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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINSTRATIVE LAW COURT
Debra Durden, Administrative Law Court Judge

Opinion No.: 6154
Case No. 2021-CP-08-00513
Appellate Tracking Number 2024-000962

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

vs.

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

PETITION FOR REHEARING *EN BANC*

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As authorized by Rule 221(a) of the *South Carolina Appellate Court Rules*, the Appellant moves for an Order of the Court granting the Appellant a rehearing and re-briefing of the legal issues raised in Opinion No. 6154. Appellant additionally moves for a rehearing *en banc* because the panel decision reached in Opinion No. 6154 is inconsistent with prior precedent, creates a newly imposed condition limiting judicial review, and disregards the Constitutional grant of judicial review as a matter of right in Article I § 22. The Opinion under review imparts an unsupported limiting condition to § 12-60-3370, S. C. Code, ann. notwithstanding the statutory text contains no such condition or limitation. As discussed in the supporting memorandum, Appellant secured the contested tax amount in controversy by posting a cash deposit and irrevocable assignment and complied fully with the Administrative Law Court's Order on remand. Finally, South Carolina precedent favors controversies being decided on the merits especially where an alleged procedural deficiency is easily correctable and the Department of Revenue cannot demonstrate any prejudice by the case being decided on the merits since a cash deposit of principal and all accrued interest terminates future interest.

Based on the violation of Article I § 22, the errors of law and fact, *stare decisus*, and the absence of prejudice to the Department of Revenue, Appellant respectfully requests the Court to withdraw Opinion No. 6154, grant rehearing, and place the matter before the entire Court of Appeals because of the profound legal issues raised and the lack of consistency with prior opinions.

Respectfully submitted.

August 10, 2026

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MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

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The petition for rehearing is based on the Court's overlooking and failing to follow important Constitutional privileges as well as matters of fact and law regarding the application of the rules of statutory construction and overlooking the fact that Appellant's bond stops future interest. The Opinion under review overlooks and misapprehends facts and law as follows:

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DISCUSSION

1. The Court of Appeals lacks authority to abrogate the Constitutionally established right of judicial review.

As set out in the Appellant's brief on page 10, the appellate jurisdiction is set by the South Carolina Constitution, specifically in this case, Article I, § 22. § 14-8-200(3), S. C. Code, ann. specifically limits the Court of Appeals from taking up Constitutional questions, limiting the Court from considering:

> (3) a final judgment involving a challenge on state or federal grounds, to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance; however, in a case where the Supreme Court finds that the constitutional question raised is not a significant one, the Supreme Court may transfer the case to the court for final judgment;

As discussed throughout, while appellate courts can address procedural deficiencies touching on appellate jurisdiction, the Opinion under review imposes a novel condition the Court asserts is necessary to invoke judicial review by imposing a limitation at variance with the General Assembly's appeal bond statute. Moreover, as also discussed throughout, the Court's judicially imposed limitation is based on an error of law that the Department of Revenue is being deprived of future interest. The law is clear that after posting an appeal bond, future interest ceases to accrue. See *Duval* and *Renaissance* discussed in detail below. *Duval v. Heritage Life Ins. Co.*, 339 S.C. 616, 529 S.E.2d 566 (Ct. App. 2000), *Renaissance Enterprises, Inc. v. Ocan Resorts, Inc.*, 326 S.C. 460, 483 S.E.2d 796, *certiorari* granted, reversed 394 S.C. 324, 513 S.E.2d 617 (1997) It is also error to graft a limiting condition on § 12-60-3370 that the General Assembly did not include, and this judicial statutory revision violates both the guarantee of Article I, § 22's judicial review and the rules of statutory construction. The distinction between subject matter jurisdiction and appellate jurisdiction is thoroughly analyzed in Appellant's Brief at pages 10, 18, 26-30 and Appellant's Reply Brief at pages 11-18. While the appellate courts can demand litigants adhere to statutory constraints, it cannot rewrite the statutes that permit appeals. Appellant jurisdiction can be lost by failing to appeal in time, failing to pay a filing fee, failing to address an issue on appeal, or failing to file pleadings, but South Carolina jurisprudence has never withheld appellate jurisdiction to a Constitutionally mandated judicial review based solely on a demonstrably erroneous ground that it is protecting the Department of Revenue's right to future interest: "The interest generated from the IOLTA account is paid to the Bar Foundation and is therefore not available to satisfy the accrued interest on the tax debt should Respondent prevail." (Opinion under review at page 4) This conclusion is not only based on a demonstrable error of law since tendering the appeal bond stops future interest but also deploys a power the Court does not possess either Constitutionally or (as discussed below) to ignore the rules of statutory construction that require courts to adhere to the statutes as written. When a party appealing a case tenders the disputed funds into escrow along with an irrevocable assignment, such deposit stops further accrual of interest. *Renaissance Enterprises, Inc. v. Ocan Resorts, Inc.*, 326 S.C. 460, 483 S.E.2d 796, *certiorari* granted, reversed 394 S.C. 324, 513 S.E.2d 617 (1997):

> In *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995), we held a judgment debtor's deposit of funds into court pursuant to Rule 67 pending his own appeal stops the accrual of interest on the judgment. See also *Small v. Pioneer Machinery, Inc.*, 330 S.C. 62, 496 S.E.2d 884 (Ct.App.1998). The rationale was that "such a rule encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available." 317 S.C. at 442, 454 S.E.2d at 896. (In reversing the Court of Appeals' finding that contractual interest stopped accruing with a deposit into Court, the Supreme Court nonetheless reached the merits of the case.)

The purpose of tendering a cash bond, and accrued interest, for the entire amount in dispute is to: (1) guarantee a fund to pay a judgment without going through collection efforts, and (2) to **shut off the accrual of interest!** The Opinion under review conflates two legally different forms of interest: (1) the interest accrued on the underlying tax liability, which Appellant paid in full, and (2) interest earned on deposited funds, which ends with the posting of the bond. The Appellant's deposit of all principal and all accrued interest and his irrevocable assignment (which the Court never mentions) provides the first, and the application of law prevents the second. The only reason deposits into court exist is to preserve recovery for a prevailing party freeze the debt to the amount paid into a court or a bond. See Rule 67, *South Carolina Rules of Civil Procedure*: "A judgment debtor's deposit of funds into court pending the debtor's own appeal stops the accrual of interest on the judgment." *Duval v. Heritage Life Ins. Co.*, 339 S.C. 616, 529 S.E.2d 566 (Ct. App. 2000) **Rule 67 instructs the Clerk of Court** to deposit the funds in any federally insured bank, and Appellant's disputed principal amount and all accrued interest are deposited in a federally insured bank no different than if the Clerk of Court handled the deposit. Unlike a Clerk of Court's account, lawyers' IOLTA accounts are highly regulated by the South Carolina Supreme Court. In addition, the Department of Revenue is insured against loss. There are more rules regulating the conduct of lawyers than regulating the conduct of Clerks of Court. As stated above, Appellant's deposit is accompanied by an irrevocable written pledge to the Department of Revenue. How this might be different from or less secure than a § 12-60-3370 "bond" the Opinion under review never says. **Because the Administrative Law Court lacks a Rule 67** or a Clerk of Court who can receive and hold money, Appellant followed the identical procedure laid out by Rule 67. Moreover, as discussed in more detail below, even if there were a qualitative difference, the remedy is to correct the deficiency, not dismiss the case and deny a taxpayer judicial review. The Opinion under review functions like a super legislature, rewriting § 12-60-3370 to include a limiting condition the General Assembly did not. The statutory appeal bond statute requires only a "bond" **without any limitation on the form**. South Carolina jurisprudence does not permit *ad hoc* limitations on statutes that provide constitutionally protected judicial review, and the Opinion under review's conclusion that the Department of Revenue is deprived of future interest is an obvious error because the Court overlooks the fact that one of the two purposes of a deposit into escrow is to shut off future interest:

> Duval argues against precedent that a judgment debtor should not be allowed to avoid post-judgment interest by depositing the amount of the judgment with the court. We disagree. In *Russo v. Sutton*, [fn.5] the supreme court held a judgment debtor's deposit of funds into court pursuant to Rule 67, SCRCP, pending the debtor's own appeal stops the accrual of interest on the judgment. The rationale was that "such a rule encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available."[fn. 6] This court has followed that rule. [fn. 7]
>
> The court of appeals is bound by the decisions of the supreme court.[fn. 8] Where the law is unmistakably clear, this court has no authority to change it. [fn. 9] We affirm the trial court on this issue.
> *Duval v. Heritage Life Ins. Co.*, 339 S.C. 616, 529 S.E.2d 566 (Ct. App. 2000)

In short, the Opinion under review denies Appellant fundamental, constitutionally protected due process based on a newly created, undisclosed limitation on bonds that does not exist and which directly conflicts with established case law that shuts off future interest when the disputed amount is tendered.

2. The Court improperly rewrites the General Assembly's statute governing tax appeals.

§ 12-33-3370, S. C. Code, ann. is not ambiguous. It contains no limitation on bonds, and the rules of statutory construction prohibit the Opinion under review from inventing a novel limitation. In *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000), the Supreme Court defined the rule of statutory construction, which the Opinion under review made no effort to apply:

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. V. State Budget and Control Bd*., 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).
>
> . . .
>
> The canon of construction *"expressio unius est exclusio alterius"* or *"inclusio unius est exclusio alterius"* holds that "to express or include one thing implies the exclusion of another, or of the alternative." *Black's Law Dictionary* 602 (7th ed. 1999). Section 1-3-240(C) does not specifically exempt the Santee Cooper Board of Directors from its operation, as it does ten other boards. The fact that the Santee Cooper Board of Directors was not included in the list of exclusions implies that the General Assembly intended for section 1-3-240(B) to apply to the Board. "The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed." Norman J. Singer, *Sutherland Statutory Construction* § 47.23 at 227 (5th ed. 1992) (citations omitted).

Moreover, as quoted below on page 14, the *Revenue Act*, which the Opinion under review, gives no weight, requires liberal construction in favor of the taxpayer.

The Opinion under review never engages, let alone analyzes the salient question the Court raised for the first time: Does § 12-33-3370, S. C. Code, ann. prohibit a bond deposited in a trust account because it deprives Respondent of future interest? Instead, without citation to a single authority, the Court declares and rewrites a statute to insert a novel limitation the General Assembly did not include to restrict judicial review. This court-created limitation is based on a demonstrably erroneous ground. The Opinion under review never explains how cash deposits in a federally insured bank for the full amount in dispute accompanied by an irrevocable, written pledge is not a bond under the statute other than to rely on the erroneous propositions that (1) the Department of Revenue is entitled to future interest after Appellant posts a bond, and (2) lawyers are untrustworthy. It is settled law that once a debtor tenders the disputed funds, future interest stops. The Opinion under review contains an inferential conclusion that because the money is in an IOLTA account under an irrevocable assignment to the Department of Revenue, that Appellant's counsel is unreliable and will violate the rules regulating lawyers' trust accounts. Lawyers' trust accounts are more secure than insurance companies as recent history demonstrates *passim*. Lawyers trust accounts are highly regulated. See *South Carolina Appellate Court Rules*, Rule 417, Rules 1 "Recordkeeping Generally," Rule 2, "Client Trust Account Safeguards, and especially Rule 407, *Rules of Professional Conduct*, Rule 1.15 Safekeeping Property. See, particularly, subsection (d) of Rule 1.15:

> Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client **or third person** any funds or other property that the client **or third person** is entitled to receive, and, upon request by the client or third person, shall promptly render a full accounting regarding such property. (emphasis added)

It was therefore shocking that oral argument generated questions about whether Appellant's counsel would obey the rule, an impertinent and unsupported inference.

As discussed above, the Opinion under review skirts these facts by protecting the Department of Revenue's right to future interest even though future interest ends with the deposit. That was the whole purpose of the Court's July 18, 2024, Order of Remand and the Administrative Law Court's September 4, 2024 Order on remand! The Administrative Law Court determined the amount necessary to be posted to appeal, and the Appellant complied, also filing an amended notice of appeal on September 26, 2024. The Court's reliance on the erroneous conclusion that the deposit deprives the Department of Revenue of future interest is erroneous because it is in direct conflict with established law that tendering the disputed amount shuts off future interest. Thus, the Opinion under review is controlled by a clear error of law. The Opinion under review does not cite a single case, statute, policy, or tradition that supports a finding that a deposit into escrow accompanied by an irrevocable pledge fails to meet the requirements of § 12-60-3370. No one believes an insurance company's "bond" is qualitatively different from (or better than) a "cash deposit bond." See Rule 67 "Deposit in Court" of the *South Carolina Rules of Civil Procedure*. **There is no comparable rule 67 in the Administrative Law Court.** (Rule 68 lets Administrative Law Court judges in their discretion apply *Rules of Civil Procedure*, but the Administrative Law Court never invoked this rule.) Because the General Assembly did not include a limitation on bonds in a clear an unambiguous statute, the appellate "court has no right to impose another meaning." *Hodges v. Rainey, ibid.*

3. The Court overlooks that the Department of Revenue never appealed the Order of the Administrative Law Court setting the escrowed appeal bond, which became the law of the case and the cash bond deposit cut off future interest.

The Department of Revenue Opinion raises the jurisdiction issue for the first time on appeal. Normally, this would be an immaterial statement, but here, this Court denied the motion to dismiss and remanded the issue to the Administrative Law Court. Appellant agrees this Court remanded the bond issue without deciding the jurisdiction issue. Footnote 3 on page 4 says: "We likewise reject Appellant's argument that this court's earlier denial of Respondent's motion to dismiss is dispositive. The court's order did not address the merits of the motion and therefore has no preclusive effect." The July 18, 2024 Order of Remand to the Administrative Law Court directed that Court to set the amount of the bond. There are no restrictions in that Order: "After careful consideration, the motion to dismiss is denied; however, nothing in this order prevents the parties from raising the issue of jurisdiction in their briefs." (Order filed July 18, 2024) This Court knew about the bond objection, declined to dismiss the appeal, remanded the matter to the Administrative Law Court to determine what was required to perfect the appeal bond. The Administrative Law Court set the amount, and Watertoys complied, and filed an Amended Notice of Appeal on September 26, 2024. The July 18, 2024, Order of remand directed the Administrative Law Court to determine the sufficiency of the appeal bond, and on September 4, 2024, it issued an Order requiring Appellant to include all accrued interest in the previously posted cash bond but said nothing about the bond being improperly placed in an IOLTA account, presumably because the Administrative Law Court understood that posting an appeal bond cut off future interest. That is the universally applied rule, and after full briefing and a hearing, the Administrative Law Court issued its Order on September 4, 2024, directing Appellant to include **accrued** interest to perfect the appeal bond. Appellant filed an Amended Notice of Appeal of this additional requirement on September 26, 2024. The Department of Revenue accepted the ruling, which is the law of the case subject only to Appellant's amended notice of appeal.

The Court's subject matter jurisdiction is not up for debate because jurisdiction is Constitutionally conferred by Article I, § 22 and statutorily conferred by § 14-8-200, S. C. Code ann. Subsection (b) of that statute reserves Constitutional questions for the sole authority of the Supreme Court. Neither the Administrative Law Court nor this Court is permitted to restrict the application of the Constitution or add a limitation to § 12-60-3370 that the General Assembly did not include. As discussed more fully above in the discussion of the rules of statutory construction pertaining to § 12-60-3370, Appellant fully complied with that statute, which places no limitations or restrictions on the types a bond a taxpayer is permitted to post. The Opinion under review impermissibly rewrites a statute to impose a novel limitation not authorized by statute. No such limitation is contained in the statute. Importantly, as also discussed above, this Court grounds its reasoning on a demonstrably erroneous assumption that the Department of Revenue is entitled to future interest. It is not because posting the bond shuts off future interest! See *Duval v. Heritage Life Ins. Co.*, 339 S.C. 616, 529 S.E.2d 566 (Ct. App. 2000 discussed in detail on page 7.) Thus, the faulty conclusion that because the interest in an IOLTA account goes to the South Carolina Bar and not the Department of Revenue the Court of Appeals can restrict judicial review is legal error. Once a debtor posts a bond, future interest ceases to accrue. The Department of Revenue's has no right to demand future interest on a disputed amount once an appeal bond is posted. Such a demand not only disobeys settled law but also conflicts with both the General Assembly's *Revenue Act* and the Department of Revenue's own stated policy. Both the Revenue Act's enabling statute, § 12-60-20, quoted above, "Taxpayer Bill of Rights," § 12-58-10, *et. seq*. and the Department of Revenue's own mission statement state that the purpose of taxpayer appellate process requires liberal construction to achieve "fairness":

> Our mission is to administer the revenue and regulatory laws of the State with integrity, effectiveness and fairness to all taxpayers, while maintaining the highest security and the protection of taxpayer information." *S. C. Dept. of Revenue Mission Statement*

There is nothing fair about denying a taxpayer his day in Court by rewriting a statute to create an undisclosed limitation *du jour*. While the Court possesses appellate jurisdiction to deny appeals for litigants who fail to adhere to *Appellate Court Rules*, the Opinion under review imposes an unwritten bar to jurisdiction to Appellant's prejudice, which is both a violation of the Department of Revenue's obligations and legal error. The General Assembly enacts the jurisdictional requirements, and the appellate courts cannot rewrite them to impose judicially created restrictions as this Opinion does.

The Administrative Law Court's September 4, 2024 Order answers this Court's question as to what Appellant is required to do to comply with the statute. Appellant complied with the Court's Order. Nothing in that process notified Appellant that the location or form of the security remained independently insufficient or incapable of correction after remand. Even though the Order of Remand reserved the parties' right to brief a jurisdictional issue, the Administrative Law Court set the appeal bond with which Appellant complied and filed a second Notice of Appeal on September 26, 2024. The Administrative Law Court never mentioned the alleged inadequacy of an irrevocable bond or how a deposit into an IOLTA account accompanied by an irrevocable assignment was insufficient nor did it require any remedy to address a putative deficiency. The Opinion under review never mentions the irrevocable assignment other than to suggest at oral argument that nothing stops a lawyer from disobeying the assignment, either overlooking or forgetting that the South Carolina Supreme Court highly regulates lawyers' trust accounts and any lawyer misapplying trust funds is subject to disbarment. Furthermore, deposits in lawyers' trust accounts are insured by Rule 411 *Appellate Court Rules*, "Lawyers' Fund for Client Protection."

Subsection (c)(1) specifically protects the "third party" Department of Revenue. (The oral argument comment was ambiguous as to whether the Court views all lawyers or only Appellant's lawyer as potentially unethical. Either way, the Court's question overlooked the extensive regulation on lawyers' trust accounts and forgot that such accounts are separately insured to protect both clients and third parties, specifically the Department of Revenue.) The Department of Revenue took no appeal from the Administrative Law Court's September 4, 2024 Order (R.O.A. page 16), and that un-appealed Order is the law of the case except for Appellant challenging the Court's conclusion that interest is not a penalty. Obviously, the Opinion under review never reached this or any of the legal issues raised.

Since the Administrative Law Court settled the issue without ruling on the putative deficiency after remand from this Court, from which there was no appeal, the Department of Revenue has waived the right to litigate an issue not addressed on remand. "It is axiomatic that an issue cannot be raised for the first time on appeal but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998), *Grant v. South Carolina Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995) "**An issue is not preserved where the [circuit court] does not explicitly rule on an argument** and the appellant does not make a Rule 59(e) [SCRCP] motion to alter or amend the judgment." (emphasis added) The Department of Revenue cannot remain silent before the Administrative Law Court and then reassert a jurisdiction bar after remaining silent on remand. Such a process amounts to a party renewing an issue the first time on appeal. This procedure violates Article I §22, § 12-60-3370 and the fundamental fairness the Department of Revenue promises § 12-60-20, S. C. Code, ann:

> It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue and a

> dispute concerning property taxes. The South Carolina Revenue Procedure Act must be interpreted and construed in accordance with, and in furtherance of, that intent.

The Opinion under review does the opposite, rewarding sharp practice.

The Administrative Law Court was well aware of the status of the appeal bond at the time it took up the case because the Department of Revenue filed its Motion to Dismiss on June 19, 2024, 3 months before the remand hearing at the Administrative Law Court. As the record demonstrates, the Administrative Law Court found the bond sufficient requiring **only** that an additional deposit of interest be added to perfect the appeal bond, a condition the Appellant immediately fulfilled:

> **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.
> (Sept. 4, 2024, Order on Remand, page 19 of Record on Appeal)

The Department of Revenue accepted this ruling, which is the law of the case. The Department of Revenue cannot argue a procedural objection for what is tantamount to raising it for the first time on appeal when it did not ask the Administrative Law Court for a ruling. In light of the Department of Revenue's statutory obligation to act fairly, it cannot remain silent before the trial court and then try to prevent a meritorious appeal of a decision controlled by palpable errors of law. "An unappealed ruling is the law of the case and requires affirmance." *Transp. Ins. Co. & Flagstar Corp. v. S. C. Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687 (2010) "Appellate courts in this state, like well-behaved children, do not speak until spoken to and do not answer questions they are not asked." *Transportation Insurance Company v. South Carolina Second Injury Fund*, 298 S.C. 255, 39 S.E.2d 732 (1989) quoting *C. Ray Miles Constr. Co. v. Weaver*, 296 S.C. 466, 469 n. 10, 373 S.E.2d 905, 909 n. 10 (Ct. App. 1988) The Department of Revenue waived its right to ask a question for the first time on appeal when it remained silent on remand.

Opinion No. 6154 denies Appellant a Constitutional privilege based on its erroneous conclusion that Appellant is not continuing to pay future interest that is not required. Appellant has a fundamental right to be judged on the merits because he complied precisely with § 12-60-3370 S. C. Code, ann. Since posting the bond cuts off future interest, the Opinion under review is grounded upon an error of fact and law.

Before moving on to a detailed discussion of specific facts "overlooked or misapplied" (Rule 221(a), *S. C. Appellate Court Rules*), some consideration of remedy is appropriate. The Opinion under review does not question subject matter jurisdiction; rather, it erroneously concludes appellate jurisdiction is lacking because (1) § 12-60-3370 does not allow a "bond" to rest in an IOLTA account and (2) the Department of Revenue is deprived of future interest because interest in IOLTA accounts go to the Bar and not to the Department of Revenue. Assuming *arguendo* the Court reached the correct conclusion (which is disputed), the remedy is never dismissal—especially on an important novel taxation issue—but rather issue an Order to correct an alleged deficiency. The Constitutionally bestowed right of judicial review, the *Rules of Civil Procedure*, the *Appellate Court Rules*, the *Revenue Act's* enabling statute, and even the Department of Revenue's own mission statement quoted above demand such. For example, if an appellant files an appeal in the wrong court, the Court does not dismiss the appeal; it transfers it to the right court. Rule 204 "Improperly Filed Cases." See Rule 102 "Effective Date and Repealer": "[The rules] govern all matters occurring after they take effect and also all further proceeding in matters then pending except to the extent that in the opinion of the Court their application in a particular matter pending when these rules take effect would not be feasible or would work an injustice, in which event the former procedure applies." See also the Department of Revenue's *Taxpayers' Bill of Rights* § 12-58-10, *et. seq*. South Carolina jurisprudence has always protected litigant's rights to have their cases fairly adjudicated and not dismissed on technical grounds. See *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (1990), *Mictronics Inc. v. S. C. Dep't. of Revenue*, 345 S.C. 506 548 DS.E.2d 223 (Ct. App. 2001) As the Supreme Court said in *Kyle Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 817 S.E.2d 273 (2018):

The court of appeals erred in concluding this issue was not preserved for appellate review; further, it was an abuse of discretion for the court of appeals to raise this issue sua sponte then to deny Petitioners' request to supplement the record with materials in response to the court of appeals' questions at oral argument, particularly where counsel for Pertuis conceded the Hammonds' challenge was preserved. "Judicial economy is not served when a case, ripe for decision, is decided on a procedural technicality of this nature. **In the interests of justice and fair play, cases should be decided on the merits when deficiencies of this nature can be easily corrected.**" *Silk v. Terrill*, 898 S.W.2d 764, 766 (Tex. 1995) (citation omitted) (finding an intermediate appellate court abused its discretion in denying a party's motion to supplement the record then concluding the resulting insufficiencies in the record procedurally barred the substantive consideration of the legal issues where the omitted documents had not previously been at issue and the appellate court was not in any way misled or its decision hindered or delayed); see also *Atl. Coast Builders & Contractors, LLC v. Lewis* , 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (expressing concern about the "over-zealous application" of "long-standing error preservation rules" and discouraging a "hypertechnical application" of those rules resulting in appellate arguments being procedurally barred); *Herron v. Century BMW* , 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review . . . . Imposing such a requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." (quotation marks and citations omitted)); *Wilder Corp. v. Wilke* , 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (citation omitted) ("Post-trial motions are not necessary to preserve issues that have been ruled upon at trial; they are used to preserve those that have been raised to the trial court but not yet ruled upon by it.").
Kyle Pertuis v. Front Roe Restaurants, Inc., 423 S.C. 640, 817 S.E.2d 273 (2018) (emphasis added)

If appellate courts transfer wrongly filed appeals to prevent dismissal, if the rules governing tax appeals must be liberally construed, if there is no material difference between a deposit in an IOLTA account or an insurance company, the interests of justice and fair play require this Court to provide at a minimum an opportunity to the Appellant to correct a putative deficiency before denying Appellant his constitutional right to judicial review.

4. The Court ignores the Respondent's own stated policy governing tax appeals.

As quoted above on page 14, the Department of Revenue is required to assist taxpayers in addressing tax matters, not set traps: "Our mission is to administer the revenue and regulatory laws of the State with integrity, effectiveness and fairness to all taxpayers, while maintaining the highest security and the protection of taxpayer information." *S. C. Dept. of Revenue Mission Statement* The enabling statute § 12-60-20, S. C. Code, quoted above on page 14, requires that the rules be liberally construed, but the Opinion under review does the opposite. The Respondent disobeys its governing policy here and thrown every dilatory obstruction it could to prevent the case being determined on its merits, intent on depriving Appellant of his day in court. The Department's conduct here is the same conduct this Court condemned in *Mictronics Inc. v. S. C. Dep't. of Revenue*, 345 S.C. 506 548 DS.E.2d 223 (Ct. App. 2001):

> Here, Mictronics made an error with respect to the hearing date and immediately sought relief from the dismissal. In *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 339 S.E.2d 524 (Ct.App.1986), this court found that a trial judge abused his discretion in refusing to grant a motion to set aside a default judgment granted after an answer was received one day late. The court there held that "where there is a good faith mistake of fact, and, no attempt to thwart the judicial system, there is basis for relief." 288 S.C. at 61, 339 S.E.2d at 525. This is consistent with South Carolina's policy favoring the disposition of issues on their merits rather than on technicalities. *Id.*; see also *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 153, 399 S.E.2d 439, 440 (Ct.App.1990) (finding sanction dismissing counterclaim too severe).

In this case, even if the deposit into an IOLTA account were improper, which Appellant denies, the Department of Revenue can show no prejudice by the case being decided on the merits because a "properly" posted bond ends future interest. As demonstrated above, as discussed above, the deposit shuts off future interest so the Department's claim to future interest does not exist and this is the sole basis on which the Opinion under review denies Appellant judicial review. Appellant raises numerous important public policy tax issues, and this Court's refusal to allowing Appellant to be heard is contrary long settled principles of law. It was error to dismiss the appeal and the Court should grant a rehearing and reconsideration before the entire Court of Appeals in order to achieve consistency with prior opinions, address an important, novel public policy question, and allow Appellant to be heard on the merits.

Conclusion

For reasons set forth above, the Appellant requests that this Court withdraw Opinion No. 6154 and reconsider and rehear the case because Appellant raises important tax questions of statewide importance, and the novel decision reached in this case for the first time in South Carolina jurisprudence runs counter to established precedent, statutory requirements, and above all the Constitutionally protected right to judicial review. As demonstrated above, the basis of the decision is based on the erroneous assumption that the Department of Revenue is entitled to future interest after posting the bond or that the bond posted does not comply with the General Assembly's statute because this Court inserted a limitation that does not appear in the statute. Moreover, the Opinion under review is not only inconsistent with settled case law but also creates a Constitutional question by denying Appellant subject matter jurisdiction over an issue that, at best, creates a technical deficiency easily resolved. The Opinion is also at variance with the Court's prior decisions, and in order to provide consistency, the parties should re-brief the specific findings in the Opinion under review and re-argue the case to the entire members of the Court of Appeals because the Opinion intrudes on constitutionally protected rights and fundamentally changes appellate procedure. The Department of Revenue cannot deprive Appellant of his access to judicial review especially on an issue raised for the first time on appeal. The Department of Revenue is statutorily required to provide a "straightforward" path to judicial review, and as this record demonstrates, the Department of Revenue has done exactly the opposite. The Revenue Act requires its rules to be construed liberally, and the Opinion under review does not do that. The same principle applies to appellate courts where courts prefer to treat cases on their merits and not on technicalities, especially in cases such as this where the technicality is grounded on an incorrect application of law. It is improper for an appellate court to take up a motion to dismiss in the first instance when the Administrative Law Court said nothing. See *Spence v. Spence*, 368 S. C. 106, 628 S.E.2d 869 (2006).

Finally, if this Court is going to restrict the constitutionally protected right of judicial review, Rule 204 requires a transfer the case to the Supreme Court to address a new constitutional issue and where the issue raised in this case is a novel one that deserves a fully developed record.

Respectfully, if this Court believes there is an issue with the bond, then it should at least remand the case to the Administrative Law Court for an evidentiary hearing on why the Appellant's irrevocable bond is insufficient to any other type of bond and to give Appellant an opportunity to provide an evidentiary record on the putative deficiency of the appeal bond.

Respectfully submitted.

August 10, 2026

/s/ Thomas R. Goldstein
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Aug 10 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Debra Durden, Administrative Law Court Judge

Opinion No.: 6154
Case No. 2021-CP-08-00513
Appellate Tracking Number 2024-000962

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

vs.

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

PROOF OF SERVICE

I certify that I have served the Appellant's Petition for Rehearing on the Respondent, South Carolina Department of Revenue, by depositing a copy of it in the United States Mail, postage prepaid, on August 10, 2026, addressed to the attorneys of record, Marcus Antley, 300-A Outlet Pointe Blvd., Columbia, South Carolina 29210 and by electronic mail to Marcus.Antley@dor.sc.gov.

August 10, 2026

/s/Thomas R. Goldstein
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August 10, 2026

RECEIVED
Aug 10 2026
SC Court of Appeals

Hon. Jenny Abbot Kitchings
Clerk of Court
S. C. Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

RE: *Watertoys, LLC v. S. C. Department of Revenue*
Opinion No.: 2024-000962
Appellate Tracking No.: 2024-000962
Dept. of Revenue Case I.D. 0-001-559-662
Administrative Law Court Docket No. 23-ALJ-17-0362-CC
D.O.R. File No.: 230028

Dear Ms. Kitchings,

I ask that you file the Appellant's Petition for Rehearing En Banc along with the proof of service. I understand that paper copies are no longer required, but if your office requires a paper copy, please advise. By regular mail, I am transmitting the filing fee of $50.00. Please let me know if you require anything further to perfect this filing. I thank you in advance for your attention to this request. With kind regards, I am

Very truly yours,

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enclosure: filing fee

Mr. Marcus D. Antley, III
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