THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable S. Phillip Lenski, Administrative Law Judge

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

Richard Beltram,.....Appellant/Respondent,

v.

South Carolina Department of Revenue,.....Respondent/Appellant.

RESPONDENT'S AMENDED FINAL BRIEF OF RESPONDENT/APPELLANT

Nicole M. Wooten (Bar No. 73594)
Counsel for Litigation
William J. Condon, Jr. (Bar No. 72632)
Managing Counsel for Litigation
Jason P. Luther (Bar No. 78021)
General Counsel for Litigation
P.O. Box 12265
Columbia, SC 29211-9979
(803) 898-1826
Nicole.Wooten@dor.sc.gov
CourtOrders@dor.sc.gov

Attorneys for Respondent/Appellant
South Carolina Department of Revenue

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable S. Phillip Lenski, Administrative Law Judge

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

Richard Beltram,.....Appellant/Respondent,

v.

South Carolina Department of Revenue,.....Respondent/Appellant.

RESPONDENT'S AMENDED FINAL BRIEF OF RESPONDENT/APPELLANT

Nicole M. Wooten (Bar No. 73594)
Counsel for Litigation
William J. Condon, Jr. (Bar No. 72632)
Managing Counsel for Litigation
Jason P. Luther (Bar No. 78021)
General Counsel for Litigation
P.O. Box 12265
Columbia, SC 29211-9979
(803) 898-1826
Nicole.Wooten@dor.sc.gov
CourtOrders@dor.sc.gov

Attorneys for Respondent/Appellant
South Carolina Department of Revenue

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

S.C. STATUTES

OTHER AUTHORITIES

STATEMENT OF THE ISSUES ON APPEAL

I. **DID THE ADMINISTRATIVE LAW COURT ERR IN CONCLUDING THAT BELTRAM IS RESPONSIBLE FOR THE WITHHOLDING TAX LIABILITY OF INTEDGE DURING THE TIME HE WAS PRESIDENT AND MAJORITY SHAREHOLDER OF INTEDGE?**

II. **DID THE ADMINISTRATIVE LAW COURT ERR IN RULING THAT BELTRAM HAD NOTICE, AN OPPORTUNITY TO BE HEARD IN A MEANINGFUL WAY, AND JUDICIAL REVIEW IN THIS MATTER?**

III. **IS BELTRAM ENTITLED TO AN AWARD OF $1,875.00 FOR "UNANTICIPATED ATTORNEY'S FEES" IN THIS MATTER?**

STATEMENT OF THE CASE

The Department presented its Statement of the Case in the Initial Appellant's Brief of Respondent/Appellant South Carolina Department of Revenue (Department). In the interest of judicial economy, the Department respectfully incorporates its Statement of the Case in such brief into this brief. (Dept.'s Appellant's Br., pp. 2-4.)

STATEMENT OF FACTS

Based upon the Issues on Appeal in the Department's Appellant's Brief, the Department presented its Statement of Facts in the Department's Appellant's Brief. In the interest of judicial economy, the Department respectfully incorporates its Statement of Facts in such brief into this brief. Further, based upon the Statement of Facts set forth in Appellant/Respondent Richard Beltram's (Beltram) Appellate brief, the Department includes the following additional Statement of Facts.

Beltram's Role and Responsibilities at Intedge Industries, Inc.

Intedge Industries, Inc. began operating as a family-owned business in 1914 under the name International Edge Tool Company. (R. p. 125; Hr'g Tr. 17:2-4.) The business was located in Newark, New Jersey. *Id.* In 1976, the business formally changed its name to Intedge Industries, Inc. (Intedge) and registered as a New Jersey corporation. (R. p. 125; Hr'g Tr. 17:5-7.) In approximately 1988, the company moved its operations from Newark, New Jersey to 1875 Chumley Road, Woodruff, South Carolina. (R. p. 125; 17:7-16.)

Beltram held a variety of employment positions with Intedge throughout the years. Specifically, Beltram began as a salesperson, moved to assistant sales manager, and then moved to vice-president of sales. (R. p. 126; Hr'g Tr. 18:17-19.) In the mid-1980's, Beltram became

president and majority shareholder of Intedge, and he remained in these last two positions until at least July 1, 2005. (R. pp. 126-127; Hr'g Tr. 18:20-19:5.)

Beltram's responsibilities and duties within Intedge included the authority to sign checks, the power to hire and fire employees, and the ability to sign contractual obligations on behalf of Intedge. (R. pp. 166-167; Hr'g Tr. 58:17-59:6.) Beltram acknowledged he had access to corporate records and majority control of Intedge from 1999 to early 2005. (R. pp. 157, 167, 172; Hr'g Tr. 49:3-15, 59:2-7, 64:5-11.) He further acknowledged that he had the authority to resolve any outstanding tax liabilities with the Department on behalf of Intedge during this timeframe. (R. p. 174; Hr'g Tr. 66:11-17.)

Intedge's Bookkeeper and Accountant

In 1999 and 2000, Intedge employed a bookkeeper who had the ability to place Beltram's signature on checks on behalf of Intedge using a "stamp" of Beltram's signature. (R. pp. 127, 168; Hr'g Tr. 19:7-13, 60:9-12.) Beltram was her supervisor at the time, and his duties and responsibilities as president of Intedge included verifying that Intedge's accounts were properly reconciled. (R. p. 168; Hr'g Tr. 60:9-24.)

In 2000, Beltram hired Terry Lawing (Mr. Lawing) as an independent contractor to prepare the payroll and quarterly withholding and sales tax returns, among other duties. (R. pp. 128, 135, 230-232; Hr'g Tr. 20:24-25, 27:18-25, 122:23-124:19.) Mr. Lawing was hired by Beltram and reported directly to him. (R. p. 239; Hr'g Tr. 131:13-14.) Mr. Lawing had authorization from Beltram to sign the tax returns of Intedge, but Mr. Lawing did not have authorization to sign checks on behalf of Intedge. (R. p. 241; Hr'g Tr. 133:1-9.)

In 2002, Beltram and Mr. Lawing met with Revenue Officers at the Department. (R. p. 135; Hr'g Tr. 27:4-25.) Beltram, on behalf of Intedge, requested to pay the delinquent taxes due

at that time under the "Amnesty" program. *Id.* Payment of the delinquent taxes under this program would have permitted Intedge to pay the delinquent taxes and a portion of the penalty and/or interest that had accrued since the due date of the returns. *See* S.C. Code Ann. § 12-4-397 (2014) (outlining procedure set forth by the General Assembly regarding a "tax amnesty period"). Although Beltram (acting on behalf of Intedge) agreed to pay the taxes, Intedge failed to remit the total amount due as required under the program. (R. pp. 135, 319-320; Hr'g Tr. 27:4-25, 211:20-212:4.)

Intedge Industries, Inc. and Intedge Manufacturing, Inc.

In mid to late 2005, Beltram sold assets of Intedge Industries, Inc. to Intedge Manufacturing, Inc., a company owned and operated by Beltram's uncle, Daniel Beltram. (R. pp. 125-126, 150-151; Hr'g Tr. 17:18-18:6, 42:24-43:5.) Beltram "didn't do anything" to wind up the corporate affairs of Intedge. (R. p. 187; Hr'g Tr. 79:22.) Specifically, Beltram did not file Articles of Dissolution with the South Carolina Secretary of State's office notifying it of Intedge's dissolution; he did not notify the Department of the sale to Daniel Beltram; he did not notify the Department of Beltram's change of address with regard to Intedge Industries; he did not request a certificate of compliance from the Department prior to his sale of Intedge; and he did not properly "wind-up" the corporate affairs of Intedge. (R. pp. 187-188, 189-191; Hr'g Tr. 79:19-80:1-9, 81:9-83:1-11.) Intedge instead was administratively dissolved by the Secretary of State on January 16, 2009. (R. pp. 313-315, 497-498; 205:20-207:3; Resp't Ex. 4.)

ARGUMENTS

As argued in the Department's Appellant's Brief, this Court lacks appellate jurisdiction to hear Beltram's appeal because he did not comply with the procedural requirements of S.C. Code Ann. § 12-60-3370 (2014) prior to appealing the matter to this Court.

Nevertheless, with regard to Beltram's Issues I and II on Appeal, the Administrative Law Court's (ALC) decision is consistent with South Carolina law and the relevant statutes, and its decision is supported by the substantial evidence in the record. *See* S.C. Code Ann. §§ 1-23-610(B) (Supp. 2015) (providing that this Court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact). Thus, pursuant to § 1-23-610(B), this Court should affirm the findings and conclusions of the ALC's decision related to Beltram's Issue I and II on Appeal.

As to Beltram's Issue III on Appeal, there is no statutory or case law supporting the award of $1,875.00 for "unanticipated attorney's fees"; thus, this Court should not grant the relief Beltram requests. (Beltram's Appellant's Br., p. 13.) Further, Beltram is not entitled to any attorney's fees because the reduction of Beltram's tax liability based upon a perceived discovery dispute is in excess of the ALC's statutory authority, is an error of law, is not supported by the substantial evidence on the whole record, and is an abuse of discretion. *See* S.C. Code Ann. §§ 1-23-610(B)(b), 1-23-610(B)(d), 1-23-610(B)(e), 1-23-610(B)(f) (Supp. 2015) (providing that this Court may reverse the ALC's decision if it is in excess of the ALC's statutory authority, an error of law, "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record," or is an abuse of discretion).

I. THE ADMINISTRATIVE LAW COURT CORRECTLY CONCLUDED THAT BELTRAM IS RESPONSIBLE FOR THE WITHHOLDING TAX LIABILITY OF INTEDGE DURING THE TIME HE WAS PRESIDENT AND MAJORITY SHAREHOLDER OF THE CORPORATION.

The ALC clarified in its Order on Remand that Beltram, as a responsible party, was liable for Intedge's unpaid withholding taxes for eight withholding quarters:

Withholding Period Ending	Date of Proposed Notice of Assessment (PNOA) to Intedge	Date of Final Assessment	Lien Date
September 2003	02/17/2004	05/18/2004	09/07/2004
December 2003	07/30/2004	10/29/2004	02/16/2005
March 2004	07/30/2004	10/29/2004	02/16/2005
June 2004	11/1/2004	02/01/2005	05/23/2005
September 2004	01/14/2005	04/15/2005	08/03/2005
December 2004	05/05/2005	08/03/2005	09/06/2005
March 2005	06/01/2005	08/31/2005	10/7/2005
June 2005	11/4/2005	02/03/2005	03/06/2006

(R. pp. 1-3; Order on Remand, pp. 1-3.) *See also* R. pp. 490-494; Resp't Ex. 2. Beltram admits personal liability for the first four quarters, but relying on when the Department filed tax liens against Intedge, he asserts that the Department cannot assess him personally for Intedge's liabilities for the last four quarters. Beltram's reliance on the filing dates of the tax liens is misplaced, and this Court should affirm the ALC's decision that Beltram is personally liable for Intedge's unpaid withholding tax liabilities for all eight withholding quarters.

In the Amended Final Order, the ALC concluded that Beltram is personally liable for the employee withholding taxes and interest owed by Intedge for the period of May 1, 2003, through July 1, 2005 ("Responsible Party Period"). (R. p. 28; Amended Final Order, p. 24.) The ALC further concluded that Beltram is required to pay interest on the unpaid portion of the withholding taxes Intedge incurred during the Responsible Party Period. (R. p. 29; Amended Final Order p. 25.) Pursuant to the ALC's Order on Remand, the ALC determined that Beltram is responsible for tax and interest in the amount of $54,510.50. (R. p. 3; Order on Remand, p. 3.)

Most importantly, Beltram does not argue anywhere in his Appellant's brief that he is not the responsible party for the outstanding tax liabilities of Intedge Industries.

Instead, Beltram argues that the ALC erred in holding that he is liable for the tax due for the withholding quarters ended September 2004, December 2004, March 2005, and June 2005

because the Department did not file the tax liens in Spartanburg county for these quarters until after the Responsible Party Period (after July 1, 2005). (R. pp. 490-494; Resp't Ex. 2.) Beltram's reliance on the filing dates of the tax liens is misplaced because a lien does not need to be filed in the county clerk of court or register of deeds office in order for Intedge or any taxpayer to be liable for a tax.

In short, a tax lien does not create an obligation or liability of the taxpayer – it identifies a liability that already exists. *See* S.C. Code Ann. § 12-8-520 (2014) (providing that income tax on an employee's wages shall be withheld if at the time of payment the wages are expected to equal or exceed one thousand dollars during the year). At the moment of withholding, Intedge became a withholding agent who was liable to pay the tax withheld to the Department. *See* S.C. Code Ann. § 12-8-2030 (2014) ("An amount withhEld under this chapter must be held in trust for the State and is a lien against all property . . . of the withholding agent."). A tax lien is mere evidence of a liability the taxpayer owes the Department, regardless of whether the lien is ever "filed."

Under South Carolina law, a tax lien is created when a taxpayer fails or refuses to pay a tax after demand:

> If a person liable to pay a tax neglects or refuses to pay it after demand, the amount of the tax, including interest, additional tax, addition to tax, or assessable penalty, plus accrued costs, is a lien in favor of the Department of Revenue on all property and rights to property, real or personal, tangible or intangible, belonging to the person.

S.C. Code Ann. § 12-54-120(A)(1) (2014) (emphasis added). The tax lien permits the Department "to seize, levy on, and sell the property of the person for the payment of the amount due . . . ." S.C. Code Ann. § 12-54-120(A)(2)(c) (2014). By contrast, a tax lien is filed in a county's clerk of court's office to give notice to third parties that the Department of Revenue has a lien against a taxpayer for an existing tax liability. Further, a tax lien is filed to establish the priority of liabilities

as to a taxpayer's other creditors. The Department does not "file" a tax lien to create a liability but to ensure that an existing liability has priority over the liabilities of the taxpayer's other creditors.

Thus, Intedge was liable for the withholding taxes for the withholding quarters ended September 2004, December 2004, March 2005, and June 2005 as of June 30, 2005,[1] and Beltram is liable for these four withholding quarters because he was the responsible party during that time, which is when the tax became due.[2] Intedge failed or refused to pay its existing tax liabilities for the withholding tax. *See* S.C. Code Ann. § 12-8-2030. The ALC correctly concluded that Beltram's liability "is based upon the withholding tax quarters, rather than the filing dates of the liens themselves" during the Responsible Party Period. (R. p. 3; Order on Remand, p. 3.) Thus, Beltram is liable for the tax due for the Eight Withholding Periods during the entire Responsible Party Period.

---

[1]As concluded by the ALC in the Order on Remand, Beltram is liable for these liabilities because "the taxable activity giving rise to the underlying case occurred during [Beltram's] time as a responsible party. (R. p. 2; Order of Remand, p. 2, n. 3.)

[2]In his brief, Beltram seems to assert that the ALC "acknowledged . . . that the date for determining responsibility is the date the return/remission should have been filed/made." (Beltram Appellant's Br., p. 8.) In support for this statement, Beltram cites to the ALC's Amended Order at page 21, paragraph 29.

However, this paragraph does not stand for the proposition asserted by Beltram. Paragraph 29 discusses a sales tax return for the period ending September 2005. Because the ALC determined that Beltram lost control of the business in early July 2005, the ALC properly excluded any liability resulting from the sales tax return for the period ending September 2005.

By contrast, the liabilities resulting from the withholding tax return for the April, May, and June 2005 months were incurred while Beltram was still in control of Intedge.

II. THE ADMINISTRATIVE LAW COURT CORRECTLY CONCLUDED THAT BELTRAM HAD NOTICE, AN OPPORTUNITY TO BE HEARD IN A MEANINGFUL WAY, AND JUDICIAL REVIEW IN THIS MATTER.

A. Beltram Abandoned Any Claim That Accruing Interest Violated His Due Process Rights.

In his brief, Beltram includes the following heading:

> a. Allowing and awarding interest on the tax liens and on the judgment itself that accrued during periods of significant delay that were no fault of Appellant violated Appellant's constitutionally guaranteed due process rights.

(Beltram's Appellant's Br., p. 9.) Following heading "a", Beltram immediately proceeded to heading "b". Because Beltram failed to argue or provide any support for this assertion, the issue should be deemed abandoned on appeal. *Transportation Ins. Co. and Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 699 S.C. 687 (2010) (concluding party abandoned issue by failing to cite any authority for its position); *Teeter v. Teeter*, 408 S.C. 485, 499-500, 759 S.E.2d 144, 152 (Ct. App. 2014) (concluding party abandoned issue on appeal for failure to cite supporting authority); *Glasscock, Inc. v. U.S. Fidelity and Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."

B. The Department Gave Beltram Timely Notice of Intedge's Liabilities and Did Not Violate Beltram's Due Process Rights.

1. Beltram, as president and majority shareholder of Intedge, had notice of Intedge's outstanding tax liabilities.

Beltram next argues that the Department's responsible party assessment should be abated in its entirety because the Department's "collection efforts did not provide timely notice of the liens against him" and violated his "constitutionally guaranteed due process rights." (Beltram's

Appellant's Br., p. 10.) However, the Department's timely assessments to Intedge for the four withholding quarters[3] challenged by Beltram were constructive notice to Beltram (president and majority shareholder of Intedge) of both the existence of the tax debt itself and that if the taxes were not remitted, he would be personally liable for the debt. *See* R. pp. 490-494; Resp't Ex. 2 (establishing the date of the proposed notice of assessments to Intedge for each withholding period). Beltram does not assert now that he is not the responsible party, and the evidence in the record establishes that Beltram, as president and majority shareholder of Intedge, received timely notice of Intedge's outstanding tax liabilities. Thus, the ALC correctly concluded that the Department's responsible party assessment to Beltram functioned as a confirmation, rather than untimely notice, of Beltram's lability for Intedge's outstanding tax liabilities. (R. p. 19; ALC Amended Order, p. 15.)

Further, Beltram's argument that his due process rights were violated by the Department based on "multiple and lengthy delays in pursuing both Intedge and Beltram personally" is without merit. (Beltram's Appellant's Br., p. 10.) "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution." *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (citing *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)). Due process requires "notice, an opportunity to be heard in a meaningful way, and judicial review." *Kurschner*, 376

[3]Intedge received the September 2004 proposed notice of assessment (PNOA) on or about January 14, 2005; it received the December 2004 PNOA on or about May 5, 2005; it received the March 2005 PNOA on or about June 1, 2005; and it received the June 2005 PNOA on or about November 14, 2005. (R. pp. 490-494; Resp't Ex. 2.) Because Intedge did not protest the PNOAs for September 2004, December 2004, March 2005, and June 2005, the assessments became final on April 15, 2005, August 3, 2005, August 31, 2005, and February 3, 2006, respectively. *Id.*

S.C. at 171, 656 S.E.2d at 350. Further, "due process is flexible and calls for such procedural protections as the particular situation demands." *Id.* at 172, 656 S.E.2d at 350.

Here, Beltram's due process rights were not violated as he had notice of Intedge's outstanding liabilities as early as April 15, 2005, when the proposed notice of assessment for the September 2004 withholding tax period was issued to Intedge. (R. pp. 490-494; Resp't Ex. 2.) Moreover, he participated in conversations with Department employees regarding the Amnesty Program for Intedge's outstanding tax liabilities. (R. pp. 129, 135, 173; Hr'g Tr. 21:1-4, 27:4-16, 65:8.) His attorney contacted the Department in July 2005 to obtain a payoff amount or possible penalty waiver with regard to Intedge's outstanding liabilities. (R. p. 281-282; Hr'g Tr. 173:18-174:9.) Finally, Beltram received written notice of the Department's decision to hold him personally liable for Intedge's outstanding tax liabilities when he received the responsible party PNOA on or about September 2, 2009. (R. p. 442; Resp't Ex. 1, p. 1.)

Next, Beltram had the opportunity to present any documents or other evidence to the Department to challenge the responsible party PNOA when he participated in conversations with Department employees after receiving the responsible party PNOA. (R. pp. 288-289; Hr'g Tr. 180:4-181:2.) Further, the Department issued its final agency decision which allowed him to request a contested case hearing before the ALC, and Beltram (through counsel) presented his case before the ALC. (R. pp. 391-407, 109-366; Pet'r Ex. 7; Hr'g Tr. 1:1-257:25.) Finally, as evidenced by this pending Appeal, he has been afforded the opportunity for judicial review in this matter. *See id.* at 173-174, 656 S.E.2d at 351 (2008); *see also* S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 406 S.E.2d 340 (1991). Thus, Beltram's due process rights were not violated as he had notice, an opportunity to

be heard by the Department and the ALC, and he has been afforded the opportunity for judicial review in this matter.

2. Beltram failed to pursue the statutory remedy available to him.

Despite Beltram's misstatement[4] in his brief, Beltram also asserts that his due process rights were violated by the Department because the Department Determination was issued three years after he protested the responsible party PNOA. Beltram had the right to request a contested case hearing with the ALC on or about September 1, 2010 – nine months after his protest of the matter. *See* S.C. Code Ann. § 12-60-450(E)(3) (2014) (permitting a taxpayer to file a request for a contested case hearing with the ALC if the Department does not issue its final agency determination within nine (9) months of the taxpayer's protest of the matter). Here, Beltram failed to request such a hearing after nine months of the responsible party PNOA being issued to him. Thus, Beltram cannot complain of any perceived unfairness when he had the statutory remedy available to him but chose not to exercise that right. *See Campbell v. Bi-Lo, Inc.*, 301 S.C. 448, 392 S.E.2d 477 (Ct. App. 1990) (concluding that "if a statute creates a substantive right and provides a remedy for infringement of that right, the plaintiff is limited to the statutory remedy").[5]

Finally, the delays in this matter are not entirely attributable to the Department. While Beltram's contested case hearing was heard September 16-17, 2014, the ALC did not issue the Amended Final Order until March 17, 2017. Further, on July 13, 2017, this Court remanded the matter to the ALC for a determination of the amount of taxes Beltram must pay or the amount of

---

[4]In his brief, Beltram incorrectly states that he "had no right to request a contested case hearing until receipt of the final DOR determination." (Beltram's Appellant's Br., p. 4.) As discussed above, this is simply incorrect. *See* S.C. Code Ann. § 12-60-450(E)(3).

[5]Moreover, the ALC's remedy regarding any perceived delay by the Department was to abate all penalties ($22,102.32 as of 5/1/13) assessed against Beltram by the Department in the responsible party PNOA. The Department did not appeal this finding by the ALC.

bond Beltram must post pursuant to § 12-60-3370. The ALC issued its Order on Remand on January 12, 2018.

C. Beltram Does not Qualify for Any Relief Under S.C. Code Ann. § 12-54-124 (2014).

In his brief, Beltram asserts that Intedge was sold to Intedge Manufacturing, Inc. on July 1, 2005, and any liability for the delinquent taxes and interest became the liability of the successor corporation under § 12-54-124. Beltram's assertion fails for two reasons.

First, Beltram failed to argue or provide any supporting authority for this statement, and the statement should be deemed abandoned on Appeal. *Transportation Ins. Co. and Flagstar Corp.*, 389 S.C. at 431; *Teeter*, 408 S.C. at 499-500, 759 S.E.2d at 152; *Glasscock, Inc.*, 348 S.C. at 81, 557 S.E.2d at 691("[S]hort, conclusory statements made without supporting authority are deemed abandoned on Appeal and therefore not presented for review."

Nevertheless, even if Beltram provided sufficient supporting authority for this argument, § 12-54-124 does not support for Beltram's lone statement. This section provides, in part, for the following:

> In the case of the transfer of a majority of the assets of a business, other than cash, whether through sale, gift, devise, inheritance, liquidation, distribution, merger, consolidation, corporate reorganization, lease or otherwise, any tax generated by the business which was due on or before the date of any part of the transfer constitutes a lien against the assets in the hands of a purchaser, or any other transferee, until the taxes are paid. Whether a majority of the assets have been transferred is determined by the fair market value of the assets transferred, and not by the number of assets transferred. The department may not issue a license to continue the business to the transferee until all taxes due the State have been settled and paid and may revoke a license issued to the business in violation of this section.

S.C. Code Ann. § 12-54-124. This section does not apply if the purchaser receives a certificate of compliance from the department stating that all tax returns have been filed and all taxes generated

by the business have been paid. *Id.* The certificate of compliance is valid if it is obtained no more than thirty days before the sale or transfer. *Id.*

Further, § 12-54-124 provides for "transferee" liability under circumstances where "substantially" all of the corporate assets have been sold, and Beltram failed to provide any evidence to substantiate this claim. Despite repeated requests by the Department, Beltram never provided documents of the sale of "substantially" all of Intedge's corporate assets during the Department's audit, through discovery, or at trial.[6] Moreover, Beltram signed an indemnification agreement on October 1, 2005, holding Intedge Manufacturing harmless for any outstanding taxes owed by Intedge prior to the date of the indemnification agreement:

> AMOUNT OF GUARANTEE AND INDEMNITY: The amount of this Guarantee and indemnification is unlimited.
>
> INDEBTEDNESS GUARANTEED: The indebtedness as guaranteed by this Guarantee includes any and all amount which are deemed due or such amounts as attach to assets purchased under the Sale and Purchase Agreement executed prior to this Agreement. This indebtedness includes and relates to any and all of Guarantor's[7] liabilities, judgements, obligations, debts, taxes due, in the most comprehensive sense; absolute or contingent, joint or several, which may become a lien or attach the asset transferred by Bill of Sale and Sale and Purchase Agreement. The guaranteed amount also includes costs and attorney's fees as may become due under the indemnification provision of said purchase agreement.

---

[6]Despite Beltram's assertions that these records are unavailable, it is hard to fathom that Beltram was represented by one attorney regarding the sale of the family business that has been in operation since 1914, and another attorney in litigation regarding the sale of that business – and yet Beltram could not obtain any pertinent documents related to the sale of his family's business. Interestingly, Beltram described the environment in 2005 as "amicable," but later during the hearing, Beltram testified that he was prevented from gaining access to corporate records in the beginning of 2005. (R. pp. 147, 155; Hr'g Tr. 39:7-15, 47:20-21.)

[7]"Guarantor" is defined as "Richard S. Beltram, individually and as majority shareholder; and Richard S. Beltram as President of Intedge Industries, Inc., Post Office Box 969, Woodruff, SC 29388." (R. p. 495; Resp't Ex. 3, p. 1.)

(R. pp. 495-496; Respt's Ex. 3) (emphasis added.) The effect of this agreement was to maintain responsibility for any such delinquent taxes with Beltram, "individually and as majority shareholder . . . and President of Intedge Industries, Inc." (R. pp. 495-496; Resp't Ex. 3.) The ALC correctly concluded that Beltram is the responsible party in this matter, and the indemnification agreement further solidifies the position that Intedge Manufacturing is specifically not responsible for the tax liabilities of Intedge. The tax liabilities arose under Beltram's control of Intedge, and Beltram cannot deflect that responsibility to another corporation (that merely purchased assets) without documentation establishing such transferee liability. In the absence of any documents of sale or other documentation illustrating assumption of liability, Beltram does not qualify for any relief under § 12-54-124.[8]

It is clear that the tax liabilities of Intedge were established prior to any sale of the assets to Beltram's uncle. Beltram was in control of Intedge during that time, and he is the responsible party for such tax liabilities.

D. S.C. Code Ann. § 12-54-25(C)(1) (2014) Does Not Apply to Assessments.

Beltram next asserts that § 12-54-25(C)(1) provides "clear statutory authority for the ALC to have determined a credit of accrued interest in the same manner it determined a credit of penalties[.]" (Beltram Appellant's Br., p. 11.) Beltram's assertion is incorrect. First, Beltram did not raise this issue to the ALC. *See I'on, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (stating "the long-established preservation requirement that the losing

[8]Even if Beltram were to provide evidence that substantially all the assets of the corporation were sold, it does not necessarily lead to the conclusion that he is absolved of liability for delinquent withholding taxes as a responsible party. Section 12-54-124 only provides that liens securing tax debts follow the "the assets in the hands of a purchaser, or any other transferee, until the taxes are paid." The section does not relieve any responsible party, or the selling corporation, for that matter, of liability for the tax debt.

party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.") Second, the ALC did not give a "credit" regarding the penalties. The ALC abated/waived the penalties in their entirety, and the Department did not appeal that decision of the ALC.

Moreover, Beltram's assertion that § 12-54-25(C)(1) provides authority for a credit of accrued interest to Beltram is an erroneous interpretation of the statute. Section 12-54-25(C)(1) only applies to refund requests, and Beltram did not request any refund in this matter. The Department Determination assessed Beltram as a responsible party for the outstanding liabilities of Intedge. Further, the South Carolina Supreme Court has recognized that § 12-54-25(C)(1) specifically applies to refunds. *See Rivers v. State*, 327 S.C. 271, 490 S.E.2d 261 (1997) (concluding that S.C. Code Ann. § 12-54-25(C) "specifically applied to tax refunds"). Accordingly, the ALC did not err as a matter of law by declining to apply any "credit" of interest to Beltram as this section does not apply in this matter. Further, as discussed below, S.C. Code Ann. § 12-54-25(A) (2014) requires that interest continues to accrue on any tax liability until it is satisfied in its entirety. Because Beltram has not satisfied the amount determined to be due by the ALC, interest continues to accrue in this matter.

E. Because Beltram and the Department Did Not Enter Into a Settlement Agreement in This Matter, S.C. Code Ann. § 12-4-320(3) (2014) Does Not Apply.

As discussed above, § 12-54-25(A) provides that interest is due on unpaid taxes. Nevertheless, Beltram asserts that the ALC has discretion to waive the interest pursuant to § 12-4-320(3), and should have exercised that discretion in this case. However, the ALC correctly concluded that interest is due on Beltram's unpaid liability as neither the ALC nor the Department

have any discretion to waive the payment of interest upon the determination that outstanding taxes are owed by the taxpayer. *See* Amended Final Order, p. 23.

Section 12-4-320(3) provides that the Department may "compromise any tax, interest, or penalty imposed by this title . . . ." To the contrary, S.C. Code Ann. § 12-54-160 (2014) provides that "[u]nless otherwise specifically prohibited, the department may waive, dismiss or reduce penalties provided for in this chapter." Accordingly, while § 12-4-320(3) permits the compromise of interest and penalties, § 12-54-160 only allows for the waiver of penalties. Although § 12-4-320(3) does not define "compromise," Black's Law Dictionary defines "compromise" as follows:

> 1. An agreement between two or more persons to settle matters in dispute between them. A debtor's partial payment coupled with the creditor's promise not to claim the rest of the amount due or claimed.

Compromise, BLACK'S LAW DICTIONARY (7th ed. 1999).

In *Anonymous Taxpayers v. S.C. Dep't of Rev.*, 2004 WL 3154667, (S.C.Admin.Law.Ct., 2004 (J. Anderson)), the ALC analyzed the exact issue of whether the Department may waive interest. To resolve this issue, the *Anonymous* court applied statutory construction principles when interpreting and applying §§ 12-4-320(3) and 12-54-160.

Section 12-4-320 is found under the general powers of the Department in Article 3 of Chapter 4, Title 12. *Anonymous*, *5. To the contrary, interest and penalties are imposed under the Uniform Method of Collection and Enforcement of Taxes Levied and Assessed by South Carolina Department of Revenue in Chapter 54 of Title 12. Section 12-54-160 states that "[u]nless otherwise specifically prohibited, the department may waive, dismiss, or reduce penalties provided for in this chapter." Moreover, S.C. Code Ann. § 12-54-190 (2014) clearly states that "[u]nless otherwise specified, the provisions of this chapter take precedence over all other related statutory provisions." (emphasis added). As noted by the *Anonymous* court, § 12-54-160 specifically limits

the remedy under Chapter 54 to the waiver of penalties when a tax is found to be owed. *Anonymous*, *5. Therefore, the remedy Beltram seeks in this matter is not available pursuant to § 12-54-160:

> Consequently, a correct reading of Sections 12-4-320(3) and 12-54-160 permits the Department to "compromise" interest in order to settle cases under circumstances where there is a "quid pro quo" between the parties. However, outside of the settlement realm, only penalties may be waived when the underlying tax is found to be owed. Moreover, if the Legislature had intended the word "compromise" to mean the same as "waiver" of a penalty, then Section's 12-54-160 authorization to waive penalties would be superfluous.

Anonymous, *5. Because Beltram and the Department did not reach a settlement (i.e., compromise) of this matter, § 12-4-320(3) does not apply and Beltram is required to pay interest on the outstanding tax liabilities of Intedge.

Moreover, Beltram's assertion that the ALC "did not properly craft a remedy" for an alleged violation of his due process rights confuses the ALC's authority in this matter. Here, Beltram filed a request for a contested case hearing pursuant to S.C. Code Ann. §§ 1-23-600 (2005) and 12-60-450(E)(3). Thus, the ALC "does not hear this case as a mediator but rather as a judge of the facts and laws relating to the case." *Anonymous*, *5. Further, the ALC "does not seek to craft a 'compromise' between the parties but rather makes a final determination of the decision." *Id.* Thus, § 12-4-320(3) is inapplicable to this matter because § 12-4-320(3) "addresses the power of the Department to 'compromise' or settle cases, not the consideration to be made in determining the correct outcome of the matter." *Id.*

It is well established that interest is mandated by state law. S.C. Code Ann. § 12-54-25(A). A waiver of interest is not statutorily authorized, as interest represents the time value of money. *See Vick v. S.C. Dep't of Transportation*, 347 S.C. 470, 556 S.E.2d 693 (Ct. App. 2001)

(recognizing that "interest is designed to pay the [plaintiff] for the time value of money that should have been received at the time of the taking); *Intel Corp. v. Comm'r of Rev.*, 111 T.C. No. 4, 11 T.C. 90, Tax Ct. Rep. (CCH) 52, 816 (July 30, 1998) ("Interest per se involves the time value of money[.]"); *Anonymous Taxpayers v. S.C. Dep't of Rev.*, 2001 WL 1744519, *7 (S.C.Admin.Law.Ct., (J. Anderson, 2001)) ("Interest is not a penalty. It is a charge for the time value of money.") Thus, the ALC did not err in imposing the statutorily mandated interest on Beltram's liability, and further, interest remains due and owing in this matter.

F. Beltram was Timely Served with the Assessments in This Matter.

Finally, Beltram asserts that the ALC erred by concluding that Beltram received timely notice of the assessments in this matter. Beltram's argument is without merit. As discussed below, the ALC correctly concluded that because Beltram's liability is derived from his role in Intedge, notice of the assessment to Intedge constituted notice of assessment to him, personally and individually. The notices of assessment were issued to Intedge as the withholding agent in a timely manner, and Intedge did not protest such assessments.

S.C. Code Ann. § 12-54-85(A) (2014) states that "[e]xcept as otherwise provided in this section, taxes must be determined and assessed within thirty-six months from the date the return or document was filed or due to be filed, whichever is later." Subsection (G) of § 12-54-85 describes the thirty-six month period as a statute of limitations. The section contains a number of exceptions to the thirty-six month statute of limitations, including fraud and the taxpayer's failure to file a return among other exceptions. *See* S.C. Code Ann. § 12-54-85(A)-(G).[9]

[9]Internal Revenue Code (IRC) § 6501(a) requires that a tax assessment, including responsible party assessments, be issued against a taxpayer within three years after the return was filed. However, IRC § 6501 is specifically not made applicable to South Carolina state taxes. S.C. Code Ann. § 12-6-50 (2014) provides in pertinent part:

Here, the ALC correctly interpreted the interaction between a withholding agent's liability under § 12-8-2010 and the statute of limitations under § 12-54-85. In doing so, the ALC acknowledged that previous ALC decisions addressed this exact issue and reached the same conclusion. *See Edwin Rowland v. S.C. Dep't of Rev.*, 2008 WL 3863554 (S.C.Admin.Law.Ct., 2008 (J. Geathers)) and *Philip Roddey v. S.C. Dep't of Rev.*, 2014 WL 3816563 (S.C.Admin.Law.Ct., 2014 (J. Robonsin)). In *Rowland*, the Department held the owner/sole-shareholder of an S Corporation personally and individually liable for the delinquent withholding taxes of the business entity. *Rowland* asserted that the Department was barred from holding him personally liable because the Department did not timely assess him, personally. The *Rowland* court disagreed and held the statute of limitations did not bar the Department from holding him personally liable. Specifically, the *Rowland* Court stated:

> [S]ubsection (D) [of section 12-8-2010] codifies, with respect to withholding taxes, the common law principles of holding corporate principals liable for corporate debts under appropriate circumstances and places those individuals on notice that a tax debt that is timely assessed against a corporation will be considered a

---

> For purposes of this title and all other titles that provide for taxes administered by the department, except as otherwise specifically provided, the following Internal Revenue Code Sections are specifically not adopted by this State:
>
> * * *
>
> (16) Sections 2001 through 7655, 7801 through 7871, and 8001 through 9602, except For Sections 6015 and 6701, and except for Sections 6654 and 6655 which are adopted as provided in Section 12-6-3910 and Section 12-54-55. However, Section 6654(d)(1)(D) relating to estimated tax payments for qualified individuals as defined in that item is not adopted.

(Emphasis added). Moreover, § 12-6-50 also excludes IRC § 6672, which addresses the liability of third parties for federal withholding tax obligations. Instead, a third party's liability for state withholding taxes is governed by S.C. Code Ann. § 12-8-2010(A) (2014). Accordingly, IRC § 6501(a) is not applicable in this matter.

> debt of those individuals associated with the corporation who are responsible for withholding. The provision does not create any new liability, but simply clarifies existing common law."

Id. at *4. The *Rowland* court further concluded that "[t]he Department's notices of assessment sent to [the corporation] served as sufficient constructive notice to [the owner] that the corporation was liable for withholding taxes, penalties and interest and that, as a principal [and withholding agent] of the corporation, he would be ultimately liable for this debt." *Id.* at *5 (basing its decision in part on the Indiana case *Ball v. Ind. Dep't of Rev.*, 563 N.E.2d 522 (1990) (discussing the liability of a withholding agent under a substantially similar statutory scheme to hold timely notice of the assessment to the corporation was timely constructive notice to the withholding agent of his personal liability)). Here, the ALC found the *Roddey* and *Rowland* court's analysis persuasive and followed its reasoning and logic. (R. pp. 16-19; ALC Amended Final Order, pp. 12-15.)

Here, the ALC concluded that Beltram had a duty to remit the withholding taxes and is personally liable under the statute for the amount of taxes not paid. (R. p. 18; ALC Amended Order, p. 14.) *See* S.C. Code Ann. § 12-8-2010(A). The ALC, quoting *Roddey*, noted that a taxpayer's "statutorily imposed liability is in contrast to the equitable doctrine of piercing the corporate veil, which seeks to bypass the well-recognized principal that 'a corporation is an entity, separate and distinct from its officers and stockholders, and that its debts are not the individual indebtedness of its stockholders.'" (R. p. 18; ALC Amended Order, p. 14 (citing *Roddey*, at page 5 (quoting *Hunting v. Elders*, 359 S.C. 217, 223, 597 S.E.2d 803, 806 (Ct. App. 2004))).

"Because Beltram's liability is derived from his role in the corporation, notice of the assessment to the corporation constituted notice of assessment to him, personally and individually. Further, Intedge's notices of assessment were issued in a timely manner." (R. p. 18; ALC Amended Order, p. 14.) *See* S.C. Code Ann. § 12-54-85 ("within three years of the date the return was filed

or due to the filed"). Because S.C. Code Ann. § 12-8-2010(D) (2014) expands the definition of "withholding agent" to include a corporate officer responsible for withholding taxes, any notice issued to Intedge as a withholding agent, by definition, is also issued to Beltram as the corporate officer with responsibility for these matters because of the failure to remit withholding taxes. Most importantly, under the responsible party provisions of § 12-8-2010, there is no requirement that the corporate officer or other responsible party be put on notice by separate assessments. (R. p. 19; ALC Amended Order, p. 15.)

The ALC correctly determined that § 12-54-85(A) does not bar the Department from seeking to collect Intedge's delinquent withholding taxes from Beltram because Beltram, as a corporate officer with the duty to remit withholding taxes, was aware of the notices of assessment issued to Intedge:

> Under the rationale employed by the Indiana Court in *Ball* and adopted in *Roddey* and *Rowland*, the assessments issued to Intedge constituted assessments to [Beltram] as a withholding agent. Any doubt as to [Beltram's] notice with regard to the delinquencies, such doubt is dispelled by his 2002 meeting with the Department. At the meeting [Beltram] represent Intedge and participated in discussions with the Department regarding the existing delinquent taxes. [Beltram], acting for Intedge in the meeting, expressed a desire to enter the Department's Amnesty Program to satisfy the outstanding tax liability. [Beltram] was, or should have been aware of the assessments against Intedge and his personal liability under Section 12-8-2010(A) in the event Intedge failed to remit the taxes.[10] Thus, the Department's timely assessments to Intedge put [Beltram] on constructive notice, as a principal of the corporation and as a withholding agent, both of the existence of the tax debt itself and the fact that if the taxes were not remitted he would be personally liable for the debt. Consequently, the court interprets the [responsible

[10]Notably, communications documented by the Department's Automated Receivables Management System ("ARMS") establish that Beltram and/or his attorneys were aware of the Intedge's liens as of July 2005. (R. p. 281; Hr'g Tr. 173:17-23.) As testified to by a Department witness, all of these documented communications in ARMS are consistent with the Department attempting to collect from Intedge Industries before attempting to collect from Beltram. (R. p. 312; Hr'g Tr. 204:9-25.)

> party PNOA] dated September 2, 2009, as a confirmation, rather than untimely notice, of [Beltram's] liability.

(R. p. 19; Amended Final Order, p. 15.) (emphasis added).

By virtue of the original proposed notice of assessment to Intedge, notice was given to Beltram, and its debt becomes fixed when Intedge did not protest such assessment. As noted by the ALC, the responsible party PNOA "provided the responsible party an opportunity to deflect the liability. The outstanding corporate debt itself, however, is certain at that point." *Id.* Thus, the ALC correctly concluded, because Beltram received timely constructive notice, the statute of limitations under § 12-54-85(A) does not bar the Department from seeking to collect the delinquent taxes from Beltram.

III. NO STATUTORY OR CASE LAW SUPPORTS THE AWARD OF $1,875.00 FOR "UNANTICIPATED ATTORNEY'S FEES" TO BELTRAM IN THIS MATTER.

In his brief, Beltram asserts that the ALC erred in denying his request for at least $1,875.00 for "unanticipated attorney's fees" in this matter related to a perceived discovery dispute. However, this Court should not grant the relief Beltram requests as no statute or case in South Carolina supports his argument. Moreover, Beltram is not entitled to any attorney's fees because the reduction of Beltram's tax liability based upon a perceived discovery dispute is in excess of the ALC's statutory authority, is an error of law, is not supported by the substantial evidence on the whole record, and is an abuse of discretion.[11]

[11]The Department addressed this argument in its Appellant's Brief filed February 16, 2018. (Dept.'s Appellant's Br., pp. 18-27.) In the interest of judicial economy, the Department respectfully incorporates such argument in this brief.

A. Attorney's Fees are Prohibited under S.C. Code Ann. § 12-60-3350 (2014).

The Department reiterates the argument in its Appellant's Brief that the ALC does not have the statutory authority to reduce a taxpayer's liability based upon a discovery dispute. (Dept.'s Appellant's Br., pp. 20-21.) Moreover, Beltram acknowledges in his Appellant's Brief that the $675.00 "award" was based upon "attorney's fees." (Beltram's Appellant's Br., pp. 13-15.) Thus, to the extent the ALC's decision is construed as an award of attorney's fees to Beltram based upon the discovery dispute, the ALC's decision is based on an error of law. Section 12-60-3350 states that "in an action covered by [Chapter 60], no costs or disbursements may be charged or allowed to either party, except for the service of process and the attendance of witnesses." The South Carolina Supreme Court interpreted this statutory provision in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 84, 716 S.E.2d 877, 886 (2011), to also bar the award of attorney's fees:

> [I]n its reply brief, CFRE requested an awarded of attorney's fees. However, "[i]n an action covered by [the South Carolina Revenue Procedures Act (SCRPA)], no costs or disbursements may be charged or allowed to either party, except for the service of process and attendance of witnesses." S.C. Code Ann. § 12-60-3350 (Supp. 2010). As this action is governed by the SCRPA in the tribunals below, *see id.* § 12-60-2510, et *seq.*, CFRE is not entitled to attorney's fees but may be entitled to some costs.

Id. at 84, 716 S.E.2d at 886 (emphasis added). Beltram initiated this action with the ALC pursuant to S.C. Code Ann. § 12-60-3340 (2014), and *CFRE, LLC* confirms that § 12-60-3350 bars the award of attorney's fees to taxpayers under the Revenue Procedures Act. *Id.* at 84, 716 S.E.2d at 886. Accordingly, the ALC erred as a matter of law to the extent it awarded attorney's fees to Beltram in this matter, and Beltram is not entitled to any of the claimed $1,875.00 in attorney's fees.

B. Beltram's Assertions Are Not Supported by the ALC Amended Order or the Record on Appeal.

In his brief, Appellant states that "[t]he ALC acknowledged that [the discovery documents] were material[.]" (Beltram's Appellant's Br., p. 13.) The Department is unable to find any support for this assertion in the ALC's Amended Final Order. To the contrary, the ALC Amended Order concludes that the documents did not help Beltram: "[T]he documents did not help [Beltram] in his case." (R. pp. 12, 28; Amended Order, pp. 8, 24, 24 n. 20.) (emphasis added). While the ALC did state that "it could be argued that [Beltram] may have more actively pursued a settlement in this matter," the ALC did not make any statements that these documents were material in any way.[12] *Id.*

C. Beltram Cannot Meet the Abuse of Discretion Standard Set Forth in *Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014).

In his brief, Beltram argues that the ALC erred in failing to dismiss the Department's assessment in its entirety. (Beltram's Appellant's Br., p. 14.) As support for his assertion, Beltram cites to *Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014). First, *Davis* does not stand for the proposition that a tax assessment should be abated in its entirety based upon a perceived discovery abuse. Second, a review of the record in this matter establishes that Beltram cannot meet the requirements set forth in *Davis* to achieve the result he desires. In *Davis*, the Supreme Court of South Carolina set forth the requirements a moving party must show when

[12]During the meeting in the Judge's chambers, the Department and Beltram's counsel discussed the documents in the possession of the Department employee. The Department employee's office is located in Greenville, and he traveled in his car to Columbia for the ALC hearing on September 13 and 14, 2014. In preparation for his testimony, the employee brought documents from his file located in the Department's Greenville office.

As discussed in the Department's Appellant's Brief, the Department did not initially provide the Beltram's appeal/protest documents to him because they were inadvertently attached to a privileged document within his file or the Department's counsel believed the computer system screenshots from "ARMS" were privileged. (Dept.'s Appellant's Br., pp. 18-19, n. 18.)

advocating for an action to be dismissed as a remedy for a discovery sanction: "bad faith, willful disobedience or gross indifference to its rights to justify the sanction." *Davis*, 409 S.C. at 282, 762 S.E.2d at 544.

Here, the ALC specifically concluded that the "omission was certainly not deliberate," that the Department "did not act in bad faith," and that Beltram was not harmed or prejudiced by receiving these documents at the hearing, and in fact – the Department appeared to be more harmed than Beltram:

> Though the Department may have received some of the requested documents just prior to the hearing, this court finds that the Department . . . did not act in bad faith, and error that may have resulted was cured when the documents were provided to [Beltram].
>
> * * *
>
> The Department did not become aware of the existence of the requested documents/records until one of its employees (Mr. Owens) revealed during his hearing testimony that he had them in his possession, and that he had also provided the Department with them a few days prior. . . . [T]he Department should have learned of these records and could have used them, *ironically*, to its own benefit.

Interestingly, some of the documents Beltram "objected to not receiving during discovery was his own protest and associated documents, which he had submitted to the Department." (R. p. 12, 420-429; Amended Order, p. 8, n. 8; Pet'r Ex. 9, pp. 1-10.)

The ALC made clear findings of fact and conclusions of law that the Department did not act in bad faith in not producing the documents, and Beltram was not prejudiced by receiving the documents during the trial. In fact, the ALC found that any "error that may have resulted was cured when the documents were provided to [Beltram]." (R. p. 12; Amended Final Order, p. 8.) Finally, the ALC concluded that the Department likely suffered harm by not using such documents to its advantage. (R. p. 28; Amended Final Order, p. 24.)

As discussed in the Department's Appellant's Brief, pursuant to *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 84, 716 S.E.2d 877, 886 (2011) and *McNair v. Fairfield County*, 379 S.C. 462, 467, 665 S.E.2d 830, 832 (Ct. App. 2008), the ALC's decision to impose any sanction on the Department based upon a perceived discovery dispute is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and an abuse of discretion. *See also Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989).

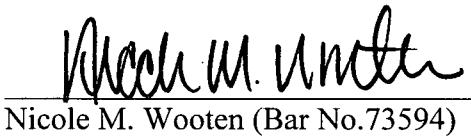
Moreover, under the doctrine of unclean hands, Beltram should be barred from receiving any award regarding a discovery dispute as Beltram himself failed to produce relevant, material documents in discovery. *See Ingram v. Kasey's Associates*, 340 S.C. 98, 107, 531 S.E.2d 287, 292, n.2 (2000) ("Unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.") (Dept.'s Appellant's Br., pp. 25-27.) Accordingly, this Court should reverse the ALC's decision to sanction the Department based upon a discovery dispute where Beltram engaged in the same conduct.

CONCLUSION

This Court lacks appellate jurisdiction to hear Beltram's appeal because Beltram failed to comply with the procedural requirements of § 12-60-3370 before appealing to this Court. As to Beltram's Issue III on Appeal, there is no statutory or case law supporting the award of $1,875.00 "in unanticipated attorney's fees"; thus, this Court should not grant the relief Beltram requests. (Beltram Appellant's Br., p. 13.) Further, Beltram is not entitled to any attorney's fees because the reduction of Beltram's tax liability based upon a perceived discovery dispute is in excess of the ALC's statutory authority, is an error of law, is not supported by the substantial evidence on the whole record, and is an abuse of discretion.

Thus, pursuant to § 1-23-610(B), this Court should affirm the findings and conclusions of the ALC's decisions related to Beltram's Issue I and II on Appeal. As to Beltram's Issue III on Appeal, this Court should reverse the findings of the ALC because the reduction of Beltram's tax liability based upon a perceived discovery dispute is an abuse of discretion.

Respectfully Submitted,



Nicole M. Wooten (Bar No.73594)
Counsel for Litigation
William J. Condon, Jr. (Bar. No. 72632)
Managing Counsel for Litigation
Jason P. Luther (Bar No. 78021)
General Counsel for Litigation
PO Box 12265
Columbia, SC 29211-9979
803-898-1826
Nicole.Wooten@dor.sc.gov
Attorneys for Respondent/Appellant
South Carolina Department of Revenue

Columbia, South Carolina
November 16, 2018

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable S. Phillip Lenski, Administrative Law Judge

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

Richard Beltram,.....Appellant/Respondent,

v.

South Carolina Department of Revenue,.....Respondent/Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

Nicole M. Wooten (Bar No. 73594)
Counsel for Litigation
William J. Condon, Jr. (Bar No. 73632)
Managing Counsel for Litigation
Jason P. Luther (Bar No. 78021)
General Counsel for Litigation
PO Box 12265
Columbia, SC 29211
803-898-1826
803-896-0171 (Fax)

Attorneys for Respondent/Appellant,
South Carolina Department of Revenue