THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Docket No. 2012-CP-38-00837
Appellant Case No. 2017-001790

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.....Respondents,

v.

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

INITIAL BRIEF OF APPELLANT

Dana R. Krajack (Bar No. 3608)
Counsel for Litigation
Jason P. Luther (Bar No. 78021)
General Counsel for Litigation
P.O. Box 12265
Columbia, SC 29211-9979
803-898-5172
Attorneys for Appellant
Dana.krajack@dor.sc.gov

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STATEMENT OF THE CASE

Respondents (both individually and as putative class members) initiated this action to challenge the authority of Appellant South Carolina Department of Revenue (Appellant or Department) to collect certain delinquent debts on behalf of various government entities. These debts are owed to the government entities and are collected by the Department on their behalf, pursuant to the Governmental Enterprise Accounts Receivable [GEAR] Program, codified at S.C. Code Ann. § 12-4-580.[1]

Respondents filed their Second Amended Complaint on October 25, 2012, alleging that the Department, pursuant to the GEAR Program and S.C. Code Ann. § 12-54-130, wrongfully used wage garnishment under the GEAR Program to collect certain delinquent debts owed by Respondents to several government entities.[2] (Second Amended Complaint, p. 4–8; R. ___). The Second Amended Complaint sought a declaratory judgment that Sections 12-4-580 and 12-54-130 are unconstitutional, (Id., p. 7–8; R. ___). and requested a refund of those amounts that had been collected by the Department. (Id., p. 9; R. ___). Respondents sought class certification of their claims pursuant to Rule 23, SCRCP. (Id., p. 5, 9; R. ___).

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[1]The GEAR program was first enacted in 1996, and is a statutorily authorized collection service performed by the Department on behalf of state governmental entities. For purposes of the GEAR program, the governmental entities are defined as "claimant agencies" and include a state agency, board, committee, public institution of higher learning, political subdivision, other governmental or quasi-governmental entity, and the Municipal Association of South Carolina and the South Carolina Association of Counties. See § 12-4-580(C)(1).

[2]Section 12-54-130 is a provision of the Uniform Method of Collection and Enforcement of Taxes Levied and Assessed, see S.C. Code Ann. § 12-54-10 *et seq.*, and sets forth the Department's general authority for the collection of taxes. Contrary to the allegations in the Second Amended Complaint, the Department has not asserted that its authority to collect delinquent debts owed to claimant agencies flows from § 12-54-130.

In its Answer to the Second Amended Complaint, the Department raised defenses that Respondents failed to pursue their administrative remedies as required under the South Carolina Revenue Procedures Act (RPA), and that S.C. Code Ann. § 12-60-80(C) provides a statutory bar to Respondents bringing their claims against the Department as a class action. (Answer p. 2; R. ___).

On May 14, 2014, Respondents filed a Motion to Strike the Department's statutory defenses under § 12-60-80(C). (Motion to Strike Defenses; R. ___). The Honorable Diane S. Goodstein, Circuit Judge of the First Judicial Circuit, held a hearing on the Motion on June 20, 2017. (Transcript, p.3, line 23–25; R. ____). At the hearing, Judge Goodstein granted the Motion and directed Respondents to submit a proposed order. (Transcript, p. 29, 16–22, p. 36, line 21–p. 37, line 3; R. ___).

The present appeal arises from the Order dated July 5, 2017, which granted Respondents' Motion to Strike the Department's statutory defense under § 12-60-80. (Order, p.1; R. ___). In the Order, the Judge Goodstein held "the medical bills and other debts at issue are not 'taxes' as the term is defined statutorily or as it is commonly understood." (Order p. 2; R. ___).[3] The trial court based its decision on its finding that "§ 12–60–80(C) does not apply because this is not a tax case" and that "this case does not involve taxes". (Order p.1; R. ___). As a result of this conclusion, the Court held Respondents did not have to exhaust their administrative remedies before bringing this action in circuit court, and that Respondents could pursue a class action suit against the Department

[3] In a prior order dated December 19, 2012, Judge Goodstein ruled that "the delinquent debts are not included in the Act's [RPA's] definition of tax . . . nor does the ordinary definition of taxes encompass delinquent debts . . . . Therefore the RPA does not apply." (December 2012 Order, pp. 3–4, R. ____). In opposing Respondent's Motion to Strike, the Department asked the court to reconsider this prior ruling. (Transcript p. 19, line 10–p. 20, line 14). Judge Goodstein reconsidered but reaffirmed its prior holding that the medical debts at issue are not taxes. (Order p. 2; R. ___).

for these claims—notwithstanding the prohibitions contained in § 12-60-80. (Order p. 2; R. ___). The Department filed a Notice of Appeal on August 23, 2017.[4]

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. (S.C. Court of Appeals letter; R. ___). On September 6, 2017, Respondents filed a Motion to Dismiss the Appeal. The Department submitted a memorandum of law on the issue of appealability. By order dated October 5, 2017, this Court denied Respondent's Motion to Dismiss the present appeal. (Court of Appeals Order; R. _____).

ARGUMENTS

This Court should reverse the trial court. Section 12-60-80 prohibits the Department from being sued in a class action lawsuit, whether for the refund of taxes or for any other claim. The Revenue Procedures Act defines "taxes" to mean any amounts collected by the Department, including delinquent debts collected pursuant to the GEAR program. Therefore, because the amounts at issue in this case constitute taxes as statutorily defined, the plain language of § 12-60-80 bars Respondents from bringing this class action against the Department. Further, the RPA requires the Respondents to exhaust their administrative remedies before filing an action against the Department for the refund of the disputed debts.

By striking the Department's defense under § 12-60-80 and holding Respondents need not exhaust their administrative remedies, the trial court committed reversible error.

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[4]Although the trial court signed the Order on July 5, 2017, the Order was not served upon the parties by the trial court or the Clerk of Court until August 16, 2017.

I. THE TRIAL COURT ERRED IN STRIKING THE DEPARTMENT'S CLASS ACTION DEFENSE UNDER § 12-60-80.

A. The trial court erred as a matter of law by holding that the amounts collected by the Department are not "taxes."

The trial court committed a fundamental error in holding that, as a matter of law, the outstanding debts owed to the claimant agencies are "not taxes as the term is defined statutorily." (Order p. 2; R. ___). As a result of this fundamental error, the trial court committed further error when it struck the Department's statutory defenses under § 12-60-80 and held that Respondents are not required to exhaust their administrative remedies because the disputed debts are not "taxes" and therefore "this is not a tax case." (Id.).

i. The statutory definitions of "tax" or "taxes" are broad and include any amounts imposed by Title 12 or otherwise collected by the Department under the provisions of Title 12.

The Revenue Procedures Act (RPA), S.C. Code Ann. § 12-60-10 et seq., was created to provide South Carolina citizens the "procedure to determine a dispute with the Department of Revenue." S.C. Code Ann. § 12-60-20. The RPA "must be interpreted and construed in accordance with, and in furtherance of, that intent." Id. (emphasis added) The RPA defines "tax" in two separate definitions:

> (26) "State tax" means taxes, licenses, permits, fees, or other amounts, including interest and penalties, imposed by this title, or assessed or collected by the department, except property taxes.
> (27) "Tax" or "taxes" means 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.

S.C. Code Ann. § 12-60-30 (emphasis added). These definitions apply both in Chapter 60 (the RPA) and Chapter 54 (Uniform Method of Collection and Enforcement of Taxes Levied and

Assessed by South Carolina Department of Revenue. Id. Under both definitions, "tax" is defined broadly to include ***any amounts*** imposed by Title 12 or collected by the Department of Revenue.

ii. The GEAR program is codified in Title 12 and authorizes the Department to collect amounts on behalf of claimant agencies.

Section 12-4-580(A) sets forth the contours of the GEAR program, and provides that for purposes of collecting liabilities owed to governmental entities under the GEAR program the Department "has all the rights and powers of collection provided pursuant to this title [Title 12] for the collection of taxes . . . ." Section 12-4-580(A).

By collecting these debts pursuant to the GEAR program, the Department acts in compliance with its statutorily mandated duties. S.C. Code Ann. § 12-4-10 provides that the Department "is created to administer and enforce the revenue laws of this State; administer the licensing laws and regulations relating to alcoholic liquors, beers, and wine . . . *and other laws specifically assigned to it.*" (emphasis added). This mandate is echoed in § 12-4-310: "The Department shall . . . (9) exercise and perform other powers and duties as granted to it or imposed upon it by law."

The amounts collected by the Department for governmental entities and claimant agencies under the GEAR program are imposed by Title 12 and are "other amounts . . . subject to collection by the department." Accordingly, the definition of "taxes" as used in Chapter 60 of Title 12 includes debts or liabilities under the GEAR program.

The above statutory definitions are clear and unambiguous. Where the language of the statute is clear and unambiguous, there is no need to employ the rules of statutory construction and the court cannot rewrite the statute and inject matters into it which are not in the legislature's language. See e.g. City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997) and Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995) ("Where the terms of

a relevant statute are clear, there is no room for construction."). The trial court's holding ignores the plain language of the statutory definitions explained above. (Order p.2, R. ___). (finding the "medical bills and other debts at issue are not 'taxes' as the term is defined statutorily or as commonly understood."). Thus, by concluding that "this case is not a tax case" and "does not involve taxes," (Order p. 1; R. ___), the trial court erred as a matter of law.

B. The plain language of § 12-60-80(c) prohibits *any class action suit involving the refund of taxes.*

Section 12-60-80(C) prohibits a class action suit seeking a refund of taxes:

> (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 Judge Division 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 plain language of the first prohibitive clause of subsection (C) unambiguously bars class action lawsuits for refunds of taxes from being brought in the Administrative Law Court or in any court of this State. In this case, Respondents are seeking a refund of amounts collected by the Department through wage garnishments. As discussed above, these amounts are "taxes" as statutorily defined in Chapter 60 of Title 12. Thus, Section 12-60-80(C) prohibits Respondents from bringing a class action for the refund of the amounts collected by the Department pursuant to the GEAR Program.

C. <u>The plain language of § 12-60-80(c) prohibits the Department from being named as a defendant *in any class action suit.*</u>

In addition to the prohibition against class actions for the refund of taxes, the second prohibitive clause of § 12-60-80(C) prohibits ANY class action suit against the Department:

> (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 Judge Division 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 phrase "any other class action" is broad, and should be given its plain and ordinary meaning. Gardner, et al. v. S.C. Dept. of Revenue, et al., 353 S.C. 1, 577 S.E. 2d 190 (2003) ("Words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation."). By using the phrase "any other class action" directly after a prohibition against class actions for the refund of taxes, the Legislature expressed its intent that the Department be immune from suit in all class actions—whether those actions involve the taxes or otherwise.

Importantly, the second prohibitive clause does not have any limitation or restriction on the words "any other class action" that would require the action to involve taxes. The trial court's order incorrectly construed the second prohibitive clause of § 12-60-80(C) by inserting a modifier—"over taxes"—at the end of subsection (C). In other words, the trial court interpreted the latter half of subsection (C) to read: "the department . . . may not be named or made a defendant in any other class action **[over taxes]** brought in this State." This interpretation improperly limits the statute's operation, and resorts to a subtle or forced construction of subsection (C). The plain language of the statute is clear and explicit, and the trial court erred by improperly rewriting the statute and injecting matters into it that was not in the Legislature's language. City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997).

Even if the trial court was correct in finding that the second prohibitive clause in § 12-60-80(C) is impliedly limited to claims "over taxes," the statute still applies to bar this action. In addition to the refund claim, the Second Amended Complaint also seeks a declaratory judgment that §§ 12-4-580 and 12-54-130 are unconstitutional. The trial court concluded that § 12-60-80(C) is linked to subsections (A) and (B), and that the "any other" language in subsection (C) is limited

to the same general kind or type as the items previously specified in § 12-60-80 (i.e., tax disputes). If the trial court's interpretation is correct, it necessarily means that the prohibition against "any other class action" contained in subsection (C) includes class action suits for the types of declaratory judgments challenging tax statutes as discussed in subsection (B).[5] Both of the statutes at issue in this case are contained in Title 12—Taxation, and are therefore "tax" statutes. Therefore, Section 12-60-80(C) prohibits a class action suit challenging the constitutionality of these tax statutes.

i. The Supreme Court has repeatedly dismissed class action lawsuits against the Department on the grounds that such suits are barred by § 12-60-80.

The South Carolina Supreme Court has enforced § 12-60-80 to bar class action suits against the Department in two cases similar to this appeal. In Drummond v. State of South Carolina et al., 378 S.C. 362, 365–69, 662 S.E.2d 587, 589–90 (2008), the plaintiff sued the Department to recover sales taxes that were allegedly collected in error and for a declaration that an agency regulation was invalid. The plaintiff also sought to bring these claims as the representative of a putative class of similarly situated persons.

The Supreme Court affirmed the circuit court's dismissal of the claims for a tax refund because the plaintiff had not exhausted available administrative remedies by first seeking relief under the Revenue Procedures Act. Id. at 368–69, 662 S.E.2d at 590. Because the refund claim

[5]In its Order, the trial court stated that "the statute on the Department's ability to collect the non-tax debts at issue is in a wholly separate chapter [Chapter 4]" from Chapter 60, presumably as the reason the trial court concluded the GEAR statute is not the type of "statute" referenced in § 12-60-80(B). This conclusion has no basis in the text and would lead to absurd results. Chapter 60 codifies the RPA, which established the procedures for determining a dispute with the Department. The Department administers and enforces the entirety of Title 12, the vast majority of which is contained in chapters other than Chapter 60. To limit a taxpayer's right under § 12-60-80(B) to challenging the constitutionality of only those statutes contained in the RPA (Chapter 60) would essentially render this remedy under the RPA meaningless.

was effectively severed from the declaratory judgment action, the Court permitted the request for declaratory relief to proceed in circuit court. However, the Court specifically relied on § 12-60-80(C) in holding that the plaintiff could not prosecute his claim for declaratory relief (declaring the Department's regulation invalid) on behalf of a class. Id. at 370 n.5, 662 S.E.2d at 591 n.5.

This same application of § 12-60-80 was recently revisited and reaffirmed in Lightner v. Hampton Hall Club, Inc., State of South Carolina et al., 419 S.C. 357, 798 S.E. 2d 555 (2017). In Lightner, the plaintiff brought a class action lawsuit in circuit court seeking a refund of admissions taxes. The Supreme Court reversed the circuit court's holding that the RPA did not apply and that the plaintiff could not proceed in circuit court without first exhausting its administrative remedies at the ALC. In addition, the Supreme Court held definitively that the "plain language of the statute [§ 12-60-80] prohibits a claim for a tax refund from being brought as a class action in any court of law in this state." Lightner, 419 S.C. at 368, 798 S.E.2d at 560 (emphasis added). The Court's discussion in Lightner left Drummond's rationale and holding intact (that a class action could not be certified against the Department for a declaratory judgment regarding an agency regulation), and further affirmed that the Department is immune from suit in any class action involving a claim for a tax refund.

ii. Permitting a class action suit against the Department in contravention of § 12-60-80 ignores the legislative history of § 12-60-80 and would be inconsistent with other provisions of Title 12.

The trial court's erroneous interpretation of § 12-60-80 also ignores the litigation and legislative history behind the statute. Section 12-60-80 was first codified in 1995, and contained only one sentence (similar to the current subsection (A)): "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." See S.C. Acts, Act No. 60, § 4A, 1995. The statute did not contain a prohibition against class action lawsuits against the Department.

On January 27, 2003, the Supreme Court decided Gardner v. S.C. Dep't of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003), which involved an appeal concerning the Setoff Debt Collection Act (SDCA). In Gardner, several plaintiffs sought certification as class representatives,[6] and also sought a declaratory judgment action against the Department and other defendants and the return of their seized tax refunds. In a series of orders, the trial court ordered, *inter alia*, the return of seized income tax refunds for certain years plus related administrative fees and interest, and enjoined the Department from collecting claims submitted during certain tax years. The trial judge also certified a bilateral class action. Gardner, 353 S.C. at 8–9, 577 S.E.2d at 194.

The Supreme Court reversed several of the trial court's rulings, including the trial court's decision to certify the class action on the grounds the plaintiffs failed to meet the prerequisites for class certification. Id. at 23, 577 S.E.2d at 201. In particular, the Court found that the plaintiffs failed to establish a "common thread" and commonality among both the putative plaintiff and defendant class members, and therefore failed to meet the prerequisites for class certification.

Less than five months after the Supreme Court decided Gardner, the General Assembly amended § 12-60-80 to including the current language in subsections (B) and (C). See S.C. Acts, Act No. 69, § 3, 2003. The amendment designated the ALC as the proper forum for challenges to the constitutionality of a statute as applied to a person or a limited class or classes of persons,

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[6]Notably, the plaintiffs in Gardner sought to be certified as class representatives of all taxpayers who incurred a reduction in their income tax refund pursuant to the SDCA (a companion statute to the GEAR program for the collection of outstanding indebtedness owed to claimant agencies). It is no coincidence that Respondents seek class certification on behalf of all taxpayers who have had their wages garnished (under the GEAR program) by the Department since 2003 (the date of the Gardner decision).

inserted the prohibition against class actions for the refund of taxes, and immunized the Department or other political subdivisions from being made a defendant in any other class action in this State. Id. In light of the circumstances surrounding the Gardner case, the message from the General Assembly was clear—the Department can no longer be sued in any class action, including law suits regarding the Department's collection of monies under programs like the SDCA and GEAR.

The prohibition against the Department being named as a defendant in a class action lawsuit is consistent with other provisions of Title 12. As discussed above, the RPA establishes a uniform procedure to which all taxpayers must adhere when resolving a dispute with the Department. Allowing a certified class to proceed against the Department for a refund of taxes would enable a class of taxpayers to circumvent an entire section of Title 12 (the RPA) in manner that does not account for the factual nuances of each particular taxpayer's circumstances. See, e.g., Gardner, 353 S.C. at 23, 577 S.E.2d at 201 (discussing the difficulties of examining the individual factual differences among the individualized cases of putative class members).

In addition, §§ 12-60-470 and -480 establish the procedures for taxpayers to seek a refund. Importantly, if a taxpayer obtains a refund after prevailing on the merits of a lawsuit, § 12-60-480 requires the Department to issue a refund to similarly situated taxpayers. S.C. Code Ann. § 12-60-480 (noting the "department shall issue a refund . . . .") (emphasis added). This mandate eliminates the need for a class action suit. However, the Department is only required to issue the refund to "similarly situated taxpayers who properly applied for a refund pursuant to the requirements of this chapter," including the timing requirements under § 12-54-85 (3 years depending on the circumstances). Id. Thus, permitting a class action against the Department, like the trial court did here, would allow an entire class of taxpayers to obtain a refund who otherwise did not properly

apply for a refund as required under Chapter 60. It would also effectively expand the time period for obtaining a refund beyond the 3 year limitation. (Second Amended Complaint, pp. 8-9; R. ___). (seeking a refund of garnishments from 2003 to present). In doing so, the trial court erred and its Order to that effect should be reversed.

D. The trial court's order striking the Department's defenses under § 12-60-80 is immediately appealable.

The trial court's order striking the Department's defense under § 12-60-80 is immediately appealable. At the request of this Court, the Department previously submitted a complete memorandum of law setting forth the reasons the trial court's order is immediately appealable. (Department's Memorandum on Appealability; R. ___.) The Department craves reference to and incorporates herein the complete arguments set forth in that Memorandum.

First, the order strikes a portion of the Department's Answer. S.C. Code Ann. § 14-3-330 governs the right to appeal, and grants appellate courts jurisdiction to immediately review "an order affecting a substantial right made in an action when such order . . . *strikes out an answer* or any part thereof in any pleading in any action . . . ." (emphasis supplied); § 14-3-330; see also P.J. Const. Co. v. Roller, 287 S.C. 632, 633, 340 S.E.2d 564, 565 (Ct. App. 1986) (citation omitted) (recognizing that "an order striking a portion of a pleading is immediately appealable").

Here, the trial court's order affected a substantial right of the Department by striking a portion of its Answer and its defense pursuant to Section 12-60-80(C), which provides a complete statutory bar to being made a defendant in the very type of suit at issue in this appeal. See 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) (holding 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").

Second, the trial court's order is immediately appealable because it denies the Department its right to a particular mode of trial. Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 72–73, 533 S.E.2d 331, 333–34 (2000) (citing cases holding 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). In actions against the Department, a plaintiff is required to exhaust his administrative remedies as provided under the RPA, § 12-60-10, et al. Hyde v. S.C. Dept. of Mental Health, 314 S.C 207, 442 S.E. 2d 582, 583, (1994) ("One must pursue the administrative remedy or be precluded from seeking relief in the courts.").

Because the Respondents are seeking a claim for refund of taxes, they are required as a matter of law to exhaust their administrative remedies, and the Appellant is entitled as a matter of statutory right to have the Respondents' dispute decided first by the Administrative Law Court as required by the RPA. See S.C. Code Ann. § 12-60-80(A). The trial court effectively denied the Department a mode of trial to which it is entitled—an ALC hearing—by concluding the RPA does not apply to the instant action. Thus, 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).

Finally, the trial court's order is immediately appealable because it is not a class certification order. The trial court's order did not certify a class or deny class certification. (Order, p. 7; R. ___.) ("Conclusion: The Court may consider whether to certify this action as a class action.") (emphasis added). Moreover, the Department's statutory defense that the trial court struck is not directed toward the merits of class certification, but toward the complete, statutory bar to the Department being named as a defendant in this specific type of suit (class action suit for

refund of taxes). By striking the Department's defense, the true effect of the trial court's order was 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 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").

II. THE TRIAL COURT ERRED IN HOLDING THAT RESPONDENTS ARE NOT REQUIRED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES BEFORE BRINGING AN ACTION AGAINST THE DEPARTMENT SEEKING A REFUND OF MONIES COLLECTED BY THE DEPARTMENT UNDER THE GEAR PROGRAM.

Because the trial erroneously concluded that the amounts at issue in this case are not "taxes" as defined in § 12-60-30(26) and (27), the trial court wrongly concluded that the RPA does not apply to Respondents' suit against the Department. Accordingly, the trial court erred as a matter of law in holding that Respondents were not required to exhaust their administrative remedies as required under the RPA.

A. South Carolina law requires that all disputes with the Department are governed by the Revenue Procedures Act.

As explained above, the RPA was enacted by the General Assembly with the express intent of "provid[ing] 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 Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent." S.C. Code Ann. § 12–60–20 (emphasis added).

The instant action unquestionably involves a dispute with the Department relating to the GEAR program. (Second Amended Complaint, pp. 4-6, 9 12; R. ___). Both of statutes at issue (§ 12-4-580 and § 12-54-130) are in Title 12 and within the scope of the Department's duties and

responsibilities. See S.C. Code Ann. § 12-4-310(9) (requiring the Department to "exercise and perform other powers and duties as granted to it or imposed upon it by law"); S.C. Code Ann. § 12-4-580(A) (authorizing the GEAR program and granting the Department "all the rights and powers of collection provided pursuant to [Title 12] for the collection of taxes and all the rights and powers authorized the governmental entity to which the liability is owed"); S.C. Code Ann. § 12-54-190 (mandating that the provisions of Chapter 54, which include the right to garnish wages under § 12-54-130, "take precedence over all other related statutory provisions").

Pursuant to the provisions of the GEAR program (and by reference to the provisions of the SDCA) "[t]he sole and exclusive appeal procedure for the setoff of a debt owed to the Department is governed by the provisions of Chapter 60, Title 12." See S.C. Code Ann. § 12-56-120.[7] Moreover, as discussed above, § 12-60-80(A) reiterates that "[e]xcept 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." Accordingly, the trial court erred as a matter of law in holding that the RPA does not apply to this dispute with the Department.

B. The RPA requires actions alleging the illegal or improper collection of taxes, like this one, to be brought in the Administrative Law Court.

The RPA sets forth the general rule for actions against the Department arising from all tax matters:

> (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.

[7]The GEAR statute incorporates by reference the Setoff Debt Collection Act, codified at S.C. Code Ann. §§ 12-56-10, et seq., including the notice, hearing, appeals and other provisions contained in the SDCA.

S.C. Code Ann. § 12-60-80(A). In addition, S.C. Const. art. V, § 11 provides in pertinent part that "[t]he Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law" (emphasis added). Section 12-60-80(A) plainly states that the only redress available to challenge the Department's actions Respondents complain of here, is that "provided in this chapter [Chapter 60 of Title 12]." Therefore, in creating the RPA, the General Assembly carefully specified how and when the Department may be named a defendant in any civil or administrative action, and §§ 12-60-20, 12-60-80(A), and 12-60-3390 express the General Assembly's clear direction and intent that cases challenging the Department's tax collection efforts must first be brought in the Administrative Law Court.

In this case, Respondents have chosen to sue the Department for what they allege are improper collection methods under § 12-4-580 and § 12-54-130. In other words, Respondents have sued the Department over "other amounts . . . collected" by the Department and seek "a refund" of those amounts. (Second Amended Complaint pp. 8-9; R. ___) (praying for relief "requir[ing] 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"). By defining taxes broadly to include any amounts collected by the Department, the General Assembly expressed its intent that lawsuits challenging the Department's collection efforts must first be brought in the Administrative Law Court.

The Supreme Court recently examined the applicability of the RPA and held that it applies to all disputes with the Department and is not limited only to a select type of tax matters. See Lightner v. Hampton Hall Club, Inc., 419 S.C. 357, 364, 798 S.E.2d 555, 559 (2017), reh'g denied (May 3, 2017) (clarifying that the RPA "applies to disputes with the SCDOR"). In Lightner, the

plaintiff alleged the Department (and other defendants) had wrongfully collected admissions taxes. The plaintiff also sought class certification of his claims, which included a refund of those taxes and declaration that the collection and retention of such admission taxes was unlawful. The Department moved for a dismissal of the case on the grounds that the plaintiff had failed to exhaust his administrative remedies. In response, the plaintiff contended he was exempt from having to pursue his administrative remedies because § 12–60–20 and the RPA applied only to a dispute with the Department concerning property taxes. The Lightner court rejected the plaintiffs interpretation of § 12–60–20 and held the RPA applies to all disputes with the Department. Lightner, 419 S.C. at 367, 798 S.E.2d at 560.

The trial court erred as a matter of law in allowing Respondents to circumvent the express intent of the Legislature by holding that Respondents need not exhaust their administrative remedies.[8] Id. (holding the plaintiffs are limited to the administrative remedies under the RPA where their complaint alleged wrongful collection of taxes, as defined under § 12-60-30(27)). Accordingly, the trial court should be reversed because Respondents claims in this case must be brought at the Administrative Law Court as required by the RPA.[9] Id. (reversing circuit court's decision and remanding action to the circuit court to dismiss the case with prejudice); see also S.C. Code Ann. § 12-60-3390 (2014) ("If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice.").

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[8]The "exhaustion of the taxpayer's administrative remedy" is set forth in § 12-60-30(14).

[9]Importantly, the Plaintiffs have also failed to exhaust their administrative remedies available under the SDCA and the GEAR program. Debtors have the right to request hearings to contest the validity of debts owed to governmental entities with subsequent appeal to the ALC. See Section 12-4-580(E); S.C. Code Ann. §§ 12-56-50 through 12-56-120. There is no evidence in the record that the Plaintiffs made any attempt to exercise their administrative remedies under GEAR or the SDCA.

C. Respondents' constitutional challenge to § 12-4-580 does not eliminate their obligation to exhaust their administrative remedies.

Section 12-60-80(B) provides that "[n]otwithstanding subsection (A), an action for a declaratory judgment where *the sole issue* is whether a statute is constitutional may be brought in circuit court." By implication, if an action is not limited to a sole issue challenging the constitutionality of a statute, then the action must still be brought first in the Administrative Law Court. See also Video Gaming Consultants, Inc. v. South Carolina Dept. of Revenue, 342 S. C. 34, 39, 535 S.E. 2d 642, 645 (2000) ("*If the sole issue* in a particular case is the constitutionality of a statute, a court may decide the case without waiting for an administrative hearing.") (emphasis added).

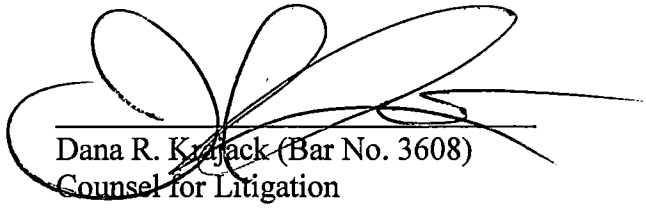
Here, Respondents have joined their constitutional challenge with their claim for refund of monies collected by the Department. Thus, this case does not involve an action for declaratory judgment where the sole issue is the constitutionality of a statute. Accordingly, under the plain language of the RPA, Respondents must first exhaust their administrative remedies by bringing all of the claims in the Administrative Law Court.

CONCLUSION

As set forth above, the trial court erred in determining that the debts collected by the Department pursuant to the GEAR program are not "taxes" as statutorily defined in Title 12. As a direct result, the trial court further erred in striking the Department's statutory defense under § 12-60-80 and permitting Respondents to proceed in bringing a class action suit against the Department for the refund of taxes and to challenge the constitutionality of the GEAR program. Finally, the trial court erred by not requiring Respondents to pursue their administrative remedies under the RPA.

Because the trial court erred as a matter of law, this Court should reverse and remand the case to the circuit court to dismiss the action.

Respectfully submitted,



Dana R. Kurjack (Bar No. 3608)
Counsel for Litigation
Jason P. Luther (Bar No. 78021)
General Counsel for Litigation
P.O. Box 12265
Columbia, SC 29211-9979
803-898-5172
Attorneys for Appellant

January 10, 2018
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2012-CP-38-00837
Appellant Case No. 2017-001790

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.....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, a copy of Appellant's Initial Brief and Designation of Matter in the above-referenced matter to the following attorneys of record Robert N. Hill, Esquire, P.O. Box 1323, Lexington, SC, 29071-1323; Mark B. Tinsley, Esquire, Gooding and Gooding, P.O. Box 1000, Allendale, SC 29810; Charles H. Williams, Esquire, Williams & Williams, P.O. Box 1084, Orangeburg, SC 29115; and Daniel W. Williams, Esquire, Bedingfield & Williams, P.O. Box 616, Barnwell, SC 29812 this 10th day of January 2018.

Jean M. O'Connor