THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 19-ALJ-17-0121-AP
Appellate Case No. 2019-001748

Shirley Whitfield, Individually and as personal representative of the Estate of William Whitfield, ...Appellant,

v.

South Carolina Department of Revenue, ...Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This matter came before the Administrative Law Court (ALC) upon Shirley Whitfield's, individually and as personal representative of the Estate of William Whitfield ("Appellant"), filing of her request for a contested case hearing with the ALC on April 25, 2019. (R. pp. 1, 12-18; Req. for Contested Case Hr'g; Notice of Assignment). On June 7, 2019, the South Carolina Department of Revenue ("Department" or "Respondent") moved for the ALC to dismiss the Appellant's action due to the Appellant's failure to exhaust her administrative remedies. (R. pp. 5, 22-41; Order p. 2; Mot. to Dismiss, pp. 1-6, Exhibits A-D). On September 18, 2019, the ALC issued an Order granting the Department's Motion to Dismiss ("Order"). (R. pp. 4-11; Order pp. 1-8). The Appellant filed her Notice of Appeal on October 17, 2019.

STANDARD OF REVIEW

In an appeal from the decision of an administrative agency, the Administrative Procedures Act ("APA") provides the appropriate standard of review. Olson v. S.C. Dep't of Health & Envtl. Control, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct. App. 2008); Turner v. S.C. Dep't of Health & Envtl. Control, 377 S.C. 540, 544, 661 S.E.2d 118, 120 (Ct. App. 2008); Clark v. Aiken County Gov't, 366 S.C. 102, 107, 620 S.E.2d 99, 101 (Ct. App. 2005). Section 1-23-610(B) provides the applicable standard:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;

> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B) (Supp. 2017).

"Questions of statutory interpretation are questions of law, which [this Court is] free to decide without any deference to the court below." Centex Int'l, Inc. v. S. C. Dep't of Revenue, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013), *reh'g denied* (Sept. 20, 2013). "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning." Ward v. West Oil Co., Inc., 387 S.C. 268, 278, 522 S.E.2d 516, 522 (2010). Moreover, the words of the statute "must be given their plain and ordinary meaning without resort[ing] 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, 846 (1992) (internal citations omitted). Accordingly, because the language of the statutes at issue is plain and unambiguous, no need for employing the rules of statutory interpretation exists.

However, if the need for statutory construction arises, "'the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.'" CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2009)). "We therefore should not concentrate on isolated phrases within the statute." Id. "Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose." CFRE at 74, 716 S.E.2d at 881 (citing State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), aff'd, 386 S.C. 339. 688 S.E. 2d 569 (2010)). "What a legislature says

in the text of a statute is considered the best evidence of the legislative intent or will." State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed.1992)). Furthermore, "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Brown v. S.C. Dep't of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (quoting Dunton v. S.C. Bd. of Examin'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)); see also Nucor Steel v. S.C. Pub. Serv. Comm'n, 310 S.C. 539, 543, 426 S.E.2d 319, 321 (1992) (recognizing that where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason).

In this case, the ALC properly construed and adhered to the plain language of the applicable sections of the RPA. The ALC correctly dismissed the contested case because the Appellant failed to exhaust her administrative remedies prior to filing her request for a contested case hearing. Therefore, this Court should affirm the ALC's decision.

STATEMENT OF FACTS

In 2017 and 2018, the Appellant sought a refund of taxes paid for the 2012 and 2013 tax years. (R. pp. 4, 23, 28-32, 35-39; Order p. 1; Mot. to Dismiss p. 2, Exhibits A and C). While the Appellant and her husband (prior to his death in July of 2018) made periodic payments toward their 2012 and 2013 income tax liabilities, they never filed tax returns with the Department for either 2012 or 2013 by April 15 of the following years.

It was not until August 11, 2017, that the Department received Appellant's 2012 South Carolina individual income return claiming a refund of $114,644.00 for income taxes paid toward

the 2012 tax year liability.[1] (R. pp. 4, 23, 35-39; Order p. 1; Mot. to Dismiss p. 2, Exhibit A). On February 14, 2018, the Department issued a denial letter to the Appellant, denying her claim for refund as untimely under S.C. Code Ann. § 12-54-85 (2014), S.C. Code Ann. §§ 12-54-85(D)(2) and (3) (2014),[2] and S.C. Code Ann. § 12-60-470 (2014). (R. pp. 4, 23, 33-34; Order p. 1; Mot. to Dismiss p. 2, Exhibit B). The Department's denial letter advised the Appellant that she had ninety days from the date of the letter within which to submit a written protest to the Department. (R. pp. 4, 23, 33-34; Order p. 1; Mot. to Dismiss p. 2, Exhibit B). The denial letter was never returned to the Department as "undeliverable" or as "return to sender." (R. p. 23; Mtn. to Dismiss p. 2).

One year later, on August 13, 2018, the Department received the Appellant's 2013 South Carolina individual income tax return claiming a refund of $53,796.00 for income taxes paid

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[1]Appellant's tax returns show that for both 2012 and 2013, the overpayments were not the amounts the Appellant claims were sought as refunds in her Initial Brief and in the Request for Contested Case Hearing. (R. p. 14; Request for Contested Case Hr'g, ¶ 7). See also Appellant's Initial Brief p. 1. In fact, the Appellant did not claim *any* refund for either 2012 or 2013, but elected to carry the overpayment forward to be applied to the next tax year. (R. pp. 31, 38; Mtn. to Dismiss, Exhibit A, p. 3, lines 27 and 30, Exhibit C, p. 3, lines 27 and 30).

In any event, because the ALC decided this on a procedural motion, the facts of the alleged claims for refund were not developed or put into the record. While the Department does not concede that the Appellant claimed or was entitled to any refund, because the Department sent denial letters in response to the Appellant's late filed tax returns, the Appellant's protest of the denials had to meet the procedural requirements and deadlines imposed according to the RPA. Further, while the Department does not concede that the Appellant filed any claim for refund for 2012 and 2013, for the Court's ease of reference, the Department will use the term "claim for refund" throughout this brief as it relates to the event that caused this dispute.

[2]As the Department receives many claims for refunds and, in turn, issues many denial letters on the same basis as the Department's denials in this case, the Department's denial letters for refund claims are standard forms and include the same language in all cases. That being said, §§ 12-54-85(D)(2) and (3), while they may apply in the denial of other refund claims, do not directly apply to the Appellant's case, whereas § 12-54-85(F)(1) and § 12-60-470 do apply.

toward the 2013 tax year liability.[3] (R. pp. 4, 23, 35-39; Order p. 1; Mtn. to Dismiss p. 2, Exhibit C). The Department issued a second denial letter on August 16, 2018, denying the Appellant's 2013 claim for refund for the same reasons set forth in the Department's previous denial. (R. pp. 4, 23-24, 40-41; Order p. 1; Mtn. to Dismiss p. 2-3, Exhibit D). The Department's second denial letter also advised the Appellant that she had ninety days to submit a written protest to the Department. (R. pp. 4-5, 24, 40-41; Order p. 1-2; Mtn. to Dismiss p. 3, Exhibit D). The denial letter was never returned to the Department as "undeliverable" or as "return to sender." (R. p. 24; Mtn. to Dismiss p. 3).[4]

On February 27, 2019, the Department received a protest from the Appellant's representative regarding the Department's denial letters. (R. pp. 5, 24; Order p. 2; Mtn. to Dismiss p. 3). In response to the Appellant's protest, the Department issued two letters (one for each claim for refund) on March 27, 2019, explaining that the Appellant did not timely file her protest of the Department's denials. (R. pp. 5, 24, 12-18; Order p. 2; Mtn. to Dismiss p. 3; Req. for Contested Case Hr'g, Exhibits). Thereafter, on April 25, 2019, the Appellant filed a request for a contested case hearing with the ALC. (R. pp. 12-18; Req. for Contested Case Hr'g).

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[3]In her brief, the Appellant states that she filed her 2013 South Carolina tax return on or around June 18, 2018. See Appellant Initial Brief p. 1. However, the ALC found, and the evidence shows, that the Appellant did not file her 2013 South Carolina tax return until August 13, 2018. (R. pp. 4, 35-39; Order p. 1; Mtn. to Dismiss, Exhibit C). However, for purposes of determining the timeliness of the Appellant's protest, this difference is immaterial. Furthermore, see footnote 1, page 5.

[4]The Appellant references the filing of her 2014 South Carolina tax return and refund claim. See Appellant Initial Brief pp. 1-2. However, the issues on appeal relate only to whether the Appellant failed to exhaust her administrative remedies when she failed to file a written protest within ninety days of the Department's denials for tax years 2012 and 2013. Accordingly, tax year 2014 and any claim for refund the Appellant may or may not have filed with the Department regarding tax year 2014 is not before this Court.

On June 7, 2019, the Department filed a Motion to Dismiss the Appellant's action on the basis that the Appellant failed to exhaust her administrative remedies prior to requesting a contested case hearing with the ALC. (R. pp. 5, 22-41; Order p. 2; Mtn. to Dismiss pp. 1-6, with exhibits). On June 17, 2019, the Appellant filed her Memorandum in Opposition to Respondent's Motion to Dismiss. (R. pp. 42-48; Memo. in Opposition pp. 1-7). On June 24, 2019, the Department filed its Reply. (R. pp. 49-58; Reply pp. 1-10). After considering the arguments raised in the parties' filings and after reviewing the record, the ALC granted the Department's Motion to Dismiss in its Order dated September 18, 2019. (R. pp. 4-11; Order pp. 1-8). The Appellant filed her Notice of Appeal on October 17, 2019.

ARGUMENT

I. THE REVENUE PROCEDURES ACT PROVIDES A CLEAR, STRAIGHTFORWARD APPEALS PROCEDURE TO DETERMINE A DISPUTE WITH THE DEPARTMENT OF REVENUE.

When read in full and in the correct context, the administrative process—including its time limits and deadlines—is simple and straightforward. However, the Appellant has cherry-picked statutes and sections of statutes, creating unnecessary confusion about process deadlines established in the Revenue Procedures Act ("RPA"). In short, the Appellant has mistakenly mixed the appeals process for two different types of refund claims: (1) a refund claim made as a result of the overpayment of taxes; and (2) a refund claim made after a taxpayer is assessed by the Department for the underpayment of taxes. Thus, the confusion that the Appellant describes regarding the RPA is the result of her failure to read the RPA as a whole and, instead, reading certain statutes in isolation and out of context.

The General Assembly expressed the intent behind the RPA in the text of the legislation.

> It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine a dispute with

> the Department of Revenue and a dispute concerning property taxes. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.

S.C. Code Ann. § 12-60-20 (2014). The process afforded to the Appellant is straightforward; it is only complicated by confusing the processes allowed for different types of refund claims. The South Carolina Supreme Court stated that "'[t]he various provisions of an act should be read so that all may, if possible, have their due and conjoint effect without repugnancy or inconsistency.'" Buchanan v. S.C. Prop. and Cas. Ins. Guar. Ass'n, 424 S.C. 542, 549, 819 S.E.2d 124, 128 (2018) (citing Crescent Mfg. Co. v. Tax Comm'n, 129 S.C. 480, 492, 124 S.E. 761, 765 (1924)). Bearing in mind the legislative intent of the RPA and reading the appeal procedures within the RPA as a whole rather than in isolation and out of context, it is clear that the legislative intent has been met and the RPA provides a clear, straightforward procedure for determining such disputes.

A. Requesting a Refund and Protesting the Denial of a Refund Claim for Taxes Paid Voluntarily.

Taxpayers should file a tax return in the year following the payment of the taxes (See S.C. Code Ann. § 12-6-4970(A) (2014)), and, if the taxpayer overpaid, she is entitled to a refund. A taxpayer may also make a claim for refund outside of the specific context of a tax return. Once a taxpayer files a valid claim for refund, the "appropriate division of the department shall decide what refund is due, if any, and give the taxpayer written notice of its decision as soon as practicable after a claim has been filed." S.C. Code Ann. § 12-60-450(D). If the Department denies the

refund claim, "[a] taxpayer may[5] appeal the [denial] by filing a written protest[6] with the department following the procedures provided in Section 12-60-450." S.C. Code Ann. § 12-60-470(E). Section 12-60-470(E) further states that, "[f]or purposes of complying with the provisions of Section 12-60-450, the written denial of any part of a claim for refund is the equivalent of a proposed assessment." Id. Accordingly, if a taxpayer wishes to appeal the Department's denial of a refund claim, he or she must follow the appeal procedures set forth in § 12-60-450, which includes the filing of a written protest within ninety days of the proposed assessment, or in the case of a refund claim, within ninety days of the Department's denial of the refund claim. Importantly, the appeals process for protesting a proposed assessment and the Department's denial of a refund claim are the same.

If the taxpayer files a protest of the refund denial within those ninety days, she is entitled to move forward in the appeals process in the same manner for protests of proposed assessments (described more fully below). This process may go all the way to the ALC. If, however, the taxpayer fails to file a written protest of the refund denial within those ninety days, the Department's denial becomes final and, just as in the appeals process for proposed assessments, the taxpayer is denied the ability to move forward in the appeals process.

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[5]The Appellant argues that the use of the word "may" "indicates that the written protest procedure delineated in [] § 12-60-450 is elective, not mandatory," and as such, argues that participating in the ninety day protest process is elective, allowing a taxpayer to proceed to file a contested case hearing with the ALC without participating in the appeals process. See Appellant Initial Brief pp. 7-8. This is incorrect. The use of the term "may" indicates that a taxpayer does not have to appeal a Department's denial of a refund claim and the taxpayer can choose to accept the denial.

[6]"Protest" means "a written appeal of a proposed assessment or a division decision made in accordance with this chapter." § 12-60-30(24).

B. Requesting a Refund and Protesting the Denial of a Refund After Paying an Unprotested Proposed Assessment.

While the Appellant's case does not involve a proposed assessment, it is important to understand the slight differences in the process when requesting a refund after paying a proposed assessment. Understanding the different deadlines makes it clear that the ALC correctly ruled that the Appellant failed to exhaust all of her administrative remedies when she missed the ninety-day protest deadline.

A proposed assessment is "the first written notice sent or given to the taxpayer stating that a division within the department has concluded that a tax is due." S.C. Code Ann. § 12-60-30(23) (2014). A taxpayer may protest a proposed assessment "by filing a written protest with the department within ninety days of the date of the division decision or the proposed assessment." § 12-60-450.

If the taxpayer files a written protest within ninety days, the "taxpayer and the department shall stipulate the facts and issues upon which they can agree and may attempt to settle the case." § 12-60-450(D)(1). But this only occurs if a taxpayer files a protest within ninety days of a division decision or a proposed assessment. On the other hand, "[i]f the taxpayer fails to file a protest with the department within ninety days of the date of the proposed assessment, the taxpayer is in default, and the department must issue an assessment for the taxes." S.C. Code Ann. § 12-60-510(A)(2) (2014). In other words, if a taxpayer does not protest a proposed assessment, the Department will make a final assessment and, if necessary, begin collection activities. See S.C. Rev. Proc. #06-2, p. 5.[7] Accordingly, a taxpayer only moves forward with the appeals process, which ultimately

[7]S.C. Revenue Procedure #06-2 is a revenue procedure issued by the Department "contain[ing] the [] Department['s] internal procedures for handling disputed matters within the jurisdiction of the Department," including refund denials. S.C. Rev. Proc. #06-2, p. 1. As demonstrated throughout the revenue procedure, the Department's internal procedures for

may end at the ALC, if she files a written protest within ninety days from said decision or proposed assessment. If the taxpayer fails to do so, she forfeits her opportunity to seek review *of the proposed assessment* at the ALC.

However, failure to protest the proposed assessment does not mean the taxpayer's payment of the tax is final. The taxpayer may seek a refund after paying the proposed assessment and, if the Department denies the refund, assuming she is timely, protest the Department's denial of the refund. [8]

II. THE ADMINISTRATIVE LAW COURT CORRECTLY RULED THAT APPELLANT FAILED TO EXHAUST HER ADMINISTRATIVE REMEDIES BECAUSE SHE DID NOT TIMELY PROTEST THE DEPARTMENT'S DENIAL.

For various reasons, the Appellant argues that the ALC erred in determining that she failed to exhaust her administrative remedies by not protesting the Department's denials within ninety

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handling disputed matters follows the appeals process set forth in the RPA. The Department currently has a draft revenue procedure, S.C. Revenue Procedure #19-x [DRAFT –11/07/2019], posted on the Department's website, which updates the Department's internal procedures set forth in #06-2 to include the Department's addition of an Appeals Section. However, none of the updates affect the timing issued before the Court in this case.

[8]Notably, if a taxpayer elects to file a request for a contested case hearing under § 12-60-460, "[the taxpayer] is considered to have elected his remedy and is denied the benefits of [S.C. Code Ann. § 12-60-470 (2014)]." S.C. Code Ann. § 12-60-470(I) (2014). As discussed in more detail herein, § 12-60-470 sets forth the process by which a taxpayer may request a refund of state taxes and, further, sets forth the process by which a taxpayer may protest the Department's denial of a request for refund. Essentially, § 12-60-470(I) provides that a taxpayer cannot get two bites at the apple—the taxpayer cannot request a contested case hearing with the ALC to protest a proposed assessment, then, after potentially losing said contested case hearing, seek a refund of taxes paid as a result of the corresponding assessment under § 12-60-470.

The Appellant criticizes § 12-60-470(I) and other related statutes, as examples of "multiple, poorly defined remedies given to a taxpayer seeking to dispute a tax refund held by the Department, none of which are made clear." See Appellant Initial Brief p. 8. However, as fully discussed herein, when read in context, these statutes clearly establish the sole step-by-step process by which a taxpayer may appeal a Department proposed assessment or refund denial.

days. See Appellant Initial Brief pp. 4-11. However, applying the undisputed facts to the plain and unambiguous process established by the RPA demonstrates that the ALC properly determined that the Appellant failed to exhaust her administrative remedies in this case.

Under the RPA, a taxpayer may seek a contested case hearing before the ALC only after she has exhausted her administrative remedies. §§ 12-60-460, -470(F), -510. (See R. Jefferson Davis, Jr. v. S.C. Dep't of Revenue, 2015 WL 6777020 at *2 (S.C. Admin. Law. Judge. Div. October 27, 2015)). "Exhaustion [of administrative remedies] is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." Video Games Consultants, Inc. v. S.C. Dep't of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000). As stated by the ALC, "[t]he doctrine of exhaustion of administrative remedies generally requires a person seeking relief from the action of an administrative agency to pursue all available administrative remedies before seeking relief from the courts." (R. p. 005; Order p. 2) (referencing Pullman Co. v. Pub. Serv. Comm'n, 234 S.C. 365, 108 S.E.2d 571 (1959)). With regard to tax disputes with the Department, in order to exhaust her administrative remedies, a taxpayer must first file a written protest with the Department. See § 12-60-450(A)-(B), -470(E), -510.

The Appellant has never disputed the material facts in this case. On August 11, 2017, the Department received the Appellant's claim for refund of 2012 income taxes. (R. pp. 4, 23, 28-32; Order p. 1; Mot. to Dismiss p. 2, Exhibit A). The Department issued a denial letter, on the basis that her refund claim was untimely. (R. pp. 4, 23, 33-34; Order p. 1; Mot. to Dismiss p. 2, Exhibit B). Similarly, the Department received the Appellant's claim for refund of 2013 income taxes on

August 13, 2018. (R. pp. 4, 23, 35-39; Order p. 1; Mot. to Dismiss p. 2, Exhibit C). The Department issued a second denial letter for the same reasons as its previous denial. (R. pp. 4, 23-24, 40-41; Order p. 1; Mot. to Dismiss p. 2-3, Exhibit D). Both of the Department's denial letters informed the Appellant that she had ninety days from the date of each letter to submit a written protest to the Department. (R. pp. 4-5, 23-24; Order p. 1-2; Mot. to Dismiss p. 2-3). However, it was not until February 27, 2019 that Appellant protested the Department's denials. (R. pp. 5, 24; Order p. 2; Mot. to Dismiss p. 3).

The RPA required the Appellant to file her protest of the Department's first denial letter no later than May 28, 2018, ninety days after the Department's denial letter dated February 14, 2018. Likewise, the RPA required the Appellant to file a protest of the Department's second denial letter no later than November 14, 2018, ninety days after the Department's denial letter dated August 16, 2018.

The RPA clearly sets forth a taxpayer's obligations for participation in the appeals process. The process must start with the filing of a written protest within ninety days of the Department's denial. Because the Appellant did not follow this first crucial step, the Appellant missed her opportunity to participate in the Department's appeals process and, ultimately, to seek judicial review of the Department's denials of her refund claims. Thus, the ALC was proper in dismissing the Appellant's case for failure to exhaust her administrative remedies.

A. <u>The Appellant's Interpretation of § 12-60-470(A) is Incorrect.</u>

As noted above, if a taxpayer pays a tax required by a proposed assessment, § 12-60-470(A) allows that taxpayer to protest the denial of a claim for refund for taxes paid pursuant to the proposed assessment, even if she did not protest the assessment. The Appellant asserts, however, that § 12-60-470(A) creates an exception to the requirement that a taxpayer file a protest within

ninety days of a Department denial of a refund claim. See Appellant Initial Brief pp. 9-11. But, as the ALC correctly noted, to accept the Appellant's interpretation of § 12-60-470(A) would go against the legislative intent and render the protest procedure within the RPA meaningless because a taxpayer would never have to make her protest within ninety days. (R. pp. 9-10; Order pp. 6-7).

The Appellant relies principally on the second sentence of § 12-60-470(A), which states, "[a] claim for refund is timely filed if filed within the period specified in Section 12-54-85 even though the time for filing a protest under Section 12-60-450 has expired and no protest was filed." The Appellant incorrectly interprets this sentence to mean that, even though she did not protest the Department's denials within ninety days, her protest is still "timely" because her 2012 and 2013 refund claims were "timely" under § 12-54-85. Section 12-60-450 simply has no application to Appellant's case because the Department never issued a proposed assessment in this matter. This aside, Appellant argues that she can bypass the statutorily mandated protest and move straight to the appeals process and, subsequently, to the ALC.

This interpretation goes against the plain reading of the RPA. The "protest" language of § 12-60-470(A) *only applies when a taxpayer is seeking a refund of taxes paid as a result of a proposed assessment issued by the Department.* (R. p. 9; Order p. 6). If the Department issues a proposed assessment to a taxpayer, the taxpayer has ninety days to file a written protest with the Department. See § 12-60-450(A). If the taxpayer does not protest the proposed assessment within the time required under § 12-60-450(A), the proposed assessment becomes final and the taxpayer must pay the taxes as assessed. See § 12-60-510(2). Nevertheless, §12-60-470 allows a taxpayer to claim a refund of the taxes paid as a result of the proposed assessment *so long as the refund claim is filed within the period specified in § 12-54-85.* The "protest" language in § 12-60-470(A)

provides that if a refund claim is timely according to § 12-54-85, it is irrelevant that the taxpayer did not protest the proposed assessment.

That is not the situation in this case. In this case, the Department did not issue a proposed assessment to the Appellant and the Appellant is not seeking a refund of taxes paid as a result of a proposed assessment from which she failed to protest. Therefore, the "protest" language of § 12-60-470(A) does not apply to Appellant's situation. Any alternative interpretation allows taxpayers to seek relief from the ALC without any regard to the administrative process created by the General Assembly, rendering the entire protest and appeals procedures superfluous. See CFRE, LLC at 74, 716 S.E.2d at 881 (a statute must be read so that "'no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' . . . for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law'").[9]

B. The Appellant Did Not Protest the Department's "Final Decisions" Within Thirty Days, so the Case Was Not Entitled to Review by the ALC.

In her brief, the Appellant states: "As a result of the taxpayer's refusal to participate in the ninety (90) day protest process, the department shall issue its department decision pursuant to S.C. Code Ann. § 12-60-450(D)(1)-(E)(3) within one (1) year of the taxpayer's claim for a refund and must mail or deliver its department decision to the taxpayer, after which the taxpayer has thirty (30) days to request a contested case hearing with the ALC." See Appellant Initial Brief p. 15. The Appellant then argues that the Department's letters dated March 27, 2019 were "final decisions" by the Department and that she timely filed a requested for contested case hearing in

[9]Even though the Appellant's tax returns for 2012 and 2013 show no refund requests, if there is some interpretation of her returns that substantiates a refund request, the Department was proper in its denials. This is because the Appellant did not make any payments toward her 2012 or 2013 tax liabilities within the three years immediately preceding her refund claims. See § 12-54-85(F)(2).

response to said letters pursuant to § 12-60-470(F), thus allowing the ALC to hear the merits of her case even though she did not file a written protest within the statutorily mandated ninety days. See Appellant Initial Brief p. 15. The Appellant is simply incorrect.

First, the Appellant misconstrues § 12-60-450(D)(2). A taxpayer's failure to participate in "this process," as stated by § 12-60-450(D)(2), refers to the process immediately preceding this statement—the process of stipulating the facts and issues on which the taxpayer and the department can agree and attempting to settle the case. § 12-60-450(D)(1). Further, the "process" referenced in (D)(1) and (2) cannot be conducted until after the taxpayer files a written protest within ninety days after the issuance of a division decision or proposed assessment. §§ 12-60-450(A)-(D)(1). Contrary to the Appellant's statement, the "process" referenced in (D)(2) is not the taxpayer's obligation to file a protest with the Department within ninety days of the division decision or proposed assessment.

Second, the Appellant did not receive, nor was she entitled to receive, a department determination within one year of her protest letter because she did not timely protest the Department's denials. The Appellant argues that the March 27, 2019 letters the Department issued in response to her protest letter were "department determinations" and that she timely submitted a request for contested case hearing after the issuance of these "department determinations." See Appellant Initial Brief p. 15. But, the March 27, 2019 letters were not department determinations. A "department determination" is a "final determination within the department from which a person may request a contested case hearing before the [ALC]." § 12-60-30(10). Further, the Department is required to include the information described in § 12-60-450(E)(2)(a)-(d) in a department determination. The Department's March 27, 2019 letters were not final determinations regarding the Appellant's claims for refunds for 2012 and 2013, which is evident by the fact that these letters

do not contain any argument or basis for the Department's denial of those refund claims. (R. pp. 5, 24, 12-18; Order p. 2; Mot. to Dismiss p. 3; Req. for Contested Case H'ring, Exhibits). Instead, these letters were simply a response to the Appellant's untimely protest letter, informing the Appellant that because the protest letter was not submitted within ninety days, the Department's denials were not subject to review. (R. pp. 5, 24, 12-18; Order p. 2; Mot. to Dismiss p. 3; Req. for Contested Case H'ring, Exhibits). Had the Appellant not submitted a protest letter, the Department would have never sent her the March 27, 2019 letters or issued any other type of correspondence to the Appellant regarding her 2012 and 2013 tax returns because she had not protested the Department's denials.

Not only did the Appellant not receive a "department determination," she was not entitled to receive a "department determination." As previously addressed, the "process" referenced § 12-60-470(D)(2) is the process established in subsection (D)(1)—not the taxpayer's obligation to file a protest within the time set forth in subsection (A). If a taxpayer files a protest within the time set forth in subsection (A), then a taxpayer has the opportunity to move forward to the next step in the appeals process, which is set forth in (D)(1).

Because the Appellant did not timely protest the Department's denials, her refund claims never reached the point in the appeals process described in (D)(1) and (D)(2). Because she did not file her protest within ninety days of the Department's denials, the Appellant had no ability to move forward with the appeals process, and therefore was not entitled to a department determination.

III. THE ADMINISTRATIVE LAW COURT CORRECTLY CONCLUDED THAT IT LACKED JURISDICTION TO CONSIDER THE APPELLANT'S MATTER ON THE MERITS DUE TO APPELLANT'S FAILURE TO EXHAUST HER ADMINISTRATIVE REMEDIES.

The Appellant argues that the ALC committed an error of law by dismissing the Appellant's case for "lack of jurisdiction" because "the exhaustion of remedies is not a matter of subject matter jurisdiction." See Appellant Initial Brief p. 12. The ALC did not say that it did not have subject matter jurisdiction over the Appellant's case. Rather, the ALC simply stated that, "[b]ecause [Appellant] did not protest the Department's denials of her refunds within ninety (90) days of the Department's decision letters, this Court is without jurisdiction to determine the underlying merits of the action . . . ." (R. p. 8; Order p. 5).[10] While there is no dispute that the ALC has the statutory power to adjudicate contested cases relating to cases of this nature, i.e., disputes with the Department relating to tax matters, the Appellant's matter was not properly before the ALC because of the Appellant's failure to exhaust her prehearing remedies.

In the case cited by the Respondent, Ward v. State, the South Carolina Supreme Court noted two different types of exhaustion remedies: judicially imposed and statutorily mandated. Ward v. State, 343 S.C. 14, 18, 538 S.E.2d 245, 247 (2000). "The general rule is that while there are several exceptions that may be applied to the judicially-imposed exhaustion requirement, those that apply to a statutory requirement are few." Id. "When the exhaustion of remedies is statutorily mandated . . . , legislative intent prevails." Ward at 18-19, 538 S.E.2d at 247.

The prehearing remedies the Appellant needed to exhaust, including the filing of a written protest within ninety-days from the date of the Department's denials, are statutorily mandated.

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[10]The ALC made essentially the same statement using different terminology: "Because [Appellant] failed to exhaust her prehearing remedy, the matter is not properly before this Court on the merits of the case . . . ." (R. p. 9; Order p. 6).

Thus, legislative intent prevails. As stated above, the General Assembly's intent in enacting the RPA was to "provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue . . . ." § 12-60-20. In furtherance of that intent, the General Assembly included S.C. Code Ann. § 12-60-80 (2014), which expressly states that, "[e]xcept as provided in subsection (B), *there is no remedy other than those provided in [the RPA] in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes*." § 12-60-80(A) (emphasis added).

The plain reading of the RPA demonstrates that the legislative intent behind the RPA was for taxpayers to have a clearly defined method for seeking relief from tax disputes with the Department. Had the General Assembly intended for taxpayers to seek relief directly from the ALC before exhausting any prehearing remedies with the Department, it would have expressly stated such. Instead, the General Assembly explained in §§ 12-60-460 and -470(F) that taxpayers may seek relief from the Department's determination only upon exhaustion of his or her prehearing remedies. Thus, a tax dispute between a taxpayer and the Department cannot be heard by the ALC unless and until the taxpayer exhausts his or her prehearing remedies.

In this case, the Appellant failed to exhaust her statutorily mandated prehearing remedies when she failed to protest the Department's denials of her 2012 and 2013 claim for refunds within ninety days of said denials. So, while the ALC unquestionably has subject matter jurisdiction to hear tax disputes such as Appellant's, it lacks the jurisdiction to review Appellant's matter because the Court does not acquire jurisdiction unless a taxpayer first exhausted her prehearing remedies. C.f. Great Games, Inc. v. S.C. Dep't of Revenue, 339 S.C. 79, 82 n. 5, 529 S.E.2d 6, 7 n. 5 (2000) ("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 [while not affecting] the court's subject

matter jurisdiction"); Mears v. Mears, 287 S.C. 168, 169, 337, S.E.2d 206, 207 (1985) (dismissing an appellant's appeal when the appellant failed to invoke the appellate court's jurisdiction by serving its Notice of Appeal after the statutorily mandated time to file); Burnett v. S.C. State Highway Dep't, 252 S.C. 568, 167 S.E. 2d 571 (1969) (holding that the lower court exceeded its authority in extending the time to accept an appeal when the time to file was statutorily mandated and that the timely filing of the notice of appeal is what granted the lower court jurisdiction); S.C. Dep't of Revenue v. Saint Rafka Maronite Mission, d/b/a August Road Bingo and Pop's Charity Bingo—Greenville, Inc., Promtoer, 2019 WL 2576502, at *1 (S.C. Admin. Law. Judge. Div., March 25, 2019) (finding that S.C. Code Ann. § 1-23-600 (Supp. 2017) grants jurisdiction to the ALC to hear contested case hearings of that nature, while also noting that "jurisdiction of [the ALC] must be properly invoked by way of a timely request"); Stop 'N' Save, Inc., d/b/a Cheapway 16 v. S.C. Dep't of Revenue, 2018 WL 379063 (S.C. Admin. Law Judge Div. January 26, 2018) (finding that the ALC had jurisdiction of contested cases of this general nature, i.e. alcohol beverage licensing matters, while also ruling that the "[p]etitioner failed to invoke the jurisdiction of [the ALC] when it failed to request a contested case hearing within the thirty-day time period provided for in [S.C. Code Ann.] § 12-60-1320 [(2014)]"); 3 Steps Learning Center v. South Carolina Dep't Labor, Licensing, and Regulation, Office of the State Fire Marshall, 2002 WL 1979090 (S.C. Admin. Law. Judge. Div., August 9, 2002) ("To invoke the jurisdiction of the [ALC] over a contested case, the petitioning party [sic] to file its request for a contested case hearing within 30 days after receipt of the agency decision" and failure to do so "is fatal since a failure to file on time denies jurisdiction to the hearing body").[11]

[11]The Appellant relies on Andrews Bearing Corporation v. Brady, where the Supreme Court noted that a failure to exhaust administrative remedies may be excused in situations where facts are undisputed and the issue involved is solely one of law. Andrews Bearing Corp. v. Brady,

A. The Appellant is Not Entitled to Demonstrate "Good Cause" for Failure to Protest the Department's Denials Within Ninety Days Because the Department Did Not Issue a Proposed Assessment.

The Appellant argues that, because § 12-60-470(E) "makes the denial of a tax refund . . . the functional equivalent of a 'proposed assessment,'" the ALC has the ability to remove an assessment on "good cause shown," even if a taxpayer's protest is untimely, under § 12-60-510(A)(2). See Appellant Initial Brief, p. 16. However, the Appellant is again misinterpreting the statute, and the ALC correctly determined that the "good cause" provision of § 12-60-510(A)(2) does not apply to the Appellant's case.

First, the Appellant is stretching the applicability of § 12-60-470(E)'s reference to a "proposed assessment." Section 12-60-470(E) provides:

> A taxpayer may appeal the division's decision by filing a written protest with the department following the procedures provided in Section 12-60-450. *For purposes of complying with the provisions of Section 12-60-450*, the written denial of any part of a claim for refund is the equivalent of a proposed assessment.

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261 S.C. 533, 536, 201 S.E.2d 241, 243 (1973). However, the Andrews case, as well as other cases the Appellant relies on, Vaught v. Waites, 300 S.C. 201, 205, 387 S.E.2d 91, 93 (Ct. App. 1989), and Ex parte Allstate Ins. Co., 248 S.C. 550, 567, 151 S.E.2d 849, 855 (1966), were all prior to the enactment of the RPA in 1995. Because the statutorily mandated appeals procedure set forth in the RPA trumps these case rulings on which the Appellant relies, such reliance is misplaced.

Furthermore, these cases were decided prior to the General Assembly's addition of the exception expressed in § 12-60-80(B) in 2003. Section 12-60-80(B) provides that a taxpayer may bring "an action [in circuit court] for a declaratory judgment where the sole issue is whether a statute is constitutional." It is worth noting that this exception for issues regarding the constitutionality of statutes codified in § 12-60-80(B) in 2003 was addressed by the Supreme Court in Ward, also relied on by the Appellant. As the legislature is presumed to have knowledge of all previous court cases and laws, had the General Assembly wished to codify an exception that excuses taxpayers from seeking relief through the RPA when the sole issue is one of law, the General Assembly would have expressly codified such an exception. Instead the General Assembly specifically limited a taxpayer's remedies to the RPA, except for cases squarely fitting within the exception in § 12-60-80(B).

(Emphasis added). This provision does not make a written denial for a claim for refund the equivalent of a proposed assessment for all statutes under the RPA relating to proposed assessments. Rather, the plain language of § 12-60-470(E) is narrowly tailored to say that the written denial for a claim for refund is the equivalent to a proposed assessment only for purposes of complying with the provisions of § 12-60-450. As fully discussed above, the provisions of § 12-60-450 set forth the prehearing remedies a taxpayer must exhaust before seeking relief from the ALC. Accordingly, § 12-60-470(E) means, and the ALC found, that a taxpayer may appeal the Department's decision to deny a claim for refund in the same manner taxpayers can appeal a proposed assessment, set forth in § 12-60-450. (R. p. 10; Order p. 7). Thus, § 12-60-470(E) does not equate a written denial for a claim for refund to a proposed assessment for all aspects of the RPA.

Second, because § 12-60-470(E) does not make a denial of a claim for refund the equivalent of a proposed assessment for all aspects of the RPA, the Appellant is not entitled to demonstrate "good cause" for failure to protest the Department's denials within ninety days. Specifically, § 12-60-510(A)(2) provides:

> If a taxpayer fails to file a protest with the department within ninety days of the date of the proposed assessment, the taxpayer is in default, and the department must issue an assessment for the taxes. The assessment may be removed by the Administrative Law Court for good cause shown, and the matter may be remanded to the department.

As the ALC correctly noted, § 12-60-510(A)(2) requires the issuance of an assessment by the Department. (R. p. 11; Order p. 8). An "assessment" is defined as "the department's recording the liability of the taxpayer in the office of the department . . . ." § 12-60-30(2). Here, the Department never issued a proposed assessment. Rather, this case involves the Appellant's refund claims for years 2012 and 2013. Accordingly, because the Department never issued a proposed

assessment in the Appellant's matter and because § 12-60-470(E) does not make a written denial for a claim for refund the same as a proposed assessment for all aspects of the RPA, the Appellant is not entitled to demonstrate "good cause" as to why she failed to protest the Department's denials within ninety days.

Lastly, even if the Court determined that the "good cause" provision applied to the Appellant's case, she failed to demonstrate any good cause for not protesting the Department's denials within ninety days. "Although 'good cause' is not defined in [the RPA] and there is extremely limited case law defining it within the context of § 12-60-510(A)(2), Black's Law Dictionary has defined it in part as '[a] legally sufficient reason.'" Dollar Tree Stores, Inc. v. S.C. Dep't of Revenue, 2018 WL 1044638, at *3 (S.C. Admin. Law Judge Div., February 16, 2018). "By way of analogy, good cause has been addressed by the courts within the context of lifting or setting aside an entry of default pursuant to Rules 55(c) and 60(b), SCRCP." Id. "That standard requires that the party seeking relief provide a satisfactory explanation for the default, and provide reasons why the vacation of default would serve the interests of justice." Id. (citing Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009)).

Here, the Appellant never demonstrated good cause to the ALC for its failure to timely protest the Department's denials of her claims for refund. The Appellant never demonstrated any facts which provide a satisfactory explanation or a legally sufficient reason for why she did not file a written protest with the Department until a year after the Department's first denial and six months after the Department's second denial. The Appellant simply made the conclusory statement that "[the ALC] clearly has the power and the jurisdiction to review the merits of [the Appellant's] claims for 'good cause shown . . . ,'" without actually demonstrating any good cause. (R. p. 47; Memo. in Opposition, p. 6). Therefore, even if the "good cause" provision applied to

Appellant's case, she never demonstrated any "good cause" to the ALC warranting anything aside from a dismissal of this case.

The Appellant claims that the ALC "improperly placed the burden on [the Appellant] to fully demonstrate good cause . . ." and that "the ALC never offered [the Appellant] the opportunity to present any evidence . . ." in an attempt to demonstrate good cause. See Appellant Initial Brief p. 17. Section 12-60-510(A)(2) provides that the ALC may remove an assessment "for good cause *shown* . . . ." (Emphasis added). No one else would bear the burden of showing good cause but the party seeking to demonstrate "good cause." As such, the ALC did not improperly place this burden on the Appellant. Furthermore, the Appellant's argument that "the ALC never offered [the Appellant] the opportunity to present any evidence . . ." is unpersuasive, as the Appellant failed to pursue all means by which she could have produced any such evidence to the ALC, for example, filing an affidavit with the ALC or filing a Motion with the ALC to demonstrate "good cause."[12]

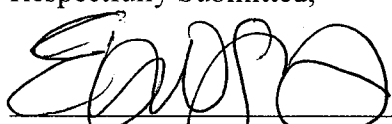
CONCLUSION

For the foregoing reasons, this Court should affirm the ALC's dismissal of the Appellant's request for a contested case hearing. To the extent that the Appellant made valid requests for refunds that the Department denied, she failed to protest the denials within the statutorily

[12]The Appellant claims that the Department failed to "follow its statutory mandate" set forth in § 12-60-420(a) "to the prejudice of [the Appellant's] substantial rights, and this failure further lends credence to [the Appellant's] good cause arguments that the ALC refused to hear." See Appellant Initial Brief, p. 14, footnote 6. She seemingly contends that the Department's denial letters must quote § 12-60-420(A) with regard to the protest timing. However, the Department's denial letters informed the Appellant, "[i]f you feel our determination is in error, you may appeal" and "[i]f you choose to appeal, you have 90 days from the date of this letter to submit a protest in writing." (R. pp. 33-34, 40-41; Mtn. to Dismiss, Exhibits B and D). Accordingly, while perhaps not using the exact language in § 12-60-420(A), the Appellant had more than enough reason to believe that the Department would take action regarding its denials if the Appellant did not protest within ninety days. Therefore, the argument that Appellant was unaware of the need to protest because the Department failed to quote § 12-60-420(A) is unpersuasive.

prescribed period of ninety days. Therefore, she did not exhaust her administrative remedies and the ALC was without jurisdiction to hear the matter.

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Administrative Law Judge

Case No. 19-ALJ-17-0121-AP
Appellate Case No. 2019-001748

Shirley Whitfield, Individually and as personal representative of the Estate of William Whitfield, ... Appellant,

v.

South Carolina Department of Revenue, ... Respondent.

CERTIFICATE OF COUNSEL

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

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