

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Appeal from Orangeburg County  
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

**RECEIVED**

Appellate Case No. 2017-001790

SEP 15 2017

**SC Court of Appeals**

Jimmie Aiken, Leila Brown, Vernonda Cohen, Carla David, Anthony Sabb,  
James Ginn, and Shirley Rice, as named Respondents representing a class  
of South Carolina Citizens.....Respondent,

v.

South Carolina Department of Revenue .....Appellant.

**APPELLANT’S MEMORANDUM ADDRESSING ISSUE OF APPEALABILITY  
AND, ALTERNATIVELY,  
APPELLANT’S REPLY TO RESPONDENT’S MOTION TO DISMISS APPEAL**

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## INTRODUCTION

This is an appeal from an order of the Honorable Diane S. Goodstein, Circuit Judge of the First Judicial Circuit, dated July 5, 2017, which granted Respondents/Plaintiffs' Motion to Strike portions of Appellant Department of Revenue's Answer, including a statutory defense under S.C. Code Ann. § 12-60-80(C). Section 12-60-80(C) provides a complete bar to any class action suit for the refund of taxes, and prohibits the Department of Revenue (the "Department") from being named or made a defendant in any other class action suit.

## FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed their Second Amended Complaint on October 25, 2012, alleging that the Department wrongfully collected certain delinquent debts and seeking a refund of those amounts. (See Second Amended Complaint, p. 9, attached as Exhibit A) The claims were brought as a class action, and Plaintiffs sought class certification pursuant to Rule 23, SCRPC. (See Second Amended Complaint, p. 5).<sup>1</sup> In its Answer, the Department raised S.C. Code Ann. §12-60-80(C) as a statutory defense.

On May 14, 2014, Plaintiffs filed a Motion to Strike the Department's defense under Section 12-60-80(C). (See Motion to Strike, attached hereto as Exhibit B) At a hearing on June 20, 2017, Judge Goodstein granted the Motion and directed Plaintiffs to submit a proposed order. Thereafter, Judge Goodstein entered the subject Order striking the Department's defense, finding that "§ 12-60-80(C) does not apply because this is not a tax case." (See Order, p. 1, attached hereto as Exhibit C). The Department filed a Notice of Appeal on August 23, 2017.

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<sup>1</sup> The Second Amended Complaint further alleged that the Department collected the subject delinquent debts pursuant to the Governmental Enterprise Accounts Receivable (GEAR) Program, and the Setoff Debt Collection Act (SDCA), codified at S.C. Code Ann. §§ 12-54-180 and 12-56-10 *et seq.*, respectively, and the Amended Complaint seeks a declaration that both of those acts are unconstitutional.

By letter from the Deputy Clerk dated September 5, 2017, this honorable Court requested that the parties file memoranda addressing whether the order challenged on appeal is immediately appealable. On September 6, 2017, Plaintiffs filed a Motion to Dismiss the Appeal.

### ARGUMENT

#### **1. THE TRIAL COURT’S ORDER IS IMMEDIATELY APPEALABLE BECAUSE IT AFFECTS A SUBSTANTIAL RIGHT OF THE DEPARTMENT.**

The right of appeal arises from and is controlled primarily by S.C. Code Ann. § 14-3-330. See Hagood v. Sommerville, 362 S.C. 191, 194–95, 607 S.E.2d 707, 708 (2005). Pursuant to Section 14-3-330, appellate courts have jurisdiction to immediately review the following:

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(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action . . .

S.C. Code Ann. § 14-3-330; see also *Appellate Practice in South Carolina*, 3<sup>rd</sup> Ed., (2016) (explaining criterion for whether an order is immediately appealable).

Here, the trial court’s order affects a substantial right of the Department because it strikes from the Department’s Answer a defense of immunity from suit in a class action involving the refund of taxes or other monies, and it denies the Department’s right to a particular mode of trial.

##### **a. The Trial Court’s Order Strikes a Portion of the Department’s Answer.**

Section 14-3-330(2) provides that an order that affects a substantial right is immediately appealable where it “strikes out an answer or any part thereof or any pleading in any action.” South Carolina courts have long recognized that “an order striking a portion of a pleading is immediately appealable.” P.J. Const. Co. v. Roller, 287 S.C. 632, 633, 340 S.E.2d 564, 565 (Ct. App. 1986)

(citation omitted) (noting the trial court’s order striking two defenses from the answer was immediately appealable).

Relevant to this appeal, the Supreme Court recently held that the plain language of Section 12-60-80(C) “prohibits a claim for a tax refund from being brought as a class action in any court of law in this state.” Lightner v. Hampton Hall Club, Inc., 419 S.C. 357, 367–68, 798 S.E.2d 555, 560 (2017), reh’g denied (May 3, 2017).<sup>2</sup> Moreover, Section 12-60-80(C) immunizes the Department of Revenue from being named or made a defendant in any other class action suit. Id.

Nonetheless, in the underlying action, Plaintiffs seek to certify a class action regarding the refund of certain taxes and other monies that the Department has collected.<sup>3</sup> Thus, by striking a portion of the Department’s Answer and its defense pursuant to Section 12-60-80(C), the trial court’s order affected a substantial right of the Department not to be named or made a defendant in the very type of suit at issue in this appeal. Therefore, the trial court’s order is immediately appealable.

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<sup>2</sup> S.C. Code Ann. § 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. (emphasis added)

<sup>3</sup> “The term ‘tax’ is defined under the [Revenue Procedures Act] as ‘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.’” Lightner, 419 S.C. at 366, 798 S.E.2d at 560 (quoting § 12-60-30(27) (2014)); see also § 12-60-30(26). The Second Amended Complaint alleges the Department collected the delinquent debts at issue in this case pursuant to its statutory authority set forth in S.C. Code Ann. § 12-56-50 and § 12-4-180(D)(1), respectively. Thus, the debts collected constitute “other amounts assessed or collected, or subject to by the Department” and fall within the definition of “taxes” as defined by the Revenue Procedures Act and affirmed in Lightner.

**b. The Trial Court's Order Denies the Department's Right to a Particular Mode of Trial Because it Allows Plaintiffs to Circumvent the Procedural Requirements of the Revenue Procedures Act.**

The South Carolina Supreme Court has repeatedly held that a trial court's order is immediately appealable when it deprives a party of a mode of trial to which it is entitled as a matter of right. Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 72–73, 533 S.E.2d 331, 333–34 (2000). In fact, the relevant case law “not only permit[s], but indeed require[s], immediate appeal in the event of denial of a mode of trial to which one is entitled as a matter of right. Failure to immediately appeal such an order forever bars appellate review.” Id.

The Revenue Procedures Act, S.C. Code Ann. § 12-60-10, et al. (Supp. 2011) (“RPA”), governs how actions may be brought against the Department. In particular, Section § 12-60-80(A) requires any case involving the wrongful collection of taxes to be brought in the Administrative Law Court. In addition, a taxpayer may not bring a declaratory judgment action against the Department in the circuit court unless “the sole issue is whether a statute is unconstitutional.” S.C. Code Ann. §12-60-80(B) (emphasis added); see also Lightner, 419 S.C. at 357, 798 S.E. 2d 555 (holding the RPA applies to all disputes with the Department regarding taxes, and concluding the trial court erred by not requiring the plaintiff to exhaust its administrative remedies under the RPA); Hyde v. S.C. Dept. of Mental Health, 314 S.C 207, 442 S.E. 2d 582, 583, (1994). “The general rule is . . . one must pursue the administrative remedy or be precluded from seeking relief in the courts.”).

Here, Plaintiffs are not just seeking a declaration where the sole issue is whether the statutes establishing the GEAR program and the SDCA are unconstitutional—Plaintiffs are also seeking a claim for refund of taxes and other monies collected by the Department. Thus, Plaintiffs are

required as a matter of law to exhaust their administrative remedies, and the Department has a statutory right to have the dispute decided by the Administrative Law Court as required by the RPA. The trial court effectively denied the Department a mode of trial to which it is entitled—an ALC hearing—when it incorrectly concluded the RPA does not apply to the instant action because the debts at issue “are not ‘taxes’ as the term is statutorily defined.” (See Order, p. 2) (finding no reason to reconsider its prior ruling that the debts at issue are not taxes). Accordingly, the trial court’s order is immediately appealable. See *Lightner*, 419 S.C. at 367, 798 S.E.2d at 560 (“If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice.”) (emphasis added) (quoting S.C. Code Ann. § 12-60-3390).

Plaintiffs contend that the trial court’s refusal to reconsider the applicability of the RPA is not immediately appealable because the underlying order (the trial court’s prior order in December 2012 that denied the Department’s motion to dismiss) is itself not immediately appealable. However, the trial court’s reasoning in striking the Department’s class action defense is the same reason for which it denied the Department’s motion to dismiss. In short, the trial court has twice held that the delinquent debts collected by the Department are not taxes, despite the clear language of the statute and the Supreme Court’s recent holding in *Lightner*, 419 S.C. at 366, 798 S.E.2d at 560 (noting the term “tax” as defined in the RPA includes “other amounts . . . imposed by this title, or subject to assessment or collection by the [Department of Revenue]”).” Thus, the trial court’s error has a compounding effect of unnecessarily protracting the litigation, and requiring the Department to expend needless time, money, and expense associated with defending an action in which the Department is statutorily barred from being named as a defendant.

## 2. THE TRIAL COURT'S ORDER IS NOT A CLASS CERTIFICATION ORDER.

In their Motion to Dismiss the Appeal, Plaintiffs incorrectly assert that the trial court's order is not immediately appealable because it is a class certification order. Plaintiffs' assertion mischaracterizes both the substance and effect of the trial court's order. See Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297, 303, 705 S.E.2d 475, 478 (Ct. App. 2011) (holding that for purposes of appealability the court must "focus on the effect of the order, not the label given to the motion or to the order granting it").

As discussed above, the trial court's order did not certify a class or deny class certification. (See Order, p. 7) ("Conclusion: The Court may consider whether to certify this action as a class action."). Moreover, the Department's statutory defense is not directed toward the merits of class certification, as Plaintiffs contend. (See Motion to Dismiss Appeal, p. 2) ("[The defense] goes only to the propriety of a class action."). Instead, the effect of the order is to strike the Department's statutory defense of immunity from a class action suit and subject the Department to the very type of suit that § 12-60-80(C) strictly prohibits.

Accordingly, the cases relied upon by Plaintiffs in support of their Motion to Dismiss are inapposite to the instant appeal. Class certification orders are typically not immediately appealable because they do not involve substantial or essential legal rights. See Knowles v. Standard Sav. & Loan Ass'n, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979). In all of the cases cited by Plaintiffs, the order being appealed dealt with whether to certify a class action.<sup>4</sup> However, the trial court's order

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<sup>4</sup> See, e.g., Salmonsens v. CGD, Inc., 377 S.C. 442, 447, 661 S.E.2d 81, 84 (2008) (finding order denying defendant's motion for decertification was not immediately appealable because the trial court retains the power to decertify or modify the class at any time prior to final judgment); Schein v. Lamar, 274 S.C. 329, 330, 263 S.E.2d 383, 384 (1980) (dismissing appeal from order granting

in this appeal does involve an essential and substantial legal right of the Department not to be sued in any class action suit, including a class action seeking a refund of taxes. None of the litigants in those cases asserted—or had the right to assert—a statutory bar to a class action for the refund of taxes or to being named or made a defendant in a class action suit.

In essence, the substantial right afforded to the Department by the General Assembly under Section 12-60-80(C) is a right akin to qualified immunity—the Department is immune from suit in all class actions involving a refund of taxes. By striking the Department’s defense, the true effect of the trial court’s order is to improperly deprive the Department of the right not to be forced to litigate the merits of the class action suit. Because this is the true effect, the trial court’s order is immediately appealable. See Mitchell v. Forsyth, 472 U.S. 511, 530, 105 S. Ct. 2806, 2817 (1985) (holding that the trial court’s denial of a claim for qualified immunity is an immediately appealable order).

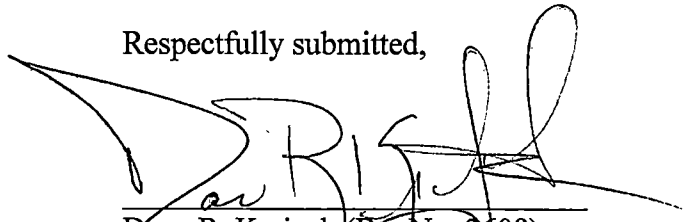
### CONCLUSION

Accordingly, the trial court’s order is immediately appealable under S.C. Code Ann. § 14-3-330 because the order affects a substantial right of the Department by striking a portion of its Answer and denying the Department a right to a particular mode of trial, and because the order is not a class certification order. Therefore, the Department respectfully request that this Court grant this appeal.

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motion to certify a class action); Knowles v. Standard Sav. & Loan Ass'n, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979) (dismissing appeal from the order of class certification).

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Dana R. Krajack', is written over a horizontal line.

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*Department of Revenue*

September 15, 2017

# **EXHIBIT**

**A**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	
	)	CASE NO.: 2012-CP-38-00837
Jimmie Aiken, Leila Brown, Veronda Cohen,	)	
Carla Davis, Anthony Sabb, James Ginn, and	)	
Shirley Rice, as named Plaintiffs representing	)	
a class of South Carolina citizens,	)	
	)	
Plaintiffs,	)	
	)	
vs	)	AMENDED COMPLAINT
	)	(Declaratory Judgment/Class Action)
South Carolina Department of Revenue,	)	
	)	
Defendant.	)	
	)	

THE PLAINTIFFS WOULD RESPECTFULLY ALLEGE AND SHOW UNTO THIS HONORABLE COURT, AS FOLLOWS:

**JURISDICTION AND VENUE**

1. The named Plaintiffs are citizens and residents of Orangeburg County and Allendale County, South Carolina.
2. Defendant South Carolina Department of Revenue is an agency of the State of South Carolina.
3. Plaintiffs seek to represent a class of individuals of South Carolina citizens as defined in the class definition below. All members of the class are citizens of South Carolina.
4. The injuries for some of the class representatives named herein as set forth below arise out of the department's wrongful and unconstitutional use of garnishment of wages in Orangeburg County, South Carolina. Accordingly, the most substantial acts giving rise to the claims herein occurred in Orangeburg County and make venue proper in Orangeburg County. Alternatively, the injuries for the other of the class representatives named herein as set forth

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below arise out of the department's wrongful and unconstitutional use of garnishment of wages in Allendale County, South Carolina. Accordingly, the most substantial acts giving rise to those claims occurred in Allendale County and would make venue proper in Allendale County, if the Court were to determine that venue not be proper in Orangeburg County.

**ALLEGATIONS AS TO CLASS REPRESENTATIVES**

5. Plaintiff Jimmie Aiken is a resident of Orangeburg County who is employed at Charles H. Williams, PA, in Orangeburg, South Carolina. On or about February 23, 2010, Plaintiff received notice from his employer that twenty-five (25%) percent of his check was to be garnished until \$2,971.20 was collected; there was no judgment or hearing that determined the validity of the alleged debt prior to the garnishment of the wages; since that time Plaintiff's bi-weekly pay has been garnished. Upon information and belief, the government entity claiming the debt is owed is The Regional Medical Center; upon information and belief some or all of this debt was not legally collectable.

6. Plaintiff Leila Brown is a resident of Allendale County who is employed at Charity Home Care Service, LLC, in Orangeburg, South Carolina. On or about February 6, 2012, Plaintiff received notice from her employer that twenty-five (25%) percent of her check was to be garnished until \$11,933.73 was collected; there was no judgment or hearing that determined the validity of the alleged debt prior to the garnishment of the wages; since that time Plaintiff's bi-weekly pay has been garnished. Upon information and belief, the government entity claiming the debt is owed is the Allendale County Hospital and some or all of this debt was not legally collectable.

7. Plaintiff Veronda Cohen is a resident of Allendale County who is employed at Newell Recycling, LLC in Allendale, South Carolina. On or about January 5, 2012, Plaintiff

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received notice from her employer that twenty-five (25%) percent of his check was to be garnished until \$19,282.45 and \$6,061.81 were collected; there was no judgment or hearing that determined the validity of the alleged debt prior to the garnishment of the wages; since that time Plaintiff's bi-weekly pay has been garnished. Upon information and belief, the government entities claiming the debts are owed are the Regional Medical Center and the Allendale County Hospital respectively and some or all of these debts were not legally collectable.

8. Plaintiff Carla Davis is a resident of Allendale County who is employed by Allendale/Barnwell Disabilities and Special Needs Board, in Allendale, South Carolina. On or about February 14, 2012, Plaintiff received notice from her employer that twenty-five (25%) percent of her check was to be garnished until \$1,241.01 was collected; there was no judgment or hearing that determined the validity of the alleged debt prior to the garnishment of the wages; since that time Plaintiff's bi-weekly pay has been garnished. Upon information and belief, the government entity claiming the debt is owed is the Allendale County Hospital and all of this debt was not legally collectable.

9. Plaintiff Anthony Sabb is a resident of Allendale County who is employed by Manna Inc. of the Low Country, in Bluffton, South Carolina. On or about February 10, 2012, Plaintiff received notice from his employer that twenty-five (25%) percent of his check was to be garnished until \$7,209.00 was collected; there was no judgment or hearing that determined the validity of the alleged debt prior to the garnishment of the wages; since that time Plaintiff's bi-weekly pay has been garnished. Upon information and belief, the government entity claiming the debt is owed is the Allendale County Hospital and all of this debt was not legally collectable.

10. Plaintiff James Ginn is a resident of Allendale County who is employed by Crane Merchandising System, Inc., in Williston, South Carolina. On or about February 10, 2012,

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Plaintiff received notice from his employer that twenty-five (25%) percent of his check was to be garnished until \$13,905.30 was collected; there was no judgment or hearing that determined the validity of the alleged debt prior to the garnishment of the wages; since that time Plaintiff's bi-weekly pay has been garnished. Upon information and belief, the government entity claiming the debt is owed is the Allendale County Hospital and all of this debt was not legally collectable.

11. Plaintiff Shirley Rice is a resident of Allendale County who is employed by ARSC Service Corp., in Bluffton, South Carolina. On or about February 6, 2012, Plaintiff received notice from her employer that twenty-five (25%) percent of her check was to be garnished until \$21,046.60 was collected; there was no judgment or hearing that determined the validity of the alleged debt prior to the garnishment of the wages; since that time Plaintiff's bi-weekly pay has been garnished. Upon information and belief, the government entity claiming the debt is owed is the Allendale County Hospital and all of this debt was not legally collectable.

12. Upon information and belief, the Defendant wrongly bases its ability and ultimate authority to garnish upon § 12-4-580 and § 12-54-130. This is unconstitutional for a number of reasons, including that: (a) § 12-4-580 was enacted pursuant to an act in violation of the South Carolina Constitution, Article III, § 17; (b) § 12-54-130 was enacted pursuant to an act in violation of the South Carolina Constitution, Article III, § 17; (c) the statutes upon which the Defendant relies to garnish Plaintiffs' wages are derived from acts which are special legislation in contravention of the South Carolina Constitution, Article III, § 34(IX); (d) the garnishment of Plaintiffs' wages by the Department pursuant to the asserted statutory scheme violates the South Carolina Constitution, Article X, § 5; (e) the garnishment of Plaintiffs' wages by the Department is violative of the doctrine of separation of powers provided by the South Carolina and United States Constitutions; and (f) the garnishment of Plaintiffs' wages by the Department fails to

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satisfy the due process requirement of the Fifth and Fourteenth Amendments to the United States Constitution and of Article I, § 3 of South Carolina Constitution and as such constitutes an unconstitutional taking.

13. Further, an interpretation of § 12-4-580 to allow garnishment violates the Plaintiffs' rights of equal protection under the South Carolina Constitution.

14. The garnishment is causing substantial financial hardship for the Plaintiffs and their families and is causing them not be able to meet their other obligations.

#### **ALLEGATIONS AS TO CLASS**

15. This action is brought by the named Plaintiffs as a class action on behalf of themselves and all others similarly situated under the provisions of South Carolina Rule of Civil Procedure 23 against a Defendant class as described below.

16. Plaintiffs seek class certification of the act pursuant to S.C.R.C.P. 23. The class consists of all persons who are South Carolina citizens who have had their wages garnished by the Defendant on behalf of any governmental entity pursuant to S.C. Code Ann. § 12-4-580 and § 12-54-130, the last garnishment having occurred since 2003, and the putative debt to be collected exceeding \$100.00.

17. Upon information and belief, the Plaintiff class consists of more than 100 persons and is so numerous that joinder of individual members is impractical.

18. There are common questions of law and/or fact in this action that relate to and affect the rights of each member and the relief sought is common to the entire class. Further, the claims of named plaintiffs or defenses raised are typical to the claims of the class. The common questions of law and/or fact include: (a) § 12-4-580 was enacted pursuant to an act in violation of the South Carolina Constitution, Article III, § 17; (b) § 12-54-130 was enacted pursuant to an act

in violation of the South Carolina Constitution, Article III, § 17; (c) the statutes upon which the Defendant relies to garnish Plaintiffs' wages are derived from acts which are special legislation in contravention of the South Carolina Constitution, Article III, § 34(IX); (d) the garnishment of Plaintiffs' wages by the Department pursuant to the asserted statutory scheme violates the South Carolina Constitution, Article X, § 5; (e) the garnishment of Plaintiffs' wages by the Department is violative of the doctrine of separation of powers provided by the South Carolina and United States Constitutions; (f) the garnishment of Plaintiffs' wages by the Department fails to satisfy the due process requirement of the Fifth and Fourteenth Amendments to the United States Constitution and of Article I, § 3 of South Carolina Constitution and as such constitutes an unconstitutional taking.

19. The claims of the named plaintiffs and class members are typical and will first depend on the Court's determination of the constitutional issues identified above in accordance with the South Carolina constitution and principles of law. Members of the class will have similar rights as named Plaintiffs and those claims arise out of the defendant's application of the statute or statutes.

20 The named Plaintiffs will fairly and adequately represent and protect the interests of the class.

21. Pursuant to S.C.R.C.P 23 this action is properly maintained as a class action in that the prosecution of several actions by individual members of the class would create the risk of varying adjudications with respect to members of the class as well as create inconsistent standard of conduct for those opposing the class. Further, individual actions by members of the class may be dispositive of the interests of other members who are not parties to the adjudication of the claim, which would impair or impede the ability of those individuals to protect their

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interests.

22. The class action is superior to other available methods for the fair and efficient adjudication of this controversy.

#### **DECLATORY RELIEF**

23. The allegations made above are incorporated herein by reference.

24. Plaintiff seeks this Court's declaration that: (a) § 12-4-580 was enacted pursuant to an act in violation of the South Carolina Constitution, Article III, § 17; (b) § 12-54-130 was enacted pursuant to an act in violation of the South Carolina Constitution, Article III, § 17; (c) the statutes upon which the Defendant relies to garnish Plaintiffs' wages are derived from acts which are special legislation in contravention of the South Carolina Constitution, Article III, § 34(IX); (d) the garnishment of Plaintiffs' wages by the Department pursuant to the asserted statutory scheme violates the South Carolina Constitution, Article X, § 5; (e) the garnishment of Plaintiffs' wages by the Department is violative of the doctrine of separation of powers provided by the South Carolina and United States Constitutions; (f) the garnishment of Plaintiffs' wages by the Department fails to satisfy the due process requirement of the Fifth and Fourteenth Amendments to the United States Constitution and of Article I, § 3 of South Carolina Constitution and as such constitutes an unconstitutional taking; and (g) that the garnishment by the Defendant was unconstitutional and thus wrongful. Plaintiffs further seek a refund of all wages taken together with prejudgment interest and that the Defendant be enjoined from further wage garnishment.

WHEREFORE, the named Plaintiffs pray this Court inquire into the matters alleged herein and:

a) issue a temporary injunction upon notice to Defendant, temporarily enjoining

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- them from further garnishment or collection of alleged debt from class members;
- b) issuing its Scheduling Order declaring the case complex and appointing one judge to hear all matters;
  - c) certify this case as a class action pursuant to S.C.R.C.P. 23;
  - d) issue its declaratory ruling that: (a) § 12-4-580 was enacted pursuant to an act in violation of the South Carolina Constitution, Article III, § 17; (b) § 12-54-130 was enacted pursuant to an act in violation of the South Carolina Constitution, Article III, § 17; (c) the statutes upon which the Defendant relies to garnish Plaintiffs' wages are derived from acts which are special legislation in contravention of the South Carolina Constitution, Article III, § 34(IX); (d) the garnishment of Plaintiffs' wages by the Department pursuant to the asserted statutory scheme violates the South Carolina Constitution, Article X, § 5; (e) the garnishment of Plaintiffs' wages by the Department is violative of the doctrine of separation of powers provided by the South Carolina and United States Constitutions; and (f) the garnishment of Plaintiffs' wages by the Department fails to satisfy the due process requirement of the Fifth and Fourteenth Amendments to the United States Constitution and of Article I, § 3 of South Carolina Constitution and as such constitutes an unconstitutional taking. Further, an interpretation of § 12-4-580 to allow garnishment violates the Plaintiffs' rights of equal protection under the South Carolina Constitution.
  - e) require Department to refund all monies garnished, including all administrative fees or other costs charged to each class members, together with prejudgment interest at the legal rate;

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- f) for the costs of this action; and,
- g) for such other and further relief as this Court deems just and proper.

GOODING & GOODING



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ATTORNEYS FOR PLAINTIFFS

October 25 2012  
Barnwell, South Carolina

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# **EXHIBIT**

**B**



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May 9, 2014  
Barnwell, South Carolina

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

handing counsel a copy thereof.

by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 9th day of May, 20 14

BEDINGFIELD & WILLIAMS, LLC

BY Angela Hill  
PARALEGAL

FILED FOR RECORD  
WINNIE B. CLARK  
CLERK OF COURT  
ORANGEBURG, SC

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TEST. TRUE COP.  
Winnie B. Clark  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

# **EXHIBIT**

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State of South Carolina )  
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 County of Orangeburg )  
 )  
 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, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 South Carolina Department )  
 of Revenue )  
 \_\_\_\_\_ )

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

**Order on S.C. Code Ann. § 12-60-80(C)**

FILED FOR RECORD  
 WINIFRA B. CLARK  
 2017 JUN 10 PM 2:00  
 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. <sup>However if this reading was correct</sup> The Supreme Court could not have certified the class of state retirees that the Court certified in its original jurisdiction.<sup>1</sup> Inmates could not seek class-wide relief against the Department of Corrections over

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

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

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

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

<sup>3</sup> *BLH v. Dep’t of Social Services*, CIA # 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

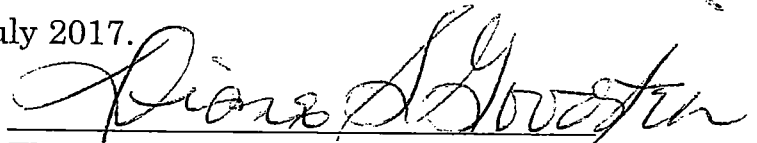
number of ways that these entities can allegedly go wrong. An Act entitled “Taxation” would include subjects as wide ranging as retirement benefits, inmate wages, and adoption subsidies.

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

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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Appeal from Orangeburg County  
Court of Common Pleas  
Diane S. Goodstein, Circuit Court Judge

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2012-CP-03-00837  
Appellate Case No. 2017-001790

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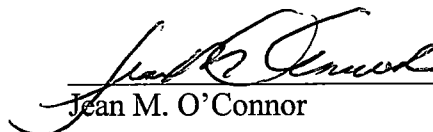
Jimmie Aiken, Leila Brown, Vernonda Cohen, Carol David, Anthony Sabb,  
James Ginn, and Shirley Rice, as named Respondents representing a  
Class of South Carolina Citizens ..... Respondent,

v.

South Carolina Department of Revenue ..... Appellant.

**PROOF OF SERVICE**

I, Jean M. O'Connor, do hereby certify that I have caused to be mailed, via United States Postal Service, postage pre-paid, the Department of Revenue's Memorandum Addressing Issue of Appealability and, Alternatively, The Department's Reply to Respondent's Motion to Dismiss Appeal in the above-referenced matter to Mark Tinsley, Esquire, Gooding and Gooding, PA, PO Box 1000, Allendale, SC 29810, Charles Williams, Esquire, Williams & Williams, PO Box 1084, Orangeburg, SC 29115 and Daniel W. Williams, Esquire, Bedingfield & Williams, L.L.C., PO Box 616, Barnwell, SC 29812, Robert Norris Hill, Esquire, PO Box 1323, Lexington, SC 29071-1323 this 15<sup>th</sup> day of September 2017.

  
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Jean M. O'Connor