

**RECEIVED**

**Mar 02 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

---

Appellate Case Nos.: 2021-001528 & 2021-001547

---

CDT, Inc., ..... Appellant,

v.

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

**AND**

Vimlesh V. Patel and Punita Patel ..... Appellants,

v.

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

---

**APPELLANTS' CONSOLIDATED PETITION FOR REHEARING,  
MEMORANDUM IN SUPPORT THEREOF, AND  
SUGGESTION FOR REHEARING EN BANC**

---

Steven Edward Buckingham (S.C. Bar No. 0075089)  
The Law Office of Steven Edward Buckingham  
16 Wellington Avenue  
Greenville, South Carolina 29609  
(o) 864.735.0832  
(e) seb@buckingham.legal

Scott F. Talley (S.C. Bar No. 0070364)  
Talley Law Firm, P.A.  
291 South Pine Street  
Spartanburg, South Carolina 29302  
(o) 864.595.2966  
(e) scott@talleylawfirm.com

Pursuant to Rule 221, SCACR, Appellants CDT, Inc., Vimlesh V. Patel, and Punita Patel, by and through their undersigned counsel, respectfully submit this consolidated petition for the Court of Appeals to conduct a rehearing of the matter decided by an Order filed on February 15, 2022 (“**the Order**”). In relevant part, the Order granted Respondent’s motion to dismiss on the basis that Appellants did not comply with South Carolina Code § 12-60-3370 in perfecting and pursuing these appellate proceedings. Appellants urge the Court to conduct a rehearing of this decision for two reasons, which are addressed below, and which represent matters that the Court of Appeals misapprehended or overlooked: (1) parties who take exception to the decision of an administrative law judge may appeal that decision to the Court of Appeals as a matter of right, without any obligation to comply with South Carolina Code § 12-60-3370; and (2) consistent with this Court’s decision in Beltram v. SCDOR, Case No. 2017-000968 (S.C. Ct. App. Oct. 23, 2019) (unpublished opinion), taxpayers who are appealing an adverse determination of an administrative law judge are entitled to a true and accurate statement of tax amounts purportedly owed from SCDOR before the Department of Revenue can invoke the requirements of South Carolina Code § 12-60-3370 to impair judicial review.

For the reasons set out below, Appellants respectfully request that the Court of Appeals grant reconsideration of the matter decided in the Order.

Also, pursuant to Rule 219(b), SCACR, this Petition is joined by a suggestion, offered by Appellants, for a rehearing en banc.

**I. APPELLANTS ARE ENTITLED TO PURSUE THESE APPELLATE PROCEEDINGS AS A MATTER OF RIGHT.**

Respondent’s motions to dismiss were predicated on the assertion that, unless Appellants paid in full or posted a bond for “all taxes, not including penalties or civil fines,

determined to be due by the administrative law judge before appealing the decision to the court of appeals,” then the Court lacked subject matter jurisdiction to entertain appellate proceedings. See S.C. Code § 12-60-3370.

Appellants would direct the Court’s attention to the first full sentence of Section 3370, which is as follows: “Except as otherwise provided, a taxpayer shall pay, or post a bond for, all taxes, not including penalties or civil fines, determined to be due by the administrative law judge before appealing the decision to the court of appeals. . . .” S.C. Code § 12-60-3370 (emphasis added). The emphasized portion of the foregoing provision leads to an obvious question: *Is there an “otherwise provided” that would create an exception to the putative requirements of Section 3370?* The answer is in the affirmative, and is supplied by a completely different title and chapter of the South Carolina Code.

South Carolina Code § 1-23-610(A)(1) is quoted below in full:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

S.C. Code § 1-23-610(A)(1) (emphasis added).

There is no dispute that the decision of the administrative law judge from which this appeal is taken is final, or that the pertinent notices of appeal were properly filed and served. The only issue is whether South Carolina Code § 1-23-610(A)(1) and § 12-60-3370 can be reconciled.

If it is the case, as it appears to be based on the plain language of South Carolina Code § 1-23-610(A)(1), that a party may take an appeal from a final decision of an administrative law judge “by right,” then that necessarily means there are no preconditions

to the exercise of that procedural opportunity, nor are any third-party permissions necessary, nor is there any judicial discretion to be exercised in determining whether appellate jurisdiction exists. All that is necessary to invoke a procedural opportunity that is established “by right” is for the party seeking to exercise that opportunity to claim it; once claimed, the right is invoked and must be observed.

The provisions of South Carolina Code § 12-60-3370 are opposed to the plain meaning of § 1-23-610(A)(1). In no uncertain terms, Section 3370 states that an aggrieved taxpayer may appeal from an adverse decision of an administrative law judge only if the taxpayer first pays the disputed principal tax in full or posts a bond. In other words, Section 3370 expressly imposes a condition precedent to the exercise of a party’s appellate rights, even though § 1-23-610(A)(1) states that no such conditions precedent exist.

Fortunately, the inherent conflict between § 1-23-610(A)(1) and § 12-60-3370 does not require this Court to strike one provision down in favor of another; nor does it require the Court to engage in linguistic heroics to reconcile the two provisions. The General Assembly has done this work already.

The opening clause of Section 3370 provides that the conditions precedent to appellate proceedings established therein apply “except as otherwise provided.” Section 610(A)(1) has no such limiting language. Accordingly, the provisions of Section 3370 that ostensibly create conditions precedent to a taxpayer taking an appeal from the final decision of an administrative law judge must necessarily give way to the provisions of Section 610(A)(1), which state that an appeal may be taken as a matter of right.

Perhaps this analysis may be criticized as acknowledging a construction in which the exception would swallow the rule. Appellants do not deny that result. However, it

represents nothing less than the natural consequence of applying the plain language of each statute as enacted by the General Assembly in a manner that is faithful to the time-honored rules of statutory construction. See, e.g., State v. Gaines, 380 S.C. 23, 32-33, 667 S.E.2d 728, 733 (2008).

Therefore, consistent with the foregoing analysis, Appellants respectfully request that, as a consequence of this Petition, Appellants' appeals from the decision of the administrative law judge be allowed to proceed.

**II. RESPONDENT'S MOTIONS TO DISMISS SHOULD HAVE BEEN DENIED AS A CONSEQUENCE OF RESPONDENT'S CONTINUING FAILURE TO PROVIDE APPELLANTS WITH THE INFORMATION NECESSARY TO OBSERVE SOUTH CAROLINA CODE § 12-60-3370.**

In the event that Appellants are obliged to follow the conditions precedent to appellate proceedings ostensibly mandated by South Carolina Code § 12-60-3370, which is denied, then Appellants may nonetheless continue to pursue these appellate proceedings due to Respondent's failure to provide Appellants with the information necessary to honor Section 3370. The factual and legal bases for this argument are set out in Appellants' response in opposition to Respondent's motions to dismiss, and are incorporated into this Petition. Accordingly, Appellants will not re-state those same bases, except in brief for the Court's convenience.

In Appellants' response in opposition to the motions to dismiss, Appellants have detailed how Respondent's calculations of taxable income have been—to be charitable—inconsistent, apparently even after the administrative law judge entered the orders from which appeal is taken.<sup>1</sup> Appellants are mindful that Respondent—through its reply in

---

<sup>1</sup> This circumstance is well-known to Respondent's counsel, who was not only in the unenviable position of having to defend SCDOR's wild inconsistencies at trial, but who

support of the motion to dismiss—has offered an explanation of how the statement of values in the administrative law judge’s order is actually the same as the statement of values provided by SCDOR, despite the fact that the numbers are actually different.

For these reasons, driven in substantial part by SCDOR’s chronic prevarication in explaining to the Appellant-taxpayers what they owe and why, Appellants do not presently perceive that they have been put in a position to pay the principal amount of taxes owed for the tax-years at issue, and therefore, could not comply with South Carolina Code § 12-60-3370, even if they were required to.

As discussed in Appellants’ response in opposition to the motions to dismiss, Appellants view their circumstance as largely identical to that of the appellant in Beltram v. SCDOR, Unpublished Op. No. 2019-UP-349 (S.C. Ct. App. Oct. 23, 2019). In that case, the appellant-taxpayer brought an appeal of an adverse decision of an administrative law judge, and SCDOR sought dismissal on the grounds that the taxpayer had not complied with South Carolina Code § 12-60-3370 prior to filing the notice of appeal. The Court denied the motion to dismiss, and remanded the case to the administrative law court to adjudicate the specific amount of tax owed. Appellants are mindful that the Beltram decision was unpublished and is not “authority” in the sense that it has precedential value. That being said, the same logic that motivated the Court to reach the decision in Beltram appears to be equally applicable to the circumstances facing the Appellant-taxpayers in this case. Accordingly, Appellants respectfully urge the Court of Appeals to follow Beltram

---

was also implicated as a potential witness, by the administrative law judge herself no less, to these inconsistencies, due to having prepared the Department Determination, which was attached to Appellants’ response in opposition to the motion to dismiss as **Attachment D**.

and remand this case so that Appellants may know how to comply with South Carolina Code § 12-60-3370, if they are required to comply, at all.

**CONCLUDING STATEMENT**

For the reasons set out in this Petition, Appellants would respectfully request a rehearing of all matters presented in the Order from which this appeal is taken, vacate the previously granted motion to dismiss, remand the matter to the administrative law judge for further proceedings, and provide such other and further relief as the Court deems just and proper.

**SUGGESTION FOR REHEARING EN BANC**

Pursuant to Rule 219(b), SCACR, Appellants respectfully suggest that the rehearing be entertained en banc.

Respectfully submitted,

*s/ Steven Edward Buckingham*

---

Steven Edward Buckingham (S.C. Bar No. 0075089)  
The Law Office of Steven Edward Buckingham  
16 Wellington Avenue  
Greenville, South Carolina 29609  
(o) 864.735.0832  
(e) seb@buckingham.legal

Scott F. Talley (S.C. Bar No. 0070364)  
Talley Law Firm, P.A.  
291 South Pine Street  
Spartanburg, South Carolina 29302  
(o) 864.595.2966  
(e) scott@talleylawfirm.com

*Attorneys for Appellants*

March 2, 2022

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

---

Appellate Case Nos.: 2021-001528 & 2021-001547

---

CDT, Inc., ..... Appellant,

v.

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

**AND**

Vimlesh V. Patel and Punita Patel ..... Appellants,

v.

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

---

**PROOF OF SERVICE**

---

The undersigned counsel for Appellants hereby certify, subject to penalty of perjury, that the following document(s) was/were served upon the following by the following means as of the date identified below.

**Document(s):** Appellants' Petition for Rehearing

**Counsel Served:** For Respondent  
Sean G. Ryan (S.C. Bar No. 0076585)  
Jason P. Luther (S.C. Bar No. 0078021)  
South Carolina Department of Revenue  
Office of General Counsel  
300A Outlet Pointe Boulevard  
Columbia, SC 29210  
(o) 803.898.5375  
(e) sean.ryan@dor.sc.gov

jason.luther@dor.sc.gov

Means of Delivery: *Via Email Only*

**Courts Served:** Office of the Clerk of the Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Means of Delivery: *Via email to ctappfilings@sccourts.org*

*With respect to the associated filing fees, via  
U.S. Mail*

**Date:** March 2, 2022

Respectfully submitted,

*s/ Steven Edward Buckingham*

---

Steven Edward Buckingham (S.C. Bar No. 0075089)  
The Law Office of Steven Edward Buckingham, LLC  
16 Wellington Avenue  
Greenville, South Carolina 29609  
(o) 864.735.0832  
(e) seb@buckingham.legal

Scott F. Talley (S.C. Bar No. 0070364)  
Talley Law Firm, P.A.  
291 South Pine Street  
Spartanburg, South Carolina 29302  
(o) 864.595.2966  
(e) scott@talleylawfirm.com

*Attorneys for Appellants*