

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
OFFICE OF THE GENERAL COUNSEL



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February 21, 2020

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

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FEB 25 2020

SC Court of Appeals

Re: Shirley Whitfield, Individually and as Personal Representative of the Estate of William Whitfield v. South Carolina Department of Revenue
Appellate Case No. 2019-001748
Docket No. 19-ALJ-17-0121-AP
DOR File Number: 190170

Dear Ms. Kitchings:

Please accept this letter as the Department's response to the Appellant's letter dated February 14, 2020 regarding the Appellant's proposed supplemental citation.

In its letter, the Appellant requests this Court to consider the Court of Appeals' decision in Pickens County v. SCDHEC, Op. No. 5707 (S.C. Ct. App. Filed January 8, 2020) (Shearouse Adv. Sh. No. 2 at 25), petition for reh'g denied (February 14, 2020), in this case. The Appellant contends that the Pickens decision is relevant to her arguments "as to whether the [Department] complied with the statutory and regulatory notice procedures applicable to its denials and whether the ALC improperly considered evidence from outside the pleadings on a motion to dismiss while simultaneously denying the Appellant the right to present evidence of good cause."

The Pickens case is not "pertinent and significant" authority, per Rule 208(b)(7), SCACR, because it considers issues that are not before the Court in this appeal.

In the Pickens case, the Court was asked to consider the statutory mandates regarding notice, which DHEC is required to follow, between two different classifications of landfills. Pickens at pages 34-38. The Court found that the deadline for seeking ALC review from a decision of the DHEC Board is not triggered until and unless DHEC complies with its own procedural and notice regulations. Pickens at page 37. In this appeal, the Appellant does not argue that the Department wrongly characterized her refund request, thereby triggering the wrong deadline to appeal. The

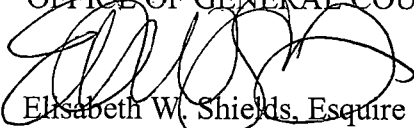
basis for Appellant's claim that the Department failed to follow "the procedural and notice requirements of its own regulations" is that DOR did not exactly quote the language in S.C. Code Ann. § 12-60-420 (2014). The Pickens case does not speak to this issue at all.

Moreover, the finding in Pickens that the ALC erred by considering evidence outside of the pleadings is irrelevant because Whitfield did not attempt discovery in this case and there is no indication in the ALC's Order that it relied on any such evidence.

Because the issues addressed in Pickens are not issues raised by the Appellant in this appeal, the Court should not consider the supplemental citations proposed by Appellant.

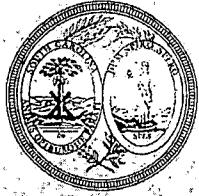
Sincerely yours,

OFFICE OF GENERAL COUNSEL FOR LITIGATION



Elisabeth W. Shields, Esquire
Counsel for Litigation

cc: Douglas M. Muller, Esquire



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