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Apr 28 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

HONORABLE H.W. FUNDERBURK, JR., ADMINISTRATIVE LAW JUDGE

CASE NO. 17-ALJ-17-0060-CC
APPELLATE CASE NO. 2019-001933

McEntire Produce, Inc.,.....Respondent,

v.

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

**APPELLANT’S MOTION TO AMEND APPELLANT’S
DESIGNATION OF MATTER**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, and for the reasons set forth below, Appellant South Carolina Department of Revenue (“Department”) respectfully requests to amend its Designation of Matter, filed with the Court on January 21, 2020.

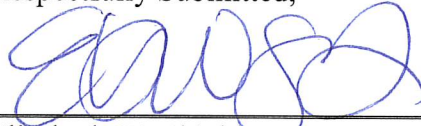
In its Designation of Matter, the Department proposed to include Respondent’s Exhibit 18 in the Record on Appeal. However, after further review of the hearing transcript in this matter, the Department discovered that the Administrative Law Court (“ALC”) did not admit Respondent’s Exhibit 18 into evidence.

Pursuant to Rule 210(g), SCACR, the Department must certify that “the Record on Appeal contains all material proposed to be included by any of the parties” However, Rule 210(c), SCACR, prohibits the Department from including any materials in the Record on Appeal “which [were] not presented to the lower court or tribunal.”

Therefore, because Respondent's Exhibit 18 was not admitted into evidence at the trial in this matter, and thus was not presented to the ALC for consideration, the Department respectfully requests that it be allowed to amend its Designation of Matter, removing Respondent's Exhibit 18 from its list of proposed materials for the Record on Appeal.

Counsel for Respondent, McEntire Produce, Inc., does not object to the Department's request.

Respectfully Submitted,



Elisabeth W. Shields, Esquire (Bar No. 100784)
Counsel for Litigation
Jason P. Luther, Esquire (Bar No. 78021)
General Counsel for Litigation
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Attorneys for Appellant
South Carolina Department of Revenue

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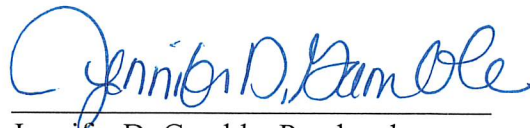
McEntire Produce, Inc.,Respondent,

v.

South Carolina Department of Revenue,Appellant.

PROOF OF SERVICE

I, the undersigned employee of the South Carolina Department of Revenue, Office of General Counsel, do hereby certify that I have served the Appellant’s Motion to Amend Appellant’s Designation of Matter, as well as the Appellant’s Amended Designation of Matter to be Included in the Record on Appeal, in connection with the above-captioned matter by causing a copy of the same to be electronically mailed to Burnet R. Maybank, III, Esquire, at bmaybank@nexsenpruet.com, and James P. Rourke, Esquire, at jrourke@nexsenpruet.com of Nexsen Pruet, LLC, Attorneys for Respondent.



Jennifer D. Gamble, Paralegal

Columbia, SC
April 28, 2020

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



300A Outlet Pointe Blvd.
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Columbia, SC 29211-9979

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SC Court of Appeals

VIA ELECTRONIC MAIL TO: ctappfilings@sccourts.org

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

Re: McEntire Produce, Inc. v. South Carolina Department of Revenue
Appellate Case No. 2019-001933
ALC Docket No. 17-ALJ-17-0060-CC
DOR File Number: 180220

Dear Ms. Kitchings:

Enclosed for filing please find copy of the following documents in connection with the above-referenced matter:

1. Appellant's Motion to Amend Appellant's Designation of Matter;
2. Appellant's Amended Designation of Matter to be Included in the Record on Appeal;
3. Proof of Service.

If you have any questions, please do not hesitate to contact me at 803-898-5576 or Elisabeth.Shields@dor.sc.gov.

Sincerely yours,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

A handwritten signature in blue ink, appearing to read "Elisabeth W. Shields".

Elisabeth W. Shields, Esquire
Counsel for Litigation

EWS/jdg

Enclosures

c: Burnet R. Maybank, III, Esquire (via electronic mail)
James P. Rourke, Esquire (via electronic mail)