

THE ADMINISTRATIVE TAX PROCESS AND THE ADMINISTRATIVE LAW COURT

SOUTH CAROLINA DEPARTMENT OF REVENUE
GOVERNMENT SERVICES DIVISION

Or:

**“I’m From the Government,
and I’m Here to Help You.”**

Applicable Tax Statutes

- § 1-23-310 Administrative Procedures Act (APA)
- § 12-60-10 Revenue Procedures Act (RPA):
 - § 12-60-30 Definitions
 - § 12-60-90 Administrative Tax Process. Who may represent whom in the Administrative Tax Process. This is applicable to the process through DOR or the counties, but not at the ALC. For representation at the ALC, see SCALC Rule 8.
 - § 12-60-410 The specific part of the RPA that deals with general state appeals procedures, including state tax assessments or refund claims

Tax Statutes

- § 12-60-1310 The specific part of the RPA that deals with license applications, suspensions and revocations
- § 12-60-1710 The specific part of the RPA that deals with all Property Tax Appeals
- § 12-60-2100 The section of the RPA that deals with appeals on property valued by DOR
- § 12-60-2510 The specific part of the RPA that deals with appeals on property valued by County Assessors
- § 12-60-2910 The specific part of the RPA that deals with appeals on property valued by County Auditors

The Elephant in the Room...



- Notice Is Now Required to Counties Affected by a Property Tax Case:
 - When a protest is received by SCDOR, 12-60-2120
 - When a request for refund is received, 12-60-2150
 - When a Department Determination is issued, 12-60-450

Notice to Counties



- Who Is Statutorily Required to Receive Notice?
 - County Executive Officer—The Administrator, Supervisor or Manager
 - County Auditor
 - County Treasurer
 - County Assessor

Notice to Counties



- Who Is NOT Required to Receive Notice?
 - County Attorneys!?!?
- SCDOR does frequently send notice to the county attorney as a courtesy
- Notices are not required for individual exemptions, i.e. disabled veterans, paraplegics, blind or disabled child, etc. (See 12-60-2120(A)(2))

County Property Tax “Appeal” Process

- 30 days after written notice of Board of Assessment Appeals “conference” (i.e. the hearing), for real property appeals, or
- 30 days after denial by Auditor, for personal property appeals,
- The Taxpayer or County may file a request for a contested case hearing at the Administrative Law Court.
- Filing fees can be found on the ALC website www.scalc.net under the “Rules” tab at Rule 71:
 - County Tax Cases (Residential & Personal Property) \$75
 - County Tax Cases (Commercial) \$350

County tax cases at the ALC

- Note, although everyone refers to the case as an “appeal,” it is technically not an “appeal” in the legal sense.
- In a true “appeal,” the Administrative Law Court would be bound by the decision below i.e., the findings by the Board of Assessment Appeals in the event of a county real property tax matter, or the decision by the county auditor for personal property.
- In a “contested case hearing,” such as a county tax matter, the ALC can make its own findings of fact; it is a *de novo* hearing. See, *Smith v. Newberry*, 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002) and *Reliance Ins. Co. v. Smith*, 327 W.C. 528, 489 S.E.2d 674 (Ct. App. 1997).

County tax cases at the ALC

- Contested case hearings are held without a jury and in accordance with the ALC Rules and Chapter 23 of Title 1 of the SC Code. SC Code § 12-60-3340.
- The Department may intervene in the contested case hearing in county property tax cases if it is not already a party, or the Administrative Law Judge (ALJ) may request that the Department participate in an ALC matter from a county assessor or auditor in order to maintain consistency throughout the state. SC Code § 12-60-3330. I have seen this statute invoked only once in the last 15 years.

County tax cases at the ALC

- A county assessor or auditor is not allowed to represent the county at the ALC. See ALC Rule 8, *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 515 S.E.2d 257 (1999), and the cases following therefrom. Make sure that your clients and county administrators are aware of this rule.



DOR Property Tax Cases at the ALC

- 12-60-2110 et seq.
- Deals with property tax exemptions as well as property assessed by SCDOR—manufacturing property, utility property, railroads, etc.
- Problems arise because while the property may be assessed by SCDOR or the exemption may be granted or denied by SCDOR, the bottom line issue deals with county money and property located in the county.
- Because the property is assessed by SCDOR or the exemption is denied by SCDOR, then the case is tried by the SCDOR litigators.
- Cases have been settled with no input from the counties, hence the new notice requirements to the counties noted earlier.

DOR Property Tax Cases at the ALC

- 12-60-2130 provides that the local governing body may request a contested case hearing at the ALC, but previously there was no requirement that the Department Determination or other notice be provided to the local governing body.
- 12-60-2150 addresses claims for refund in these situations.
 - This section was also amended to include notice to the county.
 - § The County Auditor is also required to notify the Chief Administrative Officer of any applicable taxing entities of the claim for refund. See 12-60-2150(B).
- Now, the county or other local governing bodies will have the right and opportunity to participate in the ALC case, if they so choose.

ALC Hearings

- The contested case hearing is an entirely new hearing at which all evidence must be presented to the Administrative Law Judge.
- The ALJ is the finder of fact, and the ALC record becomes the official record for subsequent judicial appeals.
- The ALJ will issue a written order, but there is no time frame required for issuance of the order.



Exhaustion of Administrative Remedies

- If the taxpayer requests a contested case hearing without exhausting his prehearing remedies because he failed to file a protest or attend a conference with county officials, the ALC will dismiss the action without prejudice.
- If the taxpayer failed to provide facts or law to support his position at the county, the ALC will remand the case for reconsideration in light of the new facts or law.
- The statutory time limitation period for assessment remains suspended during the remand process. SC Code § 12-54-85(G).

ALC Procedures

- After a Request for Contested Case Hearing is received by the ALC, the Clerk of Court will assign the case to an ALJ, and will send a Notice of Assignment to the parties, based on the information provided by the party requesting the contested case hearing.
- Once the Notice of Assignment is received, all filings should be made directly with the assigned Judge's office. It is not necessary, expected, nor required to send a copy to the Clerk of Court for the ALC, and if you send a filing only to the Clerk's office, it may be delayed in getting to the Judge's office.
- Just put the Judge's name somewhere on the envelope with the ALC address.

ALC Procedures

- File a Notice of Appearance with the court as soon as the case is assigned. This document will ensure that you receive the notices and mailings from the court. Otherwise, the mailings will continue to go to the county official, since that is the address that the court has.
- The address is based on what the party requesting the contested case hearing listed. So if the taxpayer requested the hearing, he or she may have listed the assessor or auditor only, not the county attorney.
- The ALC does not know who is representing the county, unless you tell them.

ALC Procedures

- Cases are assigned at the ALC on a rotational basis.
- Generally, the 6 ALJs are divided into groups so that cases are assigned evenly. You may notice if you have several filings in close proximity that they are assigned to the same judge or to the same few judges due to the rotation schedule.
- Cases may occasionally be assigned out of rotation for some reason.
- The rotational schedule usually changes quarterly.



ALC Procedures

- The ALC generally requires a Prehearing Statement to be filed for contested case hearings.
- This document tells the court what the case is about, what evidence will be presented and what witnesses will testify.
- This form also helps the ALC schedule the cases, so there may be a question about available dates for a hearing.
- This document should be completed by the county attorney, but may be sent to the county official, if the court does not yet have contact information for the county attorney.
- Make sure that your client sends this form, and the information needed to complete it, to you.
- Again, this document is filed directly with the judge assigned to the case, not the clerk of the court.

Prehearing Statement

- If requested, the attorney should list what dates witnesses are available to testify, so be prepared to inquire about any dates that the witness may have leave planned (medical/annual), seminars or training planned, etc. Anything that would prevent someone from being present in Columbia to testify should be disclosed. The court will try to work around your schedule, but it is not always possible.
- If you have a particular request (a scheduling order, or a specific scheduling date, etc.), feel free to request it or to contact the law clerk (with a copy to the other side, of course.)
- If you complete a Prehearing Statement, and it does not request an estimate of how long the hearing will take, please let the law clerk know for scheduling purposes. Some county cases can be completed in 2 hours, others will take 2 days. The law clerk needs to know which category your case falls into to be able to effectively schedule the hearing.

Pre-trial Procedures

- Pre-trial procedures are set forth in the ALC rules.
- You may have discovery, including depositions, interrogatories, and requests to admit, but there are limitations. Refer to ALC Rule 21 for those limitations.
- You may, however, request expanded discovery if needed.
- Please be sure to inform your client about the importance of discovery and its use at trial. Many times, clients think that they can explain discrepancies at the hearing. While they may be allowed to, it may be an unpleasant experience in the hands of an attorney skilled at cross examination.



Order of Proceeding

- Set forth in ALC Rule 29.
- The parties give brief opening statements; then present their case.
- Party with the burden of proof (generally the Taxpayer) goes first, then the other party.
- Each witness will be asked to swear or affirm that he or she is telling the truth, and will sit in the witness chair during the testimony. Direct and cross-examination follow.
- After all the testimony and evidence is presented, the parties may give brief summation.

Testifying at the ALC

- What to cover with your witnesses who are testifying:
 - § Remember to listen to your attorney's plan for the case.
 - § Pay attention to the question that is asked of you.
 - § Make eye contact with the judge to see if he or she is following what you are saying.
 - § If you're on cross examination, (if the other side's attorney is asking you questions), keep the answers short and sweet and don't volunteer answers. There is nothing wrong with a "yes" or "no" answer, or with saying, "I don't recall."
 - § If there is an objection, wait until the judge rules before answering the question that elicited the objection.
 - § Stay calm, try not to get excited and speak clearly and distinctly. Respond verbally, not with a nod. If you say something that is incorrect or needs clarification, do not panic, the County Attorney will assist you in making the testimony clear to the Court.
 - § Always be as truthful and straightforward as possible.

Demonstrative Evidence

- Be ready to prepare and discuss demonstrative evidence—charts, graphs, maps, photographs, etc.
- Use words to describe the information on the demonstrative evidence so that the court reporter can record your testimony, and the written record is clear on what you were describing.
- Do not say, “This figure indicates that the taxpayer incorrectly stated the value of his property.” The court reporter and any subsequent court won’t know what “this figure” is. Say, “This figure in column one, line one on page 2 shows. . . ” that way the record is clear if the case is appealed.
- Keep in mind that we deal with numbers, dates, calculations and it is easier to follow those items if you can see what the witness is discussing.
- Also, you don’t know prior to a hearing if the case will be appealed. Prepare the record as if the case will be appealed.

Law Clerks at the ALC

- Each judge has a law clerk, as well as staff attorneys for additional research.
- Any questions of scheduling or preferences may be answered by the law clerk.
- Likewise, any general questions about the court may also be answered by the clerk.
- The law clerks are generally pretty experienced and knowledgeable, and work closely with the judge, so it benefits you to keep the clerk happy.



Trying Cases at the ALC

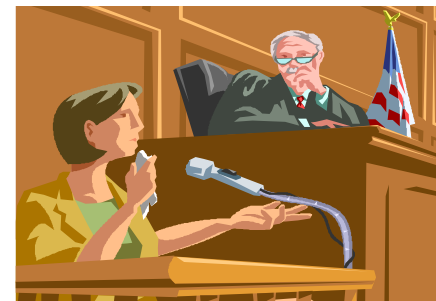
- Dress professionally and remember that you are representing the County at the hearing.
- Witnesses are sworn, the judge wears a robe and the attorneys are expected to maintain a certain level of decorum.
- This advice is particularly true if you have an opposing counsel who practices regularly at the ALC.
- The judge already knows that attorney's style and level of preparation; you may need to show that you are also prepared and knowledgeable.
- Please note that the name of the court is "The South Carolina Administrative Law Court," and the acronym is the ALC. The court ceased being the Administrative Law Judge Division and the ALJD in the mid-2000's. Purge those names from your vocabulary, especially when talking to folks at the ALC!

ALJ Expectations

- The judges expect you to be prepared, to present your evidence clearly, to cite case and statutory law to support your position and to be polite.
- Be on time; provide copies of the evidence (and maybe the law) to the court and opposing counsel.
- It's a good idea to arrive early to pre-mark your evidence for submission; judges get frustrated with "unnecessary" delays.
- Any evidence or facts that can be stipulated to help move the case along will help. Provide copies of signed stipulation agreements if applicable.

Trying Cases at the ALC

- Keep in mind that while you or your client may have been living with this case for the last year, it is all new to the judge.
- You will have to explain background.
- Don't assume that the judge knows what you are talking about, even if it's statutory or "basic" knowledge.
- Have your witnesses explain their background and role in the hearing.
- Make sure to get work experience and educational background on the record to assist the judge in judging credibility. For example, the license status of your county assessor.



Trying Cases at the ALC

- Watch out for jargon and acronyms.
- Even common terms that you or your client may think that “everybody” knows—USPAP, TMS, ATI—may need to be explained to the judge (and maybe the opposing attorney.)
- Remember that the ALJs hear cases from most state agencies—that’s a lot of acronyms to recall.



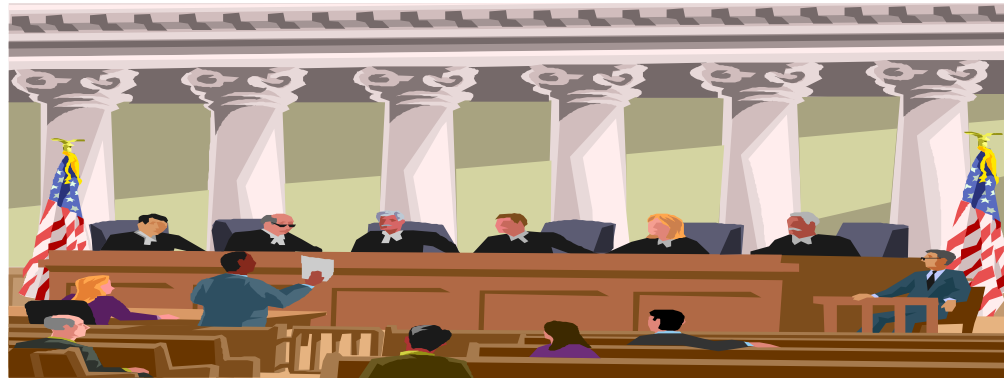
South Carolina

Department of Consumer Affairs



Trying Cases at the ALC

- The ALJ is not under any time constraints for issuing orders.
- Even if the judge rules from the bench (very rare), the ruling isn't "official" until the written order is received.
- You may be asked to submit proposed orders, but don't expect these orders to be signed as is. Most judges will use the proposed order as a first draft.
- Once the written order is received, the taxpayer or county has thirty days to appeal to the SC Court of Appeals, or ten days to file a Motion for Reconsideration. (See ALC Rule 29(D))



Judges at the ALC

- Each judge's office at the ALC is completely separate.
- The ALJs are not bound by the decisions of other ALJs, but may look to those decisions for guidance.
- The forms used are not consistent between the offices. One judge may ask for certain information, but another judge may not.
- READ the orders from the court. Even a Notice of Hearing may say different things from different judges. Some require you to submit evidence early, some require you to be present 15 minutes prior to the hearing to pre-mark evidence (a good idea whether it's required or not), and some just include the date and time of the hearing.

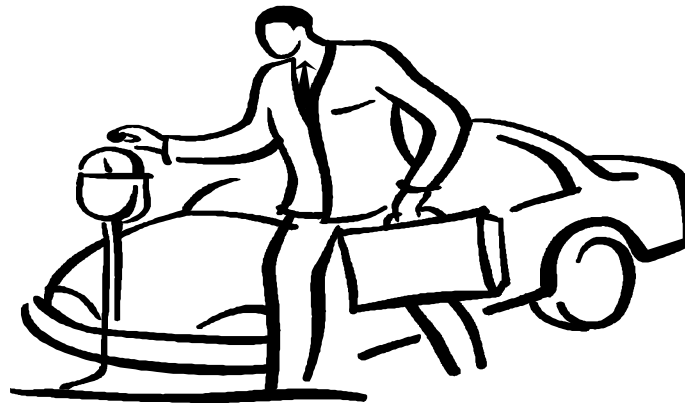
ALC Location and Mail

- The mailing address and location of the ALC are the same— 1205 Pendleton Street, Suite 224.
- The ALC got rid of its Post Office Box over 10 years ago.
- If you have old forms that have a PO Box, or if your assistant pulls up an old letter of transmittal with a PO Box address, don't use it.
- This address is in the Edgar Brown Building on the State House grounds at the corner of Sumter and Pendleton Streets.



Parking

- Parking at the ALC is non-existent; you'll be at a meter on the street.
- Bring coins for the parking meters, or use the Passport Parking App.
- Blue meters are four hours, green meters are two hours, and red meters are thirty minutes. During school times and the legislative sessions, parking is even more difficult than usual, plus the City of Columbia has removed a lot of parking spaces around the State House.
- Adjust your time accordingly to allow time to find parking.



Security at the ALC

- There is a security officer and metal detector at the entrance to the court on the second floor.
- If you are concerned about a litigant, feel free to let the law clerk know to alert the officer to be aware that there may be an “issue” in the courtroom.



Courtrooms at the ALC

- There are three courtrooms at the ALC.
- They are creatively known as courtrooms 1, 2 and 3.
- Courtroom 1 is a large room (relatively speaking) and is used for hearings with a lot of witnesses or a lot of large exhibits. Courtrooms 2 and 3 are smaller and roughly equal-sized.
- If you need the larger courtroom due to the number of witnesses or large exhibits, or if you are expecting a crowd of observers or press, please let the law clerk know, as soon as possible, that you'll need the larger courtroom, if it's available.

Trying Cases at the ALC

- The courtrooms are equipped with AV equipment for exhibits.
- You place an exhibit or document on the projector and its image is shown on touchscreens at the judge's desk, law clerk's chair, counsel tables and witness chair. The witness or attorney can then highlight or draw on the touchscreen to demonstrate.
- Remember to verbally identify what is being drawn if you want the record clear.
- The law clerk controls the system from his or her chair as far as activating or de-activating it.
- You can clear the screens by touching in the corner where the screen indicates "clear."
- There are also connections for your laptop and screens for viewing throughout the courtroom.

Visiting the ALC

- Feel free to observe a hearing prior to your hearing, or to just visit the court to see the layout and how the A/V systems work.
- Contact the clerk's office or the law clerk for a convenient time to tour, or to identify a hearing to observe.
- There is not a roster of cases available on the website.
- Just know that there is not a "standard" ALC hearing. You never really know what may come up!

Finding ALC Reported Cases

- ALC cases can be difficult to find. While the ALC website has a search feature for their cases, it can be a little “buggy.”
 - Go to the ALC website: www.scalc.net
 - Click on “Decisions” near the middle of the page.
 - Enter applicable search terms. Usually less is more.
- Cases are also available on Westlaw or on Thompson-Reuters Checkpoint.

Finding ALC Reported Cases



SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Office of Motor Vehicle Hearings



EDGAR A. BROWN BUILDING 1205 PENDLETON ST., SUITE 224 COLUMBIA, SC 29201 VOICE: (803) 734-0550 FAX: 734-6400

Mission of the Administrative Law Court

The mission of the Administrative Law Court is to provide a neutral forum for fair, prompt and objective hearings for any person affected by an action or proposed action of certain agencies of the State of South Carolina.

Creation of the Administrative Law Court

The Administrative Law Court is an agency and court of record within the executive branch of state government. The Court was created by the South Carolina General Assembly by Act No. 181 of 1993, to provide an independent forum for hearing the contested cases of state agencies. Previously, citizens desiring an evidentiary hearing to challenge the action of a State agency were heard by hearing officers employed by that particular agency.

*2019 Proposed Rules Amendments

The ALC has submitted proposed changes to its Rules of Procedure to the House and Senate Judiciary Committees. [Click here to access the proposed changes.](#)

Jurisdiction

Appeals from the Department of Employment and Workforce (DEW) - [Click here](#) for information on filing DEW appeals.

The Court's jurisdiction is statutory in nature. Because the Court is an agency within the executive branch of state government, its power to hear a particular type of case from a particular agency is derived exclusively from the legislative branch of state government, the General Assembly.

Learn more about the [jurisdiction](#) of the Administrative Law Court.

Disclaimer

This website is operated by the Administrative Law Court (ALC) as a public service. The ALC makes every effort to ensure that the content of this website is accurate at the time of publication. The information is updated periodically and is subject to change or modification without notice. The information on this website is not a substitute for legal counsel. Please contact a private attorney if you need legal advice or assistance. Direct consultation of the state statutes, case law, court opinions, and other reference materials should be made for legal research purposes. Nothing contained herein shall be construed to bind the presiding Administrative Law Judge or the ALC to any practice described herein. As a convenience to the user, this website also contains links to other external websites that are not under the control of the ALC. The ALC is not responsible for the content on any linked sites.



Appeals after an ALC Order

- An adverse decision by the ALC may be appealed to the South Carolina Court of Appeals, as provided in SC Code §§ 12-60-3370 through 12-60-3390.
- The standard of review applied in such appeals is as follows:
 - The appellate court will presume that the factual findings of an administrative agency are correct and will set them aside only if unsupported by substantial evidence in the record. *Hull v. Spartanburg County Assessor*, 372 S.C. 420, 641 S.E.2d 909 (Ct. App. 2007) (holding that, because the valuation of commercial real property as determined by the ALJ was supported by substantial evidence in the record, it would not be overturned on appeal). (Note: the ALC is an executive agency, not a judicial “court,” so the language about “findings by an administrative agency” also applies to the ALC.)
- If the issue deals with a question of law, the court may review that question without deference to the lower court.

Appeals after an ALC Order

- Before appealing to the South Carolina Court of Appeals, the taxpayer must pay, or post a bond for, all taxes, not including fines and penalties, determined to be due by the Administrative Law Court (ALC), unless the taxpayer has paid at least 80% of the protested assessment for a property tax appeal that extends past December 31.
- If this payment is not made, or the bond is not posted, the Department or county may request that the case be dismissed. See §12-60-3370.

Who May Represent the Taxpayer?

- S.C. Code § 12-60-90 and IRS Circular 230 come into play here, and it is a two-step process. (See www.irs.gov and search for Circular 230 for the specifics on Circular 230.)
- First, § 12-60-90 applies to the administrative tax process UP TO the ALC. It does not apply to cases at the Administrative Law Court. (See ALC Rule 8 for who may represent at the ALC.)
- It does apply, however, to all conferences at the Department or county level. § 12-60-90 (C) specifically addresses who may represent the taxpayer during this process.
- Notice that not all of the subsections of Circular 230 are included. You'll need to look to see if the representative is qualified, based on the subsection referenced.

Who May Represent the Taxpayer?

- The second step is that the representative will need to file a Power of Attorney (POA).
- There is a DOR form, SC2848, available for this purpose. Go to: www.dor.sc.gov and see "Forms" on the upper right.
- Make sure that the representative meets the qualifications outlined in § 12-60-90.
- Just because the representative used to work at the IRS or DOR or for an accountant, does not mean that he or she is qualified to represent the taxpayer. You will get a lot of "tax representatives" or real estate agents who want to help property taxpayers. Most will not meet the statutory requirements.

Who May Represent the Taxpayer?

- Also, verify that the tax type and tax years at issue are appropriate. These restrictions are for the protection of both the taxpayer and the county or Department employee, to avoid disclosure of confidential tax information to an unauthorized source.
- Verify that the POA is completed properly: The representative must be a person, not a corporation or tax management group. The form must be signed by the taxpayer and the representative. The tax type and years at issue must match the issues that you are addressing. Check the dates signed to verify that the POA is still valid.

Trying Cases at the ALC

- I generally contact the Assessor or Auditor the week prior to an ALC hearing to see if the county official has any questions.
- I will also ask for them to give you my contact information in case you have any questions about procedure, the ALC, or substantive issues.
- Please feel free to ask me about your ALC case.

How Can SCDOR Help You?

- We have been asked, and have filed, amicus briefs for a county position that the department may have been involved in training county officials or otherwise providing guidance to the counties.
 - This assistance is contingent on my schedule and the schedule of the attorney assigned from the Office of General Counsel for Litigation, so please give us as much notice as possible.
- If the case involves an issue that has statewide implications, please consider either asking the ALJ to order the participation of the Department under 12-60-3330 or asking the Department to intervene.

Currently Pending Cases*

*as of 07/01/19

Name of Case	Court	Counties Involved
CSX v. SCDOR	4 th Circuit Federal, 3:14-cv-03821-MBS	Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Florence, Georgetown, Greenville, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lexington, Marion, Marlboro, McCormick, Newberry, Orangeburg, Richland, Spartanburg, Sumter, Union, Williamsburg, York
CSX v. SCDOR	ALC, 19-ALJ-17-0169-CC	Same. Case is held in abeyance pending outcome of 4 th Circuit case. Any affected county may intervene without objection from parties, provided requirements of ALC Rule 20 are met.
Colonial Pipeline v. SCDOR	ALC, 18-ALJ-17-0443-CC	Anderson, Abbeville, Aiken, Cherokee, Edgefield, Greenville, Greenwood, Laurens, McCormick, Spartanburg, York
Mary Cromey v. SCDOR	SC Ct. Apps	Charleston

Currently Pending Cases*

*as of 07/01/19

Name of Case	Court	Counties Involved
Duke Energy v. SCDOR (2 cases, subsidiaries)	Awaiting Department Determination	Abbeville, Aiken, Anderson, Cherokee, Chester, Chesterfield, Clarendon, Darlington, Dillon, Edgefield, Fairfield, Florence, Georgetown, Greenville, Greenwood, Horry, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, McCormick, Newberry, Oconee, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, York
Clarendon County et al v. Farmers Telephone and SCDOR	ALC—Awaiting decision, 17-ALJ-17-0237-CC	Clarendon, Florence, Lee, Sumter, Williamsburg (Along with some school and hospital districts in these counties.)
Norfolk Southern v. SCDOR	ALC, 19-ALJ-17-0182-CC	Aiken, Anderson, Berkeley, Calhoun, Charleston, Cherokee, Chester, Dorchester, Edgefield, Fairfield, Greenville, Lexington, Newberry, Oconee, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Union, York

Contact Slide

Need Help?

More Questions?

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