

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Administrative Law Judge

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

RECEIVED
FEB 19 2020
SC Court of Appeals

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

v.

South Carolina Department of Revenue.....Respondent.

RECORD ON APPEAL

Douglas M. Muller (S.C. Bar No. 10277)
Trudy Robertson (S.C. Bar No. 64856)
Paul Lynch (S.C. Bar No. 12833)
Moore & Van Allen PLLC
78 Wentworth Street (29401)
P.O. Box 22828
Charleston, SC 29413-2828
(843) 579-7000 - telephone
(843) 579-7099 – facsimile
dougsmuller@mvalaw.com
trudyrobertson@mvalaw.com
paullynch@mvalaw.com

*Attorneys for Appellant Shirley Whitfield,
Individually and as personal representative
of the Estate of William Whitfield*

Elisabeth W. Shields, Esquire
(SC Bar No. 100784).
Counsel for Litigation
Adam J. Neil, Esquire (SC Bar No. 69594)
Managing Counsel for Litigation
South Carolina Department of Revenue
300A Outlet Pointe Blvd. (29210)
P.O. Box 12265
Columbia, SC 29211-9979
(803) 898-5576 – telephone
(803) 896-0171 – facsimile
elisabeth.shields@dor.sc.gov
adam.neil@dor.sc.gov

*Attorneys for Respondent South Carolina
Department of Revenue*

INDEX

Record Page No.

Orders

Notice of Assignment (Contested Case) dated May 6, 2019.....001

Order for Prehearing Statements filed May 31, 2019.....002

Order Granting Respondent’s Motion to Dismiss filed September 18, 2019004

Pleadings

Request for Contested Case Hearing and Notice of Appearance filed April 25, 2019,
including Exhibit “A” attached thereto.....012

Agency information Sheet and Notice of Appearance, Contested Case,
dated May 28, 2019.....019

Respondent South Carolina Department of Revenue’s Notice of Motion and Motion to Dismiss
dated June 6, 2019, including Exhibits “A” through “D” attached thereto.....022

Petitioner Shirley Whitfield’s Memorandum in Opposition to Respondent’s
Motion to Dismiss filed June 18, 2019.....042

Respondent’s Reply to Petitioner’s Response to the Respondent’s Motion to Dismiss
dated June 24, 2019.....049

Other Materials or Documents

Email correspondence between Elisabeth Shields of the South Carolina Department of Revenue
and Tia Smith of the South Carolina Administrative Law Court dated June 7, 2019 to June 11,
2019 regarding Prehearing Statements deadline held in abeyance.....059

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shirley Whitfield, individually and as personal
representative of the Estate of William
Whitfield,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

NOTICE OF ASSIGNMENT
(Contested Case)

DOCKET NO. 19-ALJ-17-0121-CC

NOTICE IS GIVEN that a request for a contested case hearing was filed on April 25, 2019. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2018), the **Honorable Shirley C. Robinson**, Administrative Law Judge, has been assigned to preside in this matter. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings (except for the Agency Information Sheet) must be filed directly with the above assigned Judge and shall include the docket number.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

A copy of any document or any other item filed with the Court shall be sent to all other parties at the time of filing. If a mailing address changes, or if an address is incorrect, the Court must be notified immediately of the correct address.

This the sixth day of May 2019.

Ralph King Anderson, III
Chief Administrative Law Judge

By: _____

Jana E. Shealy
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

MAY 06 2019

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Shirley Whitfield, individually and as personal
representative of the Estate of William
Whitfield,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

Docket No. 19-ALJ-17-0121-CC

**ORDER FOR PREHEARING
STATEMENTS**

IT IS HEREBY ORDERED that each party who intends to appear at the hearing must file with the undersigned's office a Prehearing Statement stating to the best of the party's ability, the following:

1. The nature of this proceeding;
2. The statutory provision(s) conferring subject matter jurisdiction to the Court and other applicable statutes and regulations;
3. The issues to be presented for determination, including any claims or defenses expected to be raised;
4. The action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations;
5. A brief summary of the facts to be presented at the hearing;
6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion;
7. A list of proposed witnesses and exhibits;
8. A statement regarding the necessity of discovery, if any;
9. The estimated time required for the hearing;

Page 1 of 2

FILED

MAY 31 2019

SC ADMIN. LAW COURT

RECORD 000002

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

Docket No. 19-ALJ-17-0121-AP

ORDER

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to South Carolina Department of Revenue's (Department) Motion to Dismiss the contested case filed by Shirley Whitfield, Individually and as personal representative of the Estate of William Whitfield (Petitioner). Upon consideration of arguments raised in the parties' briefs, and a review of the record on appeal and the law, the Department's Motion to Dismiss is granted.

BACKGROUND

Petitioner is the widow and Personal Representative of William Whitfield, who died in July 2018. On or about August 11, 2017, the Department received Petitioner's 2012 South Carolina individual income tax return in which Petitioner claimed a refund of income taxes paid in 2012 (2012 return). After reviewing the 2012 return and the Department's records, the Department issued a letter on February 14, 2018 denying Petitioner's claim for a refund of 2012 income taxes as untimely under Sections 12-54-85(D)(2), (3) and (F)(1), and 12-60-470 of the South Carolina Code. S.C. Code Ann. §§ 12-54-85 and 12-60-470 (2014). The denial letter advised Petitioner that she had ninety (90) days from the date of the letter within which to submit a protest to the Department.

About one (1) year later, on August 13, 2018, the Department received Petitioner's 2013 South Carolina individual income tax return in which Petitioner claimed a refund of 2013 income taxes (2013 return). After reviewing the 2013 return and the Department's records, the Department issued a letter on August 16, 2018, denying Petitioner's claim for a refund of 2013 income taxes as untimely. Similarly, the denial letter advised Petitioner that she had ninety (90) days to submit

FILED

SEP 18 2019

a protest. There is nothing to suggest that Petitioner did not receive the denial letters and Petitioner does not deny receipt.

On February 27, 2019, the Department received a protest from Petitioner's representative protesting the Department's denials of her claims for refunds of 2012 and 2013 income taxes. On March 27, 2019, the Department issued two letters (one for each of the years for which Petitioner claimed a refund) explaining that Petitioner did not timely file protests of the Department's denials.¹ On April 25, 2019, Petitioner filed a Request for a Contested Case Hearing. On June 7, 2019, the Department filed a Motion to Dismiss on the basis that Petitioner failed to exhaust her administrative remedies prior to seeking this Court's review.

DISCUSSION

The Department argues that Petitioner did not file a timely written protest of the Department's decision within ninety (90) days of that decision as required by Sections 12-60-450(A) and 12-60-510(A) and as such, failed to exhaust her administrative remedies prior to seeking a contested case hearing as required by Section 12-6-510(A). Section 12-60-450(A) provides that a taxpayer can appeal a division decision or proposed assessment² by filing a written protest with the Department within ninety (90) days³ of the date of the division decision or the proposed assessment. S.C. Code Ann. § 12-60-450 (2014). Similarly, Section 12-60-510(A) states that "Before a taxpayer may seek a contested case hearing before the Administrative Law Court, he shall exhaust the prehearing remedy." S.C. Code Ann. § 12-60-510 (2014).

The 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. *Pullman Co. v. Pub. Serv. Comm'n*, 234 S.C. 365, 108 S.E.2d 571 (1959). A party seeking relief from the courts or another agency after entirely forgoing its remedies before the initiating agency may have its case dismissed by the reviewing court or agency for failure to exhaust administrative remedies. The failure to exhaust administrative

¹ Petitioner's Request for a Contested Case Hearing referenced that Petitioner also sought refund of 2014 individual income taxes however, Petitioner is only seeking this Court's review of the Department's denial for refunds of the 2012 and 2013 individual income tax returns.

² A "proposed assessment" is defined as "[T]he first written notice sent or given to the taxpayer stating that a division within the department has concluded that a tax is due. The term proposed assessment does not include the auditor's work papers, draft audit reports, or a document specifically stating that it is not a proposed assessment." S.C. Code Ann. § 12-60-30(23) (2014).

³ Section 12-60-450(A) provides that Department may extend the time for filing a protest at any time before the period has expired but Petitioner did not make such request.

remedies could also completely preclude review by the court or agency where the party's opportunity to cure its failure to exhaust its remedies before the initiating agency has expired. See, e.g., *Meredith v. Elliott*, 247 S.C. 335, 346-47, 147 S.E.2d 244, 249 (1966) ("Having failed to follow the administrative remedy created by the statute for the correction of errors in the valuation of their property, [taxpayers] are precluded from resorting to the courts for relief."); *Lominick v. City of Aiken*, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964) ("It was incumbent upon [the challenging party]... to appeal to the Zoning Board of Adjustment from the decision of the Building Inspector if [she]... considered his decision erroneous. Not having done so, she cannot now attack the validity of his decision.").

Petitioner asserts that the doctrine of exhaustion of administrative remedies is generally considered a rule of "policy, convenience and discretion, rather than one of law, and is not jurisdictional," and that situations can exist where failure to exhaust administrative remedies may be excused. *Vaughl v. Waites*, 300 S.C. 201, 205, 387 S.E.2d 91, 93 (Ct. App. 1989). In *Ward v. State*, the South Carolina Supreme Court noted that there are two different types of exhaustion of 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.* The Supreme Court continued by stating that "When the exhaustion of remedies is statutorily mandated ... legislative intent prevails." *Ward v. State*, 343 S.C. at 18-19, 538 S.E.2d at 245.

Both the Administrative⁴ and South Carolina Revenue Procedures Acts statutorily require a party to exhaust his or her administrative remedies prior to seeking this Court's review. The stated legislative intent of the General Assembly in enacting the Revenue Procedures Act, to "provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue," prevails in this case. S.C. Code Ann. § 12-60-20 (2014). See also S.C. Code Ann. § 12-60-80 (2014) ("Except as provided in subsection (B),⁵ there is no remedy other than provided in this chapter in any case involving the illegal or wrongful collection of taxes, or

⁴ See S.C. Code Ann. § 1-23-380 (Supp. 2018) ("A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review ...").

⁵ Subsection (B) of Section 12-60-80 is not applicable in this instance. Subsection (B) states, "Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons."

attempt to collect taxes.”). The application of this doctrine is also necessary to avoid interference with the orderly performance of administrative functions.

Here, Petitioner failed to file timely protests of the Department’s denials of Petitioner’s 2012 and 2013 claims. The Department denied Petitioner’s 2012 claim for a refund on February 14, 2018. A protest for the 2012 claim should have been filed within ninety (90) days or by May 15, 2018; instead, Petitioner waited until February 27, 2019. The Department denied Petitioner’s 2013 claim for a refund on August 16, 2018 resulting in Petitioner having until November 14, 2018 to submit a timely protest. Petitioner did not protest the denial of the 2013 claim until February 27, 2019.

Petitioner disagrees and avers that her requests were timely on the basis of Section 12-60-470(A) that states:

A taxpayer may seek a refund of a state tax by filing a written claim for refund with the department. A claim for refund is timely filed if filed within the period specified in Section 12-54-85 even if the time for filing a protest under Section 12-60-450 has expired and no protest was filed.

Relying on Section 12-54-85(F)(1) which provides that “[C]laims for credit or refund must be filed within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later,” Petitioner argues that her requests for refunds for tax years 2012 and 2013 were timely because the requests were made “within three years from the time the return was filed ...” In short, Petitioner maintains that her 2012 and 2013 refund claims were timely filed under Sections 12-60-470(A) and 12-54-85(F)(1) even if the Petitioner’s time for filing a protest was untimely under Section 12-60-450.

Petitioner’s reliance on Sections 12-60-470(A) and 12-54-85(F)(1) appears to be misplaced. The immediate issue before the Court is not the propriety of the Department’s decision letters of February 14, 2018 and August 16, 2018 denying Petitioner’s claims⁶ for refunds as being untimely, as this would be a decision on the merits. The issue is whether Petitioner timely protested those decision letters prior to requesting a contested case hearing. Rightly or wrongly, Petitioner’s requests for refunds were denied by the Department by letters on February 14, 2018 and August 16, 2018. The protests of the Department’s denial of refunds on the basis of timeliness should have been filed within ninety (90) days of the dates of those decision letters. It was not

⁶ The claims for refunds for 2012 and 2013 were made on August 11, 2017 and August 13, 2018, respectively.

until February 27, 2019 that the Department received the protests. Because Petitioner 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: whether the Department properly denied Petitioner's claims for refunds based on the timeliness of the protest letter dated February 27, 2019.

Contrary to Petitioner's argument, Section 12-60-470(A) does not exist for the purpose of allowing taxpayers to seek relief directly from the Administrative Law Court before exhausting prehearing remedies with the Department. If one were to look solely at only subsection (A) of Section 12-60-470, at first glance, it may appear that it is in conflict with Section 12-60-450. However, they are capable of reasonable reconciliation, and the Department offers a logical and reasonable manner in which this may be accomplished.⁷

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Statutes dealing with the same subject matter must be construed together and reconciled, if possible, so as to render both operative. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000); *Butler v. Unisun Ins.*, 323 S.C. 402, 475 S.E.2d 758 (1978). When reasonably possible, statutes in apparent conflict should be interpreted to allow both to stand. *Natl Adver. Co., Inc. v. Mount Pleasant Bd. of Adjustment*, 312 S.C. 397, 400, 440 S.E.2d 875, 877 (1994); *Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992); *Powell v. Red Carpet Lounge*, 280 S.C. 142, 145, 311 S.E.2d 719, 721 (1984); see also *Florence County v. Moore*, 344 S.C. 596, 545 S.E.2d 507 (2001) ("Our goal in construing statutes is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd."). Moreover, the various provisions of a single act should be so read that all may, if possible, have effect without repugnancy or inconsistency, so as to render the statute a consistent and harmonious whole. *Buchanan v. S.C. Prop. and Cas. Ins. Guar. Ass'n*, 424 S.C. 542, 550, 424 S.E.2d 124, 128 (2018) (citing *Crescent Mfg. Co. v. Tax Com'n*, 129 S.C. 480, 492, 124 S.E. 761, 765 (1924)). Here, the statutes Petitioner believes to be in conflict were all enacted in 1995 under Act No. 60.

⁷ While it does not serve as the exclusive basis for this Court's order, the Court notes that when required to apply the rules of construction, the construction of a statute by an agency charged with administering that statute is entitled to most respectful consideration. *Stephenson Finance Co. v. South Carolina Tax Comm'n*, 242 S.C. 98, 130 S.E.2d 72 (1963).

As noted by the Department, Section 12-60-450 captioned "Appeal of proposed assessment; contents of written protest,"⁸ is applicable to a situation in which the Department issues a proposed assessment to a taxpayer with which the taxpayer disagrees. Under this scenario, the taxpayer has ninety (90) days to file a protest with the Department to appeal the proposed assessment. If a taxpayer does not protest the proposed assessment within ninety (90) days as specified by Section 12-60-450(A), the proposed assessment becomes final and the taxpayer must pay the taxes as assessed.

On the other hand, the protest language of Section 12-60-470(A)⁹ applies when a taxpayer is seeking a refund of taxes that have already been paid in response to a proposed assessment. The "protest" language of Section 12-60-470(A) provides that as long as the refund claim is filed within the time period specified in 12-54-85, it matters not whether the taxpayer protested the corresponding proposed assessment. In the event a taxpayer's request for a refund results in an adverse decision, the taxpayer must then appeal the Department's decision by filing a written protest following the procedures provided in Section 12-60-450. See Section 12-60-470(E).¹⁰ Petitioner failed to do this following receipt of the Department's letters denying her refunds, and no Department determination was issued. Because Petitioner failed to exhaust her prehearing remedy, the matter is not properly before this Court on the merits of the case (whether the request for refunds were timely filed). See Section 12-60-470(F).¹¹ Subsections (E) and (F) of Section 12-60-470 support the Department's position.

To accept the Petitioner's interpretation of Section 12-60-470(A) and allow this matter to proceed without protesting a Department decision would ignore the legislative intent behind the Revenue Procedures Act and allow taxpayers to circumvent the "straightforward procedure to determine a dispute with the Department of Revenue" S.C. Code Ann. § 12-60-20 (2014).

⁸ What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will, however, it is also proper to consider the title or caption of an act in aid of construction to show the intent of the legislature. *Hock RH, LLC v. S.C. Dep't of Revenue*, 423 S.C. 208, 813 S.E.2d 540 (Ct. App. 2018).

⁹ Section 12-60-470 is captioned, "Taxpayers' refund claim; time for filing; contents."

¹⁰ "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."

¹¹ "Upon exhaustion of his prehearing remedy, a taxpayer may seek relief from the department's determination by requesting a contested case hearing before the Administrative Law Court. This 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."

Acceptance of Petitioner's interpretation of Section 12-60-470(A), would allow a taxpayer to seek relief from this Court without any regard to the deadlines set forth by the General Assembly in the Revenues Procedure Act, thereby rendering the entire appeals procedures contained therein, superfluous. *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 774, 395 S.E.2d 877, 881 (2011) (The statute must be read as a whole so "that no word, clause, sentence provision or part shall be rendered surplusage, or superfluous.").

Finally, Petitioner argues that the Court has the jurisdiction to review the merits of Petitioner's claim pursuant to Section 12-60-510(A)(2)¹² even if her protest was untimely. Petitioner avers that because Section 12-60-470(E) "makes the denial of a tax refund ... the functional equivalent of a 'proposed' assessment," this Court has the ability to remove the "assessment" for good cause shown pursuant to Subsection (A)(2) of Section 12-60-510. The Court disagrees.

Section 12-60-470(E) which states:

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.

This subsection does not make a written denial of a claim for a refund the equivalent of a proposed assessment for all statutes under the Revenue Procedures Act relating to proposed assessments. It is specifically limited to provide that the written denial for a claim for refund is equivalent to a proposed assessment exclusively for purposes of complying with the provisions of Section 12-60-450, and states as much. As discussed more fully above, Section 12-60-450 sets forth the prehearing remedies that a taxpayer must exhaust prior to seeking relief from this Court. Those remedies include the submission of a written protest to the Department within ninety (90) days from the date of a division decision or a proposed assessment. *See* S.C. Code Ann. § 12-60-450(A). This Court interprets Section 12-60-470(E) to mean that a taxpayer may appeal the Department's decision¹³ to deny a claim for refund in the same manner in which taxpayers can appeal a proposed assessment.

¹² Subsection (A)(2) of Section 12-60-510 provides that "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."

¹³ Here, the Department's decisions from which a protest should have been filed prior to seeking relief in this Court

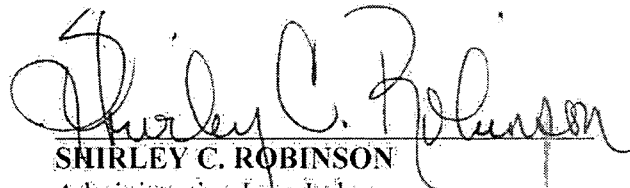
Moreover, the "good cause" provision in Section 12-60-510(A)(2) requires the issuance of an assessment by the Department. Section 12-60-30(2) defines "Assessment" as "the department's recording the liability of the taxpayer in the office of the department ..." S.C. Code Ann. § 12-60-30 (2014). This case relates to Petitioner's request for refunds rather than recordation of any taxes due. While the Court is empathetic with the loss of Petitioner's husband in July 2016, Petitioner has offered no explanation or good cause as to why a written protest was not submitted to the Department until February 27, 2019, a year after the Department's denial of the 2012 claim for refund and six months after the Department's denial of the 2013 claim for refund. Even if good cause existed, there was no proposed assessment and hence, nothing for this Court to remand to the Department.

ORDER

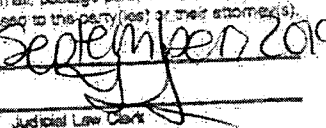
Based on the foregoing,

IT IS HEREBY ORDERED that the South Carolina Department of Revenue's Motion to Dismiss is **GRANTED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

September 18, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the emergency Mail Service addressed to the party (ies) or their attorney(s).
This 18 day of September, 2019
By: 
Judicial Law Clerk

are included in its letters of February 14, 2018 and August 16, 2018 denying Petitioner's claims for refunds.

South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

COPY

Last Name: Shirley Whitfield, individually and as personal representative of the Estate of William Whitfield		First: William	Middle: Whitfield	<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs.	<input type="checkbox"/> Miss <input type="checkbox"/> Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: c/o Moore & Van Allen PLLC (see below)			City:		State and Zip:	
Home Number: c/o Moore & Van Allen PLLC (see below)	Work Number:	Cell Number:		*E-Mail Address:		

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

Are you representing yourself? Yes No

Are you represented by an Attorney? Yes No

Name of Attorney:

Attorney Mailing Address: Douglas M. Muller, Esq.
Moore & Van Allen PLLC
P.O. Box 22828
Charleston, SC 29413-2828

City, State and Zip:

Attorney Work Number and Cell Number:
(W) 843-579-7032
(C) 843-509-3538

Attorney E-Mail Address:

dougmulder@mvalaw.com

CASE INFORMATION

Name of Agency that Issued the Decision: South Carolina Department of Revenue
(Example - Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, **you must attach the agency decision.** Is it attached?:
 Yes No

If no, please explain:

Date the decision was issued: March 27, 2019

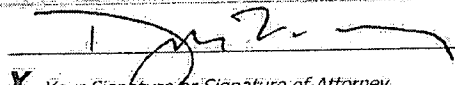
Date the decision was received: Unknown

Please provide a brief statement regarding why the hearing is being requested and the relief sought:

Please see attached letter and Request for Contested Case Hearing and Notice of Appearance, along with Exhibits referenced therein, and Certificate of Mailing.

Payment via Check Money Order Cash for \$ submitted today to the Administrative Law Court via

(applicable **filing fee pursuant to ALC Rule 71**) is being
 U.S. Postal Service Hand-delivery


X Your Signature or Signature of Attorney

April 25, 2019

Date

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: Megan Hickey

Date: April 25, 2019

City: Charleston

State: SC

I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing **on all other parties** to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

South Carolina Department of Revenue, Taxpayer and Business Services, PO Box 125, Columbia, SC 29244-0100

Name and/or Agency Name

Address

City, State and Zip

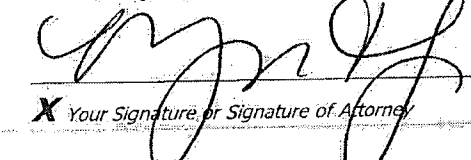
South Carolina Department of Revenue, 300A Outlet Pointe Boulevard, Columbia, SC 29210

FILED
APR 25 2019

Name and/or Agency Name

Address

City, State and Zip


X Your Signature or Signature of Attorney

April 25, 2019

Date

SC ADMIN. LAW COURT

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
Docket No. __-ALJ-__-____-

Shirley Whitfield, individually and as)	
personal representative of the Estate of)	
William Whitfield,)	
)	
Petitioner,)	REQUEST FOR CONTESTED CASE
)	HEARING
v.)	AND NOTICE OF APPEARANCE
)	
South Carolina Department of Revenue,)	
)	
Respondent.)	

Agency: South Carolina Department of Revenue
 Decisions Dated: March 27, 2019
 Re: Denial of Income Tax Refunds (Personal) for Tax Years 2012 and 2013

Parties Requesting
 Contested Case: Shirley Whitfield, individually and as personal representative of the Estate of William Whitfield

Shirley Whitfield, individually and as personal representative of the Estate of William Whitfield (the "**Petitioner**") hereby requests a contested case hearing for review of two (2) decisions issued by the South Carolina Department of Revenue (the "**Respondent**") dated March 27, 2019 to deny personal income tax refunds to Petitioner for the years 2012 and 2013 (collectively the "**Decisions**"), copies of which Decisions are attached hereto as **Exhibit "A"**. Pursuant to South Carolina Code §12-60-510, Petitioner requests a contested case hearing as to the timeliness of the requests for income tax refunds filed by Petitioner with Respondent in connection with tax year 2012 and tax year 2013 (as set forth more fully below).

1. The Petitioner is eighty-eight (88) years old and the widow and Personal Representative of William Whitfield, who passed away in July of 2018.

2. The Respondent acknowledged the Petitioner's overpayment of income taxes due for tax year 2014 but denied the Petitioner's requests for income tax refunds for tax year 2012 and tax year 2013 as untimely. The Petitioner objects to the Respondent's denial of an income tax refund for tax year 2012 and tax year 2013 as untimely, and seeks relief from the Respondent's determination to deny the Petitioner's requests for an income tax refund for tax year 2012 and tax year 2013.

3. As the result of William Whitfield's declining health and Petitioner's age, the Petitioner was delayed in filing income tax returns for the tax years 2012, 2013 and 2014.

4. The Petitioner filed income tax returns with Respondent and made a request for a refund on the 2012 South Carolina tax return that was filed on or around July 27, 2017, in the amount of \$114,644.00

5. The Petitioner filed income tax returns with Respondent and made a request for a refund on the 2013 South Carolina tax return that was filed on or around June 18, 2018, in the amount of \$53,796.00.

6. The Petitioner filed income tax returns with Respondent and made a request for a refund on the 2014 South Carolina tax return that was filed on or around June 18, 2018, in the amount of \$207,461.00.

7. The Petitioner received notice from the Respondent on February 14, 2018, denying Petitioner's request for a refund on their 2012 South Carolina tax return filed on or around July 27, 2017 in the amount of \$114,644.00. The Petitioner also received notice from the Respondent on August 16, 2018, denying Petitioner's request for a refund on their 2013 South Carolina tax return filed on or around June 18, 2018 in the amount of \$53,796.00. The Petitioner received no specific denial of the refund owed on the 2014 South Carolina income tax return but received a letter dated August 20, 2018 acknowledging the tax overpayment of \$207,461.00 for that tax year.

8. The Petitioner appealed the decision to the Respondent pursuant to a letter of formal protest dated February 27, 2019. On March 27, 2019 the Respondent responded to the Petitioner's appeal stating that the Respondent had determined that the protest for both 2012 and 2013 was untimely because it was not made within ninety (90) days of the aforementioned notices mailed on February 14, 2018 and August 16, 2018.

9. The Petitioner's request was timely because S.C. Code §12-60-470(A) states specifically that: "A taxpayer may seek a refund of a state tax by filing a written claim for refund with the department. 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."

10. S.C. Code §12-54-85(F)(1) provides in pertinent part that: "...claims for credit or refund must be filed within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later."

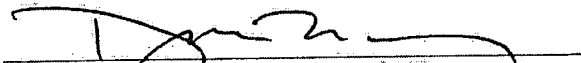
11. The Petitioner timely made a request for a refund for tax year 2012 and tax year 2013 because the request was made "within three years from the time the return was filed....," as provided in S.C. Code §12-54-85(F), even if the Petitioner's time for filing a protest was untimely under S.C. Code §12-60-450." As such, the Respondent's determination that no tax refund was due because the protest was untimely is erroneous and should be corrected.

12. The Petitioner has exhausted the prehearing remedies as required by South Carolina Code §12-60-510 and the Petitioner is entitled to have the Administrative Law Court conduct a contested case hearing.

13. Petitioner Shirley Whitfield, individually and as personal representative of the Estate of William Whitfield is represented by attorneys Paul M. Lynch, Esq., of Moore & Van Allen PLLC, 78 Wentworth Street, Charleston, South Carolina 29401, (843) 579-7012, paullynch@mvalaw.com; Douglas M. Muller, Esq., of Moore & Van Allen PLLC, 78 Wentworth Street, Charleston, South Carolina 29401, (843) 579-7032, dougmuller@mvalaw.com; and Andrew E. Rhea, Esq., of Moore & Van Allen PLLC, 78 Wentworth Street, Charleston, South Carolina 29401, (843) 579-7078, andrewrhea@mvalaw.com.

14. The undersigned attorneys are submitting this Request for Contested Case Hearing on behalf of Petitioner and are hereby submitting their Notice of Appearance pursuant to Rule 8(B) of the Rules of Procedure for the Administrative Law Court.

MOORE & VAN ALLEN, PLLC



Paul M. Lynch, S.C. Bar No. 012833
Douglas M. Muller, S.C. Bar No. 10277
Andrew E. Rhea, S.C. Bar No. 101969
78 Wentworth Street (29401)
P.O. Box 22828
Charleston, South Carolina 29413
(843) 579-7012
paullynch@mvalaw.com
(843) 579-7032
dougmuller@mvalaw.com
(843) 579-7078
andrewrhea@mvalaw.com

*Attorneys for Petitioner Shirley Whitfield,
individually and as personal representative of the
Estate of William Whitfield*

April 25, 2019
Charleston, South Carolina

Exhibit "A"

Decisions



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Important Account Information

SSN: ***-**-9550
Letter ID: L0010231826
Date Issued: March 27, 2019

WILLIAM WHITFIELD
SHIRLEY WHITFIELD
6518 DORCHESTER ROAD UNIT
NORTH CHARLESTON SC 29418



We received your 2012 Individual Income Tax return and/or correspondence.

- We received your appeal postmarked 02/27/2019 in reference to the Notice of Proposed Assessment dated 02/14/2018 made to your 2012 Individual Income Tax return. Written protests must be made within 90 days of the date of the division decision or proposed assessment. Your appeal was not filed on time, so the Notice of Proposed Adjustment has not changed.

If you have any questions, contact this office.

South Carolina Department of Revenue
Taxpayer and Business Services
PO Box 125
Columbia, SC 29214-0400
1-844-898-8542

JP-4133E:01648S:010IN:0A#:A0868328151J:0000091540-



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Important Account InformationSSN: ***-**-9550
Letter ID: L0010174331
Date Issued: March 27, 2019WILLIAM WHITFIELD
SHIRLEY WHITFIELD
6518 DORCHESTER ROAD UNIT
NORTH CHARLESTON SC 29418

We received your 2013 Individual Income Tax return and/or correspondence.

- We received your appeal postmarked 02/27/2019 in reference to the Notice of Proposed Assessment dated 08/16/2018 made to your 2013 Individual Income Tax return. Written protests must be made within 90 days of the date of the division decision or proposed assessment. Your appeal was not filed on time, so the Notice of Proposed Adjustment has not changed.

If you have any questions, contact this office.

South Carolina Department of Revenue
Taxpayer and Business Services
PO Box 125
Columbia, SC 29214-0400
1-844-898-8542

JP:4135E:01648S:020IN:0A#:A08683281613:0000091540*



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Shirley Whitfield, individually and as personal representative of the Estate of William Whitfield,

Petitioner,

v.

South Carolina Department of Revenue,

Respondent.

Docket Number: 19-ALJ-17-0121-CC

**AGENCY INFORMATION SHEET AND
NOTICE OF APPEARANCE
Contested Case**

1. Identifying information on the matter in controversy (Name and/or title of agency proceeding, statutory provisions giving rise to the controversy, file number or any other identifying information):

Taxpayer: Shirley Whitfield, individually and as personal representative of the Estate of William Whitfield

Periods Involved: 2012–2013 Individual Income Tax

Is Shirley Whitfield's, individually and as personal representative of the Estate of William Whitfield, (Taxpayer) refund claim within the time limitations of S.C. Code Ann. § 12-54-85 (2014)?

S.C. Code Ann. §§ 12-54-85, 12-60-510, 12-60-450, and 12-60-470.

2. Has the agency staff issued a final written decision regarding its action or inaction in this matter? _____ yes X no (if yes, please attach a copy).
3. Name, address, and telephone numbers of all known parties and their attorneys, if represented:

Petitioner:

Shirley Whitfield, individually, and as Personal Representative of the Estate of William Whitfield

6518 Dorchester Road Unit
North Charleston, SC 29418

Counsel for Petitioner
Douglas M. Muller, Esquire
Moore & Van Allen PLLC
78 Wentworth Street
Post Office Box 22828 (29413)
Charleston, SC 29401
Phone: 843-579-7032
Fax: 843-579-8719
E-Mail: dougsmuller@mvalaw.com

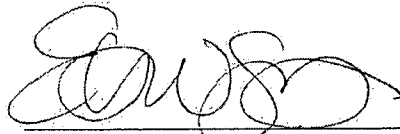
Respondent:
South Carolina Department of Revenue
Elisabeth Shields, Counsel for Litigation
Adam J. Neil, Managing Counsel for Litigation
P.O. Box 12265
Columbia, SC 29211-9979
Phone: (803) 898-5576
Fax: (803) 896-0171
Elisabeth.Shields@dor.sc.gov
Counsel for Respondent

4. Name, address, and telephone number of any persons who have exercised their legal right to object to the issuance of the permit or license:

Not applicable.

Pursuant to ALC Rule 8(B), notice is hereby given that the undersigned is authorized to and will be representing the above named agency in this matter. Further, by my signature below, I certify that a copy of this information sheet has been served on all parties or their attorneys by first class mail on the date shown below.

<Signature page to follow>



Elisabeth W. Shields (Bar No. 100784)

Counsel for Litigation

Adam J. Neil (Bar No. 69594)

Managing Counsel for Litigation

P.O. Box 12265

Columbia, SC 29211-9979

Phone: (803) 898-5576

Fax: (803) 896-0171

Attorneys for Department of Revenue

Elisabeth.Shields@dor.sc.gov

CourtOrders@dor.sc.gov

Columbia, South Carolina
May 28, 2019

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Shirley Whitfield, individually and as personal
representative of the Estate of William
Whitfield,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

Docket Number: 19-ALJ-17-0121-CC

**NOTICE OF MOTION AND
MOTION TO DISMISS**

TO: DOUGLAS M. MULLER, ESQUIRE, COUNSEL FOR PETITIONER:

PLEASE TAKE NOTICE that the undersigned, as attorney for the Respondent, South Carolina Department of Revenue (the "Department"), will, not sooner than ten (10) days from the date of service of this Motion, or as soon thereafter as counsel may be heard, move for an order dismissing the Petitioner's request for a contested case hearing (hereinafter referred to as Petitioner's "Request"). Said motion is made in accordance with ALC Rule 19 and is based on the following:

"A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review." 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) (citing S.C. Code Ann. § 1-23-380 (Supp. 2015)). "Under South Carolina's tax code, a taxpayer 'shall exhaust the prehearing remedy' before he or she may seek a contested case hearing before [the Administrative Law Court (ALC)]." Id. (citing S.C. Code Ann. § 12-60-510(A)(2014)). "If he or she does not exhaust his or her administrative remedies, [the ALC] must dismiss the request for contested case hearing without prejudice." Id. (citing § 12-60-510(A)(1)). "To exhaust his or her prehearing remedy, a taxpayer must file a protest with the Department." Id.

S.C. Code Ann. § 12-60-450(A) (2014) governs protests and provides, in pertinent part, “[a] taxpayer can appeal a division decision or 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 . . .” (Emphasis added). If a taxpayer fails to file a protest within the ninety (90) day period, then the taxpayer is in default and the Department must assess the taxes due. S.C. Code Ann. § 12-60-510(A)(2) (2014).

Here, the Petitioner failed to file a written protest within the time required by law. Accordingly, the Petitioner failed to meet the requirements of the Administrative Procedures Act (APA) and the Revenue Procedures Act (RPA), thus divesting this Court of jurisdiction to review this matter. See Jefferson at *3. Therefore, the Court should dismiss this case for failure to properly exhaust the Petitioner’s prehearing remedies.

In this case, the Department received the Petitioner’s 2012 South Carolina individual income tax return on or around August 11, 2017, wherein the Petitioner claimed a refund of 2012 income taxes. (collectively referred to as the “2012 return”). (See attached Exhibit A). After reviewing the 2012 return and the Department’s records, the Department issued a denial letter on February 14, 2018, wherein the Department denied the Petitioner’s claim for refund of 2012 income taxes for failure to meet the time requirements under S.C. Code Ann. § 12-54-85 (2014). (See attached Exhibit B). The denial letter for 2012 informed the Petitioner that she had ninety (90) days from the date of the denial letter to submit a written protest to the Department. The denial letter was never returned to the Department as “undeliverable” or as “return to sender.”

One year later, the Department received the Petitioner’s 2013 South Carolina individual income tax return on or around August 13, 2018, wherein the Petitioner claimed a refund of 2013 income taxes. (collectively referred to as the “2013 return”). (See attached Exhibit C). After

reviewing the 2013 return and the Department's records, the Department issued a denial letter on August 16, 2018, wherein the Department denied the Petitioner's claim for refund of 2013 income taxes for failure to meet the time requirements under § 12-54-85. (See attached Exhibit D). The denial letter for 2013 informed the Petitioner that she had ninety (90) days from the date of the denial letter to submit a written protest to the Department. The denial letter was never returned to the Department as "undeliverable" or as "return to sender."³

The Department received a protest from the Petitioner's representative on or around February 27, 2019,¹ wherein the Petitioner protested the Department's denials of the Petitioner's claims for refunds of 2012 and 2013 income taxes. On March 27, 2019, Department issued two letters, one for the Petitioner's 2012 claim for refund and one for the 2013 claim for refund, on March 27, 2019, wherein the Department explained that the Petitioner did not timely file her protest of the Department's denials.² Subsequent to this, the Petitioner filed her Request with this Court.³

The Petitioner failed to properly exhaust her administrative and prehearing remedies when she submitted a protest of the Department's denials more than ninety (90) days from the Department's denial letters. Before a taxpayer may seek judicial review of a Department decision, he or she must first meet the requirements of the APA and the RPA. The APA requires that a

¹The Petitioner confirms the date of her protest letter, February 27, 2019, in her Request.

²Said letters are attached as exhibits to the Petitioner's Request.

³In the Petitioner's Request, the Petitioner informs this Court that it also sought a refund of 2014 individual income taxes (see ¶ 6 and ¶ 7, page 2 of the Petitioner's Request). However, the Petitioner is only seeking a contested case hearing for review of two (2) decisions issued by the Department. (See page 1 of the Petitioner's Request). Those two decisions are the denials for 2012 and 2013. (See page 1 of the Petitioner's Request). As such, while the Petitioner mentions her claim for refund for 2014 individual income taxes, that tax year is not before the Court in this matter.

taxpayer exhaust all of his or her administrative remedies prior to seeking judicial review of an agency decision. See S.C. Code Ann. § 1-23-380 (Supp. 2015). Further, and more specific to tax matters, in order for a taxpayer to request a contested case hearing from a Department decision, he or she must first meet the requirements of the RPA and exhaust his or her prehearing remedies, which include the filing of a written protest. See §§ 12-60-450(A) and 12-60-510(A). The RPA provides certain requisites for a taxpayer's protest, which includes the filing of a written protest within ninety (90) days of a division decision or a proposed assessment. See § 12-60-450(A). Thus, in order for the Petitioner's protest to comply with the requirements of the RPA, the Petitioner must have filed her protest within ninety (90) days of the Department's denial letters.

Specifically, the Petitioner needed to file her protest of the Department's denial of her 2012 claim for refund no later than May 28, 2018. Instead, however, the Petitioner filed her protest over a year after the denial letter. Specifically, the Petitioner did not submit a protest until 275 days after the ninety (90) day deadline expired to protest the Department's denial of her 2012 claim for refund. Likewise, in order for the Petitioner's protest of the Department's denial of her 2013 claim for refund to be timely, the Petitioner needed to file her protest no later than November 14, 2018. Instead, the Petitioner filed her protest 105 days after the ninety (90) day deadline expired to protest the Department's denial of her 2013 claim for refund.

In her Request, the Petitioner relies on S.C. Code Ann. § 12-60-470(A) (2014), wherein the Code states, "[a] claim for refund is timely filed if filed [with the Department] 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." (See Petitioner's Request, p. 2, ¶ 9). The Petitioner argues in her Request that her 2012 and 2013 refund claims were timely filed under S.C. Code Ann. § 12-

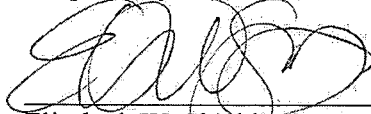
54-85(F), even if the Petitioner's protest was untimely under § 12-60-450. (See Petitioner's Request, p. 3, ¶ 11).

Essentially, the Petitioner is attempting to argue the merits of the Department's denials of her 2012 and 2013 refund claims. However, the Petitioner forfeited her right to argue the merits on whether or not she timely filed her 2012 and 2013 refund claims when she failed to timely file her protest as required by the RPA. Accordingly, the Court does not have jurisdiction to consider the merits on whether or not the Petitioner timely filed her refund claims under § 12-54-85(F) because the Petitioner failed to properly exhaust her administrative and prehearing remedies. Furthermore, § 12-60-470 does not trump the requirements of the APA or the RPA that a taxpayer must meet prior to requesting a contested case hearing with the Court. Section 12-60-470 merely provides when a taxpayer's claim for refund is timely, not whether a taxpayer's protest to the Department's denial of a claim for refund is timely.

The law is clear—before a taxpayer may seek a contested case hearing with this Court, he or she must first exhaust his or her prehearing and administrative remedies. The Petitioner failed to do so in this case when she failed to file a protest in accordance with the requirements of the RPA, specifically, when she failed to file her protest within the time required by law. Therefore, the Petitioner is in default and the denials of her 2012 and 2013 claims for refund are final. Accordingly, this matter should be dismissed.

WHEREFORE, the Department moves that this Court dismiss this matter because the Petitioner failed to exhaust her prehearing and administrative remedies by failing to protest the Department's division decisions within the time required by law, divesting this Court of any jurisdiction over this matter.

Respectfully submitted,



Elisabeth W. Shields (Bar No. 100784)

Counsel for Litigation

Adam J. Neil (Bar No. 69594)

Managing Counsel for Litigation

P.O. Box 12265

Columbia, SC 29211-9979

Phone: (803) 898-5576

Fax: (803) 896-0171

Attorneys for Department of Revenue

Elisabeth.Shields@dor.sc.gov

CourtOrders@dor.sc.gov

Columbia, South Carolina
June 6, 2019

EXHIBIT A

1019



EXTENSION

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
2012 INDIVIDUAL INCOME TAX RETURN

SC1040
(Rev. 8/10/12)
3075

Your social security number [REDACTED]	Check if deceased <input type="checkbox"/>
Spouse's social security number [REDACTED]	Check if deceased <input type="checkbox"/>

DO NOT USE THIS FORM TO FILE A
CORRECTED RETURN. SEE SC1040
INSTRUCTIONS FOR ADDITIONAL
INFORMATION.

For the year January 1 - December 31, 2012, or fiscal tax year beginning		and ending	
Print your first name and initial WILLIAM F.		Last name WHITFIELD	Suff.
Spouse's first name, if married filing jointly SHIRLEY D.		Last name WHITFIELD	
Check if <input type="checkbox"/> new address	Mailing address (number and street, Apt. no or P.O. Box) Foreign address, see instructions 1776 CHELLWOOD DRIVE		County code
City CHARLESTON	State SC	ZIP 29407	Area code Daytime telephone
Check if address <input type="checkbox"/> is outside US	Foreign country address including Postal code (see instructions)		

Check this box if you are filing SC Schedule NR (Part year/Nonresident)

Check this box if filing a composite return for partnership or "S" corporation

Check this box if you have filed a federal or state extension

Check this box if you served in a Military COMBAT ZONE during the filing period

Enter the name of the combat zone: _____

Check this box if this return is affected by a federally declared DISASTER AREA

Enter the name of the disaster area: _____

CHECK YOUR FEDERAL FILING STATUS

(1) Single (3) Married filing separately. Enter spouse's SSN here: _____

(2) Married filing jointly (4) Head-of-household (5) Widow(er) with dependent child

Federal Exemptions

Enter the number of exemptions from your 2012 federal return

Enter the number of exemptions listed above that were under the age of 6 years on December 31, 2012

Enter the number of taxpayers age 65 or older, as of December 31, 2012

Dependents:

First name	Last name	Social security number	Relationship	Date of birth (MM/DD/YYYY)

277001
08-22-12

30751028



INCOME AND ADJUSTMENTS

2012

1 Enter federal taxable income from your federal form. If zero or less, enter zero here.
Nonresident filers complete Schedule NR and enter total from line 49 on line 5 below
Dollars 9311679 00

ADDITIONS TO FEDERAL TAXABLE INCOME

a State tax addback, if itemizing on federal return (See instructions) 187178 00 STATEMENT 4
b Out-of-state losses (See instructions)
Check type of loss: Rental Business Other
c Expenses related to National Guard and Military Reserve Income 00
d Interest income on obligations of states and political subdivisions other than South Carolina 7912 00
e Other additions to income. Attach an explanation (See instructions) 38276 00 STATEMENT 3
2 Add lines a through e and enter the total here. These are your total additions 233366 00
3 Add lines 1 and 2 and enter the total here 9545045 00

SUBTRACTIONS FROM FEDERAL TAXABLE INCOME

f State tax refund, if included on your federal return 00 Dollars
g Total and permanent disability retirement income, if taxed on your federal return 00
h Out-of-state income/gain. Do not include personal service income (See instr.) STMT 7
Check type of income/gain: Rental Business Other 3710539 00 STMT 6
i 44% of net capital gains held for more than one year (See instructions) STMT 5
2373034 00
j Volunteer deductions (See instructions) Check type of deduction:
Firefighter HazMat Rescue Squad
DNR Reserve Police Other 00
k Contributions to the SC College Investment Program ("Future Scholar") or the SC Tuition Prepayment Program (See instructions) 00
l Active Trade or Business Income deduction (See instructions) 00
m Interest income from obligations of the US government 00
n Certain nontaxable National Guard or Reserve Pay (See instructions) 00
o Social security and/or railroad retirement, if taxed on your federal return 17713 00
p Caution: Retirement Deduction (See instructions)
p-1 Taxpayer: date of birth 11/16/1928 2899 00
p-2 Spouse: date of birth 00
p-3 Surviving spouse #1: date of birth of deceased spouse 00
p-4 Surviving spouse #2: date of birth of deceased spouse 00
q Age 65 and older deduction (See instructions)
q-1 Taxpayer: date of birth 11/16/1928 12101 00
q-2 Spouse: date of birth 11/25/1930 15000 00
r Negative amount of federal taxable income 00
s Subsistence allowance days @ \$8.00 00
t Dependents under the age of 6 years on December 31 of the tax year 00
u Other subtractions (See instructions) 00

4 Add lines f through u and enter here. These are your total subtractions 6131286 00
5 Residents subtract line 4 from line 3 and enter the difference. Nonresidents enter amount from Schedule NR, line 49. If less than zero, enter zero here. This is your South Carolina INCOME SUBJECT TO TAX 3413759 00
6 TAX: enter tax from SOUTH CAROLINA tax tables 238487 00
7 TAX on Lump Sum Distribution (Attach SC4972) 00
8 TAX on Active Trade or Business Income (Attach I-335) 00
9 TAX on excess withdrawals from Catastrophe Savings Accounts 00
10 Add lines 6 through 9 and enter the total here. This is your TOTAL SOUTH CAROLINA TAX 238487 00
11 Child and Dependent Care (See instructions) 00
12 Two Wage Earner Credit (See instructions) 00
13 Other non-refundable credits. Attach SC1040TC and other state return(s) 00
14 TOTAL non-refundable credits. Add lines 11 through 13 and enter the total here 00
15 SUBTRACT line 14 from line 10. Enter the difference BUT NOT LESS THAN ZERO here 238487 00

30752026

277002 00-22-12



2012

PAYMENTS AND REFUNDABLE CREDITS

16 SC INCOME TAX WITHHELD (Attach W-2 or SC41) ...	00	20 Other SC withholding (Attach Form 1099) ...	00
17 2012 estimated tax payments	178529	21 Tuition tax credit (Attach I-319) ...	00
18 Amount paid with extension	175000	22 Other refundable credit(s)	00
19 NR sale of real estate	00		

Check type: Anhydrous Ammonia (Attach I-333)
 Milk Credit (Attach I-334)

23 Add lines 16 through 22 and enter the total here	23	353529	00
24 If line 23 is LARGER than line 15, subtract line 15 from line 23 and enter the OVERPAYMENT	24	115042	00
25 If line 15 is LARGER than line 23, subtract line 23 from line 15 and enter the AMOUNT DUE	25		00
26 USE TAX: (See instructions)	26		00
27 Amount of line 24 to be credited to your 2013 Estimated Tax	27	114644	00
28 Total Contributions for Check-offs (Attach I-330)	28		00
29 Add lines 26 through 28 and enter the total here:	29	114644	00
30 If line 29 is larger than line 24, go to line 31. Otherwise, subtract line 29 from line 24 and enter the AMOUNT TO BE REFUNDED TO YOU (line 30a check box entry is required)	30		00

REFUND OPTIONS (subject to program limitations)
 30a Mark one refund choice: Direct Deposit (30b required) Debit Card* Paper Check
 *SCDOR Income Tax Refund Prepaid Debit Card issued by Bank of America
 30b Direct Deposit (for US Accounts Only) Type: Checking Savings
 Routing Number (RTN) _____ Must be 9 digits. The first two numbers of the RTN must be 01 through 12 or 21 through 32
 Bank Account Number (BAN) _____ 1-17 digits

31 Tax Due: Add lines 25 and 29. If line 29 is larger than line 24, subtract line 24 from line 29 and enter the amount	31		00
32 Late filing and/or late payment: Penalties _____ Interest _____ (See instructions) Enter total here	32		00
33 Penalty for Underpayment of Estimated Tax (Attach SC2210) (See instructions and enter letter in box if applicable) Exception to Underpayment of Estimated Tax <input type="checkbox"/>	33	398	00
34 Add lines 31 through 33 and enter the AMOUNT YOU OWE here	34		00

Pay electronically free of charge at www.sctax.org. Click on DORePay and pay with Visa, Mastercard or by Electronic Funds Withdrawal (EFW) or include SC1040-V with your check or money order for the full amount payable to "SC Department of Revenue". Write your social security number and "2012 SC1040" on the payment.

Go Paperless! SCDOR will soon offer the option to receive your Form 1099-G/INT on its secure, confidential website www.sctax.org instead of receiving it in the mail. Form 1099-G/INT is used when preparing your federal tax return. The website information would allow you to print a copy of the form if needed. Check the box below and provide a valid email address to receive more information and instructions about this new program when available.

Yes, I wish to receive information about accessing my 1099-G/INT information through the SCDOR website. Email Address _____

I declare that this return and all attachments are true, correct and complete to the best of my knowledge and belief.

Your signature <i>William F. Whitfield</i>	Date 8/10/17	Spouse's signature (if married filing jointly, BOTH must sign) <i>Shirley D. Whitfield</i>
-----------------------------------------------	-----------------	-----------------------------------------------------------------------------------------------

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. Yes No Preparer's printed name: MATTHEW MADDEN

If prepared by a person other than the taxpayer, his declaration is based on all information of which he has any knowledge.

Paid Preparer Preparer's signature <i>Matthew Madden</i>	Date 07/27/17	Check if self-employed <input type="checkbox"/>	PTIN [REDACTED]
Use Only Firm name (or yours if self-employed) and address and ZIP Code ELLIOTT DAVIS DECOSIMO, LLC / PLLC P.O. BOX 6286 GREENVILLE, SC 29606-6286	FEIN [REDACTED]	Phone No. 864-242-3370	

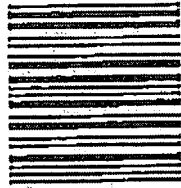
MAIL TO: **REFUNDS OR ZERO TAX** SC1040 Processing Center, P.O. BOX 101100, Columbia, SC 29211-0100

BALANCE DUE Taxable Processing Center, P.O. BOX 101105, Columbia, SC 29211-0105

30753024

PFX 27903 08-22-12

U.S. POSTAGE
 PAID
 NORTH CHARLESTON, SC
 29418
 AUG 11 17
 AMOUNT
\$2.45
 R2304H108103-30



29211




1000

EXHIBIT B



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Important Account Information

I-365
(Rev. 08/10/17)
3696

SSN: 
Letter ID: L0005519214
Date Issued: February 14, 2018

WILLIAM F WHITFIELD
SHIRLEY D WHITFIELD
1776 CHELLWOOD DR
CHARLESTON SC 29407



Taxpayer,

The Department is in receipt of your Individual Income Tax return and/or correspondence for the tax year 2012. Additional information concerning your account may be required.

- The request for refund is denied. The claim was not made within the time required by law as outlined in SC Code Sections 12-54-85(F)(1), 12-54-85(D)(2)(3), and 12-60-470. If you feel our determination is in error, you may appeal. If you choose to appeal, you have 90 days from the date of this letter to submit a protest in writing. Form C-245 can be used to submit your protest. It must state all the reasons you disagree with the Department's denial of your refund, a statement of the facts supporting your position, and the law or other authority upon which you are basing your protest.

By providing any requested information, the Department can complete a review of your account in an attempt to resolve any discrepancies.

If you have any questions, contact this office.

South Carolina Department of Revenue
Taxpayer and Business Services
P.O. Box 125
Columbia, SC 29214-0015
1-844-898-8542

JP:5927E:02098S:010IN:0A#:A031134669J:0000040298



EXHIBIT C

EXTENSION

1019



STATE OF SOUTH CAROLINA DEPARTMENT OF REVENUE 2013 INDIVIDUAL INCOME TAX RETURN

SC1040 (Rev. 8/20/13) 3076

Form with fields for 'Your social security number' and 'Spouse's social security number', each with a 'Check if deceased' checkbox.

DO NOT USE THIS FORM TO FILE A CORRECTED RETURN. SEE SC1040 INSTRUCTIONS FOR ADDITIONAL INFORMATION.

Main header section for the tax year (January 1 - December 31, 2013) and filer information (Name: WILLIAM F. WHITFIELD, Spouse: SHIRLEY D. WHITFIELD, Address: 1776 CHELWOOD DRIVE, CHARLESTON, SC 29407).

Checkboxes for filing status: SC Schedule NR, composite return, federal/state extension, military combat zone, and disaster area.

CHECK YOUR FEDERAL FILING STATUS: (1) Single, (2) Married filing jointly (checked), (3) Married filing separately, (4) Head-of-household, (5) Widow(er) with dependent child.

Federal Exemptions: Enter the number of exemptions from your 2013 federal return (2), under the age of 6 years on December 31, 2013 (0), and taxpayers age 65 or older, as of December 31, 2013 (2).

Table with 5 columns: First name, Last name, Social security number, Relationship, Date of birth (MM/DD/YYYY). Includes a small '377801 00-20-13' stamp.

30751028



INCOME AND ADJUSTMENTS

2013

1 Enter federal taxable income from your federal form. If zero or less, enter zero here. Nonresident filers complete Schedule NR and enter total from line 50 on line 5 below

1 Dollars 471756 00

ADDITIONS TO FEDERAL TAXABLE INCOME

a State tax addback, if itemizing on federal return (See instructions) 317697 00 STATEMENT 2
b Out-of-state losses (See instructions) 00
Check type of loss: Rental Business Other
c Expenses related to National Guard and Military Reserve Income 00
d Interest income on obligations of states and political subdivisions other than South Carolina 00
e Other additions to income. Attach an explanation (See instructions) 11963 00 STATEMENT 1

2 Add lines a through e and enter the total here. These are your total additions 2 329660 00

3 Add lines 1 and 2 and enter the total here 3 801416 00

SUBTRACTIONS FROM FEDERAL TAXABLE INCOME

f State tax refund, if included on your federal return 00 Dollars
g Total and permanent disability retirement income, if taxed on your federal return 00
h Out-of-state income/gain - Do not include personal service income. (See instr.) STMT 5
Check type of income/gain: Rental Business X Other 6946 00 STMT 3
i 44% of net capital gains held for more than one year (See instructions) 35426 00
j Volunteer deductions (See instructions) Check type of deduction:
Firefighter HazMat Rescue Squad
DNR Reserve Police Other 00
k Contributions to the SC College Investment Program ("Future Scholar") or the SC Tuition Prepayment Program (See instructions) 00
l Active Trade or Business Income deduction (See instructions) 00
m Interest income from obligations of the US government 00
n Certain nontaxable National Guard or Reserve Pay (See instructions) 00
o Social security and/or railroad retirement, if taxed on your federal return 18003 00
p Caution: Retirement Deduction (See instructions)
p-1 Taxpayer: date of birth 11/16/1928 2899 00
p-2 Spouse: date of birth 00
p-3 Surviving spouse #1: date of birth of deceased spouse 00
p-4 Surviving spouse #2: date of birth of deceased spouse 00
q Age 65 and older deduction (See instructions)
q-1 Taxpayer: date of birth 11/16/1928 12101 00
q-2 Spouse: date of birth 11/25/1930 15000 00
r Negative amount of federal taxable income 00
s Subsistence allowance days @ \$8.00 00
t Dependents under the age of 6 years on December 31 of the tax year 00
u Consumer Protection Services 00
v Other subtractions (See instructions) STMT 4 44049 00

4 Add lines f through v and enter here. These are your total subtractions 4 < 134424 00>

5 Residents subtract line 4 from line 3 and enter the difference. Nonresidents enter amount from Schedule NR, line 50. If loss than zero, enter zero here This is your South Carolina INCOME SUBJECT TO TAX 5 666992 00

6 TAX: enter tax from SOUTH CAROLINA tax tables 6 46204 00

7 TAX on Lump Sum Distribution (Attach SC4972) 7 00

8 TAX on Active Trade or Business Income (Attach I-335) 8 00

9 TAX on excess withdrawals from Catastrophe Savings Accounts 9 00

10 Add lines 6 through 9 and enter the total here This is your TOTAL SOUTH CAROLINA TAX 10 46204 00

11 Child and Dependent Care (See instructions) 11 00

12 Two Wage Earner Credit (See instructions) 12 00

13 Other non-refundable credits. Attach SC1040TC and other state return(s) 13 00

14 TOTAL non-refundable credits. Add lines 11 through 13 and enter the total here 14 00

15 SUBTRACT line 14 from line 10. Enter the difference BUT NOT LESS THAN ZERO here 15 46204 00

30752026

377602 09-30-13



2013

PAYMENTS AND REFUNDABLE CREDITS

16 SO INCOME TAX WITHHELD (Attach W-2 or SC41)	00	20 Other SC withholding (Attach Form 1099)	00
17 2013 estimated tax payments	214644	21 Tuition tax credit (Attach I-319)	00
18 Amount paid with extension	00	22 Other refundable credit(s)	00
19 NR sale of real estate	00		
23 Add lines 16 through 22 and enter the total here		These are your TOTAL PAYMENTS	
24 If line 23 is LARGER than line 15, subtract line 15 from line 23 and enter the OVERPAYMENT		23	214644 00
25 If line 15 is LARGER than line 23, subtract line 23 from line 15 and enter the AMOUNT DUE		24	168440 00
26 USE TAX: (See Instructions)		25	00
27 Amount of line 24 to be credited to your 2014 Estimated Tax		26	00
28 Total Contributions for Check-offs (Attach I-330)		27	168440 00
29 Add lines 26 through 28 and enter the total here		28	00
30 If line 29 is larger than line 24, go to line 31. Otherwise, subtract line 29 from line 24 and enter the AMOUNT TO BE REFUNDED TO YOU (line 30a check box entry is required)		29	168440 00
		30	0 00

REFUND OPTIONS (subject to program limitations)

30a Mark one refund choice: Direct Deposit (30b required) Debit Card* Paper Check

**SCDOR Income Tax Refund Prepaid Debit Card Issued by Bank of America*

30b Direct Deposit (for US Accounts Only) Type: Checking Savings

Routing Number (RTN) _____ Must be 9 digits. The first two numbers of the RTN must be 01 through 12 or 21 through 32

Bank Account Number (BAN) _____ 1-17 digits

31 Tax Due; Add lines 25 and 29. If line 29 is larger than line 24, subtract line 24 from line 29 and enter the amount	31	00
32 Late filing and/or late payment: Penalties _____ Interest _____ (See Instructions) Enter total here	32	00
33 Penalty for Underpayment of Estimated Tax (Attach SC2210) (See Instructions and enter letter in box if applicable) Exception to Underpayment of Estimated Tax <input type="checkbox"/>	33	00
34 Add lines 31 through 33 and enter the AMOUNT YOU OWE here	34	00

Pay electronically free of charge at www.sclax.org. Click on DORePay and pay with Visa, MasterCard or by Electronic Funds Withdrawal (EFW) or include SC1040-V with your check or money order for the full amount payable to "SC Department of Revenue". Write your social security number and "2013 SC1040" on the payment.

Go Paperless! SCDOR will offer the option to receive your Form 1099-G/INT electronically instead of receiving it in the mail. Form 1099-G/INT is used when preparing your federal tax return.

Check here and enter your email address if you wish to receive information about obtaining your 1099-G/INT Income Tax Refund statement electronically.

Email Address _____

I declare that this return and all attachments are true, correct and complete to the best of my knowledge and belief.

Your signature: *Matthew T. Madden* Date: *6/18/2018* Spouse's signature (if married filing jointly, BOTH must sign): *Shirley D. Whitfield*

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. Yes No Preparer's printed name: **MATTHEW T. MADDEN**

If prepared by a person other than the taxpayer, his declaration is based on all information of which he has any knowledge.

Paid Preparer's signature: *Matthew T. Madden* Date: *06/18/18* Check if self-employed: PTIN: _____

Use Only Firm name (or yours if self-employed) and address and ZIP Code: **ELLIOTT DAVIS, LLC/PLLC P.O. BOX 6286 GREENVILLE, SC 29606-6286** FEIN: _____ Phone No. (864) 242-3370

MAIL TO: **REFUNDS OR ZERO TAX** SC1040 Processing Center, PO BOX 101100, Columbia, SC 29211-0100

BALANCE DUE Taxable Processing Center, PO BOX 101105, Columbia, SC 29211-0105

30753024 PFX 06-30-13

https://doway.scdor.us/pcj/PpR2/Retrieve/0/qc-JJIS6NR1A3A9T1X21e1Tg_?FILE_=_IMAGE&PARAMS_=_8364967179252394909

RECORD 000039

PRIORITY MAIL ★

UNITED STATES POSTAL SERVICE

Retail

P

US POSTAGE PAID
\$13.65

Origin: 29148
Destination: 29214
7 1b 8-8 0z
Aug 13, 18
4584600148-02

1024

SCANNED AT P&B

PRIORITY MAIL 1-Day ®

EXPECTED DELIVERY DAY: 08/14/2018

USPS TRACKING NUMBER



9505 5109 6106 8225 0657 53

SCANNED AT P&BDC

PRIORITY MAIL ★

UNITED STATES POSTAL SERVICE
VISIT US AT USPS.COM®
ORDER FREE SUPPLIES ONLINE

FROM:

*The Whitford Company
LLC
6578 C Dorchester Rd
N Charleston SC 29415*

TO:

*South Carolina Dept of
Revenue
Non-taxable Partnership*

POST OFFICE BOX
LIGHT*

EXHIBIT D

1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Important Account Information

I-365
(Rev. 05/03/18)
3696

SSN: [REDACTED]
Letter ID: L0007435799
Date Issued: August 16, 2018

WILLIAM WHITFIELD
SHIRLEY WHITFIELD
1776 CHELLWOOD DR
CHARLESTON SC 29407



Taxpayer,

The Department is in receipt of your Individual Income Tax return and/or correspondence for the tax year 2013. Additional information concerning your account may be required.

- The request for refund is denied. The claim was not made within the time required by law as outlined in SC Code Sections 12-54-85(F)(1), 12-54-85(D)(2)(3), and 12-60-470. If you feel our determination is in error, you may appeal. If you choose to appeal, you have 90 days from the date of this letter to submit a protest in writing. Form C-245 can be used to submit your protest. It must state all the reasons you disagree with the Department's denial of your refund, a statement of the facts supporting your position, and the law or other authority upon which you are basing your protest.

By providing any requested information, the Department can complete a review of your account in an attempt to resolve any discrepancies.

If you have any questions, contact this office.

South Carolina Department of Revenue
Taxpayer and Business Services
P.O. Box 125
Columbia SC 29214-0015
803-896-3542

JP:173E:00056S:010IN:0A#:A0237363807J:0000025843*



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Shirley Whitfield, individually and as
personal representative of the Estate of
William Whitfield,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

Docket No. 19-ALL-17-0121-CC

**PETITIONER SHIRLEY WHITFIELD'S
MEMORANDUM IN OPPOSITION TO
RESPONDENT'S MOTION TO
DISMISS**

Petitioner Shirley Whitfield, individually and as personal representative of the Estate of William Whitfield, ("Mrs. Whitfield") hereby submits this Memorandum in Opposition to Respondent the South Carolina Department of Revenue's (the "Department of Revenue") Motion to Dismiss Petitioner's Request for a Contested Case Hearing for Lack of Jurisdiction.

I. BRIEF SUMMARY OF FACTS

Mrs. Whitfield is eighty-eight (88) years old and the widow and Personal Representative of William Whitfield, who passed away in July of 2018. As the result of spouse William Whitfield's declining health and Mrs. Whitfield's age, Mrs. Whitfield was delayed in filing income tax returns for the tax years 2012, 2013 and 2014. Mrs. Whitfield filed income tax returns with the Department of Revenue and made a request for a refund on the following tax returns: 2012 South Carolina tax return filed on or around August 11, 2017 (Exhibit "A" to Respondent's Motion to Dismiss); 2013 South Carolina tax return filed on or around June 18, 2018 (Exhibit "C" to Respondent's Motion to Dismiss) and a 2014 South Carolina tax return, also filed on or around June 18, 2018.

Mrs. Whitfield received notice from the Department of Revenue on February 14, 2018 denying Mrs. Whitfield's request for a refund on the 2012 South Carolina tax return. M. Whitfield

FILED

JUN 18 2019

SO. ADMIN. LAW COURT

also received notice from the Department of Revenue on August 16, 2018 denying Mrs. Whitfield's request for a refund on the 2013 South Carolina tax return. In both instances the basis for the Department of Revenue's denial of a tax refund was that: "*The claim was not made within the time required by law as outlined in SC Code Sections 12-54-85(F)(1), 12-54-85 (D)(2)(3) and 12-60-470.*" (See Motion to Dismiss, Exhibits "B" and "D"). As demonstrated below, the Department of Revenue's decision was clearly erroneous and incorrectly interpreted these statutes.

Mrs. Whitfield appealed both decisions to the Department of Revenue pursuant to a letter of formal protest mailed by Moore & Van Allen PLLC on Mrs. Whitfield's behalf on February 27, 2019. On March 27, 2019, the Department of Revenue responded to Mrs. Whitfield's appeal stating that the protests for both 2012 and 2013 were untimely because said protests were not made within ninety (90) days of the Department of Revenue's denials of the tax refund claims on February 14, 2018 and August 16, 2018, respectively. In response to these denials, Mrs. Whitfield timely submitted a Request for Contested Case Hearing to the South Carolina Administrative Law Court on April 25, 2019.

II. LEGAL ARGUMENT

A. Mrs. Whitfield's Appeals Were Timely By Statute.

The South Carolina Revenue Procedures Act, S.C. Code §12-60-10, *et seq.*, provides the statutory basis for dispute procedures to be used by a taxpayer in connection with tax matters handled by the Department of Revenue. In terms of legislative intent, that intent is explicit and clear. S.C. Code §12-60-20 (entitled "Legislative Intent") provides specifically that: "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.”

In connection with a request for a tax refund from the Department of Revenue, S.C. Code §12-60-470(A) states that: “A taxpayer may seek a refund of a state tax by filing a written claim for refund with the department. 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.” (emphasis added). S.C. Code §12-54-85(F)(1) provides in pertinent part that: “...claims for credit or refund must be filed within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later.” Mrs. Whitfield timely made a request for a refund for tax year 2012 and tax year 2013 because the request was made “within three years from the time the return was filed.....” as provided in S.C. Code §12-54-85(F)(1), even if Mrs. Whitfield’s time for filing a protest was untimely under S.C. Code §12-60-450.

The Department of Revenue argues in its Motion to Dismiss that Mrs. Whitfield’s protests of the tax refund decisions were untimely under S.C. Code §12-60-450(A) (see Motion to Dismiss at p. 4). The Department of Revenue recognizes in its Motion to Dismiss that S.C. Code §12-60-470 specifically allows the claim to be timely even if the protest is untimely as long as the claim for a refund is filed within the time allowed by S.C. Code §12-54-85. That point notwithstanding, the Department of Revenue contends, without any citation of legal authority that this Court cannot consider the “merits” of Mrs. Whitfield’s tax refund claims if her protests were untimely under S.C. Code §12-60-450 (see Motion to Dismiss at p. 4). This argument ignores the clear language in S.C. Code §12-60-470, as well as the legislature’s clearly expressed intent in S.C. Code §12-60-20 and common rules of statutory construction. See, e.g., *Joiner v. Rivas*, 342 S.C. 102, 108, 536 S.E.2d 372, 375 (2000) (“The cardinal rule of statutory construction is to ascertain and

effectuate the legislative intent whenever possible"); *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) ("The language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose"); *Nat'l Adver. Co., Inc. v. Mount Pleasant Bd. of Adjustment*, 312 S.C. 397, 400, 440 S.E.2d 875, 877 (1994) ("When reasonably possible, statutes in apparent conflict should be interpreted to allow both to stand").

In this instance, the substance and meaning of S.C. Code §12-60-470 would be rendered meaningless if the timely failure to protest trumped Mrs. Whitfield's timely claim under S.C. Code §12-54-85(F)(1), particularly when the statute recites that such a claim is timely "*even though the time for filing a protest under Section 12-60-450 has expired and no protest was filed.*" More importantly, the stated legislative intent to provide for a "straightforward procedure" for determining disputes would be turned on its head if the Department of Revenue could make an obviously erroneous interpretation that Mrs. Whitfield's claims for a tax refund were untimely - despite the fact that her claims for tax refunds were clearly timely by a plain reading of the statutes - and that error could never be reviewed by this Court because her subsequent protest was untimely (even though the applicable statutes allow the tax refund claim to be timely even if the time for filing a protest has passed or no protest has been filed). As such, the Department of Revenue's argument should be disregarded.

B. The Administrative Law Court Has Subject Matter Jurisdiction to Hear this Contested Case.

Subject matter jurisdiction refers to a court's constitutional or statutory power to adjudicate a case. *Johnson v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007) (citation omitted). It is "the power to hear and determine cases of the general class to which the proceedings in question belong." *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994) (quoting *Bank of Babylon v. Quirk*, 472 A.2d 21, 22 (1984)). The

Administrative Law Court has subject matter jurisdiction in this action pursuant to S.C. Code §1-23-310 *et seq.* Furthermore, S.C. Code §12-60-460 specifically authorizes the Court to hear contested cases arising under South Carolina Revenue Procedures Act.

The doctrine of exhaustion of administrative remedies is generally considered a rule of "policy, convenience and discretion, rather than one of law, and is not jurisdictional." *Vaught v. Waites*, 300 S.C. 201, 205, 387 S.E.2d 91, 93 (Ct.App.1989). The rule is discretionary in nature and a recognition that situations can exist where failure to exhaust administrative remedies may be excused. *Andrews Bearing Corporation v. Brady*, 261 S.C. 533, 201 S.E. 2d 241 (1973). The failure to exhaust administrative remedies goes to the prematurity of a case, not subject matter jurisdiction. *Ward v. State*, 343 S.C. 14, 16 n. 5, 538 S.E.2d 245, 246 n. 5 (2000).

In *Andrews Bearing Corporation v. Brady*, *supra*, the taxpayer asserted that the South Carolina Tax Commission improperly used a higher ratio to value in assessing its personal and real property, in violation, in part, of a state statute. The complaint alleged that the taxpayer had unsuccessfully protested the assessment by the Commission but did not allege that it appealed from the ruling of the Tax Commission to the South Carolina Tax Board of Review pursuant to statutory procedures. *Id.*, 261 S.C. at 535-536, 201 S.E. 2d at 242. The defendants contended that the complaint was insufficient to state a cause of action, since it was not alleged that the taxpayer had exhausted its administrative remedies by appealing to the South Carolina Tax Board of Review and that as a result the court was without jurisdiction to hear the matter. *Id.* The South Carolina Supreme Court disagreed, finding that the failure to exhaust administrative remedies was discretionary, not jurisdictional, and noting that the facts were undisputed and that the issue involved was solely one of law. *Id.*, 261 S.C. at 536-537, 201 S.E. 2d at 243.


In this contested case Mrs. Whitfield and the Department of Revenue do not appear to dispute the underlying facts, but instead the interpretation of the statutes at issue, which solely involves legal issues. Under the reasoning of *Andrews Bearing Corporation v. Brady, supra*, this Court should exercise jurisdiction to consider these legal issues.

Even if the Court were to accept the Department of Revenue's position as correct, there is still statutory jurisdiction to hear the claim. S.C. Code §12-60-470(E) provides that: "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. (emphasis added). S.C. Code §12-60-510(A)(2) provides further that: "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." (emphasis added). As such, S.C. Code §12-60-470(E) makes the denial of a tax refund by the Department of Revenue the functional equivalent of a "proposed assessment" and S.C. Code §12-60-510(A)(2) gives the Administrative Law Court the ability to consider and remove an assessment "on good cause shown," even if the taxpayer's protest is untimely. This Court clearly has the power and the jurisdiction to review the merits of Mrs. Whitfield's claims for "good cause shown." As the South Carolina Supreme Court stated in *Ward v. State, supra*, if there are statutory or case law exceptions to the exhaustion requirement, the issue cannot be one of subject matter jurisdiction. *Ward v. State*, 343 S.C. at 16 n. 5, 538 S.E.2d at 246 n. 5.

III. CONCLUSION

For the reasons discussed above, Mrs. Whitfield respectfully requests that this Court deny the Department of Revenue's Motion to Dismiss in its entirety.

MOORE & VAN ALLEN, PLLC


Paul M. Lynch, S.C. Bar No. 012833
Douglas M. Muller, S.C. Bar No. 10277
Andrew E. Rhea, S.C. Bar No. 101969
78 Wentworth Street (29401)
P.O. Box 22828
Charleston, South Carolina 29413
(843) 579-7012
paullynch@mvalaw.com
(843) 579-7032
dougsmuller@mvalaw.com
(843) 579-7078
andrewrhea@mvalaw.com

*Attorneys for Petitioner Shirley Whitfield,
individually and as personal representative of
the Estate of William Whitfield*

June 17, 2019
Charleston, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Shirley Whitfield, individually and as personal
representative of the Estate of William
Whitfield,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

Docket Number: 19-ALJ-17-0121-CC

**REPLY TO PETITIONER'S RESPONSE
TO THE RESPONDENT'S MOTION
TO DISMISS**

Pursuant to Rule 19(A) of the South Carolina Administrative Law Court Rules (SCALCR), the undersigned, as attorneys for the Respondent, the South Carolina Department of Revenue (the "Department"), submit this Reply (the "Reply") to Petitioner's Response to the Department's Motion to Dismiss (the "Response"), which was served on the Department on June 17, 2019.¹

ARGUMENT

The Court should dismiss the request for contested case hearing filed by Shirley Whitfield, individually and as personal representative of the Estate of William Whitfield (the "Petitioner") due to the Petitioner's failure to exhaust her prehearing remedies. As the Department correctly asserted in its Notice of Motion and Motion to Dismiss (the "Motion"), the Petitioner was required to protest the Department's denials of her 2012 and 2013 refund claims within ninety (90) days of the Department's denial letters. See S.C. Code Ann. §§ 12-60-450(A) and 12-60-470(E) (2014). The Department denied the Petitioner's 2012 claim for refund by letter dated February 14, 2018. Accordingly, the Petitioner had until May 28, 2018 to file her

¹SCALC Rule 19(A) provides that "[a]ny party may file a written reply within five (5) days of the filing of a response, unless otherwise ordered by the administrative law judge." Further, SCALC Rule 3(A) provides that "[w]hen the period [of time] prescribed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation." Based on these rules, the Department's Reply to the Petitioner's Response is due June 24, 2019.

written protest of the Department's denial of her 2012 claim for refund with the Department. Further, the Department denied the Petitioner's 2013 claim for refund by letter dated August 16, 2018. Accordingly, the Petitioner had until November 14, 2018 to file her written protest of the Department's denial of her 2013 claim for refund with the Department.

Nevertheless, the Petitioner did not file a written protest relating to the Department's denials of either her 2012 or 2013 claims for refund until February 27, 2019. Upon receipt of the Petitioner's protest, the Department, by letters dated March 27, 2019, informed the Petitioner that she did not timely file her protest of the Department's denials. Shortly thereafter, the Petitioner filed her request for contested case hearing ("Request") with the Administrative Law Court ("ALC" or "Court").

Despite the ninety (90) day deadlines for the Petitioner to protest the Department's denials, the Petitioner did not file its written protest with the Department until well after the ninety (90) day deadlines expired. Therefore, the Petitioner failed to exhaust her prehearing remedies, divesting this Court of any jurisdiction to hear this matter. Accordingly, this matter should be dismissed.

I. The Petitioner's interpretation of S.C. Code Ann. § 12-60-470(A) (2014) is flawed.

In her Response, the Petitioner asserts that § 12-60-470(A) allows a taxpayer to seek a contested case hearing with this Court despite missing the deadlines described above.² Specifically, the Petitioner wishes for this Court to interpret § 12-60-470(A) to mean that this Court may hear the disputes regarding her refund claims under S.C. Code Ann. § 12-54-85 (2014) even if her protest to the Department's denials was untimely under § 12-60-450(A).

²Petitioner has not disputed the missed deadlines.

However, the Petitioner's reliance on Sections -450 and -470 is misplaced, as those statutes do not apply to Petitioner's case.³ Rather, 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. Specifically, if the Department issues a proposed assessment to a taxpayer, the taxpayer has ninety (90) days to file a written protest with the Department, appealing the proposed assessment. 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. Nevertheless, §12-60-470 allows the 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. Essentially, the "protest" language in § 12-60-470(A) provides that if a refund claim is timely filed under §12-54-85, it does not matter if the taxpayer protested the corresponding proposed assessment.

That is not the situation in this case. In this case, the Department did not issue a proposed assessment to the Petitioner. As such, the Petitioner 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 Petitioner's situation.

To accept the Petitioner's interpretation of § 12-60-470(A) and allow this matter to proceed would ignore the legislative intent behind the RPA and allow taxpayers to circumvent the "straightforward procedure to determine a dispute with the Department of Revenue" S.C. Code Ann. § 12-60-20 (2014). If the Court were to accept the Petitioner's interpretation of

³While the Department acknowledges that code section titles are not binding as to the effect of the statute, it is noteworthy that §12-60-450 is titled "Appeal of proposed assessment; contents of written protest." Therefore, even the title of the statute supports the arguments made in the remainder of this memorandum, i.e. §12-60-470 only applies to a situation where the taxpayer pays an assessment without protest, but later seeks a refund of the paid assessment.

§ 12-60-470(A), taxpayers could seek relief from the ALC without any regard to the deadlines the General Assembly set forth in the RPA, rendering the entire appeals procedures in the RPA superfluous. See CFRE, LLC, v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (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”). Thus, Petitioner’s interpretation of § 12-60-470(A) is impractical and inconsistent with the purpose of the General Assembly’s enactment of the RPA. See Fullbright v. Spinnaker Resorts, Inc., 420 S.C. 265, 272, 802 S.E.2d 794, 798 (2017) (quoting State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015)) (“A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers”).

II. The Court is without jurisdiction to review this matter, as the Petitioner failed to exhaust the statutorily mandated prehearing remedies within the RPA.

In her Response, the Petitioner argues that the ALC has subject matter jurisdiction to hear this contested case, citing S.C. Code Ann. § 1-23-310 *et seq.*, as well as §12-60-460. While the ALC has the statutory power to adjudicate contested cases like Petitioner’s case, i.e. disputes with the Department relating to tax matters, the Court lacks jurisdiction as applied to Petitioner’s specific case because of her failure to exhaust her prehearing remedies.

In the case cited by the Petitioner, 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 Petitioner needed to exhaust, including the filing of a written protest within ninety (90) days from the date of the Department's denials, are statutorily mandated. As such, 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 this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-80(A) (2014) (emphasis added). The remedies provided to the taxpayers of this State are through the RPA, including the appeals procedures discussed herein, as well as the Department's Motion.

The plain reading of these statutes demonstrates that the legislative intent behind the enactment of the RPA was for taxpayers to have a very specific and set method of 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 S.C. Code Ann. § 12-60-470(F) (2014)⁴ that taxpayers may seek relief from the Department's determination upon exhaustion of his or her prehearing remedies. It was the intent of the General Assembly that a tax dispute between a taxpayer and the Department cannot be heard by the ALC until and unless the taxpayer exhausts his or her prehearing remedies.

⁴Section 12-60-460 relates to seeking relief from a Department determination after the Department issues a proposed assessment. Section 12-60-470(F), applicable in this matter, relates to taxpayers seeking relief from a Department determination after the Department denies a claim for refund. Notably, the Department never issued a Department determination in this case due to Petitioner's failure to protest the Department's denials of her refund claims.

In this case, the Petitioner 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 (90) days of said denials. Accordingly, while the Court unquestionably has jurisdiction to hear tax disputes such as Petitioner's, it lacks the jurisdiction to review Petitioner's matter because the General Assembly did not intend for the Court to acquire jurisdiction until and unless a taxpayer first exhausted his or her prehearing remedies. Compare with 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"); 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)]").

Furthermore, the Petitioner's case does not fall within the sole exception under the RPA, which allows taxpayers to seek relief from Circuit Court without exhausting their prehearing remedies. Under § 12-60-80(B), the General Assembly enacted an exception to the statutorily mandated remedies under the RPA in "action[s] for declaratory judgment where the sole issue is whether a statute is constitutional," which may be brought in Circuit Court. § 12-60-80(B).

Since Petitioner's case does not involve the constitutionality of any statute, this exception does not apply.⁵

III. The Petitioner has not demonstrated "good cause" pursuant to S.C. Code Ann. § 12-60-510(A)(2) (2014).

Lastly, the Petitioner argues that, because S.C. Code Ann. § 12-60-470(E) (2014) "makes the denial of a tax refund . . . the functional equivalent of a 'proposed assessment,'" the ALC has the ability to remove the "assessment" for "good cause shown" pursuant to S.C. Code Ann. § 12-60-510(A)(2) (2014). (See Response p. 6).

First, the Petitioner is stretching the applicability of § 12-60-470(E)'s reference to § 12-60-450. 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.

(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

⁵The Petitioner relies on the South Carolina Supreme Court case of Andrews Bearing Corporation v. Brady, wherein the 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, 261 S.C. 533, 536, 201 S.E.2d 241, 243 (1973). However, the Andrews case, as well as another case the Petitioner relies on, Vaught v. Waites, 300 S.C. 201, 205, 387 S.E.2d 91, 93 (Ct. App. 1989), were both prior to the enactment of the RPA in 1995 and prior to the General Assembly's addition of the exception expressed in § 12-60-80(B) in 2003. 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 the Ward case in 2000. 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.

of complying with the provisions of § 12-60-450. The provisions of § 12-60-450 set forth the prehearing remedies a taxpayer must exhaust before seeking relief from the ALC, including filing a written protest with the Department within ninety (90) days from the date of the proposed assessment/denial of a claim for refund. Accordingly, § 12-60-470(E) means 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. Thus, § 12-60-470(E) does not equate a written denial for a claim for refund the same as a proposed assessment for all aspects of the RPA.

Furthermore, the "good cause" provision in § 12-60-510(A)(2) requires the issuance of an assessment by the Department. An "assessment" is defined as "the department's recording the liability [due] of the taxpayer in the office of the department" S.C. Code Ann. § 12-60-30(2) (2014). In Petitioner's case, the Department made no recording of a tax due by the Petitioner; rather, this case relates only to Mrs. Whitfield's claim for a tax refund.

For the reasons set forth above, the "good cause" provision in § 12-60-510(A)(2) does not apply to the Petitioner's case. However, if the Court deemed the "good cause" provision to apply in Petitioner's case, the Petitioner has failed to show any good cause for this matter to be remanded to the Department.⁶

"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

⁶In her Response, the Petitioner attempts to argue that she has demonstrated "good cause" pursuant to § 12-60-510(A)(2), and as such, the ALC has the ability to "review the merits of [the Petitioner's] case." (See Response p. 6). However, even if the "good cause" provision of § 12-60-510(A)(2) applied in Petitioner's case, which the Department contends it does not based on the above, if the Petitioner could establish "good cause," her relief under the provision would be for the matter to be remanded to the Department—not for the ALC to hear the merits of her case.

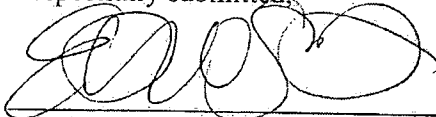
WL 1044638, at *3 (S.C. Admin. Law Judge Div. February 16, 2018). “By way of analogy, good cause has been addressed by the courts within the context of lifting or setting aside an entry of default pursuant to Rules 55(c) and 60(b), SCRPC.” Id. “That standard requires that the party seeking relief provide 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 Petitioner has not demonstrated good cause for its failure to timely protest the Department’s denials of her claims for refund. The Petitioner has not demonstrated any facts which provide a satisfactory explanation or a legally sufficient reason for why the Petitioner did not file a written protest with the Department until a year after the Department’s denial of the Petitioner’s 2012 claim for refund and six months after the Department’s denial of the Petitioner’s 2013 claim for refund. Therefore, even if the “good cause” provision applied to Petitioner’s case, the Petitioner has not demonstrated any “good cause” warranting anything aside from a dismissal of this case.

WHEREFORE, the Department reasserts that the Petitioner failed to exhaust her prehearing remedies by failing to protest the Department’s denials of her refund claims within the time required by law, divesting this Court of any jurisdiction over this matter. As such, the Department respectfully requests that the Court dismiss this action.

[Signature on following page]

Respectfully submitted,



Elisabeth W. Shields, Esquire (Bar No. 100784)

Counsel for Litigation

Adam J. Neil, Esquire (Bar No. 69594)

Managing Counsel for Litigation

P.O. Box 12265

Columbia, SC 29211-9979

Phone: (803) 898-5576

Fax: (803) 896-0171

Attorneys for Department of Revenue

Elisabeth.Shields@dor.sc.gov

CourtOrders@dor.sc.gov

Columbia, South Carolina
June 24, 2019

Doug Muller

From: Tia Smith <thazel@scalc.net>
Sent: Tuesday, June 11, 2019 11:23 AM
To: Elisabeth Shields
Cc: Doug Muller
Subject: RE: Shirley Whitfield... v. SCDOR, Docket No. 19-AJ-17-0121-CC

EXTERNAL EMAIL - USE CAUTION

Per Judge Robinson, the PHS deadline is held in abeyance until a ruling on the Motion to Dismiss.

Best,
Ti'a

From: Elisabeth Shields <Elisabeth.Shields@dor.sc.gov>
Sent: Monday, June 10, 2019 9:18 AM
To: Tia Smith <thazel@scalc.net>
Cc: Doug Muller <dougmuller@mvalaw.com>
Subject: RE: Shirley Whitfield... v. SCDOR, Docket No. 19-AJ-17-0121-CC

Thank you, Tia.

Also, the parties' Prehearing Statements, per the Court's Order dated May 31st, are due June 20th. I was wondering if Judge Robinson would be willing to hold the parties' Prehearing Statements in abeyance until after she rules on the Department's Motion to Dismiss. Thank you.



Elisabeth Shields

Counsel for Litigation
Litigation & Appeals
803-898-5576 | Elisabeth.Shields@dor.sc.gov
South Carolina Department of Revenue | dor.sc.gov
PO Box 12265, Columbia, SC 29211-9979

The content of this email and any attachments may be confidential and legally protected from disclosure. If you are not the intended recipient of this email, please reply immediately to notify the sender, then delete it from your system. You are prohibited from sharing any part of this message with a third party.

From: Tia Smith <thazel@scalc.net>
Sent: Monday, June 10, 2019 8:55 AM
To: Elisabeth Shields <Elisabeth.Shields@dor.sc.gov>
Cc: Doug Muller <dougmuller@mvalaw.com>
Subject: RE: Shirley Whitfield... v. SCDOR, Docket No. 19-AJ-17-0121-CC

Received.

Thanks,

Ti'a

From: Elisabeth Shields <Elisabeth.Shields@dor.sc.gov>
Sent: Friday, June 7, 2019 8:08 AM
To: Tia Smith <thazel@scal.net>
Cc: Doug Muller <dougmulder@mvalaw.com>
Subject: Shirley Whitfield... v. SCDOR, Docket No. 19-AJ-17-0121-CC

Dear Tia:

Attached please find the Department's Notice of Motion and Motion to Dismiss regarding the above-referenced matter, which was also placed in yesterday's mail. Thank you.



Elisabeth Shields

Counsel for Litigation

Litigation & Appeals

803-898-5576 | Elisabeth.Shields@dor.sc.gov

South Carolina Department of Revenue | dor.sc.gov

PO Box 12265, Columbia, SC 29211-9979

The content of this email and any attachments may be confidential and legally protected from disclosure. If you are not the intended recipient of this email, please reply immediately to notify the sender, then delete it from your system. You are prohibited from sharing any part of this message with a third party.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Administrative Law Judge

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

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

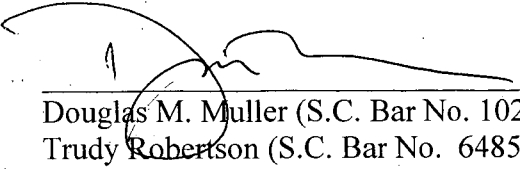
v.

South Carolina Department of Revenue.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to
be included by any of the parties and not any other material.

RECEIVED
FEB 19 2020
SC Court of Appeals



Douglas M. Muller (S.C. Bar No. 10277)

Trudy Robertson (S.C. Bar No. 64856)

Paul Lynch (S.C. Bar No. 12833)

Moore & Van Allen PLLC

78 Wentworth Street (29401)

P.O. Box 22828

Charleston, SC 29413-2828

(843) 579-7000 - telephone

(843) 579-7099 – facsimile

dougmuller@mvalaw.com

trudyrobertson@mvalaw.com

paullynch@mvalaw.com

*Attorneys for Appellant Shirley Whitfield,
Individually and as personal representative
of the Estate of William Whitfield*

February 18, 2020

Charleston, South Carolina