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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Deborah Brooks Durden, Administrative Law Judge

ALC Case No.: 19-ALJ-17-0338-CC, Appellate Case No.: 2021-001528
ALC Case No.: 19-ALJ-17-0339-CC, Appellate Case No.: 2021-001547
Supreme Court Case No.: 2022-00845

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.

RESPONDENT SOUTH CAROLINA DEPARTMENT OF REVENUE'S RETURN TO PETITIONERS' CONSOLIDATED PETITION FOR WRIT OF CERTIORARI OF PETITIONERS CDT, INC. & VIMLESH V. AND PUNITA PATEL

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QUESTION PRESENTED FOR REVIEW

Was the Court of Appeals correct in dismissing the appeals of Petitioner CDT, Inc. (CDT) and Petitioners Vimlesh and Punita Patel (Patels) (collectively Petitioners) because neither CDT nor the Patels paid the amount of tax and interest ordered by the Administrative Law Court (ALC), nor posted bond for that amount, prior to appealing as required by S.C. Code Ann. § 12-60-3370 (2014)?

STATEMENT OF THE CASE

The matter before the Court involves tax liabilities found by the ALC against the two Petitioners. CDT is a tobacco wholesaler located in South Carolina that supplies tobacco products, soft drinks, and snacks to local convenience stores for resale. 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 Petitioner Vimlesh Patel. The Patels file join tax returns as husband and wife. Therefore, the income of CDT flows through to the Patels where it is to be included on their South Carolina individual income tax returns and subject to tax. While CDT's income is not taxed at the corporate level, it is still liable for Corporate License fees.

Beginning in 2016, the Respondent, South Carolina Department of Revenue (Department), conducted income tax audits of CDT and the Patels for the periods of 2012 through 2016 (audit period). The audits resulted in the Department finding that both Petitioners owed tax, interest, and penalties to the Department. The Department assessed CDT for Corporate License Fees pursuant to S.C. Code Ann. § 12-20-50 (2014) for each of the years in the audit period. The Department included interest as it is mandated by S.C. Code Ann. § 12-54-25(A) (2014). The Department also included failure to file and failure to pay penalties because CDT failed to timely file or timely pay its income taxes for every year of the audit period. The Department assessed the Patels for individual income

taxes pursuant to S.C. Code Ann. § 12-6-510 (2014) for each of the years in the audit period. The Department included interest and substantial understatement penalties because the Patels' understatement of their tax liability each year exceeded the greater of ten percent of the tax required or $5,000.

The Petitioners disagreed with the Department and requested contested case hearings before the ALC. The ALC conducted a hearing on the merits on May 25, 2021. On October 28, 2021, the ALC issued an order holding that CDT had earned income in tax years 2012 through 2016 that had not been reported on the CDT's tax returns. (R. p. 1.) Both CDT and the Department filed motions pursuant to Rule 59(e), SCRCP. (R. pp. 32, 36.) On November 23, 2021, the ALC granted the Department's Motion and issued its Amended Final Order. (R. p. 15.) In the Amended Final Order, the ALC determined that CDT earned more business income than the amounts reported on its corporate income tax returns for tax years 2012 through 2016. The ALC then ordered that the matter be remanded to the Department so the Department could calculate the taxes, penalties, and interest owed by both Petitioners. The ALC ordered that the Department provide the Petitioners with a statement of the amount owed within fifteen (15) days of the date of the Order. The Amended Final Order then states "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." In accordance with the Amended Final Order, on December 2, 2021, the Department notified the Petitioners of the amounts of tax, interest, and penalties owed as a result of the ALC's order. The Petitioners did not make any motion or in any way notify the ALC of any disagreement with the Department's calculations.

On December 23, 2021, CDT and the Patels each filed a Notice of Appeal with the Court of Appeals. (R. pp. 45, 47.) Neither CDT nor the Patels paid the taxes determined to be due by the ALC,

or post bond for such taxes, prior to filing their appeals, which is required by § 12-60-3370. On January 12, 2022, the Department filed Motions to Dismiss in both appeals. (R. pp. 49, 72.) On February 15, 2022, the Court of Appeals granted the Department's motions and dismissed the appeals. (R. pp. 29, 30.) On March 2, 2022, the Petitioners filed a Consolidated Petition for Rehearing and Suggestion for Rehearing *En Banc* with the Court of Appeals (Petition for Rehearing). (R. p. 194.) On May 19, 2022, the Court of Appeals issued an Order denying the Petitioners' Petition for Rehearing. (R. p. 31.) In so ruling, the Court of Appeals stated that after careful consideration the Court was unable to discover that any material fact or principle of law has been overlooked or disregarded. On June 17, 2022, the Petitioners filed their Consolidated Petition for Writ of Certiorari of Petitioners CDT, Inc. and Vimlesh V. and Punita Patel with this Court (Petitioners' Petition).

ARGUMENTS

I. Petitioners have not established any basis for granting their Petition for Certiorari under Rule 242(b).

Rule 242, SCACR, provides that "[a] writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered." The rule then identifies five factors that the Court will review when determining whether to grant the petition. Although the list of considerations in Rule 242 are not exhaustive, with one limited exception discussed below, the Department is not aware of any additional considerations that this Court has recognized. None of the Rule 242 factors weigh in favor of granting Petitioners' Petition.

A. There is no novel question of law.

The Petitioners fail to provide any explanation for how the application of the requirements of § 12-60-3370 constitute a novel issue. To the contrary, § 12-60-3370 clearly states that a taxpayer must

pay or post bond for all taxes determined by an administrative law judge before appealing to the Court of Appeals. The Petitioners' failure to follow the clear requirement § 12-60-3370 does not make application of the statute a novel issue. Accordingly, this factor does not support the Petitioners' Petition.

B. There was no dissent in the Court of Appeals.

There was no dissent in the Court of Appeals, rather the Court of Appeals ruled unanimously in denying the Petitioners' Petition for Rehearing. Accordingly, this factor does not support the Petitioners' Petition.

C. The Court of Appeals' decision does not conflict with a prior decision of the Supreme Court.

There is only one Supreme Court decision addressing § 12-60-3370. In Great Games Inc., v. South Carolina Department of Revenue, 339 S.C. 79, 529 S.E.2d 6 (2000), this Court held that a fine imposed by the ALC pursuant to S.C. Code Ann. § 12-21-2804(F) (2014) is not a tax so § 12-60-3370 does not apply. There are no fines at issue in the present matter, therefore Great Games is not applicable to the present matter. Accordingly, this factor does not support the Petitioners' Petition.

D. There is no constitutional issue in this litigation.

In deciding whether to grant a petition for certiorari, this Court may consider whether "substantial constitutional issues are directly involved." The Petitioners' Petition does not identify any constitutional issues nor are there any constitutional issues in this matter. Accordingly, this factor does not support the Petitioners' Petition.

E. This matter does not involve a federal question.

Certiorari is appropriate where the case involves a federal question and the Court of Appeals' decision conflicts with a decision of the United States Supreme Court. The Petitioners have not raised any federal question in this case. Accordingly, this factor does not support the Petitioners' Petition.

II. Petitioners have not established any exceptional circumstances that would justify granting the Petition for Certiorari.

"[A] writ of certiorari may be issued when exceptional circumstances exist." Laffitte v. Bridgestone Corp., 381 S.C. 460, 471, 674 S.E.2d 154, 160 (2009) (citing In re Breast Implant Product Liability Litigation, 331 S.C. 540, 503 S.E.2d 445 (1998)). The Breast Implant Court provided additional guidance on what circumstances are so exceptional to warrant a writ of certiorari:

> Although we will not generally accept matters on a writ of certiorari that can be entertained in the trial court or on appeal, a writ of certiorari may be issued when exceptional circumstances exist. This matter presents such a case. Novel questions of law concerning issues of significant public interest that are contained in numerous state and federal actions are involved in this matter. A decision by this Court would serve the interests of judicial economy by eliminating numerous inevitable appeals raising these issues.

Breast Implant, 331 S.C. at 543 n.2.

In a civil action, this Court has only granted a writ of certiorari twice using the exceptional circumstances standard. In Laffitte, this Court employed the exceptional circumstances test to grant certiorari because the trial court had ordered production of confidential information ostensibly protected by the South Carolina Trade Secrets Act. This Court found that the trial court erred in ordering production of the trade secrets: "the plain language of § 39-8-60(B) clearly indicates that trade secrets may be protected during discovery not only in misappropriation cases, but in 'any civil action' where trade secrets are sought during discovery." Exceptional circumstances were obviously present in that case. If the trial court's order had stood and Bridgestone had been forced to disclose trade

secrets, that genie could not have been put back in the bottle even if the trial court's order was ultimately overturned. Moreover, at that time the issue before the Court, i.e. whether the protections afforded by S.C. Code Ann. § 39-8-60 applied to any civil action, was truly novel in that it had never been considered by any South Carolina court.

Similarly, in the Breast Implant Product Liability Litigation, the Supreme Court was faced with considering appeals of numerous product liability cases, all of which had been affected by a single order of the assigned judge. Even the trial judge recognized the need for guidance from the Supreme Court and he "certified" questions to the Supreme Court. Simultaneously, some Defendants filed a Petition for Certiorari based on the trial court's denial of a motion to dismiss. The Supreme Court denied the certification from the Circuit Court, but issued the writ of certiorari based on the exceptional circumstances. According to the above-referenced criteria, this matter does not meet the exceptional circumstances threshold.

Because the underlying matter does not satisfy any of the five enumerated reasons why this Court might grant a Petition for Writ of Certiorari, the Petitioners instead put forth two legally flawed and incorrect arguments.

III. <u>An appeal by right may be subject to requirements</u>.

The Petitioners admit that they failed to comply with the clear requirement of § 12-60-3370 that requires each Petitioner to pay or post bond for all taxes determined to be due by the administrative law judge before appealing a decision to the Court of Appeals. The Court of Appeals dismissed their appeals for these admitted failures. Petitioners argue that S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2021) conflicts with § 12-60-3370 and therefore § 12-60-3370 is not applicable. The Petitioners argument is neither legally correct nor supported by the case law of this State.

Section 12-60 3370 states: "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. . . ." According to the Petitioners, the phrase "except as otherwise provided" creates an exception that allows the Petitioners to avoid compliance with § 12-60 3370. The Petitioners argue that § 1-23-610(A)(1) is the "exception" the General Assembly intended to apply when it included "except as otherwise provided" in § 12-60 3370.

Section 1-23-610(A)(1) states:

> 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). According to the Petitioners, because the statute states '[a]ppeal in these matters is by right" the only requirements that can be placed on an appellant are those found in § 1-23-610(A)(1). The Petitioners interpret appeal by right to mean an appeal which may not be limited or subject to any requirements. Pursuant to Petitioners' interpretation, because § 12-60-3370 creates additional requirements, that statute conflicts with § 1-23-610(A)(1) and therefore no longer applies. The Petitioners cite no authority supporting this interpretation. See e.g., First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (concluding Appellant abandoned issue on appeal where he failed to provide supporting authority).

Contrary to the Petitioners' arguments, this Court has long held that our General Assembly has not only the authority to regulate the right to appeal, but the power to require payment of bond or other undertaking as a condition to appealing. In Horn v. Blackwell this Court stated:

> It follows that in the absence of a constitutional restriction, the legislature in its discretion may abridge or regulate the right of appeal. Appellant says that in the case of an appeal from a magistrate, the General Assembly is limited by the terms of Article 5, Section 23, of our Constitution, which provides that in all cases tried by a magistrate, 'the right of appeal shall be secured under such rules and regulations as may be provided by law.'
>
> The requirement that an appeal bond or other security be given as a condition precedent to the right of appeal from a magistrate or justice of the peace is embodied either in a statute or rule of court in most jurisdictions. 51 C.J.S., Justices of the Peace, § 153, page 279. In Bell v. Wheeler, 3 S.C. 104, an appeal was dismissed because the appellant had not executed an undertaking for the payment of the costs as required by statute. 'Under its general authority to regulate appellate procedure the legislature has the power to require the giving of a bond or undertaking as a condition precedent to the right to appeal or sue out a writ of error, unless sued power is clearly excluded by the constitution. Such statutes do not violate constitutional provisions granting the right of appeal, as they do not restrict or deny the right, but merely regulate the manner of exercising it * * *.' 4 C.J.S., Appeal and Error, § 502, page 971.

Horn v. Blackwell, 48 S.E.2d 322, 323, 212 S.C. 480, 483–84 (1948). The General Assembly clearly holds the authority to create a requirement that must be complied with in order to maintain an appeal. The General Assembly chose to require that taxes be either be paid or bond posted prior to appealing to the Court of Appeals, and in so doing the General Assembly neither restricted no denied the right to appeal; rather, it regulated it. Contrary to the Petitioners' assertions, application of § 12-60-3370 does not violate or contradict the appeal by right provided in § 1-23-610(A)(1).

The legal inaccuracy of the Petitioners' argument is further demonstrated by the fact it renders § 12-60-3370 meaningless. Pursuant to the Revenue Procedures Act, all disputes with the Department involving taxes must be heard by the ALC. S.C. Code Ann. § 12-60-20 (2014). Therefore, all tax disputes involving the Department that go to trial will result in a decision by an administrative law judge. Section 12-60-3370 requires that a taxpayer pay, or post a bond for, all taxes determined to be due by the administrative law judge before appealing the decision to the court of appeals. Accordingly,

all tax disputes with the Department that go to trial that result in taxes being owed are subject to the requirement of § 12-60 3370. At the same time, § 1-23-610(A)(1) applies to all final decisions of the an administrative law judge, regardless of whether the decision involves a tax dispute. Of course it also applies to all tax disputes involving the Department. Clearly both statutes apply to all tax matters.

Under the Petitioners' interpretation, § 12-60-3370 does not apply to any case where § 1-23-610(A)(1) applies, because § 1-23-610(A)(1) is an exception to § 12-60-3370. But both statutes always apply to tax matters, so the Petitioners' interpretation renders § 12-60-3370 meaningless; it would always be trumped by § 1-23-610(A)(1). If the Petitioners' interpretation is correct, there is no instance in which the requirements of § 12-60-3370 will ever apply. Such interpretation is clearly not permissible under South Carolina law. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278 (2011). A court may not construe a statute in a way which leads to an absurd result or renders it meaningless. See Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense, 380 S.C. 219, 670 S.E.2d 371 (2008) (in interpreting a statute a court must reject an interpretation which leads to an absurd result that could not have been intended by the General Assembly); Gordon v. Phillips Utils., Inc., 362 S.C. 403, 608 S.E.2d 425 (2005) (it is presumed that the General Assembly intended to accomplish something by its choice of words and would not do a futile thing); Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196 (2002) (the Supreme Court must presume the General Assembly did not intend a futile act, but rather intended its statutes to accomplish something); Hinton v. S.C. Dep't of Probation, Parole and Pardon Servs., 357 S.C. 327, 592 S.E.2d 335 (Ct.App. 2004) (a court should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless).

In their Petition, the Petitioners acknowledge this obvious flaw in their argument. "Perhaps this analysis may be criticized as acknowledging a construction in which the exception would swallow the rule. Petitioners do not deny that result." (Petitioners' Petition, p. 5.) The Petitioners seemingly fail to grasp the full extent of that flaw. Under the Petitioners' interpretation, § 12-60-3370 is an entirely meaningless statute that never applies. This cannot be the intent of the General Assembly. The shortfall of the Petitioners' argument becomes even more apparent given the timing of amendments to both § 12-60-3370 and § 1-23-610(A)(1). The General Assembly simultaneously amended both § 12-60-3370 and § 1-23-610 in 2006 in Act No. 387. The amended version of § 12-60-3370 contained the language "except as otherwise provided" and the amended version of § 1-23-610 contained the "appeal by right" language the Petitioners now argue controls. 2006 Act No. 387, §§ 5, 12, eff July 1, 2006. Unquestionably, the General Assembly would not amend § 12-60-3370 in an act, yet within the very same act make another amendment that would render § 12-60-3370 meaningless. As the cases cited above hold, an interpretation that renders an entire statute meaningless is an impermissible interpretation. On the other hand, if the General Assembly intended to nullify § 12-60-3370, as the Petitioners' interpretation does, it could have simply repealed it. See Abandoned Buildings Revitalization Act, 2013 S.C. Acts 57, wherein the General Assembly repealed Chapter 67 of Title 12.

Interpreting § 12-60-3370 and § 1-23-610(A)(1) in a way that renders neither statute meaningless is neither difficult nor complex. Section 1-23-610(A)(1) provides a general provision that judicial review of the decisions of an administrative law judge will be heard by the Court of Appeals. This general provision applies to all decisions of an administrative law judge regardless of the subject matter. Administrative law judges preside over hearings of contested cases involving the many departments of the executive branch. S.C. Code Ann. § 1-23-600 (2005). Administrative law

judges hear far more than just matters involving taxes and § 1-23-610(A)(1) provides that appeals of those decisions will be heard by the Court of Appeals. Section 12-60-3370 on the other hand creates a very specific requirement that only applies to matters involving taxes. Simply stated, § 1-23-610 applies to all appeals from the ALC, including tax appeals, while § 12-60-3370 only applies to cases involving taxes. Section 12-60-3370 creates an additional and separate requirement that all taxes must be paid prior to appealing to the Court of Appeals. This interpretation allows both statutes to remain meaningful and applicable, and therefore, that interpretation must prevail over the Petitioners' interpretation that renders § 12-60-3370 meaningless.

IV. Respondent did not cause Petitioners' failure to comply with § 12-60-3370.

Petitioners do not deny that both CDT and the Patels failed to pay the amount of tax and interest ordered by the ALC prior to appealing. Instead, the Petitioners 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 Petitioners' assertions, there is no uncertainty regarding the amount of tax and interest that were ordered by the ALC.

The only issue currently before this Court is whether the Petitioners paid the taxes and interest ordered by the ALC prior to filing the Notice of Appeal, which is required by § 12-60-3370. Pages 6 through 14 of the Petitioners' Petition recounts allegations about the Department's conduct prior to trial. These allegations are irrelevant to whether the Petitioners satisfied the statutory prerequisite to pursue their appeals. The only relevant issue is conceded: Petitioners do not deny that they have not paid the taxes or interest for either Petitioner. Instead, to justify their failure to comply with § 12-60-3370, the Petitioners 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.

The timing of Petitioners' 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 Petitioners. The Court ordered that the Department provide the Petitioners with a statement of the amount owed within 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 Petitioners within the required 15 days. The Amended Final Order then states "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." (R. p. 27.) In light of this order, if Petitioners 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." Petitioners did not file a motion with the ALC, and in fact, never contacted the Department to express any disagreement about the statement of amounts owed.

The Petitioners cannot now come before this Court and present a heretofore unasserted disagreement with the Department's calculations as a basis for their noncompliance with § 12-60-3370. See Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) ("A party may not complain on appeal of error or object to a trial procedure which his own conduct has induced."). The ALC ordered that the Petitioners 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 Petitioners 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 Petitioners 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 Petitioners legitimately asserted a disagreement with the Department's calculations as a basis for their noncompliance with § 12-60-3370, there is no genuine basis for Petitioners' alleged disagreement with the Department's calculations. According to the Petitioners, the Department's calculations are incorrect because the total taxable income as calculated by the Department is different from the amount of income contained in the ALC's Amended Final Order. To support this argument, the Petitioners provide this Court with a table they label as "Taxable Income ALC Order" next to "Taxable Income Respondent's Email." (Petitioners' Petition, p. 12.) 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 Petitioners, easily explain these differences. Unfortunately for this Court, Petitioners' Petition 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, the Patels have income from sources other than CDT for the audit period at issue and the amount of the non-CDT income is not in dispute. Once the ALC determined the income coming from CDT, the amount of tax owed by the Patels on all of their income could be calculated. Stated simply, the Petitioners admitted in the Joint Stipulation that they earned other income and that they owed tax on that income.

Petitioners' Petition omits the Stipulation or the additional income the Petitioners admitted they earned and on which they owed tax. Instead, the Petitioners' Petition implies that the only income involved in these appeals is the income generated by CDT. As the Stipulation clearly explains, that is simply not accurate. In support of their argument, the Petitioners' Petition includes an inaccurate and misleading chart. The "Taxable Income ALC Order" label on Petitioners' chart is not reflective of the Amended Final Order which makes no finding about 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. These amounts are identical to the amounts listed in Petitioners' chart as "Taxable Income ALC Order." The Petitioners 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 inconsistent with the Amended Final Order and the Patels' pre-trial stipulation. The Petitioners know that the amount of income flowing from CDT to the Patels is not the only income for which the Patels are liable for income tax. Pursuant to Rule

242(d)(4), SCACR, "[f]ailure of a petitioner to present with accuracy, brevity, and clarity the information and arguments that are essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition." Petitioners' Petition intentionally excludes pertinent information in an effort to mislead this Court. The Petitioners' failure to present with accuracy and clarity the full facts in this case is sufficient reason for this Court to deny the Petition.

The additional income that the Patels stipulated that they earned is the sole reason for the difference between the amounts listed in Petitioners' chart as "Taxable Income ALC Order" and "Taxable Income Respondent's Email." 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 Petitioners knew of that additional income and stipulated that it would be in addition to the amount of income flowing from CDT.

The Petitioners' Petition cites to the unpublished opinion of Beltram v. South Carolina Department of Revenue, Unpublished Opinion No. 2019-UP-349. As the Petitioners acknowledge, this opinion is unpublished. Pursuant to Rule 268(d)(2) of the Appellate Court Rules, 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 Petitioners' 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 the Court of Appeals 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 Petitioners now claim they disagree with the amount, but there is no issue as the specificity of the amount and, in any event, their agreement is untimely. 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 Petitioners 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 Petitioners. Accordingly, the Petitioners' reliance upon the unpublished decision in Beltram is both impermissible and unpersuasive.

CONCLUSION

There are five enumerated reasons why the Supreme Court might grant a Petition for Writ of Certiorari. The Petitioners cannot demonstrate that any of those considerations are applicable to their dispute with the Department. The Petitioners had a statutory obligation to pay the tax and interest ordered by the ALC prior to the filing their appeals. Section § 12-60-3370. The Petitioners have undisputedly failed to comply with this requirement. Petitioners now come before this Court seeking to have their failure to comply excused based upon two arguments, neither of which is supported by either the law of this State or the facts in the record. First, the Petitioners offer an interpretation of § 12-60-3370 and § 1-23-610(A)(1) so flawed that it renders § 12-60-3370 meaningless and never applicable. Such interpretation violates basic tenants of statutory interpretation and the Petitioners provide this Court with no legal support for such interpretation. Second, the Petitioners urge this Court to excuse their admitted failure to comply with § 12-60-3370 because they are allegedly in disagreement with the calculations of their tax liabilities. As explained herein, the Petitioners 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. Petitioners not only knew the Patels had additional income beyond what they earned from CDT, they stipulated to the existence

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

Because the Petitioners have neither paid the tax and interest owed, nor posted a bond for such as required by § 12-60-3370, the Court of Appeals properly dismissed their appeals. The Petitioners failed to provide this Court with any persuasive reason why the Court of Appeals' dismissals were improper. Accordingly, the Department asks that this Court deny the Petitioners' Consolidated Petition for Writ of Certiorari of Petitioners CDT, Inc. and Vimlesh V. and Punita Patel.

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