

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Richard Beltram,)
)
Petitioner,)
)
v.)
)
South Carolina Department of Revenue,)
)
Respondent.)

ALC Docket No. 13-ALJ-17-0244-CC
Appellate Case No. 2017-000968

ORDER ON REMAND
TO PAY OR POST BOND

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JAN 16 2018

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or court) pursuant to an Order from the Court of Appeals, dated July 13, 2017, which remanded the case to this court to determine the amount of taxes Richard Beltram must pay or the amount of bond he must post pursuant to S.C. Code Ann. § 12-60-3370. Both the Petitioner and the South Carolina Department of Revenue (Department or Respondent) filed Briefs on Remand arguing their respective positions.

DISCUSSION

In its Amended Final Order, this court held that the Petitioner is “personally liable for the employee withholding taxes, penalties, and interest owed by Intedge for the period of May 1, 2003, through July 1, 2005” (Responsible Period).¹ This court further held that “the Petitioner is not liable for the penalties . . . [after July 1, 2005] due to the Department’s eight (8) year delay in pursuing the Petitioner as a responsible party.” Finally, this court held that “the Petitioner is

¹ This period, which the court found that the Petitioner is personally liable for, includes quarters ending in: September 2003, December 2003, March 2004, June 2004, September 2004, December 2004, March 2005, and June 2005. The periods, which the court found that the Petitioner is not personally liable for, include quarters ending in: September 1999, March 2001, June 2001, March 2003, September 2005, and December 2005. Although the court did not originally include the withheld tax from the quarter ending in June 2005 in its calculation, this was in error. See Amended Final Order at p. 9, paragraph 27. The quarter ending in June 2005 is contained within the Responsible Period ending on July 1, 2005 and, thus, should have been included in the court’s calculation. Additionally, this court erred by including the quarter ending in March 2003 in its calculation, as that quarter ended prior to the start of the Responsible Period on May 1, 2003. See Amended Final Order at p. 9, paragraph 27.

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required to pay interest that has continued to accrue, on the unpaid portion of the taxes[,] for taxes Intedg incurred from May 1, 2003 through July 1, 2005.” Amended Final Order at pp. 24-25.

Pursuant to S.C. Code Ann. § 12-60-3370, “a taxpayer shall pay, or post a bond for, all taxes, not including penalties or civil fines, determined to be due by the administrative law judge before appealing the decision to the court of appeals.” Moreover, S.C. Code Ann. § 12-60-30(27) states that “‘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.”

In his Brief on Remand, the Petitioner contends that he is responsible for: (1) the lien filed on September 7, 2004 in the amount of \$4,258.28; (2) the lien filed on February 16, 2005 in the amount of \$3,923.79; (3) the lien filed on February 16, 2005 in the amount of \$3,528.79; and (4) the lien filed on May 23, 2005 in the amount of \$2,566.25. Brief of Petitioner on Remand at p. 2. The Petitioner further argues that interest, while disputed as it relates to his underlying tax liability, is not required under S.C. Code Ann. § 12-60-3370 to proceed with his appeal. Reply Brief of Petitioner on Remand at p. 3. Thus, the Petitioner contends that his total obligation under S.C. Code Ann. § 12-60-3370 is \$13,602.11.² Brief of Petitioner on Remand at p. 2.

The Department, in its Brief on Remand, argues the Petitioner is responsible for eight (8) withholding tax quarters, including: September 2003, December 2003, March 2004, June 2004, September 2004, December 2004, March 2005, and June 2005.³ The adjusted tax obligation for this period, as determined by the Department, amounts to \$29,792.49 plus interest. The Department further contends that under the definition of “taxes” contained in S.C. Code Ann. § 12-60-30(27), the Petitioner is obligated to include interest in any payment or bond under S.C. Code Ann. § 12-60-3370. Respondent’s Response to Brief of Petitioner on Remand pp. 1-2. As such, the Department calculated the interest through January 12, 2018⁴ as totaling \$24,718.01.

² The actual amount of liability for these periods totals \$14,277.11 but the Petitioner subtracted \$675.00 for an “attorney’s fees reduction” based on this court’s holding in the Amended Final Order. Brief of Petitioner on Remand at p. 3; Amended Final Order at p. 24.

³ Though the Petitioner claims that the June 2005 quarter should not be included in the calculation due to the fact that taxes for that quarter were not due until July 31, 2005, after the Responsible Period, the court disagrees with this argument. While the due date was after the Responsible Period, the taxable activity giving rise to the underlying case occurred during the Petitioner’s time as a responsible party. Thus, the failure of the court to include this quarter in its Amended Final Order was simply the result of a miscalculation.

⁴ As S.C. Code Ann. § 12-54-25(A) dictates, interest continues to accrue on the tax liability until “paid in its entirety.” Pursuant to recent communications with the parties and an updated interest calculation from the Department, this figure includes interest accrued through the issuance date of this order.

Thus, after the \$675.00 reduction for attorney's fees, the Department concludes that the total liability of the Petitioner amounts to \$54,510.50. *See* Respondent's Brief on Remand from the South Carolina Court of Appeals at pp. 6-7; Respondent's Ex. 1, column H.

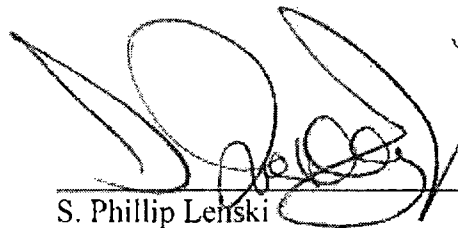
The court agrees with the Department's interpretation of the Amended Final Order that the Petitioner's liability is based upon the withholding tax quarters, rather than the filing dates of the liens themselves during the Responsible Period. Moreover, the Department properly calculated the quarters included in the Responsible Period pursuant to this court's order. The Department was also correct in its reading of this court's order that the Petitioner is accountable for any interest on the Petitioner's tax liability during the Responsible Period. Finally, this court finds that interest must also be included for any payment or bond pursuant to S.C. Code Ann. § 12-60-3370.

Therefore, the court holds that the Petitioner's total liability in this matter amounts to \$54,510.50. The Petitioner must pay, or post a bond of, this amount to proceed with his appeal.

ORDER

IT IS HEREBY ORDERED that, pursuant to S.C. Code Ann. § 12-60-3370 and the Order from the Court of Appeals, the Petitioner must pay, or post a bond in the amount of, \$54,510.50.

AND IT IS SO ORDERED.

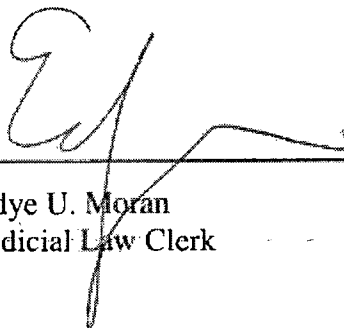
A handwritten signature in black ink, appearing to read 'S. Phillip Lenski', is written over a horizontal line. The signature is stylized and somewhat cursive.

S. Phillip Lenski
Administrative Law Judge

January 12, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Edye U. Moran, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Edye U. Moran
Judicial Law Clerk

January 12, 2018
Columbia, South Carolina

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Administrative Law Court
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