

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM AIKEN COUNTY
William P. Keesley, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2023-000442
Case No. 2021-CP-02-02323

Mark Gregory Thompson and Jane Page Thompson, individually and
behalf of all those similarly situated, Appellants,

v.

Clay Killian, in his official capacity as Aiken County Administrator, Jason
Goings, in his official capacity as Treasurer of Aiken County, Aiken
County Council, Aiken County, City of Aiken, Aiken Council, and Stuart
Bedenbaugh, in his official capacity as City Manager of Aiken, Respondents.

**MEMORANDUM IN SUPPORT OF
RESPONDENTS' PETITION FOR REHEARING**

The Respondents have petitioned this Court for a rehearing of its recent published decision in *Thompson v. Killian*, Op. No. 28305 (S.C. S.Ct. filed November 5, 2025). The Respondents respectfully submit that the following points were overlooked or misapprehended by this Court:

I.

The trial court ruled that the Appellants' class action lawsuit is barred by the catchall provision in Section 12-60-80(C) and its construction by this Court in *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020). Section 12-60-80(C) provides as follows:

Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Court or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.

S.C. Code Ann. § 12-60-80(C). (Emphasis added).

In its opinion in the case at bar, this Court ruled that the “catchall clause” in Section 12-60-80(C) bars only class actions against the South Carolina Department of Revenue and not political subdivisions such as Aiken County and the City of Aiken. The Court writes: “When read in the context of the entire RPA, subsection (C) does not bar class actions against political subdivision in cases unrelated to value-based property taxes.” (Slip Op. at 7).

The Court is respectfully requested to reconsider its narrow reading of Section 12-60-80(C), which in effect overrules its decision in *Aiken*. To be clear, Section 12-60-80(C) identifies and prohibits two distinct categories or types of class actions. The first distinct category is a class action “for the refund of taxes” which “may not be brought as a class action in the Administrative Law Court or any court of law in this State.” The second distinct category is “any other class action brought in this State” in which “the department, political subdivisions, or their instrumentalities” are named a defendant.

Despite the fact that Section 12-60-80(C) describes two distinct categories of class actions, the Court has narrowly determined that the first category bars class actions regarding any type of taxes involving the Department of Revenue as well as only value-based property taxes imposed by a political subdivision, while the second category bars “any other class action” brought *only against the Department*. In effect, the Court has judicially stricken the words “political subdivisions or their instrumentalities” from the statute. In other words, the Court has rendered those words absolutely meaningless.

In doing so, the Court has chosen to overrule its decision in *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020), without expressly stating that is what it is doing. In *Aiken*, this Court held that “subsection 12-60-80(C) indicates no intent to limit or restrict the general words ‘any other class action’ in the catchall clause of subsection (C) to the specific subject of ‘taxes’ set forth in the first portion of subsection (C).” 839 S.E.2d at 99. Thus, the *Aiken* Court broadly construed “any other class action” consistently *with its plain meaning* and concluded that “the plain language of subsection (C), by itself, clearly prohibits the instant action from proceeding as a class action.” 839 S.E.2d at 100. The same should be true in the case at bar.

Nonetheless, the Court has now determined that the “catchall clause” of Section 12-60-80(C) should be read only as a prohibition on class actions that can be brought against the Department of Revenue. However, as indicated, that reading renders meaningless and effectively *deletes* from the statute the words “political subdivisions or their instrumentalities.” Instead, as the entirety of the plain language of the “catchall clause” explicitly states, the prohibition on class actions applies not only to the Department of Revenue but also to “political subdivisions or their instrumentalities” which is inclusive of the Respondents in this case.

The Court actually acknowledges that its ruling “appears incongruous” (Slip Op. at 8), and welcomes the General Assembly to take “remedial” action. (Slip Op. at 9). The Court claims to be “applying statutory law as written” (Slip Op at 8), but respectfully the Court is doing the precise opposite. There can be no denying that the Court has judicially stricken the words “political subdivisions or their instrumentalities” from the “catchall clause.”

It should also be reiterated and emphasized that *Aiken* did not involve a purported class action to recover a refund of taxes. Instead, the class action was intended to recover refunds of amounts garnished from the putative class members’ wages by the Department of Revenue to

satisfy delinquent debts they owed to other governmental entities, including debts owed to hospitals for medical services, student loan debt, tenant debt, and child care debt, *all of which are subject matters beyond the scope of the RPA*. Yet, the *Aiken* Court concluded that the “catchall clause” in Section 12-60-80(C) applies nonetheless to a class action designed to obtain a refund of garnished wages to pay a myriad of debts.

Most importantly, this Court was correct in *Aiken*. Contrary to what the Court has done in this case, its interpretation of the “catchall clause” in *Aiken* did not simply strike from the statute the words “political subdivisions or their instrumentalities” and render such language absolutely meaningless. Instead, the Court in *Aiken* was faithful to the plain meaning of the language used by the General Assembly.

The Court now justifies its re-write of the “catchall clause” to delete the words “political subdivisions or their instrumentalities” on the premise that the “catchall clause” cannot apply to cases that do not fall within the scope of the RPA and the limited legislative intent as expressed in Section 12-60-20. However, as explained above, the plaintiffs in *Aiken* challenged the garnishment of wages to pay delinquent debts owed by taxpayers to other governmental entities. None of that falls within the scope of the RPA; yet, the *Aiken* Court found (and correctly so) that the “catchall clause” of Section 12-60-80(C) barred that action as proceeding as a class action. The *Aiken* Court applied the plain meaning of the language in the “catchall clause” and certainly did not re-write the statute nor strike certain words from the statute.

In sum, the General Assembly clearly intended Section 12-60-80(C) to have a broad scope – one that goes even beyond the strict confines of the RPA. That is evident in the specific language used in the “catchall clause.” On rehearing, the Court is respectfully requested to apply the “catchall clause” of Section 12-60-80(C), as it was written and intended, so as to bar the Appellants’ attempt to proceed as a class action.

II.

In its opinion, this Court ruled that the “road maintenance fees do not fall within the RPA’s definition of taxes,” and as a result, the “jurisdictional bars” of the RPA “do not apply,” meaning that “the trial court retained subject matter jurisdiction.” (Slip Op. at 7). The Court focuses on the definition of “tax” or “taxes” in Section 12-60-30(27) of the RPA, which states: “except when the context clearly indicates a different meaning,” the terms tax or taxes “mean 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 of Revenue.” S.C. Code Ann. § 12-60-30(27). The Court explained that the road maintenance fees are not “taxes” under Title 12 nor collected by the Department of Revenue, and as a result, do not satisfy the definition of “taxes” under the RPA. However, the Court overlooked the important statutory qualifier in the definitional section of Section 12-60-30, which states “*except when the context clearly indicates a different meaning.*” S.C. Code Ann. § 12-60-30. (Emphasis added). Thus, the definition of “taxes” is a flexible one and should be construed as having a different meaning where the context so dictates. To that point, the context of Section 12-60-80 requires that “taxes” be given a broader meaning consistent with the trial court’s analysis.

Importantly, any action for the wrongful collection of taxes falls within the scope of the RPA. Section 12-60-80(A) provides that “[e]xcept as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.” S.C. Code Ann. § 12-60-80(A). Prior to the enactment of the RPA in 1995, there was a patchwork of statutory provisions that allowed for taxpayers to pay taxes under protest and then sue to seek a refund. Of note, this Court has recognized that “[t]he right to recover taxes from the State was created by statute and was created after the adoption of our constitution.” *C.W. Matthews Contracting Co.*,

Inc. v. South Carolina Tax Commission, 267 S.C. 548, 230 S.E.2d 223, 226 (1976). In fact, “[t]he right to recover taxes from the sovereign was not recognized by this Court in 1868.” 230 S.E.2d at 225. This Court in *Matthews* further held that “[t]he right is not in the nature of a common law action” but rather “the statutory recovery of taxes paid to the government is a unique proceeding.” 230 S.E.2d at 226.

Accordingly, there must be a *statutory mechanism* for a taxpayer to seek the recovery of taxes. From 1995 until present, that statutory mechanism is exclusively the RPA. The RPA replaced prior statutes allowing for the recovery of taxes paid under protest. *See*, 1995 Act No. 60, § 4.I. The reason for that is the RPA was intended to be the exclusive mechanism for a taxpayer to bring an action for the wrongful collection of taxes, just as Section 12-60-80(A) states. In that respect, the RPA was not limited to taxes imposed by Title 12 or those collected by the Department of Revenue. As intended by the General Assembly, the RPA should be read broader than the Court has read it in its decision in this case. The RPA should be read so as to include within its scope any taxes whether collected by the Department of Revenue or any political subdivision, including any taxes imposed under Titles 4 and 6. The RPA’s repeal of all existing statutes that allowed a taxpayer to litigate the illegal or wrongful collection of taxes prior to 1995 is clear evidence of that legislative intent.

In sum, the Court is urged to reconsider its narrow reading of the term “taxes” in the RPA and to conclude that the RPA is the exclusive mechanism by which a taxpayer may seek a remedy for the illegal or wrongful collection of taxes. There is no other statutory basis for such a claim, and as this Court has previously held in *Matthews*, there is no action nor remedy at common law for the refund of taxes.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that the Court rehear its decision in this case in part and affirm the trial court's ruling that the circuit court lacks subject matter jurisdiction over the Appellants' claims including their attempt to commence the case as a class action. The Respondents further request that the Court affirm the trial court's ruling that the Appellants' exclusive remedy is pursuant to the RPA and must be pursued in the Administrative Law Court.

Respectfully submitted,

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