

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**5K FARMS, INC.**

**APPELLANT**

**VS.**

**NO.: 2009-CT-01787-SCT**

**MISSISSIPPI DEPARTMENT OF  
REVENUE F/K/A MISSISSIPPI STATE  
TAX COMMISSION**

**APPELLEE**

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**APPELLEE'S SUPPLEMENTAL BRIEF TO  
MISSISSIPPI SUPREME COURT UPON GRANTING OF  
APPELLANT'S PETITION FOR WRIT OF CERTIORARI**

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**COMES NOW** the Mississippi Department of Revenue, formerly known as the Mississippi State Tax Commission<sup>1</sup>, (hereinafter referred to as the "Mississippi State Tax Commission" or the "MSTC"<sup>2</sup>) and files this its supplemental brief pursuant to MRAP 17(h) to this Court in its consideration of this case having granted Appellant's Petition for Writ of Certiorari. The purpose of this supplemental brief is not to be a substitution for the Brief of Appellee or Appellee's Response to Appellant's Petition for Writ of Certiorari to the

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<sup>1</sup> On July 1, 2010, the Mississippi State Tax Commission was reorganized into the Mississippi Department of Revenue and the Mississippi Board of Tax Appeals. See Laws of Mississippi, 2009, Ch. 492. With this reorganization, the Mississippi Department of Revenue became the successor to the Mississippi State Tax Commission in this appeal.

<sup>2</sup>The present appeal involves an assessment, administrative appeal and an attempted judicial appeal that all took place before the July 1, 2010 reorganization of the Mississippi State Tax Commission. For this reason all references to the agency that assessed the tax and defend against the present action below shall be to "Mississippi State Tax Commission" or "MSTC" and the term "State Tax Commission" to refer to the three-member appellate body that heard the administrative appeal by 5K Farms, Inc.

Mississippi Supreme Court previously submitted in this appeal, but to bring to the Court's attention a case that was decided subsequent to the filing of the Appellee's Response to Appellant's Petition for Writ of Certiorari to the Mississippi Supreme Court that is decisive of the issue raised by the Appellant as to whether the Chancery Court has jurisdiction where the aggrieved taxpayer fails to comply with Miss. Code Ann. § 27-77-7(3) and file a bond in double the amount in controversy or pay the amount of tax in protest and sue for a refund of said tax. That case decided on September 22, 2011 is *Walter D. Akins d/b/a Akins Construction Company vs. Mississippi Department of Revenue f/k/a Mississippi State Tax Commission*, Docket No.: 2010-CA-00599-SCT (Hereinafter referred to as "*Akins*").

**It Was Established In The *Akins* Case That The Bond Or Payment Required Of Miss. Code Ann. § 27-77-7 Is Clear And Certain And The Administrative And Judicial Appeal Processes Provided Are Constitutional.**

The similarities between the facts of this case and the *Akins* case are clear. Both cases deal with assessments that were issued after July 1, 2005, but before July 1, 2010, wherein the version of Miss. Code Ann. § 27-77-7 that passed in 2005 is applicable. See Appellant's R.E., Tab 4, p. 4, ¶ 12 & p. 8, ¶ 6 and *Akins* at ¶¶ 2-4. See also the saving clause of the 2009 act which indicated that the law that existed prior to the effective date of the amendment, being July 1, 2010, would apply to assessments issued prior to the effective date of the act. See Laws of

Mississippi, 2009, Ch. 492, Section 144. In this case and *Akins*, the primary issue raised was whether the Chancery Court had subject matter jurisdiction to hear the taxpayer's appeal if the taxpayer did not comply with the requirement of Miss. Code Ann. § 27-77-7(3) of posting a surety bond in "double the amount in controversy" or "pay to the agency, under protest, the amount ordered by the commission to be paid and seek a refund of such taxes". See Miss. Code Ann. § 27-77-7(3). The only difference between the two (2) cases is that in *Akins*, this Court was able to address the issue of whether such statutory requirement of payment or posting of a bond met the requirements of due process.

In *Akins*, this Court found that "Mississippi Code Section 27-77-7 requires the taxpayer to pay the amount in controversy or post a bond for double the amount before seeking judicial review." See *Akins*, ¶ 17. This is similar to the finding of the Court of Appeals below in this case that "The requirements of section 27-77-7 are clear. The taxpayer has thirty days to file an appeal in the chancery court. The taxpayer is also required to pay a bond or the amount of the tax under protest." See Court of Appeals Opinion, ¶ 10. There is no question in either this case or in *Akins* that the posting of the bond or the payment of the tax was jurisdictional and if the taxpayer failed in this requirement, the Chancery Court would not have jurisdiction over this action.

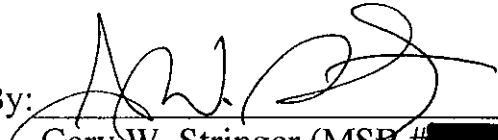
In *Akins*, this Court went further on to determine whether this process of contesting a tax assessment met the requirements of due process. As to the predeprivation process/administrative appeal process provided under Miss. Code Ann. § 27-77-5 to the Review Board of the MSTC and then to the full MSTC, it found that due process requirements were met. See *Akins* at ¶ 15. As to the postdeprivation process under Miss. Code Ann. § 27-77-7 of paying the tax or posting a bond and filing an action in Chancery Court, this Court also found that the due process requirements were met. See Appendix, *Akins* at ¶ 18. This Court went on to find that “the statute [Miss. Code Ann. § 27-77-7] does meet constitutional standards and *Akins* failed to pay the tax or post a bond in order to grant jurisdiction to the chancery court, we affirm the decision of the chancellor.” Likewise in the present appeal, the failure of 5K Farms to post the required bond or pay the tax under protest failed to meet the statutory requirement of Miss. Code Ann. § 27-77-7 and thereby deprived the Chancery Court below of jurisdiction to hear this matter.

### **Conclusion**

Under Miss. Code Ann. § 27-77-7, the authority previously submitted in this appeal and the *Akins* case, the MSTC submits that both the Court of Appeal and the Chancery Court below were correct when they found that the failure of 5K Farms to post the bond or pay the tax under protest deprived the Chancery Court of

subject matter jurisdiction over this action. The decision of the Chancery Court to dismiss this action for lack of such jurisdiction should be affirmed.

Respectfully Submitted:  
Mississippi Department of Revenue  
f/k/a Mississippi State Tax Commission

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**CERTIFICATE OF SERVICE**

I, Gary W. Stringer, one of the attorneys for the Mississippi Department of Revenue, hereby certify that I have served the above and foregoing APPELLEE'S SUPPLEMENTAL BRIEF TO MISSISSIPPI SUPREME COURT UPON GRANTING OF APPELLANT'S PETITION FOR WRIT OF CERTIORARI by mailing, this day, by First Class Mail, postage prepaid, a true and correct copy of same to the following:

Michael A. Heilman, Esquire  
Christopher T. Graham, Esquire  
Heilman Law Group, P.A.  
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Honorable William H. Singletary  
Hinds County Chancery Court Judge  
P.O. Box 686  
Jackson, MS 39205

THUS DONE, this the 21<sup>st</sup> day of November, 2011.

  
Gary W. Stringer