

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
Appellate Case No. 2017-001790

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SC Court of Appeals

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 RevenueAppellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 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.)
)
 SOUTH CAROLINA DEPARTMENT)
 OF REVENUE,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 C/A#: 12-CP-38-00837

ORDER

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This matter came before me on November 13, 2012, upon Defendant's Amended¹ Motion to Dismiss, to Change Venue, and/or to Strike pursuant to Rules 12(b)(1), 12(b)(6), 12(b)(7), 12(b)(3), 12(e), and 12(f) of the South Carolina Rules of Civil Procedure. Present at the hearing on behalf of the Plaintiffs were Mark B. Tinsley, Esquire, who presented the oral argument, Dan W. Williams, Esquire, Charles Williams, Esquire, and Laine B. Gooding, Esquire. Present on behalf of the Defendant were Milton G. Kimpson, Esquire, and Adam N. Marinelli, Esquire, both of whom presented oral argument, and Kathryn Brown, Esquire. For the reasons that follow, the Court denies the Defendant's 12(b)(1)

¹ Plaintiffs original Complaint was filed on June 19, 2012. In response, Defendant filed its initial Motion to Dismiss, to Change Venue, and/or to Strike. On or about October 29, 2012, Plaintiffs filed and served an Amended Complaint. In response, Defendant filed its Amended Motion in which Defendant added a motion for a more definite statement directed towards Plaintiffs' Amended Complaint. All grounds set forth in Defendant's Amended Motion were heard by the Court at the hearing on November 13, 2012.

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Wingie B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

motion, 12(b)(6) motion, 12(b)(7) motion, and 12(f) motion, and the Court grants Defendant's 12(e) motion for a more definite statement.

BACKGROUND

This action arises out of the Defendant's garnishment of Plaintiffs' wages to satisfy delinquent debts the Plaintiffs allegedly owe to governmental or quasi-governmental entities other than the Defendant. Claiming authority under S.C. Code Ann. § 12-4-580, the Department has contracted with certain governmental entities to collect debts allegedly owed the governmental entities by Plaintiffs and other South Carolina citizens. These alleged debts arise out of services provided to Plaintiffs. The Defendant has utilized wage garnishment as its method of collection. In exchange for its collection efforts, the Defendant retains a portion of the garnished wages.

As a result of the garnishment of their wages by the Defendant, the Plaintiffs have brought this declaratory judgment action, as named Plaintiffs representing a class of South Carolina citizens, against the Defendant requesting a declaration that the statutes under which Defendant claims authority for its actions, namely S.C. Code Ann. § 12-4-580 and § 12-54-130, are facially unconstitutional on a number of grounds. Moreover, Plaintiffs request a refund of their wages with prejudgment interest.

in response, Defendant filed a motion to dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction; a motion to dismiss pursuant Rule 12(b)(6) for failure to exhaust administrative remedies; a motion to dismiss pursuant to Rule 12(b)(7) for failure to join indispensable parties under Rule 19; a motion to transfer venue pursuant to Rule 12(b)(3); a motion to strike class allegations pursuant to Rule 12(f); and a motion for a more definite statement pursuant to Rule 12(e).

I. RULE 12(b)(1) MOTION

The Defendant moved pursuant to Rule 12(b)(1) for a dismissal of this action for lack of subject matter jurisdiction on the grounds that the Revenue Procedures Act, S.C. Code Ann. § 12-60-10, et. seq., applies and creates exclusive jurisdiction in the Administrative Law Court (ALC). In essence, the Defendant argues that Plaintiff was required under the Revenue Procedures Act to commence this action in the ALC and follow the appellate rules applicable to claims heard in the ALC. Defendant argues that the Revenue Procedures Act divests this Court of subject matter jurisdiction. However, South Carolina law is clear that the issue raised by Defendant is an exhaustion of remedies issue that does not involve the Court's subject matter jurisdiction. See, Ward v. State, 343 S.C.14, 538 S.E.2d 245 (2000). Rather, the issue should be dealt with in the context of Defendant's 12(b)(6) motion. Therefore, Defendant's Rule 12(b)(1) motion is denied.

II. RULE 12(b)(6) MOTION

The Defendant moved pursuant to Rule 12(b)(6) for a dismissal of the case based on the Plaintiffs' failure to exhaust the administrative remedies set forth in the Revenue Procedures Act. The Defendant argues that the Revenue Procedures Act applies and sets forth the exclusive remedy against the Department because the delinquent debts that are the subject of this lawsuit are taxes as defined in the Revenue Procedures Act, S.C. Code Ann. § 12-60-10, et. seq. The Act defines "tax or taxes" 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." S.C. Code Ann. § 12-60-30(27). Delinquent debts are not included in the Act's definition of "tax." See, Great

Games, Inc. v. S.C. Dept. of Revenue, 339 S.C. 79, 529 S.E.2d 6 (2000). Nor does the ordinary definition of taxes encompass delinquent debts. Id. Therefore, the Revenue Procedures Act does not apply, and the Court denies Defendant's 12(b)(6) motion to dismiss for failure to exhaust administrative remedies.

Even if the Revenue Procedures Act is broad enough to apply to issues other than tax issues, the Plaintiffs are not required to exhaust the administrative remedies outlined in the Act. It has long been the law in South Carolina that the Administrative Law Court has no authority to rule on the constitutionality of a statute. See, Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000); Video Gaming Consultants, Inc. v. S.C. Dept. of Revenue, 342 S.C. 34, 535 S.E.2d 642 (2000); Great Games, Inc. v. S.C. Dept. Of Revenue, 339 S.C. 79, 529 S.E.2d 6 (2000). In Great Games, our Supreme Court took the "opportunity to remind the bench and bar that ALJs are an agency of the executive branch of government, and must follow the law as written until its constitutionality is judicially determined; ALJs have no authority to pass upon the constitutionality of a statute or regulation." 339 S.C. 79, 529 S.E.2d 6 (2000)(citations omitted). In Video Gaming, the Court held that "if the only issue is a constitutional challenge to a statute or regulation, a party should seek a declaratory judgment from circuit court rather than going before an ALJ." 342 S.C. 34, 39. Recently, in Travelscape, LLC v. S.C. Dept. Of Revenue, the Court recognized a difference between constitutional challenges which challenge the facial validity of a statute (de jure) as opposed to as applied challenges (de facto) which challenge a statute's constitutionality when applied under certain facts that affect only a certain group of people. In differentiating between the two types of challenges, the Court held that:

... ALCs are empowered to hear as applied challenges to statutes and regulations. ALCs are better suited for making the factual determinations necessary for an as applied challenge, and finding a statute or regulation unconstitutional as applied to a specific party does not affect the facial validity of that provision. We wish to reiterate that our decision today does not affect the ALC's inability to decide **facial challenges** to a statute or regulation; those are legal questions that are properly raised for the first time on appeal or in a **declaratory judgment action before the circuit court.**

Id. (emphasis added). Moreover, § 12-60-80(B) of the Revenue Procedures Act properly recognizes this distinction and creates an exception to the purported exclusive jurisdiction of the ALC: "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 or persons."

Here, Plaintiffs have brought a declaratory judgment action seeking a declaration that two specific statutes are facially unconstitutional, namely S.C. Code Ann. § 12-4-580 and § 12-54-130, on the following grounds:

(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.

See, Plaintiffs' Amended Complaint, p. 7. Moreover, Plaintiffs are requesting a finding that § 12-60-80(C) is unconstitutional because it was enacted in violation of Article III, § 17 of the South Carolina Constitution. See, Plaintiffs' Second Amended Complaint. Each of the grounds set forth above involves a facial constitutional challenge to a statute. Our law is clear that the ALC cannot decide constitutional challenges to the facial validity of a statute. Therefore, even if the Revenue Procedures Act is broad enough to apply to this non-tax issue, the Plaintiffs properly filed this declaratory judgment action in circuit court, and Defendant's 12(b)(6) motion is denied.²

III. 12(b)(7) MOTION

Defendant moved pursuant to Rule 12(b)(7) to dismiss the action for failure to join indispensable parties. The Defendant argues that the governmental entities to which the alleged debts are owed are indispensable under Rule 19. Rule 19(a), SCRCF, provides as follows:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1)

² Defendant also argues that the Plaintiffs were required to exhaust their administrative remedies set forth in the Setoff Debt Collection Act. However, those administrative remedies are specific to claims against the governmental entities for which the Department is collecting and do not apply to claims against the Defendant. Moreover, for the same reasons set forth above, Plaintiffs were not required to assert these facial constitutional challenges in an administrative hearing where the hearing officer would have no authority to rule on a facial constitutional challenge.

in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Rule 19, SCRPC. South Carolina law is well-settled that the Plaintiff is entitled to choose whom he sues. Chester v. S.C. Dept. of Public Safety, 388 S.C. 343, 698 S.E.2d 559 (2010); see also, Cook v. Lowe's, 2006 U.S. Dist. LEXIS 79489 (holding that "the plaintiff has the right to name whom she sues"); Causey v. Burgess, 236 F.Supp. 326 (D.S.C. 1964)(relying on the "well recognized right of a plaintiff to sue one or more joint tortfeasors at his election"); Little v. Robt. G. Lassiter & Co., 156 S.C. 286, 153 S.E. 128 (1930)("the injured party is not obliged to join both tortfeasors in his action, but he may sue either singly").

Here, Plaintiffs have chosen to name a single responsible Defendant from which the Plaintiffs seek complete relief. The GEAR statute itself, § 12-4-580, recognizes that the Department may incur liability as a result of its collection efforts. As the Defendant concedes, § 12-4-580(c) creates a right of indemnity in favor of the Defendant against the other governmental entities: "Governmental entities that contract with the department pursuant to this section . . . shall indemnify the department against injuries, actions, liabilities, or proceedings arising from the collection or attempted collection by the department of the liability owed to the governmental entity." This creation of a right to indemnification demonstrates not only that the Legislature contemplated that the Department can be sued for its collection efforts under § 12-4-580 but also that there may

be instances where the Department is sued singly. Under Rule 19, Plaintiffs can obtain complete relief from this single Defendant. If Plaintiffs are successful, Defendant will have a right of indemnification. Moreover, failure to join the other governmental entities does not subject the Department to a substantial risk of incurring double, multiple or inconsistent obligations nor will the interests of those other governmental entities be impaired if they are not joined. Therefore, Defendant's Rule 12(b)(7) motion is denied.

IV. RULE 12(b)(3) MOTION

Defendant moved for a change of venue to either Richland or Lexington County pursuant to § 15-77-50 on the grounds that the Defendant's decision-making occurred in either of those counties. Section 15-77-50 provides that venue of an action against a state agency is proper "in the circuit where such question, action or controversy shall arise." S.C. Code Ann. § 15-77-50. An action arises where the most substantial part of the act or omission giving rise to Plaintiff's causes of action occurred. Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 698 S.E.2d 773 (2010). Here, the most substantial act giving rise to Plaintiffs' claims is the garnishment of their wages. But for the actual taking of Plaintiffs' wages, no cause of action would have accrued and Plaintiffs would have no standing to assert these claims against the Defendant. Therefore, proper venue lies where Plaintiffs' money was garnished. Both Plaintiff Jimmy Aiken and Plaintiff Leila Brown's wages were garnished in Orangeburg County where they are employed. Therefore, the action or controversy set forth in Plaintiffs' Complaint arose in Orangeburg County where the most substantial part of the act or omission giving rise to the claim occurred. Defendant's Rule 12(b)(3) motion is therefore denied.

V. RULE 12(e) MOTION

Defendant moved pursuant to Rule 12(e) for a more definite statement of Plaintiffs' constitutional challenges. The constitutional challenges set forth in Plaintiff's Amended Complaint are not vague or ambiguous, and Defendant's motion is denied as to the constitutional challenges set forth in Plaintiff's Amended Complaint. However, even though Plaintiffs have set forth class allegations in their Amended Complaint and argue that the prohibition against class actions in § 12-60-80(C) does not apply, Plaintiffs failed to set forth in their pleadings the grounds of their assertion. Plaintiffs' class allegations are therefore vague and ambiguous, and Defendants are entitled to a more definite statement under Rule 12(e). At the hearing, the Court ordered the Plaintiffs to file and serve a Second Amended Complaint setting forth the grounds for their assertion that § 12-80-60(C) does not apply. In compliance with the Court's order, Plaintiffs have filed and served a Second Amended Complaint setting forth their challenges to the applicability of § 12-60-80(C).

VI. RULE 12(f) MOTION

Defendant moved pursuant to Rule 12(f) to strike Plaintiffs' class allegations. However, Plaintiffs' Second Amended Complaint sufficiently sets forth the grounds on which Plaintiffs challenge the applicability of § 12-60-80(C), and therefore Plaintiffs' class allegations are not redundant, immaterial, impertinent or scandalous. Defendant's Rule 12(f) motion to strike Plaintiffs' class allegations is therefore denied.

*And it is ordered this 19th
Day of December 2012.*

Christine Smith

St. George, D.C.

IT IS SO ORDERED this _____ day of _____, 2012!

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

State of South Carolina)
County of Orangeburg)

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

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

Order on S.C. Code Ann. § 12-60-80(C)

Plaintiffs,)

vs.)

South Carolina Department)
of Revenue)

FILED FOR RECORD
WINNIFRA B. CLARK
2017 JUL 10 P 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. ^{Howevr if this was by way of collect of} The Supreme Court could not have certified the class of state retirees that the Court certified in its original jurisdiction.¹ Inmates could not seek class-wide relief against the Department of Corrections over

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

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

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

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

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

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

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

³*BLH v. Dep’t of Social Services*, 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

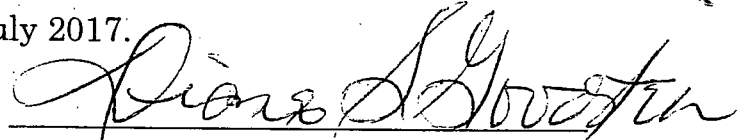
number of ways that these entities can allegedly go wrong. An Act entitled "Taxation" would include subjects as wide ranging as retirement benefits, inmate wages, and adoption subsidies.

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

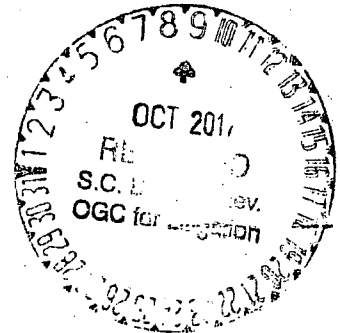
The South Carolina Court of Appeals

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.

Appellate Case No. 2017-001790



ORDER

After careful consideration of all the parties' filings, the motion to dismiss is denied. Nothing in this order prevents the parties from addressing the issue of appealability in their briefs.


FOR THE COURT

Columbia, South Carolina

cc:

Dana Robert Krajack, Esquire
Sean Gordon Ryan, Esquire
Jason Phillip Luther, Esquire
Robert Norris Hill, Esquire
Mark Brandon Tinsley, Esquire
Charles H. Williams, Esquire
Daniel Webster Williams, Esquire

FILED

October 5, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 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.)
)
 South Carolina Department)
 of Revenue,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 CASE NO: 2012-CP-38-00837

**DEFENDANT'S ANSWER TO
 PLAINTIFFS' SECOND
 AMENDED COMPLAINT**

COMES NOW the Defendant, South Carolina Department of Revenue, (Department) answers the Plaintiffs' Second Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Each allegation not hereinafter admitted, explained, or modified is denied and specific proof demanded thereof.
2. The Department is without sufficient information or belief to admit or deny paragraphs 1 and 3, and therefore denies the same and requests specific proof thereof.
3. The Department admits paragraph 2.
4. Upon information and belief, paragraphs 4, 5, 6, 7, 8, 9, 10, and 11 are denied and the Department demands strict proof thereof.

5. Paragraphs 12, 13, and 14 are denied.

6. Paragraphs 15, 16, 17, 18, 19, 20, 21, 22, and 23 are denied. Furthermore, inasmuch as S.C. Code Ann. § 12-60-80(C) (Supp. 2011) mandates that the Department “may not be named or made a defendant in any other class action brought in this State,” upon information and belief, the Plaintiffs are prohibited from bringing this suit as a class action. The Department would further respectfully assert that § 12-60-80(C) is constitutional under S.C. Const. art. III, § 17.

7. Paragraphs 24 and 25 are denied in their entirety.

FOR A SECOND DEFENSE
(Lack of Subject Matter Jurisdiction)

8. Paragraphs 1-7, above, are reiterated as if fully set forth herein.

9. Upon information and belief, to the extent the Plaintiffs challenge the Department’s authority under the GEAR program to implement wage withholding as a collection mechanism, jurisdiction over this action properly lies in the South Carolina Administrative Law Court (ALC) such that this Court lacks subject matter jurisdiction over the within action and it should be dismissed under Rule 12(b)(1), SCRPC.

FOR A THIRD DEFENSE
(Failure to State a Claim/Exhaust Administrative Remedies)

10. Paragraphs 1-9, above, are reiterated as if fully set forth herein.

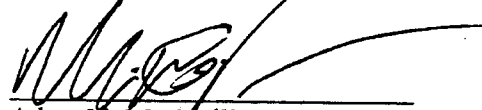
11. Given Plaintiffs’ request for refunds of amounts the Department has collected under its collection mechanism, the Plaintiffs have been afforded remedies under the Revenue Procedures Act, S.C. Code Ann. § 12-60-10, et. seq., (Supp. 2011), and the failure to exhaust those administrative remedies requires the dismissal of the

within action under Rule 12(b)(6), SCRCP, for failure to state facts sufficient to constitute a cause of action.

12. Furthermore, the individual Plaintiffs have been afforded administrative remedies under the GEAR statutes themselves but have failed to exhaust said remedies such that the within suit should be dismissed. Debtors have the right to request hearings to contest the validity of debts owed to governmental entities with subsequent appeal to the ALC. S.C. Code Ann. § 12-4-580(E) (Supp. 2011); S.C. Code Ann. §§ 12-56-50 through 12-56-120 (Supp. 2011).

WHEREFORE, the Department, having fully answered the Plaintiffs' Second Amended Complaint, respectfully requests the Court to deny all relief requested in Plaintiffs' Second Amended Complaint.

Respectfully submitted,



Adam N. Marinelli (Bar No. 79031)
Counsel for Litigation
Kathryn R. Brown (Bar No. 78399)
Counsel for Litigation
Milton G. Kimpson (Bar No. 7917)
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Fax: (803) 896-01717
Attorneys for Defendant

Columbia, South Carolina
February 6, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
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,)

**DEFENDANT'S NOTICE OF MOTION
AND MOTION TO DISMISS, TO
CHANGE VENUE, AND/OR TO STRIKE
PURSUANT TO RULE 12(b)(1),(6),(7), AND
(3), SCRPC, AND RULE 12(f), SCRPC**

vs.)

South Carolina)
Department of Revenue,)
)
Defendant.)

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG COUNTY
SOUTH CAROLINA
SEP 10 PM 3:17

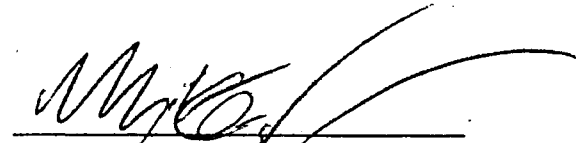
**TO: PLAINTIFFS AND THEIR ATTORNEYS, MARK TINSLEY, ESQUIRE,
CHARLES WILLIAMS, ESQUIRE, and DANIEL W. WILLIAMS,
ESQUIRE**

PLEASE TAKE NOTICE that the Defendant, South Carolina Department of Revenue (Department or Defendant), by and through its undersigned attorneys, will, ten (10) days from the date of service of this Motion or at such time as the Court may determine, move the Court for an order pursuant to Rule 12(b)(1), (6), and (7), SCRPC, dismissing the Complaint in this action and all claims asserted therein. In the alternative, if the Department's Motion to Dismiss is denied, the Department moves the Court to change venue of this action to Richland County pursuant to Rule 12(b)(3), SCRPC. The Department further moves, pursuant to Rule 12(f), SCRPC, to strike the class allegations and certain other portions of the Complaint as they contain redundant, impertinent, immaterial, and scandalous matter. The motions are based on the following grounds:

1. The Plaintiffs' action against the Department should be dismissed pursuant to Rule 12(b)(1), SCRCF, for lack of subject matter jurisdiction. The Revenue Procedures Act (RPA), S.C. Code Ann. § 12-60-10, et al. (Supp. 2011), specifies how actions may be brought against the Department and creates jurisdiction over such disputes in the Administrative Law Court (ALC). In the alternative, the action should be dismissed pursuant to Rule 12(b)(6), for failure to state facts sufficient to constitute a cause of action, inasmuch as the Plaintiffs have failed to exhaust their administrative remedies under the RPA and the Governmental Enterprise Accounts Receivables Program (GEAR), itself.
2. The Plaintiffs' Complaint should also be dismissed pursuant to Rule 12(b)(7), SCRCF, for failure to join indispensable parties under Rule 19, SCRCF. Although the Plaintiffs acknowledge that this action stems from debts owed to Allendale County Hospital and Regional Medical Center (Hospitals) and despite their challenge to the validity of said debts, the Plaintiffs have failed to name these governmental entities as party defendants to the suit. The Plaintiffs also have failed to name the South Carolina Association of Counties (SCAC) as a party. These entities are necessary parties under Rule 19, SCRCF, such that the Plaintiffs' failure to join them requires dismissal of the action.
3. In the event the Court allows the suit to go forward, Orangeburg County is an improper venue and venue should be transferred to Richland County pursuant to Rule 12(b)(3), SCRCF, and S.C. Code Ann. § 15-77-50 (2005). The Department is a State agency located in Richland County and the matters of which the Plaintiffs complain occurred within Richland County.
4. All Plaintiffs' allegations regarding class actions, specifically paragraphs 16-23 of the Complaint, should be stricken as they are impertinent and immaterial within the meaning of Rule 12(f), SCRCF. S.C. Code Ann. § 12-60-80(C) (Supp. 2011) prohibits class actions from being brought against the Department. Further, the Plaintiffs' characterizations of the statutory provisions for garnishment as "draconian, oppressive, unfair, arbitrary and unreasonable," should be stricken. Any Department action pursuant to these statutory provisions is authorized under South Carolina law and thus, by definition, cannot be as described by the Plaintiffs.

The Department submits herewith a memorandum of law in support of its motions and further reserves the right to submit additional law, affidavits, or other information in support at a later time as fixed by the Court. The Department respectfully requests a hearing on its motions.

Respectfully submitted,



Kathryn Brown (Bar No. 78399)
Counsel for Litigation
Adam N. Marinelli (Bar #79031)
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Milton G. Kimpson (Bar # 7917)
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Attorneys for Defendant
South Carolina Department of Revenue

Columbia, South Carolina
September 7, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 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.)
)
 South Carolina)
 Department of Revenue,)
)
 Defendant.)
 _____)

**IN THE COURT OF COMMON PLEAS
 CASE NO: 2012-CP-38-00837**

**AMENDED
 DEFENDANT'S NOTICE OF MOTION
 AND MOTION TO DISMISS, TO
 CHANGE VENUE, AND/OR TO STRIKE
 PURSUANT TO RULE 12(b)(1),(6),(7) AND
 (3), SCRPC, RULE 12(e), SCRPC AND
 RULE 12(f), SCRPC**

**TO: PLAINTIFFS AND THEIR ATTORNEYS, MARK TINSLEY, ESQUIRE,
 CHARLES WILLIAMS, ESQUIRE, and DANIEL W. WILLIAMS,
 ESQUIRE**

PLEASE TAKE NOTICE that the Defendant, South Carolina Department of Revenue (Department or Defendant), by and through its undersigned attorneys, will, ten (10) days from the date of service of this Amended Motion or at such time as the Court may determine, move the Court for an order pursuant to Rule 12(b)(1), (6), and (7), SCRPC, dismissing the Amended Complaint in this action and all claims asserted therein. In the alternative, if the Department's Motion to Dismiss is denied, the Department moves the Court to change venue of this action to Richland County pursuant to Rule 12(b)(3), SCRPC. The Department moves for a motion for a more definite statement pursuant to Rule 12(e), SCRPC. The Department further moves, pursuant to Rule 12(f), SCRPC, to strike the class allegations and certain other portions of the Amended

Complaint as they contain redundant, impertinent, immaterial, and scandalous matter.

The Amended Motion is based on the following grounds:

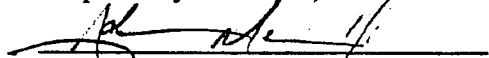
1. The Plaintiffs' action against the Department should be dismissed pursuant to Rule 12(b)(1), SCRCP, for lack of subject matter jurisdiction. The Revenue Procedures Act (RPA), S.C. Code Ann. § 12-60-10, et al. (Supp. 2011), specifies how actions may be brought against the Department and creates jurisdiction over such disputes in the Administrative Law Court (ALC). In the alternative, the action should be dismissed pursuant to Rule 12(b)(6), SCRCP, for failure to state facts sufficient to constitute a cause of action, inasmuch as the Plaintiffs have failed to exhaust their administrative remedies under the RPA and the Governmental Enterprise Accounts Receivables Program (GEAR), itself.
2. The Plaintiffs' Amended Complaint should also be dismissed pursuant to Rule 12(b)(7), SCRCP, for failure to join indispensable parties under Rule 19, SCRCP. Although the Plaintiffs acknowledge that this action stems from debts owed to Allendale County Hospital and Regional Medical Center (Hospitals) and despite their challenge to the validity of said debts, the Plaintiffs have failed to name these governmental entities as party defendants to the suit. The Plaintiffs also have failed to name the South Carolina Association of Counties (SCAC) as a party. These entities are necessary parties under Rule 19, SCRCP, such that the Plaintiffs' failure to join them requires dismissal of the action.
3. In the event the Court allows the suit to go forward, Orangeburg County is an improper venue and venue should be transferred to Richland County pursuant to Rule 12(b)(3), SCRCP, and S.C. Code Ann. § 15-77-50 (2005). The Department is a State agency located in Richland County and the matters of which the Plaintiffs complain occurred within Richland County.
4. The Plaintiffs' Amended Complaint, filed October 25, 2012, is overly vague and ambiguous such that the Department cannot reasonably be required to frame defenses in response to its allegations. The Department respectfully requests that the Court instruct the Plaintiffs to provide a clear legal basis for the constitutional claims made therein as it pertains to Title 12, and to identify the specific actions of the Department that are illegal, unconstitutional, and alleged grounds for the requested relief.
5. Specifically, the Plaintiffs have made broad and sweeping claims that various sections of Title 12, which the General Assembly has enacted and charged the Department with administering, violate the South Carolina Constitution and the United States Constitution. The Amended Complaint vaguely contends that these sections of Title 12 are special legislation, part of an enactment which pertains to more than one subject, constitutes a tax without consent, violates the separation of powers and due process requirements of both Constitutions, and are an

unconstitutional taking. All of these claims are made without any reference to facts or no attempt to describe how these statutes are in fact unconstitutional. The Department simply cannot reasonably be expected to respond to such open ended claims of the unconstitutionality of properly enacted legislation without some clear and specific reference to the basis of that claim in the Amended Complaint.

6. All Plaintiffs' allegations regarding class actions, specifically paragraphs 16-23 of the Amended Complaint, should be stricken as they are impertinent and immaterial within the meaning of Rule 12(f), SCRPC. S.C. Code Ann. § 12-60-80(C) (Supp. 2011) prohibits class actions from being brought against the Department. Further, the Plaintiffs' characterizations of the statutory provisions for garnishment as "draconian, oppressive, unfair, arbitrary and unreasonable," should be stricken. Any Department action pursuant to these statutory provisions is authorized under South Carolina law and thus, by definition, cannot be as described by the Plaintiffs.

The Department respectfully requests that it be allowed to rely upon the memorandum of law it submitted in support of its original motion in this matter, filed with this Court on September 7, 2012. The Department further reserves the right to submit additional law, affidavits, or other information in support at a later time as fixed by the Court. The Department respectfully requests a hearing on its motion.

Respectfully submitted,



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Attorneys for Defendant
South Carolina Department of Revenue

Columbia, South Carolina
November 8, 2012

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)	
)	
South Carolina Department of Revenue,)	
)	
Defendant.)	
)	

**SECOND
AMENDED COMPLAINT**
(Declaratory Judgment/Class Action)

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

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

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,

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

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. Plaintiffs specifically assert that the prohibition against class actions set forth in S.C. Code Ann. § 12-60-80(C) of the Revenue Procedures Act does not apply to the claims set forth herein on the following grounds: (1) the Revenue Procedures Act does not apply to the claims set forth herein because the alleged delinquent debts collected by the Defendant are not taxes; and (2) even if the Revenue Procedures Act applies to this non-tax issue, § 12-60-80(C) is unconstitutional on its face because it was enacted pursuant to an act in violation of the South Carolina Constitution, Article III, § 17.

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

19. 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; and (g) the Revenue Procedures Act does not apply to the claims set forth herein because the alleged delinquent debts collected by the Defendant are not taxes, and even if the Revenue Procedures Act applies to this non-tax issue, § 12-60-80(C) is unconstitutional on its face because it was enacted pursuant to an act in violation of the South Carolina Constitution, Article III, § 17.

20. 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.

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

22. 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 interests.

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

DECLATORY RELIEF

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

25. 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; (g) that the garnishment by the Defendant was unconstitutional and thus wrongful; and (g) the Revenue Procedures Act does not apply to the claims set forth herein because the alleged delinquent debts collected by the Defendant are not taxes, and even if the Revenue Procedures Act applies to this non-tax issue, § 12-60-80(C) is unconstitutional on its face because it was enacted pursuant to an act in violation of the South Carolina Constitution, Article III, § 17. Plaintiffs further seek a refund of all wages taken together with prejudgment interest and that the Defendant be enjoined from further wage garnishment.

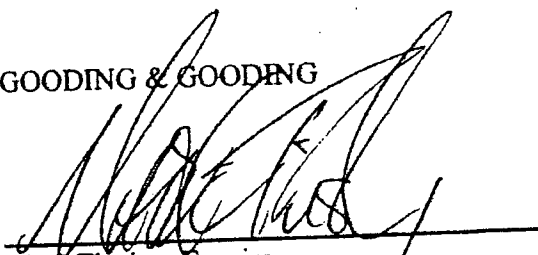
WHEREFORE, the named Plaintiffs pray this Court inquire into the matters alleged herein and:

- a) issue a temporary injunction upon notice to Defendant, temporarily enjoining 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 and find that the prohibition against class actions set forth in § 12-60-80(C) of the Revenue Procedures Act does not apply to the claims asserted herein because these alleged delinquent debts are not taxes, and even if the Revenue Procedures Act applies, § 12-60-80(C) is unconstitutional on its face because it was enacted pursuant to an

act in violation of the South Carolina Constitution, Article III, § 17.

- 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;
- 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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-and-

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ATTORNEYS FOR PLAINTIFFS

Date: January 9, 2013
Allendale, South Carolina

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.

NOTICE OF MOTION AND
MOTION TO STRIKE DEFENSES

South Carolina Department of Revenue,

Defendant.

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2014 MAY 14 PM 12:28

TO: MILTON KIMPSON, ATTORNEY FOR DEFENDANT

You are notified that Plaintiffs, through their undersigned counsel, will move before this Court ten (10) days after service hereof or as soon as counsel can be heard for an Order Striking the portion of Paragraph 6 of Defendant's Answer to 2nd Amended Complaint which asserts that S.C. Code Ann §12-60-80(c) bars class actions for matters not involving tax disputes with the Department of Revenue. The grounds for this motion are that such an interpretation of that statute would violate Article III §17 of the South Carolina Constitution, commonly referred to as the one subject rule as well general principles of statutory construction.

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danwilliams@bellsouth.net

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

-and-

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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 AM day of May, 2014
BEDINGFIELD & WILLIAMS, LLC

BY Angela Steel
PARALEGAL

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

2014 MAY 14 PM 12:22

WINSL. TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

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I N D E X

WITNESS/DESCRIPTION

PAGE NO.

EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING.

Certificate of Court Reporter

1 THE COURT: All right. I have -- thank you so
2 much for your memos. And what happened since 2015 in this
3 case? I had one of these experiences yesterday as I was
4 preparing. It's like, huh, I wonder if this case has a
5 complex designation? Yes, it does. It's mine. Okay. And
6 I did notice that in the order for the complex case
7 designation it did say that counsel was going to get
8 together within thirty days and come up with a scheduling
9 order. Did that, like, ever happen? No.

10 MR. KRAJACK: I don't believe it did, Your Honor.

11 THE COURT: Okay. That's fine. That's fine.
12 Okay. So is it just been lying dormant? Yes? Stomp once
13 for yes and twice for no.

14 MR. KRAJACK: Pretty much, Your Honor.

15 THE COURT: I think that's probably, like, my
16 fault. I apologize to all of you.

17 MR. KRAJACK: I'm pretty sure it's not your fault,
18 that the --

19 THE COURT: No, it's probably my fault. I've got
20 it. I take it. So I apologize to all of you that I have
21 not been more attendant to it. But I shall be going
22 forward, I promise. I will be much more, cued in and queued
23 up and ready. All right. So this begins -- is the
24 plaintiff's motion to strike defenses, so I'll start with
25 the plaintiff.

1 MR. HILL: Good morning, Your Honor. Robert Hill
2 on behalf of the plaintiffs and appearing with me is Mr.
3 Mark Tinsley, Mr. Daniel Williams and Mr. Charles Williams.
4 We are here on a motion to strike. But first let me
5 describe the class and then let me describe the issues for
6 you.

7 THE COURT: Okay.

8 MR. HILL: Just to refresh your recollection, Your
9 Honor, these claimants allege that the department of revenue
10 garnished their wages to collect medical bills. They claim
11 that the 12-4-580 of the governmental enterprise accounts
12 receivable act is unconstitutional and they seek to
13 represent a class of other South Carolina citizens whose
14 wages were likewise garnished for medical bills and other
15 third-party debts. The issue is whether or not a
16 subsection, subsection (c) of the statute 12-60-80(c)
17 applies to bar us from even attempting to bring this action
18 as a class action. And I would like to make three arguments
19 this morning to Your Honor. Number one, this action does
20 not involve taxes. Number two, 12-60-80(c) is limited to
21 bar class actions only over taxes, not just for a refund of
22 taxes, but only over the taxes. And then the third argument
23 is that the department's contrary reading would have the
24 statute violate Article III, Section 17 of 173.

25 First, let me go back to argument one, Your Honor,

1 about this action does not involve taxes. A memorandum,
2 which I understand that you have, Exhibit A to that is an
3 order that Your Honor issued back in 2012, which
4 specifically held that the revenue procedures act does not
5 apply because the debts we're talking about are not taxes.
6 You said that these debts were not taxes under the common
7 reading of the rule and also under taxes as defined by the
8 revenues procedures act and cited great gains that decision
9 for that. And, Your Honor, if I may just hand you up the
10 statute. It's the one that -- in this case.

11 THE COURT: Sure.

12 MR. HILL: Thank you.

13 THE COURT: Thanks much.

14 MR. HILL: The materials I just handed Your Honor
15 are the statute as written, a marked-up, struck-through
16 copy that I contend is how the department reads the statute.
17 And then some questions including the Gaines, Drummond, and
18 then three cases on the -- I'm going to mangle the Latin.
19 Please forgive me -- Eiusdem Generis, found in the
20 instruction. I actually looked in Black's Law this year and
21 that's as close as I could get this morning, Your Honor.
22 But I wanted to bring that to Your Honor's attention just to
23 emphasize that not everything that the department touches is
24 a tax. In that case they held it as a fine that the
25 department was involved in was not a tax. And I wanted to

1 remind Your Honor of the prior ruling that this was not a
2 tax because the rest of my arguments flow from that ruling.
3 But also the fact that this case does not involve a tax also
4 distinguishes their primary case, because their primary
5 reliance is on Drummond versus South Carolina and in
6 particular footnote 5. And that's one of the decisions I've
7 handed up to Your Honor.

8 THE COURT: Uh-huh. (Affirmative response.)

9 MR. HILL: And it's on the next to the last page
10 of the West Law printout that I did. It's in small print
11 under the right-hand corner at the bottom. It's footnote 5.
12 And that opening paragraph begins: We know that 12-60-80(c)
13 which prohibits a class action applies not only to
14 administrative law cases but also to tax cases brought into
15 the Circuit Court. We have no quarrel with that, but I
16 would suggest that the department is wanting to read that to
17 apply to non-tax cases. And the distinction there was
18 between actions that have to be brought in front of the
19 Administrative Law Court and run through the administrative
20 procedures an action which may be brought in Circuit Court,
21 but in either event the ruling there is the limitations is
22 also to tax cases brought in Circuit Court. Further this
23 year there was another action, Leightner, which involved a
24 dispute about is a refund of the taxes and whether or not
25 the class action law also applied to -- I think it was

1 admissions tax as well as a property tax. And the Supreme
2 Court held yes, that it applied to both. But, again, this
3 was a refund of the taxes. To go beyond that is not to
4 apply either decision but to expand those decision, I
5 believe beyond what the statute would allow. So you're not
6 applying Drummond because Drummond quite clearly was known
7 as the tax cases brought in Circuit Court.

8 Then we now go to my marked through striked through
9 copy of the statute. Your Honor, I believe that the first
10 provision that the department is trying to read out of the
11 statute is right after it talks about the department. It
12 talks about political subdivisions or their
13 instrumentalities. That's in that very last clause. And I
14 believe that's important because however Your Honor rules
15 the scope of this bar is it would not apply just to the
16 department, but also to all political subdivisions and all
17 instrumentalities.

18 Now, in my mind that would make sense if we were
19 talking about taxes, but if it's going to be all class
20 actions over anything, then the same rule in context would
21 have to be also all class actions over anything, no matter
22 how many subdivisions that they're on or how many
23 instrumentalities they're on. And I suggest that that would
24 fit much better in chapter 15 on civil procedures and
25 remedies, particularly at Chapter 77 at title 15, which is a

1 whole chapter in there on civil procedures against the state
2 and state agencies. If you order that kind of comprehensive
3 bar, that's not in the tax statute. The second part that I
4 believe that they're trying to read out is the very first
5 clause of subsection (c) where it talks about
6 notwithstanding subsection (a) and (b), which ties (c) back
7 into (a) and (b). And Your Honor, I believe that that's
8 important because subsection (a) talks about collecting
9 taxes or attempting to collect taxes. Subsection (b) talks
10 about actions that you can bring, these tax actions that you
11 can bring in Circuit Court, such as the one in Drummond.
12 But, again, (c) ties it back into (a) and (b). At the same
13 time, they enacted this subsection (c) they also amended the
14 Geer statute that is the subject of our action, at 12-4-
15 5(e). And I suggest to Your Honor that had they wanted this
16 class action bar to apply to the Geer statute, that's where
17 they would have put it or they would have at least had some
18 sort of cross-reference rather than have this bar stick out
19 there on its on in the revenues procedures action, that this
20 Court earlier ruled does not apply because this action does
21 not involve taxes. It involves medical bills and other
22 debts.

23 Now, we get to the Latin -- Yeah, that one. And that
24 is the two clauses that are sandwiched right after the
25 notwithstanding subsection (a) and (b), it specifically

1 provides that you cannot bring a class action for a refund
2 of taxes. It then had the comma and says any other class
3 action against the department and political subdivisions and
4 instrumentalities. It's kind of constructed specifically
5 with that type of sentence structure, where you've got a
6 specified item followed by this general any other clause.
7 And the -- construction is that we're going to limit the any
8 other clause to the same kind or type or class of items that
9 the specified items -- And the case that struck me, and I
10 handed it up, was the Bassey versus Spake, which was a
11 statute which applied to any action for assault battery,
12 false imprisonment, libel slander, malicious prosecution,
13 criminal conversion or seduction or in any other action for
14 damages for torts. The issue comes up whether or not an
15 action for damages for as trespass of the land is an action
16 for damages for torts. And I guess we could argue about
17 that, except for the statutes context. And in context the
18 Supreme Court held that it did not because the trespass of
19 land was a different kind of tort, there was a torts
20 specified. I suggest that the same thing's going on here,
21 Your Honor. By specifying a particular bar to class action
22 for refund of taxes, that the General Assembly intended --
23 that any other clause applies to the same type or kind of
24 tax cases. Not just tax refunds. I'm not arguing that the
25 statute's limited to just tax refunds, even though it falls

1 -- But I suggest that the tax cases, and there were plenty
2 of tax cases that don't involve a refund a taxes, including
3 the Drummond case, which they're relying on, which was an
4 attack on a regulation of a state tax exemption. Now, that
5 goes to just the context.

6 The department's argued that this Canon doesn't apply
7 for two reasons. Number one, they don't believe that
8 there's any other clause is really a general term. I think
9 that it is a general term within the rule. I think that the
10 Bassey case, the Shepherd case involving the City of
11 Orangeburg here and then the tax case, the Cooper River
12 Bridge case all cite that this -- when you have an other
13 clause or any other clause, that that's a general term
14 rendered by the specified terms.

15 They also argue that the refund of taxes is not enough
16 of an enumeration to limit the any other clause to that
17 provision, but I believe that it is. Otherwise, there would
18 have been absolutely no need to put that in there. If the
19 last clause already applies to all class actions no matter
20 what type, that renders the class action for refund of taxes
21 -- it has no meaning. And to give an independent meaning, I
22 believe, --

23 THE COURT: Uh-huh. (Affirmative response.)

24 MR. HILL: Lastly, let me invoke another canon of
25 construction and that's the constitutional voids. If you're

1 faced with two constructions of a statute, one of which
2 would render the statute unconstitutional, you go with the
3 other one. Here, their reading would render the statute
4 unconstitutional under Article III, Section 17 which
5 provides that every act or resolution having the force of
6 law shall relate to the one subject and that shall be
7 expressed in the title. Two primary requirements from that
8 constitutional provision, Your Honor. One was when it
9 provides that the subject shall be expressed in the title,
10 that requires that the title of an act must convey a
11 reasonable notice of the subject matter to the legislature
12 in part. The title to this act, this is act sixty-nine from
13 2003. It's Exhibit B to our memo. It's two hundred and one
14 single-spaced lines. I think it's about four and a half
15 pages that's in there. There's nothing in that title that
16 says class or class action. There's nothing in that title
17 to suggest that they're doing anything with political
18 subdivisions or instrumentalities. The most that's in there
19 is just three or four lines where it says that the act is to
20 amend Article I, chapter sixty of title twelve related to
21 the South Carolina Revenue Procedures Act so as to provide
22 the manner in which and conditions under which disputes a
23 claims with the department of revenue are determined and
24 resolved. That, by referring back to -- let me take a step
25 back. The title actually begins with one word subject.

1 It's called taxation and that's how this history begins. By
2 then describing it as a revision to the revenues procedures
3 act, it arguably notifies people that okay, we're going to
4 come in and revise how you bring a tax claim or challenges
5 to the tax disputes. But there's nothing in that title that
6 gives anyone notice that it's going to effect these Geer
7 claims, the garnishment of wages for medical bills and other
8 debts. There are other provisions in that title again that
9 do deal with that particular view because that particular
10 statute was amended, but there's nothing in that title's
11 description which gives anyone notice that that we've going
12 to have a class action brought up for these cases because
13 the amendments to the Geer statute doesn't say anything
14 about a class action.

15 There's -- lastly, I went through that -- there's at
16 least three subjects in there, okay? One is taxation.
17 That's the one subject. Taxation, that's the title. And
18 most everything else involves some -- some sort of taxation.
19 And I'm not going to parse property taxes versus some kind
20 of taxes, other kind of taxes. Taxes is the one general
21 subject and there's not a constitutional problem of having
22 branches off of the same subject. But we've also got
23 descriptions and changes to this non-tax code, that these
24 medical bills and other collections that the department is
25 garnishing. And there's even a provision in there on golf

1 carts, golf cart permits. That's stuck at the very end.

2 Now, my understanding from what the department says is
3 that may or may not cause a problem. If there's a problem,
4 maybe you can just settle it all, because this happened
5 before the 2008 case that the Supreme Court rendered which
6 says you can't end those cases, but you just settle the
7 provisions off. My question is, is okay what provision are
8 we going to settle off and what are we going to leave?
9 Because it seems to me that the provision that should be
10 left arguably is taxes because that's the one word provision
11 and that's the bulk of what's left. And if we're going to
12 sever everything off but taxes, we're fine because our cases
13 doesn't involve taxes. If we're not going to limit it to
14 taxes, now we've got problems because every subject that --
15 the subject of any action not only involved against the
16 department but also political subdivisions and also against
17 instrumentalities, and I'm thinking, you know, goodness
18 gracious. I could file a suit against the department of
19 corrections for prison crowding. I've got a class actions
20 possibly from employment discrimination. I've got maybe a
21 class action against the department of social services for
22 the way they treat foster parents. I can envision a whole
23 lot of class actions against the department that doesn't
24 have anything to do with taxes and against political
25 subdivisions and instrumentalities that doesn't have

1 anything to do with taxes. If we're going read all those
2 subjects into this title, we now have problems with the one
3 subject. I know in my memo I defied the department to
4 identify what one subject this title covers. I haven't
5 heard an answer to that yet, but I'm going to suggest if
6 it's going to cover one subject we're going to have to pick
7 one. Taxes wouldn't be a bad one. If they're going to do
8 that, then you should construe it the way we suggest it and
9 leave that class action brought to refund the taxes and to
10 other class actions of the same type that affect tax cases
11 and not apply it to the Geer statutes on medical bills and
12 other debt.

13 So you can avoid -- you can read it our way to avoid
14 the constitutional conundrum. If you read it their way, I
15 believe you would render the statute unconstitutional. All
16 right. Any questions, I know I was going fast, Your Honor.

17 THE COURT: No, sir. You weren't going fast
18 enough. Thank you.

19 MR. HILL: Thank you, ma'am.

20 THE COURT: Uh-huh. (Affirmative response.)

21 MR. KRAJACK: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. KRAJACK: My name is Dana Krajack, general
24 counsel at the department of revenue is seated next to me.
25 The first thing I'd like to point out of any significance is

1 the fact that the plaintiff's have captioned their motion
2 before the Court today as one -- as a motion to strike.
3 However, that's not what is before this Court. They are
4 asking this Court, as a matter of a declaratory judgment
5 action, to declare the statute 12-60-80 -- particularly that
6 provision (c) -- unconstitutional. That's the motion before
7 you. We've raised that as a defense. They have moved to
8 strike our defense on the basis that it is unconstitutional,
9 whereas their motion states other general statutory
10 destruction principals. So, looking at our defense, we have
11 raised this under 12-60-80(c). Looking at what they have
12 put before the Court to consider in support of their motion
13 to strike or declare this unconstitutional, I think we're
14 limited then to looking at Article III, Section 17, which
15 is the one-subject rule. And I don't have a dispute with
16 Mr. Hill. He did a fine job articulating the one subject
17 rule. However, I'm not certain exactly what relief they're
18 seeking by attacking act sixty-nine. I don't know if
19 they're necessarily asking that you declare the entire act
20 to be unconstitutional or whether they want to just strike
21 12-60-80(c) or whether they want to strike the golf carts
22 provision. I'm not really sure about that but from the
23 departments position, looking at act sixty-nine. It does
24 say taxation. Mr. Hill did appropriately cite the section
25 within the title that relates to 12-60-80(c). I don't think

1 it is subject to dispute that act sixty-nine simply rewrote
2 the tax code, which if you look at what the department does.
3 There's forty different types of taxes, but there's also
4 many other things again that Mr. Hill recognizes that the
5 department does. How the department administers and
6 enforces the responsibilities and the duties that the
7 General Assembly has placed upon the department was
8 encompassed within act sixty-nine. Someone having a dispute
9 with the department for those things that we do, that we are
10 charged to do, it is necessarily an associated subject that
11 falls within that act. I mean, it's not something that if
12 someone wants to appeal a decision by the department, an
13 action to be taken by the department, the revenue procedures
14 act and how that person would challenge the department's
15 actions is necessarily part of the tax code. It would make
16 no sense, as Mr. Hill might suggest, to stick it in
17 something under the DHEC statute.

18 If you want to challenge the department of revenue's
19 actions, it needs to be in the tax code and that's where it
20 is. And for that purpose, we don't feel that it's simply
21 unrelated. The cases that we put before the Court -- in
22 other words, what I'm trying to say is, the General Assembly
23 when they said taxation, they're not related to simply only
24 things that say taxation in it are they permitted to address
25 in the act. As long as they are kindred in nature, they're

1 not prohibited from addressing multiple facets of a single
2 bill. Multiple -- matters addressed within the bill need to
3 only be, as I said, kindred in nature and have a natural
4 association with one another. Where I'm going with this is
5 I believe that the Article III, Section 17 is
6 constitutional. I haven't heard anything today that was
7 already before this Court, that would require this Court to
8 determine the entire act to be unconstitutional. Mr. Hill
9 cited the American Petroleum case, which we brought to the
10 Court's attention by virtue of our brief. In American
11 Petroleum the Court looked at it. There was a provision in
12 there and the Court basically said we're going to declare
13 the whole act unconstitutional. The one thing that I would
14 point out is that the Supreme Court at that time said we are
15 going to basically restrict our decision to all cases that
16 were decided within the act that we are looking at, as well
17 as any that were done concurrently. They would have, in
18 other words, prospective application only in terms of the
19 court's ability to strike down an entire act. And, again,
20 I'm not really sure what Mr. Hill's asking the Court to do
21 with act sixty-nine, whether he wants you to declare the
22 whole thing unconstitutional or just this section. But the
23 other case that cited was Public Interest Foundation versus
24 Lucas, who was Speaker of the House at the time. The Public
25 Interest Foundation was challenging the general

1 appropriations bill, which provides the funding for the
2 entire State of South Carolina. And the court looked at it,
3 and just getting to the end of it, basically decided to
4 modify their holding in American Petroleum saying look,
5 where there's just a single provision or proviso that's out
6 of kilter much like, admittedly the golf cart that was
7 attached to the end of act sixty-nine, it's not necessary to
8 declare the entire act unconstitutional. It's such a
9 drastic remedy where it involves these fiscal issues, it
10 simply wasn't necessary. And I would submit that the entire
11 tax code that was essentially revamped by virtue of act
12 sixty-nine, also has a compelling interest to keep it intact
13 to the extent that the Court would see fit. In other words,
14 we would ask that the Court not declare the entire act
15 sixty-nine to be unconstitutional. If that is the Court's
16 decision that there is some provision that's not germane,
17 and simply excise that portion that is not reasonably
18 related to the act itself.

19 So what I believe I have submitted to the Court then is
20 that we believe that this proviso that deals with 12-60-80
21 is germane to the subject of taxation and how the department
22 operates in enforcement of the statute and the laws.

23 THE COURT: So what you're saying is that the
24 collection of the medical bills is germane to the manner in
25 which the department of revenue collects taxes?

1 MR. KRAJACK: Well, I might -- and I wasn't
2 involved back in 2012 on this case.

3 THE COURT: Sure.

4 MR. KRAJACK: Admittedly, I came into it only
5 within the past few months.

6 THE COURT: Sure.

7 MR. KRAJACK: Which is why this is kind of -- I
8 pushed this issue to the surface.

9 THE COURT: Okay.

10 MR. KRAJACK: I'm mindful of the Court's order
11 wherein the Court decided and has ruled that these medical
12 debts are not taxes.

13 THE COURT: Right.

14 MR. KRAJACK: Nonetheless and with all due
15 respect, we would, as the department's brief has been
16 submitted to the Court as an additional sustaining reason
17 that we do believe these are taxes by virtue of the
18 definitional sections of what a tax, state tax are. That
19 includes amounts to be collected by the department. Given
20 the breadth of all the things that the department does, it
21 was -- which admittedly aren't necessarily taxes, but
22 rather than write a separate procedure for how the
23 department collects delinquent debts that are owed to the
24 State of South Carolina, one for how it manages being the --
25 one how it manages the alcohol beverage licensing. The

1 revenue procedures act changed the definition of taxes to
2 encompass these additional duties and responsibilities. So
3 if you look at the tax, it's not just tax as the next person
4 walking in the room might accept what the word tax is.
5 Because that definitional section includes taxes, fines,
6 penalties, interest, and other amounts to be collected by
7 the department. So with that, my answer is if you would
8 reconsider that decision as to whether or not these are
9 taxes. I understand you have ruled that for purposes of
10 having to pursue their administrative remedies under the
11 revenue procedure, it's not a tax. The question that we
12 would ask you to reconsider is whether or not these are --
13 the collection of these delinquent debts owed to the State
14 of South Carolina are taxes for purpose of the --

15 THE COURT: I thought they were medical bills.

16 MR. KRAJACK: They are medical bills that are owed
17 to, in this case I believe it is the Regional Medical Center
18 of Orangeburg and Calhoun Counties.

19 THE COURT: Okay.

20 MR. KRAJACK: Those are debts that are owed to a
21 county-owned hospital, which the legislature has for good or
22 for worse, has placed the responsibility of collecting those
23 debts upon the department of revenue.

24 THE COURT: Okay.

25 MR. KRAJACK: Now, as to the interpretation of 12-

1 60-80(c), it's the department's position that the language
2 is very plain, that it doesn't take some type of contorted,
3 twisted analysis in order to exclude the bar for class
4 actions involving the department of revenue. If you look at
5 the provision (a), it basically says that there's no other
6 remedy, other than those provided in this chapter, involving
7 illegal or wrongful collection of taxes. All right. So (a)
8 has got to --

9 I beg the Court's indulgence for just a minute.

10 So, thus, under (a) any action involving wrongful or
11 illegal collection of taxes must be brought under -- Two
12 says, notwithstanding that, where there is only a single
13 constitutional issue, that action can go in Circuit Court.
14 (C) then says well, despite or notwithstanding (a) and (b),
15 no class action can be brought or claim for a refund of
16 taxes, which must proceed under -- then the party cannot be
17 named as a defendant in any other class action.

18 Looking at what Mr. Hill submitted to the Court and his
19 excised, the department isn't really taking any great
20 exception to that. The excised portion is what Mr. Hill put
21 before the Court is simply kind of a restatement -- it's
22 redundant as to what (a) and (b) already says. What I'd
23 also like to hand up to the Court -- unfortunately, I only
24 have two copies. It's not precedential, but it is because
25 it is persuasive, an order signed by Judge Thomas Cooper

1 appearing in the Court of Common Pleas for Richland County,
2 wherein Judge Cooper -- this is the only case that we could
3 find that directly involves the issue now before the Court,
4 which is whether or not the limitations of the class bar is
5 limited to the taxes. Judge Cooper ruled that the
6 plaintiffs in that action simply were ignoring the plain
7 language of 12-60-80(c). Where the language is clear and
8 unequivocal, the words must be given their plain and
9 ordinary meaning. The statute should be construed so that
10 no word, clause, sentence, provision or part shall be
11 rendered superfluous. We would submit based on the plain
12 language of 12-60-80 that there is no reason for the Court
13 to add any other words that the plaintiff would or have
14 suggested you should place in it. They would have you read
15 12-60-80(c) in a manner that it would be limited to a class
16 bar and inserting the word taxes. Now, where they want it
17 in there, I'm not sure, but that isn't what the General
18 Assembly put. And with just the simple, plain, language, I
19 don't know why it -- or should be a matter of some dispute.

20 The other thing I would say is that even if these
21 delinquent debts, these medical bills, even if they are not
22 taxes, that the second clause of 12-60-80(c) is broad enough
23 to encompass the matter that is now before the Court,
24 particularly their constitutional challenge. Mr. Hill cited
25 the Drummond case, which we have also cited and what I would

1 point out to, in terms of Drummond, is that in that case the
2 plaintiffs sought to challenge the validity of a department
3 regulation under state law. It wasn't a constitutional
4 challenge. It was done or the plaintiffs sought to be a
5 putative representative of a class in that declaratory
6 judgment action, so I would submit that we are on a parallel
7 here in that the plaintiffs are seeking a challenge, a
8 declaratory judgment challenge to a statute much like
9 Drummond did. The Court in Drummond clearly said they could
10 not proceed in that action on that matter as a class action.
11 Mr. Hill also cited the Leightner case, which came out in
12 February this year. This did involve a question wherein the
13 plaintiff was challenging admission taxes charged to its
14 member's dues. The Court not only felt -- they reversed the
15 Circuit Court's decision -- that they need not pursue their
16 administrative remedies under the remedy procedures act, but
17 more importantly, they certified that that action could not
18 be maintained as a class action as well. In that the
19 plaintiffs in the present case are seeking a refund of these
20 monies seized -- and, again, I wasn't privy back in 2012,
21 but on your order, I believe -- let me find it, Your Honor.
22 On page five of your order, which Mr. Hill handed up to you
23 as part of the exhibits --

24 THE COURT: Right.

25 MR. KRAJACK: -- the plaintiffs have brought a

1 declaratory judgment act seeking a declaration that two
2 specific statutes are facially unconstitutional, namely 12-
3 45-80 and 12-54-130. 12-45-80 is the Geer program, which is
4 the governmental enterprise accounts receivable. The other
5 one in the court's order, Your Court's order, 12-54-130 is
6 known as the SDCA, which is the set-off debt collection.
7 The set-off debt collection act, the SDCA actually did not
8 seize any wages. It seized the income tax refunds that were
9 due to the plaintiffs as a result of these medical bills.
10 So and to the extent that plaintiffs were contending the
11 SDCA is unconstitutional, it involves -- it clearly,
12 unequivocally involves taxes, because it involved a refund.
13 We seized the refund of their taxes. True, it was for
14 medical bills but it involves taxes because it was a refund
15 of their taxes.

16 And finally, and I probably am even less adept than Mr.
17 Hill at pronouncing Eiusdem Generis, that's how I'm going to
18 say it. For the same reasons that we've already submitted,
19 we believe that this statute is plain on its face, that it
20 doesn't require any statutory construction and that there
21 would be no need to do so because of the plain language of
22 the statute. However, even if the Court's said well, I'm
23 not so sure. You know, I'm looking at this. Maybe I'm not
24 thinking it's exactly what you're saying it says or I'm
25 thinking it means something else, we don't think that

1 principal statutory construction this Eiusdem Generis would
2 apply. For the first reason I would say or submit is there
3 is no list of people, things or items in the first part of
4 this -- there's not a long list of, you know, water, sewer,
5 electric, it's not a list of types of billings. There's
6 just two clauses here. So what I would submit to the Court
7 is, is this Eiusdem Generis -- it -- there would be no need
8 for it to apply because there is no list. There's not a
9 general list of things, of specific things, followed by a
10 general thing. You have to have a list of specific things
11 first before you can apply this principal saying that
12 whatever follows that, those specific things, would be
13 limited within those parameters. The other reason I would
14 submit that it is not necessarily applicable would be that
15 the second clause of 12-60-80(c) refers to the any other
16 class action may be brought in the state. It is not depend
17 on the first clause. It can be read without having any
18 reference to the first clause. Your Honor, the only other
19 thing, we did attempt to submit a reply to their
20 supplemental memorandum --

21 THE COURT: Yes.

22 MR. KRAJACK: -- which Mr. Smythe -- which Mr.
23 Smythe had not received as of the call of the case this
24 morning, which I did provide the Court a copy. We would ask
25 the Court to give it some consideration towards our reply.

1 And the language of Judge Cooper's order with part and
2 parcel of that reply. And it is -- I gave my -- we had two
3 copies. I gave one to the Court and to Mr. Hill. I know
4 the Court's very familiar with that order, that language,
5 but I believe we've also referenced that case in our reply
6 to the supplemental memorandum of plaintiffs. Thank you,
7 Your Honor.

8 THE COURT: Thank you very much.

9 Yes, sir.

10 MR. HILL: Yes, Your Honor. I need to deal with
11 Judge Cooper's order. In the order at page one, the first
12 sentence in the document, this case arises out of a taxpayer
13 payment that was unlawfully accessed by a computer -- and --
14 now, we can argue about whether or not that's a tax case,
15 but apparently Judge Cooper considered this case to be a tax
16 case because one was at issue there was taxpayer debt. And
17 I'm reading it that way because at the end when he goes back
18 and cites the Drummond case, the part of the Drummond case
19 he's citing is that infamous footnote 5 where it talks about
20 the tax cases brought in Circuit Court. So it would make
21 sense that Drummond does apply if this case is off taxpayer
22 data, meaning it's a tax case. All tax cases -- under our
23 reading, all cases involving taxes will be barred by this
24 class action debt because there would be any other class
25 action, other than the refund of taxes. But if you don't

1 limit it to taxes, what you're doing is reading the first
2 part out, the very adjacent clause out, which talks about a
3 refund of taxes. And I think it was incredibly telling --
4 my ears perked up a little bit when the department said that
5 that little redacted, struck-through portion of how I
6 thought they were reading the statute, yes, that is actually
7 the way that they're reading the statute. If they're
8 focusing in on that little four-word clause in isolation
9 without reading it in the context of the adjacent clause,
10 without reading it in the context of the statute as a whole,
11 without reading it in the context of its placement within
12 the chapter on revenues procedures act, and without even
13 reading it in its placement on the title, title twelve on
14 taxation versus chapter or a title fifteen on civil
15 procedures amended, the bar that they want would not only
16 apply to them, it would also apply, the same subjects would
17 apply all public subdivisions and all instrumentalities
18 meaning that any and all class actions of no matter what
19 type or subject can no longer be brought, not only against
20 the department but against public subdivisions and
21 instrumentalities. So I believe that the way -- of course,
22 Judge Cooper's is not a -- but as far as it is persuasive I
23 believe the way to make it persuasive is to read that first
24 sentence and say if Judge Cooper really thought this was a
25 tax case then, therefore, Drummond wouldn't apply.

1 One last thing. I will answer the departments question
2 of what relief we're seeking by raising unconstitutionality.
3 The relief we're seeking is that you read the statute our
4 way and not theirs. Because if you read the statute their
5 way, it's unconstitutional. If you read it our way, it is
6 not. When it goes on into the multiple subjects, again, the
7 multiple subjects -- and this is the other thing I heard --
8 that if you read it that way you've got problems. I think I
9 heard him admit that there's at least two subjects in there
10 because we've got these golf cart permits we've got to deal
11 with in some way. So if you read it our way, you can avoid
12 that by limiting this to taxes and sever off the golf cart
13 permits, possibly. If you read it their way, I'm not sure
14 what to say. I'm not sure what the subject is anymore. It
15 can't be if it's just taxes, we're good. But if it's just
16 everything that the department of revenue touches, it's even
17 broader than that because there were provisions in that act
18 that also applied to county taxes, dealing with county
19 property taxes and that whole argument. So it can't be just
20 the department. So, okay, are we supposed to sever that
21 off. Exactly what are we supposed to be left that we have
22 that could be applied constitutionally to bar our cases?
23 Your Honor, if you read it our way, you don't have to deal
24 with any of that because it's not unconstitutional. It's
25 only if you read it their way is what would render it

1 unconstitutional. Just about the reconsideration of Your
2 Honor's order, the Great Games case that Your Honor cited,
3 actually cited and construed that specific statute defining
4 taxes, it's not just common sense taxes, but it's fines,
5 assessments and all that other languages. That was an
6 extremely case so I suggest that that gives you no reason to
7 reconsider that. If you do we still have a difficult with
8 the one subject rule, but we can avoid all of that if Your
9 Honor abides by Your Honor's earlier rule in applying Great
10 Games and limit subsection (c) to taxes. After all, that's
11 the title it's in, in the revenues procedures act, dealing
12 with tax revenues, and with subsection (c), which talks
13 about refunds on taxes and all the rest of the context
14 there. And I appreciate your attention, Your Honor. Thank
15 you.

16 THE COURT: I appreciate it. So what you're after
17 at this juncture is to strike the defense?

18 MR. HILL: Yes, Your Honor. All I want to do is
19 be able to later file a class action, motion for class
20 action certification, without Your Honor saying you can't
21 even go there because that statute prohibits it.

22 THE COURT: Okay.

23 MR. KRAJACK: Very quickly, Your Honor.

24 THE COURT: Yeah.

25 MR. KRAJACK: The Morgan versus Haley case that was

1 handed up, it involved allegations of gross negligence,
2 which obviously with the court action, which Judge Cooper
3 said no, don't bring the class action in.

4 THE COURT: Well, that was because it involved the
5 data, the taxpayer data, specifically the taxpayer data.

6 MR. KRAJACK: Right.

7 THE COURT: And so there was a determination at
8 that point because what is involved specifically is just
9 that, taxpayer data and the breach thereof, that it could
10 not be brought as a class action. Yes?

11 MR. KRAJACK: Correct, Your Honor.

12 THE COURT: So the question then is whether or not
13 the collection of medical bills is the collection of taxes,
14 at the end of the day.

15 MR. KRAJACK: Well, much of what Judge Cooper
16 recognized that a data breach -- and I would respond this
17 way.

18 THE COURT: Okay.

19 MR. KRAJACK: That Judge Cooper recognized that
20 this data breach -- it is what it was. It was a data
21 breach.

22 THE COURT: Right.

23 MR. KRAJACK: It would not be --

24 THE COURT: It was a taxpayer.

25 MR. KRAJACK: It would not be taxes in the sense

1 that -- a data breach is not taxes. But yet, and we would
2 submit that it is much like the collection of these medical
3 bills. It involved the operation of the department of
4 revenue. So to the extent that the data breach involves the
5 operation of the department of revenue and the collection of
6 these debts owed to the political subdivisions of the State
7 of South Carolina are our responsibility. Those are
8 consistent with Judge Cooper's ruling that those actions
9 cannot be brought as a class action. And finally, I would,
10 I guess ask the Court to note and I would distinguish this
11 Great Games case. Essentially the Great Games case came up
12 as a result of a fine that was intended to be imposed by the
13 department and the Great Games, what the license holder did
14 in that case was he had failed to post a bond. So the Court
15 wasn't necessarily saying that the fine wasn't -- they were
16 more -- I think it came up as a -- and it was more directed
17 to the fact that the statute required someone that was
18 appealing a decision of the department or the ALC to post a
19 bond. And the Court said that bond wasn't a tax as opposed
20 to the fine that was to be imposed. So, really, the factual
21 pattern, I think, would be distinguished here. Now, we have
22 a statute that says amounts to be collected are taxes
23 whereas you couldn't take that language that we would submit
24 to the Court would cover the facts in this case. You
25 couldn't take that language, apply it to the language or the

1 facts of Great Games and say, ah, a bond that has to be
2 posted necessary --

3 THE COURT: So let me ask you this question. Is
4 it your position that there is no scenario that would allow
5 a class action under any circumstances to be maintained
6 against the department of revenue?

7 MR. KRAJACK: Yes, ma'am.

8 THE COURT: Okay. In other words, that is what
9 you believe the rule is. There can be no class action under
10 any circumstances brought against the department of revenue.
11 So why doesn't the statute say that?

12 MR. KRAJACK: Well, we believe it says that.

13 THE COURT: No. It doesn't say that. Doesn't say
14 that.

15 MR. KRAJACK: It say may not be -- any defendant in
16 any other class action brought in this state.

17 THE COURT: Notwithstanding a claim or action for
18 the refund of taxes may not be brought as a class action
19 anywhere. Okay, so tell me -- taxes -- so you think just
20 gratuitously it says that neither the department of revenue,
21 any political subdivisions or the political subdivision
22 instrumentalities may not be named or made a defendant in
23 any other class action brought in the State. So what you're
24 saying is you believe that this statute or provision
25 maintains that there may be a class action brought against

1 no political subdivisions in the State of South Carolina,
2 yes?

3 MR. KRAJACK: Your Honor, it says what it says.
4 My preference would be that it didn't have political
5 subdivisions in there --

6 THE COURT: Yeah.

7 MR. KRAJACK: -- because I can understand the
8 breadth of Mr. Hill's argument.

9 THE COURT: Yeah. Yes.

10 MR. KRAJACK: But nonetheless, we would take the
11 position that as it relates to the department of revenue,
12 you cannot sue us in any class action. The department may
13 not be made a defendant in any class action.

14 THE COURT: Okay.

15 MR. KRAJACK: Thank you, ma'am.

16 THE COURT: Uh-huh. (Affirmative response.)

17 MR. HILL: Your Honor, if I may have ten seconds?

18 THE COURT: Sure. Of course.

19 MR. HILL: This Latin term, which I will not try
20 to pronounce, just specifically -- and I think the case
21 closest on point is Bassey versus State. It's an older
22 decision, but that's the list of torts. That list those
23 torts and then it's got a comma and any other action for
24 damages and tort. And the Supreme Court held that any other
25 action for damages and tort does not include an action for

1 damages of trespass of lands, because for an action for
2 damages to trespass of lands was a different kind or a
3 character than any of the other tort actions listed. That's
4 all we're saying here. This is tailor made for this because
5 any other class action is not of the same kind of character
6 as a refund of taxes. We're talking about medical bills.
7 Thank you.

8 THE COURT: So, are you aware of any cases that
9 you can discuss with me where there has been a class action
10 brought against a political subdivision in the State of
11 South Carolina?

12 MR. HILL: No. No.

13 THE COURT: Okay.

14 MR. HILL: I cannot, but I can certainly -- I
15 thought about it. I can envision wanting to sue -- well,
16 I'm not sure who the proper defendant would be for a class
17 action. I'm not sure if that could be a subdivision or an
18 instrumentality, whether or not the -- may be an
19 instrumentality.

20 THE COURT: Of course, it is.

21 MR. HILL: Okay. Well, then that would be one.
22 So they would bar -- so the department would have you read
23 this clause that is tacked onto the end or a subsection at
24 the end of the revenues procedures act within the chapter
25 seven or title twelve on taxation to bar that kind of class

1 action. Because whatever rule would apply to them, you've
2 got to apply to the instrumentality. They're in the same
3 comma, within words separating each other. And I believe
4 that's the problem with the departments construction is they
5 want you to myopically focus on those four words rather than
6 reading the context as a whole. So I believe that would be
7 one. I can also envision others. And let me do say this,
8 because there was some hint in the papers of this. I am not
9 suggesting that the General Assembly cannot bar class
10 actions. I mean, they can if they wanted to. It's just
11 that they didn't do that here. And if they wanted to have
12 the kind of class action that the department's asking for,
13 there really is a chapter. It's chapter seventy-seven of
14 title fifteen that deals with civil procedures against the
15 state -- That's the place to put this kind of thing. And
16 really, if you try to stick it over here in -- it's going to
17 stick out like a sore thumb, plus it's going to create all
18 of these one subject problems under Article III, Section 17.

19 MR. TINSLEY: Your Honor, we've settled within the
20 last two years a class action against the department of
21 public safety on behalf of the South Carolina Highway
22 Patrol. And the legislature funded that settlement. This
23 has been within the last two years.

24 THE COURT: I was thinking of one -- as I recall
25 against the department of corrections for mental health

1 abuse as well.

2 MR. TINSLEY: And I believe Mr. Williams and Brad
3 Hutto recently had one certified against the department of
4 employment and work force, employment and work force.

5 THE COURT: Okay.

6 MR. TINSLEY: And certainly the legislature
7 wouldn't have funded to settle a class action if class
8 actions against all political subdivisions or
9 instrumentalities were barred.

10 MR. HILL: Your Honor, if I might and I apologize.

11 THE COURT: Sure.

12 MR. HILL: We can dispute within the context of
13 this case why the General Assembly or anybody else might
14 settle cases. As we know, there are all kinds of reasons
15 and rationales to support the settlement. We would point
16 the Court's attention to Judge Cooper's decision that talks
17 about them being a bars to class actions under -- somewhere
18 other than title fifteen, chapter seventy-seven.

19 THE COURT: Thank you.

20 MR. HILL: Thank you, Your Honor.

21 THE COURT: I think I'll just ask for a proposed
22 order. I think that it is nonsensical for me to -- I've
23 issued a decision, which I'm still comfortable with that the
24 portion of the statutory configuration which allows for the
25 department of revenue to collect medical bills is a

1 collection of tax, it's just not. And I'm satisfied with
2 that decision and I think likewise class actions can be
3 maintained.

4 MR. HILL: Your Honor, I will have a proposed
5 order to you by tomorrow.

6 THE COURT: That's a little quick because I might
7 not be ready to look at it like tomorrow, but by the day
8 after tomorrow, I'll be like ready.

9 Do not let it mold.

10 I mean, I just -- I mean, I think the path is what the
11 path is insofar as my view of these matters. I do believe
12 that there are class actions that can be maintained against
13 a sovereign, if you will. And I do not believe that -- and
14 I've already opined that I do not believe that the
15 collection of medical bills is collection of taxes. It is
16 what it is. We are where we are in this particular case and
17 I think it would be an inconsistent determination and I
18 think that I would be making a determination that class
19 actions cannot be maintained against a sovereign and that's
20 just simply not what the law maintains. There are agencies
21 that can be sued and it has happened. It doesn't happen all
22 of the time. It certainly has happened.

23 All right. Thank you.

24 MR. HILL: Thank you, Your Honor.

25 MR. KRAJACK: Thank you, Your Honor.

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THE COURT: Thank you everyone so much.

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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF COMMON PLEAS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 20 DAY OF JUNE, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

December 11, 2017

S*0274 (Rat #0138, Act #0069 of 2003) General Bill, By Leventis
Similar (H 3919)

Summary: Motor vehicle, property tax exemption; provided to member of armed services who leases private passenger vehicle

AN ACT TO AMEND SECTION 12-37-220, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO EXEMPT A PRIVATE PASSENGER MOTOR VEHICLE LEASED TO A MEMBER OF THE ARMED FORCES OF THE UNITED STATES STATIONED IN THIS STATE WHOSE HOME OF RECORD IS IN ANOTHER STATE AND THE LEASED VEHICLE IS TO BE REGISTERED AND LICENSED IN THE STATE OF THE SERVICE MEMBER'S HOME OF RECORD AND TO EXEMPT ALL VEHICLES LEASED BY A PUBLIC BODY IF THE VEHICLE WOULD OTHERWISE BE EXEMPT IF OWNED BY THE PUBLIC BODY; TO PROVIDE THAT THE AMENDMENT TO SECTION 12-37-220(B)(11), BY ACT 334 OF 2002, APPLIES TO PROPERTY TAX YEARS BEGINNING AFTER 2001; BY ADDING SECTION 12-2-100 SO AS TO PROVIDE THAT A TAX CREDIT ADMINISTERED BY THE DEPARTMENT OF REVENUE IS USEABLE IN THE YEAR IT IS GENERATED AND IS NONREFUNDABLE; TO AMEND SECTION 12-2-20, RELATING TO THE DEFINITION OF "PERSON" FOR TAXATION PURPOSES, SO AS TO PROVIDE THAT THE DEFINITION APPLIES NOT ONLY IN TITLE 12, BUT ALSO IN OTHER TITLES WHICH PROVIDE FOR TAXES THAT ARE ADMINISTERED BY THE DEPARTMENT OF REVENUE; TO AMEND SECTION 12-2-25, AS AMENDED, RELATING TO DEFINITIONS PERTAINING TO LIMITED LIABILITY COMPANIES AND SINGLE-MEMBER LIMITED LIABILITY COMPANIES, SO AS TO PROVIDE THAT THE DEFINITIONS APPLY NOT ONLY IN TITLE 12, BUT ALSO IN OTHER TITLES WHICH PROVIDE FOR TAXES THAT ARE ADMINISTERED BY THE DEPARTMENT OF REVENUE; TO AMEND SECTION 12-8-580, AS AMENDED, RELATING TO STATE INCOME TAX WITHHOLDING ON PROCEEDS OF THE SALE OF REAL PROPERTY BY NONRESIDENTS, SO AS TO CONFORM THE CALCULATION OF AMOUNTS SUBJECT TO WITHHOLDING TO THE PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 ALLOWING THE EXCLUSION FROM TAXABLE INCOME OF A PORTION OF THE GAIN ON THE SALE OF A PRINCIPAL RESIDENCE AND TO ALLOW THE DEPARTMENT OF REVENUE TO REVOKE EXEMPTIONS FROM WITHHOLDING ALLOWED FOR CERTAIN TRANSACTIONS IF THE DEPARTMENT DETERMINES THE NONRESIDENT IS NOT COOPERATING IN THE DETERMINATION OF THE TAXPAYER'S SOUTH CAROLINA INCOME TAX LIABILITY; TO AMEND SECTION 12-6-40, AS AMENDED, RELATING TO ADOPTION OF THE INTERNAL REVENUE CODE, SO AS TO ADOPT IT TO STATE LAW AS AMENDED THROUGH 2002; TO AMEND SECTION 12-6-540, RELATING TO THE STATE INCOME TAX RATES APPLICABLE TO EXEMPT ORGANIZATIONS AND COOPERATIVES, SO AS TO PROVIDE A SPECIFIC REFERENCE TO THE TAX RATE APPLICABLE TO HOMEOWNERS' ASSOCIATIONS; TO AMEND SECTION 12-13-50, RELATING TO EXCEPTIONS FROM THE BUILDING AND LOAN ASSOCIATION INCOME TAX, SO AS TO PROVIDE THAT PAYMENT OF THE INCOME TAX PROVIDED IN CHAPTER 13, TITLE 12 SHALL NOT BE IN LIEU OF DEED RECORDING FEES; TO AMEND SECTIONS 12-13-70, 12-20-150, 12-28-940, 12-43-210, AND 12-43-230, RELATING TO THE ADMINISTRATION OF THE DEPARTMENT OF REVENUE, THE COMPUTATION OF MOTOR FUEL TAXES, THE ESTABLISHMENT OF UNIFORM AND EQUITABLE TAX ASSESSMENTS, AND THE PROMULGATION OF DEFINITIONAL REGULATIONS TO FACILITATE THE ESTABLISHMENT OF UNIFORM TAX ASSESSMENTS, SO AS TO CHANGE THE DEPARTMENT'S AUTHORITY TO PROMULGATE REGULATIONS FROM MANDATORY TO PERMISSIVE AND TO MAKE TECHNICAL CORRECTIONS; TO AMEND SECTION 12-54-110, RELATING TO THE POWER OF THE DEPARTMENT OF REVENUE TO SUMMON A TAXPAYER OR OTHERS, SO AS TO INCLUDE TAX MATTERS AND OTHER MATTERS ADMINISTERED BY THE DEPARTMENT; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE JOB TAX CREDIT, SO AS TO PROVIDE FOR COUNTY DESIGNATIONS TO BE EFFECTIVE FOR THE TAXABLE YEARS BEGINNING THE FOLLOWING CALENDAR YEAR; TO AMEND SECTION 12-6-3415, RELATING TO INCOME TAX CREDIT FOR RESEARCH AND DEVELOPMENT EXPENSES, SO AS TO MAKE IT APPLICABLE ONLY FOR RESEARCH EXPENSES; TO AMEND SECTION 12-6-3470, RELATING TO EMPLOYER TAX CREDIT, SO AS TO EXEMPT APPLICATION OF THE MAXIMUM AGGREGATE CREDIT FOR EMPLOYEES IN DISTRESSED COUNTIES; TO AMEND SECTION 12-6-3310, RELATING TO CREDITS AGAINST INCOME TAX, SO AS TO PROVIDE FOR PASS-THROUGH OF A CREDIT TO A SHAREHOLDER, MEMBER, OR PARTNER OF AN "S" CORPORATION, LIMITED LIABILITY COMPANY TAXED LIKE A PARTNERSHIP, AND PARTNERSHIP; TO AMEND SECTION 12-6-3365, RELATING TO CORPORATE INCOME TAX MORATORIUM FOR JOB CREATION, SO AS TO INCLUDE A MORATORIUM ON INSURANCE PREMIUM TAX, TO REVISE THE DATA USED FOR COMPUTING A COUNTY'S UNEMPLOYMENT RATE AND TO PROVIDE THAT THE DEPARTMENT NAME THE MORATORIUM COUNTIES, EFFECTIVE FOR THE TAXABLE YEAR BEGINNING THE FOLLOWING CALENDAR YEAR; TO REPEAL SECTION 12-10-35 RELATING TO A MORATORIUM ON STATE CORPORATE INCOME TAXES; TO AMEND SECTION 12-44-30, AS AMENDED, AND SECTION 4-12-30, AS AMENDED, BOTH RELATING TO THE DEFINITION OF "MINIMUM INVESTMENT" FOR PURPOSES OF A FEE IN LIEU OF PROPERTY TAX, BOTH SO AS TO PROVIDE FOR EFFECTIVENESS OF COUNTY DESIGNATIONS IN THE FOLLOWING CALENDAR YEAR, AND TO PROVIDE THAT THE DEPARTMENT DESIGNATE REDUCED INVESTMENT COUNTIES, EFFECTIVE FOR A SPONSOR WHOSE FEE AGREEMENT IS SIGNED IN THE CALENDAR YEAR FOLLOWING THE DESIGNATION; BY ADDING SECTION 12-6-535 SO AS TO PROVIDE THAT FOR PURPOSES OF INTERNAL REVENUE CODE SECTION 641(c), AN ELECTING SMALL BUSINESS TRUST IS TAXED AT THE

HIGHEST RATE PROVIDED IN SECTION 12-6-510; TO AMEND SECTION 12-6-5020, RELATING TO ENTITIES AUTHORIZED TO FILE CONSOLIDATED CORPORATE INCOME TAX RETURNS, SO AS TO PROVIDE THAT A CORPORATION THAT HAS ELECTED TO BE TAXED UNDER SUBCHAPTER S OF THE INTERNAL REVENUE CODE MAY NOT JOIN IN THE FILING OF A CONSOLIDATED INCOME TAX RETURN; TO AMEND SECTION 12-35-40, RELATING TO MULTISTATE DISCUSSIONS OF SIMPLIFICATION REQUIREMENTS IN CONNECTION WITH THE SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT, SO AS TO PROVIDE THAT THE DELEGATION TO THE MULTISTATE DISCUSSION MEETINGS MAY BE REIMBURSED FOR LODGING, AIR FARE, AND OTHER BUSINESS EXPENSES; TO AMEND SECTION 12-36-1310, AS AMENDED, RELATING TO THE IMPOSITION OF A STATE USE TAX ON CERTAIN TANGIBLE PERSONAL PROPERTY AND PROVIDING A CREDIT FOR TAXES PAID IN ANOTHER STATE, SO AS TO REQUIRE PROOF THAT THE SALES OR USE TAX WAS DUE AND PAID IN THE OTHER STATE AND TO DELETE A RECIPROCITY REQUIREMENT; TO AMEND SECTION 12-53-40, RELATING TO COSTS AND EXPENSES OF TAX SALES AND COLLECTIONS, SO AS TO INCLUDE THE COST OF FILING, ENROLLING, AND SATISFACTION OF A STATE TAX LIEN; BY ADDING SECTION 12-54-124 SO AS TO PROVIDE THAT IN THE CASE OF THE TRANSFER OF A MAJORITY OF THE ASSETS OF A BUSINESS OTHER THAN CASH, ANY TAX GENERATED BY THE BUSINESS WHICH WAS DUE ON OR BEFORE THE DATE OF THE TRANSFER CONSTITUTES A LIEN AGAINST THE ASSETS IN THE HANDS OF THE TRANSFEREE UNTIL THE TAXES ARE PAID, TO PROVIDE THAT FAIR MARKET VALUE MUST BE USED TO DETERMINE WHETHER A MAJORITY OF THE ASSETS HAVE BEEN TRANSFERRED, TO PROVIDE THAT THE DEPARTMENT OF REVENUE MAY NOT ISSUE A LICENSE TO CONTINUE THE BUSINESS TO THE TRANSFEREE UNTIL ALL TAXES DUE TO THE STATE HAVE BEEN PAID AND MAY REVOKE A LICENSE ISSUED TO A BUSINESS THAT VIOLATES THIS PROVISION; TO AMEND SECTION 12-54-25, RELATING TO INTEREST THAT MUST BE PAID ON ANY TAX THAT IS NOT PAID WHEN DUE, SO AS TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 12-54-240, AS AMENDED, RELATING TO THE DISCLOSURE OF CERTAIN RECORDS OF AND REPORTS AND RETURNS FILED WITH THE DEPARTMENT OF REVENUE, SO AS TO INCLUDE AS AN EXCEPTION TO THE PROHIBITION OF DISCLOSURE INFORMATION PURSUANT TO A SUBPOENA ISSUED BY A FEDERAL OR THE STATE GRAND JURY; 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; TO AMEND ARTICLE 5, CHAPTER 60 OF TITLE 12, RELATING TO STATE REVENUE APPEALS PROCEDURES, SO AS TO REVISE THESE APPEAL PROCEDURES; TO AMEND SECTION 12-60-2110, RELATING TO PROPERTY TAX ASSESSMENT PROTESTS, SO AS TO REVISE THE TIME FOR FILING THESE PROTESTS; TO AMEND SECTION 12-60-2510, AS AMENDED, RELATING TO PROPERTY TAX ASSESSMENT NOTICES, SO AS TO CLARIFY CERTAIN REFERENCES IN THE SECTION; TO AMEND SECTION 12-6-3535, RELATING TO TAX CREDIT FOR REHABILITATION OF AN HISTORIC STRUCTURE, SO AS TO REDEFINE "CERTIFIED HISTORIC RESIDENTIAL STRUCTURE", DEFINE "OWNER-OCCUPIED RESIDENCE", AND PROVIDE FOR DOCUMENTATION OF REHABILITATION STANDARDS; TO AMEND ARTICLE 13, CHAPTER 60 OF TITLE 12, RELATING TO PROCEDURES AND CONTESTED REVENUE CASES, SO AS TO REVISE THE DUTIES, FUNCTIONS, AND RESPONSIBILITIES OF THE ADMINISTRATIVE LAW JUDGE DIVISION AND DEPARTMENT HEARING OFFICERS; TO AMEND SECTION 30-2-30, RELATING TO DEFINITIONS USED IN THE FAMILY PRIVACY PROTECTION ACT OF 2002, SO AS TO PROVIDE THAT PERSONAL INFORMATION DOES NOT MEAN INFORMATION ABOUT THE NAMES AND ADDRESSES FROM REGISTRATION DOCUMENTS FILED WITH THE DEPARTMENT OF REVENUE AS A BUSINESS ADDRESS WHICH ALSO MAY BE A PERSONAL ADDRESS; TO PROVIDE THAT THE AMENDMENT TO SECTION 12-37-220(B)(11), BY ACT 334 OF 2002, APPLIES TO PROPERTY TAX YEARS BEGINNING AFTER 2001; TO AMEND SECTION 12-4-580, AS AMENDED, RELATING TO DEBT COLLECTION BY THE DEPARTMENT FOR A GOVERNMENTAL ENTITY, SO AS TO REDFINE "LIABILITIES OWED THE GOVERNMENTAL ENTITY" TO MEAN THE SAME AS "DELINQUENT DEBT" AND TO PROVIDE FOR NOTICE AND AN APPEALS PROCEDURE; TO AMEND SECTION 12-56-20, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF DEBT COLLECTION BY THE DEPARTMENT FOR A CLAIMANT AGENCY SO TO SPECIFY A COUNTY OR LOCAL GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY AS A "POLITICAL SUBDIVISION"; TO AMEND SECTION 12-56-60, RELATING TO SET OFF AGAINST A DEBTOR'S REFUND, SO AS TO REQUIRE THE CLAIMANT AGENCY TO NOTIFY THE DEPARTMENT OF A REDUCTION IN THE DELINQUENCY; TO AMEND SECTION 12-56-62, RELATING TO NOTICE OF SETOFF, SO AS TO PROVIDE FOR NOTICE OF THE INTEREST DUE ON THE DEBT AND THAT SETOFFS MAY BE MADE AGAINST REFUNDS UNTIL THE DELINQUENCY IS SATISFIED; TO AMEND SECTION 12-56-63, RELATING TO PROTEST OF A DEBT TO A CLAIMANT AGENCY, SO AS TO REQUIRE A TAXPAYER IDENTIFICATION NUMBER INSTEAD OF SOCIAL SECURITY NUMBER, TO ALLOW AN ADMINISTRATIVE FEE TO BE CHARGED BY THE MUNICIPAL ASSOCIATION OR ASSOCIATION OF COUNTIES OF SOUTH CAROLINA TO COVER COSTS INCURRED IN SUBMITTING A CLAIM, AND TO MAKE THE ENTITY CLAIMING THROUGH THE ASSOCIATION RESPONSIBLE FOR THE NOTICE AND HEARING REQUIREMENTS; TO AMEND SECTION 12-56-65, RELATING TO A DEBTOR'S CLAIM FOR A REFUND, SO AS TO PROVIDE FOR A DEBTOR'S CLAIM FOR A REFUND OF THE COLLECTED DEBT WITHIN ONE YEAR OF ITS COLLECTION; TO REPEAL SECTION 6-4-30 RELATING TO THE DUTIES OF THE DEPARTMENT IN CONNECTION WITH THE ACCOMMODATIONS TAX; TO AMEND SECTION 12-36-910, AS AMENDED, RELATING TO THE SALES TAX ON CHARGES FOR THE TRANSMISSION OF VOICE MESSAGES TO PROVIDE FOR A "BUNDLED

TRANSACTION"; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO EXEMPTIONS FROM THE SALES TAX, SO AS TO INCLUDE PRESCRIPTION MEDICINES USED TO PREVENT RESPIRATORY SYNCYTIAL VIRUS; TO AMEND SECTION 12-20-105, RELATING TO PROJECTS ELIGIBLE FOR THE LICENSE TAX CREDIT, SO AS TO INCLUDE ELIGIBILITY PURSUANT TO ANY OF THE FEE IN LIEU PROGRAMS; TO AMEND SECTION 12-10-95, RELATING TO THE RETRAINING TAX CREDIT, SO AS TO ALLOW THE CREDIT FOR APPRENTICESHIP PROGRAMS AND PROGRAMS ENHANCING EXPORTS; TO PROVIDE THAT A COUNTY MAY POSTPONE ITS 2002 REASSESSMENT PROGRAM FOR AN ADDITIONAL YEAR, UNTIL 2004; TO AMEND SECTIONS 12-43-355, 58-9-2200, 12-39-70, AND 12-6-3360, ALL RELATING TO ASSESSMENT AND APPRAISAL OF CERTAIN PERSONAL PROPERTY OF BUSINESS AND INDUSTRY, SO AS TO CHANGE TO DETERMINATION AS CLASSIFIED IN THE NORTH AMERICAN CLASSIFICATION SYSTEM MANUAL AND TO MAKE APPROPRIATE REFERENCE CHANGES; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO EXEMPTIONS FROM THE SALES TAX, SO AS TO INCLUDE SEVENTY PERCENT OF THE GROSS PROCEEDS OF THE RENTAL OR LEASE OF PORTABLE TOILETS; BY ADDING SECTION 12-4-385 SO AS TO PROVIDE THAT THE DEPARTMENT GIVE NOTICE TO THE DEPARTMENT OF LABOR, LICENSING AND REGULATION WHEN AN INDUSTRY GROUP WILL BE AFFECTED BY A PROPOSED POLICY CHANGE; TO PROVIDE FOR THE REFUND OF CERTAIN SALES TAX PAID ON THE LEASE OR RENTING OF PORTABLE TOILETS; BY ADDING SECTION 12-6-5085 SO AS TO PROVIDE FOR A TAX RETURN CHECKOFF CONTRIBUTION TO THE SOUTH CAROLINA LITTER CONTROL ENFORCEMENT PROGRAM; TO AMEND CHAPTER 12, TITLE 4, RELATING TO THE FEE IN LIEU OF PROPERTY TAXES ACT, SECTION 4-29-67, AS AMENDED, RELATING TO INDUSTRIAL DEVELOPMENT PROJECTS REQUIRING A FEE IN LIEU OF PROPERTY TAXES, AND CHAPTER 44 OF TITLE 12, RELATING TO THE FEE IN LIEU OF TAX SIMPLIFICATION ACT, ALL SO AS TO PROVIDE FOR DESIGNATIONS OF COUNTIES AS REDUCED INVESTMENT COUNTIES BY DECEMBER THIRTY-FIRST OF EACH YEAR BASED ON DATA AVAILABLE ON THE MOST RECENT NOVEMBER FIRST, TO PROVIDE WHEN THE DESIGNATIONS ARE EFFECTIVE FOR A SPONSOR, TO INCLUDE AMOUNTS EXPENDED AT A PROJECT AS A NONRESPONSIBLE PARTY PURSUANT TO THE BROWNFIELDS VOLUNTARY CLEANUP PROGRAM TOWARD THE MINIMUM INVESTMENT THRESHOLD, TO REPLACE THE WORD "INVESTOR" WITH THE WORD "SPONSOR", TO PROVIDE THAT FAILURE TO MAINTAIN THE MINIMUM LEVEL OF INVESTMENT IN A PROJECT RESULTS IN DISQUALIFICATION FOR THE FEE, TO SUSPEND THE STATUTE OF LIMITATIONS FOR ASSESSMENT OF TAXES OR FEES DUE ON A PROJECT IF NECESSARY TO THE DETERMINATION OF COMPLIANCE WITH INVESTMENT REQUIREMENTS, TO DELETE THE QUALIFICATION FOR A FOUR PERCENT ASSESSMENT ON INVESTMENTS OF AT LEAST FOUR HUNDRED MILLION DOLLARS IN LEAST DEVELOPED OR UNDERDEVELOPED COUNTIES BY A LIMITED LIABILITY COMPANY AND BY AN INVESTOR AFFILIATE LOCATED CONTIGUOUS TO THE INVESTOR PROJECT, TO SPECIFY THAT PROPERTY TAXES REFERENCES ARE TO AD VALOREM PROPERTY TAXES, TO PROVIDE FOR THE ESTABLISHMENT OF THE MILLAGE RATE BY WAY OF A MILLAGE RATE AGREEMENT OR THE INITIAL LEASE AGREEMENT, TO PROHIBIT AN INCREASE IN THE TERM OF THE AGREEMENT OR A DECREASE IN THE MILLAGE OR DISCOUNT RATE OR ASSESSMENT RATIO, TO CHANGE TIME PERIODS FOR MEETING CERTAIN INVESTMENT AND JOB CREATION REQUIREMENTS, TO PROVIDE FOR A NONCASH CREDIT AGAINST A FEE DUE FROM A SPONSOR, TO REQUIRE A CLAIM FOR ADJUSTMENT FOR A MISALLOCATION OF FEE BE MADE WITHIN ONE YEAR OF THE IMPROPER DISTRIBUTION, TO PROVIDE FOR THE BASIS IN TRANSFERRED PROPERTY SUBJECT TO THE FEE, TO CHANGE REFERENCES FROM "MULTICOUNTY PARK" TO "INDUSTRIAL DEVELOPMENT PARK", TO PROVIDE THAT A SPONSOR FILE DUPLICATE FORMS OR RETURNS WITH THE DEPARTMENT OF REVENUE AND THE COUNTY OR COUNTIES IN WHICH THE PROJECT IS LOCATED, TO PROVIDE FOR THE WAIVER OF CERTAIN ITEMS IN A RECAPITULATION OF THE CONTENTS OF AN AGREEMENT; AND TO AMEND SECTION 4-29-10, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF INDUSTRIAL DEVELOPMENT PROJECTS REQUIRING A FEE IN LIEU OF TAXES, SO AS TO DELETE DEFINITIONS OF "INVESTOR", "INVESTOR AFFILIATE", AND "BUSINESS"; TO AMEND CHAPTER 28 OF TITLE 12, RELATING TO THE TAX ON MOTOR FUELS, BY DIRECTING THE CODE COMMISSIONER TO SUBSTITUTE "USER FEE" FOR "TAX" AND "MOTOR FUEL SUBJECT TO THE USER FEE" FOR "TAXABLE MOTOR FUEL"; TO PROVIDE FOR VARIOUS EFFECTIVE DATES; AND TO AMEND SECTION 56-3-115, AS AMENDED, RELATING TO GOLF CART PERMITS, SO AS TO PROVIDE THAT THE PERMIT ALLOWS THE GOLF CART TO BE OPERATED BY THE OWNER OR HIS AGENT OR EMPLOYEES. - ratified title

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

MAR 30 2018

Diane S. Goodstein, Circuit Court Judge

SC Court of Appeals

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 RevenueAppellant.

CERTIFICATE OF COUNSEL

I certify that this Record on Appeal contains all material proposed to be included in
accordance with Rule 210(g), SCACR.



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