

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable Paige J. Gossett, Administrative Law Judge

Anonymous Taxpayer,
(Robert Patriot) Appellant-Petitioner

v.

SC Department of Revenue.....Respondent-Respondent

Opposition to Motion to Dismiss

1. On _____ Respondent DOR filed a motion to dismiss on the grounds that appellant Robert Patriot has never paid the proposed income tax assessment issued by DOR nor posted a bond.
2. These are proposed taxes and not a final assessment until the appellant process has been concluded. Therefore the proposed or possible assessment is not yet final and the requirement for prepayment does not yet apply.
3. Appellant is unable to pay the proposed assessment because the figures are way out of line compared to what he actually owes. DOR is not authorized by the State legislature to collect taxes which are not owed.

4. Appellant is a working man who has no assets and very little income. He is unable to pay or post bond for the assessment which is known by all to be excessive.

Prepayment as condition of appeal is discrimination based on wealth. The interpretation of the law by able tax lawyer for Respondent violates the equal access to the courts provision in the SC and U.S. Constitutions.

5. As a citizen of the state of SC, Appellant has a right to access to the courts and to appeal. The Due Process Clause of the U.S. Constitution and the equivalent provision in the SC Constitution provide that taxpayer has a right to appeal. The Due Process Clause does not limit Appellate rights to wealthy individuals and corporations. A denial of a right to appeal would be a denial of Constitutional rights of an honest citizen of SC.

The criminal element in our society has Constitutional rights which they frequently use to escape justice. If criminals and violent people have rights under the Dues Process Clause then so do taxpayers. Able and competent lawyer for the DOR in his memorandum had at the end of his Statement “see attachment B” which was to be a copy of the SC Code pertaining to this issue. However “attachment B” was an affidavit of an employee of DOR, not the code section as promised.

6. Code Section 12-60-3370 starts by saying, “Except as otherwise provided”. “Otherwise provided” clearly means the right to appeal in the SC Constitution and Due Process rights under both state and federal Constitutions. Therefore taxpayer fits inside this exception.

Said Code section also provides that Petitioner must pay or post taxes “not including penalties or civil fines”. A large portion of the proposed assessment against taxpayer consists of penalties and civil fines. However, DOR is requiring taxpayer to pay the penalties even though the statute provides otherwise. The Administrative Law Court has not made a separate finding on penalties. Further the penalties and interest vary with time.

7. In Conclusion Appellant requests this case not be dismissed and that he be allowed to file an appeal.

March 8, 2008

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APPEAL FROM THE ADMINISTRATIVE LAW

Paige Gossett, Administrative Law Judge

Case No. 07-ALJ-17-XXXX-XX

South Carolina Department of Revenue, Respondent,

v.

Robert Patriot Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on opposing counsel by depositing a copy of it in the United States Mail, postage prepaid, on March 8, 2008 addressed to:

Ronald Urban, Chief Counsel for Litigation
301 Gervais Street
Columbia, SC 29211.

Date: March 8, 2008

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