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 S. Beltram,.....Appellant/Respondent,

v.

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

APPELLANT'S 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 S. Beltram,.....Appellant/Respondent,

v.

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

APPELLANT'S 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

STATEMENT OF THE ISSUES ON APPEAL

I. SHOULD THIS COURT DISMISS BELTRAM'S APPEAL WITH PREJUDICE BECAUSE HE FAILED TO COMPLY WITH THE REQUIREMENTS OF S.C. CODE ANN. § 12-60-3370 PRIOR TO APPEALING THE MATTER TO THE COURT OF APPEALS.

II. DID THE ADMINISTRATIVE LAW COURT ERR 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.

III. DID 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.

STATEMENT OF THE CASE

This matter came before the Administrative Law Court (ALC) in accordance with the Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310 *et seq.* (Supp. 2015). Appellant-Respondent Richard Beltram (Beltram) filed a contested case hearing with the ALC to challenge a Department Determination (Determination) issued by the Respondent-Appellant South Carolina Department of Revenue (Department) on May 1, 2013. (R. pp. 391-407; Pet'r Ex. 7.) The Department Determination concluded that Beltram is personally responsible for the delinquent withholding tax, sales tax, penalties, and interest owed by Intedge Industries, Inc. for the periods of September 1999 through December 2005. *Id.*

On September 16 and 17, 2014, the ALC held a hearing. (R. pp. 109-366; Hr'g Tr. 1:1-258:1.) The ALC issued its Order on March 25, 2015, finding that the Department's Determination was upheld in part and overturned in part. (R. pp. 31-51; Order dated March 25, 2015, pp. 1-19.) On April 2, 2015, Beltram filed a Notice of Motion to Reconsider, Alter or Amend. (R. pp. 99-104; Beltram's Motion to Reconsider, pp. 1-6.) On April 6, 2015, the Department filed a Motion for Reconsideration. (R. pp. 80-98; Department's Motion for Reconsideration, pp. 1-19.) Based upon the issues raised by the parties in their respective motions, the ALC issued an Order Vacating Final Order on May 1, 2015. (R. p. 30; Order Vacating Final Order, p. 1.) The ALC issued an Amended Final Order on March 17, 2017, and 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.[1] (R. pp. 5-29; Amended Final Order, pp. 24-25.) Further, the ALC reduced

[1] The Department does not appeal the ALC's determination that Beltram is not responsible for the delinquent withholding taxes of Intedge for the periods of June 2005, September 2005, and December 2005. Further, the Department does not appeal the ALC's determination that Beltram is not responsible for the delinquent sales taxes of Intedge for the period of September 2005. Finally, the Department does not appeal the ALC's determination that all penalties are waived.

Beltram's tax liability by $675.00 for alleged discovery abuse by the Department. (R. p. 28; Amended Final Order, p. 24.)

On April 14, 2017, Beltram filed his notice of appeal of the ALC's decision to the South Carolina Court of Appeals. (Beltram's notice of appeal.) The Department filed a cross appeal of the ALC's decision to the South Carolina Court of Appeals on April 24, 2017. (Department's cross appeal.) On April 28, 2017, the Department filed a Motion to Dismiss Appeal with Prejudice based upon Beltram's failure to comply with S.C. Code Ann. § 12-60-3370 (2014). (Department's Motion to Dismiss Appeal, p. 1-11.) Beltram filed his Return to Motion to Dismiss on May 18, 2017. (Beltram's Return to Motion to Dismiss, pp. 1-10.) The Department filed its Reply to Appellant/Respondent's Return to Motion to Dismiss on May 30, 2017. (Department's Reply, pp. 1-21.)

By Order filed July 13, 2017, the Court of Appeals denied the Department's Motion to Dismiss but permitted the Department to raise the jurisdictional issue in its appellate brief. Further, the Court of Appeals remanded the matter to the ALC for the sole issue of the "determination of the amount of taxes Beltram must pay or the amount of the bond Beltram must post pursuant to section 12-60-3370." At the request of the ALC, Beltram and the Department filed briefs outlining their respective positions regarding the amount of tax or bond posted that Beltram must pay pursuant to section 12-60-3370. (R. pp. 52-79; Department's Brief, pp. 1-11; Beltram's Brief, pp. 1-7; Department's Reply, pp. 1-7; Beltram's Reply, pp. 1-4.)

On January 12, 2018, the ALC issued an Order on Remand to Pay or Post Bond finding that Beltram is required to pay $54,510.50 pursuant to section 12-60-3370.[2] (R. pp.1-4; Order on Remand, pp. 1-4.)

STATEMENT OF FACTS

Unpaid Tax Liabilities of Intedge Industries, Inc.

Intedge Industries, Inc. was a family-owned business operating at 1875 Chumley Road, Woodruff, South Carolina. (R. p. 125; Hr'g Tr. 17:7-13.) Intedge submitted quarterly South Carolina withholding tax returns (Forms WH-1605) on behalf of the corporation for the quarters ending September 1999 through December 2005, except that it failed to file Form WH-1605 for the quarter ended September 30, 2005. (R. pp. 442-489, 478; Resp't Ex. 1; Resp't Ex. 1, p. 37.) Each filed return was timely filed and showed withholding tax due and reflected that such had been duly deposited or paid to the Department. (R. pp. 320; Hr'g Tr. 212:14-213:16.)

Despite the representations made in the filed returns, Intedge failed to remit to the Department all of the withholding taxes that it had shown and reported on its withholding returns for the periods referenced above. (R. pp. 321-325, 442-489; Hr'g Tr. 213:17-217:2; Resp't Ex 1.) The Department subsequently issued Proposed Notices of Assessment, which Intedge did not protest. (R. p. 320; Hr'g Tr. 212:5-10.) Based upon Intedge's failure to protest, the Department issued final assessments for these unpaid withholding taxes, ultimately resulting in the filing of tax liens for each period. (R. pp. 322-325, 442-489, 490-494, 65-68; Hr'g Tr. 214:2-217:2; Resp't Ex. 1; Resp't Ex. 2; Ex. 1 to DOR's Brief on Remand.) The assessments were properly made by

[2]As noted in the Order on Remand to Pay or Post Bond, this amount includes interest accrued through the issuance date of the order. Pursuant to S.C. Code Ann. § 12-54-25(A) (2014), interest is due on unpaid taxes and "is due on the unpaid portion from the time the tax was due until paid in its entirety." Because Beltram did not pay the tax or post a bond for such tax prior to January 12, 2018, interest continues to run on the unpaid liability.

the Department within three years of the day the tax was due without penalty. (R. pp. 12, 442-489; Amended Final Order, p. 12; Resp't Ex. 1.) These withholding taxes and interest remain unpaid.[3] (R. pp. 60; Department's Motion to Dismiss Appeal, pp. 9-10; Ex. 3, Department's Brief on Remand.)

The Department's Attempts to Collect the Unpaid Taxes From Beltram

Lori Coggins (Ms. Coggins) was employed by the Department as a Revenue Officer from May 2009 through March 2010. (R. pp. 207-208; Hr'g Tr. 99:19-100:9.) During her employment with the Department, Ms. Coggins was assigned to begin collection procedures with regard to Intedge's outstanding tax liabilities. (R. p. 209; Hr'g Tr. 101:9-21.) As part of her job duties, Ms. Coggins made numerous attempts to contact Beltram in an attempt to discuss Intedge's outstanding tax liabilities. (R. pp. 211-213; Hr'g Tr. 103:19-105:2; 104:14-16.) Beltram did not respond to any of Ms. Coggins' attempts to contact him. (R. pp. 211, 212-213, 222-223; Hr'g Tr. 103:19-104:9; 104:23-105:1; 114:19 – 115:10.)

As part of her duties with the Department, Ms. Coggins issued a responsible party Proposed Notice of Assessment (responsible party PNOA) to Beltram on September 2, 2009, in an attempt to collect the outstanding taxes owed by Intedge. (R. pp. 209-210, 210-211, 214, 215, 380; Hr'g Tr. 101:24-102:2; 102:16-103:5; 106:4-11; 107:14-15; Pet'r Ex. 2, p. 1.) Specifically, the responsible party PNOA informed Beltram that he was being held personally responsible for Intedge's outstanding sales and withholding taxes, penalties and interest for the periods of September 1999 through December 2005. (R. pp. 380, 442-489; Pet'r Ex. 2, p.1; Resp't Ex. 1.) The responsible party PNOA was issued to Beltram based upon his position, duties, and authority

[3]When the Department filed its initial Appellant's Brief, the taxes at issue in this matter remained unpaid. On February 27, 2018, Beltram submitted a check to the Department for the amount determined to be due in the ALC Order on Remand. (R. pp. 1-4.)

with Intedge as its president and majority shareholder. (R. pp. 213, 256, 325; Hr'g Tr. 105:11-20; 148:15-22; 217:12-16.) On December 1, 2009, Beltram filed a timely protest contesting his personal liability for the withholding and sales tax assessments, penalties, and interest issued to Intedge. (R. p. 217, 420-421; Hr'g Tr. 109:8-11; Pet'r Ex. 9, p. 2.)

ARGUMENTS

As explained more fully below, 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. As to the Department's appeal, this Court should reverse those findings and conclusions of the ALC regarding its interpretation of the ten year lien period of Intedge's liabilities as applied to Beltram's liability as a responsible party in this matter. *See* S.C. Code Ann. §§ 1-23-610(B)(a) and 1-23-610(B)(d) (Supp. 2015) (providing that this Court may reverse or modify the administrative law judge's order if his findings or conclusions are "in violation of constitutional or statutory provisions" or "affected by other error of law"). Further, the ALC's decision to reduce Beltram's tax liability based upon a perceived discovery dispute 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, and 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.)

Thus, pursuant to section 1-23-610(B), this Court should reverse the findings and conclusions of the ALC's decisions related to the ten year lien limitations period and the reduction of Beltram's tax liability based upon a perceived discovery dispute.

I. THIS COURT SHOULD DISMISS BELTRAM'S APPEAL WITH PREJUDICE BECAUSE HE FAILED TO COMPLY WITH THE REQUIREMENTS OF S.C. CODE ANN. § 12-60-3370 PRIOR TO APPEALING THE MATTER TO THE COURT OF APPEALS.

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. (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 from May 1, 2003 through July 1, 2005. (R. p. 29; Amended Final Order p. 25).

It is undisputed that Beltram did not pay the tax or post bond for such tax prior to the appeal filed with this Court. (Beltram's Return to Motion to Dismiss, p. 2.) Further, as of the date of this filing, Beltram has not paid the tax or posted bond for such tax. Because Beltram failed to pay the tax or post the bond for such tax determined to be due by the ALC prior to his appeal filed with this Court, this Court lacks appellate jurisdiction and Beltram's appeal must be dismissed.

In South Carolina, a taxpayer's right to challenge a dispute with the Department is authorized pursuant to the South Carolina Revenue Procedures Act (RPA). S.C. Code Ann. § 12-60-10 *et seq.* (2014). Specifically, in 1995, the South Carolina Legislature created the RPA "to provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue . . . ." S.C. Code Ann. § 12-60-20 (2014); 1995 Act No. 60, § 4A. If the taxpayer and the Department cannot resolve the dispute, S.C. Code Ann. § 12-60-460 (2014) provides that the taxpayer may seek relief from the department's determination by requesting a contested case hearings before the ALC. *See also* S.C. Code Ann. § 12-60-3340 (2014).

Once a decision has been made by the ALC, the APA provides for the appeal of such decision to the Court of Appeals. S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2015). However, the RPA requires a taxpayer to pay, or post a bond for, the taxes and interest owed in order to exercise

his right to appeal:

> Except as otherwise provided, a taxpayer shall pay, or post a bond for, all taxes, not including penalties or civil fines, determined to be due by the administrative law judge **before appealing the decision to the court of appeals**.

S.C. Code Ann. § 12-60-3370 (2014)(emphasis added).

Pursuant to section 12-60-3370 of the RPA, the South Carolina Legislature explicitly conditioned a taxpayer's ability to appeal an ALC decision to this Court. Specifically, the RPA provides a definite requirement for a taxpayer seeking to challenge an ALC decision. Section 12-60-3370 states a taxpayer "**shall** pay, or post a bond for, all taxes, not including penalties or civil fines, determined to be due by the administrative law judge **before** appealing the decision to the court of appeals." (Emphasis added). Based on the plain language of section 12-60-3370, payment of the tax, or bond for such tax, is a prerequisite to filing a notice of appeal of the ALC's decision.[4] *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."); *see also Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) ("The Court

[4]It is important to note the nature of the underlying tax assessment in this matter – withholding taxes. Withholding taxes are held by withholding agents in trust for the State, and this trust arrangement is created by statute. *See* S.C. Code Ann. § 12-8-2030. The failure to remit taxes that have been withheld from employees' pay for this purpose is particularly egregious, as these monies never belonged to Beltram or Intedge. *See* S.C. Code Ann. § 12-8-2030.

The State of South Carolina is particularly prejudiced as a result of the failure of Beltram to remit such withholding taxes to the Department. The subsequent failure of Beltram to pay the tax ordered by the ALC or post sufficient bond prior to filing his notice of appeal further exacerbates such prejudice. Such action harms the State and its citizens, and this is precisely the situation the General Assembly sought to avoid by enacting section 12-60-3370 in 1995.

must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.").

Moreover, section 12-60-3370 does not contain any permissive or optional language but instead includes the mandate "shall." The word "shall" in section 12-60-3370 must be afforded its plain and ordinary meaning. *Buist v. Huggins*, 367 S.C. 268, 625 S.E.2d 636 (2006) ("The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction or limit to expand the statute's operation."). Furthermore, words within a statute cannot be omitted. *Savannah Bank and Trust v. Shuman*, 250 S.C. 344, 157 S.E.2d 864 (1962) ("It is axiomatic that words in a statute cannot be ignored or deleted."). Section 12-60-3370 can only be read to provide a mandatory requirement to pay the tax, or post a bond for such tax, determined to be due by the administrative law judge prior to appealing the decision to this Court.

In *State v. Brown*, 358 S.C. 382, 596 S.E.2d 39 (2004), the South Carolina Supreme Court concluded that the "failure of a party to comply with the procedural requirements for perfecting an appeal may deprive the court of 'appellate' jurisdiction over the case, but it does not affect the court's subject matter jurisdiction." *State v. Brown*, 358 S.C. at 387, 596 S.E.2d at 41 (*citing Great Games, Inc. v. S.C. Dep't of Rev.*, 339 S.C. 79, 82 at n.5, 529 S.E.2d 6, 7 at n.5 (2000)).[5] *See* Jean

[5]Although not precedent, in an unpublished decision in *Anonymous Taxpayer v. South Carolina Department of Revenue*, 2008-UP-124, available at 2008 WL 9837290, this Court, citing to *State v. Brown*, found that it lacked appellate jurisdiction in the matter because the Appellant failed to pay the tax or post a bond prior to the appeal to the circuit court pursuant to S.C. Code Ann. § 12-60-3370. At the time the taxpayer in *Anonymous* appealed the ALC decision, such appeals were taken to the circuit court pursuant to then existing sections 12-60-3370 and 1-23-610. In 2006, these sections, in addition to S.C. Code Ann. § 12-60-3380, were amended to provide that appeals from ALC decisions are to the Court of Appeals. *See* 2006 Act No. 387, § 5, eff. July 1, 2006 (amending § 1-23-610); 2006 Act No. 387, § 12, eff. July 1, 2006 (amending § 12-60-3370); and 2006 Act No. 387, § 13, eff. July 1, 2006 (amending § 12-60-3380). Section 53 of 2006 Act 387 further provides:

Hoefer Toal et al., *Appellate Practice in South Carolina* 353 (3d ed. 2015) (citing S.C. Code Ann. § 12-60-3370, which requires payment of the tax and interest or bond prior to taxpayer's appeal to Court of Appeals). Here, Beltram failed to comply with the procedural requirements of section 12-60-3370 before appealing the ALC's decision to this Court. Accordingly, the Department respectfully submits this Court lacks appellate jurisdiction in this matter and requests that his appeal be dismissed with prejudice.

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.

In its Amended Final Order, the ALC concluded that the Department is barred from collecting any taxes from Beltram that are secured by liens against Intedge that were filed more than ten years before the May 1, 2013 Department Determination. (R. pp. 20-22; Amended Final Order, pp. 16-18.) For the reasons set forth below, the ALC erred in its interpretation of the relevant statutes, and Beltram's liability in this matter includes the withholding tax and interest due for Intedge's withholding periods of September 1999, March 2001, and June 2001. (R. pp. 65-68; Department's Brief on Remand, Ex. 1.)[6]

> This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.

[6]The withholding tax due for such periods is as follows: September 1999 - $2,519.14; March 2001 - $4,660.71; and June 2001 - $4,302.30. (R. pp. 65-68, 490-494; Department's Brief on Remand, Ex. 1; Resp't Ex. 2.) These amounts do not includes interest, and S.C. Code Ann. § 12-54-25(A) (2014) provides that interest continues to accrue on any unpaid tax liability.

A. 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.[7]

S.C. Code Ann. § 12-8-2030 (2014) provides for a lien against property if a withholding agent fails to withhold income tax and remit such tax to the Department:

> An amount withhold under this chapter must be held in trust for the State and is a lien against all property, both real and personal, tangible and intangible, of the withholding agent. The lien becomes effective after it has been properly recorded in the county where the withholding agent's business is located.

Further, S.C. Code Ann. § 12-54-120 (2014) provides, in pertinent part:

> (A)(1) 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.
>
> (2) This lien:
>
> * * *
>
> (e) continues for ten years from the date of filing.

---

[7] Although it is acknowledged that Beltram's liability for the tax debt as a responsible party is derivative of Intedge's tax liability, it simply does not follow that Beltram's liability should be extinguished at the expiration of the ten-year period for the liens against the corporation. The tax liens were filed against Intedge, and the Department is adhering to sound public policy by first seeking to collect taxes from the corporation before looking through the corporation to individuals. The Department had no ability to enforce those liens against Beltram until the proposed notice of assessment for responsible party was issued to him. Most importantly, S.C. Code Ann. §§ 12-8-2010 does not provide for a statute of limitations period with regard to responsible party status. Although the Internal Revenue Service does provide for a statute of limitations for a responsible party, the South Carolina Legislature specifically chose not to adopt the applicable sections of the Internal Revenue Code. *See* Internal Revenue Code § 6501(a); *cf.* S.C. Code Ann. § 12-6-50(16) (2014).

Because no South Carolina statute provides a date in which a responsible party PNOA must be issued to a taxpayer, the ALC erred in creating a statute of limitations for Beltram with regard to Intedge's tax liens. Nevertheless, the Department asserts that if a date should be used in determining whether the Department can assess Beltram as a responsible party for the outstanding tax liabilities of Intedge, the most reasonable date to use is the September 9, 2009 responsible party PNOA (rather than the May 1, 2013 Department Determination.)

(3) "Demand", as used in this section, means an assessment by the department.

Based on the plain language of sections 12-8-2030 and 12-54-120, the withholding tax liens for Intedge's delinquent withholding taxes became effective against the company upon the filing of the same in Spartanburg County. (R. pp. 20; Amended Final Order, p. 16.) *See Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006) ("words should be given their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation."); *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843 (1992). Although section 12-8-2030 does not provide a limitations period for such lien, section 12-54-120 goes on to provide the tax lien continues for a ten year period "from the date of filing." As to Intedge, therefore, any liens that have been filed longer than 10 years, those liens have expired and the associated taxes, interest, penalties, and costs are no longer collectible against the company. Nevertheless, this rationale does not apply to Beltram as a withholding agent/responsible person. 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.

Pursuant to S.C. Code Ann. § 12-60-440 (2014), the Department may not assess a tax against a taxpayer while that tax is being appealed to a court. S.C. Code Ann. § 12-54-120(a)(1) provides for a lien in favor of the Department when it makes a demand for the outstanding taxes. S.C. Code Ann. § 12-54-120(e)(3) provides that a "demand" means an assessment by the Department. Because the Department cannot make an assessment against Beltram until this litigation is complete, it necessarily follows that the Department cannot make a demand or establish a lien against Beltram until the litigation is complete. Thus, the ten-year limitation period cannot begin until this litigation is complete. The tax liability – first sought to be imposed against

a responsible party in September 2009 – is therefore still collectible against Beltram. Any lien filed against him at the resolution of this litigation will thus have a collectible life of ten years from the date of filing.

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.[8] 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.

[8]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. p. 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").

Support for use of the September 2, 2009 date is found in an earlier portion of the ALC's Amended Final Order, which contains the following legal conclusion:

> The Petitioner 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. Thus, the Department's timely assessments to Intedge put the Petitioner 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, this court interprets the Department's Responsible Party Proposed Assessment Letter, dated September 2, 2009, as a confirmation, rather than untimely notice, of the Petitioner's liability.

(R. p. 19; Amended Final Order, p. 15 (footnote omitted)). As the ALC recognized, the September 2, 2009 responsible party PNOA to Beltram confirmed that he is liable for the outstanding taxes owed by Intedge.

While the ALC recognized that Beltram was on notice of the outstanding taxes of Intedge, it misunderstood the Department's ability to finalize an assessment against the taxpayer and move forward with statutory collection methods, such as the filing of a lien. Specifically, the ALC concluded the following:

> This court rejects the Department's argument that the date of September 2, 2009, has significance. Even at the date of the hearing, **the Department had not filed any tax liens against [Beltram]**.
>
> * * *
>
> If this court were to take [the Department's argument that the Department Determination has no tolling effect on any limitation period], then the **Department's failure to file tax liens against [Beltram] as of [May 1, 2013]**, would mean that the Department has no recourse regarding any of the fifteen (15) tax liens.

(R. p. 22; Amended Final Order, p. 18, and p.18, n. 16.) (emphasis added). This is 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.[9] 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:

> **The department may not assess a deficiency** until ninety days after sending the proposed assessment . . . or, **if the taxpayer files a timely written protest with the department, until the taxpayer's appeal is finally decided.** For purposes of this section, the final decision of an appeal includes the decision of the Administrative Law Court or court, if the matter was heard by the Administrative Law Court or appealed to a courts as provided in this article.

S.C. Code Ann. § 12-60-440(A) (emphasis added); *see* S.C. Code Ann. § 12-60-450(C) ("the filing of an appeal of a proposed assessment . . . extends the time for assessment as provided in Section 12-54-85(G)(3)); S.C. Code Ann. § 12-54-85(G)(3) (providing that the running of the period of limitations provided in subsections of section 12-54-85 are suspended "from the date of a proposed assessment . . . until ninety days after a decision becomes final, if a taxpayer protests the proposed assessment.").

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 Department Determination is simply incorrect. Rather, September 2, 2009, the date of issuance for the

---

[9]In rare instances, if the Department determines that following the general deficiency procedures might jeopardize or endanger the collection of the tax, the Department may forgo normal collection procedures and make an immediate assessment. *See* S.C. Code Ann. § 12-60-910 (2014) (providing the Department with authority to issue jeopardy assessments). However, a jeopardy assessment in this matter was not applicable for two reasons: (1) pursuant to section 12-60-910, a jeopardy assessment must be initiated before the proposed notice of assessment is issued; and (2) prior to the issuance of the September 2, 2009 responsible party PNOA, the Department was not aware of any facts to support that following the usual collection procedures might jeopardize or endanger the collection of the tax.

responsible party PNOA – is the correct date to use in determining whether the outstanding tax liens of Intedge are collectible against Beltram.[10] None of Intedge's withholding tax liens the ALC originally excluded from Beltram's responsible party liability had actually expired on September 2, 2009.

B. The May 1, 2013 Department Determination Against Beltram is Not Relevant When Determining Whether Any of Intedge's Liens Had Expired as to Beltram's Responsible Party Liability.

Moreover, the ALC's conclusion that May 1, 2013 – the date of the Department Determination against Beltram – is the determinative date to use when evaluating the existence of valid Intedge tax liens (and thus, excluding the withholding periods of September 1999, March 2001, and June 2001 from Beltram's liability) is clearly erroneous and not supported by South Carolina law for the following reasons.[11] "Department Determination" is defined as the "final determination within the department from which a person may request a contested case hearing before the Administrative Law Court." S.C. Code Ann. § 12-60-30(10). In practice, the Department Determination is the official position of the Department after consideration of the

---

[10]S.C. Code Ann. § 12-60-30(23) defines "proposed assessment" as "the first written notice sent or given to the taxpayer stating that a division within the department has concluded that a tax is due."

[11]The ALC places great emphasis on the Department's "delay" in issuing the responsible PNOA to Beltram and subsequent Department Determination. However, in responsible party matters, the Department adheres to sound public policy by first seeking to collect taxes from the corporation before looking through the corporation to individuals. *See e.g.*, *Hunting v. Elders*, 359 S.C. 217, 223-24, 597 S.E.2d 803, 806 (Ct. App. 2004) ("'[P]iercing the corporate veil' is not a doctrine to be applied without substantial reflection.") (quoting *Baker v. Equitable Leasing Corp.*, 275 S.C. 359, 367, 271 S.E.2d 596, 600 (1980)). If the Department Determination operated as a "deadline" for the Department's ability to enforce a corporation's tax liability, the responsible party could conceivably engage in a lengthy protest period after the responsible party PNOA is issued. Such interpretation of the statutes encourages lengthy appeals to "run" the limitations period and potentially forces the Department to take aggressive collection actions before the individual has the opportunity to be heard before the ALC.

facts, circumstances, and legal argument offered by the taxpayer in his protest filed in response to a proposed assessment. Significantly, the Department Determination has no "tolling" effect on any limitations period. To the contrary, in the context of limitation periods applicable to tax debts, the issuance of a proposed notice of assessment "tolls" various limitations periods. *See generally*, S.C. Code Ann. § 12-54-85(G).

Simply put, the Department Determination does not toll any deadline with respect to the assessment of a tax liability.[12] Rather, the Department Determination provided Beltram the opportunity to challenge the Department's decision that he is personally liable for Intedge's unpaid tax liabilities. The ALC's creation of a statute of limitations for collections related to the Department Determination is not supported by any statute or case law. In fact, under the ALC's interpretation, Beltram may not owe any tax liability if this appeal lasts longer than the liens filed against Intedge. Such interpretation is inconsistent with S.C. Code Ann. § 15-35-810.

If this Court determines that Beltram's liability includes all the withholding periods at issue in the Department's appeal, such final judgment creates a lien against Beltram's real estate in this State, for a period of ten years:

> Final judgments and decrees entered in any court of record in this State subsequent to November 25, 1873, or in any circuit or district court of the United States within this State or of any other Federal court the final judgments and decrees of which, by act of Congress, shall be declared to create a lien, shall constitute a lien upon the real estate of the judgment debtor situate in any county in this State in

[12]In fact, a taxpayer's failure to file a request for a contested case hearing with the Administrative Law Court within thirty days of the Department's determination precludes the ALC from hearing the taxpayer's protest of the assessment and such assessment becomes final. *See* S.C. Code Ann. § 12-60-460 (2014) (providing that "request must be made within thirty days after the date the department's determination was sent by first class mail or delivered to the taxpayer. Requests for a hearing before the Administrative Law Court must be made in accordance with its rules."); ALC Rule 11(C) ("Unless otherwise provided by statute, a request must be filed and served within thirty (30) days after actual or constructive notice of the agency's determination.")

> which the judgment or transcript thereof is entered upon the book of abstracts of judgments and duly indexed, the lien to begin from the time of such entry on the book of abstracts and indices and to continue for a period of ten years from the date of such final judgment or decree.

S.C. Code Ann. § 15-35-810.

Because the ALC erred in its interpretation and application of the relevant statutes regarding the ten year limitation period, this Court should reverse the ALC's decision regarding the September 1999, March 2001, and June 2001 withholding tax periods of Intedge that remain unpaid. *See* R. p. 22; Amended Final Order, p. 18.

The Department's issuance of the September 2, 2009 responsible party PNOA tolled the ten year lien period (as to Intedge's liens that are collectible against Beltram) until the resolution of Beltram's protest to the proposed assessment. None of the withholding periods excluded by the ALC had expired; thus, the liens filed as to Intedge's September 1999, March 2001, and June 2001 delinquent withholding tax periods are still personally collectible against Beltram at the conclusion of this litigation (including interest that continues to accrue on the unpaid tax liability).

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[13] for the following reasons: (1) it is in excess of the

[13]The Department's alleged discovery abuse relates to the documents introduced at the hearing as Petitioner's Exhibits 8 and 9. (R. pp. 408-441; Pet'r Ex. 8, 9.) These documents contain Beltram's initial protest of the responsible party PNOA as well as screenshots from a Department computer system ("ARMS"). These screenshots contain notes of communication between Department employees and the taxpayer or his representative related to that specific account. This matter was discussed with the ALC Judge in his office during a brief recess at the hearing and in a follow-up letter to Beltram's counsel, the Department informed Beltram's counsel that it did not initially provide Beltram's appeal documents to him because they were inadvertently attached to a privileged document within his file. (R. pp. 269-270, 499; Hr'g Tr. 161:6-162:17; September

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).

In the Amended Final Order, the ALC recognized that Beltram "provided the court with no statutory authority or case law that would allow it to award attorney's fees in this case." (R. pp. 28; Amended Final Order, p. 24.) The ALC subsequently concluded that a sanction of $675.00 was appropriate in this matter regarding "the Department's failure to provide requested discovery." (R. pp. 28; Amended Final Order, p. 24.) Conversely, in the ALC's Order on Remand, the ALC stated the $675.00 related to an award of "attorney's fees." (R. pp. 2, 3; Order on Remand, p. 2, n. 2; p. 3.) Thus, it is unclear from the ALC Order on Remand and Amended Final Order if the ALC awarded "attorney's fees" to Beltram or sanctioned the Department for a perceived discovery dispute. Nevertheless, under either scenario, the ALC's decision to reduce Beltram's tax liability in this matter by $675.00 for attorney's fees or a discovery dispute is in excess of the ALC's

---

16, 2014 letter to Beltram's counsel.) Further, the Department did not initially produce the screenshots as Department counsel believed those computer system screenshots were privileged. Nevertheless, the Department provided most of the screenshots to Beltram's counsel on September 15, 2014, the day before the hearing (R. pp. 408-419; Pet'r Ex. 8.)

statutory authority. However, even if this Court determines the ALC did not exceed its authority by reducing the tax liability, the ALC's decision must be reversed because it is an error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and an abuse of discretion.

A. The ALC Lacks Authority to Reduce the Amount of Tax it Determined to be Due by Beltram.[14]

In its' Amended Final Order, the ALC sanctioned the Department for a perceived discovery dispute by reducing the tax assessment of Beltram by $675.00:

> Though this omission was certainly not deliberate, and probably harmed the Department more than [Beltram], this court concludes that this sanction (**a reduction of $675.00**) is appropriate in this case.

(R. p. 28; Amended Order, p. 24.) (emphasis added). The Department submits that the ALC's decision to reduce Beltram's liability in this matter based upon an alleged discovery abuse is in excess of the ALC's statutory authority. *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).

Once the ALC determines that a taxpayer is liable for the outstanding tax assessment, the ALC does not have the authority to reduce the assessment in order to monetarily penalize the Department for a matter completely unrelated to the underlying assessment. The Department is unaware of any authority – statutory or case law – that grants the ALC the authority to take such action.

---

[14]The Administrative Law Court is an agency and a court of record within the executive branch of state government. S.C. Code Ann. § 1-23-500 (2005). The ALC was created by the General Assembly by Act No. 181 of 1993.

Moreover, 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 (citing Randolf R. Lowell, *South Carolina Administrative Practice and Procedure*, 152 (2d ed. 2008)). 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[15] 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.

Even if the ALC was statutorily authorized to reduce a taxpayer's liability based upon a discovery dispute, 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. S.C. Code Ann. § 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

[15]As discussed above, the underlying tax liability of Intedge became fixed when Intedge failed to protest the assessment. Further, in the Amended Final Order, the ALC concluded that Beltram "is personally liable for the employee withholding taxes, penalties and interest owed by Intedge for the period of May 1, 2003 through July 1, 2005. (R. p. 24; Amended Final Order, p. 24.) There is no language in the Amended Final Order indicating that Beltram's responsible party liability should be decreased by $675.00 based upon a finding related to his duties, role, or responsibilities of Intedge, and that is the sole issue before the ALC in this matter.

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.[16] *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.

To the extent the ALC fined the Department in the nature of sanctions for failing to initially turn over all documents in discovery, 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. In *CFRE, LLC* the South Carolina Supreme Court affirmed the ALC's decision to refrain from imposing sanctions on the Assessor for its failure to formally respond to CFRE's discovery requests. *CFRE, LLC*, 395 S.C. at 82, 716 S.E.2d at 885. In reaching its decision, the *CFRE, LLC,* court stated a 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. *Id.* (citing *McNair v. Fairfield County*, 379 S.C. 462, 467, 665 S.E.2d 830, 832 (Ct. App. 2008)). In *CFRE, LLC*, the Assessor subsequently "fully complied" with the discovery requests, and the "documents submitted to the court created a complete record of the facts." *Id.* The Supreme Court further found CFRE "ultimately received all pertinent and material

[16]S.C. Code Ann. § 12-60-3350 does not operate as a complete bar for attorney's fees assessed against the Department. Rather, it prohibits an award of attorney's fees for actions arising pursuant to the RPA. *See Sloan v. S.C. Dep't of Rev.*, 409 S.C. 551, 762 S.E.2d 687 (2014) (affirming award of attorney's fees against the Department for an action initiated under the Freedom of Information Act, S.C. Code Ann. § 30-4-100(b)).

information it would have been entitled to had the Assessor specifically answered CFRE's requests." *Id.* Finally, the *CFRE, LLC* court concluded that although prejudice is presumed in the analysis, "the party who has failed to submit the discovery can show lack of prejudice." *Id.*

Applying *CFRE, LLC's* three-step analysis to this matter, the ALC's decision to sanction the Department is not supported by the record in this matter and is an abuse of discretion. 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.**
>
> * * *
>
> **The documents did not help [Beltram] in his case.**

(R. pp. 12, 28; Amended Order, pp. 8, 24, 24 n. 20.) (emphasis added). 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. pp. 12, 420-429; Amended Order, p. 8, n. 8; Pet'r Ex. 9, pp. 1-10.)

While the disclosure of the documents did not occur until the ALC had recessed at the end of the first day of the hearing, the trial in this matter had originally been scheduled to last for two (2) days – thus, the parties were not prejudiced by having to resume the trial the next day. As indicated in *CFRE, LLC*, the analysis must be whether the evidence itself added anything

substantive to Beltram's case. *CFRE, LLC*, 395 S.C. at 82, 716 S.E.2d at 885. The documents that were ultimately disclosed to Beltram were screenshots from the Department's Automated Receivables Management System (ARMS) as well as documents Beltram created and/or submitted to the Department with regard to his protest of the responsible party PNOA. (R. pp. 408-441; Pet'r Ex. 8 and 9.) This evidence was cumulative and, as concluded by the ALC, did not add to Beltram's case or his knowledge about the case. (R. pp. 24, 295-308; Amended Final Order, p. 24; 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 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. 24; 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 v. Greenville County Assessor*, 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.

To the extent the ALC sanctioned the Department pursuant to any equitable considerations, the Department asserts that 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.").

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 apparently produced some, but not 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:

> Q: Is this the document you were referring to when you believe – you said you believed that we had the contract?
> A: No, that was – no. There was – there was documents dated October 1st that showed transfer of the corporate name and things like that.
> Q: Do you have the documents with you?
> Mr. Greene: Your Honor, if I may?
> The Court: Yes, sir.
> Mr. Greene: I did find a document that I think maybe what he's looking at if I can –
> The Court: Yes, Sir. See what's Mr. Greene's got there.
> Ms. Wooten: Thank you, Your Honor. The document that was provided was not the contract that I was requesting . . . .

(R. pp. 182-183; Hr'g Tr. 74:24-75 15.) The discussion regarding the newly discovered document continued through Beltram's cross-examination:

> Ms. Wooten: Your honor, if I could have a moment, please?

> The Court: Yes
> Ms. Wooten: Thank you, Your Honor, I'm going to give this document to Mr. Beltram. This was just presented to us this morning.

(R. pp. 191; Hr'g Tr. 83:12-17.)

> M[s]. Wooten: At this time, I'd like to move this exhibit into evidence as Respondent's exhibit Three.
> Mr. Greene: Okay
> The Court: Respondent's Exhibit Three, there being no objection is admitted.
> Q: Mr. Beltram, could you tell me the – the title of the document that I handed to you as Respondent's Exhibit Three?
> A: Guarantee and Indemnity Agreement.

(R. pp. 191-192, 495-496; Hr'g Tr. 83:24 – 84:10; Resp't Ex. 3.)

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:

> Q: Mr. Greene: Okay. Now a lot has been made these last two days about the contract of sale that you have told us was on October 1, **and we have not provided that to DOR**, can you tell me why you haven't provided that to me for me to provided it to them?

(R. p. 333; Hr'g Tr. 225:2-7.) (emphasis added).

Finally, during closing arguments the Department informed the ALC that it received this document during the hearing despite prior discovery requests for such document:

> **Moreover, Mr. Beltram provided yesterday, despite prior discovery requests, an indemnification agreement** holding Intedge Manufacturing harmless for any outstanding taxes by Intedge Industries prior to the date of this agreement. While this contract provides liabilities between the two parties, it provides further evidence of the department's position, which relies upon

> statutes that Mr. Beltram is liable for the taxes occurred under his watch as president and majority shareholder of the corporation.

(R. pp. 359-360, 495-496; Hr'g Tr. 251:21-252:7; Resp't Ex. 3.) (emphasis added).

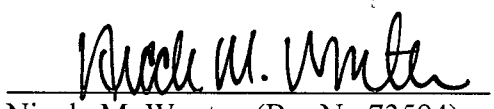
This document was presented to the Department during Beltram's cross-examination, despite repeated requests by the Department during discovery and Beltram's deposition. The document produced was "Guarantee and Indemnity Agreement." (R. pp. 495-496; Resp't Ex. 3.) Although the ALC did not find the Department's 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

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,



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

July 30, 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 S. 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