

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

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Docket No. \_\_\_\_\_  
07-ALJ-17-025x-xx

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South Carolina Department  
of Revenue,

Respondent,

v.

Robert Patriot,

Appellant.

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BRIEF OF APPELLANT

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Robert Patriot  
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Attorney pro se

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In the Supreme Court,  
The Court of Appeals

Anonymous Taxpayer, )  
(Robert Patriot) ) Docket No. \_\_\_\_\_  
Appellant-Petitioner ) 07-ALJ-17-025x-xx  
)  
v. ) **Statement of the Case**  
)  
SC Department of Revenue )  
Respondent-Respondent )

I. STATEMENT OF THE CASE

This case began on June 4, 2007 when Appellate-Petitioner filed his Notice of Request for Contested Case Hearing to the Administrative Law Court. This is on the Record of Appeal page \_\_\_\_\_.

On \_\_\_\_\_, Petitioner filed Petitioners Prehearing Statement, record page \_\_\_\_.

On \_\_\_\_\_ Petitioner filed Petitioner's Request for Production of Documents, record page \_\_\_\_\_.

On \_\_\_\_\_ DOR, represented by the honorable Ronald W. Urban, Chief Counsel filed an Agency Information Sheet, record page \_\_\_\_.

Hearing was held on \_\_\_\_\_ in Columbia, SC before the Honorable Paige J. Gossett, ALJ. On \_\_\_\_\_ Judge Gossett entered her order holding Robert Clarkson in Contempt of Court.

Final Order and Decision, dated \_\_\_\_\_, record page \_\_\_\_.

Motion for Rehearing was filed on \_\_\_\_\_, record page \_\_\_\_.

Order Denying Rehearing was filed by Judge Gossett, dated \_\_\_\_\_, record page \_\_\_\_.

Then Petitioner filed his Notice of Appeal \_\_\_\_\_, record page \_\_\_\_.

## II. STATEMENT OF FACTS

1. Appellate \_\_\_\_\_ was accused by the Department of Revenue for not filing tax returns for the tax years \_\_\_\_\_. DOR sent Taxpayer a number of administrative letters and notices which he highly contested.

Taxpayer continually asserted that he had dependents, deductions, credits, etc... However, mainly, he claimed he had business expenses for his home repair business and a part-time teaching position at a technical college.

2. Taxpayer's repair business incurred a great deal of expenses for supplies, tools, van, home office, transportation, etc. These expenses came to 60% of his gross therefore taxes claimed by DOR pertaining to his business would have been 60% less than the assessment.

3. Taxpayer did not raise any political arguments or challenge the definition of "income". However the lower court and the legal counsel for the tax agency continually harped on this non-issue. That portion of the Judge's decision was not necessary. DOR brought up this frivolous position several times and they should be fined for such.

4. Taxpayer was also assessed for an economic benefit to his son because taxpayer prepaid college tuition to Bob Jones University. The cost of tuition was held at the same amount for a number of years because it was pre-paid. There were no earnings involved. It is similar to an after Christmas sale when you can buy Christmas ornaments at 50% off. This is not earnings for the next Christmas. This is not an economic benefit.

5. If the Bob Jones University tuition prepayment program is to be considered an economic benefit, it should be considered as such for his son and not to taxpayer. Therefore his son should be taxed for this economic benefit.

6. Taxpayer was denied a clerical assistant before the hearing at the Administrative Law Court. Taxpayer had a clerical assistant who was

helping him with his books and records. Judge Gossett removed the helper. Taxpayer has a right to this assistance at the table with him.

6. Due to my low income, I am unable to protect myself or hire an expensive tax professional. The tax collectors are merciless in exercising their authority and will not relax their procedures to give me a fair chance. Taxpayer requested a court appointed attorney.

After removing my clerical assistant, I made a motion for continuance in order to hire an attorney. The court denied my motion for continuance. I am being penalized for my political associations.

7. The state legislature authorizes the DOR to collect the taxes actually owed. Clearly, taxpayer had a business and had business expenses which reached 50% of the gross. Therefore, DOR is attempting to assess and collect taxes which are clearly not owed.

8. Since records to substantiate his business expenses and deductions are lost Taxpayer relies on the Cohen case:

The Cohen v. CIR case shows that in tax disputes, the taxpayer can use reasonable figures, instead of figures conjured by the tax collectors that cannot be correct. The taxpayer can also reconstruct lost paperwork to substantiate his deductions and business expenses.

Further, the taxpayer can claim a percentage of business expenses and profit for a business enterprise, even if he has no records to substantiate business expenses. For example, a plumbing subcontractor could claim as expenses 60% of gross receipts from the form 1099s that the IRS received from the contractors.

The 9th Circuit Court ruled in Cohen v. CIR, 266 F 2d 5(1959):  
*" We think our only proper course is to approach the problem indirectly by analysis of the record in the light of the principles established in Cohan v. Commissioner, 39 F.2d 540 (2d Cir. 1930). Our objective will be, after resolving any reasonable doubts against petitioner, to reconstruct his gross income as betting commissioner at a figure which in our judgment it would be unlikely to exceed in fact."*

The purpose of the DOR is to collect taxes, not to browbeat hard working citizens who are unable to produce records. Taxpayer in this case was unable to produce all the records that DOR seeks. However, everyone knows that taxpayer did incur large expenses for business.

The government should figure out what the law says he owes--not a tax imposed by lack of ability to produce records by a taxpayer working hard to make a living.

9. The Judge's order claimed that IRS printouts are not hearsay. However, state law provides otherwise: The department is required to use the best information.

10. The best information is the 1099's submitted by the product providers. The employers in this state spend millions of dollars complying and mailing to DOR the wage statements of the employees. DOR should use these rather than the grossly unreliable figures from the IRS.

11. IRS transcripts from the IRS are notorious for being incorrect. The data entry staff at the IRS service centers is well known to be lazy, imaginative, and grossly inaccurate. DOR should have used the direct information from the companies that issued the 1099's.

12. The documentation this court allowed DOR to submit at trial violates the hearsay rule. This court clearly favors DOR and has made no effort to give taxpayer a fair chance. The court denied appellant's receipts without proper authentication, but allowed the unauthenticated records for the tax collector.

13. Taxpayer did the best he could on books and records. The tax law is so complex and confusing that nobody knows what it says. Therefore, Petitioner is entitled some leeway and reduction in penalties.

14. DOR is using the overwhelming resources of the taxpayers to bully and overwhelm an average businessman. The high paid attorneys for the department used their knowledge of the complex tax laws and procedures against a taxpayer without a lawyer or resources to hire a lawyer. Shamefully, this court allowed the tax collectors to take advantage of a loyal citizen of this state.

Thousands of taxpayers in our wonderful state have the same problem: no funds to hire a tax lawyers/CPA. The bullies at DOR know this very well. They are using their financial advantage to the maximum benefit.

The tax victims of SC are therefore paying large amounts of non-owed taxes. Unjust taxes are assessed and collected because the working people do not have the economic resources and knowledge to fight back. Without the representation, the taxpayer is in sense being tried in the Star Chamber.

15. That administrative court had a duty to protect the people from the rapturous, insensitive, bureaucracy. Because the prey is unable to contest audits, DOR is knowingly and purposely collecting taxes that they know are not owed.

16. The State legislature did not authorize the tax collectors to collect taxes that are un-owed. The tax collectors, by law must determine the tax liability, not determine how much money the little people have to fight the audit. Everybody knows when a case is assigned to an agent, the first thing he does is analyzes the file to see whether his subject has the ability to protect his interest. Then the agent acts accordingly. Would a lawyer or a relative of a politician ever be treated as this bureaucracy has terrorized this honest, hard-workingman and loyal citizen of this magnificent state?

17. In conclusion, this case should remanded and the ALC should re-open its case so that the working man can receive credit for business costs, depreciation, etc and the true and correct tax be figured.

### **III. ISSUES**

#### **A. Should the Cohen case be adopted by this court?**

In tax cases, the federal courts have adopted the Cohen doctrine explained in Cohen v. CIR, *supra*. As well known the South Carolina Tax Law is a mirror of the Federal Tax Law. That which applies federally automatically applies to all states unless the state legislature enacts otherwise.

Many little people have been brought into the tax system and they are simply unable to keep all the books and records as the big corporations and the wealthy. Taxpayer was unable to produce books and records to substantiate his business expenses.

However taxpayer did testify that he incurred them and taxpayer was under oath in court. The lower court should have at least listened to him.

### **B. Can DOR use Hearsay?**

DOR uses an IRS printout to prove the income figures even though the employers file wage statements with the Department. The government should be required to obey the law and produce documents showing income which are properly authenticated.

The IRS figures are notoriously inaccurate and frequently include the earnings of illegal immigrants who kidnapped someone's social security number, especially in the construction industry. The tax department can do better than this.

### **C. Is a pro se litigant entitled to some assistance?**

Taxpayer has no legal education and does not understand the tax laws. He had a pile of documents to produce to the court showing his case and his legitimate deductions.

However the lower court removed his clerical assistant and left taxpayer high and dry. He was unable to continue with the case and was unable to put his documents on record.

The opposition was represented by two skillful attorneys assisted by a CPA and a dozen law clerks. Taxpayer was just overwhelmed.

Taxpayer moved the court for a continuance since he had no notice that his document clerk would be removed and unable to assist him.

This was done just as the trial started, before taxpayer and his assistant had an opportunity to be disruptive and not obey the rules which of course they would not have done anyway.

Taxpayer was a witness at the probation violation hearing of Robert Clarkson on \_\_\_\_\_, In Re Robert Clarkson, Docket No.\_\_\_\_\_. Prior to the hearing itself, the honorable clerk of said court Daniel Sherhouse told Defendant Clarkson and his two assistance sitting at the table with him that non-lawyers were not allowed to sit at the table and assist litigants.

Mr. Sherhouse was polite and respectful but also firm. Defendant Clarkson told the clerk that he had a right to have clerical assistance at the table with him. Upon that, Mr. Sherhouse went into the chambers of the justices. He came back shortly saying that Clarkson could in fact have clerical assistance at his table to assist him.

At no time did the issue arise as to the clerical assistants creating a disturbance or disruption. The subjects were polite, respectful, but firm. Clarkson clearly stated that he needed them to assist him.

If Dr. Clarkson can have non-lawyer clerical assistance at the table with him at the highest court than Appellate has the right to the same before the ALC. Of course, subject to the rules of the court. One rule in other courts is that the assistants are not allowed to speak to the pro se litigant unless he asks a question to them first.

#### **IV. Conclusion**

In Conclusion, by bullying and oppressive tactics, the Department of Revenue is able to extract taxes that are clearly not owed from the working people of this fine state. The ALC failed in its duty to protect the people from the rapist tax agency. Therefore this case should be remanded for an accurate determination of what taxpayer really owes.

\_\_\_\_\_  
Robert Patriot  
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Date: \_\_\_\_\_



**Certificate of Service:** I hereby certify that I sent properly a copy of this pleading to opposing counsel.

\_\_\_\_\_  
Robert Patriot  
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Date: \_\_\_\_\_