

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

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Case No. 2012-CP-38-00837

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**RECEIVED**

MAR 04 2019

SC Court of Appeals

Jimmie Aiken, Leila Brown, Veronda 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.

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**Appellant's Return to Respondents' Petition to Transfer  
And  
Motion to Strike**

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Dana R. Krajack (Bar No. 3608)  
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Pursuant to Rule 240(e), SCACR, Appellant South Carolina Department of Revenue (Appellant or Department) submits this Return to Respondents' Rule 204(b) Petition to Transfer. As discussed more fully below, the Department does not oppose the ultimate relief sought in the Respondents' Petition, but is filing this Return to clarify the issues that are of significant public interest or of major importance, and to ensure that any review of this appeal is properly limited strictly to those matters that are in the Record on Appeal currently pending before the Court of Appeals.

Accordingly, the Department also moves, pursuant to Rule 240, SCACR, to strike those portions of the Petition, and any exhibits attached thereto, that discuss facts and allegations not included in the Record on Appeal.

### INTRODUCTION

This case involves a simple question of statutory construction: if the General Assembly codifies a specific, statutory meaning for a word, does that statutory definition control over what the Respondents believe should be the common, ordinary meaning of that word?

The short answer is "Yes." *See Bell Finance Co., Inc. v. S.C. Dept. of Consumer Affairs*, 297 S.C. 111, 114, 374 S.E.2d 918, 920 (Ct.App.1988) ("In construing a statute, the words used should be given their ordinary meaning, nothing else appearing . . . [but where the statute] contains words that are statutorily defined, the statutory definitions should generally be followed in interpreting the statute."); *see also Brown v. Martin*, 203 S.C. 84, 88, 26 S.E.2d 317, 318 (1943) ("The General Assembly has power to prescribe legal definitions of its own language, and such definitions are generally binding upon the Courts, and should prevail.").

In this case, the Revenue Procedures Act (RPA) provides a statutory definition of “taxes.” *See* S.C. Code Ann. § 12-60-30(27).<sup>1</sup> The definition includes licenses, permits, and fees, none of which are commonly understood to be “taxes.” More importantly, the definition also includes any amount imposed by Title 12 or any amount subject to collection by the Department. *Id.* In addition to defining “taxes”, the RPA also provides that “a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Judge Division or any court of law in this State,” and the Department of Revenue (Department) “may not be named or made a defendant in any other class action brought in this State.” S.C. Code Ann. § 12-60-80 (emphasis added).

Included in the definition of “taxes” are amounts subject to collection by the Department pursuant to the Government Enterprise Accounts Receivable (GEAR) program. The GEAR program, which is contained in Chapter 4 of Title 12, is a statutorily authorized collection service performed by the Department on behalf of state governmental entities, defined as “claimant agencies.” S.C. Code Ann. § 12-4-580. Pursuant to the GEAR program, the Department is authorized to collect certain amounts owed to claimant agencies, including medical debts like the ones at issue in this case. *See* S.C. Code Ann. § 12-4-580, §12-56-20(4).

Respondents contend that the GEAR program is unconstitutional, and in their complaint they seek a judgment to declare unconstitutional the statutes enacting and authorizing the GEAR program. In addition, Respondents have also requested a refund of those amounts that had been collected by the Department, pursuant to the GEAR program, since 2003.

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<sup>1</sup> See also S.C. Code Ann. §12-60-30(26), which defines “State tax” to mean “...taxes, licenses, permits, fees, or other amounts, including interest and penalties, imposed by this title, or assessed or collected by the department, except property taxes.”

However, the sole issues on appeal in this case are whether the lower court erred in striking the Department's class action defense under Section 12-60-80 and holding that Respondents are not required to exhaust their administrative remedies before seeking a refund of monies collected under the GEAR program—all because the lower court determined that a GEAR debt is not a “tax”. Importantly, the sole and exclusive appeal procedure for a GEAR debt is governed by the RPA<sup>2</sup>—the same RPA that defines “taxes” and specifically prohibits class action lawsuits against the Department for the refund of taxes. *See* S.C. Code Ann. § 12-60-80.

Thus, the action that forms the basis of this appeal is squarely prohibited by the RPA. It is a claim for the refund of “taxes”. It was brought as a putative class action lawsuit in a South Carolina court. It names the Department as a defendant in the putative class action. Nevertheless, Respondents wrongly assert, and the circuit court incorrectly concluded, that none of the statutory prohibitions in Section 12-60-80 apply because a medical debt collected by the Department pursuant to Title 12 is not a “tax” as the term is commonly understood.

If Respondents and the circuit court are correct, it completely undermines the General Assembly's ability to create specific statutory definitions for specific statutory schemes, and would lead to countless lawsuits over whether a statutorily defined term is trumped by the term's ordinary meaning. In addition, it would upend nearly 25 years of administrative practice, as governed by the RPA, and would entirely eliminate the RPA's appeals processes related to disputed GEAR debts. Finally, permitting a class action lawsuit seeking refunds of the amounts collected by the Department pursuant to the GEAR program for over 16 years could expose the Department—and

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<sup>2</sup> See S.C. Code Ann. §12-4-580(E) which provides “[t]he notice, hearing, appeals, and other provisions contained in Section 12-56-50 through 12-56-120 apply to this section....”

the State—to significant financial liability in the event this Court were to ultimately conclude that the entire GEAR program is unconstitutional (as Petitioners contend).

In short, the meaning of the word “taxes” is of significant public interest and the legal principle at the heart of this dispute is of major importance.

### **STATEMENT OF THE CASE**

Respondents initiated this action on June 19, 2012. They filed a Second Amended Complaint on October 25, 2012, in which they contend that the Department has wrongfully used wage garnishment under the GEAR program to collect certain delinquent debts owed by Respondents to several claimant agencies. The Second Amended Complaint sought a declaratory judgment that the GEAR program (§ 12-4-580) is unconstitutional, and requested a refund of those amounts that had been collected by the Department since 2003. Respondents sought class certification of their claims pursuant to Rule 23, SCRCP. The Department filed a timely Answer and Motion to Dismiss under Rule 12.

On May 14, 2014, Respondents filed a Motion to Strike a portion of the Department’s Answer; namely, the defense raised by the Department that the RPA and S.C. Code Ann. § 12-60-80(C) provides a statutory bar to Respondents naming the Department as a defendant in a class action lawsuit for the refund of taxes. On July 5, 2017, The Honorable Diane S. Goodstein, Circuit Judge of the First Judicial Circuit, granted Respondents’ Motion to Strike, finding that “the medical bills and other debts at issue are not ‘taxes’ as the term is defined statutorily or as it is commonly understood.” The circuit court ruled that that “§ 12-60-80(C) does not apply because this is not a tax case” and that “this case does not involve taxes”. As a further result of this conclusion, the circuit court held Respondents did not have to exhaust their administrative remedies before bringing this action in circuit court, and that Respondents could pursue a class

action suit against the Department for these claims—notwithstanding the prohibitions contained in § 12-60-80. This appeal followed.

On September 6, 2017, Respondents filed a Motion to Dismiss the Appeal on the grounds that the circuit court's order was not immediately appealable. After both parties briefed this issue, the Court of Appeals denied the motion by order dated October 5, 2017.

On April 23, 2018, Respondents filed a motion with the trial court seeking leave to file a Third Amended Complaint which would add a new plaintiff and new claims that were not included in the Second Amended Complaint. On May 22, 2018, over a month after the parties had filed their final briefs with the Court of Appeals, Respondents then filed a Motion to Supplement the Record on Appeal with a copy of the motion they had filed in circuit court—along with the affidavits and other records that had been included with the motion and proposed Third Amended Complaint.

On July 18, 2018, the Court of Appeals denied Respondents' motion to supplement the record on appeal. Then, on December 19, 2018, the circuit court denied Respondents' Motion for leave to file and serve a Third Amended Complaint, finding that SCACR Rule 205 deprives the circuit the authority to proceed with hearing matters that are affected by the appeal.

### **ARGUMENT**

As discussed above, Appellant does not oppose the transfer of this case to this Court. However, the Department objects to Respondent's improper attempt to introduce to this Court extraneous matters that are not and should not be included in the Record on Appeal. Remarkably, in the present Petition to Transfer, Respondents have attempted an end-run around the clear strictures of SCACR Rules 209 and 210, as well as the holding of the Court of Appeals' July 18, 2018 Order, by seeking to introduce—via the Petition and its attachments—the same factual allegations and documents that the Court of Appeals has already held are not part of the Record

on Appeal and should not be included in the Record on Appeal in this case. As this Court has previously noted, such repeated disregard of the Rules of Appellate Practice should not be tolerated. *See State v. Harris*, 278 S.C. 46, 47, 292 S.E.2d 40, 40 (1982) (roundly criticizing appellate practitioners' violations of the rules governing what matters are properly included in the record on appeal).

SCACR Rule 201 provides that an “[a]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision.” In addition, SCACR Rule 210 provides that the Record on Appeal may contain “all matter designated by any party under SCACR Rule 209,” but the Record on Appeal is not without limitation: “The Record **shall not**, however, include matter which was not presented to the lower court or tribunal.” Rule 210(C), SCACR (emphasis added). Each party’s counsel must also certify that the designation of matter to be included in the record on appeal “contains no matter which is irrelevant to the appeal.” Rule 209(c), SCACR.

Respondents’ Petition, as evidenced by the attachments to its Motion, putatively seeks to include in the record for this appeal at least four items that violate SCACR Rules 209 and 210:

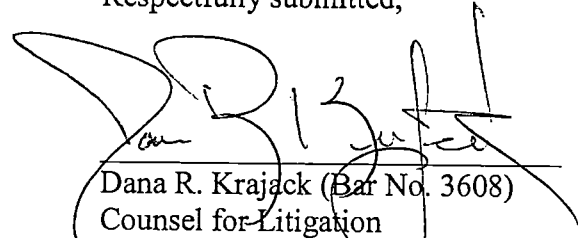
- Third Amended Complaint, which was not ruled on by the lower court prior to the initiation of this appeal, and which the lower court has now ruled cannot be filed and served during the pendency of this appeal;
- Affidavits and documents (which were either attached to the Third Amended Complaint, or are now attached to the Petition), which have not been considered or ruled upon by the lower court or the Court of Appeals;
- July 18, 2018 Order of the Court of Appeals denying Respondent’s motion to supplement the record, which was not appealed by Respondents; and
- December 19, 2018 Order of the circuit court that denied Respondents’ Motion for Leave to File a Third Amended Complaint, which was entered subsequent to the initiation of this appeal and which was not appealed by Respondents.

Respondents' attempt to boot-strap these matters into the record before this Court—if not formally, then informally, by including them as attachments to the Petition—is wholly improper. First, neither of these orders were appealed by Respondents. To the extent Respondents' Petition is now a backdoor attempt to appeal those orders, those rulings, “right or wrong, [are] the law of the case” and require affirmance. *Atlantic Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 703 S.E. 2d 282 (2012). Second, Respondents' inclusion of the attachments and documents in its Petition (referencing a putative new plaintiff with wholly new claims), which were not attached to any order and were not the subject of any appealed order, is also improper. *See Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E. 2d 902 (Ct. App. 2006) (“In order for an issue to be properly preserved for appeal, it must have been both raised to and ruled upon by the trial court.”).

### **CONCLUSION**

Based on the foregoing, the Department respectfully requests that Respondents' Petition to Transfer, if granted, should be limited to those matters that are in the Record now pending before the Court of Appeals. All other orders, exhibits, and arguments should be stricken and not permitted to be raised before the Court.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Dana R. Krajack', is written over the typed name and title.

Dana R. Krajack (Bar No. 3608)

Counsel for Litigation

Jason P. Luther (Bar No. 78021)

General Counsel for Litigation

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Columbia, SC 29211-9979

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Attorneys for Appellant

March 1, 2019

STATE OF SOUTH CAROLINA  
In the Supreme Court

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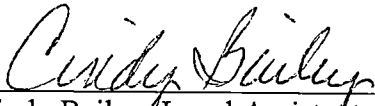
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**Appellant's Return to Respondents' Petitioner to Transfer  
And  
Motion to Strike**

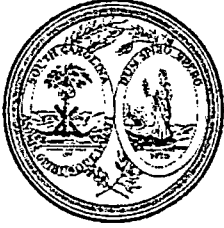
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**PROOF OF SERVICE**

I, as employee for the Appellant, do hereby certify that I have served the Appellant's Return to Respondent's Petition to Transfer and Motion to Strike [and served Jimmie Aiken, Leila Brown, Veronda Cohen, Carla David, Anthony Sabb, James Ginn, and Shirley Rice] by depositing a copy of same in the United States Mail, postage prepaid, on March 1, 2019, addressed to their attorney(s) of record, Robert N. Hill, Esquire, P.O. Box 1323, Lexington, SC, 29071-1323; Mark B. Tinsley, Esquire, Gooding and Gooding, P.O. Box 1000, Allendale, SC 29810; Charles H. Williams, Esquire, Williams & Williams, P.O. Box 1084, Orangeburg, SC 29115; and Daniel W. Williams, Esquire, Bedingfield & Williams, P.O. Box 616, Barnwell, SC 29812.

  
Cindy Bailey, Legal Assistant, S.C. Dept. of Revenue

March 1, 2019



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
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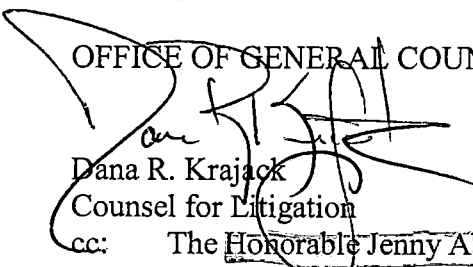
Re: Jimmie Aiken, Leila Brown, Vernonda Cohen, Carla David, Anthony Sabb, James Ginn, and Shirley Rice, as named Plaintiffs representing a class of South Carolina Citizens, Respondent vs. South Carolina Department of Revenue, Appellant  
Appellate Case Number: 2017-001790

Dear Clerk of Court:

Enclosed please find the Appellant's, South Carolina Department of Revenue's, Return to Respondent's Petition to Transfer *and* Motion to Strike. I am providing the unbound original and six copies of same. Please further find the Appellant's Certificate of Service for same.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

  
Dana R. Krajack  
Counsel for Litigation

cc: The Honorable Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals, P.O. Box 11629, Columbia, SC 29211  
Robert N. Hill, Esquire, P.O. Box 1323, Lexington, SC, 29071-1323  
Mark B. Tinsley, Esquire, Gooding and Gooding, P.O. Box 1000, Allendale, SC 29810  
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**South Carolina  
Department of Revenue  
Office of General Counsel**

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Hon. Jenny Abbott Kitchings  
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