

RECEIVED

Sep 26 2024

SC Court of Appeals

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Watertoys, LLC, d/b/a Tidalwave
Watersports,

Petitioner,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 23-ALJ-17-0362-CC

ORDER ON REMAND

This case is before the Administrative Law Court (ALC or Court) pursuant to a contested case filed by Watertoys, LLC, d/b/a Tidalwave Watersports (Petitioner or Appellant). Petitioner contested a determination by the South Carolina Department of Revenue (Respondent or Department) finding it liable for admissions taxes arising out of parasailing rides for which it charged passengers admission fees from September 1, 2018, to December 31, 2021 (the Audit Period). On April 18, 2024, the ALC issued an Order Granting Respondent’s Motion for Summary Judgment and Denying Petitioner’s Motion for Summary Judgment. On May 14, 2024, the ALC issued an Order Denying Petitioner’s Motion for Reconsideration. Petitioner appealed to the South Carolina Court of Appeals. Acting on Respondent’s motion to dismiss the appeal due to the failure to pay or post a bond, the Court of Appeals remanded the matter to the ALC to specify the amount of taxes Petitioner/Appellant must pay and/or the amount of the bond which must be posted pursuant to S.C. Code Ann. § 12-60-3370 (Westlaw Edge through 2024 Act No. 225).

ISSUE

What amount of interest, if any, is required to be posted as part of the appeal bond.

DISCUSSION

Petitioner argues that section 12-60-3370 does not require that interest be included in the bond, or, in the alternative, that interest would begin to run only as to the date of the ALC order denying reconsideration. I disagree, finding those arguments to be contrary to the plain language of the statute at issue, as well as the Department’s longstanding practice and interpretation of the statutory requirements.

Section 12-60-3370 provides that “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.” On June 26, 2024, Petitioner filed an amended



bond by deposits to his attorney's IOLTA account in the amount of \$33,998. The parties agree that this is approximately the amount determined to be owed in admissions tax only pursuant to the ALC's orders, excluding both interest and penalties. While interest and penalties increase with time, the amount of the tax excluding interest and penalties is fixed and remains the amount indicated in the Department Determination issued August 18, 2023.

Petitioner challenges whether the language "all taxes" in § 12-60-3370 includes interest and also when interest begins to accrue. As explained below, "all taxes" includes interest, and interest accrues from the date the taxes were due during the Audit Period.

"All taxes" includes interest under section 12-60-3370.

Section 12-60-3370, in relevant part, provides: "[e]xcept 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). S.C. Code Ann. § 12-60-30 (2014), the definition section of Chapter 60 of the Revenue Procedures Act (RPA), provides:

As used in this chapter and in Chapter 54 of this title except when the context clearly indicates a different meaning:

(27) "Tax" or "taxes" means taxes, licenses, permits, fees, or other amounts, **including interest**, regulatory and other penalties, and civil fines, imposed by this title, or subject to assessment or collection by the department.

(emphasis added). "[W]hen the legislature defines a term in a statute, that definition governs, and the court must give effect to the definitions contained in the statute and exclude any unstated meanings." 82 C.J.S. Statutes § 356. Therefore, unless stated otherwise, "taxes" include tax, interest, and penalties.

In section 12-60-3370, the Legislature explicitly excluded from the bond amount penalties and civil fines, which are included in the definition of tax.¹ However, the Legislature made no such exclusion for interest. If penalties were inclusive of interest, the Legislature would not have listed both in the definition of tax. See CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("we must read the statute so 'that no word, clause, sentence, provision or

¹ When section 12-60-3370 was amended effective August 17, 2000 to exclude penalties and civil fines, the Department published guidance clearly stating that tax includes interest. See SC Revenue Informational Bulletin #00-1530, 2000 WL 35722072 at 30. The prior version of the statute expressly included interest, penalties, and other amounts determined to be due by the administrative law judge.

part shall be rendered surplusage, or superfluous”) (citation omitted). The penalties at issue here are imposed for failure to file an admissions tax return and failure to pay the tax required to be shown on the admissions tax return. See S.C. Code Ann. § 12-54-43(C)(1) and (E) (2014) respectively. These penalties accumulate at a statutory rate while the failure to file and pay continues. Undisputedly, Petitioner did not file an admission tax return or pay admissions tax for the Audit Period. Regardless, unlike interest, penalties expressly are not included in the amount of the bond Petitioner must post pursuant to section 12-60-3370. Accordingly, tax—as used in section 12-60-3370—includes interest.²

Interest accrues from the date tax was due during the Audit Period

Interest is the compensation allowed by law for the use or forbearance or detention of money. Rosen v. U.S., 288 F.2d 658, 660 (3rd Cir. 1961); see also INTEREST, Black's Law Dictionary (12th ed. 2024) (interest is “compensation fixed by agreement or allowed by law for the use or detention of money, or for the loss of money by one who is entitled to its use.”). The statute that imposes interest in this matter is S.C. Code § 12-54-25 (A) (2014), 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.” Section 12-54-25(D) mandates that “the rate of interest on underpayments and overpayments is established by the department in the same manner and at the same time as the underpayment rate provided in Internal Revenue Code Sections 6621(a)(2) and 6622.” SC Information Letter #24-11 publishes the interest rates for the periods from September 1, 1985, to September 30, 2024.

Section 12-54-25(B) explains:

For purposes of this section, a tax is due on the last day provided for its payment, without regard for any extension of time for payment and without regard for or to any assessment under Section 12-60-910. Stamp taxes and any other tax for which no payment date is provided are due on the day the liability arises.

In this case, the admissions tax returns should have been filed monthly during the Audit Period. Therefore, the liability arose during the Audit Period. Petitioner argues that the tax was not due until this Court issued its order. While this Court confirmed that the tax was in fact due, the tax

² Although not precedent, in an unpublished decision Anonymous Taxpayer v. S.C. Dep't of Rev., 2008-UP-124, available at 2008 WL 9837290, the Court of Appeals, citing to State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) found it lacked appellate jurisdiction in the matter because Appellant failed to pay or post a bond for the tax and interest prior to the appeal to the circuit court pursuant to section 12-60-3370. At the time, appeals from the ALC went to the circuit court.

liability was incurred during the Audit Period. Petitioner’s interpretation to the contrary leads to an absurd result. See Duke Energy Corp. v. S.C. Dep’t of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) (a statute will not be construed to lead to absurd results).

Interest exists because the present value of money generally is greater than the future value of money. Interest neutralizes the effect of one party having the use of another party’s funds. Under Petitioner’s interpretation, no rational taxpayer would pay any tax until ordered to do so by a court. Adopting the Petitioner’s position would grant it an interest-free loan from the State. The Legislature could not have intended such an absurd result. Further, Petitioner conflated prejudgment interest in Title 34 with tax interest in Title 12. These are two entirely different types of interest, and the interpretation of Title 34 interest cited by Appellant is irrelevant to the procedural requirements necessary to perfect a tax appeal from the Administrative Law Court. Whether a taxpayer chooses to pay or post a bond for the tax, the amount must include interest accruing from the Audit Period.

CONCLUSION

“All taxes” under section 12-60-3370 includes interest accrued from when the tax was due. The following amounts were calculated by the Department through the date of the hearing on August 28, 2024³:


Tax	\$ 33,998.40
Penalty	\$ 15,915.60
Interest	\$ 7,842.52

ORDER

IT IS THEREFORE ORDERED that the amount that must be paid, or bond posted, to perfect an appeal pursuant to section 12-60-3370 in this matter is \$41,840.92.

AND IT IS SO ORDERED.

September 4, 2024
Columbia, South Carolina


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

³ Interest and penalties will continue to accrue while the remand and appeal are pending.

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

September 4, 2024
Columbia, South Carolina

