

RECEIVED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APR 07 2014

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

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.

APPELLANT'S REPLY TO RESPONDENT'S MOTION TO DISMISS APPEAL
WITH PREJUDICE

Appellant opposes Respondent's Motion to Dismiss Appeal with Prejudice, which was filed with the Court of Appeals on or about March 28, 2014. Appellant asserts that this Court has appellate jurisdiction to hear the appeal and that the tax, including penalties and interest, has been paid to date. (See attached Affidavit of Eugenia Boggero).

Appellant asserts that the statute, S.C. Code Ann. § 12-60-3370 (2014)¹, requiring a taxpayer to pay or post a bond for all taxes before appealing an Administrative Law

¹ South Carolina Code Section 12-60-3370 (2014) states: "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's decision to the Court of Appeals deprives Appellant of her substantive due process rights. See generally In re: Care and Treatment of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (2002) (finding that the substantive due process guarantee requires a rational basis for legislation depriving a person of life, liberty, or property). There is not a rational basis for Section 12-60-3370 requiring Appellant to pay a significant sum of purported taxes in less than thirty days before appealing a decision because the decision imposing the purported taxes may be reversed or modified by the appellate court, and thus the imposition of the purported taxes is not a final and binding decision. Moreover, the requirement to pay such taxes within such a short timeframe of a mere thirty days is an onerous burden on small businesses and individuals such as Appellant. Thirty days is an insufficient amount of time to overcome such an onerous obligation in order to not lose a right to appeal and thus infringes on Appellant's substantive due process. Section 12-30-3370 is a substantial and undue burden on Appellant and deprives her of substantive due process, and at a minimum the limited time constraints of this statutory provision violate Appellant's due process rights.

In addition, a party must generally establish prejudice as the result of another's failure to follow mandatory statutory procedure. See Rose v. Beasley, 327 S.C. 197, 489 S.E.2d 625 (1997) (where statutory pre-removal hearing was not provided, party nonetheless failed to establish prejudice where received post-removal hearing); see also Porter v. S.C. Public Serv. Comm'n, 338 S.C. 164, 525 S.E.2d 866 (2000) (reversing

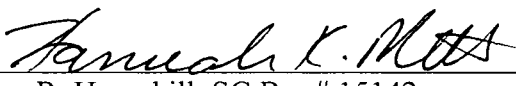
court of appeals. For property tax cases covered by Section 12-60-2140 or 12-60-2550, the taxpayer need pay only the amount assessed pursuant to the appropriate section.”

agency decision where it found substantial prejudice from lack of notice). In this case, Appellant has paid the taxes, including penalties and interest, and Respondent has not been prejudiced by Appellant's failure to pay the taxes within thirty days from the date of the Administrative Law Court's Order.

Appellant respectfully requests this Court to deny Respondent's Motion to Dismiss as Appellant's due process rights have been violated by Section 12-30-3370 and furthermore, Respondent has not been prejudiced by Appellant paying the taxes more than thirty days after the date of the Administrative Law Court Order. See generally Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 794 (1992) (holding that failure to comply with appellate court rules did not require dismissal of appeal).

Respectfully submitted,

April 4, 2014



Roy R. Hemphill, SC Bar # 15142
Hannah K. Metts, SC Bar # 72818
McDonald Patrick Poston Hemphill & Roper, LLC
P.O. Box 1547
Greenwood, SC 29648
(864) 229-2511

Burnet R. Maybank, III, SC Bar # 3699
Nexsen Pruet, LLC
P.O. Drawer 2426
Columbia, SC 29202
(803) 540-2048

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

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.

AFFIDAVIT OF EUGENIA BOGGERO REGARDING APPELLANT'S REPLY TO
RESPONDENT'S MOTION TO DISMISS APPEAL WITH PREJUDICE

COMES NOW Eugenia Boggero, who being duly sworn, provides:

1. I am the Appellant in this matter.
2. My family has operated the business known as Boggero's Portable Toilets since 1968, and I have operated the business since 2005. To my knowledge, the business has never paid sales tax.
3. I paid the sales taxes ordered by the Administrative Law Court in the amount of \$8,891.96 on or about February 27, 2014 and the penalties and interest in the amount of \$5,229.94 on or about March 28, 2014. Copies of the checks are attached hereto.
4. Payment of the sales tax and of the penalties and interest was a significant burden on me, especially since my small business had never had to pay sales tax before.

FURTHER AFFIANT SAYETH NOT.

SWORN to before me this 4th
Day of April, 2014

Eugenia Boggero
Eugenia Boggero

May L. Shusterman
Notary Public for State of South Carolina
My commission expires: 4/20/23

BOGGERO'S PORTABLE TOILET

1502 SOUTH MAIN ST 864-223-7023
P O BOX 783
GREENWOOD SC 29646

3313

67-118/532
91

DATE March 27, 2014

PAY TO THE ORDER OF S.C. Department of Revenue \$ 5,229.94

Five thousand two hundred twenty-nine and 94/100 DOLLARS



The Palmetto Bank
Upstate South Carolina
1-800-PAL BANK

FOR sales tax penalties + interest pending appeal

Alena Boggero

⑈003313⑈ ⑆053201886⑆ 011109270⑈

BOGGERO'S PORTABLE TOILET

1502 SOUTH MAIN ST 864-223-7023
P O BOX 783
GREENWOOD SC 29646

3306

67-118/532
91

DATE February 27, 2014

PAY TO THE ORDER OF S.C. Department of Revenue \$ 8,891.96

eight thousand eight hundred ninety-one and 96/100 DOLLARS



The Palmetto Bank
Upstate South Carolina
1-800-PAL BANK

FOR sales tax pending appeal

Alena Boggero

⑈003306⑈ ⑆053201886⑆ 011109270⑈

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

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.

PROOF OF SERVICE


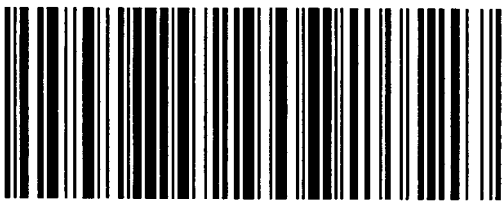
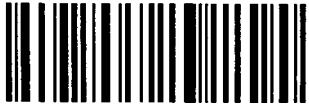
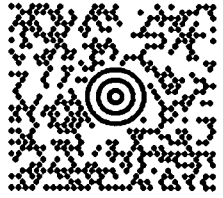
I certify that I have served Appellant's Reply to Motion to Dismiss Appeal on the South Carolina Department of Revenue by depositing a copy of it in the United States Mail, postage prepaid, on April 4, 2014, addressed to its attorneys of record, Anne Marie Thompson, Carol I. McMahan, Milton G. Kimpson, and Harry T. Cooper, Jr., Post Office Box 12265, Columbia, South Carolina 29211.

April 4, 2014



Hannah K. Metts
McDonald Patrick Poston Hemphill & Roper, LLC
P.O. Box 1547
Greenwood, SC 29648
(864) 229-2511
Attorney for Appellant

APR 07 2014
SC Court of Appeals

Reference#1: HKM - Boggero's Appeal Reference#2: HKM - 13-00349 UIS 16.2.03 WNTNWSO 48.0A.01/2014 	
BILLING: P/P	
	
UPS NEXT DAY AIR TRACKING #: 1Z E29 394 01 9499 5481 1	
	
SC 292 9-01	
SHIP TO: MCDONALD PATRICK LAW FIRM 8643881025 414 MAIN STREET GREENWOOD SC 29646 THE HONORABLE JENNY A. KITCHINGS SOUTH CAROLINA COURT OF APPEALS 1015 SUMTER STREET COLUMBIA SC 29201-3726	
MCDONALD PATRICK LAW FIRM 8643881025 414 MAIN STREET GREENWOOD SC 29646	0.8 LBS LTR 1 OF 1