

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III
Administrative Law Judge

RECEIVED

AUG 30 2013

SC Court of Appeals

Case No. 12-ALJ-17-0221-CC
Appellate Case No. 2012-212844

John Ray and Sherry Ray, Appellants,

v.

South Carolina Department of Revenue, Respondent.

RESPONDENT'S RENEWED MOTION FOR ORDER OF DISMISSAL

In accordance with Rule 240, SCACR, the Respondent, South Carolina Department of Revenue (Department) moves to renew its April 18, 2013, Motion to Dismiss and asks for an order dismissing this appeal. The grounds for this Renewed Motion to Dismiss are as follows: S.C. Code Ann. § 12-60-3370 (Supp. 2012) required the Appellants to pay or post a bond for the taxes determined to be due by the Administrative Law Court (ALC) before filing this appeal. On April 18, 2013, after determining that the Appellants did not pay or post a bond with this Court or the ALC, the Department moved for an order from this Court dismissing this appeal. On July 12, 2013, this Court issued an Order holding the Department's motion in abeyance and requiring the Appellants, within ten (10) days of the Order, to provide this Court with confirmation either that they had paid the Department the principal amount of the

disputed tax, \$850, or that they had posted a bond in that amount pending a resolution of their appeal. (A copy of this Order is attached hereto as Exhibit A.) The Order states that failure to comply by the Appellants would result in the dismissal of this appeal.

As of the date of this Renewed Motion, the Appellants have not provided this Court with confirmation that they have either paid the Department the principal amount, \$850, or that they have posted a bond in that amount pending the resolution of their appeal. Furthermore, the Department has not received any payment of the principal from the Appellants. (See Department's affidavit attached hereto as Exhibit B.) Accordingly, the Department requests that this Court find that the Appellants have failed to comply with this Court's Order of July 12, 2013, and dismiss this appeal.



Aaron M. Scheuer (Bar No. 100230)
Counsel for Litigation
Sean G. Ryan (Bar No. 76585)
Managing Counsel for Litigation
Harry T. Cooper, Jr. (Bar No. 1383)
General Counsel
Milton G. Kimpson (Bar No. 7917)
Chief Counsel of Litigation
P.O. Box 12265
Columbia, SC 29211
803-898-5118
Attorneys for S.C. Department of Revenue
Scheuea@sctax.org
courtorders@sctax.org

Columbia, South Carolina
August 28, 2013

EXHIBIT

A

The South Carolina Court of Appeals

John Ray and Sherry Ray, Appellants,

v.

South Carolina Department of Revenue, Respondent.

Appellate Case No. 2012-212844

RECEIVED

AUG 30 2013

SC Court of Appeals

ORDER

Respondent has filed a Motion for Order of Dismissal requesting that this Court dismiss the instant appeal for Appellants' failure to comply with section 12-60-3370 of the South Carolina Code (Supp. 2012). That statute provides, in pertinent 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."

We find in the order from which appeal is taken, the Administrative Law Court determined Appellants owed Respondent \$850, plus interest, for an improperly refunded tuition credit toward their 2008 income taxes. We further find Appellants have provided no evidence they either paid Respondent or posted a bond in the amount of \$850 prior to filing this appeal. Respondent's motion is hereby held in abeyance. Within ten days, Appellants shall provide this Court with confirmation, either that they have paid Respondent the principal amount of the disputed tax, \$850, or that they have posted bond in that amount pending the resolution of their appeal. Appellants' failure to comply with this order will result in the dismissal of this appeal.


FOR THE COURT

Columbia, South Carolina

FILED

JF 7/12/13



EXHIBIT
B

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III
Administrative Law Judge

Case No. 12-ALJ-17-0221-CC
Appellate Case No. 2012-212844

John Ray and Sherry Ray, Appellants,

v.

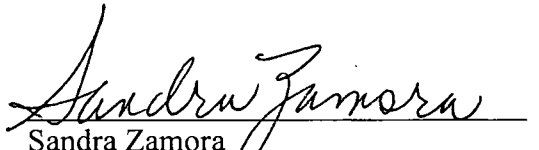
South Carolina Department of Revenue, Respondent.

AFFADAVIT OF THE SOUTH CAROLINA DEPARTMENT OF REVENUE

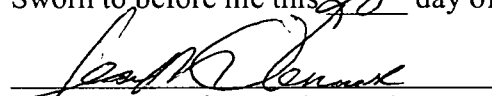
Sandra Zamora, being first duly sworn, affirms the following on behalf of the South Carolina Department of Revenue (Department) under the penalty of perjury:

After due diligence, as of August 28, 2013, the Department has not received any payment of the principal due from John and Sherry Ray pursuant to S.C. Code Ann. § 12-60-3360 (Supp. 2012) for their appeal from the Administrative Law Court, Case No. 12-ALJ-17-0221-CC.

Affiant further sayeth not.


Sandra Zamora
Audit Services Division
South Carolina Department of Revenue

Sworn to before me this 28th day of August, 2013


Notary Public for South Carolina

My Commission Expires on: 1-10-2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Ralph King Anderson, III
Administrative Law Judge

Case No. 12-ALJ-17-0221-CC
Appellate Case No. 2012-212844

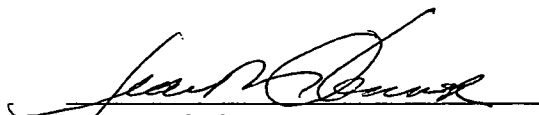
John Ray and Sherry Ray, Appellants,

v.

South Carolina Department of Revenue, Respondent.

PROOF OF SERVICE

I, Jean M. O'Connor, do hereby certify that I have mailed, postage prepaid by United States Postal Service, a copy of Respondent's Renewed Motion for Order of Dismissal in the above-referenced matter to J. William Ray, Esquire, PO Box 8535, Greenville, SC 29604, this 29th day of August 2013.


Jean M. O'Connor

RECEIVED

AUG 30 2013

SC Court of Appeals