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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.

FINAL REPLY BRIEF OF RESPONDENT/APPELLANT

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Pursuant to Rule 242(g), SCACR, Respondent/Appellant South Carolina Department of Revenue (Department) files this Reply Brief in response to Appellant/Respondent Richard Beltram's (Beltram) Respondent's Brief (Beltram Brief) in this matter. For the reasons stated in the Appellant's Brief of the Department (Department's Brief) and herein, this Court should grant the relief requested in the Department's Brief and as set forth more specifically below.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

Please see the Department's Appellant's Brief at pp. 2-6 for a statement of the case and statement of facts in this matter.

ARGUMENTS

I. THE SOUTH CAROLINA COURT OF APPEALS LACKS APPELLATE JURISDICTION IN THIS MATTER.

In his Brief, Beltram asserts that he has properly perfected his Notice of Appeal in this matter and argues that S.C. Code Ann. § 12-60-3370 (2014) "cannot override the specific rules of the South Carolina Court of Appeals for complying with the procedural requirement for perfecting an appeal." (Beltram's Br., p. 6.) The Department disagrees. The South Carolina Revenue Procedures Act, specifically § 12-60-3370, provides a requirement to taxpayers who wish to appeal a final decision of the Administrative Law Court (ALC) , and to the extent Beltram argues this section conflicts with the South Carolina Appellate Court Rules, the Department respectfully submits the language of the statute must control in this matter.

A. S.C. Code Ann. § 12-60-3370 Applies in This Matter.

Despite Beltram's assertion, without citation from supporting authority, that § 12-60-3370 cannot supersede the South Carolina appellate court rules, the Department asserts that § 12-60-3370 can be read together with the rules of procedure. Nevertheless, to the extent this Court determines § 12-60-3370 is in conflict with Rule 203(b)(6) and (d)(2), SCACR, Rule 263(b),

SCRCP or any other court rules of procedure, the Department respectfully submits that the requirement of § 12-60-3370 must control in this matter. *State v. Cottingham*, 224 S.C. 181, 187, 77 S.E.2d 897, 900 (1953) ("Statutes override rules of court, if in conflict."); *see also Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 94, 668 S.E.2d 795, 796-797 (2008) ("Our jurisprudence confirms that jurisdictional appealability issues are governed by statute, and not by the rules of civil procedure.") (*citing N.C. Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986) (rejecting an attempt to invoke a rule of civil procedure as a basis of the right to appeal and holding, "[t]he right of appeal arises from and is controlled by statutory law")); *see also* S.C. Code Ann. § 14–3–330 (Supp. 2007) (primary statute addressing appellate jurisdiction). Accordingly, the Department respectfully submits that this Court lacks appellate jurisdiction in this matter and requests that Beltram's appeal be dismissed with prejudice.

B. A Taxpayer's "Lack of Knowledge" of § 12-60-3370 is Not a Sufficient Reason to Excuse Him from Complying with the Requirements of the Statute.

In his Brief, Beltram acknowledges that he did not pay either the amounts due under the ALC's Amended Final Order or post a bond prior to filing his appeal in this case. (Beltram's Brief, p. 6.) Nevertheless, Beltram argues that he "was prepared to meet the requirements of the deposit/bond statute, but did not have sufficient information to enable him to make said deposit." (Beltram's Br., p. 7.)

Interestingly, in his Return to the Department's Motion to Dismiss, Beltram stated that this Court should excuse him from the requirements of § 12-60-3370 because "**he was not aware of this requirement**." (Beltram's Return, p. 2) (emphasis added.) For Beltram to state in one filing before this Court that he was not aware of the requirements in § 12-60-3370, yet state in another filing – with the same Court – that he was prepared to make the payment but did not have sufficient information to make such payment, is disingenuous at best. Moreover, prior to filing his notice of

appeal with this Court, Beltram did not contact the Department to inquire about the amount of money he must pay or post bond for pursuant to the requirements of § 12-60-3370.

It is a well-established principle that ignorance of the law is no excuse to relieve an individual from an act required under the law. *See Ahrens v. State*, 392 S.C. 340, 355, 709 S.E.2d 54, 62 (2011) ("[C]itizens are presumed to know the law and are charged with exercising 'reasonable care to protect their interest.'") (*citing Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008)). Beltram cannot be excused from the statutory requirement of § 12-60-3370 simply because he was "unaware" of its existence.

C. Beltram's Subsequent Remedial Action is Insufficient to Grant Appellate Jurisdiction to This Court.

In his Brief, Beltram asserts that because he "complied with the order generated by the ALC on remand, [] his appeal must therefore stand." (Beltram's Br., p. 7.) The Department disagrees. Beltram's subsequent remedial actions are insufficient to grant appellate jurisdiction to this Court.

Section 12-60-3370 clearly and plainly requires a taxpayer to pay the tax or post a bond **prior to** filing the notice of appeal with the Court, and a taxpayer's failure to comply with § 12-60-3370 deprives this Court of appellate jurisdiction. *See supra*. Further, there are no exceptions to the requirements of § 12-60-3370. A party's failure to comply with statutory requirements prescribed by the Legislature should not be excused by the party's subsequent untimely action. The Legislature made a clear and definite requirement that a party must pay or post bond for such amount determined to be due by the ALC before the notice of appeal is filed, and the Legislature did not provide for any exception to such requirement. *See also Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014) ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal

meaning."); *Id.* at 500, 763 S.E.2d at 192-193 ("This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless.").

II. THE ADMINISTRATIVE LAW COURT ERRED BY RULING THAT THE DEPARTMENT IS BARRED FROM COLLECTING ANY TAXES FROM BELTRAM THAT WERE SECURED BY A TAX LIEN AGAINST INTEDGE AND FILED MORE THAN TEN YEARS BEFORE THE ISSUANCE OF THE DEPARTMENT DETERMINATION.

A. The Department Cannot File Any Tax Liens Against Beltram Until the Conclusion of This Matter.

In his Brief, Beltram asserts that the Department "has essentially argued that there is no time limit on its ability to collect on tax liens against Beltram, no matter the date of filing, or whether the liens have ever been filed." (Beltram's Br., p. 7.) This is a mischaracterization of the Department's argument and is, quite simply, incorrect.

The Department cannot engage in any collections methods, to include filing any tax liens against Beltram, related to this matter until the liability is established and finalized. Because Beltram protested his responsibility for such tax liability related to Intedge (by filing with the Department a protest to the responsible party PNOA), the Department is statutorily precluded from filing any liens against him personally until the matter is resolved in favor of the Department.

Simply put, the Department has not and cannot file a lien against Beltram because of the litigation and current appeal. There are no liens against Beltram at this point and therefore the ten year limitation period is not yet applicable to Beltram. *See* S.C. Code Ann. § 12-60-440 (2014) (providing that the Department may not assess a tax against a taxpayer while that tax is being appealed to a court). However, any lien filed against him at the resolution of this litigation will have a collectible life of ten years from the date of filing.

B. September 2, 2009 is the Correct Date to Use in Determining Whether the Department is Barred From Collecting Any Taxes from Beltram that are Secured by Liens Against Intedge.

In his brief, Beltram asserts, without any analysis or supporting authority, that the "September 2, 2009 notice of assessment to responsible party has no impact whatsoever on the ten-year enforcement period." (Beltram Br., p. 9.) As noted in the Department's Brief, the issuance of the September 2, 2009 responsible party PNOA put Beltram on official notice that the Department sought to hold him personally liable for the taxes and was "confirmation . . . of the Petitioner's liability." (R. p. 19; Amended Final Order, p. 15.) The September 2, 2009 responsible party PNOA represented the initiation of the Department's formal efforts to collect the tax debt from Beltram in his individual capacity as a withholding agent. Furthermore, as the ALC correctly observed, the responsible party PNOA "provided the responsible party an opportunity to deflect liability" and exercise his due process rights under the South Carolina Revenue Procedures Act by filing a protest to challenge whether he was, in fact, a responsible party.[1] Beltram timely protested the responsible party PNOA and by doing so, prevented the Department from taking any collection efforts, including filing a lien, until this litigation is complete. *Id.*; *see* S.C. Code Ann. 12-60-10 *et seq*. Because the responsible party PNOA put Beltram on notice and because his protest of the responsible party PNOA stopped all of the Department's collection efforts, the date of that PNOA is the determinative date for what liabilities can be pursued against Beltram. The liabilities included in that PNOA, on that date, are the liabilities the Department is entitled to pursue.

Accordingly, the ALC's determination that the Department is barred from collecting any taxes secured by a lien against Intedge that was filed more than ten years before the May 1, 2013

[1]The responsible party PNOA does not allow a withholding agent to contest the amount of the corporation's tax debt; instead, as here, the taxpayer may only contest whether he is liable as a responsible party. (R. pp. 16, 19; Amended Final Order, p. 12, n.13; p. 15) ("The outstanding corporate debt itself, however, was established upon issuance of responsible party PNOA"; "The debt became fixed when Intedge failed to protest the assessment").

Department Determination is simply incorrect. Rather, September 2, 2009, the date of issuance for the responsible party PNOA – is the correct date to use in determining whether the outstanding tax liens of Intedge are collectible against Beltram. None of Intedge's withholding tax liens the ALC originally excluded from Beltram's responsible party liability had actually expired on September 2, 2009.

C. Beltram Failed to Pursue the Statutory Remedy Available to Him.

In his brief, Beltram asserts that the Department "suffered no consequences" from its failure to issue the Department Determination within nine (9) months after his written protest was submitted to the Department. (Beltram's Br., p. 9.) Notably, Beltram had the right to request a contested case hearing with the ALC on or about September 1, 2010 – nine (9) 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 a 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").[2]

[2]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.

III. THE ADMINISTRATIVE LAW COURT'S DECISION TO REDUCE BELTRAM'S TAX LIABILITY BASED UPON ALLEGED DISCOVERY ABUSE BY THE DEPARTMENT IS CLEARLY ERRONEOUS AND AN ABUSE OF DISCRETION.

This Court should reverse the ALC's decision to reduce Beltram's tax liability based upon perceived discovery abuse by the Department for the following reasons: (1) it is in excess of the statutory authority of the ALC; (2) it is an error of law; (3) it is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and (4) it is an abuse of discretion. *See Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989) ("A trial court judge's rulings on discovery matters will not be disturbed on appeal absent a clear abuse of discretion. The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion.") (citations omitted); *see also Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013) ("An abuse of discretion occurs when a court's order is controlled by an error of law or there is no evidentiary support for the court's factual conclusions.") (citing *Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 727 S.E.2d 407 (2012)); *Ex Parte Gregory*, 378 S.C. 430, 663 S.E.2d 46 (2008).

A. The ALC Lacks Authority to Reduce the Amount of Tax it Determined to be Due by Beltram.

In his Brief, Beltram cites general rules of procedure to suggest the ALC did not exceed his authority regarding the award of attorney's fees for perceived discovery abuse. (Beltram's Br., p. 9.) However, Beltram does not cite any supporting authority – or much less, even argue – that the ALC has the authority to reduce Beltram's tax liability in this matter based upon an alleged discovery abuse. To the contrary, the ALC exceeded his statutory authority by reducing the tax liability in this matter. *See S.C. Dep't of Consumer Affairs v. Foreclosure Specialist, Inc.*, 390 S.C. 182, 184, 700 S.E.2d 468, 468 (Ct. App. 2010) (noting that the ALC does not have the authority to exceed its statutorily granted powers); *Id.* at 187, 700 S.E.2d at 470 (citing Randolf R.

Lowell, *South Carolina Administrative Practice and Procedure*, 152 (2d ed. 2008) (stating the "ALC has no authority to decide civil matters or to award monetary damages in cases."). *Id.* at 187, 700 S.E.2d at 470). Accordingly, this Court should reverse the ALC's decision to reduce Beltram's tax liability because the ALC does not have the authority to reduce an accurate tax assessment based on a finding unrelated to the underlying tax assessment.

B. S.C. Code Ann. § 12-60-3350 (2014) Bars the Award of Attorney's Fees in Actions Brought Pursuant to the Revenue Procedures Act.

Again, Beltram's Brief does not address the statutory bar to attorney's fees in cases brought pursuant to the Revenue Procedures Act. The South Carolina Supreme Court established in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 84, 716 S.E.2d 877, 886 (2011), that S.C. Code Ann. § 12-60-3350 bars 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, and *CFRE, LLC* confirmed that S.C. Code Ann. § 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.

C. The ALC's Decision to Sanction 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 is an Abuse of Discretion.

In his brief, Beltram asserts that the ALC has the authority "to issue a discovery abuse sanction, including an award of attorney's fees[.]" (Beltram's Br., p. 11.) This is simply incorrect.

As discussed above, the ALC does not have the authority to award attorney's fees in matters brought pursuant to the Revenue Procedures Act. Further, as discussed in the Department's Brief, the ALC's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and is an abuse of discretion. *See CFRE, LLC, v. Greenville County Assessor*, 395 S.C. 67, 84, 716 S.E.2d 877, 886 (2011) (citing *McNair v. Fairfield County*, 379 S.C. 462, 467, 665 S.E.2d 830, 832 (Ct. App. 2008)) (outlining three-step analysis in determining whether a sanction is appropriate for discovery abuse: (1) the precise nature of the discovery and the discovery posture of the case; (2) willfulness; and (3) degree of prejudice).

Although Beltram states in his brief that "[t]he ALC acknowledged [the discovery documents] were material", a review of the hearing transcript provides otherwise. (Beltram's Br., p. 10.) The ALC specifically concluded that "**the documents did not help [Beltram] in his case.**"[3] (R. pp. 2, 28; Amended Order, pp. 8, 24, 24 n. 20.) (emphasis added). Interestingly, some of the documents Beltram "objected to not receiving during discovery were his own protest and associated documents, which he had submitted to the Department." (R. pp. 12, 420 - 429; Amended Order, p. 8, n. 8; Pet'r Ex. 9, pp. 1-10.) Further, this evidence was cumulative and, as concluded by the ALC, did not add to Beltram's case or his knowledge about the case. (R. p. 295; Hr'g Tr. 187:10-200:4.)

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

[3]Beltram also states the ALC found that "Beltram would have likely evaluated the matter differently if he had been privy to the materials prior to trial." (Beltram's Br., p. 10.) Again, Beltram takes the ALC's statement out of context. The ALC found that Beltram "may have actively pursued a settlement in this matter" had the documents been produced to him prior to trial. As noted in the ALC's Amended Final Order, these documents established that Beltram and/or attorneys were aware of Intedge's tax liens as of July 2005. (R. p. 28; Amended Final Order, p. 24, n. 20.)

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.) Accordingly, pursuant to *CFRE and McNair*, the ALC's decision to sanction 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 CFRE, LLC*, 395 S.C. 67, 716 S.E.2d 877; *McNair v. Fairfield County*, 379 S.C. 462, 665 S.E.2d 830; *see also Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989).

D. The ALC Erred in Sanctioning the Department When Beltram Failed to Comply With Discovery Rules.

Finally, Beltram does not address his own conduct that contributed to a discovery issue during the hearing of this matter. Accordingly, under the doctrine of unclean hands, Beltram must 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.").

During the discovery process of this matter, to include the deposition of Beltram, the Department made numerous requests to Beltram to produce any and all documents related to the sale of Intedge Industries, Inc. to Intedge Manufacturing as this sale was the primary - if not the only - argument Beltram asserted to deflect his individual liability of Intedge Industries' outstanding tax debt. (R. pp. 188, 192-193, 495-496; Hr'g Tr. 80:3-9; 84:21-85:5; Resp't Ex. 3.) Beltram did not produce all of the documents in his possession related to the sale of Intedge

Industries. At trial, during cross-examination of Beltram by the Department's counsel, Beltram referenced - for the first time - a document that had not been previously provided to the Department during discovery. Further, Beltram's counsel acknowledged during his rebuttal of Beltram that neither he nor Beltram provided the document to the Department prior to the hearing, despite previous requests by the Department.

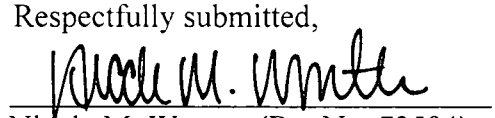
Although the ALC did not find the Department's reliance on this document persuasive, the Department had nearly identical time to review this document and make necessary adjustments to its presentation as Beltram did with regard to his acquired documents. In addition to other reasons argued above, it is inequitable to sanction the Department for a discovery dispute when Beltram engaged in the very same action – inadvertent or not – at the hearing of this matter.

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

Accordingly, for the reasons set forth above and those contained in the Department's Brief, the Department respectfully submits that this Court lacks appellate jurisdiction to hear Beltram's appeal because he failed to comply with the procedural requirements of S.C. Code Ann. § 12-60-3370 before appealing to this Court. Further, the ALC erred in determining that the Department is barred from collecting any taxes secured by tax liens against Intedge that were filed more than ten years before the May 1, 2013 Department Determination. Finally, the ALC's decision to reduce Beltram's tax liability based upon alleged discovery abuse by the Department is in excess of the ALC's statutory authority, is an error of law, is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and is an abuse of discretion. Therefore, this Court should reverse the ALC's decision for those matters set forth above.

Respectfully submitted,



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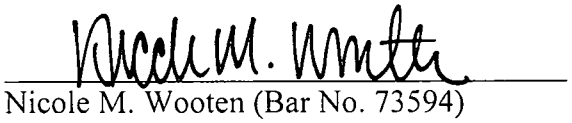
CERTIFICATE OF COUNSEL

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



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