amending 12-60-3380). Section 53 of 2006 Act 387 further provides:

This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.

Supreme Court held that the failure to appeal a decision from a single Commissioner to the Full Workers Compensation Commission within 14 days, as required by South Carolina Code Ann. § 42-17-50 (Supp.2010), deprived the Commission of appellate jurisdiction.

Section 12-60-3370 explicitly provides that a taxpayer shall pay or post a bond for all taxes determined by the ALC to be due, before appealing the decision to this Court. As our Supreme Court has stated, “a statute should be construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous . . . .” Matter of Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). The requirements of Section 12-60-3370 are clear, the taxes must be paid or bond must be posted before appealing, not after appealing to this Court. The Appellant has neither paid nor posted bond for the taxes determined by the ALC. Accordingly, the Appellant is not in compliance with Section 12-60-3370. To permit the Appellant to now pay the taxes or post bond would render the “before appealing the decision to the court of appeals” language superfluous. Because no statute shall be interpreted in a manner that renders any term in the statute superfluous, the Appellant cannot now pay the tax or post bond, as it has already appealed and the time for filing an appeal has passed. The Appellant’s failure to comply with the requirements of Section 12-60-3370 deprives this Court of appellate jurisdiction and this appeal should be dismissed.

The failure of Appellant to pay the tax ordered by the ALC or post sufficient bond prior to filing its notice of appeal prejudices the Department. The statutory mandate of Section 12-60-3370 ensures that the tax monies owed, as determined by the ALC, will be held in trust for the benefit of the citizens of South Carolina pending the outcome of Appellant’s appeal.<sup>2</sup> The posting of a bond ensures that these tax monies will be available in the event the State ultimately prevails. Here, Appellant has not paid the tax or posted a bond on such tax imposed by the ALC in its Order

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<sup>2</sup> Notably, should Appellant prevail in this matter, the State must issue a refund of the tax paid.

and presumably, Appellant has diverted the State's money for personal use during the pendency of this matter. Such action harms the State and its citizens. Ostensibly, this is precisely the situation the General Assembly sought to avoid by enacting Section 12-60-3370 in 1995.

It is important for this Court to understand the Appellant's conduct regarding its tax obligations. As the ALC found in the Amended Final Order, the Appellant did not timely file its corporate income tax returns for tax years 2012 through 2016. (Order p.3). To the contrary, the Appellant did not file any corporate returns for those numerous years until the Department initiated an audit. Id. Then, during the course of the audit, the Appellant filed returns but did not pay any taxes or corporate license fees. Moreover, as the Appellant admitted at trial, it has not filed corporate income taxes for the years subsequent to the audit. Id. Now, the Appellant seeks to further delay paying the taxes it owes for tax years 2012 through 2016.

Accordingly, because the Appellant has neither paid nor posted bond for the taxes determined by the ALC, it is not in compliance with Section 12-60-3370. Because the Appellant is not in compliance with Section 12-60-3370, Respondent respectfully submits this Court lacks appellate jurisdiction in this matter and respectfully requests the appeal be dismissed with prejudice.

  
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January 12, 2022

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

HONORABLE DEBORAH BROOKS DURDEN, ADMINISTRATIVE LAW JUDGE

CASE NO. 19-ALJ-17-0338-CC  
APPELLATE CASE NO. 2021-001528

CDT, Inc.,.....Appellant,

v.

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

**AFFIDAVIT OF ROBERT KING**

COMES NOW, Robert King, being duly sworn, deposes and states:

1. I am employed by the South Carolina Department of Revenue (Department) as a Foreign Audit Manager.
2. As part of my duties with the Department, I have access to the Department's records concerning proposed tax assessments and outstanding tax liabilities.
3. At the request of the Department's Office of General Counsel, I was asked to determine the amount of Appellant's proposed tax assessments based upon the Department's interpretation of the Administrative Law Court's November 23, 2021 Amended Final Order. Those proposed tax assessments are as follows:

| Tax Year | Tax Due | Interest* | TOTAL DUE |
|----------|---------|-----------|-----------|
|----------|---------|-----------|-----------|

|      |                 |                |                 |
|------|-----------------|----------------|-----------------|
| 2012 | \$25.00         | \$9.86         | \$34.86         |
| 2013 | \$25.00         | \$8.70         | \$33.70         |
| 2014 | \$25.00         | \$7.74         | \$32.74         |
| 2015 | \$25.00         | \$6.86         | \$31.86         |
| 2016 | \$25.00         | \$5.55         | \$30.55         |
|      | <b>\$125.00</b> | <b>\$38.71</b> | <b>\$163.71</b> |

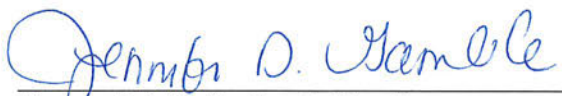
\*Interest is accrued through December 23, 2021.

4. At the request of the Department's Office of General Counsel, I was asked to verify the current status of Appellant's proposed tax assessments as outlined above. Such proposed tax assessments remain outstanding in that Appellant has neither paid any of the amounts due nor posted a bond for said amounts.

FURTHER AFFIANT SAYETH NOT.

  
Robert King

Sworn to and subscribed before me this 11  
day of January 2022.

  
Notary Public for South Carolina  
My Commission Expires: 8/30/2026

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

CDT, Inc.,

Petitioner,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 19-ALJ-17-0338-CC

**AMENDED FINAL ORDER**

Vimlesh V. Patel and Punita Patel,

Petitioners,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 19-ALJ-17-0339-CC

**APPEARANCES:** For Petitioner: Scott Talley, Esquire  
Steven Buckingham, Esquire  
For Respondent: Sean G. Ryan, Esquire

**STATEMENT OF THE CASE**

This matter is before the South Carolina Administrative Law Court (ALC or Court) following requests by Vimlesh and Punita Patel, and CDT, Inc. (CDT) for a contested case hearing pursuant to S.C. Code Ann. § 12-60-460 (2014). Vimlesh Patel is the sole owner of CDT, an S Corporation. CDT and the Patels are contesting the decision of the South Carolina Department of Revenue (Department or SCDOR) finding that CDT earned more business income than the amounts reported on its corporate income tax returns for tax years 2012 through 2016 (Audit Period). On September 23, 2020, the two contested cases were consolidated because the same issues and evidence are relevant to both cases.

After notice to the parties, this Court held a hearing in the matter on May 25, 2021, at the ALC in Columbia, South Carolina. The parties appeared and were represented by counsel at the hearing. On October 28, 2021, a Final Order was issued. On November 2, 2021, SCDOR filed a Motion to Reconsider, Alter, or Amend the Final Order. On November 10, 2021, CDT filed a Motion to Alter/Amend the Final Order. The motions are



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granted and the October 28, 2021 Final Order is hereby vacated. This Amended Final Order substituted in its place.

### **STIPULATIONS OF FACT**

On March 15, 2021, the parties executed a Joint Stipulation stipulating to the following facts:

1. There are only two issues in dispute in these matters:
  - a. The amount of income generated by Petitioner CDT, Inc.; and
  - b. The amount of tax, interest, and penalties, if any, that the CDT, Inc., income causes for the Petitioners Vimlesh V. Patel and Punita Patel.
2. The Petitioners Vimlesh V. Patel and Punita Patel have income from sources other than CDT, Inc. for the Audit Period. The amount of income the Petitioners Vimlesh V. Patel and Punita Patel earned from other sources is not in dispute. Furthermore, the expenses of the Petitioners Vimlesh V. Patel and Punita Patel are not in dispute. Because these issues are not in dispute the parties stipulate that such will not be argued at the hearing.
3. Once the Court determines the amount of income generated for Petitioner, CDT, Inc., the Department can then calculate the specific amount of tax and interest and penalties, if any, for the Petitioners Vimlesh V. Patel and Punita Patel.

In addition, at the hearing the parties agreed that there is no dispute as to CDT's deductions and expenses, and that the only issue in dispute is the amount of the gross receipts of the business.

### **ISSUE**

What were the gross receipts of CDT, Inc. for tax years 2012 through 2016?

### **FINDINGS OF FACT**

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of proof and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

During the Audit Period, CDT was a tobacco wholesaler, which supplied tobacco products, soft drinks, and snacks to local convenience stores for resale. The business is located at 3801 Calhoun Memorial Highway, Suite C in Easley, South Carolina. CDT is an S Corporation and therefore its income is not taxed at the corporate level, rather, that income flows through to

the shareholders and is taxed at the shareholder level. CDT is solely owned and controlled by Vimlesh Patel (Patel). Therefore, the income of CDT flows through to Mr. Patel, where it is to be included on his South Carolina individual income tax returns (filed jointly with his wife Punita Patel) and subject to tax. While CDT's income is not taxed, it is still liable for corporate license fees.

CDT has a history as a noncompliant taxpayer. The corporate tax returns at issue for the Audit Period in this case were filed on February 16, 2018, after the corporate income audit was underway. As of the date of the hearing, CDT had not filed its returns for the subsequent years (2017-2020). Patel testified that he was waiting to see the outcome of this litigation before filing those returns. In addition, CDT provided little in the way of corporate financial records to the Department in response to the auditor's request at the outset of the audit process. Some records were, however, provided to the Department during the appeals process at the Department in 2018 and 2019 and further records were provided in response to discovery requests in this litigation following an order of this Court compelling discovery. Patel testified that he did not provide documents to the Department previously because they already had all the records that he could provide. His tax resolution specialist, Zarek Lehl testified that a comprehensive set of sales invoices for the years 2015 and 2016 were produced to the Department during the audit appeal process at the Department in 2019 and were also used in his analysis to determine CDT's gross income for those years. However, a review of those documents, introduced into evidence at the hearing by CDT as Petitioner's Exhibit 6, reveals that these invoices reflect amounts **paid by** CDT for goods sold, not accounts **payable to** CDT reflecting income to the business.

Prior to the audit at issue in this matter, the Department conducted a tobacco audit of CDT to determine if excise taxes on tobacco products had been properly paid. During that audit the Department obtained monthly purchase reports reflecting the amount of tobacco CDT purchased from its suppliers. In conducting the audit now before this Court, the Department utilized these monthly purchase reports to determine the amount of tobacco purchased during the Audit Period. In addition, the Department summoned CDT's bank records directly from CDT's bank.

Sonia Braje testified at the hearing. Braje is the SCDOR auditor who conducted the audit, examining CDT's banking records and the information obtained in the tobacco audit. However, the July 2019 decision letter that was issued to CDT based

upon her work in the audit increased CDT's tax burden by \$3 million over the estimates and calculations in her working papers. This was accomplished in part by reducing the cost of goods sold dramatically from what was reflected in the banking and tobacco records. Braje testified that she believed her working papers included fairly accurate numbers for cost of goods sold. The Department offered no explanation for issuing an initial decision letter reflecting a tax burden so fundamentally at odds with the information in the audit working papers other than Braje's testimony that she was suspicious that not all of the business' receipts were flowing into the bank account. Subsequently, the Department has adopted the cost of goods sold figures reflected in the banking and tobacco records. The cost of goods sold figures now recognized by the Department are not in dispute between the parties. I find that the July 31, 2019 Department Determination is not supported by the facts of this case or the documents the Department admits it had complete access to at the time the decision was issued.

The Department bases its estimate of gross revenue on three months of tobacco sales invoice data from March, April, and May of 2012. These are the only business records reflecting sales data that Petitioners have provided to the Department and it was the only evidence of income presented at the hearing available to substantiate the bank account numbers. The Department used that data to calculate a markup margin for sales for those three months as 13%, 19% and 23% respectively. It then estimated the total sales revenue by applying the 23% multiplier to the cost of goods sold for tobacco products in all months in the 60-month period. The Department's position at the time of the hearing is based upon estimating gross receipts utilizing a 19% markup over the cost of goods sold for tobacco products and a 14.05% markup for other products. CDT has refused to provide any other business records that would directly reflect the prices charged to its customers for tobacco products, the amounts billed to customers, or amounts collected from customers. CDT did not provide the Department with any sales records related to tobacco other than the three months from 2012. Nor did CDT provide any other documentation (such as customer price sheets) reflecting the pricing of the tobacco products that it sells. CDT provided six months of sales records for non-tobacco related products that it sells, which reflect a markup margin of 14.05% for non-tobacco products. SCDOR used those records to arrive at the 14.05% markup it used to estimate non-tobacco

sales revenue. CDT did not provide the Department or this Court with any profit and loss statements or comprehensive records showing its income or expenses, such as customer invoices, W-2's or 1099's related to the employees of CDT. The Department argues that because the taxpayer has refused to provide business records, other than the deposits to the bank account, to demonstrate its income or profit margin on the cost of goods sold, an inference is created that the records would not support CDT's position that all of the business income was deposited into the bank account.

Patel testified that some sales records from 2012-2013 were lost in a computer crash and that he supplied everything that he understood SCDOR sought, except records that he knew they already had in their possession. Patel testified that the 19% markup figure for tobacco products used by the Department is higher than he has ever realized. He estimates his markup on tobacco products to be six to eight percent. He did not, however, give any explanation as to why his markup on tobacco products for the three months of records that he produced would have been exceptional, nor provide records of any type to support this assertion. Furthermore, he provided no credible explanation for his failure to produce such business records from 2014-2016. Patel admitted that CDT sends out two invoices with each shipment to its customers. One invoice stays with the customer and the other invoice comes back to CDT with payment and is scanned to create an electronic record. Mr. Patel admitted that he did not provide those sales invoices to the Department, claiming the Department did not want such invoices. Patel's assertion that the Department did not seek the sales invoices is contradicted by the Department's Motion to Compel, which was ruled upon by this Court on August 26, 2020, ordering that Petitioners provide such records.

In assessing Patel's credibility, the Court also notes that Petitioners are seemingly disavowing the state and federal tax returns they filed for CDT for each of the years in the Audit Period. The income and expenses reported on those returns are inconsistent with the income and expenses CDT now claims this Court should find. Most notably, for 2015, the banking records would show a loss of almost \$500,000, but the business reported income of \$170,000 on the federal income tax return. Patel could not explain where the amounts of income and expenses reported on those returns originated, nor why those amounts are not accurate. The only explanation he offered was, "[t]hat wasn't me. That was my accountant." There is no evidence Petitioners have filed amended returns with the Department or the Internal Revenue Service

(IRS) reflecting the amount of income CDT now asserts it earned. The lack of consistency between the tax returns and the bank account records casts significant doubt on Patel's testimony that the bank account reflects all income and payments made by the business and that all income was deposited into that account. I do not find his testimony that all cash received was deposited into the First Citizens bank account to be credible. Likewise, I do not find credible his assertion that the markups CDT charges its customers have never been more than six to eight percent. That testimony inexplicably contradicts the only documentary evidence CDT made available showing actual markups of 13%, 19% and 23% during three months in 2012.

CDT presented testimony by Zarek Lehl, who performed an analysis of CDT's records. Lehl is employed by Larson Financial and works as a tax resolution specialist. Lehl's analysis purports to compare the bank deposits and records of sales receipts of the business to demonstrate that the bank deposits reasonably reflect the total receipts of the business. However, a review of the documents relied upon by Lehl reveals that the documents he interpreted as sales invoices reflecting accounts receivable to CDT are actually purchase invoices paid by CDT for tobacco products the business purchased from suppliers. Furthermore, Lehl's conclusion as to the amount of taxes owed by CDT demonstrates a misunderstanding of the tax situation at hand. He calculated the tax owed using the corporate income tax rate, which is inapplicable to an S corporation such as CDT. Because of these fundamental errors, I do not find Lehl's testimony or analysis to be credible or useful in resolving this dispute.

This Court's calculations of CDT's income for each of the years of the Audit Period using the Department's percentage markup methodology is represented in the following table:

|                                                         | 2012      | 2013      | 2014       | 2015       | 2016       |
|---------------------------------------------------------|-----------|-----------|------------|------------|------------|
| Tobacco Purchased <sup>1</sup>                          | 4,161,691 | 6,592,943 | 8,145,420  | 11,939,808 | 14,255,260 |
| Tobacco Excise Taxes Paid <sup>2</sup>                  | 195,137   | 309,135   | 455,900    | 427,646    | 1,141,702  |
| Tobacco COGS <sup>3</sup>                               | 4,356,828 | 6,902,078 | 8,601,320  | 12,367,454 | 15,396,962 |
| Tobacco Gross Receipts (19% Markup) <sup>4</sup>        | 5,184,625 | 8,213,473 | 10,235,571 | 14,717,270 | 18,322,385 |
| Non-tobacco COGS <sup>5</sup>                           | 0         | 7,992     | 100,735    | 119,160    | 384,206    |
| Non-tobacco Gross Receipts (14.05% Markup) <sup>6</sup> | 0         | 9,115     | 114,888    | 135,902    | 438,187    |
| Total COGS <sup>7</sup>                                 | 4,161,691 | 6,600,935 | 8,246,155  | 12,058,968 | 14,639,466 |
| Adjusted Gross Income <sup>8</sup>                      | 1,022,934 | 1,621,653 | 2,104,304  | 2,794,204  | 4,121,106  |
| Total Operating Expenses <sup>9</sup>                   | 292,580   | 405,705   | 615,873    | 588,855    | 1,278,244  |
| Net Income <sup>10</sup>                                | 730,354   | 1,215,948 | 1,488,431  | 2,205,349  | 2,842,862  |

<sup>1</sup> Petitioners do not dispute the figures estimated by SCDOR for Tobacco Purchased.

<sup>2</sup> Petitioners do not dispute the figures estimated by SCDOR for Tobacco Excise Taxes Paid.

<sup>3</sup> Tobacco COGS (Cost of Goods Sold) equals Tobacco Purchased plus Tobacco Excise Taxes Paid.

<sup>4</sup> Tobacco Gross Receipts (19% Markup) equals Tobacco COGS multiplied by 1.19.

<sup>5</sup> Petitioners do not dispute the figures estimated by SCDOR for Non-tobacco COGS.

<sup>6</sup> Non-tobacco Gross Receipts (14.05% Markup) equals Non-tobacco COGS multiplied by 1.1405.

<sup>7</sup> Total COGS equals Tobacco COGS plus Non-tobacco COGS minus Tobacco Excise Taxes Paid.

<sup>8</sup> Adjusted Gross Income equals Tobacco Gross Receipts (19% Markup) plus Non-tobacco Gross Receipts (14.05% Markup) minus Total COGS.

<sup>9</sup> Petitioners do not dispute the figures estimated by SCDOR for Total Operating Expenses.

<sup>10</sup> Net Income equals Adjusted Gross Income minus Total Operating Expenses.

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

The Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. §§ 12-60-430 (2014); 1-23-600 (Supp. 2020). In this contested case, the Court serves as the finder of fact, and conducts a *de novo* review. See Reliance Ins. Co. v. Smith, 327 S.C. 528, 534-35, 489 S.E.2d 674, 677 (Ct. App. 1997). As the trier of fact, the weight and credibility assigned to evidence presented at the hearing is within the province of the Court. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). The standard of proof in this case is a preponderance of the evidence. See Anonymous v. Slate Bd. of Med. Exam'rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (quoting 2 Am.Jur.2d Administrative Law § 363 (1994)) ("[T]he standard of proof in administrative hearings is generally a preponderance of the evidence.").

An S corporation is not subject to tax in South Carolina to the extent it would be exempt from federal corporate income tax. S.C. Code Ann. § 12-6-590 (2014). The income of an S corporation is passed through to its shareholders and each shareholder must include its share of South Carolina S Corporation income on that shareholder's individual income tax return. Id. The provisions of the Internal Revenue Code (IRC) apply to determine an S corporation's gross income, adjusted gross income, and taxable income. Id. Because the income of an S corporation is determined pursuant to the provisions of the IRC, cases addressing the IRC, including cases from the United States Tax Court, while not binding, are applicable and instructive in determining any dispute involving the income of an S corporation.

When a taxpayer fails to file a tax return, the Department is authorized to issue that taxpayer a proposed assessment based on the best information available and issue a proposed assessment for the taxes, including penalties and interest. Section 12-60-430. In order to aid in this assessment, the taxpayer is required to keep records or other documents related to his taxes. S.C. Code Ann. § 12-54-210(A) (2014); S.C. Code Ann. Regs. 117-200 - 117-200.1 (2012). As the Eighth Circuit recognized,

[t]he cases are legion which state that the burden of proof is on the taxpayer; that the Commissioner's assessment is *prima facie* or presumptively correct and that such presumption is not overcome by mere book entries, mere

statements in the tax returns, the mere unsupported testimony of the taxpayer, or mathematical calculations involving uncertain facts.

Cleveland Chiropractic College v. Commissioner, 312 F.2d 203, 206 (1963)(internal quotations omitted). Rather, a taxpayer is required to maintain adequate records sufficient to enable the taxing authority to determine the taxpayer's correct tax liability. S.C. Code Ann. § 12-54-210 (2014); Meneguzzo v. Commissioner, 43 T.C. 824, 831-832 (1965); § 1.6001-1(a), Income Tax Regs. A taxpayer's inability to produce records does not relieve the taxpayer of the burden of proof. See Estate of Mason v. Commissioner, 64 T.C. 651 (1975), affd., 566 F.2d 2 (6th Cir. 1977).

In this case, CDT urges the Court to use the total deposits into the business bank account to calculate the revenue of the business. Patel testified that all revenue, including any cash accepted, was deposited into that account and that those deposits reflect the accurate gross revenue of CDT. I conclude that the methodology urged by CDT of using the total deposits into the bank account as the amount of gross revenue is contrary to the evidence before me. Likewise, CDT has not carried its burden of proving that the markup method utilized by the Department is inaccurate. CDT could have provided records showing sales using smaller markup percentages than those used by the Department, but chose not to do so despite admitting that it keeps those records and in defiance of this Court's order compelling discovery responses. The Department's assessment methodology, although based upon assumptions and extrapolated from the data made available, is a reasonable calculation of the likely gross income using the best information available to the Department and this Court. The fact that the Petitioners had control over the business records, and offered no credible explanation for the refusal to produce them, leads this Court to draw the inference that those records would not support the calculations urged by CDT. If a party has relevant evidence within its control which it fails to produce at a hearing, the failure to produce the evidence will give rise to an inference that it is unfavorable to that party. 48A Am.Jur.2d Labor and Labor Relations § 2021.

CDT is in the business of selling goods, therefore its income is realized through sales. The Department utilized the only records Petitioners made available regarding CDT's sales to calculate an average markup margin. The parties are in agreement as to the amount of tobacco and non-tobacco products purchased by CDT. What the parties cannot agree upon is how much CDT received when it sold those goods to its customers. The only sales records

or other documentation in the record regarding the amount CDT charged its customers for tobacco is the three months of sales records from 2012. Absent adequate records, or if the records that are kept do not accurately reflect income, the taxing authority may determine the existence and amount of a taxpayer's income by using any method that clearly reflects income. United States v. Johnson, 319 U.S. 503 (1943); Petzoldt v. Commissioner, 92 T.C. 661, 686-687 (1989). It is proper for the Department to employ an indirect method to calculate income where the method used is reasonable. Holland v. United States, 348 U.S. 121 (1954); Davis v. Commissioner, 239 F.2d 187, 189 (7th Cir. 1956), affg. T.C. Memo 1955-87; Giddio v. Commissioner, 54 T.C. 1530, 1533 (1970). "The reconstruction need only be reasonable in light of all surrounding facts and circumstances." Petzoldt, 92 T.C. at 687; Giddio, 54 T.C. at 1533. The percentage markup method is well recognized as an appropriate means of reconstructing income where a taxpayer's records are incomplete or inaccurate. Cebollero v. Commissioner, T.C. Memo. 1990-618, affd. 967 F.2d 986 (4th Cir. 1992). Bollella v. Commissioner, 374 F.2d 96 (6th Cir. 1967), affg. T.C. Memo. 1965-162; Kurnick v. Commissioner, 232 F.2d 678 (6th Cir. 1956), affg. T.C. Memo. 1955-31; Stone v. Commissioner, 22 T.C. 893, 905-906 (1954). The purchase markup method is considered particularly appropriate in matters where the amount of goods purchased for sale may be readily computed. Frank v. Commissioner, T.C. Memo. 1982-214, 1982 WL 10540 (Tax Court 1982).

Here, the three months of sales records admitted into evidence reflected monthly average markups of 13.5%, 19%, and 23.5%. It is reasonable to utilize the median markup percentage of 19% to calculate the gross income for the other months of the Audit Period for which no records were provided by Petitioners. The Court finds the case of Webb v. Commissioner, 394 F.2d 366 (5th Cir. 1968), while not binding, shares similarities with the present case and is therefore instructive. In Webb, the United States Court of Appeals for the Fifth Circuit addressed liquor store owners contesting the Commissioner of the IRS' computation of their income using a purchase markup method. Like CDT, the Webbs failed to maintain or provide complete records to the IRS. Id. at 369. The Court noted that Mr. Webb accepted cash and did not deposit all his receipts into his bank account. Id. Moreover, the amount the Webbs reported in gross sales on their tax returns was \$18,000 less than the amount shown in their incomplete records. Id. Because the Webbs failed to maintain

complete records, the IRS determined the Webbs' income using the purchase markup method. The Fifth Circuit recognized that the IRS' determination of taxable income is presumptively correct and the taxpayer has the burden of showing that the assessment is wrong on any proper theory. Id. at 372, quoting Bernstein v. C.I.R., 267 F.2d 879, 881 (5<sup>th</sup> Cir. 1959). The Webb Court held that the purchase markup method was the most reasonable means of computing income because the Webbs' cost of sales each year "were known with certainty." Id. at 373. In addressing the Webbs' complaints that the IRS should have used a different method the Court stated, "Arithmetic precision was originally and exclusively in Webb's hands, and he had a statutory duty to provide it. He did not have to add or subtract; rather, he had simply to keep papers and data for others to mathematici[s]e." Id. at 373, citing Breland v. United States, 323 F.2d 492 (5<sup>th</sup> Cir. 1963); Mendelson v. C.I.R., 305 F.2d 519 (7<sup>th</sup> Cir. 1962). The Webbs then argued that the IRS markup percentage was too high and did not reflect their actual income. In response, the Court stated, "There are X's in the Commissioner's equation, but the formula is reliably correct, and the X's were not filled in by Webb." Id. at 376-377. The Court then went on to uphold the determination of the Webbs' income using the percentage markup method. Similarly in this case, CDT failed to maintain or provide full records to the Department despite a statutory duty to maintain records. Section 12-54-210; Regulation 117-200 - 117-200.1. As the Webb court recognized, the purchase markup method is the most reasonable method when cost of sales each year is known with certainty. CDT's cost of sales for each year of the Audit Period are known and the parties agree on what CDT spent on goods purchased to resell to its customers. Accordingly, the purchase markup method is the most reasonable method to use in this case to estimate income.

Civil penalties are applied to every South Carolina tax that requires a return unless otherwise provided. S.C. Code Ann. § 12-54-43 (2014). Such penalties are considered a tax owed to the State. Id. Further, "[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety." S.C. Code Ann. § 12-54-25(A) (2014). Penalties are applicable to this matter pursuant to § 12-54-43 which states:

In the case of failure to file a return on or before the date prescribed by law... there must be added to the amount required to be shown as tax on the return, a penalty of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or

fraction of the month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43(C)(1) (2014). Additionally, S.C. Code Ann. § 12-54-43(E) (2014) states:

In the case of failure to pay any amount of any tax required to be shown on a return which is not shown, including an assessment within ten days of the date of the notice and demand for payment, there must be added to the amount of tax stated in the notice and demand one-half of one percent of the amount of the tax if the failure is for not more than one month, with an additional one-half of one percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43(E) (2014). Here, CDT admits that it failed to timely file its corporate income tax returns or timely pay its corporate license fees for any of the years in the Audit Period. In its motion to Alter/Amend the October 28 Order, Petitioner requests that the Court eliminate the requirement that it pay any penalty and interest due to the fact the cost of goods sold figures in the Department's determination were erroneous and unsupported. Petitioner does not cite legal authority demonstrating that this Court has the authority to waive the penalties and interest established by statute. Therefore, CDT is liable for failure to file and failure to pay penalties pursuant to §§ 12-54-43(C)(1) and 12-54-43(E) and interest calculated as provided in § 12-54-25(A).

During the Audit Period CDT earned the following net income which flows through to Mr. Patel:

| 2012      | 2013        | 2014        | 2015        | 2016        |
|-----------|-------------|-------------|-------------|-------------|
| \$730,354 | \$1,215,948 | \$1,488,431 | \$2,205,349 | \$2,842,862 |

Therefore,

- 1) **IT IS ORDERED** that the October 28, 2021 Final Order issued by this Court is vacated and this order substituted therefore;
- 2) **IT IS ALSO ORDERED** that Petitioner CDT is liable for corporate license fees and interest for each of the years of the Audit Period;
- 3) **IT IS ALSO ORDERED** that Petitioners Vimlesh V. Patel and Punita Patel are liable for income taxes on CDT's income as found in this order;

- 4) **IT IS ALSO ORDERED** that Petitioners are liable for failure to file and failure to pay penalties pursuant to §§ 12-54-43(C)(I) and 12-54-43(E);
- 5) **IT IS ALSO ORDERED** that this matter is **REMANDED** to the Department of Revenue to calculate the taxes, penalties, and interest owed by Petitioners as of the date of this order. The Department must provide Petitioners a statement of the amount owed within 15 days from the date of this order. Petitioners may pay the amount owed within 30 days of receipt of the statement without incurring additional penalties or interest; and
- 6) **IT IS FURTHER ORDERED** that Petitioners may, within 15 days of receiving the statement of amounts owed, move this Court for further examination of SCDOR's calculations if there is disagreement.

**AND IT IS SO ORDERED.**



Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

November 23, 2021  
Columbia, South Carolina

### CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).

*Robin Coleman*

Robin E. Coleman  
Judicial Aide to Judge Deborah Brooks Durden

November 23, 2021  
Columbia, South Carolina



THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

HONORABLE DEBORAH BROOKS DURDEN, ADMINISTRATIVE LAW JUDGE

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CASE NO. 19-ALJ-17-0339-CC  
APPELLATE CASE NO. 2021-001547

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Vimlesh V. Patel and Punita Patel.....Appellants,

v.

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

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**MOTION TO DISMISS APPEAL WITH PREJUDICE**

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Pursuant to Rule 240, SCACR, Respondent South Carolina Department of Revenue requests that the Court dismiss Appellants Vimlesh V. and Punita Patel's appeal. Appellants are attempting to appeal proposed tax assessments issued by the Respondent and affirmed by the Administrative Law Court. Appellants, however, have neither paid these taxes nor posted a bond for such taxes as required by S.C. Code Ann. § 12-60-3370 (2014). Appellants' appeal should therefore be dismissed based on a lack of appellate jurisdiction.

  
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16 Wellington Avenue  
Greenville SC 29609

Attorneys for Appellants

January 12, 2022

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

HONORABLE DEBORAH BROOKS DURDEN, ADMINISTRATIVE LAW JUDGE

---

CASE NO. 19-ALJ-17-0339-CC  
APPELLATE CASE NO. 2021-001547

---

Vimlesh V. Patel and Punita Patel.....Appellants,

v.

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

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**MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS APPEAL WITH PREJUDICE**

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On January 6, 2022, Respondent South Carolina Department of Revenue filed with this court and served on counsel of record, its Motion to Dismiss Appeal with Prejudice. Respondent submits that due to Appellants' failure to pay the tax or post bond on such tax found to be due by the Administrative Law Court (ALC) prior to their appeal to this Court, such failure divests this Court of appellate jurisdiction and requires dismissal of the instant appeal.

**ISSUE**

Should this appeal be dismissed because Appellants failed to comply with the requirements of S.C. Code Ann. § 12-60-3370 (2014) by failing to pay the tax or post bond for such tax prior to appealing the matter to the Court of Appeals?

### RELEVANT FACTS

On November 23, 2021, the ALC issued its Amended Final Order (Order) giving rise to the issue herein. In the Order, the ALC determined that Appellants are liable for individual income taxes for tax years 2012 through 2016. (Order attached). In accordance with the Order, on December 2, 2021, the Department notified the Appellants of the amount of tax, interest, and penalties as determined by the ALC. On December 23, 2021, Appellants filed their Notice of Appeal with the Court of Appeals. As of the date of this motion and accompanying memorandum of law, Appellants have not paid the tax or posted a bond for such tax determined to be due by the ALC. See affidavit of Brian Smith, p. 8.

### ARGUMENT IN SUPPORT OF DISMISSAL

Because Appellants failed to pay the tax determined to be due by the ALC or post bond for such tax prior to the appeal filed with the South Carolina Court of Appeals (Court) in this matter, this Court lacks appellate jurisdiction. See State v. Brown, 358 S.C. 382, 596 S.E. 2d 39 (2004).

The Administrative Procedures Act (APA) provides for the appeal of an ALC decision:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2020).

Where an appeal is made of an ALC decision related to taxes, S.C. Code Ann. § 12-60-3370 (2014) provides, in relevant part:

Except as otherwise provided, a taxpayer shall pay, or post a bond for, all taxes, not including penalties or civil fines, determined to be due by the administrative law judge **before appealing the decision to the court of appeals.**

(Emphasis added).

Further, S.C. Code Ann. § 12-60-3380 provides the following:

Appeal of decision to court of appeals.

Except as otherwise provided in this chapter, a party may appeal a decision of the Administrative law Court to the court of appeals. Appeal of a decision of the Administrative Law Court must be made in accordance with Section 1-23-610(B).

In State v. Brown, the South Carolina Supreme Court concluded that the “failure of a party to comply with the procedural requirements for perfecting an appeal may deprive the court of ‘appellate’ jurisdiction over the case, but it does not affect the court’s subject matter jurisdiction.” State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (citing Great Games, Inc. v. S.C. Dep’t of Rev., 339 S.C. 79, 82 at n.5, 529 S.E.2d 6, 7 at n.5 (2000)).<sup>1</sup> The Supreme Court reiterated that holding in Allison v. W.L. Gore & Associates, stating that questions of compliance with rules, regulations, and statutes governing an appeal are questions of appellate jurisdiction. Allison v. W.L. Gore & Associates, 714 S.E.2d 547, 549, 394 S.C. 185, 188 (2011) (citing In re November 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 686 S.E.2d 683 (2009)). In Allison, the

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<sup>1</sup> Although not precedent, in an unpublished decision in Anonymous Taxpayer v. S.C. Dep’t of Rev., 2008-UP-124, available at 2008 WL 9837290, this Court, citing to State v. Brown, found that it lacked appellate jurisdiction in the matter because the Appellant failed to pay the tax or post a bond prior to the appeal to the circuit court pursuant to S.C. Code Ann. § 12-60-3370. At the time the taxpayer in Anonymous appealed the ALC decision, such appeals were taken to the circuit court pursuant to then existing sections 12-60-3370 and 1-23-610. In 2006, these sections, in addition to S.C. Code Ann. § 12-60-3380, were amended to provide that appeals from ALC decisions are to the Court of Appeals. See 2006 Act No. 387, § 5, eff. July 1, 2006 (amending 1-23-610); 2006 Act No. 387, § 12, eff. July 1, 2006 (amending 12-60-3370); and 2006 Act No. 387, § 13, eff. July 1, 2006 (amending 12-60-3380). Section 53 of 2006 Act 387 further provides:

This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.

Supreme Court held that the failure to appeal a decision from a single Commissioner to the Full Workers Compensation Commission within 14 days, as required by South Carolina Code Ann. § 42-17-50 (Supp.2010), deprived the Commission of appellate jurisdiction.

Section 12-60-3370 explicitly provides that a taxpayer shall pay or post a bond for all taxes determined by the ALC to be due, before appealing the decision to this Court. As our Supreme Court has stated, “a statute should be construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous . . .” Matter of Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). The requirements of Section 12-60-3370 are clear: the taxes must be paid or bond must be posted before appealing, not after appealing to this Court. The Appellants have neither paid nor posted bond for the taxes determined by the ALC. Accordingly, the Appellants are not in compliance with Section 12-60-3370. To permit the Appellants to now pay the taxes or post bond would render the “before appealing the decision to the court of appeals” language superfluous. Because no statute shall be interpreted in a manner that renders any term in the statute superfluous, the Appellants cannot now pay the tax or post bond, as they have already appealed and the time for filing an appeal has passed. The Appellant’s failure to comply with the requirements of Section 12-60-3370 deprives this Court of appellate jurisdiction and this appeal should be dismissed.

The failure of Appellants to pay the tax ordered by the ALC or post sufficient bond prior to filing their notice of appeal prejudices the Department. The statutory mandate of Section 12-60-3370 ensures that the tax monies owed, as determined by the ALC, will be held in trust for the benefit of the citizens of South Carolina pending the outcome of Appellants’ appeal.<sup>2</sup> The posting of a bond ensures that these tax monies will be available in the event the State ultimately prevails.

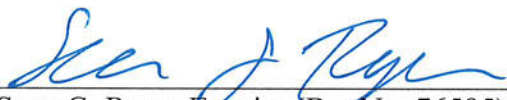
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<sup>2</sup> Notably, should Appellants prevail in this matter, the State must issue a refund of the tax paid.

Here, Appellants have not paid the tax or posted a bond on such tax imposed by the ALC in its Order and presumably, Appellants have diverted the State's money for personal use during the pendency of this matter. Such action harms the State and its citizens. Ostensibly, this is precisely the situation the General Assembly sought to avoid by enacting Section 12-60-3370 in 1995.

It is important for this Court to understand the Appellants' conduct regarding their tax obligations. The Appellants did not timely file their individual income tax returns or pay taxes for tax years 2012 through 2016. To the contrary, the Appellants only filed individual income tax returns once the Department initiated an audit. Moreover, as the Appellants admitted at trial, they have not filed individual income taxes for the years subsequent to the audit. Now, the Appellants seeks to further delay paying the taxes they owe for tax years 2012 through 2016.

Accordingly, because the Appellants have neither paid nor posted bond for the taxes determined by the ALC, they are not in compliance with Section 12-60-3370. Because the Appellants are not in compliance with Section 12-60-3370, Respondent respectfully submits this Court lacks appellate jurisdiction in this matter and respectfully requests the appeal be dismissed with prejudice.

  
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January 12, 2022

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

HONORABLE DEBORAH BROOKS DURDEN, ADMINISTRATIVE LAW JUDGE

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CASE NO. 19-ALJ-17-0339-CC  
APPELLATE CASE NO. 2021-001547

---

Vimlesh V. Patel and Punita Patel.....Appellants,

v.

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

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**AFFIDAVIT OF ROBERT KING**

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COMES NOW, Robert King, being duly sworn, deposes and states:

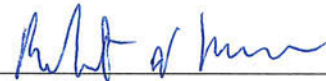
1. I am employed by the South Carolina Department of Revenue (Department) as a Foreign Audit Manager.
2. As part of my duties with the Department, I have access to the Department's records concerning proposed tax assessments and outstanding tax liabilities.
3. At the request of the Department's Office of General Counsel, I was asked to determine the amount of Appellant's proposed tax assessments based upon the Department's interpretation of the Administrative Law Court's November 23, 2021 Amended Final Order. Those proposed tax assessments are as follows:

| Tax Year | Tax Due             | Interest*           | TOTAL DUE           |
|----------|---------------------|---------------------|---------------------|
| 2012     | \$52,609.00         | \$20,535.07         | \$73,144.07         |
| 2013     | \$84,099.00         | \$29,520.39         | \$113,619.39        |
| 2014     | \$103,684.00        | \$32,255.29         | \$135,939.29        |
| 2015     | \$155,894.00        | \$42,294.04         | \$198,188.04        |
| 2016     | \$199,481.00        | \$44,176.01         | \$243,657.01        |
|          | <b>\$595,767.00</b> | <b>\$168,780.80</b> | <b>\$764,547.80</b> |

\*Interest is accrued through December 23, 2021.

4. At the request of the Department's Office of General Counsel, I was asked to verify the current status of Appellant's proposed tax assessments as outlined above. Such proposed tax assessments remain outstanding in that Appellant has neither paid any of the amounts due nor posted a bond for said amounts.

FURTHER AFFIANT SAYETH NOT.

  
Robert King

Sworn to and subscribed before me this 11  
day of January 2022.

  
Notary Public for South Carolina  
My Commission Expires: 8/30/2026

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

CDT, Inc.,

Docket No. 19-ALJ-17-0338-CC

Petitioner,

v.

**AMENDED FINAL ORDER**

South Carolina Department of Revenue,

Respondent.

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Vimlesh V. Patel and Punita Patel,

Docket No. 19-ALJ-17-0339-CC

Petitioners,

v.

South Carolina Department of Revenue,

Respondent.

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**APPEARANCES:** For Petitioner: Scott Talley, Esquire  
Steven Buckingham, Esquire  
For Respondent: Sean G. Ryan, Esquire

**STATEMENT OF THE CASE**

This matter is before the South Carolina Administrative Law Court (ALC or Court) following requests by Vimlesh and Punita Patel, and CDT, Inc. (CDT) for a contested case hearing pursuant to S.C. Code Ann. § 12-60-460 (2014). Vimlesh Patel is the sole owner of CDT, an S Corporation. CDT and the Patels are contesting the decision of the South Carolina Department of Revenue (Department or SCDOR) finding that CDT earned more business income than the amounts reported on its corporate income tax returns for tax years 2012 through 2016 (Audit Period). On September 23, 2020, the two contested cases were consolidated because the same issues and evidence are relevant to both cases.

After notice to the parties, this Court held a hearing in the matter on May 25, 2021, at the ALC in Columbia, South Carolina. The parties appeared and were represented by counsel at the hearing. On October 28, 2021, a Final Order was issued. On November 2, 2021, SCDOR filed a Motion to Reconsider, Alter, or Amend the Final Order. On November 10, 2021, CDT filed a Motion to Alter/Amend the Final Order. The motions are



**R\_0081**

granted and the October 28, 2021 Final Order is hereby vacated. This Amended Final Order substituted in its place.

### **STIPULATIONS OF FACT**

On March 15, 2021, the parties executed a Joint Stipulation stipulating to the following facts:

1. There are only two issues in dispute in these matters:
  - a. The amount of income generated by Petitioner CDT, Inc.; and
  - b. The amount of tax, interest, and penalties, if any, that the CDT, Inc., income causes for the Petitioners Vimlesh V. Patel and Punita Patel.
2. The Petitioners Vimlesh V. Patel and Punita Patel have income from sources other than CDT, Inc. for the Audit Period. The amount of income the Petitioners Vimlesh V. Patel and Punita Patel earned from other sources is not in dispute. Furthermore, the expenses of the Petitioners Vimlesh V. Patel and Punita Patel are not in dispute. Because these issues are not in dispute the parties stipulate that such will not be argued at the hearing.
3. Once the Court determines the amount of income generated for Petitioner, CDT, Inc., the Department can then calculate the specific amount of tax and interest and penalties, if any, for the Petitioners Vimlesh V. Patel and Punita Patel.

In addition, at the hearing the parties agreed that there is no dispute as to CDT's deductions and expenses, and that the only issue in dispute is the amount of the gross receipts of the business.

### **ISSUE**

What were the gross receipts of CDT, Inc. for tax years 2012 through 2016?

### **FINDINGS OF FACT**

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of proof and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

During the Audit Period, CDT was a tobacco wholesaler, which supplied tobacco products, soft drinks, and snacks to local convenience stores for resale. The business is located at 3801 Calhoun Memorial Highway, Suite C in Easley, South Carolina. CDT is an S Corporation and therefore its income is not taxed at the corporate level, rather, that income flows through to

the shareholders and is taxed at the shareholder level. CDT is solely owned and controlled by Vimlesh Patel (Patel). Therefore, the income of CDT flows through to Mr. Patel, where it is to be included on his South Carolina individual income tax returns (filed jointly with his wife Punita Patel) and subject to tax. While CDT's income is not taxed, it is still liable for corporate license fees.

CDT has a history as a noncompliant taxpayer. The corporate tax returns at issue for the Audit Period in this case were filed on February 16, 2018, after the corporate income audit was underway. As of the date of the hearing, CDT had not filed its returns for the subsequent years (2017-2020). Patel testified that he was waiting to see the outcome of this litigation before filing those returns. In addition, CDT provided little in the way of corporate financial records to the Department in response to the auditor's request at the outset of the audit process. Some records were, however, provided to the Department during the appeals process at the Department in 2018 and 2019 and further records were provided in response to discovery requests in this litigation following an order of this Court compelling discovery. Patel testified that he did not provide documents to the Department previously because they already had all the records that he could provide. His tax resolution specialist, Zarek Lehl testified that a comprehensive set of sales invoices for the years 2015 and 2016 were produced to the Department during the audit appeal process at the Department in 2019 and were also used in his analysis to determine CDT's gross income for those years. However, a review of those documents, introduced into evidence at the hearing by CDT as Petitioner's Exhibit 6, reveals that these invoices reflect amounts **paid by** CDT for goods sold, not accounts **payable to** CDT reflecting income to the business.

Prior to the audit at issue in this matter, the Department conducted a tobacco audit of CDT to determine if excise taxes on tobacco products had been properly paid. During that audit the Department obtained monthly purchase reports reflecting the amount of tobacco CDT purchased from its suppliers. In conducting the audit now before this Court, the Department utilized these monthly purchase reports to determine the amount of tobacco purchased during the Audit Period. In addition, the Department summoned CDT's bank records directly from CDT's bank.

Sonia Braje testified at the hearing. Braje is the SCDOR auditor who conducted the audit, examining CDT's banking records and the information obtained in the tobacco audit. However, the July 2019 decision letter that was issued to CDT based

upon her work in the audit increased CDT's tax burden by \$3 million over the estimates and calculations in her working papers. This was accomplished in part by reducing the cost of goods sold dramatically from what was reflected in the banking and tobacco records. Braje testified that she believed her working papers included fairly accurate numbers for cost of goods sold. The Department offered no explanation for issuing an initial decision letter reflecting a tax burden so fundamentally at odds with the information in the audit working papers other than Braje's testimony that she was suspicious that not all of the business' receipts were flowing into the bank account. Subsequently, the Department has adopted the cost of goods sold figures reflected in the banking and tobacco records. The cost of goods sold figures now recognized by the Department are not in dispute between the parties. I find that the July 31, 2019 Department Determination is not supported by the facts of this case or the documents the Department admits it had complete access to at the time the decision was issued.

The Department bases its estimate of gross revenue on three months of tobacco sales invoice data from March, April, and May of 2012. These are the only business records reflecting sales data that Petitioners have provided to the Department and it was the only evidence of income presented at the hearing available to substantiate the bank account numbers. The Department used that data to calculate a markup margin for sales for those three months as 13%, 19% and 23% respectively. It then estimated the total sales revenue by applying the 23% multiplier to the cost of goods sold for tobacco products in all months in the 60-month period. The Department's position at the time of the hearing is based upon estimating gross receipts utilizing a 19% markup over the cost of goods sold for tobacco products and a 14.05% markup for other products. CDT has refused to provide any other business records that would directly reflect the prices charged to its customers for tobacco products, the amounts billed to customers, or amounts collected from customers. CDT did not provide the Department with any sales records related to tobacco other than the three months from 2012. Nor did CDT provide any other documentation (such as customer price sheets) reflecting the pricing of the tobacco products that it sells. CDT provided six months of sales records for non-tobacco related products that it sells, which reflect a markup margin of 14.05% for non-tobacco products. SCDOR used those records to arrive at the 14.05% markup it used to estimate non-tobacco

sales revenue. CDT did not provide the Department or this Court with any profit and loss statements or comprehensive records showing its income or expenses, such as customer invoices, W-2's or 1099's related to the employees of CDT. The Department argues that because the taxpayer has refused to provide business records, other than the deposits to the bank account, to demonstrate its income or profit margin on the cost of goods sold, an inference is created that the records would not support CDT's position that all of the business income was deposited into the bank account.

Patel testified that some sales records from 2012-2013 were lost in a computer crash and that he supplied everything that he understood SCDOR sought, except records that he knew they already had in their possession. Patel testified that the 19% markup figure for tobacco products used by the Department is higher than he has ever realized. He estimates his markup on tobacco products to be six to eight percent. He did not, however, give any explanation as to why his markup on tobacco products for the three months of records that he produced would have been exceptional, nor provide records of any type to support this assertion. Furthermore, he provided no credible explanation for his failure to produce such business records from 2014-2016. Patel admitted that CDT sends out two invoices with each shipment to its customers. One invoice stays with the customer and the other invoice comes back to CDT with payment and is scanned to create an electronic record. Mr. Patel admitted that he did not provide those sales invoices to the Department, claiming the Department did not want such invoices. Patel's assertion that the Department did not seek the sales invoices is contradicted by the Department's Motion to Compel, which was ruled upon by this Court on August 26, 2020, ordering that Petitioners provide such records.

In assessing Patel's credibility, the Court also notes that Petitioners are seemingly disavowing the state and federal tax returns they filed for CDT for each of the years in the Audit Period. The income and expenses reported on those returns are inconsistent with the income and expenses CDT now claims this Court should find. Most notably, for 2015, the banking records would show a loss of almost \$500,000, but the business reported income of \$170,000 on the federal income tax return. Patel could not explain where the amounts of income and expenses reported on those returns originated, nor why those amounts are not accurate. The only explanation he offered was, "[t]hat wasn't me. That was my accountant." There is no evidence Petitioners have filed amended returns with the Department or the Internal Revenue Service

(IRS) reflecting the amount of income CDT now asserts it earned. The lack of consistency between the tax returns and the bank account records casts significant doubt on Patel's testimony that the bank account reflects all income and payments made by the business and that all income was deposited into that account. I do not find his testimony that all cash received was deposited into the First Citizens bank account to be credible. Likewise, I do not find credible his assertion that the markups CDT charges its customers have never been more than six to eight percent. That testimony inexplicably contradicts the only documentary evidence CDT made available showing actual markups of 13%, 19% and 23% during three months in 2012.

CDT presented testimony by Zarek Lehl, who performed an analysis of CDT's records. Lehl is employed by Larson Financial and works as a tax resolution specialist. Lehl's analysis purports to compare the bank deposits and records of sales receipts of the business to demonstrate that the bank deposits reasonably reflect the total receipts of the business. However, a review of the documents relied upon by Lehl reveals that the documents he interpreted as sales invoices reflecting accounts receivable to CDT are actually purchase invoices paid by CDT for tobacco products the business purchased from suppliers. Furthermore, Lehl's conclusion as to the amount of taxes owed by CDT demonstrates a misunderstanding of the tax situation at hand. He calculated the tax owed using the corporate income tax rate, which is inapplicable to an S corporation such as CDT. Because of these fundamental errors, I do not find Lehl's testimony or analysis to be credible or useful in resolving this dispute.

This Court's calculations of CDT's income for each of the years of the Audit Period using the Department's percentage markup methodology is represented in the following table:

|                                                         | 2012      | 2013      | 2014       | 2015       | 2016       |
|---------------------------------------------------------|-----------|-----------|------------|------------|------------|
| Tobacco Purchased <sup>1</sup>                          | 4,161,691 | 6,592,943 | 8,145,420  | 11,939,808 | 14,255,260 |
| Tobacco Excise Taxes Paid <sup>2</sup>                  | 195,137   | 309,135   | 455,900    | 427,646    | 1,141,702  |
| Tobacco COGS <sup>3</sup>                               | 4,356,828 | 6,902,078 | 8,601,320  | 12,367,454 | 15,396,962 |
| Tobacco Gross Receipts (19% Markup) <sup>4</sup>        | 5,184,625 | 8,213,473 | 10,235,571 | 14,717,270 | 18,322,385 |
| Non-tobacco COGS <sup>5</sup>                           | 0         | 7,992     | 100,735    | 119,160    | 384,206    |
| Non-tobacco Gross Receipts (14.05% Markup) <sup>6</sup> | 0         | 9,115     | 114,888    | 135,902    | 438,187    |
| Total COGS <sup>7</sup>                                 | 4,161,691 | 6,600,935 | 8,246,155  | 12,058,968 | 14,639,466 |
| Adjusted Gross Income <sup>8</sup>                      | 1,022,934 | 1,621,653 | 2,104,304  | 2,794,204  | 4,121,106  |
| Total Operating Expenses <sup>9</sup>                   | 292,580   | 405,705   | 615,873    | 588,855    | 1,278,244  |
| Net Income <sup>10</sup>                                | 730,354   | 1,215,948 | 1,488,431  | 2,205,349  | 2,842,862  |

<sup>1</sup> Petitioners do not dispute the figures estimated by SCDOR for Tobacco Purchased.

<sup>2</sup> Petitioners do not dispute the figures estimated by SCDOR for Tobacco Excise Taxes Paid.

<sup>3</sup> Tobacco COGS (Cost of Goods Sold) equals Tobacco Purchased plus Tobacco Excise Taxes Paid.

<sup>4</sup> Tobacco Gross Receipts (19% Markup) equals Tobacco COGS multiplied by 1.19.

<sup>5</sup> Petitioners do not dispute the figures estimated by SCDOR for Non-tobacco COGS.

<sup>6</sup> Non-tobacco Gross Receipts (14.05% Markup) equals Non-tobacco COGS multiplied by 1.1405.

<sup>7</sup> Total COGS equals Tobacco COGS plus Non-tobacco COGS minus Tobacco Excise Taxes Paid.

<sup>8</sup> Adjusted Gross Income equals Tobacco Gross Receipts (19% Markup) plus Non-tobacco Gross Receipts (14.05% Markup) minus Total COGS.

<sup>9</sup> Petitioners do not dispute the figures estimated by SCDOR for Total Operating Expenses.

<sup>10</sup> Net Income equals Adjusted Gross Income minus Total Operating Expenses.

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

The Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. §§ 12-60-430 (2014); 1-23-600 (Supp. 2020). In this contested case, the Court serves as the finder of fact, and conducts a *de novo* review. See Reliance Ins. Co. v. Smith, 327 S.C. 528, 534-35, 489 S.E.2d 674, 677 (Ct. App. 1997). As the trier of fact, the weight and credibility assigned to evidence presented at the hearing is within the province of the Court. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). The standard of proof in this case is a preponderance of the evidence. See Anonymous v. Slate Bd. of Med. Exam'rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (quoting 2 Am.Jur.2d Administrative Law § 363 (1994)) ("[T]he standard of proof in administrative hearings is generally a preponderance of the evidence.").

An S corporation is not subject to tax in South Carolina to the extent it would be exempt from federal corporate income tax. S.C. Code Ann. § 12-6-590 (2014). The income of an S corporation is passed through to its shareholders and each shareholder must include its share of South Carolina S Corporation income on that shareholder's individual income tax return. Id. The provisions of the Internal Revenue Code (IRC) apply to determine an S corporation's gross income, adjusted gross income, and taxable income. Id. Because the income of an S corporation is determined pursuant to the provisions of the IRC, cases addressing the IRC, including cases from the United States Tax Court, while not binding, are applicable and instructive in determining any dispute involving the income of an S corporation.

When a taxpayer fails to file a tax return, the Department is authorized to issue that taxpayer a proposed assessment based on the best information available and issue a proposed assessment for the taxes, including penalties and interest. Section 12-60-430. In order to aid in this assessment, the taxpayer is required to keep records or other documents related to his taxes. S.C. Code Ann. § 12-54-210(A) (2014); S.C. Code Ann. Regs. 117-200 - 117-200.1 (2012). As the Eighth Circuit recognized,

[t]he cases are legion which state that the burden of proof is on the taxpayer; that the Commissioner's assessment is *prima facie* or presumptively correct and that such presumption is not overcome by mere book entries, mere

statements in the tax returns, the mere unsupported testimony of the taxpayer, or mathematical calculations involving uncertain facts.

Cleveland Chiropractic College v. Commissioner, 312 F.2d 203, 206 (1963)(internal quotations omitted). Rather, a taxpayer is required to maintain adequate records sufficient to enable the taxing authority to determine the taxpayer's correct tax liability. S.C. Code Ann. § 12-54-210 (2014); Meneguzzo v. Commissioner, 43 T.C. 824, 831-832 (1965); § 1.6001-1(a), Income Tax Regs. A taxpayer's inability to produce records does not relieve the taxpayer of the burden of proof. See Estate of Mason v. Commissioner, 64 T.C. 651 (1975), affd., 566 F.2d 2 (6th Cir. 1977).

In this case, CDT urges the Court to use the total deposits into the business bank account to calculate the revenue of the business. Patel testified that all revenue, including any cash accepted, was deposited into that account and that those deposits reflect the accurate gross revenue of CDT. I conclude that the methodology urged by CDT of using the total deposits into the bank account as the amount of gross revenue is contrary to the evidence before me. Likewise, CDT has not carried its burden of proving that the markup method utilized by the Department is inaccurate. CDT could have provided records showing sales using smaller markup percentages than those used by the Department, but chose not to do so despite admitting that it keeps those records and in defiance of this Court's order compelling discovery responses. The Department's assessment methodology, although based upon assumptions and extrapolated from the data made available, is a reasonable calculation of the likely gross income using the best information available to the Department and this Court. The fact that the Petitioners had control over the business records, and offered no credible explanation for the refusal to produce them, leads this Court to draw the inference that those records would not support the calculations urged by CDT. If a party has relevant evidence within its control which it fails to produce at a hearing, the failure to produce the evidence will give rise to an inference that it is unfavorable to that party. 48A Am.Jur.2d Labor and Labor Relations § 2021.

CDT is in the business of selling goods, therefore its income is realized through sales. The Department utilized the only records Petitioners made available regarding CDT's sales to calculate an average markup margin. The parties are in agreement as to the amount of tobacco and non-tobacco products purchased by CDT. What the parties cannot agree upon is how much CDT received when it sold those goods to its customers. The only sales records

or other documentation in the record regarding the amount CDT charged its customers for tobacco is the three months of sales records from 2012. Absent adequate records, or if the records that are kept do not accurately reflect income, the taxing authority may determine the existence and amount of a taxpayer's income by using any method that clearly reflects income. United States v. Johnson, 319 U.S. 503 (1943); Petzoldt v. Commissioner, 92 T.C. 661, 686-687 (1989). It is proper for the Department to employ an indirect method to calculate income where the method used is reasonable. Holland v. United States, 348 U.S. 121 (1954); Davis v. Commissioner, 239 F.2d 187, 189 (7th Cir. 1956), affg. T.C. Memo 1955-87; Giddio v. Commissioner, 54 T.C. 1530, 1533 (1970). "The reconstruction need only be reasonable in light of all surrounding facts and circumstances." Petzoldt, 92 T.C. at 687; Giddio, 54 T.C. at 1533. The percentage markup method is well recognized as an appropriate means of reconstructing income where a taxpayer's records are incomplete or inaccurate. Cebollero v. Commissioner, T.C. Memo. 1990-618, affd. 967 F.2d 986 (4th Cir. 1992). Bollella v. Commissioner, 374 F.2d 96 (6th Cir. 1967), affg. T.C. Memo. 1965-162; Kurnick v. Commissioner, 232 F.2d 678 (6th Cir. 1956), affg. T.C. Memo. 1955-31; Stone v. Commissioner, 22 T.C. 893, 905-906 (1954). The purchase markup method is considered particularly appropriate in matters where the amount of goods purchased for sale may be readily computed. Frank v. Commissioner, T.C. Memo. 1982-214, 1982 WL 10540 (Tax Court 1982).

Here, the three months of sales records admitted into evidence reflected monthly average markups of 13.5%, 19%, and 23.5%. It is reasonable to utilize the median markup percentage of 19% to calculate the gross income for the other months of the Audit Period for which no records were provided by Petitioners. The Court finds the case of Webb v. Commissioner, 394 F.2d 366 (5th Cir. 1968), while not binding, shares similarities with the present case and is therefore instructive. In Webb, the United States Court of Appeals for the Fifth Circuit addressed liquor store owners contesting the Commissioner of the IRS' computation of their income using a purchase markup method. Like CDT, the Webbs failed to maintain or provide complete records to the IRS. Id. at 369. The Court noted that Mr. Webb accepted cash and did not deposit all his receipts into his bank account. Id. Moreover, the amount the Webbs reported in gross sales on their tax returns was \$18,000 less than the amount shown in their incomplete records. Id. Because the Webbs failed to maintain

complete records, the IRS determined the Webbs' income using the purchase markup method. The Fifth Circuit recognized that the IRS' determination of taxable income is presumptively correct and the taxpayer has the burden of showing that the assessment is wrong on any proper theory. Id. at 372, quoting Bernstein v. C.I.R., 267 F.2d 879, 881 (5<sup>th</sup> Cir. 1959). The Webb Court held that the purchase markup method was the most reasonable means of computing income because the Webbs' cost of sales each year "were known with certainty." Id. at 373. In addressing the Webbs' complaints that the IRS should have used a different method the Court stated, "Arithmetic precision was originally and exclusively in Webb's hands, and he had a statutory duty to provide it. He did not have to add or subtract; rather, he had simply to keep papers and data for others to mathematici[s]e." Id. at 373, citing Breland v. United States, 323 F.2d 492 (5<sup>th</sup> Cir. 1963); Mendelson v. C.I.R., 305 F.2d 519 (7<sup>th</sup> Cir. 1962). The Webbs then argued that the IRS markup percentage was too high and did not reflect their actual income. In response, the Court stated, "There are X's in the Commissioner's equation, but the formula is reliably correct, and the X's were not filled in by Webb." Id. at 376-377. The Court then went on to uphold the determination of the Webbs' income using the percentage markup method. Similarly in this case, CDT failed to maintain or provide full records to the Department despite a statutory duty to maintain records. Section 12-54-210; Regulation 117-200 - 117-200.1. As the Webb court recognized, the purchase markup method is the most reasonable method when cost of sales each year is known with certainty. CDT's cost of sales for each year of the Audit Period are known and the parties agree on what CDT spent on goods purchased to resell to its customers. Accordingly, the purchase markup method is the most reasonable method to use in this case to estimate income.

Civil penalties are applied to every South Carolina tax that requires a return unless otherwise provided. S.C. Code Ann. § 12-54-43 (2014). Such penalties are considered a tax owed to the State. Id. Further, "[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety." S.C. Code Ann. § 12-54-25(A) (2014). Penalties are applicable to this matter pursuant to § 12-54-43 which states:

In the case of failure to file a return on or before the date prescribed by law... there must be added to the amount required to be shown as tax on the return, a penalty of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or

fraction of the month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43(C)(1) (2014). Additionally, S.C. Code Ann. § 12-54-43(E) (2014) states:

In the case of failure to pay any amount of any tax required to be shown on a return which is not shown, including an assessment within ten days of the date of the notice and demand for payment, there must be added to the amount of tax stated in the notice and demand one-half of one percent of the amount of the tax if the failure is for not more than one month, with an additional one-half of one percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43(E) (2014). Here, CDT admits that it failed to timely file its corporate income tax returns or timely pay its corporate license fees for any of the years in the Audit Period. In its motion to Alter/Amend the October 28 Order, Petitioner requests that the Court eliminate the requirement that it pay any penalty and interest due to the fact the cost of goods sold figures in the Department's determination were erroneous and unsupported. Petitioner does not cite legal authority demonstrating that this Court has the authority to waive the penalties and interest established by statute. Therefore, CDT is liable for failure to file and failure to pay penalties pursuant to §§ 12-54-43(C)(1) and 12-54-43(E) and interest calculated as provided in § 12-54-25(A).

During the Audit Period CDT earned the following net income which flows through to Mr. Patel:

| 2012      | 2013        | 2014        | 2015        | 2016        |
|-----------|-------------|-------------|-------------|-------------|
| \$730,354 | \$1,215,948 | \$1,488,431 | \$2,205,349 | \$2,842,862 |

Therefore,

- 1) **IT IS ORDERED** that the October 28, 2021 Final Order issued by this Court is vacated and this order substituted therefore;
- 2) **IT IS ALSO ORDERED** that Petitioner CDT is liable for corporate license fees and interest for each of the years of the Audit Period;
- 3) **IT IS ALSO ORDERED** that Petitioners Vimlesh V. Patel and Punita Patel are liable for income taxes on CDT's income as found in this order;

- 4) **IT IS ALSO ORDERED** that Petitioners are liable for failure to file and failure to pay penalties pursuant to §§ 12-54-43(C)(I) and 12-54-43(E);
- 5) **IT IS ALSO ORDERED** that this matter is **REMANDED** to the Department of Revenue to calculate the taxes, penalties, and interest owed by Petitioners as of the date of this order. The Department must provide Petitioners a statement of the amount owed within 15 days from the date of this order. Petitioners may pay the amount owed within 30 days of receipt of the statement without incurring additional penalties or interest; and
- 6) **IT IS FURTHER ORDERED** that Petitioners may, within 15 days of receiving the statement of amounts owed, move this Court for further examination of SCDOR's calculations if there is disagreement.

**AND IT IS SO ORDERED.**

A handwritten signature in black ink, reading "Deborah Brooks Durden". The signature is written in a cursive, flowing style.

Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

November 23, 2021  
Columbia, South Carolina

### CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).

*Robin Coleman*

Robin E. Coleman  
Judicial Aide to Judge Deborah Brooks Durden

November 23, 2021  
Columbia, South Carolina



THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

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Appellate Case Nos.: 2021-001528 & 2021-001547

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CDT, Inc., ..... Appellant,

v.

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

**AND**

Vimlesh V. Patel and Punita Patel ..... Appellants,

v.

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

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**APPELLANTS' CONSOLIDATED RESPONSE IN OPPOSITION  
TO RESPONDENT'S MOTION TO DISMISS**

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**Statement of Pertinent Facts**

The matter presented in this appeal arises from Respondent's consistent failure to accurately calculate and communicate the amount of taxable income for which Appellants are responsible, a defect which continues through this very moment.

Appellant CDT, Inc. ("CDT") is a tobacco wholesaler located in Easley, South Carolina. Its primary business activity is to sell tobacco products to convenience stores for resale. CDT is, and at all relevant times has been, owned and operated solely by Appellant Vimlesh V. Patel. Mr. Patel's spouse is Appellant Punita Patel. Because of CDT's

ownership structure and tax-status election, CDT's income is not taxed at the corporate level; instead, for purposes of taxation, CDT's income flows through the corporation and is subject to taxation at the individual taxpayer level, by Mr. Patel, as CDT's sole shareholder.

During or about 2017, Respondent commenced audit proceedings against CDT with respect to CDT's taxable corporate income. The audit period in question pertained to five specific tax years—2012 through 2016. The most charitable way to describe Respondent's calculations of Appellants' taxable income would be "inconsistent." A more realistic description would be "an unprincipled crapshoot."

Respondent's initial analysis of Appellants' taxable income for the audit period in question was prepared in 2018. A true and accurate copy of this initial analysis is attached hereto as **Attachment A**.

Through this analysis, Respondent was ostensibly trying to extrapolate CDT's gross income for each of the years of the audit period by multiplying the costs of CDT's tobacco purchases by a certain ratio, yielded by comparing the operating costs claimed by CDT against the operating costs deemed "allowed" by Respondent. According to Attachment A and the testimony of Respondent's auditor at trial, this ratio was generated through an analysis of CDT's bank records. The conclusions reached by Respondent through this analysis were, as demonstrated below, utterly bizarre.

For example, for tax year 2016, Respondent determined that CDT's tobacco purchase for that year totaled \$14,255,260. Then, Respondent applied its calculation of operating costs derived—allegedly—from a study of CDT's bank records to extrapolate that CDT's gross revenue for 2016 was \$23,978,570.23. A true and accurate copy of a

summary of CDT's bank records, which were presented at trial, are attached hereto as **Attachment B**. However, as Respondent knew or should have known, based on the very same bank records used to calculate the operational-cost ratio, CDT's gross revenue for 2016 was only \$15,988,720.09. Incredibly, Respondent had overestimated CDT's gross revenue by eight million dollars. And, what's worse, it was very much Respondent's intention to assess taxes against CDT according to its utterly indefensible calculation.

Respondent's initial analysis of the other tax years for the audit period was no better. For 2015, Respondent contended that CDT's gross revenue was \$21,057,862.43, even though CDT's bank records showed revenue of only \$12,183,064; for 2014, Respondent contended that CDT's gross revenue was \$13,150,000, when bank records showed only \$9,633,273. For 2013 and 2012, Respondent simply "carried back" its calculation of gross revenue for 2014, showing that CDT's gross revenue for 2012 and 2013 was the same as 2014—\$13,150,000. Respondent took this position, in spite of CDT's bank records which showed gross revenue for 2012 in the amount of \$3,107,986 and for 2013 in the amount of \$7,284,384.

All told, as a result of Respondent's "analysis," CDT's gross revenue for the audit period was overestimated by approximately \$36 million. This, however, was only Respondent's initial analysis. There were more to follow, and each was plagued by their own brand of fiction.

In March 2019, Respondent issued a "Corporate Working Paper" for each tax year of the audit period with "adjusted" audit calculations. Each of these is attached hereto as **Attachment C**. A summary of Respondent's conclusions is set out below, along with a comparison with their prior conclusions:

|      | Gross Revenue<br>CDT Bank Records | Gross Revenue<br>Initial Analysis | Gross Revenue<br>Mar. 2019 Analysis |
|------|-----------------------------------|-----------------------------------|-------------------------------------|
| 2012 | \$3,107,986                       | \$13,150,000                      | \$5,717,622                         |
| 2013 | \$7,284,384                       | \$13,150,000                      | \$9,068,333                         |
| 2014 | \$9,633,273                       | \$13,150,500                      | \$11,420,020                        |
| 2015 | \$12,183,064                      | \$21,057,862                      | \$16,386,632                        |
| 2016 | \$15,988.720.09                   | \$23,978.570.23                   | \$20,710,194                        |

As the foregoing table demonstrates, as of January 2019, Respondent’s analyses were trending toward a more factual grounding. However, even this new analysis continued to show that CDT’s gross revenues were more—millions more—than what were established through the company’s bank records. And the new analysis still overstated CDT’s gross revenue for the audit period by approximately \$15.5 million. It was Respondent’s position that the amounts represented in the March 2019 analysis constituted “the final proposed assessment.”

But this wasn’t true. By correspondence dated July 31, 2019, Respondent sent a “Department Determination” letter, which purported set out a true and accurate calculation of taxable revenues attributable to Appellants. A true and accurate copy of this letter is attached hereto as **Attachment D**.

The good news about this Department Determination letter is that—for the first time—Respondent seemed to acknowledge that, to some extent, CDT’s gross revenue was around the same amount as was reflected in CDT’s bank records:

|      | Gross Revenue<br>CDT Bank Records | Gross Revenue<br>Initial Analysis | Gross Revenue<br>Mar. 2019 Analysis | Gross Revenue<br>Jul. 2019 Letter |
|------|-----------------------------------|-----------------------------------|-------------------------------------|-----------------------------------|
| 2012 | \$3,107,986                       | \$13,150,000                      | \$5,717,622                         | \$7,203,847                       |
| 2013 | \$7,284,384                       | \$13,150,000                      | \$9,068,333                         | \$7,203,847                       |
| 2014 | \$9,633,273                       | \$13,150,500                      | \$11,420,020                        | \$9,549,526                       |
| 2015 | \$12,183,064                      | \$21,057,862                      | \$16,386,632                        | \$12,031,231                      |
| 2016 | \$15,988,720.09                   | \$23,978,570.23                   | \$20,710,194                        | \$15,170,003                      |

Were it not for the inexplicable overestimation of CDT's gross revenue for 2012, Respondent's July 31, 2019 Department Determination letter would have fairly closely tracked the amount of CDT's revenue evidenced by its banking records.

However, the Department Determination letter introduced a new issue. For some also-inexplicable reason, Respondent unilaterally decided to discount a substantial portion of the operating expenses (including cost-of-goods-sold) reported by CDT and evidenced by its bank records. Following is a table that compares the various positions taken with respect to operating expenses:

|      | Operating Expenses<br>CDT Bank Records | Operating Expenses<br>Mar. 2019 Analysis | Operating Expenses<br>Jul. 2019 Letter |
|------|----------------------------------------|------------------------------------------|----------------------------------------|
| 2012 | \$4,452,852                            | \$4,452,852                              | \$3,822,607                            |
| 2013 | \$7,005,221                            | \$7,005,221                              | \$3,822,606                            |
| 2014 | \$8,859,123                            | \$8,859,123                              | \$6,072,554                            |
| 2015 | \$12,646,969                           | \$12,646,969                             | \$6,978,222                            |
| 2016 | \$15,913,150                           | \$15,913,150                             | \$9,150,810                            |

As evidenced by this table, until Respondent's July 2019 Department Determination letter, the parties were in agreement—to the dollar—on the amount of CDT's operating expenses for each year of the audit period. Then, for reason which is still not presently known, in the July 2019 Department Determination letter, Respondent undervalued CDT's operating expenses by nearly \$20 million. Accordingly, even though the gap between the parties regarding CDT's gross revenue had been reduced to approximately \$3 million, Respondent's sudden and senseless decision to reduce the amount operating expenses creditable to CDT created a net-\$17 million gap, for which Respondent was seeking the payment of taxes.

These circumstances were the backdrop of the trial of this matter, which occurred in the Administrative Law Court on May 25, 2021. As a result of the trial, the court found as follows:

***With Respect to CDT's Gross Revenue for the Audit Period<sup>1</sup>***

|      | Gross Revenue<br>CDT Bank Records | Gross Revenue<br>Mar. 2019 Analysis | Gross Revenue<br>Jul. 2019 Letter | Gross Revenue<br>ALC Order |
|------|-----------------------------------|-------------------------------------|-----------------------------------|----------------------------|
| 2012 | \$3,107,986                       | \$5,717,622                         | \$7,203,847                       | \$5,184,625                |
| 2013 | \$7,284,384                       | \$9,068,333                         | \$7,203,847                       | \$8,222,588                |
| 2014 | \$9,633,273                       | \$11,420,020                        | \$9,549,526                       | \$10,350,459               |
| 2015 | \$12,183,064                      | \$16,386,632                        | \$12,031,231                      | \$14,853,172               |
| 2016 | \$15,988,720.09                   | \$20,710,194                        | \$15,170,003                      | \$18,760,572               |

***With Respect to CDT's Operating Expenses for the Audit Period***

|      | Operating Exp.<br>CDT Bank Records | Operating Exp.<br>Mar. 2019 Analysis | Operating Exp.<br>Jul. 2019 Letter | Operating Exp.<br>ALC Order |
|------|------------------------------------|--------------------------------------|------------------------------------|-----------------------------|
| 2012 | \$4,452,852                        | \$4,452,852                          | \$3,822,607                        | \$4,454,271                 |
| 2013 | \$7,005,221                        | \$7,005,221                          | \$3,822,606                        | \$7,006,640                 |
| 2014 | \$8,859,123                        | \$8,859,123                          | \$6,072,554                        | \$8,862,028                 |
| 2015 | \$12,183,064                       | \$16,386,632                         | \$12,031,231                       | \$12,647,823                |
| 2016 | \$15,988,720.09                    | \$20,710,194                         | \$15,170,003                       | \$15,917,710                |

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<sup>1</sup> Appellants dispute that the lower court correctly calculated the amount of CDT's gross revenue for the audit period. However, that matter is the substance of the appeal, and is not immediately pertinent to Appellants' response in opposition to the motion to dismiss, which is targeted at Respondent's own improper calculations and communications of tax amounts allegedly owed.

***With Respect to CDT's Taxable Income***

|      | Taxable Income<br>ALC Order |
|------|-----------------------------|
| 2012 | \$730,354                   |
| 2013 | \$1,215,948                 |
| 2014 | \$1,488,431                 |
| 2015 | \$2,205,349                 |
| 2016 | \$2,842,862                 |

Appellants are sincerely hopeful that the foregoing tables, which are all based on information that will be part of the Record on Appeal, demonstrate that Respondent's calculations have been wildly unpredictable throughout the entirety of these proceedings. However, most importantly for the purposes of this response in opposition to Respondent's motion to dismiss, Appellants would respectfully direct the Court's attention to one final calculation error for which Respondent is responsible.

In the order from which this appeal is taken, the lower court directed Respondent to prepare a statement of taxes owed by Appellants based on the taxable income attributed to CDT as a result of trial. Respondent's counsel did so via email to Appellants' counsel on December 2, 2021. A true and accurate copy of relevant excerpts of Respondent's most recent statement of Appellants' tax liability is attached hereto as **Attachment E**. A summary of the pertinent assertions is set out in the following table:

|      | Taxable Income<br>ALC Order | Taxable Income<br>Respondent's Email |
|------|-----------------------------|--------------------------------------|
| 2012 | \$730,354                   | \$778,715                            |
| 2013 | \$1,215,948                 | \$1,212,249                          |
| 2014 | \$1,488,431                 | \$1,492,156                          |
| 2015 | \$2,205,349                 | \$2,238,122                          |
| 2016 | \$2,842,862                 | \$2,860,861                          |

Accordingly, as of the date on which this response is provided, Respondent has not only failed to advise Appellants of its tax liability as established by the order from which this appeal is taken, Respondent continues to overstate the taxable income attributable to Appellants, presently by approximately \$100,000.

**ARGUMENT DENYING RESPONDENT'S MOTION TO DISMISS APPEAL**

In its Memorandum dated January 12, 2022, Respondent SC DOR relies upon State v. Brown, 358 S.C. 382, 596 S.E.2d 39 (2004) to argue its belief that this Court lacks jurisdiction over Appellant's appeal in this matter. SC DOR does correctly state that in State v. Brown, the Supreme Court concluded that "failure of a party to comply with the procedural requirements for perfecting an appeal *may* (emphasis added) deprive the court of 'appellate' jurisdiction over the case, but it does not affect the court's subject matter jurisdiction." State v. Brown, 358 S.C. 382, 387, 596 S.E. 2d 39, 41 (2004).

The Administrative Law Court issued its Amended Final Order on November 23, 2021. This Amended Final Order was the result of post trial motions filed by both Appellants and Respondent as to the issue of amount of taxes due from the Appellants,

which as stated above and in Attachment E, is still not in compliance with or consistent with findings in the Administrative Law Court's Amended Final Order. Appellants sole avenue to address the continued errors of the Respondent is this Court. While not precedential, this Court recently rendered an Unpublished Opinion No. 2019-UP-349 in the matter of Beltram v. South Carolina Department of Revenue which pertained to similar facts regarding calculations of amounts owed by a taxpayer that were not clear.

Based on the foregoing, Appellant's pray that the Motion to Dismiss be denied.

Respectfully submitted,

*s/ Steven Edward Buckingham*

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*Attorneys for Appellant*

# **ATTACHMENT A**

|                                  |                                                           |      |                   |                    |                                                    |
|----------------------------------|-----------------------------------------------------------|------|-------------------|--------------------|----------------------------------------------------|
| CDT, Inc.                        |                                                           |      |                   |                    |                                                    |
| Income adjustment calculation    |                                                           |      |                   |                    |                                                    |
| For period 1/1/2012 - 12/31/2016 |                                                           |      |                   |                    |                                                    |
|                                  |                                                           |      |                   |                    | <b>Audited</b>                                     |
|                                  |                                                           | Year | Tobacco purchases | ADJ Gross Receipts | <b>COGS/Gross receipts (per bank transactions)</b> |
|                                  |                                                           | 2012 | -                 | 13,150,500.48      | carried back 2014                                  |
|                                  |                                                           | 2013 | -                 | 13,150,500.48      | carried back 2014                                  |
|                                  |                                                           | 2014 | 8,145,420.00      | 13,150,500.48      | 62%                                                |
|                                  |                                                           | 2015 | 11,939,808.00     | 21,057,862.43      | 57%                                                |
|                                  |                                                           | 2016 | 14,255,260.00     | 23,978,570.23      | 59%                                                |
|                                  |                                                           |      |                   |                    |                                                    |
|                                  |                                                           |      |                   |                    |                                                    |
|                                  |                                                           |      |                   |                    |                                                    |
|                                  |                                                           |      |                   |                    |                                                    |
|                                  | ***Percentages calculated from bank transaction schedule. |      |                   |                    |                                                    |
|                                  | COGS and Gross receipts numbers are highlighted in purple |      |                   |                    |                                                    |
|                                  | for each year.                                            |      |                   |                    |                                                    |

# **ATTACHMENT B**

# CDT 2012 Income Breakdown

|           | Bank Deposit          |
|-----------|-----------------------|
| January   | \$129,669.71          |
| February  | \$140,323.98          |
| March     | \$131,397.00          |
| April     | \$158,505.52          |
| May       | \$229,452.10          |
| June      | \$240,256.98          |
| July      | \$236,811.15          |
| August    | \$341,876.13          |
| September | \$360,109.01          |
| October   | \$367,695.14          |
| November  | \$376,128.21          |
| December  | \$395,762.00          |
| Total     | <b>\$3,107,986.93</b> |

|                      |                |                                                                              |
|----------------------|----------------|------------------------------------------------------------------------------|
| Total Expense        | \$8,145,420.00 | ***Expense information used from attached<br>Corporate Adjustment Summary*** |
| Total Taxable Income | \$0.00         |                                                                              |
| Tax Due Pre Tax      | \$0.00         |                                                                              |

# CDT 2013 Income Breakdown

|           | Bank Deposit          |
|-----------|-----------------------|
| January   | \$424,937.75          |
| February  | \$375,259.70          |
| March     | \$390,714.98          |
| April     | \$537,321.04          |
| May       | \$701,401.71          |
| June      | \$635,500.90          |
| July      | \$846,633.39          |
| August    | \$738,630.60          |
| September | \$620,867.65          |
| October   | \$729,398.18          |
| November  | \$610,824.33          |
| December  | \$672,894.62          |
| Total     | <b>\$7,284,384.85</b> |

|               |                |
|---------------|----------------|
| Total Expense | \$7,005,221.00 |
|---------------|----------------|

\*\*\*Expense information used from attached  
Corporate Adjustment Summary\*\*\*

|                      |              |
|----------------------|--------------|
| Total Taxable Income | \$279,163.85 |
|----------------------|--------------|

|                 |             |
|-----------------|-------------|
| Tax Due Pre Tax | \$13,958.19 |
|-----------------|-------------|

# CDT 2014 Income Breakdown

|                         | Bank Deposit          | Invoice Totals                                                                   |
|-------------------------|-----------------------|----------------------------------------------------------------------------------|
| January                 | \$696,399.31          |                                                                                  |
| February                | \$741,144.19          |                                                                                  |
| March                   | \$712,184.36          |                                                                                  |
| April                   | \$708,426.81          |                                                                                  |
| May                     | \$793,851.59          | \$695,940.39                                                                     |
| June                    | \$807,798.00          | \$824,923.37                                                                     |
| July                    | \$977,869.00          | \$931,865.74                                                                     |
| August                  | \$1,029,101.15        | \$932,294.35                                                                     |
| September               | \$877,239.73          | \$944,137.67                                                                     |
| October                 | \$794,236.75          | \$964,516.38                                                                     |
| November                | \$666,726.15          | \$566,425.17                                                                     |
| December                | \$828,296.56          | \$1,100,295.90                                                                   |
| <b>Total</b>            | <b>\$9,633,273.60</b> |                                                                                  |
| <br>Total Expense       | <br>\$8,859,123.00    | <br>***Expense information used from attached<br>Corporate Adjustment Summary*** |
| Total Taxable Income    | \$774,150.60          |                                                                                  |
| <br>Tax Due Pre Penalty | <br>\$38,707.53       |                                                                                  |

# CDT 2015 Income Breakdown

|                         | Bank Deposit           | Invoice Totals                                                                   |
|-------------------------|------------------------|----------------------------------------------------------------------------------|
| January                 | \$767,152.15           | \$696,569.22                                                                     |
| February                | \$779,841.79           | \$906,632.98                                                                     |
| March                   | \$1,010,228.32         | \$1,109,775.06                                                                   |
| April                   | \$971,531.81           | \$1,046,388.79                                                                   |
| May                     | \$979,056.52           | \$960,277.04                                                                     |
| June                    | \$995,101.19           | \$1,133,917.36                                                                   |
| July                    | \$1,044,613.10         | \$1,006,758.62                                                                   |
| August                  | \$1,022,308.20         | \$1,104,463.62                                                                   |
| September               | \$1,081,865.86         | \$1,189,032.83                                                                   |
| October                 | \$1,155,978.05         | \$1,122,587.63                                                                   |
| November                | \$1,138,324.04         | \$1,223,151.84                                                                   |
| December                | \$1,237,063.07         | \$1,118,334.49                                                                   |
| <b>Total</b>            | <b>\$12,183,064.10</b> | <b>\$12,617,889.48</b>                                                           |
| <br>Total Expense       | <br>\$12,646,969.00    | <br>***Expense information used from attached<br>Corporate Adjustment Summary*** |
| Total Taxable Income    | -\$463,904.90          |                                                                                  |
| <br>Tax Due Pre Penalty | <br>\$0.00             |                                                                                  |

# CDT 2016 Income Breakdown

|           | Bank Deposit           | Invoice Totals         |
|-----------|------------------------|------------------------|
| January   | \$1,002,516.90         | \$1,145,832.40         |
| February  | \$1,069,996.52         | \$1,226,397.25         |
| March     | \$1,397,471.06         | \$1,206,988.67         |
| April     | \$1,256,105.39         | \$1,194,142.30         |
| May       | \$1,200,258.92         | \$1,454,702.55         |
| June      | \$1,342,413.43         | \$1,189,955.74         |
| July      | \$1,477,852.00         | \$1,227,301.22         |
| August    | \$1,282,197.21         | \$1,429,867.01         |
| September | \$1,409,780.31         | \$1,387,486.66         |
| October   | \$1,443,302.31         | \$1,535,754.39         |
| November  | \$1,471,480.32         | \$1,609,520.86         |
| December  | \$1,635,345.72         | \$1,348,300.95         |
| Total     | <b>\$15,988,720.09</b> | <b>\$15,956,250.00</b> |

Total Expense \$15,913,150.00

\*\*\*Expense information used from attached  
Corporate Adjustment Summary\*\*\*

Total Taxable Income \$75,570.09

Tax Due Pre Penalty \$3,778.50

# **ATTACHMENT C**



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Corporate Working Paper

## Adjustments To Federal Schedules for 2012

| Federal Schedule Field       | Description                          | Reported Amount | Audited Amount     | Audit Adjustment |
|------------------------------|--------------------------------------|-----------------|--------------------|------------------|
| 01a. Gross receipts or sales |                                      | \$0             | \$5,184,625        | \$5,184,625      |
| 02. Cost of goods sold       |                                      | \$0             | \$4,161,691        | -\$4,161,691     |
| 19. Other deductions         | Carried back 2013 operating expenses | \$0             | \$97,443           | -\$97,443        |
| 12. Taxes and licenses       |                                      | \$0             | \$195,137          | -\$195,137       |
|                              |                                      | <b>\$0</b>      | <b>\$9,638,896</b> | <b>\$730,354</b> |

### Explanation of Federal Schedule Adjustments

Operating expenses carried back from tax year 2013. The tobacco excise taxes were estimated based on percentage of taxes to tobacco purchases from tax year 2013.

ADJ- 3-13-19- Carried back additional office expense of \$1419 as verified for 2013 to allowance for operating expense in 2012. Adjusted gross receipts are based on 19% tobacco gross margin percentage.



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Corporate Working Paper

## Adjustments To Federal Schedules for 2013

| Federal Schedule Field       | Description                      | Reported Amount | Audited Amount      | Audit Adjustment   |
|------------------------------|----------------------------------|-----------------|---------------------|--------------------|
| 01a. Gross receipts or sales |                                  | \$0             | \$8,222,587         | \$8,222,587        |
| 02. Cost of goods sold       |                                  | \$0             | \$6,600,935         | -\$6,600,935       |
| 11. Rents                    |                                  | \$0             | \$19,710            | -\$19,710          |
| 19. Other deductions         | auto & truck- fuel               | \$0             | \$27,101            | -\$27,101          |
| 19. Other deductions         | bank charges                     | \$0             | \$5,757             | -\$5,757           |
| 19. Other deductions         | freight                          | \$0             | \$25,066            | -\$25,066          |
| 19. Other deductions         | professional fees-<br>accounting | \$0             | \$1,225             | -\$1,225           |
| 19. Other deductions         | supplies                         | \$0             | \$4,164             | -\$4,164           |
| 19. Other deductions         | telephone                        | \$0             | \$4,428             | -\$4,428           |
| 19. Other deductions         | utilities                        | \$0             | \$1,422             | -\$1,422           |
| 19. Other deductions         | miscellaneous                    | \$0             | \$30                | -\$30              |
| 19. Other deductions         | office                           | \$0             | \$3,230             | -\$3,230           |
| 12. Taxes and licenses       |                                  | \$0             | \$309,135           | -\$309,135         |
| 19. Other deductions         | insurance                        | \$0             | \$4,437             | -\$4,437           |
|                              |                                  | <b>\$0</b>      | <b>\$15,229,227</b> | <b>\$1,215,947</b> |

### Explanation of Federal Schedule Adjustments

ADJ- 3-13-19- Gross receipts adjusted to reflect 19% GM on tobacco items and 14.05% on non-tobacco items.  
Additional expenses allowed based on CC statements.



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Corporate Working Paper

## Adjustments To Federal Schedules for 2014

| Federal Schedule Field       | Description        | Reported Amount | Audited Amount      | Audit Adjustment   |
|------------------------------|--------------------|-----------------|---------------------|--------------------|
| 01a. Gross receipts or sales |                    | \$0             | \$10,350,459        | \$10,350,459       |
| 02. Cost of goods sold       |                    | \$0             | \$8,246,155         | -\$8,246,155       |
| 11. Rents                    |                    | \$0             | \$18,750            | -\$18,750          |
| 19. Other deductions         | auto & truck- fuel | \$0             | \$52,552            | -\$52,552          |
| 19. Other deductions         | bank charges       | \$0             | \$8,574             | -\$8,574           |
| 19. Other deductions         | freight            | \$0             | \$14,890            | -\$14,890          |
| 19. Other deductions         | miscellaneous      | \$0             | \$7                 | -\$7               |
| 19. Other deductions         | office             | \$0             | \$9,123             | -\$9,123           |
| 19. Other deductions         | telephone          | \$0             | \$3,664             | -\$3,664           |
| 19. Other deductions         | utilities          | \$0             | \$1,495             | -\$1,495           |
| 19. Other deductions         | supplies           | \$0             | \$48,872            | -\$48,872          |
| 19. Other deductions         | insurance          | \$0             | \$2,046             | -\$2,046           |
| 12. Taxes and licenses       |                    | \$0             | \$455,900           | -\$455,900         |
|                              |                    | <b>\$0</b>      | <b>\$19,212,487</b> | <b>\$1,488,431</b> |

### Explanation of Federal Schedule Adjustments

ADJ- 3-13-19- Gross receipts adjusted to reflect 19% GM on tobacco items and 14.05% on non-tobacco items.  
Additional expenses allowed based on CC statements.



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Corporate Working Paper

## Adjustments To Federal Schedules for 2015

| Federal Schedule Field       | Description        | Reported Amount | Audited Amount      | Audit Adjustment   |
|------------------------------|--------------------|-----------------|---------------------|--------------------|
| 01a. Gross receipts or sales |                    | \$0             | \$14,853,172        | \$14,853,172       |
| 02. Cost of goods sold       |                    | \$0             | \$12,058,968        | -\$12,058,968      |
| 11. Rents                    |                    | \$0             | \$26,625            | -\$26,625          |
| 19. Other deductions         | auto & truck- fuel | \$0             | \$24,019            | -\$24,019          |
| 19. Other deductions         | bank charges       | \$0             | \$8,302             | -\$8,302           |
| 19. Other deductions         | freight            | \$0             | \$17,513            | -\$17,513          |
| 19. Other deductions         | miscellaneous      | \$0             | \$766               | -\$766             |
| 19. Other deductions         | office expense     | \$0             | \$12,954            | -\$12,954          |
| 19. Other deductions         | supplies           | \$0             | \$50,764            | -\$50,764          |
| 19. Other deductions         | telephone          | \$0             | \$3,916             | -\$3,916           |
| 19. Other deductions         | utilities          | \$0             | \$6,557             | -\$6,557           |
| 19. Other deductions         | security           | \$0             | \$5,720             | -\$5,720           |
| 19. Other deductions         | trash              | \$0             | \$330               | -\$330             |
| 19. Other deductions         | insurance          | \$0             | \$3,743             | -\$3,743           |
| 12. Taxes and licenses       |                    | \$0             | \$427,646           | -\$427,646         |
|                              |                    | <b>\$0</b>      | <b>\$27,500,995</b> | <b>\$2,205,349</b> |

### Explanation of Federal Schedule Adjustments

ADJ- 3-13-19- Gross receipts adjusted to reflect 19% GM on tobacco items and 14.05% on non-tobacco items.  
Additional expenses allowed based on CC statements.



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Corporate Working Paper

## Adjustments To Federal Schedules for 2016

| Federal Schedule Field       | Description        | Reported Amount | Audited Amount      | Audit Adjustment   |
|------------------------------|--------------------|-----------------|---------------------|--------------------|
| 01a. Gross receipts or sales |                    | \$0             | \$18,760,571        | \$18,760,571       |
| 02. Cost of goods sold       |                    | \$0             | \$14,639,466        | -\$14,639,466      |
| 11. Rents                    |                    | \$0             | \$42,000            | -\$42,000          |
| 12. Taxes and licenses       |                    | \$0             | \$1,141,702         | -\$1,141,702       |
| 19. Other deductions         | auto & truck- fuel | \$0             | \$39,988            | -\$39,988          |
| 19. Other deductions         | bank charges       | \$0             | \$13,410            | -\$13,410          |
| 19. Other deductions         | freight            | \$0             | \$8,035             | -\$8,035           |
| 19. Other deductions         | office expense     | \$0             | \$8,710             | -\$8,710           |
| 19. Other deductions         | telephone          | \$0             | \$3,270             | -\$3,270           |
| 19. Other deductions         | utilities          | \$0             | \$7,798             | -\$7,798           |
| 19. Other deductions         | security           | \$0             | \$480               | -\$480             |
| 19. Other deductions         | trash              | \$0             | \$1,222             | -\$1,222           |
| 19. Other deductions         | supplies           | \$0             | \$11,242            | -\$11,242          |
| 19. Other deductions         | insurance          | \$0             | \$387               | -\$387             |
|                              |                    | <b>\$0</b>      | <b>\$34,678,281</b> | <b>\$2,842,861</b> |

### Explanation of Federal Schedule Adjustments

ADJ- 3-13-19- Gross receipts adjusted to reflect 19% GM on tobacco items and 14.05% on non-tobacco items.  
Additional expenses allowed based on CC statements.

# **ATTACHMENT D**

STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
OFFICE OF THE GENERAL COUNSEL

Physical Address:

300A Outlet Pointe Blvd.  
Columbia, SC 29210



Mailing Address:

PO Box 12265  
Columbia, SC 29211-9979

July 31, 2019

Rick Reames, III, Esquire  
James Rourke, Esquire  
Nexsen Pruet  
P. O. Box 2426  
Columbia, SC 29202

Re: Department Determination  
CDT, Inc.  
2012 – 2016 Corporate Income Tax  
Our File Number: 190115

Dear Counsel:

Enclosed is the South Carolina Department of Revenue's Determination in the above-referenced matter. If you disagree with the Determination, you may request a contested case hearing before an Administrative Law Judge. If you choose to pursue such remedy, you must do so within thirty (30) days of the date of this letter. If you fail to respond within this time limitation, you will lose your right to appeal the Department Determination and your protest will be ended. Should you desire a contested case hearing, you must complete the enclosed request form and mail it, along with a \$150.00 filing fee, to the Administrative Law Court at the address stated on the form's instruction sheet.

**The Administrative Law Court rules require that you also send me a copy of your request.** My address is as follows: PO Box 12265, Columbia, SC 29211-9979.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

A handwritten signature in blue ink, appearing to read "Sean G. Ryan", is written over the typed name.

Sean G. Ryan, Esquire  
Managing Counsel for Litigation  
[Sean.Ryan@dor.sc.gov](mailto:Sean.Ryan@dor.sc.gov)  
803-898-5375

SGR/gjm

Enclosures

## DEPARTMENT DETERMINATION

### **Taxpayer:**

CDT, Inc.  
3801 Calhoun Memorial Highway, Suite C  
Easley, SC 29640-9033

### **Periods at Issue:**

Corporate Income Tax Years 2012-2016

### **Matter in Dispute:**

Did CDT, Inc., (Taxpayer) earn more business income than the amounts reported on its tax returns for the Periods Involved.

| <b>Tax Year</b> | <b>Tax<sup>1</sup></b> | <b>Interest<sup>2</sup></b> | <b>Penalties</b> | <b>Total</b>    |
|-----------------|------------------------|-----------------------------|------------------|-----------------|
| <b>2012</b>     | \$25.00                | \$7.00                      | \$12.50          | \$44.50         |
| <b>2013</b>     | \$25.00                | \$6.05                      | \$12.50          | \$43.55         |
| <b>2014</b>     | \$25.00                | \$5.13                      | \$12.50          | \$42.63         |
| <b>2015</b>     | \$25.00                | \$4.23                      | \$11.37          | \$40.60         |
| <b>2016</b>     | \$25.00                | \$3.09                      | \$ 9.87          | \$37.96         |
| <b>Total</b>    | <b>\$125.00</b>        | <b>\$25.50</b>              | <b>\$58.74</b>   | <b>\$209.24</b> |

### **Determinations:**

The Taxpayer earned more business income than the amounts reported on its tax returns for the Periods Involved.

### **Relevant Facts:**

1. The Taxpayer is a tobacco wholesaler, which supplies tobacco products to local convenience stores for resale. The business also supplies soft drinks and snacks, but these products represent only a small percentage of the business' revenues. The business is located at 3801 Calhoun Memorial Highway, Suite C in Easley, South Carolina.

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<sup>1</sup>Because the Taxpayer is an S Corporation, its income is not taxed at the corporate level, rather that income flows through to the shareholders and taxed at the shareholder level. Taxation of the additional income determined herein is addressed in a separate Department Determination for the Taxpayer's sole shareholder, Vimlesh Patel. While the Taxpayer's income is not taxed, it is still liable for Corporate License fees.

<sup>2</sup>Charges for accrued interest apply. See S.C. Code Ann. § 12-54-25 (2014). The interest amount has been updated from the Proposed Notice of Assessment and is computed through September 4, 2019, and will continue to accrue until this matter is resolved.

2. During the course of a Tobacco & Cigarette Tax audit, the South Carolina Department of Revenue (Department) discovered that the Taxpayer had not filed South Carolina Corporate Income Tax returns for 2012 through 2016. In response to the Taxpayer not filing corporate returns, the Department began a corporate income tax audit.
3. On October 6, 2016, the Department notified the Taxpayer that it was the subject of a corporate income audit. In its notification, the Department requested that the Taxpayer provide copies of its books and records. Despite this request, the Taxpayer did not provide any records. The Department previously obtained monthly purchase reports during a tobacco audit, which showed purchases for November and December of 2014 and all months in 2015 and 2016. In addition, the Department summoned the Taxpayer's bank records directly from the Taxpayer's bank. Because the Taxpayer refused to provide records, the Department utilized the purchase reports and bank records to complete a corporate income tax audit.
4. On March 2, 2018, the Taxpayer's Power of Attorney provided the Department with South Carolina Corporate Income Tax returns for the Period Involved. All of the provided returns are dated February 5, 2018. The Department's auditor reviewed the provided returns and compared such to the bank transaction summaries for each year. Gross receipts on the returns were significantly less than deposits into the bank account for all years.
5. Review of the tobacco purchase reports revealed that purchases reported by the Taxpayer were only slightly lower than the total amount deposited into the bank account. Cost of goods sold, as identified through bank transactions, was on average 64% of purchases according to the tobacco purchase reports. This information indicates that the Taxpayer makes substantial purchases with cash, which is not deposited into the bank account.
6. In order to calculate the Taxpayer's total gross receipts, including both deposited funds and cash used directly for the purchase of goods, the Department's auditor prepared percentages based on the bank transaction schedule. The Taxpayer's deposits were compared against the Taxpayer's cost of goods sold in order to create a percentage. The Department used this percentage to mark up the purchases reported on the tobacco purchase reports. The resulting amount was used as estimated gross receipts for the business in 2015 and 2016. For 2014, only two monthly reports were available, these two monthly figures were averaged and the average was carried over twelve months to estimate annual purchases for 2014. Because the Taxpayer refused to provide records and the Department did not have purchase reports for 2012 or 2013, the Department used the gross receipts of 2014 for 2012 and 2013.
7. The Taxpayer did not provide any documentation to support the amounts of expenses claimed on the corporate returns. The Taxpayer's bank records do not support any of the expense amounts claimed on the returns. Therefore, operating expenses for the business were adjusted to the amounts verified from the bank statements. On March 28, 2018, the Department issued the Taxpayer a Proposed Assessment for the Period Involved. The Proposed Assessment included tax, penalties, and interest determined in the audit.

8. On June 26, 2018, the Department received the Taxpayer's protest of the Proposed Assessment.
9. On August 23, 2018, the Appeals section of the Department conducted a telephone conference with the Taxpayer and its Power of Attorney. The Taxpayer expressed its disagreement with the findings of the audit. The Department requested that any additional information the Taxpayer would like to submit for review and consideration would need to be submitted no later than September 6, 2018.
10. The Taxpayer did not provide any additional information or documentation by September 6, 2018. Then, on October 4, 2018, the Department received notification that the Taxpayer retained counsel to represent it in this matter. The Taxpayer's counsel requested documentation regarding the audit which the Department provided. The Taxpayer's counsel stated they would be in contact to discuss the audit the following week.
11. On November 6, 2018, the Department's Appeals section held a telephone conference with the Taxpayer's counsel to discuss the findings of the audit. Counsel requested time to meet with their client and determine if there was any additional information they could gather. The Department agreed to give the Taxpayer until November 20, 2018 to contact the Department after speaking with their client.
12. On November 20, 2018, the Taxpayer's counsel contacted the Department requesting additional time so that a certified public account could review the Taxpayer's records and review the audit. On December 19, 2018, the Department contacted Taxpayer's counsel and informed them that any and all information that they would like to be considered for review be submitted no later than January 9, 2019.
13. On January 9, 2019, the Taxpayer's counsel provided a revised protest of the proposed assessment along with additional documentation regarding the Taxpayer's business. The documents provided included sales data for three months of 2012. The gross margin percentages for these three months varied between 13.5% and 23.8%. Due to the small number of samples and the fact that they are from the oldest period in the audit, The Department adjusted the findings of the audit using the 23.8% gross margin percentage. On January 18, 2019, the Department issued the Taxpayer a revised Proposed Assessment reflecting the adjustments made after receipt of documentation from the Taxpayer.
14. After reviewing the revised Proposed Assessment, the Taxpayer still disagreed with the findings of the audit. After continued discussions between the Taxpayer's counsel and the Department's Appeals section, the Taxpayer provided additional documents to the Department on February 7, 2019.
15. The additional documents provided by the Taxpayer contained spreadsheets without headings making the documents very difficult to decipher and did not contain any sales reports. The Department's auditor reviewed the additional materials and allowed additional business expenses totaling \$9,095.00.

16. After continued discussions between the Department and the Taxpayer's counsel, the audit remained unresolved. Therefore, on March 28, 2019, the Department notified the Taxpayer's counsel that the matter would be sent to the Department's Office of General Counsel for Litigation for issuance of this Department Determination.

**Analysis:**

**I. The Taxpayer Earned More Business Income Than The Amounts Reported On Its Tax Returns For The Periods Involved.**

The Taxpayer is a tobacco wholesaler, which supplies tobacco products to local convenience stores for resale. The business also supplies soft drinks and snacks, but these products represent only a small percentage of the business' revenues. Despite being located in South Carolina and conducting its business in South Carolina, the Taxpayer did not file South Carolina Corporate Income Tax returns until after the Department began an audit of the Taxpayer.<sup>3</sup>

During the course of the audit, the Department requested that the Taxpayer provide documentation regarding its income and expenses during the Periods Involved. Despite the Department's requests, the Taxpayer refused to provide any records to the Department. The Department previously obtained monthly purchase reports during a tobacco audit of the Taxpayer, which showed purchases for November and December of 2014, and all months in 2015 and 2016. In addition, the Department summoned the Taxpayer's bank records directly from the Taxpayer's bank. Because the Taxpayer refused to provide records, the Department utilized the purchase reports and bank records to complete a corporate income tax audit.

Prior to the inception of the audit, the Taxpayer did not file income tax returns for the Periods Involved. Only once the audit began did the Taxpayer's Power of Attorney provide tax returns. Unfortunately, the Taxpayer did not provide documentation to support the amounts reported on these late returns. In situations where the amounts on a taxpayer's returns are unsubstantiated, as is the case in this matter, the Department may employ any proper and reasonable audit method necessary to ascertaining the correctness of that return. S.C. Code Ann. § 12-54-100 (Supp. 2018). When a taxpayer fails to provide documentation to support his or her returns, the Department utilizes information obtained from third parties as a tool to reconstruct the taxpayer's activities and thereby determine that taxpayer's liability. In the present matter, the Department utilized purchase records obtained from a third party vendor to determine the quantity and cost of tobacco and other goods purchased by the Taxpayer to operate its wholesale business.

In order to initially calculate the Taxpayer's total gross receipts, including both deposited funds and cash used directly for the purchase of goods, the Department's auditor prepared percentages based on the Taxpayer's bank transaction schedule. The Taxpayer's deposits were compared against the Taxpayer's cost of goods sold in order to create a percentage. The Department used this percentage to mark up the purchases reported on the tobacco purchase reports. The resulting

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<sup>3</sup>Pursuant to S.C. Code Ann. § 12-54-85 (C) (2014), because the Taxpayer failed to file returns as required, the thirty-six month limitation on the assessment of taxes provided in § 12-54-85 (A) does not apply in this matter.

amount was used as estimated gross receipts for the business in 2015 and 2016. For 2014, only two monthly reports were available, these two monthly figures were averaged and the average was carried over twelve months to estimate annual purchases for 2014. Because the Taxpayer refused to provide records and the Department did not have purchase reports for 2012 or 2013, the Department used the gross receipts of 2014 for 2012 and 2013.

To calculate the Taxpayer's expenses for 2014 and 2015 the Department utilized the cost of goods sold as reported by the Taxpayer on its tobacco purchase reports. Only two tobacco purchase reports were available for 2014, therefore the Department utilized the average of those expenses for all months of 2014. Because the Taxpayer refused to provide records and the Department did not have purchase reports for 2012 or 2013, the Department used the expenses of 2014 for 2012 and 2013.

In January of 2019, after the Department issued its Proposed Assessment, the Taxpayer provided additional documentation regarding its business. The documents provided included sales data for three months of 2012. The gross margin percentages for these three months varied between 13.5% and 23.8%. Due to the small number of samples and the fact that they are from the oldest period in the audit, The Department adjusted the findings of the audit by applying the Taxpayer's own 23.8% gross margin percentage to its purchases. On January 18, 2019, the Department issued the Taxpayer a revised Proposed Assessment reflecting the adjustments made using the 23.8% gross margin percentage. The revised calculations for 2012 and 2013 reflect net income of \$3,356,185.00, including \$7,203,847.00 in gross receipts, \$3,726,583.00 in cost of goods sold, and operating expenses totaling \$96,024.00. The revised calculations for 2014 reflect net income of \$3,425,810.00, including gross receipts of \$9,549,526.00, \$5,914,877.00 in cost of goods sold, and operating expenses totaling \$157,677.00. The revised calculations for 2015 reflect a net income of \$4,993,067.00, including gross receipts of \$12,031,231.00, \$6,821,610.00 in cost of goods sold, and operating expenses totaling \$156,612.00. The revised calculations for 2016 reflect net income of \$5,852,236.00, including gross receipts of \$15,170,003.00, \$9,018,599.00 in cost of goods sold, and operating expenses totaling \$132,211.00.

Pursuant to S.C. Code Ann. § 12-36-2540 (2014), a taxpayer is obligated to keep and preserve records of the business sufficient for the Department to determine the amount of tax due. Specifically, sellers of tangible personal property are required to keep all "records, receipts, invoices, and other pertinent papers". In this case, the Taxpayer failed to maintain sufficient records supporting its tax returns. Accordingly, the Department used a reasonable method to calculate the Taxpayers income and expenses.<sup>4</sup>

In this case, the Department properly determined the Taxpayer's income and expenses based on the Taxpayer's gross proceeds of sales, as calculated through its purchase history. The use of a mark-up percentage as a means of determining the gross proceeds of sales is well recognized as an appropriate means of reconstructing income where a taxpayer's records are incomplete or

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<sup>4</sup>Other jurisdictions have applied reasonable methods to determine the appropriate tax where few, if any, records are available, SQS Foodstores Inc. v. Tracy, 2002 WL 31116698 (Ohio App. 7 Dist. 2002); Yilmaz, Inc. v. Director, Div. of Taxation, 390 N. J. Super. 435, 444, 915 A.2d 1069, 1074 (N. J. Super. A. D. 2007).

inaccurate. See, In Re: A Finding Concerning The Sales Tax Liability Of John Doe dba XYZ Store For The Period April 1, 1987 Through March 31, 1990, South Carolina Tax Commission Decision No. 93-89, (Sept. 23. 1993); Cebollero v. Commissioner, 967 F.2d 986 (4th Cir.1992) *aff'g.*, T.C.Memo. 1990-618; Bollella v. Commissioner, 374 F.2d 96 (6th Cir.1967) *aff'g.* T.C.Memo. 1965-162; Kurnick v. Commissioner, 232 F.2d 678 (6th Cir.1956) *aff'g.* T.C. Memo 1965-162; Stone v. Commissioner, 22 T.C. 893, 905-906 (1954).

## **II. The Taxpayer Is Liable For Corporate License Fees.**

Pursuant to S.C. Code Ann. § 12-20-20(A) (2014), every domestic corporation must file an annual report with the Department on or before April 15<sup>th</sup> of the following year. Pursuant to S.C. Code Ann. § 12-20-50(A) (2014), every corporation required to file an annual report must also pay an annual corporate license fee. The annual license fee is equal to fifteen dollars plus one dollar for each thousand dollars, or fraction of a thousand dollars, of capital stock and paid-in or capital surplus of the corporation. In no case may the license fee provided by this section be less than twenty-five dollars. Id. The license fee must be paid on or before the original due date for filing the annual report. Id. The tax returns provided by the Taxpayer do not list any capital or paid in surplus amount. Because the Taxpayer did not cooperate with the audit or provide records, the Department had no means of determining if the taxpayer paid in capital during the audit period, or if the amount would have been sufficient to increase the minimum license fee of \$25.00. In the absence of additional documentation, the Department assessed the statutory minimum license fee of \$25.00 for each year.

## **III. The Taxpayer Is Liable For Interest and Penalties.**

Civil penalties are applied to every South Carolina tax law that requires a return unless otherwise provided. S.C. Code Ann. § 12-54-43 (2014). Such penalties are considered a tax owed this State. Id. Further, “[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety.” S.C. Code Ann. § 12-54-25(A) (2014). Penalties are applicable to this matter pursuant to § 12-54-43. S.C. Code Ann. § 12-54-43(C)(1) (2014) states:

In the case of failure to file a return on or before the date prescribed by law, there must be added to the amount required to be shown as tax on the return, a penalty of five percent if the failure is not for more than one month, with an additional five percent for each additional month or fraction of the month not exceeding twenty-five percent in the aggregate.

Additionally, S.C. Code Ann. § 12-54-43(E)(2014) states:

In the case of failure to pay any amount of any tax required to be shown on return which is not shown, including an assessment within ten days of the date of the notice and demand for payment, there must be added to the amount of tax stated in the notice and demand one-half of one percent of the amount of

the tax if the failure is for not more than one month, with an additional one-half of one percent for each additional month or fraction of a month which the failure continues, not exceeding twenty-five percent in the aggregate.

Here, the Taxpayer failed to timely file its corporate income tax returns or timely pay its corporate license fees for the Periods Involved. Therefore, the Department's auditors applied failure to file and failure to pay penalties to the Taxpayer's liability, pursuant to §§ 12-54-43(C)(1) and 12-54-43(E).

#### **IV. The Taxpayer's Arguments Are Not Persuasive.**

The Taxpayer asserts that the Department's calculations are incorrect and overstate its income. The Taxpayer's assertions stem from its belief that the Department's reconstruction of its income and expenses is not accurate. The need to reconstruct the Taxpayer's income stems entirely from the Taxpayer's own failure to maintain records supporting the amounts on its returns. Accordingly, any inaccuracy in the Department's calculations is solely the result of the Taxpayer's own failure to maintain records. It is the taxpayer's own failure to comply with the statutory duty to keep and maintain records that forced the Department to utilize a markup method to determine its tax liability. As the Tenth Circuit Court of Appeals recognized in Jones v. C.I.R., if a taxpayer fails to keep adequate records, the taxing authority can use any reasonable method to compute the taxpayer's liability. The taxpayer cannot later complain that the liability so computed by that authority is inexact. Jones v. C.I.R., 903 F.2d 1301 (10th Cir. 1990).

#### **Conclusion:**

The Taxpayer failed to maintain adequate records for tax purposes and failed to timely file returns. The records that are available do not support the Taxpayer's returns thereby requiring the Department to determine the Taxpayer's income using the best information available. The Department determined the Taxpayer's income and expenses using the recognized and approved purchase markup method. Based upon the Department's audit, the Taxpayer earned more business income than the amounts reported on its tax returns for the Periods Involved.

July 31, 2019

## **Filing and Assignment of a Contested Case with the Administrative Law Court**

Complete the Request for Contested Case Hearing **and** Certificate of Service form in its entirety. File the original by mailing it or hand delivering it to the Administrative Law Court, along with a copy of the decision from the agency (for example: Department Determination) **and the appropriate filing fee**. Be sure to serve a copy of the Request on the agency which you are appealing (see address below) as well as any other known parties or protestants.

Your case will be deemed filed with the Administrative Law Court upon receipt of your request and filing fee, and will normally be assigned to an administrative law judge within a week of filing. You should receive a Notice of Assignment within a few days of your case being assigned. The Notice of Assignment will have the case caption, docket number, date of filing and the name of the administrative law judge assigned to your case. Once your case has been assigned, all filings and questions regarding your case should be directed to the assigned judge.

Clerk's Office  
South Carolina Administrative Law Court  
1205 Pendleton Street, Suite 224  
Columbia, SC 29201

South Carolina Department of Revenue  
Litigation & Appeals  
Office of General Counsel  
P.O. Box 12265  
Columbia, SC 29211-9979

**South Carolina Administrative Law Court (SC ALC)**  
**Request for Contested Case Hearing FORM**  
**Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201**

|                  |              |              |                                                                                                                          |                                     |
|------------------|--------------|--------------|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| Last Name:       | First:       | Middle:      | <input type="checkbox"/> Mr. <input type="checkbox"/> Miss<br><input type="checkbox"/> Mrs. <input type="checkbox"/> Ms. | Docket No. (To Be Completed by ALC) |
| Mailing Address: |              | City:        | State and Zip:                                                                                                           |                                     |
| Home Number:     | Work Number: | Cell Number: | *E-Mail Address:                                                                                                         |                                     |

\*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

**REPRESENTATION**

|                                                                                              |                          |
|----------------------------------------------------------------------------------------------|--------------------------|
| Are you representing yourself? <input type="checkbox"/> Yes <input type="checkbox"/> No      |                          |
| Are you represented by an Attorney? <input type="checkbox"/> Yes <input type="checkbox"/> No | Name of Attorney:        |
| Attorney Mailing Address:                                                                    | City, State and Zip:     |
| Attorney Work Number and Cell Number:                                                        | Attorney E-Mail Address: |

**CASE INFORMATION**

|                                                                                                                                                                |                                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| <b>Name of Agency that Issued the Decision:</b><br>(Example – Dept. of Revenue, Dept. of Insurance, DHEC)                                                      |                                 |
| In order to have your case processed, <b>you must attach the agency decision.</b> Is it attached?:<br><input type="checkbox"/> Yes <input type="checkbox"/> No | If no, please explain:          |
| Date the decision was issued:                                                                                                                                  | Date the decision was received: |
| Please provide a brief statement regarding why the hearing is being requested and the relief sought:                                                           |                                 |

|                                                                                                                                                                                    |                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Payment via</b> <input type="checkbox"/> Check <input type="checkbox"/> Money Order <input type="checkbox"/> Cash for \$<br>submitted today to the Administrative Law Court via | (applicable <b>filing fee pursuant to</b> ALC Rule 71) is being<br><input type="checkbox"/> U.S. Postal Service <input type="checkbox"/> Hand-delivery |
| <b>X</b> <i>Your Signature or Signature of Attorney</i>                                                                                                                            | <i>Date</i>                                                                                                                                            |

**PROOF OF SERVICE (MUST BE COMPLETED)**

|                                                                                                                                                                                                                                                                                                                    |         |                     |        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|---------------------|--------|
| Your Name:                                                                                                                                                                                                                                                                                                         | Date:   | City:               | State: |
| I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing <b>on all other parties</b> to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names): |         |                     |        |
| Name and/or Agency Name                                                                                                                                                                                                                                                                                            | Address | City, State and Zip |        |
| Name and/or Agency Name                                                                                                                                                                                                                                                                                            | Address | City, State and Zip |        |
| <b>X</b> <i>Your Signature or Signature of Attorney</i>                                                                                                                                                                                                                                                            |         | <i>Date</i>         |        |

**Attention:** All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website [www.scalc.net](http://www.scalc.net) or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

**R\_0129**

# **ATTACHMENT E**



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Individual Income Working Paper

## Individual Income Adjustments Summary for 2012

|                                                | Reported | Audited   |
|------------------------------------------------|----------|-----------|
| 1. Federal Taxable Income                      | \$27,109 | \$778,715 |
| 2. Total Additions                             | \$0      | \$0       |
| 3. Sum of Federal Taxable Income and Additions | \$27,109 | \$778,715 |
| 4. Total Subtractions                          | \$0      | \$0       |
| 5. South Carolina Income Subject to Tax        | \$27,109 | \$778,715 |
| 10. Total South Carolina Tax                   | \$1,425  | \$54,034  |
| 15. Tax less Non-Refundable Credits            | \$1,414  | \$54,023  |
| 23. Total Payments                             | \$1,222  | \$1,222   |
| 24. Overpayment                                | \$0      | \$0       |
| 25. Amount Due                                 | \$192    | \$52,801  |
| 26. Use Tax                                    | \$0      | \$0       |
| 30. Refund Amount                              | \$0      | \$0       |
| 31. Tax Due                                    | \$192    | \$52,801  |



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Individual Income Working Paper

## Individual Income Adjustments Summary for 2013

|                                                | Reported | Audited     |
|------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                      | \$0      | \$1,212,249 |
| 2. Total Additions                             | \$0      | \$0         |
| 3. Sum of Federal Taxable Income and Additions | \$0      | \$1,212,249 |
| 4. Total Subtractions                          | \$0      | \$3,900     |
| 5. South Carolina Income Subject to Tax        | \$0      | \$1,208,349 |
| 10. Total South Carolina Tax                   | \$0      | \$84,099    |
| 15. Tax less Non-Refundable Credits            | \$0      | \$84,099    |
| 23. Total Payments                             | \$0      | \$0         |
| 24. Overpayment                                | \$0      | \$0         |
| 25. Amount Due                                 | \$0      | \$84,099    |
| 26. Use Tax                                    | \$0      | \$0         |
| 30. Refund Amount                              | \$0      | \$0         |
| 31. Tax Due                                    | \$0      | \$84,099    |



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Individual Income Working Paper

## Individual Income Adjustments Summary for 2014

|                                                | Reported | Audited     |
|------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                      | \$0      | \$1,492,156 |
| 2. Total Additions                             | \$0      | \$0         |
| 3. Sum of Federal Taxable Income and Additions | \$0      | \$1,492,156 |
| 4. Total Subtractions                          | \$0      | \$3,950     |
| 5. South Carolina Income Subject to Tax        | \$0      | \$1,488,206 |
| 10. Total South Carolina Tax                   | \$0      | \$103,684   |
| 15. Tax less Non-Refundable Credits            | \$0      | \$103,684   |
| 23. Total Payments                             | \$0      | \$0         |
| 24. Overpayment                                | \$0      | \$0         |
| 25. Amount Due                                 | \$0      | \$103,684   |
| 26. Use Tax                                    | \$0      | \$0         |
| 30. Refund Amount                              | \$0      | \$0         |
| 31. Tax Due                                    | \$0      | \$103,684   |



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Individual Income Working Paper

## Individual Income Adjustments Summary for 2015

|                                                | Reported | Audited     |
|------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                      | \$0      | \$2,238,122 |
| 2. Total Additions                             | \$0      | \$0         |
| 3. Sum of Federal Taxable Income and Additions | \$0      | \$2,238,122 |
| 4. Total Subtractions                          | \$0      | \$4,000     |
| 5. South Carolina Income Subject to Tax        | \$0      | \$2,234,122 |
| 10. Total South Carolina Tax                   | \$0      | \$155,894   |
| 15. Tax less Non-Refundable Credits            | \$0      | \$155,894   |
| 23. Total Payments                             | \$0      | \$0         |
| 24. Overpayment                                | \$0      | \$0         |
| 25. Amount Due                                 | \$0      | \$155,894   |
| 26. Use Tax                                    | \$0      | \$0         |
| 30. Refund Amount                              | \$0      | \$0         |
| 31. Tax Due                                    | \$0      | \$155,894   |



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Individual Income Working Paper

## Individual Income Adjustments Summary for 2016

|                                                | Reported | Audited     |
|------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                      | \$0      | \$2,860,861 |
| 2. Total Additions                             | \$0      | \$0         |
| 3. Sum of Federal Taxable Income and Additions | \$0      | \$2,860,861 |
| 4. Total Subtractions                          | \$0      | \$4,050     |
| 5. South Carolina Income Subject to Tax        | \$0      | \$2,856,811 |
| 10. Total South Carolina Tax                   | \$0      | \$199,481   |
| 15. Tax less Non-Refundable Credits            | \$0      | \$199,481   |
| 23. Total Payments                             | \$0      | \$0         |
| 24. Overpayment                                | \$0      | \$0         |
| 25. Amount Due                                 | \$0      | \$199,481   |
| 26. Use Tax                                    | \$0      | \$0         |
| 30. Refund Amount                              | \$0      | \$0         |
| 31. Tax Due                                    | \$0      | \$199,481   |

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

HONORABLE DEBORAH BROOKS DURDEN, ADMINISTRATIVE LAW JUDGE

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CASE NO. 19-ALJ-17-0338-CC  
APPELLATE CASE NO. 2021-001528

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CASE NO. 19-ALJ-17-0339-CC  
APPELLATE CASE NO. 2021-001547

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CDT, Inc., and Vimlesh V. Patel and Punita Patel.....Appellants,

v.

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

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**RESPONDENT'S REPLY TO THE APPELLANTS' CONSOLIDATED RESPONSE IN  
OPPOSITION TO THE RESPONDENT'S  
MOTION TO DISMISS**

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Pursuant to Rule 240, SCACR, Respondent South Carolina Department of Revenue (Department) makes the following reply to the Appellants' Consolidated Opposition to the Respondent's Motion to Dismiss (Appellants' Response). The appeals at issue involve the tax liabilities of two taxpayers, CDT, Inc., and Vimlesh and Punita Patel. The Department moved to dismiss both of their appeals because neither CDT, Inc., nor the Patels paid the amount of tax and interest ordered by the Administrative Law Court (ALC) prior to appealing as required by S.C. Code Ann. § 12-60-3370 (2014).

Appellants' Response does not deny that both CDT, Inc., and the Patels failed to pay the amount of tax and interest ordered by the ALC prior to appealing. Instead, the Appellants' attempt

to confuse and mislead this Court into believing there is uncertainty regarding the amount of tax owed and that is why they did not pay the amount of tax and interest prior to appealing. Contrary to the Appellants' assertions, there is no uncertainty regarding the amount of tax and interest that were ordered by the ALC.

In order to understand the appeals before the Court it is first important to understand the connection between the two Appellants. Appellant CDT, Inc., is an S Corporation and therefore its income is not taxed at the corporate level, rather that income flows through to the shareholders and is taxed at the shareholder level. CDT, Inc., is solely owned and controlled exclusively by Appellant Vimlesh Patel. Therefore, the income of CDT, Inc., flows through to Mr. Patel where it is to be included on his South Carolina individual income tax returns and subject to tax. While CDT, Inc.'s income is not subject to income tax, CDT must still pay Corporate License fees.<sup>1</sup>

The only issue currently before this Court is whether the Appellants paid the taxes and interest ordered by the ALC prior to filing the Notice of Appeal, which is required by § 12-60-3370. The first eight pages of the Appellants' ten page Response In Opposition only recounts allegations about the Department's conduct prior to trial. These allegations are irrelevant to whether the Appellants satisfied the statutory prerequisite to pursuit of this appeal. The only relevant issue is conceded: Appellants' do not deny that they have not paid the taxes or interest for either Appellant. Instead, to justify their failure to comply with § 12-60-3370, the Appellants assert that the Department's calculations of the amount of tax, interest, and penalties, as ordered by the ALC, is incorrect, therefore they were not obligated to pay it prior to appealing.

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<sup>1</sup>Pursuant to S.C. Code Ann. § 12-60-30 (Supp. 2020) fees, including Corporate License Fees, fall within the definition of a tax.

The timing of Appellants' decision to assert that the Department's calculations are incorrect is both quizzical and ultimately fatal to their appeals. In the Amended Final Order, the ALC ordered that the matter be remanded to the Department so the Department could calculate the taxes, penalties, and interest owed by both Appellants. The Court ordered that the Department provide the Appellants with a statement of the amount owed within fifteen (15) days of the date of the Order. There is no dispute that the Department completed those calculations and provided a "statement of amounts owed" to the Appellants within the required fifteen (15) days. The Amended Final Order then states "IT IS FURTHER ORDERED that Appellants may, within 15 days of receiving the statement of amounts owed, move this Court for further examination of SCDOR's calculations if there is disagreement." In light of this Order, if Appellants objected to or were unclear about "the statement of amounts owed," they were obligated to bring the issue before the ALC via a motion "for further examination of SCDOR's calculations." Appellants did not do so and, in fact, never contacted the Department to express any disagreement about the statement of amounts owed.

The Appellants seemingly ignored the ALC's Order and instead make the factually and legally incorrect assertion that the "Appellants sole avenue to address the continued errors of the Respondent is this Court." Contrary to the Appellants' assertions, appealing to this Court was not their "sole avenue" to address the Department's calculations, rather, they were ordered to bring any disagreement with the Department's calculations before the ALC.<sup>2</sup>

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<sup>2</sup>At this stage, the Appellants have not set out all of their objections to the ALC's decision. In the event that the Appellants have an issue with the amount of the Department's income tax assessment, that issue is likely not preserved for appeal due to the failure to abide by the ALC's Order.

The Appellants cannot now come before this Court and use disagreement with the Department's calculations as a basis for their noncompliance with § 12-60-3370. The ALC ordered that the Appellants move before the ALC if there was disagreement with the Department's calculations. This Order allowed the ALC an opportunity to rule upon the disagreement if such existed. The Appellants never moved the ALC for further examination of the Department's calculations and thereby deprived the ALC of the opportunity to examine the Department's statement of amounts owed, indicating, of course, that there was no such disagreement. It is well settled law that an appellate court cannot address an issue unless it was raised to and ruled upon by the trial court. *Chastain v. Hiltabidle*, 673 S.E.2d 826, 829, 381 S.C. 508, 514–15 (Ct.App. 2009), citing, *Lucas v. Rawl Family Ltd. P'ship*, 359 S.C. 505, 510–511, 598 S.E.2d 712, 715 (2004). Because the Appellants did not raise their disagreement with the Department's calculations to the ALC, they have waived their opportunity to dispute the Department's calculations. Moreover, that issue is not preserved and they cannot now use that as a basis to avoid compliance with § 12-60-3370.

Even if the Appellants were entitled to argue disagreement with the Department's calculations as a basis for their noncompliance with § 12-60-3370, there is no genuine basis for Appellants alleged disagreement with the Department's calculations. According to Appellants, they disagree with the Department's calculations because, "Respondent continues to overstate the taxable income attributable to Appellants, presently by approximately \$100,000." (Appellants' Response p. 9). To support this argument, the Appellants provide this Court with a table they label as "Taxable Income ALC Order" next to "Taxable Income Respondent's Email". (Appellants' Response p. 9). The Department does not disagree with the amounts listed in either column, or that those numbers are different. The facts of this case, known to the ALC and the Appellants,

easily explain these differences. Unfortunately for this Court, Appellants' Response omits the explanation for the differences.

As the record reflects, the parties entered into a Joint Stipulation and offered that Joint Stipulation at trial. The ALC included that Joint Stipulation in the Amended Final Order. (Amended Final Order p. 2). That Stipulation includes the following paragraphs:

2. The Petitioners Vimlesh V. Patel and Punita Patel have income from sources other than CDT, Inc. for the periods at issue. The amount of income the Petitioners Vimlesh V. Patel and Punita Patel earned from other sources is not in dispute. Furthermore the expenses of the Petitioners Vimlesh V. Patel and Punita Patel are not in dispute. Because these issues are not in dispute the parties stipulate that such will not be argued at the hearing.

3. Once the Court determines the amount of income generated for Petitioner, CDT, Inc., the Department can then calculate the specific amount of tax and interest and penalties, if any, for the Petitioners Vimlesh V. Patel and Punita Patel.

Pursuant to the explicit terms of the Joint Stipulation, Appellants Vimlesh V. Patel and Punita Patel have income from sources other than CDT, Inc. for the periods at issue and the amount of that income is not in dispute. Once the ALC determined the income coming from CDT, Inc., the amount of tax owed by the Patels on all of their income could be calculated. Stated simply, the Appellants admitted in the Joint Stipulation that they earned other income and that they owed tax on that income.

Appellants' Response fails to include any mention of the Stipulation or the additional income the Appellants admitted they earned and on which they owed tax. Instead, the Appellants' Response presents its arguments as though the only income involved in these appeals is the income generated by CDT, Inc. As the Stipulation clearly explains, that is simply not accurate. To support their argument, the Appellants' Response includes a chart labeled "Taxable Income ALC Order." The label on Appellants' chart is inaccurate and misleading. The Amended Final Order does not

refer to generic “Taxable Income.” The ALC’s Amended Final Order actually establishes “the following net income [of CDT] which flows through to Mr. Patel.” (Amended Final Order p. 12). The Amended Final Order then provides the exact amount of net income flowing to the Patels each year from CDT, Inc. These amounts are identical to the amounts listed in Appellants’ chart as “Taxable Income ALC Order.” The Appellants suggest that the amounts listed on their chart as “Taxable Income ALC Order” are the total amount of income for which the Patels are liable for income tax. That is not what the Amended Final Order states nor is it consistent with the Patels’ pre-trial stipulation. The Appellants know that the amount of income flowing through from CDT, Inc., to the Patels is not the only income for which the Patels are liable for income tax.

The additional income that the Patels stipulated that they earned is the sole reason for the difference between the amounts listed in Appellants’ chart as “Taxable Income ALC Order” and “Taxable Income Respondent’s Email.” As explained more fully below, the net income which flows through to Mr. Patel as ordered by the Court, plus the additional stipulated income, equals the amount subject to tax in the Department’s calculations. The Appellants knew of that additional income and stipulated that it would be in addition to the amount of income flowing from CDT, Inc.

Appellants’ Exhibit E does not contain the full version of the calculations that the Department gave to the Appellants as ordered by the ALC. A complete copy of the statement of amounts owed by the Patels that the Department provided in response to the ALC’s Order is attached hereto as Exhibit 1. A complete copy of the statement of amounts owed by CDT that the Department provided in response to the ALC’s Order is attached hereto as Exhibit 2. Every tax year at issue in both audits are treated consistently, therefore in the interests of judicial economy the Department will limit its explanation to only 2016.

Exhibit 1 includes the calculations for the Patel's 2016 income tax liability. The very first page clearly states the tax, penalty, and interest owed by the Patels for 2016. The fifth page is labeled Individual Income Federal Schedule Adjustments for 2016. There are five different Schedule E sources of income for the Patels for 2016. One of the lines states "Schedule E 32. Partnership & S-Corp Income (Loss)" and provides \$0 reported and \$2,842,861.00 determined by the audit. This is the income flowing to the Patels from the S Corporation, CDT, Inc. \$2,842,861.00 is the amount listed in the Amended Final Order as the amount of income flowing through to Mr. Patel from CDT, Inc for 2016. Because the Patels had additional income from sources other than CDT, Inc., which they admitted and agreed to in the Joint Stipulation, the calculation of their taxable income for 2016 did not end with the pass-through income from CDT, Inc. Rather, as Exhibit 1 demonstrates, the Patels had additional income from their other Partnerships and S-Corps, which is added to their CDT, Inc., income to determine their total income. A review of Exhibit 1 in its entirety demonstrates that the Department provided the Appellants similar calculations for each year of the audit and that the pass-through income from CDT is the same as is reflected in the ALC's Amended Final Order. The documents for each year for Appellant Patels contain a line stating "Schedule E 32. Partnership & S-Corp Income (Loss)" and provides the amount of income flowing through to the Patels from CDT as ordered by the ALC. Furthermore, the documents for each year also contain the additional income the Patels earned from sources other than CDT, Inc. Again, the Appellants not only knew about this additional income, but more significantly they stipulated to the existence and inclusion of such within their income.

Exhibit 2 contains the Department's calculations for the liability of Appellant CDT, Inc. Appellant CDT, Inc., is a subchapter S Corporation and therefore it is not subject to income tax in

South Carolina to the extent it would be exempt from federal corporate income tax. S.C. Code Ann. § 12-6-590 (2014). The income of an S Corporation is passed through to its shareholders and each shareholder includes its share of South Carolina S Corporation income on that shareholder's individual income tax return. *Id.* While an S Corporation does not pay income tax, it is still required to pay corporate license fee pursuant to Chapter 20 of Title 12 of the South Carolina Code.

S.C. Code Ann. § 12-20-50 (2014) provides:

(A) Except as provided in Section 12-20-100, every corporation required to file an annual report shall pay an annual license fee of fifteen dollars plus one dollar for each thousand dollars, or fraction of a thousand dollars, of capital stock and paid-in or capital surplus of the corporation as shown by the records of the corporation on the first day of the taxable year in which the report is filed. **In no case may the license fee provided by this section be less than twenty-five dollars.** The license fee must be paid on or before the original due date for filing the annual report. (Emphasis added).

Accordingly, the minimum license fee a corporation can owe each year is \$25.00. As Exhibit 2 demonstrates, the Department calculated the minimum required corporate license fee of \$25.00 for CDT, Inc. The Department calculated that same \$25.00 minimum for each year of the audit. The Appellants' Response offers no disagreement with the Department's calculations of the corporate license fee. The fact that the Department calculated the fee as only the statutory minimum makes any disagreement with the calculation impossible. As a review of Appellants' Response demonstrates, Appellant CDT, Inc., has not provided any explanation or excuse as to why it failed to pay the corporate license fees it owed prior to appealing as required by § 12-60-3370.

The Appellants' Response cites to the unpublished opinion of *Beltram v. South Carolina Department of Revenue*, Unpublished Opinion No. 2019-UP-349. As the Appellants acknowledged,

this opinion is unpublished. Pursuant to Rule 268(d)(2) of SCACR, unpublished orders “have no precedential value and should not be cited except in proceedings in which they are directly involved.” Of course, the *Beltram* case is not involved at all, much less directly involved, with this case. Accordingly, this Court should ignore the Appellants’ reliance upon *Beltram*.

Nevertheless, *Beltram* is clearly distinguishable from the present matter. In *Beltram*, this Court excused Beltram’s failure to pay the tax and interest before appealing because Mr. Beltram was unable to determine the amount owed based upon the ALC’s order. The amount Mr. Beltram owed was so unclear this Court remanded the matter back to the ALC and the ALC required briefing before it was able to determine the amount Mr. Beltram owed. Unlike in *Beltram*, in the present matter there is no uncertainty in the amount of tax and interest owed. The Appellants now claim they disagree with the amount, but there is no issue as the specificity of the amount. As Exhibits 1 and 2 reflect, the amount of tax and interest due for each year was clearly provided to the Appellants. Furthermore, unlike in *Beltram*, in the present matter the ALC ordered that any disagreement with the Department’s calculations be brought before the ALC for a ruling. The Appellants made no such motion and, in fact, never expressed any disagreement with the Department’s calculation of the income tax and license fees owed by the Appellants. Accordingly, the Appellants’ reliance upon the unpublished decision in *Beltram* is both impermissible and unpersuasive.

### **CONCLUSION**

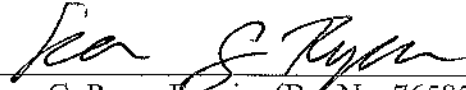
Appellants had a statutory obligation to pay the tax and interest ordered by the ALC prior to the filing their appeals. S.C. Code Ann. § 12-60-3370. The Appellants have undisputedly failed to comply with this requirement. Appellants now come before this Court seeking to have their failure to comply excused because they are allegedly in disagreement with the calculations of their

tax liabilities. As explained herein, the Appellants' claim they are in disagreement with the liability calculated for the Patels because it utilized the total income of the Patels and not simply the income flowing to the Patels from CDT, Inc. Appellants not only knew the Patels had additional income beyond what they earned from CDT, Inc., they stipulated to the existence of such income and inclusion in the Patels' taxable income. Appellants failed to provide any explanation for why they should not be required to pay tax and interest on income they stipulated existed and is subject to tax. Appellant Patels should not be allowed to violate the express requirements of § 12-60-3370 because the liability they are required to pay includes amounts they stipulated exist and are subject to tax.

The Appellants failed to provide any explanation for why Appellant CDT, Inc. failed to pay the corporate license fee and interest prior to appealing. The Department calculated the statutory minimum amount of corporate license fee tax. It is inexplicable under any theory that Appellant CDT, Inc., could owe less corporate license fee than the statutory minimum. Accordingly, the Appellants have no argument to excuse their failure to pay the corporate license fee and interest prior to appealing.

The Amended Final Order at issue in these appeals ordered the Appellants to bring any disagreement to the ALC's attention. The Appellants never notified the Department of any disagreement nor did they seek any clarification from the Department regarding its calculations. More significantly, the Appellants failed to bring their alleged disagreement to the ALC's attention thereby preventing the ALC from ruling upon that issue. The Appellants have waived their opportunity to dispute the Department's calculations and that issue cannot be brought before this Court.

Because the Appellants have neither paid the tax and interest owed, nor posted a bond for such as required by S.C. Code Ann. § 12-60-3370, the Department moves that their appeals be dismissed based on a lack of appellate jurisdiction.



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January 27, 2022

# EXHIBIT 1



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Individual Income Working Paper

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## Individual Income Audit Period Summary for 2012

| Period     | Tax                | Penalty            | Interest           | Total              |
|------------|--------------------|--------------------|--------------------|--------------------|
| 12/31/2012 | \$52,609.00        | \$26,304.50        | \$20,535.07        | \$99,448.57        |
|            | <u>\$52,609.00</u> | <u>\$26,304.50</u> | <u>\$20,535.07</u> | <u>\$99,448.57</u> |

## Individual Income Audit Penalty Summary for 2012

| Period     | Late File Penalty  | Late Pay Penalty | Substantial Understatement |
|------------|--------------------|------------------|----------------------------|
| 12/31/2012 | \$13,152.25        | \$0.00           | \$13,152.25                |
|            | <u>\$13,152.25</u> | <u>\$0.00</u>    | <u>\$13,152.25</u>         |

| Period     | Negligence    | Civil Fraud   | Specific Penalty | Other         |
|------------|---------------|---------------|------------------|---------------|
| 12/31/2012 | \$0.00        | \$0.00        | \$0.00           | \$0.00        |
|            | <u>\$0.00</u> | <u>\$0.00</u> | <u>\$0.00</u>    | <u>\$0.00</u> |



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Individual Income Working Paper

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## Individual Income Adjustments Summary for 2012

|                                                | Reported | Audited   |
|------------------------------------------------|----------|-----------|
| 1. Federal Taxable Income                      | \$27,109 | \$778,715 |
| 2. Total Additions                             | \$0      | \$0       |
| 3. Sum of Federal Taxable Income and Additions | \$27,109 | \$778,715 |
| 4. Total Subtractions                          | \$0      | \$0       |
| 5. South Carolina Income Subject to Tax        | \$27,109 | \$778,715 |
| 10. Total South Carolina Tax                   | \$1,425  | \$54,034  |
| 15. Tax less Non-Refundable Credits            | \$1,414  | \$54,023  |
| 23. Total Payments                             | \$1,222  | \$1,222   |
| 24. Overpayment                                | \$0      | \$0       |
| 25. Amount Due                                 | \$192    | \$52,801  |
| 26. Use Tax                                    | \$0      | \$0       |
| 30. Refund Amount                              | \$0      | \$0       |
| 31. Tax Due                                    | \$192    | \$52,801  |



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Individual Income Working Paper

## Individual Income and Adjustments for 2012

|                                                          | Reported | Audited   |
|----------------------------------------------------------|----------|-----------|
| 1. Federal Taxable Income                                | \$27,109 | \$778,715 |
| a. State Tax Addback                                     | \$0      | \$0       |
| b. Out-of-State Losses                                   | \$0      | \$0       |
| c. Expenses for National Guard / Military Reserve Income | \$0      | \$0       |
| d. Interest Income on Out-of-State Obligations           | \$0      | \$0       |
| e. Other Additions to Income                             | \$0      | \$0       |
| 2. Total Additions                                       | \$0      | \$0       |
| 3. Sum of Federal Taxable Income and Additions           | \$27,109 | \$778,715 |
| f. State Tax Refund                                      | \$0      | \$0       |
| g. Permanent Disability Retirement Income                | \$0      | \$0       |
| h. Out-of-State Income/Gain                              | \$0      | \$0       |
| i. 44% of Net Capital Gains Held for More than One Year  | \$0      | \$0       |
| j. Volunteer Deductions                                  | \$0      | \$0       |
| k. Contributions to SC College or Tuition Programs       | \$0      | \$0       |
| l. Active Trade or Business Income Deduction             | \$0      | \$0       |
| m. Interest Income from Obligations of the US Government | \$0      | \$0       |
| n. Nontaxable National Guard or Reserve Pay              | \$0      | \$0       |
| o. Social Security and/or Railroad Retirement            | \$0      | \$0       |
| p. Retirement Deduction                                  |          |           |
| p-1. Taxpayer                                            | \$0      | \$0       |
| p-2. Spouse                                              | \$0      | \$0       |
| p-3. Surviving Spouse #1                                 | \$0      | \$0       |
| p-4. Surviving Spouse #2                                 | \$0      | \$0       |
| Military Retirement Deduction                            |          |           |
| p-4. Taxpayer                                            | \$0      | \$0       |
| p-5. Spouse                                              | \$0      | \$0       |
| p-6. Surviving Spouse                                    | \$0      | \$0       |
| q. Age 65 and Older Deduction                            |          |           |
| q-1. Taxpayer                                            | \$0      | \$0       |
| q-2. Spouse                                              | \$0      | \$0       |
| r. Negative Amount of Federal Taxable Income             | \$0      | \$0       |
| s. Subsistence Allowance @ \$8.00                        | \$0      | \$0       |
| t. Dependents Under the Age of 6 on December 31st        | \$0      | \$0       |
| u. Consumer Protection Services                          | \$0      | \$0       |
| v. Other Subtractions                                    | \$0      | \$0       |
| w. South Carolina Dependent Exemption                    | \$0      | \$0       |
| 4. Total Subtractions                                    | \$0      | \$0       |



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Individual Income Working Paper

## Individual Income Tax, Overpayments and Credits for 2012

|                                                       | Reported | Audited   |
|-------------------------------------------------------|----------|-----------|
| 5. South Carolina Income Subject to Tax               | \$27,109 | \$778,715 |
| 6. South Carolina Tax                                 | \$1,425  | \$54,034  |
| 7. Tax on Lump Sum Distribution                       | \$0      | \$0       |
| 8. Tax on Active Trade or Business Income             | \$0      | \$0       |
| 9. Tax on Excess Withdrawals from Catastrophe Savings | \$0      | \$0       |
| 10. Total South Carolina Tax                          | \$1,425  | \$54,034  |
| 11. Child and Dependent Care                          | \$0      | \$0       |
| 12. Two Wage Earner Credit                            | \$11     | \$11      |
| 13. Other Non-Refundable Credits                      | \$0      | \$0       |
| 14. Total Non-Refundable Credits                      | \$11     | \$11      |
| 15. Tax less Non-Refundable Credits                   | \$1,414  | \$54,023  |
| 16. SC Income Tax Withheld                            | \$1,222  | \$1,222   |
| 17. Estimated Tax Payments                            | \$0      | \$0       |
| 18. Amount Paid with Extension                        | \$0      | \$0       |
| 19. NR Sale of Real Estate                            | \$0      | \$0       |
| 20. Other SC Withholding                              | \$0      | \$0       |
| 21. Tuition Tax Credit                                | \$0      | \$0       |
| 22a. Anhydrous Ammonia                                | \$0      | \$0       |
| 22b. Milk Credit                                      | \$0      | \$0       |
| 22c. Classroom Teacher Expenses                       | \$0      | \$0       |
| 22d. Parental Refundable Credit                       | \$0      | \$0       |
| 22e. Motor Fuel Income Tax Credit                     | \$0      | \$0       |
| 22. Total Other Refundable Credits                    | \$0      | \$0       |
| 23. Total Payments                                    | \$1,222  | \$1,222   |
| 24. Overpayment                                       | \$0      | \$0       |
| 25. Amount Due                                        | \$192    | \$52,801  |
| 26. Use Tax                                           | \$0      | \$0       |
| 27. Amount of Line 24 to be Credited to Estimated Tax | \$0      | \$0       |
| 28. Total Contributions for Check-offs                | \$0      | \$0       |
| 29. Sum of Lines 26-28                                | \$0      | \$0       |
| 30. Refund Amount                                     | \$0      | \$0       |
| 31. Tax Due                                           | \$192    | \$52,801  |



STATE OF SOUTH CAROLINA  
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Individual Income Working Paper

## Individual Income Federal Schedule Adjustments for 2012

| Tax Schedule | Line Description | Description                        | Reported Amount    | Audited Amount      | Adjusted Amount     |
|--------------|------------------|------------------------------------|--------------------|---------------------|---------------------|
| Schedule E   | 03.              | Rents received                     | \$0.00             | \$2,964.00          | \$2,964.00          |
| Schedule E   | 03.              | Rents received                     | \$0.00             | \$4,019.00          | \$4,019.00          |
| Schedule E   | 32.              | Partnership & S-Corp Income (Loss) | \$0.00             | \$17,799.00         | \$17,799.00         |
| Schedule E   | 32.              | Partnership & S-Corp Income (Loss) | \$0.00             | \$2,472.00          | \$2,472.00          |
| Schedule E   | 32.              | Partnership & S-Corp Income (Loss) | \$0.00             | \$18,780.00         | \$18,780.00         |
| Schedule E   | 32.              | Partnership & S-Corp Income (Loss) | \$0.00             | \$3,874.00          | \$3,874.00          |
| Schedule E   | 32.              | Partnership & S-Corp Income (Loss) | \$28,656.00        | \$730,354.00        | \$701,698.00        |
|              |                  |                                    | <b>\$28,656.00</b> | <b>\$780,262.00</b> | <b>\$751,606.00</b> |



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### Individual Income Audit Period Summary for 2013

| Period     | Tax                | Penalty            | Interest           | Total               |
|------------|--------------------|--------------------|--------------------|---------------------|
| 12/31/2013 | \$84,099.00        | \$42,049.50        | \$29,520.39        | \$155,668.89        |
|            | <b>\$84,099.00</b> | <b>\$42,049.50</b> | <b>\$29,520.39</b> | <b>\$155,668.89</b> |

### Individual Income Audit Penalty Summary for 2013

| Period     | Late File Penalty  | Late Pay Penalty | Substantial Understatement |
|------------|--------------------|------------------|----------------------------|
| 12/31/2013 | \$21,024.75        | \$0.00           | \$21,024.75                |
|            | <b>\$21,024.75</b> | <b>\$0.00</b>    | <b>\$21,024.75</b>         |

| Period     | Negligence    | Civil Fraud   | Specific Penalty | Other         |
|------------|---------------|---------------|------------------|---------------|
| 12/31/2013 | \$0.00        | \$0.00        | \$0.00           | \$0.00        |
|            | <b>\$0.00</b> | <b>\$0.00</b> | <b>\$0.00</b>    | <b>\$0.00</b> |



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## Individual Income Adjustments Summary for 2013

|                                                | Reported | Audited     |
|------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                      | \$0      | \$1,212,249 |
| 2. Total Additions                             | \$0      | \$0         |
| 3. Sum of Federal Taxable Income and Additions | \$0      | \$1,212,249 |
| 4. Total Subtractions                          | \$0      | \$3,900     |
| 5. South Carolina Income Subject to Tax        | \$0      | \$1,208,349 |
| 10. Total South Carolina Tax                   | \$0      | \$84,099    |
| 15. Tax less Non-Refundable Credits            | \$0      | \$84,099    |
| 23. Total Payments                             | \$0      | \$0         |
| 24. Overpayment                                | \$0      | \$0         |
| 25. Amount Due                                 | \$0      | \$84,099    |
| 26. Use Tax                                    | \$0      | \$0         |
| 30. Refund Amount                              | \$0      | \$0         |
| 31. Tax Due                                    | \$0      | \$84,099    |



STATE OF SOUTH CAROLINA  
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## Individual Income and Adjustments for 2013

|                                                          | Reported | Audited     |
|----------------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                                | \$0      | \$1,212,249 |
| a. State Tax Addback                                     | \$0      | \$0         |
| b. Out-of-State Losses                                   | \$0      | \$0         |
| c. Expenses for National Guard / Military Reserve Income | \$0      | \$0         |
| d. Interest Income on Out-of-State Obligations           | \$0      | \$0         |
| e. Other Additions to Income                             | \$0      | \$0         |
| 2. Total Additions                                       | \$0      | \$0         |
| 3. Sum of Federal Taxable Income and Additions           | \$0      | \$1,212,249 |
| f. State Tax Refund                                      | \$0      | \$0         |
| g. Permanent Disability Retirement Income                | \$0      | \$0         |
| h. Out-of-State Income/Gain                              | \$0      | \$0         |
| i. 44% of Net Capital Gains Held for More than One Year  | \$0      | \$0         |
| j. Volunteer Deductions                                  | \$0      | \$0         |
| k. Contributions to SC College or Tuition Programs       | \$0      | \$0         |
| l. Active Trade or Business Income Deduction             | \$0      | \$0         |
| m. Interest Income from Obligations of the US Government | \$0      | \$0         |
| n. Nontaxable National Guard or Reserve Pay              | \$0      | \$0         |
| o. Social Security and/or Railroad Retirement            | \$0      | \$0         |
| p. Retirement Deduction                                  |          |             |
| p-1. Taxpayer                                            | \$0      | \$0         |
| p-2. Spouse                                              | \$0      | \$0         |
| p-3. Surviving Spouse #1                                 | \$0      | \$0         |
| p-4. Surviving Spouse #2                                 | \$0      | \$0         |
| Military Retirement Deduction                            |          |             |
| p-4. Taxpayer                                            | \$0      | \$0         |
| p-5. Spouse                                              | \$0      | \$0         |
| p-6. Surviving Spouse                                    | \$0      | \$0         |
| q. Age 65 and Older Deduction                            |          |             |
| q-1. Taxpayer                                            | \$0      | \$0         |
| q-2. Spouse                                              | \$0      | \$0         |
| r. Negative Amount of Federal Taxable Income             | \$0      | \$0         |
| s. Subsistence Allowance @ \$8.00                        | \$0      | \$0         |
| t. Dependents Under the Age of 6 on December 31st        | \$0      | \$3,900     |
| u. Consumer Protection Services                          | \$0      | \$0         |
| v. Other Subtractions                                    | \$0      | \$0         |
| w. South Carolina Dependent Exemption                    | \$0      | \$0         |
| 4. Total Subtractions                                    | \$0      | \$3,900     |



STATE OF SOUTH CAROLINA  
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Individual Income Working Paper

## Individual Income Tax, Overpayments and Credits for 2013

|                                                       | Reported | Audited     |
|-------------------------------------------------------|----------|-------------|
| 5. South Carolina Income Subject to Tax               | \$0      | \$1,208,349 |
| 6. South Carolina Tax                                 | \$0      | \$84,099    |
| 7. Tax on Lump Sum Distribution                       | \$0      | \$0         |
| 8. Tax on Active Trade or Business Income             | \$0      | \$0         |
| 9. Tax on Excess Withdrawals from Catastrophe Savings | \$0      | \$0         |
| 10. Total South Carolina Tax                          | \$0      | \$84,099    |
| 11. Child and Dependent Care                          | \$0      | \$0         |
| 12. Two Wage Earner Credit                            | \$0      | \$0         |
| 13. Other Non-Refundable Credits                      | \$0      | \$0         |
| 14. Total Non-Refundable Credits                      | \$0      | \$0         |
| 15. Tax less Non-Refundable Credits                   | \$0      | \$84,099    |
| 16. SC Income Tax Withheld                            | \$0      | \$0         |
| 17. Estimated Tax Payments                            | \$0      | \$0         |
| 18. Amount Paid with Extension                        | \$0      | \$0         |
| 19. NR Sale of Real Estate                            | \$0      | \$0         |
| 20. Other SC Withholding                              | \$0      | \$0         |
| 21. Tuition Tax Credit                                | \$0      | \$0         |
| 22a. Anhydrous Ammonia                                | \$0      | \$0         |
| 22b. Milk Credit                                      | \$0      | \$0         |
| 22c. Classroom Teacher Expenses                       | \$0      | \$0         |
| 22d. Parental Refundable Credit                       | \$0      | \$0         |
| 22e. Motor Fuel Income Tax Credit                     | \$0      | \$0         |
| 22. Total Other Refundable Credits                    | \$0      | \$0         |
| 23. Total Payments                                    | \$0      | \$0         |
| 24. Overpayment                                       | \$0      | \$0         |
| 25. Amount Due                                        | \$0      | \$84,099    |
| 26. Use Tax                                           | \$0      | \$0         |
| 27. Amount of Line 24 to be Credited to Estimated Tax | \$0      | \$0         |
| 28. Total Contributions for Check-offs                | \$0      | \$0         |
| 29. Sum of Lines 26-28                                | \$0      | \$0         |
| 30. Refund Amount                                     | \$0      | \$0         |
| 31. Tax Due                                           | \$0      | \$84,099    |



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## Individual Income Federal Schedule Adjustments for 2013

| Tax Schedule | Line Description | Description                        | Reported Amount | Audited Amount        | Adjusted Amount       |
|--------------|------------------|------------------------------------|-----------------|-----------------------|-----------------------|
| Federal 1040 | 13.              | Capital gain or (loss)             | \$0.00          | \$13,333.00           | \$13,333.00           |
| Federal 1040 | 40.              | Total standard deductions          | \$0.00          | \$12,200.00           | -\$12,200.00          |
| Federal 1040 | 42.              | Exemptions                         | \$0.00          | \$11,700.00           | -\$11,700.00          |
| Schedule E   | 03.              | Rents received                     | \$0.00          | \$2,200.00            | \$2,200.00            |
| Schedule E   | 03.              | Rents received                     | \$0.00          | \$3,403.00            | \$3,403.00            |
| Schedule E   | 32.              | Partnership & S-Corp Income (Loss) | \$0.00          | \$1,215,947.00        | \$1,215,947.00        |
| Schedule E   | 32.              | Partnership & S-Corp Income (Loss) | \$0.00          | -\$2,759.00           | -\$2,759.00           |
| Schedule E   | 32.              | Partnership & S-Corp Income (Loss) | \$0.00          | -\$3,224.00           | -\$3,224.00           |
| Schedule E   | 32.              | Partnership & S-Corp Income (Loss) | \$0.00          | \$5,089.00            | \$5,089.00            |
| Schedule E   | 32.              | Partnership & S-Corp Income (Loss) | \$0.00          | \$2,160.00            | \$2,160.00            |
|              |                  |                                    | <b>\$0.00</b>   | <b>\$1,260,049.00</b> | <b>\$1,212,249.00</b> |



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### Individual Income Audit Period Summary for 2014

| Period     | Tax                 | Penalty            | Interest           | Total               |
|------------|---------------------|--------------------|--------------------|---------------------|
| 12/31/2014 | \$103,684.00        | \$51,842.00        | \$32,255.29        | \$187,781.29        |
|            | <b>\$103,684.00</b> | <b>\$51,842.00</b> | <b>\$32,255.29</b> | <b>\$187,781.29</b> |

### Individual Income Audit Penalty Summary for 2014

| Period     | Late File Penalty  | Late Pay Penalty | Substantial Understatement |
|------------|--------------------|------------------|----------------------------|
| 12/31/2014 | \$25,921.00        | \$0.00           | \$25,921.00                |
|            | <b>\$25,921.00</b> | <b>\$0.00</b>    | <b>\$25,921.00</b>         |

| Period     | Negligence    | Civil Fraud   | Specific Penalty | Other         |
|------------|---------------|---------------|------------------|---------------|
| 12/31/2014 | \$0.00        | \$0.00        | \$0.00           | \$0.00        |
|            | <b>\$0.00</b> | <b>\$0.00</b> | <b>\$0.00</b>    | <b>\$0.00</b> |



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## Individual Income Adjustments Summary for 2014

|                                                | Reported | Audited     |
|------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                      | \$0      | \$1,492,156 |
| 2. Total Additions                             | \$0      | \$0         |
| 3. Sum of Federal Taxable Income and Additions | \$0      | \$1,492,156 |
| 4. Total Subtractions                          | \$0      | \$3,950     |
| 5. South Carolina Income Subject to Tax        | \$0      | \$1,488,206 |
| 10. Total South Carolina Tax                   | \$0      | \$103,684   |
| 15. Tax less Non-Refundable Credits            | \$0      | \$103,684   |
| 23. Total Payments                             | \$0      | \$0         |
| 24. Overpayment                                | \$0      | \$0         |
| 25. Amount Due                                 | \$0      | \$103,684   |
| 26. Use Tax                                    | \$0      | \$0         |
| 30. Refund Amount                              | \$0      | \$0         |
| 31. Tax Due                                    | \$0      | \$103,684   |



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## Individual Income and Adjustments for 2014

|                                                          | Reported | Audited     |
|----------------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                                | \$0      | \$1,492,156 |
| a. State Tax Addback                                     | \$0      | \$0         |
| b. Out-of-State Losses                                   | \$0      | \$0         |
| c. Expenses for National Guard / Military Reserve Income | \$0      | \$0         |
| d. Interest Income on Out-of-State Obligations           | \$0      | \$0         |
| e. Other Additions to Income                             | \$0      | \$0         |
| 2. Total Additions                                       | \$0      | \$0         |
| 3. Sum of Federal Taxable Income and Additions           | \$0      | \$1,492,156 |
| f. State Tax Refund                                      | \$0      | \$0         |
| g. Permanent Disability Retirement Income                | \$0      | \$0         |
| h. Out-of-State Income/Gain                              | \$0      | \$0         |
| i. 44% of Net Capital Gains Held for More than One Year  | \$0      | \$0         |
| j. Volunteer Deductions                                  | \$0      | \$0         |
| k. Contributions to SC College or Tuition Programs       | \$0      | \$0         |
| l. Active Trade or Business Income Deduction             | \$0      | \$0         |
| m. Interest Income from Obligations of the US Government | \$0      | \$0         |
| n. Nontaxable National Guard or Reserve Pay              | \$0      | \$0         |
| o. Social Security and/or Railroad Retirement            | \$0      | \$0         |
| p. Retirement Deduction                                  | \$0      | \$0         |
| p-1. Taxpayer                                            | \$0      | \$0         |
| p-2. Spouse                                              | \$0      | \$0         |
| p-3. Surviving Spouse #1                                 | \$0      | \$0         |
| p-4. Surviving Spouse #2                                 | \$0      | \$0         |
| Military Retirement Deduction                            | \$0      | \$0         |
| p-4. Taxpayer                                            | \$0      | \$0         |
| p-5. Spouse                                              | \$0      | \$0         |
| p-6. Surviving Spouse                                    | \$0      | \$0         |
| q. Age 65 and Older Deduction                            | \$0      | \$0         |
| q-1. Taxpayer                                            | \$0      | \$0         |
| q-2. Spouse                                              | \$0      | \$0         |
| r. Negative Amount of Federal Taxable Income             | \$0      | \$0         |
| s. Subsistence Allowance @ \$8.00                        | \$0      | \$0         |
| t. Dependents Under the Age of 6 on December 31st        | \$0      | \$3,950     |
| u. Consumer Protection Services                          | \$0      | \$0         |
| v. Other Subtractions                                    | \$0      | \$0         |
| w. South Carolina Dependent Exemption                    | \$0      | \$0         |
| 4. Total Subtractions                                    | \$0      | \$3,950     |



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## Individual Income Tax, Overpayments and Credits for 2014

|                                                       | Reported | Audited     |
|-------------------------------------------------------|----------|-------------|
| 5. South Carolina Income Subject to Tax               | \$0      | \$1,488,206 |
| 6. South Carolina Tax                                 | \$0      | \$103,684   |
| 7. Tax on Lump Sum Distribution                       | \$0      | \$0         |
| 8. Tax on Active Trade or Business Income             | \$0      | \$0         |
| 9. Tax on Excess Withdrawals from Catastrophe Savings | \$0      | \$0         |
| 10. Total South Carolina Tax                          | \$0      | \$103,684   |
| 11. Child and Dependent Care                          | \$0      | \$0         |
| 12. Two Wage Earner Credit                            | \$0      | \$0         |
| 13. Other Non-Refundable Credits                      | \$0      | \$0         |
| 14. Total Non-Refundable Credits                      | \$0      | \$0         |
| 15. Tax less Non-Refundable Credits                   | \$0      | \$103,684   |
| 16. SC Income Tax Withheld                            | \$0      | \$0         |
| 17. Estimated Tax Payments                            | \$0      | \$0         |
| 18. Amount Paid with Extension                        | \$0      | \$0         |
| 19. NR Sale of Real Estate                            | \$0      | \$0         |
| 20. Other SC Withholding                              | \$0      | \$0         |
| 21. Tuition Tax Credit                                | \$0      | \$0         |
| 22a. Anhydrous Ammonia                                | \$0      | \$0         |
| 22b. Milk Credit                                      | \$0      | \$0         |
| 22c. Classroom Teacher Expenses                       | \$0      | \$0         |
| 22d. Parental Refundable Credit                       | \$0      | \$0         |
| 22e. Motor Fuel Income Tax Credit                     | \$0      | \$0         |
| 22. Total Other Refundable Credits                    | \$0      | \$0         |
| 23. Total Payments                                    | \$0      | \$0         |
| 24. Overpayment                                       | \$0      | \$0         |
| 25. Amount Due                                        | \$0      | \$103,684   |
| 26. Use Tax                                           | \$0      | \$0         |
| 27. Amount of Line 24 to be Credited to Estimated Tax | \$0      | \$0         |
| 28. Total Contributions for Check-offs                | \$0      | \$0         |
| 29. Sum of Lines 26-28                                | \$0      | \$0         |
| 30. Refund Amount                                     | \$0      | \$0         |
| 31. Tax Due                                           | \$0      | \$103,684   |



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## Individual Income Federal Schedule Adjustments for 2014

| Tax Schedule | Line Description                       | Description | Reported Amount | Audited Amount        | Adjusted Amount       |
|--------------|----------------------------------------|-------------|-----------------|-----------------------|-----------------------|
| Federal 1040 | 40. Total standard deductions          |             | \$0.00          | \$12,400.00           | -\$12,400.00          |
| Federal 1040 | 42. Exemptions                         |             | \$0.00          | \$11,850.00           | -\$11,850.00          |
| Schedule E   | 03. Rents received                     |             | \$0.00          | \$3,805.00            | \$3,805.00            |
| Schedule E   | 03. Rents received                     |             | \$0.00          | \$7,803.00            | \$7,803.00            |
| Schedule E   | 03. Rents received                     |             | \$0.00          | \$7,340.00            | \$7,340.00            |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |             | \$0.00          | \$2,599.00            | \$2,599.00            |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |             | \$0.00          | \$1,488,431.00        | \$1,488,431.00        |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |             | \$0.00          | \$6,382.00            | \$6,382.00            |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |             | \$0.00          | \$4,236.00            | \$4,236.00            |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |             | \$0.00          | -\$4,190.00           | -\$4,190.00           |
|              |                                        |             | <b>\$0.00</b>   | <b>\$1,540,656.00</b> | <b>\$1,492,156.00</b> |



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### Individual Income Audit Period Summary for 2015

| Period     | Tax                 | Penalty            | Interest           | Total               |
|------------|---------------------|--------------------|--------------------|---------------------|
| 12/31/2015 | \$155,894.00        | \$77,947.00        | \$42,294.04        | \$276,135.04        |
|            | <u>\$155,894.00</u> | <u>\$77,947.00</u> | <u>\$42,294.04</u> | <u>\$276,135.04</u> |

### Individual Income Audit Penalty Summary for 2015

| Period     | Late File Penalty  | Late Pay Penalty | Substantial Understatement |
|------------|--------------------|------------------|----------------------------|
| 12/31/2015 | \$38,973.50        | \$0.00           | \$38,973.50                |
|            | <u>\$38,973.50</u> | <u>\$0.00</u>    | <u>\$38,973.50</u>         |

| Period     | Negligence    | Civil Fraud   | Specific Penalty | Other         |
|------------|---------------|---------------|------------------|---------------|
| 12/31/2015 | \$0.00        | \$0.00        | \$0.00           | \$0.00        |
|            | <u>\$0.00</u> | <u>\$0.00</u> | <u>\$0.00</u>    | <u>\$0.00</u> |



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## Individual Income Adjustments Summary for 2015

|                                                | Reported | Audited     |
|------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                      | \$0      | \$2,238,122 |
| 2. Total Additions                             | \$0      | \$0         |
| 3. Sum of Federal Taxable Income and Additions | \$0      | \$2,238,122 |
| 4. Total Subtractions                          | \$0      | \$4,000     |
| 5. South Carolina Income Subject to Tax        | \$0      | \$2,234,122 |
| 10. Total South Carolina Tax                   | \$0      | \$155,894   |
| 15. Tax less Non-Refundable Credits            | \$0      | \$155,894   |
| 23. Total Payments                             | \$0      | \$0         |
| 24. Overpayment                                | \$0      | \$0         |
| 25. Amount Due                                 | \$0      | \$155,894   |
| 26. Use Tax                                    | \$0      | \$0         |
| 30. Refund Amount                              | \$0      | \$0         |
| 31. Tax Due                                    | \$0      | \$155,894   |



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## Individual Income and Adjustments for 2015

|                                                          | Reported | Audited     |
|----------------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                                | \$0      | \$2,238,122 |
| a. State Tax Addback                                     | \$0      | \$0         |
| b. Out-of-State Losses                                   | \$0      | \$0         |
| c. Expenses for National Guard / Military Reserve Income | \$0      | \$0         |
| d. Interest Income on Out-of-State Obligations           | \$0      | \$0         |
| e. Other Additions to Income                             | \$0      | \$0         |
| 2. Total Additions                                       | \$0      | \$0         |
| 3. Sum of Federal Taxable Income and Additions           | \$0      | \$2,238,122 |
| f. State Tax Refund                                      | \$0      | \$0         |
| g. Permanent Disability Retirement Income                | \$0      | \$0         |
| h. Out-of-State Income/Gain                              | \$0      | \$0         |
| i. 44% of Net Capital Gains Held for More than One Year  | \$0      | \$0         |
| j. Volunteer Deductions                                  | \$0      | \$0         |
| k. Contributions to SC College or Tuition Programs       | \$0      | \$0         |
| l. Active Trade or Business Income Deduction             | \$0      | \$0         |
| m. Interest Income from Obligations of the US Government | \$0      | \$0         |
| n. Nontaxable National Guard or Reserve Pay              | \$0      | \$0         |
| o. Social Security and/or Railroad Retirement            | \$0      | \$0         |
| p. Retirement Deduction                                  |          |             |
| p-1. Taxpayer                                            | \$0      | \$0         |
| p-2. Spouse                                              | \$0      | \$0         |
| p-3. Surviving Spouse #1                                 | \$0      | \$0         |
| p-4. Surviving Spouse #2                                 | \$0      | \$0         |
| Military Retirement Deduction                            |          |             |
| p-4. Taxpayer                                            | \$0      | \$0         |
| p-5. Spouse                                              | \$0      | \$0         |
| p-6. Surviving Spouse                                    | \$0      | \$0         |
| q. Age 65 and Older Deduction                            |          |             |
| q-1. Taxpayer                                            | \$0      | \$0         |
| q-2. Spouse                                              | \$0      | \$0         |
| r. Negative Amount of Federal Taxable Income             | \$0      | \$0         |
| s. Subsistence Allowance @ \$8.00                        | \$0      | \$0         |
| t. Dependents Under the Age of 6 on December 31st        | \$0      | \$4,000     |
| u. Consumer Protection Services                          | \$0      | \$0         |
| v. Other Subtractions                                    | \$0      | \$0         |
| w. South Carolina Dependent Exemption                    | \$0      | \$0         |
| 4. Total Subtractions                                    | \$0      | \$4,000     |



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## Individual Income Tax, Overpayments and Credits for 2015

|                                                       | Reported | Audited     |
|-------------------------------------------------------|----------|-------------|
| 5. South Carolina Income Subject to Tax               | \$0      | \$2,234,122 |
| 6. South Carolina Tax                                 | \$0      | \$155,894   |
| 7. Tax on Lump Sum Distribution                       | \$0      | \$0         |
| 8. Tax on Active Trade or Business Income             | \$0      | \$0         |
| 9. Tax on Excess Withdrawals from Catastrophe Savings | \$0      | \$0         |
| 10. Total South Carolina Tax                          | \$0      | \$155,894   |
| 11. Child and Dependent Care                          | \$0      | \$0         |
| 12. Two Wage Earner Credit                            | \$0      | \$0         |
| 13. Other Non-Refundable Credits                      | \$0      | \$0         |
| 14. Total Non-Refundable Credits                      | \$0      | \$0         |
| 15. Tax less Non-Refundable Credits                   | \$0      | \$155,894   |
| 16. SC Income Tax Withheld                            | \$0      | \$0         |
| 17. Estimated Tax Payments                            | \$0      | \$0         |
| 18. Amount Paid with Extension                        | \$0      | \$0         |
| 19. NR Sale of Real Estate                            | \$0      | \$0         |
| 20. Other SC Withholding                              | \$0      | \$0         |
| 21. Tuition Tax Credit                                | \$0      | \$0         |
| 22a. Anhydrous Ammonia                                | \$0      | \$0         |
| 22b. Milk Credit                                      | \$0      | \$0         |
| 22c. Classroom Teacher Expenses                       | \$0      | \$0         |
| 22d. Parental Refundable Credit                       | \$0      | \$0         |
| 22e. Motor Fuel Income Tax Credit                     | \$0      | \$0         |
| 22. Total Other Refundable Credits                    | \$0      | \$0         |
| 23. Total Payments                                    | \$0      | \$0         |
| 24. Overpayment                                       | \$0      | \$0         |
| 25. Amount Due                                        | \$0      | \$155,894   |
| 26. Use Tax                                           | \$0      | \$0         |
| 27. Amount of Line 24 to be Credited to Estimated Tax | \$0      | \$0         |
| 28. Total Contributions for Check-offs                | \$0      | \$0         |
| 29. Sum of Lines 26-28                                | \$0      | \$0         |
| 30. Refund Amount                                     | \$0      | \$0         |
| 31. Tax Due                                           | \$0      | \$155,894   |



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## Individual Income Federal Schedule Adjustments for 2015

| Tax Schedule | Line Description                       | Description                    | Reported Amount | Audited Amount        | Adjusted Amount       |
|--------------|----------------------------------------|--------------------------------|-----------------|-----------------------|-----------------------|
| Federal 1040 | 40. Total standard deductions          |                                | \$0.00          | \$12,600.00           | -\$12,600.00          |
| Federal 1040 | 42. Exemptions                         |                                | \$0.00          | \$12,000.00           | -\$12,000.00          |
| Federal 1040 | 21. Other income                       | Other portfolio income from K1 | \$0.00          | \$74.00               | \$74.00               |
| Schedule E   | 03. Rents received                     |                                | \$0.00          | \$11,199.00           | \$11,199.00           |
| Schedule E   | 03. Rents received                     |                                | \$0.00          | \$5,040.00            | \$5,040.00            |
| Schedule E   | 03. Rents received                     |                                | \$0.00          | \$3,546.00            | \$3,546.00            |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |                                | \$0.00          | \$19,636.00           | \$19,636.00           |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |                                | \$0.00          | \$12,075.00           | \$12,075.00           |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |                                | \$0.00          | \$5,803.00            | \$5,803.00            |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |                                | \$0.00          | \$2,205,349.00        | \$2,205,349.00        |
|              |                                        |                                | <b>\$0.00</b>   | <b>\$2,287,322.00</b> | <b>\$2,238,122.00</b> |



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### Individual Income Audit Period Summary for 2016

| Period     | Tax                 | Penalty            | Interest           | Total               |
|------------|---------------------|--------------------|--------------------|---------------------|
| 12/31/2016 | \$199,481.00        | \$99,740.50        | \$44,176.01        | \$343,397.51        |
|            | <u>\$199,481.00</u> | <u>\$99,740.50</u> | <u>\$44,176.01</u> | <u>\$343,397.51</u> |

### Individual Income Audit Penalty Summary for 2016

| Period     | Late File Penalty  | Late Pay Penalty   | Substantial Understatement |
|------------|--------------------|--------------------|----------------------------|
| 12/31/2016 | \$49,870.25        | \$49,870.25        | \$0.00                     |
|            | <u>\$49,870.25</u> | <u>\$49,870.25</u> | <u>\$0.00</u>              |

| Period     | Negligence    | Civil Fraud   | Specific Penalty | Other         |
|------------|---------------|---------------|------------------|---------------|
| 12/31/2016 | \$0.00        | \$0.00        | \$0.00           | \$0.00        |
|            | <u>\$0.00</u> | <u>\$0.00</u> | <u>\$0.00</u>    | <u>\$0.00</u> |



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## Individual Income Adjustments Summary for 2016

|                                                | Reported | Audited     |
|------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                      | \$0      | \$2,860,861 |
| 2. Total Additions                             | \$0      | \$0         |
| 3. Sum of Federal Taxable Income and Additions | \$0      | \$2,860,861 |
| 4. Total Subtractions                          | \$0      | \$4,050     |
| 5. South Carolina Income Subject to Tax        | \$0      | \$2,856,811 |
| 10. Total South Carolina Tax                   | \$0      | \$199,481   |
| 15. Tax less Non-Refundable Credits            | \$0      | \$199,481   |
| 23. Total Payments                             | \$0      | \$0         |
| 24. Overpayment                                | \$0      | \$0         |
| 25. Amount Due                                 | \$0      | \$199,481   |
| 26. Use Tax                                    | \$0      | \$0         |
| 30. Refund Amount                              | \$0      | \$0         |
| 31. Tax Due                                    | \$0      | \$199,481   |



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## Individual Income and Adjustments for 2016

|                                                          | Reported | Audited     |
|----------------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                                | \$0      | \$2,860,861 |
| a. State Tax Addback                                     | \$0      | \$0         |
| b. Out-of-State Losses                                   | \$0      | \$0         |
| c. Expenses for National Guard / Military Reserve Income | \$0      | \$0         |
| d. Interest Income on Out-of-State Obligations           | \$0      | \$0         |
| e. Other Additions to Income                             | \$0      | \$0         |
| 2. Total Additions                                       | \$0      | \$0         |
| 3. Sum of Federal Taxable Income and Additions           | \$0      | \$2,860,861 |
| f. State Tax Refund                                      | \$0      | \$0         |
| g. Permanent Disability Retirement Income                | \$0      | \$0         |
| h. Out-of-State Income/Gain                              | \$0      | \$0         |
| i. 44% of Net Capital Gains Held for More than One Year  | \$0      | \$0         |
| j. Volunteer Deductions                                  | \$0      | \$0         |
| k. Contributions to SC College or Tuition Programs       | \$0      | \$0         |
| l. Active Trade or Business Income Deduction             | \$0      | \$0         |
| m. Interest Income from Obligations of the US Government | \$0      | \$0         |
| n. Nontaxable National Guard or Reserve Pay              | \$0      | \$0         |
| o. Social Security and/or Railroad Retirement            | \$0      | \$0         |
| p. Retirement Deduction                                  | \$0      | \$0         |
| p-1. Taxpayer                                            | \$0      | \$0         |
| p-2. Spouse                                              | \$0      | \$0         |
| p-3. Surviving Spouse #1                                 | \$0      | \$0         |
| p-4. Surviving Spouse #2                                 | \$0      | \$0         |
| Military Retirement Deduction                            | \$0      | \$0         |
| p-4. Taxpayer                                            | \$0      | \$0         |
| p-5. Spouse                                              | \$0      | \$0         |
| p-6. Surviving Spouse                                    | \$0      | \$0         |
| q. Age 65 and Older Deduction                            | \$0      | \$0         |
| q-1. Taxpayer                                            | \$0      | \$0         |
| q-2. Spouse                                              | \$0      | \$0         |
| r. Negative Amount of Federal Taxable Income             | \$0      | \$0         |
| s. Subsistence Allowance @ \$8.00                        | \$0      | \$0         |
| t. Dependents Under the Age of 6 on December 31st        | \$0      | \$4,050     |
| u. Consumer Protection Services                          | \$0      | \$0         |
| v. Other Subtractions                                    | \$0      | \$0         |
| w. South Carolina Dependent Exemption                    | \$0      | \$0         |
| 4. Total Subtractions                                    | \$0      | \$4,050     |



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Individual Income Working Paper

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## Individual Income Tax, Overpayments and Credits for 2016

|                                                       | Reported | Audited     |
|-------------------------------------------------------|----------|-------------|
| 5. South Carolina Income Subject to Tax               | \$0      | \$2,856,811 |
| 6. South Carolina Tax                                 | \$0      | \$199,481   |
| 7. Tax on Lump Sum Distribution                       | \$0      | \$0         |
| 8. Tax on Active Trade or Business Income             | \$0      | \$0         |
| 9. Tax on Excess Withdrawals from Catastrophe Savings | \$0      | \$0         |
| 10. Total South Carolina Tax                          | \$0      | \$199,481   |
| 11. Child and Dependent Care                          | \$0      | \$0         |
| 12. Two Wage Earner Credit                            | \$0      | \$0         |
| 13. Other Non-Refundable Credits                      | \$0      | \$0         |
| 14. Total Non-Refundable Credits                      | \$0      | \$0         |
| 15. Tax less Non-Refundable Credits                   | \$0      | \$199,481   |
| 16. SC Income Tax Withheld                            | \$0      | \$0         |
| 17. Estimated Tax Payments                            | \$0      | \$0         |
| 18. Amount Paid with Extension                        | \$0      | \$0         |
| 19. NR Sale of Real Estate                            | \$0      | \$0         |
| 20. Other SC Withholding                              | \$0      | \$0         |
| 21. Tuition Tax Credit                                | \$0      | \$0         |
| 22a. Anhydrous Ammonia                                | \$0      | \$0         |
| 22b. Milk Credit                                      | \$0      | \$0         |
| 22c. Classroom Teacher Expenses                       | \$0      | \$0         |
| 22d. Parental Refundable Credit                       | \$0      | \$0         |
| 22e. Motor Fuel Income Tax Credit                     | \$0      | \$0         |
| 22. Total Other Refundable Credits                    | \$0      | \$0         |
| 23. Total Payments                                    | \$0      | \$0         |
| 24. Overpayment                                       | \$0      | \$0         |
| 25. Amount Due                                        | \$0      | \$199,481   |
| 26. Use Tax                                           | \$0      | \$0         |
| 27. Amount of Line 24 to be Credited to Estimated Tax | \$0      | \$0         |
| 28. Total Contributions for Check-offs                | \$0      | \$0         |
| 29. Sum of Lines 26-28                                | \$0      | \$0         |
| 30. Refund Amount                                     | \$0      | \$0         |
| 31. Tax Due                                           | \$0      | \$199,481   |



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Individual Income Working Paper

## Individual Income Federal Schedule Adjustments for 2016

| Tax Schedule | Line Description                       | Description | Reported Amount | Audited Amount        | Adjusted Amount       |
|--------------|----------------------------------------|-------------|-----------------|-----------------------|-----------------------|
| Federal 1040 | 40. Total standard deductions          |             | \$0.00          | \$12,600.00           | -\$12,600.00          |
| Federal 1040 | 42. Exemptions                         |             | \$0.00          | \$12,150.00           | -\$12,150.00          |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |             | \$0.00          | \$5,744.00            | \$5,744.00            |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |             | \$0.00          | \$6,011.00            | \$6,011.00            |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |             | \$0.00          | \$2,842,861.00        | \$2,842,861.00        |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |             | \$0.00          | \$12,326.00           | \$12,326.00           |
| Schedule E   | 32. Partnership & S-Corp Income (Loss) |             | \$0.00          | \$18,669.00           | \$18,669.00           |
|              |                                        |             | <b>\$0.00</b>   | <b>\$2,910,361.00</b> | <b>\$2,860,861.00</b> |

# EXHIBIT 2



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Corporate Working Paper

### Corporate Audit Period Summary for 2012

| Period     | Tax            | Penalty        | Interest      | Total          |
|------------|----------------|----------------|---------------|----------------|
| 12/31/2012 | \$25.00        | \$12.50        | \$9.86        | \$47.36        |
|            | <b>\$25.00</b> | <b>\$12.50</b> | <b>\$9.86</b> | <b>\$47.36</b> |

### Corporate Audit Penalty Summary for 2012

| Period     | Late File Penalty | Late Pay Penalty | Substantial Understatement |
|------------|-------------------|------------------|----------------------------|
| 12/31/2012 | \$6.25            | \$6.25           | \$0.00                     |
|            | <b>\$6.25</b>     | <b>\$6.25</b>    | <b>\$0.00</b>              |

| Period     | Negligence    | Civil Fraud   | Specific Penalty | Other         |
|------------|---------------|---------------|------------------|---------------|
| 12/31/2012 | \$0.00        | \$0.00        | \$0.00           | \$0.00        |
|            | <b>\$0.00</b> | <b>\$0.00</b> | <b>\$0.00</b>    | <b>\$0.00</b> |



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## Corporate Adjustments Summary for 2012

|                                                            | Reported | Audited   |
|------------------------------------------------------------|----------|-----------|
| 1. Federal Taxable Income                                  | \$0      | \$730,354 |
| 2. Net Adjustment                                          | \$0      | \$0       |
| 3. Total Net Income as Reconciled                          | \$0      | \$730,354 |
| 4. Total South Carolina Net Income                         | \$0      | \$730,354 |
| 5. Income on Line 4 taxed to Shareholders of S Corporation | \$0      | \$730,354 |
| 6. South Carolina Net Income Subject to Tax                | \$0      | \$0       |
| 7. Corporation Tax Due                                     | \$0      | \$0       |
| 8. Refundable Credits:                                     |          |           |
| a. Tax Withheld                                            | \$0      | \$0       |
| e. Ammonia Additive                                        | \$0      | \$0       |
| f. Milk Credit                                             | \$0      | \$0       |
| g. Motor Fuel Income Tax Credit                            | \$0      | \$0       |
| 9. Total Payments and Refundable Credits                   | \$0      | \$0       |
| 10. Balance                                                | \$0      | \$0       |

Explanation of Income Tax Liability Adjustments

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## Corporate License Fee for 2012

|                                       | Reported | Audited |
|---------------------------------------|----------|---------|
| 14. Total Capital and Paid in Surplus | \$0      | \$0     |
| 15. License Fee Due                   | \$0      | \$25    |
| 16. Credit taken this year            | \$0      | \$0     |
| 17. Balance                           | \$0      | \$25    |

Explanation of License Fee Adjustments

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## Adjustments To Federal Schedules for 2012

| Federal Schedule Field       | Description                          | Reported Amount | Audited Amount     | Audit Adjustment |
|------------------------------|--------------------------------------|-----------------|--------------------|------------------|
| 01a. Gross receipts or sales |                                      | \$0             | \$5,184,625        | \$5,184,625      |
| 02. Cost of goods sold       |                                      | \$0             | \$4,161,691        | -\$4,161,691     |
| 19. Other deductions         | Carried back 2013 operating expenses | \$0             | \$97,443           | -\$97,443        |
| 12. Taxes and licenses       |                                      | \$0             | \$195,137          | -\$195,137       |
|                              |                                      | <u>\$0</u>      | <u>\$9,638,896</u> | <u>\$730,354</u> |

### Explanation of Federal Schedule Adjustments

Operating expenses carried back from tax year 2013. The tobacco excise taxes were estimated based on percentage of taxes to tobacco purchases from tax year 2013.

ADJ- 3-13-19- Carried back additional office expense of \$1419 as verified for 2013 to allowance for operating expense in 2012. Adjusted gross receipts are based on 19% tobacco gross margin percentage.



STATE OF SOUTH CAROLINA  
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### Corporate Audit Period Summary for 2013

| Period     | Tax            | Penalty        | Interest      | Total          |
|------------|----------------|----------------|---------------|----------------|
| 12/31/2013 | \$25.00        | \$12.50        | \$8.70        | \$46.20        |
|            | <b>\$25.00</b> | <b>\$12.50</b> | <b>\$8.70</b> | <b>\$46.20</b> |

### Corporate Audit Penalty Summary for 2013

| Period     | Late File Penalty | Late Pay Penalty | Substantial Understatement |
|------------|-------------------|------------------|----------------------------|
| 12/31/2013 | \$6.25            | \$6.25           | \$0.00                     |
|            | <b>\$6.25</b>     | <b>\$6.25</b>    | <b>\$0.00</b>              |

| Period     | Negligence    | Civil Fraud   | Specific Penalty | Other         |
|------------|---------------|---------------|------------------|---------------|
| 12/31/2013 | \$0.00        | \$0.00        | \$0.00           | \$0.00        |
|            | <b>\$0.00</b> | <b>\$0.00</b> | <b>\$0.00</b>    | <b>\$0.00</b> |



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## Corporate Adjustments Summary for 2013

|                                                            | Reported | Audited     |
|------------------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                                  | \$0      | \$1,215,947 |
| 2. Net Adjustment                                          | \$0      | \$0         |
| 3. Total Net Income as Reconciled                          | \$0      | \$1,215,947 |
| 4. Total South Carolina Net Income                         | \$0      | \$1,215,947 |
| 5. Income on Line 4 taxed to Shareholders of S Corporation | \$0      | \$1,215,947 |
| 6. South Carolina Net Income Subject to Tax                | \$0      | \$0         |
| 7. Corporation Tax Due                                     | \$0      | \$0         |
| 8. Refundable Credits:                                     |          |             |
| a. Tax Withheld                                            | \$0      | \$0         |
| e. Ammonia Additive                                        | \$0      | \$0         |
| f. Milk Credit                                             | \$0      | \$0         |
| g. Motor Fuel Income Tax Credit                            | \$0      | \$0         |
| 9. Total Payments and Refundable Credits                   | \$0      | \$0         |
| 10. Balance                                                | \$0      | \$0         |

Explanation of Income Tax Liability Adjustments

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6432**Corporate License Fee for 2013**

|                                       | Reported | Audited |
|---------------------------------------|----------|---------|
| 14. Total Capital and Paid in Surplus | \$0      | \$0     |
| 15. License Fee Due                   | \$0      | \$25    |
| 16. Credit taken this year            | \$0      | \$0     |
| 17. Balance                           | \$0      | \$25    |

Explanation of License Fee Adjustments



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### Adjustments To Federal Schedules for 2013

| Federal Schedule Field       | Description                      | Reported Amount | Audited Amount      | Audit Adjustment   |
|------------------------------|----------------------------------|-----------------|---------------------|--------------------|
| 01a. Gross receipts or sales |                                  | \$0             | \$8,222,587         | \$8,222,587        |
| 02. Cost of goods sold       |                                  | \$0             | \$6,600,935         | -\$6,600,935       |
| 11. Rents                    |                                  | \$0             | \$19,710            | -\$19,710          |
| 19. Other deductions         | auto & truck- fuel               | \$0             | \$27,101            | -\$27,101          |
| 19. Other deductions         | bank charges                     | \$0             | \$5,757             | -\$5,757           |
| 19. Other deductions         | freight                          | \$0             | \$25,066            | -\$25,066          |
| 19. Other deductions         | professional fees-<br>accounting | \$0             | \$1,225             | -\$1,225           |
| 19. Other deductions         | supplies                         | \$0             | \$4,164             | -\$4,164           |
| 19. Other deductions         | telephone                        | \$0             | \$4,428             | -\$4,428           |
| 19. Other deductions         | utilities                        | \$0             | \$1,422             | -\$1,422           |
| 19. Other deductions         | miscellaneous                    | \$0             | \$30                | -\$30              |
| 19. Other deductions         | office                           | \$0             | \$3,230             | -\$3,230           |
| 12. Taxes and licenses       |                                  | \$0             | \$309,135           | -\$309,135         |
| 19. Other deductions         | insurance                        | \$0             | \$4,437             | -\$4,437           |
|                              |                                  | <b>\$0</b>      | <b>\$15,229,227</b> | <b>\$1,215,947</b> |

#### Explanation of Federal Schedule Adjustments

ADJ- 3-13-19- Gross receipts adjusted to reflect 19% GM on tobacco items and 14.05% on non-tobacco items.  
Additional expenses allowed based on CC statements.



STATE OF SOUTH CAROLINA  
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### Corporate Audit Period Summary for 2014

| Period     | Tax            | Penalty        | Interest      | Total          |
|------------|----------------|----------------|---------------|----------------|
| 12/31/2014 | \$25.00        | \$12.50        | \$7.74        | \$45.24        |
|            | <b>\$25.00</b> | <b>\$12.50</b> | <b>\$7.74</b> | <b>\$45.24</b> |

### Corporate Audit Penalty Summary for 2014

| Period     | Late File Penalty | Late Pay Penalty | Substantial Understatement |
|------------|-------------------|------------------|----------------------------|
| 12/31/2014 | \$6.25            | \$6.25           | \$0.00                     |
|            | <b>\$6.25</b>     | <b>\$6.25</b>    | <b>\$0.00</b>              |

| Period     | Negligence    | Civil Fraud   | Specific Penalty | Other         |
|------------|---------------|---------------|------------------|---------------|
| 12/31/2014 | \$0.00        | \$0.00        | \$0.00           | \$0.00        |
|            | <b>\$0.00</b> | <b>\$0.00</b> | <b>\$0.00</b>    | <b>\$0.00</b> |



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## Corporate Adjustments Summary for 2014

|                                                            | Reported | Audited     |
|------------------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                                  | \$0      | \$1,488,431 |
| 2. Net Adjustment                                          | \$0      | \$0         |
| 3. Total Net Income as Reconciled                          | \$0      | \$1,488,431 |
| 4. Total South Carolina Net Income                         | \$0      | \$1,488,431 |
| 5. Income on Line 4 taxed to Shareholders of S Corporation | \$0      | \$1,488,431 |
| 6. South Carolina Net Income Subject to Tax                | \$0      | \$0         |
| 7. Corporation Tax Due                                     | \$0      | \$0         |
| 8. Refundable Credits:                                     |          |             |
| a. Tax Withheld                                            | \$0      | \$0         |
| e. Ammonia Additive                                        | \$0      | \$0         |
| f. Milk Credit                                             | \$0      | \$0         |
| g. Motor Fuel Income Tax Credit                            | \$0      | \$0         |
| 9. Total Payments and Refundable Credits                   | \$0      | \$0         |
| 10. Balance                                                | \$0      | \$0         |

Explanation of Income Tax Liability Adjustments

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Issued:  
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DEPARTMENT OF REVENUE  
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6432**Corporate License Fee for 2014**

|                                       | Reported | Audited |
|---------------------------------------|----------|---------|
| 14. Total Capital and Paid in Surplus | \$0      | \$0     |
| 15. License Fee Due                   | \$0      | \$25    |
| 16. Credit taken this year            | \$0      | \$0     |
| 17. Balance                           | \$0      | \$25    |

Explanation of License Fee Adjustments



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## Adjustments To Federal Schedules for 2014

| Federal Schedule Field       | Description        | Reported Amount | Audited Amount      | Audit Adjustment   |
|------------------------------|--------------------|-----------------|---------------------|--------------------|
| 01a. Gross receipts or sales |                    | \$0             | \$10,350,459        | \$10,350,459       |
| 02. Cost of goods sold       |                    | \$0             | \$8,246,155         | -\$8,246,155       |
| 11. Rents                    |                    | \$0             | \$18,750            | -\$18,750          |
| 19. Other deductions         | auto & truck- fuel | \$0             | \$52,552            | -\$52,552          |
| 19. Other deductions         | bank charges       | \$0             | \$8,574             | -\$8,574           |
| 19. Other deductions         | freight            | \$0             | \$14,890            | -\$14,890          |
| 19. Other deductions         | miscellaneous      | \$0             | \$7                 | -\$7               |
| 19. Other deductions         | office             | \$0             | \$9,123             | -\$9,123           |
| 19. Other deductions         | telephone          | \$0             | \$3,664             | -\$3,664           |
| 19. Other deductions         | utilities          | \$0             | \$1,495             | -\$1,495           |
| 19. Other deductions         | supplies           | \$0             | \$48,872            | -\$48,872          |
| 19. Other deductions         | insurance          | \$0             | \$2,046             | -\$2,046           |
| 12. Taxes and licenses       |                    | \$0             | \$455,900           | -\$455,900         |
|                              |                    | <b>\$0</b>      | <b>\$19,212,487</b> | <b>\$1,488,431</b> |

### Explanation of Federal Schedule Adjustments

ADJ- 3-13-19- Gross receipts adjusted to reflect 19% GM on tobacco items and 14.05% on non-tobacco items.  
Additional expenses allowed based on CC statements.



STATE OF SOUTH CAROLINA  
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### Corporate Audit Period Summary for 2015

| Period     | Tax            | Penalty        | Interest      | Total          |
|------------|----------------|----------------|---------------|----------------|
| 12/31/2015 | \$25.00        | \$12.50        | \$6.86        | \$44.36        |
|            | <b>\$25.00</b> | <b>\$12.50</b> | <b>\$6.86</b> | <b>\$44.36</b> |

### Corporate Audit Penalty Summary for 2015

| Period     | Late File Penalty | Late Pay Penalty | Substantial Understatement |
|------------|-------------------|------------------|----------------------------|
| 12/31/2015 | \$6.25            | \$6.25           | \$0.00                     |
|            | <b>\$6.25</b>     | <b>\$6.25</b>    | <b>\$0.00</b>              |

| Period     | Negligence    | Civil Fraud   | Specific Penalty | Other         |
|------------|---------------|---------------|------------------|---------------|
| 12/31/2015 | \$0.00        | \$0.00        | \$0.00           | \$0.00        |
|            | <b>\$0.00</b> | <b>\$0.00</b> | <b>\$0.00</b>    | <b>\$0.00</b> |



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Corporate Working Paper

## Corporate Adjustments Summary for 2015

|                                                            | Reported | Audited     |
|------------------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                                  | \$0      | \$2,205,349 |
| 2. Net Adjustment                                          | \$0      | \$0         |
| 3. Total Net Income as Reconciled                          | \$0      | \$2,205,349 |
| 4. Total South Carolina Net Income                         | \$0      | \$2,205,349 |
| 5. Income on Line 4 taxed to Shareholders of S Corporation | \$0      | \$2,205,349 |
| 6. South Carolina Net Income Subject to Tax                | \$0      | \$0         |
| 7. Corporation Tax Due                                     | \$0      | \$0         |
| 8. Refundable Credits:                                     |          |             |
| a. Tax Withheld                                            | \$0      | \$0         |
| e. Ammonia Additive                                        | \$0      | \$0         |
| f. Milk Credit                                             | \$0      | \$0         |
| g. Motor Fuel Income Tax Credit                            | \$0      | \$0         |
| 9. Total Payments and Refundable Credits                   | \$0      | \$0         |
| 10. Balance                                                | \$0      | \$0         |

Explanation of Income Tax Liability Adjustments

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6432**Corporate License Fee for 2015**

|                                       | Reported | Audited |
|---------------------------------------|----------|---------|
| 14. Total Capital and Paid in Surplus | \$0      | \$0     |
| 15. License Fee Due                   | \$0      | \$25    |
| 16. Credit taken this year            | \$0      | \$0     |
| 17. Balance                           | \$0      | \$25    |

Explanation of License Fee Adjustments



STATE OF SOUTH CAROLINA  
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## Adjustments To Federal Schedules for 2015

| Federal Schedule Field       | Description        | Reported Amount | Audited Amount      | Audit Adjustment   |
|------------------------------|--------------------|-----------------|---------------------|--------------------|
| 01a. Gross receipts or sales |                    | \$0             | \$14,853,172        | \$14,853,172       |
| 02. Cost of goods sold       |                    | \$0             | \$12,058,968        | -\$12,058,968      |
| 11. Rents                    |                    | \$0             | \$26,625            | -\$26,625          |
| 19. Other deductions         | auto & truck- fuel | \$0             | \$24,019            | -\$24,019          |
| 19. Other deductions         | bank charges       | \$0             | \$8,302             | -\$8,302           |
| 19. Other deductions         | freight            | \$0             | \$17,513            | -\$17,513          |
| 19. Other deductions         | miscellaneous      | \$0             | \$766               | -\$766             |
| 19. Other deductions         | office expense     | \$0             | \$12,954            | -\$12,954          |
| 19. Other deductions         | supplies           | \$0             | \$50,764            | -\$50,764          |
| 19. Other deductions         | telephone          | \$0             | \$3,916             | -\$3,916           |
| 19. Other deductions         | utilities          | \$0             | \$6,557             | -\$6,557           |
| 19. Other deductions         | security           | \$0             | \$5,720             | -\$5,720           |
| 19. Other deductions         | trash              | \$0             | \$330               | -\$330             |
| 19. Other deductions         | insurance          | \$0             | \$3,743             | -\$3,743           |
| 12. Taxes and licenses       |                    | \$0             | \$427,646           | -\$427,646         |
|                              |                    | <b>\$0</b>      | <b>\$27,500,995</b> | <b>\$2,205,349</b> |

### Explanation of Federal Schedule Adjustments

ADJ- 3-13-19- Gross receipts adjusted to reflect 19% GM on tobacco items and 14.05% on non-tobacco items.  
Additional expenses allowed based on CC statements.



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### Corporate Audit Period Summary for 2016

| Period     | Tax            | Penalty        | Interest      | Total          |
|------------|----------------|----------------|---------------|----------------|
| 12/31/2016 | \$25.00        | \$12.50        | \$5.55        | \$43.05        |
|            | <b>\$25.00</b> | <b>\$12.50</b> | <b>\$5.55</b> | <b>\$43.05</b> |

### Corporate Audit Penalty Summary for 2016

| Period     | Late File Penalty | Late Pay Penalty | Substantial Understatement |
|------------|-------------------|------------------|----------------------------|
| 12/31/2016 | \$6.25            | \$6.25           | \$0.00                     |
|            | <b>\$6.25</b>     | <b>\$6.25</b>    | <b>\$0.00</b>              |

| Period     | Negligence    | Civil Fraud   | Specific Penalty | Other         |
|------------|---------------|---------------|------------------|---------------|
| 12/31/2016 | \$0.00        | \$0.00        | \$0.00           | \$0.00        |
|            | <b>\$0.00</b> | <b>\$0.00</b> | <b>\$0.00</b>    | <b>\$0.00</b> |



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Corporate Working Paper

AS-27  
(Rev. 12/10/20)  
6432

## Corporate Adjustments Summary for 2016

|                                                            | Reported | Audited     |
|------------------------------------------------------------|----------|-------------|
| 1. Federal Taxable Income                                  | \$0      | \$2,842,861 |
| 2. Net Adjustment                                          | \$0      | \$0         |
| 3. Total Net Income as Reconciled                          | \$0      | \$2,842,861 |
| 4. Total South Carolina Net Income                         | \$0      | \$2,842,861 |
| 5. Income on Line 4 taxed to Shareholders of S Corporation | \$0      | \$2,842,861 |
| 6. South Carolina Net Income Subject to Tax                | \$0      | \$0         |
| 7. Corporation Tax Due                                     | \$0      | \$0         |
| 8. Refundable Credits:                                     |          |             |
| a. Tax Withheld                                            | \$0      | \$0         |
| e. Ammonia Additive                                        | \$0      | \$0         |
| f. Milk Credit                                             | \$0      | \$0         |
| g. Motor Fuel Income Tax Credit                            | \$0      | \$0         |
| 9. Total Payments and Refundable Credits                   | \$0      | \$0         |
| 10. Balance                                                | \$0      | \$0         |

Explanation of Income Tax Liability Adjustments

STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Corporate Working PaperAS-27  
(Rev. 12/10/20)  
6432**Corporate License Fee for 2016**

|                                       | Reported | Audited |
|---------------------------------------|----------|---------|
| 14. Total Capital and Paid in Surplus | \$0      | \$0     |
| 15. License Fee Due                   | \$0      | \$25    |
| 16. Credit taken this year            | \$0      | \$0     |
| 17. Balance                           | \$0      | \$25    |

Explanation of License Fee Adjustments



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
Corporate Working Paper

## Adjustments To Federal Schedules for 2016

| Federal Schedule Field       | Description        | Reported Amount | Audited Amount      | Audit Adjustment   |
|------------------------------|--------------------|-----------------|---------------------|--------------------|
| 01a. Gross receipts or sales |                    | \$0             | \$18,760,571        | \$18,760,571       |
| 02. Cost of goods sold       |                    | \$0             | \$14,639,466        | -\$14,639,466      |
| 11. Rents                    |                    | \$0             | \$42,000            | -\$42,000          |
| 12. Taxes and licenses       |                    | \$0             | \$1,141,702         | -\$1,141,702       |
| 19. Other deductions         | auto & truck- fuel | \$0             | \$39,988            | -\$39,988          |
| 19. Other deductions         | bank charges       | \$0             | \$13,410            | -\$13,410          |
| 19. Other deductions         | freight            | \$0             | \$8,035             | -\$8,035           |
| 19. Other deductions         | office expense     | \$0             | \$8,710             | -\$8,710           |
| 19. Other deductions         | telephone          | \$0             | \$3,270             | -\$3,270           |
| 19. Other deductions         | utilities          | \$0             | \$7,798             | -\$7,798           |
| 19. Other deductions         | security           | \$0             | \$480               | -\$480             |
| 19. Other deductions         | trash              | \$0             | \$1,222             | -\$1,222           |
| 19. Other deductions         | supplies           | \$0             | \$11,242            | -\$11,242          |
| 19. Other deductions         | insurance          | \$0             | \$387               | -\$387             |
|                              |                    | <b>\$0</b>      | <b>\$34,678,281</b> | <b>\$2,842,861</b> |

### Explanation of Federal Schedule Adjustments

ADJ- 3-13-19- Gross receipts adjusted to reflect 19% GM on tobacco items and 14.05% on non-tobacco items.  
Additional expenses allowed based on CC statements.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

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Appellate Case Nos.: 2021-001528 & 2021-001547

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CDT, Inc., ..... Appellant,

v.

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

**AND**

Vimlesh V. Patel and Punita Patel ..... Appellants,

v.

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

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**APPELLANTS' CONSOLIDATED PETITION FOR REHEARING,  
MEMORANDUM IN SUPPORT THEREOF, AND  
SUGGESTION FOR REHEARING EN BANC**

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Pursuant to Rule 221, SCACR, Appellants CDT, Inc., Vimlesh V. Patel, and Punita Patel, by and through their undersigned counsel, respectfully submit this consolidated petition for the Court of Appeals to conduct a rehearing of the matter decided by an Order filed on February 15, 2022 (“**the Order**”). In relevant part, the Order granted Respondent’s motion to dismiss on the basis that Appellants did not comply with South Carolina Code § 12-60-3370 in perfecting and pursuing these appellate proceedings. Appellants urge the Court to conduct a rehearing of this decision for two reasons, which are addressed below, and which represent matters that the Court of Appeals misapprehended or overlooked: (1) parties who take exception to the decision of an administrative law judge may appeal that decision to the Court of Appeals as a matter of right, without any obligation to comply with South Carolina Code § 12-60-3370; and (2) consistent with this Court’s decision in Beltram v. SCDOR, Case No. 2017-000968 (S.C. Ct. App. Oct. 23, 2019) (unpublished opinion), taxpayers who are appealing an adverse determination of an administrative law judge are entitled to a true and accurate statement of tax amounts purportedly owed from SCDOR before the Department of Revenue can invoke the requirements of South Carolina Code § 12-60-3370 to impair judicial review.

For the reasons set out below, Appellants respectfully request that the Court of Appeals grant reconsideration of the matter decided in the Order.

Also, pursuant to Rule 219(b), SCACR, this Petition is joined by a suggestion, offered by Appellants, for a rehearing en banc.

**I. APPELLANTS ARE ENTITLED TO PURSUE THESE APPELLATE PROCEEDINGS AS A MATTER OF RIGHT.**

Respondent’s motions to dismiss were predicated on the assertion that, unless Appellants paid in full or posted a bond for “all taxes, not including penalties or civil fines,

determined to be due by the administrative law judge before appealing the decision to the court of appeals,” then the Court lacked subject matter jurisdiction to entertain appellate proceedings. See S.C. Code § 12-60-3370.

Appellants would direct the Court’s attention to the first full sentence of Section 3370, which is as follows: “Except as otherwise provided, a taxpayer shall pay, or post a bond for, all taxes, not including penalties or civil fines, determined to be due by the administrative law judge before appealing the decision to the court of appeals. . . .” S.C. Code § 12-60-3370 (emphasis added). The emphasized portion of the foregoing provision leads to an obvious question: *Is there an “otherwise provided” that would create an exception to the putative requirements of Section 3370?* The answer is in the affirmative, and is supplied by a completely different title and chapter of the South Carolina Code.

South Carolina Code § 1-23-610(A)(1) is quoted below in full:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

S.C. Code § 1-23-610(A)(1) (emphasis added).

There is no dispute that the decision of the administrative law judge from which this appeal is taken is final, or that the pertinent notices of appeal were properly filed and served. The only issue is whether South Carolina Code § 1-23-610(A)(1) and § 12-60-3370 can be reconciled.

If it is the case, as it appears to be based on the plain language of South Carolina Code § 1-23-610(A)(1), that a party may take an appeal from a final decision of an administrative law judge “by right,” then that necessarily means there are no preconditions

to the exercise of that procedural opportunity, nor are any third-party permissions necessary, nor is there any judicial discretion to be exercised in determining whether appellate jurisdiction exists. All that is necessary to invoke a procedural opportunity that is established “by right” is for the party seeking to exercise that opportunity to claim it; once claimed, the right is invoked and must be observed.

The provisions of South Carolina Code § 12-60-3370 are opposed to the plain meaning of § 1-23-610(A)(1). In no uncertain terms, Section 3370 states that an aggrieved taxpayer may appeal from an adverse decision of an administrative law judge only if the taxpayer first pays the disputed principal tax in full or posts a bond. In other words, Section 3370 expressly imposes a condition precedent to the exercise of a party’s appellate rights, even though § 1-23-610(A)(1) states that no such conditions precedent exist.

Fortunately, the inherent conflict between § 1-23-610(A)(1) and § 12-60-3370 does not require this Court to strike one provision down in favor of another; nor does it require the Court to engage in linguistic heroics to reconcile the two provisions. The General Assembly has done this work already.

The opening clause of Section 3370 provides that the conditions precedent to appellate proceedings established therein apply “except as otherwise provided.” Section 610(A)(1) has no such limiting language. Accordingly, the provisions of Section 3370 that ostensibly create conditions precedent to a taxpayer taking an appeal from the final decision of an administrative law judge must necessarily give way to the provisions of Section 610(A)(1), which state that an appeal may be taken as a matter of right.

Perhaps this analysis may be criticized as acknowledging a construction in which the exception would swallow the rule. Appellants do not deny that result. However, it

represents nothing less than the natural consequence of applying the plain language of each statute as enacted by the General Assembly in a manner that is faithful to the time-honored rules of statutory construction. See, e.g., State v. Gaines, 380 S.C. 23, 32-33, 667 S.E.2d 728, 733 (2008).

Therefore, consistent with the foregoing analysis, Appellants respectfully request that, as a consequence of this Petition, Appellants' appeals from the decision of the administrative law judge be allowed to proceed.

**II. RESPONDENT'S MOTIONS TO DISMISS SHOULD HAVE BEEN DENIED AS A CONSEQUENCE OF RESPONDENT'S CONTINUING FAILURE TO PROVIDE APPELLANTS WITH THE INFORMATION NECESSARY TO OBSERVE SOUTH CAROLINA CODE § 12-60-3370.**

In the event that Appellants are obliged to follow the conditions precedent to appellate proceedings ostensibly mandated by South Carolina Code § 12-60-3370, which is denied, then Appellants may nonetheless continue to pursue these appellate proceedings due to Respondent's failure to provide Appellants with the information necessary to honor Section 3370. The factual and legal bases for this argument are set out in Appellants' response in opposition to Respondent's motions to dismiss, and are incorporated into this Petition. Accordingly, Appellants will not re-state those same bases, except in brief for the Court's convenience.

In Appellants' response in opposition to the motions to dismiss, Appellants have detailed how Respondent's calculations of taxable income have been—to be charitable—inconsistent, apparently even after the administrative law judge entered the orders from which appeal is taken.<sup>1</sup> Appellants are mindful that Respondent—through its reply in

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<sup>1</sup> This circumstance is well-known to Respondent's counsel, who was not only in the unenviable position of having to defend SCDOR's wild inconsistencies at trial, but who

support of the motion to dismiss—has offered an explanation of how the statement of values in the administrative law judge’s order is actually the same as the statement of values provided by SCDOR, despite the fact that the numbers are actually different.

For these reasons, driven in substantial part by SCDOR’s chronic prevarication in explaining to the Appellant-taxpayers what they owe and why, Appellants do not presently perceive that they have been put in a position to pay the principal amount of taxes owed for the tax-years at issue, and therefore, could not comply with South Carolina Code § 12-60-3370, even if they were required to.

As discussed in Appellants’ response in opposition to the motions to dismiss, Appellants view their circumstance as largely identical to that of the appellant in Beltram v. SCDOR, Unpublished Op. No. 2019-UP-349 (S.C. Ct. App. Oct. 23, 2019). In that case, the appellant-taxpayer brought an appeal of an adverse decision of an administrative law judge, and SCDOR sought dismissal on the grounds that the taxpayer had not complied with South Carolina Code § 12-60-3370 prior to filing the notice of appeal. The Court denied the motion to dismiss, and remanded the case to the administrative law court to adjudicate the specific amount of tax owed. Appellants are mindful that the Beltram decision was unpublished and is not “authority” in the sense that it has precedential value. That being said, the same logic that motivated the Court to reach the decision in Beltram appears to be equally applicable to the circumstances facing the Appellant-taxpayers in this case. Accordingly, Appellants respectfully urge the Court of Appeals to follow Beltram

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was also implicated as a potential witness, by the administrative law judge herself no less, to these inconsistencies, due to having prepared the Department Determination, which was attached to Appellants’ response in opposition to the motion to dismiss as **Attachment D**.

and remand this case so that Appellants may know how to comply with South Carolina Code § 12-60-3370, if they are required to comply, at all.

**CONCLUDING STATEMENT**

For the reasons set out in this Petition, Appellants would respectfully request a rehearing of all matters presented in the Order from which this appeal is taken, vacate the previously granted motion to dismiss, remand the matter to the administrative law judge for further proceedings, and provide such other and further relief as the Court deems just and proper.

**SUGGESTION FOR REHEARING EN BANC**

Pursuant to Rule 219(b), SCACR, Appellants respectfully suggest that the rehearing be entertained en banc.

Respectfully submitted,

*s/ Steven Edward Buckingham*

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March 2, 2022