

CASE NO.
A19A2004

**IN THE COURT OF
APPEALS
STATE OF GEORGIA**

MOOSA COMPANY, LLC,
Appellant,

v.

COMMISSIONER OF THE GEORGIA DEPARTMENT OF
REVENUE,
Appellee.

BRIEF OF APPELLANT

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INTRODUCTION

Appellant, Moosa Company, LLC (“Moosa”), respectfully requests that this Court rule that the Georgia Tax Tribunal (the “Tribunal”) has jurisdiction to hear appeals of orders and assessments by the Commissioner of the Department of Revenue (the “Commissioner”) relating to tobacco taxes because the Tribunal is granted jurisdiction under O.C.G.A. 48-2-59(a) to hear an appeal from “*any* order, ruling, or finding of the commissioner . . .”. (emphasis added).

The Tribunal was created on January 1, 2013, as the result of findings of the 2010 Special Council on Tax Reform and Fairness for Georgians (the “Special Council”). *John Doe I and John Doe II*, 2013-1 Ga. Tax Tribunal (Oct. 1, 2013), at p. 4. The Special Council found that Georgia lacked an efficient, cost-effective appeals process without bias. 2010 Special Council on Tax Reform and Fairness for Georgians, Recommendations, dated January 7, 2011, at p.32.¹ Specific issues under the prior system of tax appeals included, lack of tax knowledge by superior court judges, inconsistent decisions from county to county, and cost associated with appealing to the superior courts. Georgia State University Law Review, *State*

¹ The Council’s recommendations can be found at <https://www.terry.uga.edu/media/documents/selig/georgia-tax-reform.pdf>

Government HB 100, 29 Ga. St. U. L. Rev. (2013). Upon the Special Council's recommendation, the General Assembly created the Tribunal in an effort to remedy these issues, attract business to the State of Georgia, and facilitate the resolution of small, individual disputes. *Id.* At 73. The creation of the Tribunal sought to achieve these goals by (a) requiring the judge of the Tribunal to have at least eight years of tax law experience, (b) requiring published final opinions, (c) waiving bond requirements, and (d) creating a small claims division of the Tribunal. O.C.G.A. §§ 50-13A-6, -9, -15, and -16.

Seeking to afford itself of the benefits associated with appealing in the Tribunal, Moosa relied on the language of O.C.G.A. § 48-2-59(a) and filed a petition contesting the Commissioner's order affirming the Department of Revenue's tobacco tax assessment. Because the plain language of the statute provides that the Tribunal has jurisdiction to hear appeals of orders of the Commissioner, and for the reasons addressed in further detail below, the Superior Court of Fulton County's judgment that the Tribunal lacks jurisdiction should be reversed.

STATEMENT OF PROCEEDINGS BELOW AND MATERIAL

FACTS

Moosa filed a petition in the Tribunal on July 25, 2018 contesting the Commissioner's Executive Order affirming that certain Official Order and

Assessment issued to Moosa on February 1, 2017. R-33–47. On or about August 21, 2018, the Commissioner filed a Motion to Dismiss based on lack of subject matter jurisdiction. R-53. After the submission and review of briefs filed by both Moosa and the Commissioner, the Tribunal granted the Commissioner’s Motion to Dismiss on October 16, 2018. R-129-133. Moosa then filed a Petition for Judicial Review in the Superior Court of Fulton County (the “Superior Court”) pursuant to the appeal rights set out in O.C.G.A. § 50-13A-17 (R-7-11), and on November 8, 2018 the Commissioner filed its Response to Petition for Judicial Review. R-134-138.

On February 27, 2019, the Superior Court issued its order affirming the Tribunal’s grant of the Commissioner’s Motion to Dismiss for lack of subject matter jurisdiction. R-139-141. The Superior Court based its decision on the premise that O.C.G.A. § 50-13A-9(a) granted jurisdiction by enumerating code sections dealing with specific areas of tax law (with the exception of declaratory judgments). R-140. Based on this premise, the Superior Court used the rules of statutory construction providing that the express mention of one thing in a statute implies the exclusion of all other, and that specific statutes control over generally broader statutes to find that the Tribunal lacked jurisdiction. Following the issuance of the Superior Court’s order, Moosa filed an application for appellate review, which was granted by this

Court on April 17, 2019. R-4. From this order, Moosa filed a Notice of Appeal. R-1-2.

ENUMERATION OF ERRORS

1. The Superior Court erred in affirming the Tribunal's order granting the Commissioner's Motion to Dismiss by applying statutory rules of construction when the language of O.C.G.A. § 48-2-59(a) is clear and unambiguous.
2. The Superior Court erred in affirming the Tribunal's order granting the Commissioner's Motion to Dismiss by misapplying the applicable rules of statutory construction concerning when a specific statute prevails over a more general statute.
3. The Superior Court erred in affirming the Tribunal's order granting the Commissioner's Motion to Dismiss based on the faulty premise that O.C.G.A. § 50-13A-9(a) enumerates grants of jurisdiction for each specific type of tax.

ARGUMENT AND CITATION OF AUTHORITY

This Court should reverse the judgment of the Superior Court because it erred in ignoring the plain language of the applicable statute, failed to apply the proper rules of statutory construction, and based its holding on a

faulty premise. The applicable standard of review by this Court is de novo. *Inglett & Stubbs International, Ltd. v. Riley*, 339 Ga.App. 375, 376 (2016).

I. The Superior Court Erred In Disregarding The Plain Language Of The Statute.

This Court should reverse the Superior Court's judgment because the Tribunal has jurisdiction to hear Moosa's tobacco tax appeal under the plain language of O.C.G.A. § 48-2-59(a). Under this statute, "any" order, ruling, or finding of the commissioner may be appealed to the Tribunal. *Id.* Additionally, the context surrounding the creation of the Tribunal makes clear that the Tribunal was granted broad jurisdiction in order to achieve the goals codified in O.C.G.A. § 50-13A-2. Finally, O.C.G.A. § 50-13A-9(c) does not list tobacco taxes as a specifically excluded area of tax that the Tribunal does not have jurisdiction. Therefore, it must be interpreted that the General Assembly intended the Tribunal to have jurisdiction over such area of tax.

A. The ordinary meaning of the text of O.C.G.A. § 48-2-59 and its use of the term "any" provides express jurisdiction for the Tribunal to hear Moosa's appeal of the Commissioner's Order.

The starting point for determining the meaning of a statute is the statute itself. *Blanchard v. Blanchard*, 21 Ga, 11, 12 (1991). The statute must

be read according to the natural and reasonable meaning of its words in their context. *Id.* When the language of a statute is plain and unequivocal, judicial construction is not only unnecessary, but is forbidden. *City of Jesup v. Bennett*, 226 Ga. 606, 609 (1970).

The Tribunal is granted jurisdiction in O.C.G.A. § 50-13A-9(a), which incorporates code sections in the Georgia Revenue Code that provide for appeals to the Tribunal. In filing its petition with the Tribunal, Moosa relied incorporated section O.C.G.A. § 48-2-59. This code section states in part (a):

“Except with respect to claims for refunds, either party may appeal from *any* order, ruling, or finding of the commissioner to the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or the superior court of the county of the residence of the taxpayer . . .”. (emphasis added).

Applying the natural and reasonable meaning of the text, the word “any” is understood to mean one or more without limiting the type or class. The Merriam-Webster dictionary confirms this definition by defining “any” as one or some indiscriminately of whatever kind. Merriam-Webster Online Dictionary. 2019. <http://www.merriam-webster.com> (17 May 2019). When this definition is applied to modify the words “order”, “ruling”, and “finding”, it is understood to mean that no limitation is placed on the kinds of orders,

rulings, or findings of the commissioner that may be appealed to the Tribunal.

The Superior Court, however, rushed to apply different rules of statutory interpretation without making a finding that the applicable statutes granting jurisdiction to the Tribunal were ambiguous. R-140-141. Although the Superior Court acknowledged that Moosa relied on the language in O.C.G.A. § 48-2-59(a), which provides a taxpayer may appeal any order, ruling, or finding of the Commissioner, it immediately proceeded to applying rules of statutory interpretation. As set forth in *City of Jesup*, if the language of a statute is plain and unequivocal, applying statutory rules of interpretation is prohibited. *City of Jesup*, 26 Ga. at 609. Because the Superior Court ignored the plain language and did not make a finding that the statute was ambiguous, it erred in applying judicial construction. Accordingly, the Superior Court's judgment should be reversed.

B. O.C.G.A. § 48-2-59(a)'s broad grant of jurisdiction is consistent with the purpose of the creation of the tribunal.

In addition to construing a statute according to the plain and natural reading of its words, courts must consider the text contextually. *May v. State*, 295 Ga. 388, 391 (2014) "For context, [courts] may look to the other

provisions of the same statute, the structure and history of the whole statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background of the statutory provision in question.” *Id.* at 391–392. This guidance is consistent with O.C.G.A. § 1-3-1(a), which states that courts shall “look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy.”

The context surrounding the creation of the Tribunal and its goals are stated succinctly in O.C.G.A. § 50-13A-2, which sets out the findings of the General Assembly and its purpose for creating such Tribunal. These findings include that an *independent agency* separate and apart from the Department of Revenue was needed to resolve disputes between the Commissioner and taxpayers in an efficient and cost-effective manner. (emphasis added). *Id.* The goals of such agency include improving the uniformity of decision making in tax cases, improving equal access to court process, and increasing public confidence in the fairness of the state tax system. *Id.*

With these goals in mind, the General Assembly passed, and the Governor signed into law, the Georgia Tax Tribunal Act of 2012 on April 19, 2012. 2012 Georgia Laws Act 609 (H.B. 100). This act requires the judge of the Tribunal to have practiced primarily in the area of tax law for at least eight years and to publish all final judgments of the Tribunal (except for

judgments of the small claims division). O.C.G.A. §§ 50-13A-6,-15. Moreover, the Georgia Tax Tribunal Act of 2012 eliminates the requirement for a bond or other security before initiating an action. O.C.G.A. § 50-13A-9(d). The rules of the Tribunal contrast starkly with the prior appeal rights for taxpayers in Georgia.

Under the prior law, a taxpayer's option was to appeal to the superior court in the county in which they were located. O.C.G.A. § 48-2-59(a) (as effective prior to enactment of 2012 Georgia Laws Act 609). Such an option was expensive, often requiring a surety bond to be paid and the need for legal counsel, there was a substantial likelihood that neither the judge nor the jury would possess the specialized tax knowledge necessary to resolve the matter fairly and properly, and the unpublished decisions of the superior courts created the potential for inconsistent tax treatment across the state. O.C.G.A. § 48-2-59(c); 2010 Special Council on Tax Reform and Fairness for Georgians, Recommendations, dated January 7, 2011, at p.32. The cost, lack of transparency, and perceived bias in favor of the Commissioner under this system led the Special Council to recommend an independent, efficient, and cost-effect appeals process, which became the Tribunal. *Id.*

The Superior Courts finding that tobacco taxes are excluded from the Tribunal's jurisdiction not only goes against the plain language of the statute,

but is inconsistent with the goals of the Georgia Tax Tribunal Act of 2012 and the purpose of the Tribunal. R-141.

C. O.C.G.A. § 48-2-59(a) applies to tobacco taxes because they are not otherwise specifically excluded from the Tribunal's jurisdiction.

Although the Georgia Tax Tribunal Act of 2012 provides express exclusions for certain matters from the jurisdiction of the Tribunal, tobacco tax is not one such exclusion. The Georgia Tax Tribunal Act of 2012 provides for jurisdiction of the Tribunal in O.C.G.A. § 50-13A-9(a). This statute enumerates jurisdiction by referencing specific statutes, including O.C.G.A. § 48-2-59, which therein provides for appeals to the Tribunal. Subsection (b) goes on to state that the Tribunal shall have concurrent jurisdiction with the superior courts over those matters set forth in subsection (a). Then, subsection (c) specifically excludes matters arising under Title 3, relating to alcohol, and Title 40, related to motor vehicles. There is no reference to tobacco tax matters being excluded from the jurisdiction of the Tribunal.

Georgia law provides that the express mention of one thing in an act or statute implies the exclusion of all other things. *Chase. v. State*, 285 Ga. 693, 695 (2009); *see also Alexander Properties Group v. Doe*, 280 Ga. 306, 309 (2006) (stating that in applying the principle of statutory construction,

“Expressum facit cessare tacitum” and its companion, the venerable principle, “Expressio unius est exclusion alterius”, the list of actions in a statute is presumed to exclude actions not specifically listed, and the omission of additional actions from the statute is regarded by the courts as deliberate.). O.C.G.A. § 50-13A-9(c) sets out the areas of tax law which are specifically excluded from the Tribunal’s jurisdiction. The failure of the General Assembly to reference tobacco taxes or Chapter 11 of Title 48 (relating to tobacco taxes), must be interpreted as deliberate.

These Superior Court acknowledged this rule of statutory construction in its order; however, as set forth in detail below, it erred in applying it to O.C.G.A. § 50-13A-9(a) instead of -9(c). R-141. Whereas, subsection (c) sets out specific areas of tax that are excluded, subsection (a) does not operate in this same manner. In applying the principle above to subsection (c), this intentional omission of tobacco taxes from areas of tax excluded from the Tribunal’s jurisdiction must be construed as meaning the General Assembly intended to include tobacco taxes in the jurisdiction of the Tribunal. Based on these errors, this Court should reverse the judgment of the Superior Court.

II. The Statutory Rules Of Construction Dictate That The Tribunal has Jurisdiction To Hear Moosa's Tobacco Tax Appeal.

After applying the ordinary meaning of the words of O.C.G.A. § 48-2-59(a), the statute is clear that all orders, rulings, and findings of the Commissioner may be appealed to the Tribunal. When the language of a statute is clear and unambiguous, judicial construction is not only unnecessary but is forbidden. *Abdulkadir v. State*, 279 Ga. 122, 124 (2005). Therefore, the Superior Court erred in applying rules of judicial construction when the statute's meaning was clear and unequivocal. However, even if this Court looks to the statutory rules of construction, such rules still favor construing the statute to provide jurisdiction for the Tribunal to hear Moosa's appeal.

The cardinal rule in construing legislative acts is to ascertain the legislative intent. *Wickham v. State*, 273 Ga, 544, 563 (2001). As detailed above, the context surrounding the creation of the Tribunal and the codified legislative intent shows that the General Assembly sought to provide broad jurisdiction to the Tribunal in order to achieve its stated goals. To construe the subject statutes to exclude tobacco taxes from the Tribunal's jurisdiction would be inconsistent with the goals of improving access of all parties to the

court process and the utilization of judicial resources, increasing uniformity of decision making, and increasing public confidence by forcing tobacco taxpayers to remain under the prior system and be required to pay a bond, and appeal to a superior court judge (who is likely unknowledgeable in tax matters) who would not issue written decision which would be binding on other taxpayers.

Additionally, the rules of statutory construction presume that statutes are enacted with full knowledge of the existing law and, therefore, must be construed in connection and in harmony with it. *McPherson v. City of Dawson*, 221 Ga. 861, 862 (1966). The Superior Court, however, did not attempt to harmonize O.C.G.A. § 48-2-59(a) with O.C.G.A. § 48-11-18. Instead, it jumped directly to the statutory canon that the specific statute prevails over the general statute. R. 141. The Supreme Court of Georgia explicitly rejected this approach in *State v. Hudson*, 303 Ga. 348 (2018). In this case, the Supreme Court reversed the decision of the Court of Appeals because it failed to make an attempt at harmonizing the two statutes at issue before applying the specific-over-general canon of statutory construction. *State v. Hudson*, 303 Ga. 348, 353-354 n. 5 (2018). Furthermore, a specific statute only prevails over a general statute in the absence of contrary legislative intent. *Hooks v. Cobb Ctr. Pawn & Jewelry Brokers*, 241 Ga. App.

305, 309 (1999). Thus, a Court may only apply this rule of statutory construction if the statutes at issue cannot be harmonized, and if there is no evidence of legislative intent that the specific statute should not control.

Here, O.C.G.A. § 50-13A-9(b) explicitly states that the Tribunal shall have concurrent jurisdiction with the superior court over those matters set forth in subsection (a) of such code section. This subsection in turn incorporates O.C.G.A. § 48-2-59. This statute is in contrast to O.C.G.A. §48-11-18 which provides that any person aggrieved because of any final action or decision of the Commissioner, after hearing, may appeal from the decision to the superior court of the county in which the appellant resides. This statute was enacted prior to the creation of the Tribunal, and contains no language limiting the appeal of tobacco tax matters exclusively to the superior courts. O.C.G.A. § 48-11-18 (originally enacted as 1955 Ga. Laws p. 268).

In light of the General Assembly expressly granting the Tribunal concurrent jurisdiction with the superior courts, O.C.G.A. § 48-2-59(a) should be read as expanding a tobacco taxpayer's appeal rights by affording them the opportunity to appeal to the Tribunal, while also preserving their rights to appeal to the superior court under the prior system. Additionally, the ample amount of legislative history related to the creation of the Tribunal

demonstrates the General Assembly's intent to provide relief from the burdens associated with appealing to the superior courts. Accordingly, the Superior Court erred in applying the improper rules of statutory construction and this Court should reverse the judgment of the Superior Court.

III. The Superior Court Erred In Finding That Each Code Section Enumerated In O.C.G.A. § 50-13A-9(A) Deals With Specific Areas Of Tax Law.

The Superior Court mistakenly found that O.C.G.A. § 50-13A-9(a) sets out jurisdiction by referencing code sections that deal with a specific area of tax law, with the exception of declaratory judgments. R. 140. Based on this faulty assumption, the Superior Court used the principle of statutory construction that the express mention of one thing in a statute implies the exclusion of all other things to hold that the Tribunal lacked jurisdiction because tobacco taxes were not specifically referenced under O.C.G.A. § 50-13A-9(a). R. 140-141. This finding, however, misstates the reason why each section is referenced in O.C.G.A. § 50-13A-9(a).

As explained in detail above, O.C.G.A. § 48-2-59(a) provides a general grant of authority to all orders, rulings, and findings of the Commissioner. The additional enumerated code sections then provide additional grants of jurisdiction to actions which fall outside this general grant. O.C.G.A. § 48-

2-18(c) provides for appeal of *proposed* property tax assessments issued to utilities. As the Tribunal held in *Terry E. Moon v. Commissioner*, 2013-2 Ga. Tax Tribunal (December 13, 2013) at p. 2, unless a proposed assessment is specifically enumerated such as with utilities under O.C.G.A. § 48-2-18(c), the Tribunal lacks jurisdiction until a final assessment has been made by the Commissioner. Thus, this statute is necessary because it grants jurisdiction over a specific proposed assessment, which falls outside the scope of the general grant of jurisdiction over final assessments. *Id.* The next code referenced is O.C.G.A. § 48-2-35, which provides that any taxpayer whose claim for refund is denied, or not decided upon within one year, shall have the right to bring an action for refund in the Tribunal. Again, this statute does not deal with a specific type of tax but applies to *any* taxpayer. It is needed because refund actions are explicitly excluded from the scope of O.C.G.A. § 48-2-59(a), which begins, “Except with respect to claims for refunds. . .”. O.C.G.A. § 48-3-1 was repealed January 1, 2018, but the prior law provided the right to obtain a determination of whether amounts enforced by a writ of execution were legally due. 2012 Ga Laws Act 609, § 6, *repealed by* 2017 Ga Laws Act 257, §4. O.C.G.A. § 48-5-519 provides for appeals under the same procedures as appeals of proposed assessments of utilities under O.C.G.A. § 48-2-18(c). O.C.G.A. § 48-6-7(e)(1) provides for

appeals of claim of refund of intangible recording taxes collected by the clerks of the superior courts, which are excluded from the scope of the general jurisdictional grant. Finally, O.C.G.A. § 48-7-31(d)(2)(c) provides for appeals for denials of petition for alternative allocation and apportionment formulas related to income of corporations.

Missing from the statutes referenced under O.C.G.A. § 50-13A-9(a) are grants of jurisdiction for any specific type of tax, including income tax and sales tax. Yet, the Tribunal has repeatedly decided cases involving these areas of tax using the broad jurisdictional grant of O.C.G.A. § 48-2-59(a). *See Richard Darwin Brown v. Commissioner*, 2014-1 Ga. Tax Tribunal (May 5, 2014) (deciding a case related to an individual's income tax); *see also Georgia Power Company, v. Commissioner*, 2015-1 Ga. Tax Tribunal (January 5, 2015) (deciding a case involving sales and use tax). Because O.C.G.A. § 50-13A-9(a) does not grant jurisdiction for each specific area of tax law, but provides a broad general grant of jurisdiction, the principle of statutory construction that the express mention of one thing in a statute implies the exclusion of all other things does not aid in deciding whether the Tribunal has jurisdiction over specific types of tax.² Although this principle

² This contrasts with subsection (c) of O.C.G.A. § 50-13A-9, which does exclude specific areas of tax. Therefore, although the principle does not apply to subsection (a), it is still applicable to subsection (c) and aids in determining whether tobacco taxes are excluded from jurisdiction.

of statutory construction is not instructive, the principles set forth in Argument II above provides guidance by directing this Court to look at the intent of the legislature and to harmonize the statutes dealing with the same subject matter. In applying these principles, O.C.G.A. § 48-2-59(a) expands the appeal rights of taxpayers, including tobacco taxpayers, giving them the option to appeal orders, ruling, and findings of the Commissioner to the Tribunal. Because the Superior Court misinterpreted the structure of O.C.G.A. § 50-13A-9(a), causing it to base its finding on a faulty premise, the Superior Court's judgment should be reversed.

CONCLUSION

For the foregoing reasons, Moosa requests this Court reverse the judgment of the Superior Court.

Respectfully submitted this 22nd day of May, 2019.

This submission does not exceed the word count limit imposed by Rule 24.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served a true and correct copy of the foregoing **BRIEF OF APPELLANT** upon counsel of record by electronic service and by placing same in the United States mail in a properly addressed envelope with sufficient postage affixed thereon to ensure delivery as follows:

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