

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,)
)
 Petitioner,)
)
 vs.)
)
SunBelt Furniture Xpress, Inc.,)
)
 Respondent.)
_____)

Docket No.: 19-ALJ-17-0110-IJ

**ORDER GRANTING MOTION
TO QUASH**

This matter is before the South Carolina Administrative Law Court (“ALC”) pursuant SunBelt Furniture Xpress, Inc.’s (“SunBelt”) Motion to Quash the South Carolina Department of Revenue’s (“Department”) Motion to Enforce Summons.

BACKGROUND

Sunbelt is a freight carrier based in North Carolina. The Department alleges that SunBelt regularly transports out-of-state furniture into South Carolina. This is of particular concern to the Department because some South Carolina residents who receive out-of-state furniture deliveries fail to remit use tax as required by S.C. Code Ann. § 12-36-1310. On October 16, 2018, in an effort to identify residents receiving out-of-state furniture, the Department served upon SunBelt a Summons to Produce Records. The summons requested records of all deliveries the company had made into South Carolina during the period of May of 2016 through December of 2017. The Department specified that the documents should include the purchaser’s name, address, delivery date, and a description of the products delivered. The summons also made the following statement “failure to comply with this Summons may result in contempt proceedings under SC Code § 12-54-110.” SunBelt refused to supply the Department with the requested information. On April 19, 2019, the Department filed a Notice of Motion and Motion to Enforce Summons pursuant to §§ 12-54-110, 12-4-330; Rule 45, SCRPC; and SCALC Rules 1 and 19. In response, on May 7, 2019, SunBelt filed a Motion to Quash the Department’s Motion to Enforce Summons. The Department subsequently filed its Response on May 20, 2019. After a thorough review of the applicable law, I grant SunBelt’s Motion to Quash the Department’s Motion to Enforce Summons.

FILED

JUN 11 2019

DISCUSSION

The Department administers and enforces the revenue laws of this state. S.C. Code Ann. § 12-4-10. The Department is vested with specific investigative tools. More specifically, § 12-54-100(A) states the following:

In the administration of a state tax law, the director or his duly authorized agent, for the purpose of ascertaining the correctness of a return or making a determination of or fixing tax liability, may examine or investigate the place of business, tangible personal property, facilities, computers, computer programs, electronic data, books, invoices, papers, records, memoranda, vouchers, other documents, equipment, or licenses of the taxpayer or other person bearing upon the matters required to be included on a return.

The Department is also given the authority to summons the following:

- (1) a person who:
 - (a) is required to make a return or obtain a license pursuant to the provisions of law administered by the department and who fails to do so at the time required;
 - (b) delivers a return that the department considers erroneous; or
 - (c) refuses to allow an authorized agent of the department to examine his books and records;
- (2) another person having possession, care, or custody of books of account containing entries related to the business of such person; or
- (3) another person it considers proper.

§ 12-54-110(A). Furthermore, the Department may summons witnesses to appear and give testimony and to produce records, books, papers, and documents relating to any matters which the department has authority to investigate or determine. § 12-4-330(A). A party may apply to the ALC to enforce or seek relief from a subpoena issued by the Department as provided in the ALC rules. § 1-23-600(G).

According to the aforementioned statutes, it is clear that the Department has the authority to summons witnesses to produce records relating to matters that it has the power to investigate. To this extent, the Department certainly has authority to investigate failures to pay use tax pursuant to § 12-36-1310. However, the Court questions its ability to enforce a subpoena against an out-of-state party. The remedy for failure to comply with a summons is stated as follows:

If a person summoned pursuant to this section neglects or refuses to obey the summons, the department may apply to the Administrative Law Court for an attachment against him for contempt. Any administrative law judge may hear the application and, if satisfactory proof is made, *shall issue an attachment directed to the sheriff of the county in which the person resides for his arrest*. When the person is brought before him, the judge shall proceed to a hearing of the case and may enforce obedience to the requirements of the summons by making an order consistent with existing laws for the punishment of contempt.


§ 12-54-110(D)(Emphasis added). This Court is unaware of any authority that gives the ALC enforcement powers across state lines. In the case at bar, SunBelt is a registered North Carolina business and was served in North Carolina. Pragmatically, this Court, an administrative body with limited jurisdiction, cannot order a sheriff in North Carolina to arrest one of its residents. Thusly, due to geographic limitations, this Court is without authority to enforce the Department's summons in North Carolina.

ORDER

IT IS THEREFORE ORDERED that SunBelt's Motion to Quash Summons is **GRANTED**.

IT IS FURTHER ORDERED that the Department's Motion to Enforce Summons is **DENIED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
SC Administrative Law Judge

June 11th, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).
This 11 day of June, 2019
By: Shirley C. Robinson
Judicial Law Clerk