

State of South Carolina)
County of Orangeburg)

In the Court of Common Pleas
C/A # 12-CP-38-00837

Jimmie Aiken, Leila Brown,)
Vernonda Cohen, Carla)
David, Anthony Sabb, James)
Ginn, and Shirley Rice, as)
named Plaintiffs)
representing a class of South)
Carolina citizens,)

Order on S.C. Code Ann. § 12-60-80(C)

Plaintiffs,)

RECEIVED

vs.)

AUG 24 2017

South Carolina Department)
of Revenue)

SC Court of Appeals

FILED FOR RECORD
WINNIFAB. CLARK
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CLERK OF COURT
ORANGEBURG, SC

Plaintiffs challenge the South Carolina Department of Revenue's ability to garnish wages to collect their purported medical bills. They moved to have the Court determine whether S.C. Code Ann. § 12-60-80(C) bars the Court from considering whether to certify this action as a class action on behalf of others whose wages are garnished to collect these kinds of debts. The Court rules that § 12-60-80(C) does not apply because this is not a tax case.

I. This case does not involve taxes.

S.C. Code Ann. § 12-60-80 of the Revenue Procedures Act provides:

(A) Except 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.

(B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons.

(C) 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.

The Department contends that § 12-60-80(C) applies because this action is for a refund of taxes as the term "taxes" is defined statutorily. *See Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017)(action for a tax refund); *Drummond v. State of South Carolina*, 378 S.C. 362, 370 at n. 5, 662 S.E.2d 587, 591 n. 5 (2008)(stating that the subsection applies "to tax cases brought in circuit court" and applying it to a challenge to a tax regulation).

Plaintiffs disagree and point to the Court's ruling in December 2012. In that ruling, the Court concluded that the Revenue Procedures Act does not apply because the medical bills and other debts at issue are not "taxes" as the term is defined statutorily or as it is commonly understood. Order dated December 19, 2012 at 3-4, citing *Great Games, Inc. v. South Carolina Dep't of Revenue*, 339 S.C. 79, 529 S.E.2d 6 (2000).

The Court concludes that this is not a tax case. The Department has not given the Court sufficient reason to reconsider its four-year old ruling.

II. Section 12-60-80(C) is limited to tax cases.

The Court has carefully reviewed § 12-60-80(C) and concludes that it applies in actions for a tax refund and in any other action over taxes. The Department wants the Court to go farther and rule that it bars class actions of any type. The Court disagrees that the statute extends this far.

At the hearing on the motion, the Department conceded that it is construing § 12-60-80(C) this way:

~~(C) 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 [The] department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.~~

The Court is not free to strike words in a statute. Statutes must be read as a whole and every word given meaning. *Lightner*, 798 S.E.2d at 558-559.

The Department reads out "political subdivisions" and "instrumentalities."

On questioning by the Court, the Department stated that its view bars all class actions of any type against any of the State's political subdivisions and instrumentalities. ^{However if this motion was correct} The Supreme Court could not have certified the class of state retirees that the Court certified in its original jurisdiction.¹ Inmates could not seek class-wide relief against the Department of Corrections over

¹*Layman v. State of South Carolina*, 368 S.C. 631, 637, 630 S.E.2d 265, 268 (2006).

their wages.² Adoptive couples could not seek class-wide relief against the Department of Social Services over their family subsidies.³

It appears to the Court that the General Assembly would have put such a comprehensive bar in Title 15 on civil procedure and not in Title 12 on taxes.

The Department next reads out the “Notwithstanding subsections (A) and (B)” clause. This directly links subsection (C) back to subsection (A) on collecting taxes and subsection (B) on circuit courts hearing disputes over taxes. The statute on the Department’s ability to collect the non-tax debts at issue is in a wholly separate chapter. S.C. Code Ann. §12-4-580(A). The same Act that added § 12-60-80(C) to the Revenue Procedures Act also added a new subsection to the statute on these non-tax debts.

It appears to the Court that the General Assembly would have barred class actions in the changes to § 12-4-580 had it intended to bar class actions over non-tax debt. It would not have directly linked subsection (C) to the statute’s other subsections on taxes.

The Department lastly strikes out the specific bar to class actions for a refund of taxes. This specification triggers the ejusdem generis rule. This rule limits “any other” clauses to items of the same general kind or type as the

²*Williams v. Dept. of Corrections*, 372 S.C. 255, 641 S.E.2d 885 (2007).

³*BLH v. Dep’t of Social Services*, C/A # 13-CP-42-1569 (S.C.Cir.Ct. Sept. 16, 2014)(certifying a class against the DSS). The Court is not citing *BLH* as authority but only to illustrate the effect of the Department’s reading.

item specified. *See, e.g., Vassey v. Spake*, 83 S.C. 566, 65 S.E. 825 (1909) (an action for damages for a trespass to land is not “any other action for damages for torts” because it is not the same kind of tort action as those specified).

Like *Vassey*, an action over medical bills and other third-party debt is not of the same kind or type as the specified action for a refund of taxes. The Department’s reading renders this specific bar surplusage. There is no need to single out tax refunds if the subsection bars all class actions of every type.

Dictates of Article III, § 17 of the South Carolina Constitution
III. ~~The Department’s reading creates grave constitutional concerns.~~ *DSG*

The Court’s view of § 12-60-80(C) is also informed by Article III, § 17 of the South Carolina Constitution. Article III, § 17 provides: “Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.” S.C. Const., Art. III, § 17. If possible, a court should construe a statute in a way that avoids implicating this provision. *See Wallace v. Sumter County*, 189 S.C. 395, 1 S.E.2d 345, 349 (1939) (construing a statute in a way that avoids Art. III, § 17 concerns).

The provision requires in part that “the title of an act must convey reasonable notice of the subject matter to the legislature and the public.” *Hercules Inc. v. South Carolina Tax Comm’n*, 274 S.C. 137, 142, 262 S.E.2d 45, 48 (1980). Section 12-60-80(C), S.C. Code Ann., was enacted as part of 2003 Acts 69. Its Title contains 201 lines. Nothing in these 201 lines notifies

anyone that the Act bars class actions in non-tax cases.

The Title begins with the word "Taxation"; the bulk of the remaining 201 lines are devoted to taxes. Within this description, the Title says, "To amend Article 1, Chapter 60 of Title 12, relating to South Carolina Revenue Procedures Act, so as to revise the manner in which and conditions under which disputes or claims with the Department of Revenue are determined and resolved." By saying "Taxation," and then describing changes to "Revenue Procedures," the Court concludes that these descriptions do not adequately notify one that the Act alters disputes or claims that do not involve taxes or tax revenues.

Other portions of the Title do notify one of changes to § 12-4-580, the statute governing the Department's ability to collect medical bills and the other non-tax debts at issue. The description does not notify one that the Act bars class-action challenges to how the non-tax debts are garnished.

Beyond concerns over notice, the Department's reading of § 12-60-80(C) multiplies the number of subjects within the same Act. Art. III, § 17 requires that an Act relate to only one subject. *Am. Petroleum Inst. v. South Carolina Dep't of Revenue*, 382 S.C. 572, 577, 677 S.E.2d 16, 18 (2009).

If the Department is correct, Act 69 applies to any subject that could be at issue in any case against the Department, the State's political subdivisions, and the State's instrumentalities. Act 69 would have as many subjects as the

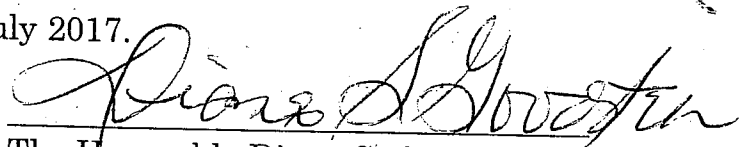
number of ways that these entities can allegedly go wrong. An Act entitled "Taxation" would include subjects as wide ranging as retirement benefits, inmate wages, and adoption subsidies.

Construing § 12-60-80(C) in context as applying only in tax cases minimizes these infirmities. The Title arguably notified legislators and the public that the Act changes how one pursues disputes over taxes. Limiting the statute to disputes over taxes also matches the Act's one-word "Taxation" title. And taxes are the subject of the bulk of the Title's provisions.

Conclusion

The Court may consider whether to certify this action as a class action.

It is so ordered this 5 day of July 2017.



The Honorable Diane S. Goodstein
Judge of the First Judicial Circuit