

STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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MAR 31 2014

APPEAL FROM THE ADMINISTRATIVE LAW COURT **SC Court of Appeals**

The Honorable John D. McLeod  
Administrative Law Judge

Case No. 13-ALJ-17-0218-CC  
Tracking No.: 2014-000214

Eugenia Boggero, d/b/a Boggero's Portable Toilets,.....Appellant,

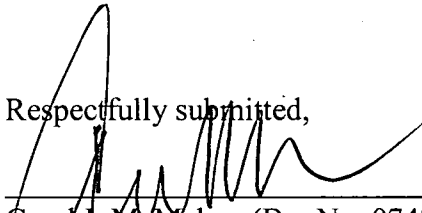
v.

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

**RESPONDENT'S MOTION TO FILE EXHIBIT TO BE INCLUDED IN THE  
RECORD ON APPEAL BY ALTERNATIVE MEDIUM**

COMES NOW the Respondent, South Carolina Department of Revenue, and pursuant to Rule 240, SCACR, respectfully requests that this Court permit the filing of Respondent's Exhibit 4 (Trans. pp. 9, 10, 59) consisting of pages 2 through 4449 to be included in the record on appeal by an alternative medium, thumb drive or compact disk as more fully set forth in the attached Affidavit and Memorandum. Opposing counsel consents with the request.

Respectfully submitted,

  
\_\_\_\_\_  
Carol L. McMahan (Bar No. 07487)  
Counsel for Litigation  
Ann Marie Thompson (Bar No. 76121)  
Counsel for Litigation

Milton G. Kimpson (Bar No. 7917)  
Chief Counsel for Litigation  
PO Box 12265  
Columbia, SC 29211  
803-898-5576  
803-896-0171 (Fax)  
Attorneys for Respondent

Columbia, South Carolina  
March 31, 2014

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Case No. 13-ALJ-17-0218-CC  
Tracking No.: 2014-000214

Eugenia Boggero, d/b/a Boggero's Portable Toilets,.....Appellant,

- v.

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

**MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION TO FILE AN  
EXHIBIT TO BE INCLUDED IN THE RECORD ON APPEAL BY AN  
ALTERNATIVE MEDIUM**

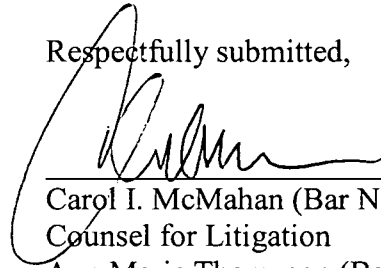
Rule 210, SCACR requires the Appellant to submit fifteen (15) copies of the record on appeal. The record on appeal consists of the documents included in both Appellant's and Respondent's Designation of Matter, Rule 209, SCACR.<sup>1</sup> Respondent's Designation of Matter to be filed April 3, 2014 includes the designation of Respondent's Exhibit No. 4 (Trans. pp. 9, 10, 59) (See Affidavit of Jean O'Connor, Exhibit A), consisting of 4,448 pages to be included in the record on appeal. Respondent submits

<sup>1</sup>Rule 209, SCACR provides that a Designation of Matter shall "set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal."

that inclusion of this Exhibit is a necessary part of the record on appeal for review by this Court. Given the tremendous cost giving rise to the provision of these voluminous documents, Respondent requests this Court allow submission of Respondent's Exhibit 4 by way of an alternative medium. Rather than including such Exhibit in the Record on Appeal as hard copy documents, the Respondent requests this Court allow inclusion of this Exhibit in the Record on Appeal by an alternative medium, thumb drive or compact disk. These alternative mediums will provide ease of access to such information to the Court as well as be less burdensome and costly on Appellant.

As noted in the Motion to which this Memorandum is attached, opposing counsel has consented to the relief sought herein.

Respectfully submitted,



Carol I. McMahan (Bar No. 07487)

Counsel for Litigation

Ann Marie Thompson (Bar No. 76121)

Counsel for Litigation

Milton G. Kimpson (Bar No. 7917)

Chief Counsel for Litigation

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March 31, 2014

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v.

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**AFFIDAVIT OF JEAN M. O'CONNOR REGARDING RESPONDENT'S  
MOTION TO FILE AN EXHIBIT TO BE INCLUDED IN THE RECORD ON  
APPEAL BY AN ALTERNATIVE MEDIUM**

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COMES NOW Jean O'Connor, Administrative Manager at the South Carolina  
Department of Revenue and being duly sworn provides:

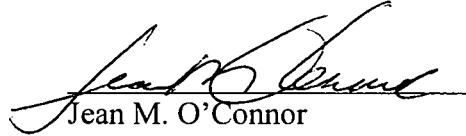
1. I am an employee of the South Carolina Department of Revenue;
2. I assisted in the compilation of Respondent's Exhibit No. 4 consisting of pages  
Bates numbered 2 through 4449 for the contested case hearing in the above  
referenced held September 12, 2013. (Trans. pp. 9, 10, 59)
3. Respondent's Exhibit 4 consists of 4,448 pages.

Exhibit A

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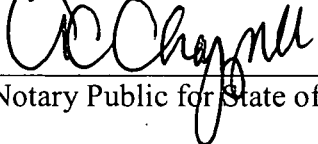
4. I have attached to this affidavit the pages of the Transcript of Hearing at the ALC giving rise to this appeal where Respondent's Exhibit 4 was entered into evidence.

FURTHER AFFIANT SAYETH NOT.

  
Jean M. O'Connor

SWORN to before me this 27<sup>th</sup>

day of March 2014.

  
\_\_\_\_\_  
Notary Public for State of South Carolina

My commission expires: 8/22/2022

Exhibit A

000006

1           into evidence just -- first part of the case.

2 ]THE COURT: All right. Do you want to hand them up  
3           or are you going to need them as you go through  
4           them?

5 MS. THOMPSON: I might need mine as I go through if  
6           you don't mind unless, Your Honor, needs a  
7           copy.

8 THE COURT: Well, let's just announce for the court  
9           reporter to take which exhibits for petitioner  
10          and respondent have been admitted without  
11          objection, and we won't have to go through all  
12          that later. But you will lead off Mr.  
13          Hemphill.

14 MR. HEMPHILL: Thank you, Your Honor. Petitioner  
15          proposes to introduce Petitioner's Exhibits  
16          One through Eighteen as -- and introduce them  
17          as evidence in the case.

18 THE COURT: And there is no objection from ---

19 MS. THOMPSON: No, sir, Your Honor.

20 THE COURT: So noted. Admitted without objection  
21          One through Eighteen for the Petitioner. Now,  
22          Ms. Thompson.

23 MS. THOMPSON: Your Honor, the Respondents have  
24          marked Exhibits Number One through Nine in this  
25          case. All department documentations, summaries

1 of invoices and many invoices that we have back  
2 here that Mr. Hemphill's looked through.

3 THE COURT: All right. Any objection, Mr. Hemphill?

4 MR. HEMPHILL: No, Your Honor.

5 THE COURT: Thank you. So Respondents Exhibit's One  
6 through Nine ---

7 COURT REPORTER: Ten.

8 THE COURT: Nine she said. The court reporter says  
9 ten.

10 MS. THOMPSON: That was my fault. Nine was supposed  
11 to be a grouping, but it's fine. We can keep  
12 it as the court reporter has it, with ten.

13 THE COURT: All right. One through Ten admitted  
14 without objection. Proceed Mr. Hemphill.

15 MR. HEMPHILL: May it please the court? Your Honor,  
16 Petitioner would call Gena Boggero to the  
17 stand.

18 THE COURT: Be sworn please ma'am. He'll swear you  
19 in.

20 COURT REPORTER: Ms. Boggero, do you solemnly swear  
21 that the testimony you are about to give will  
22 be the truth, the whole truth and nothing but  
23 the truth, so help you God?

24 MS. BOGGERO: I do.

25 GENA BOGGERO, having been duly sworn, deposes and

1           you talked about, I think it was the last  
2           invoice ---

3    A:     Uh-huh.

4    Q:     --- to the people who were building a house?

5    A:     Uh-huh (affirmative response).

6    Q:     You just -- didn't you just tell them to call  
7           you when they needed it serviced?

8    A:     Yes, ma'am.

9    Q:     So, you didn't go out there and service it once  
10           a week; is that correct?

11   A:     Yes, ma'am. That's correct.

12   Q:     All right. Ms. Boggero, I'm going to show you  
13           what's entered in the books over here but,  
14           unfortunately, I've pulled it. It's a -- I  
15           think it's Respondent's Number Four, the  
16           invoices from your business.

17   A:     Okay.

18         (Respondent's Exhibit Number Four was introduced into  
19         the record at this time.)

20   Q:     And this is a stamp that the department has put  
21           on here just to identify the number of  
22           documents that you so happily, I'm sure,  
23           provided us; over 4,000 documents. But again,  
24           we appreciate that. Anyway, I'm showing you  
25           this invoice Bates mark 86, job site 667, 18

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**PROOF OF SERVICE**

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I certify that I have served the Respondent's Motion to Include Respondent's Exhibit 4 in the Record on Appeal by Alternative Medium (including the Memorandum and Affidavit) on Eugenia Boggero, d/b/a Boggero's Portable Toilets, by depositing a copy of it in the United States Mail, postage prepaid, on March 31, 2014, addressed to her attorneys of record, Roy R. Hemphill, Esquire and Hannah K. Metts, Esquire, McDonald Patrick Poston Hemphill & Roper, LLC, P.O. Box 1547, Greenwood, S.C. 29648 and Burnet R. Maybank, III, Nexsen Pruet LLC, P.O. Drawer 2426, Columbia, S.C. 29202, on March 31, 2014.

  
\_\_\_\_\_  
Jean M. O'Connor