

TUESDAY, August 25, 2009
11:00 A.M.

NO. 3

#25095

JAMES W. FARMER, f/d/b/a
J.W. FARMER & ASSOCIATES, INC.,
Plaintiff and Appellee,

vs.

SOUTH DAKOTA DEPARTMENT OF
REVENUE AND REGULATION,
Defendant and Appellant.

Mr. Matthew R. Fonder
South Dakota Department
of Revenue and Regulation
445 East Capitol Avenue
Pierre SD 57501-3185
PH: 773-4701

(FOR APPELLANT)

Mr. Michael M. Hickey
Ms. Sarah Baron Houy
Bangs, McCullen, Butler,
Foye and Simmons
Attorneys at Law
PO Box 2670
Rapid City SD 57709-2670
Ph 343-1040

(FOR APPELLEE)

The Honorable Kathleen F. Trandahl
Sixth Judicial Circuit
Hughes County

(CIV 07-371)

STATEMENT OF LEGAL ISSUES

1. **WHETHER THE CIRCUIT COURT ERRED IN DETERMINING THAT THE DEPARTMENT'S JEOPARDY ASSESSMENT AND TAX LIEN ARE NULL AND VOID AND OF NO FURTHER FORCE AND EFFECT.**

The circuit court ruled that the jeopardy assessment and tax lien previously filed by the Department against Farmer are null and void and of no further force and effect.

SR 58; APP 3.

Relevant Cases:

DM&E Railroad Corp. v. Acuity, 2006 SD 72, 720 NW2d 655.

Jundt v. Fuller, 2007 SD 62, 736 NW2d 508.

McElhaney v. Anderson, 1999 SD 78, 598 NW2d 203.

People ex rel. L.S., 2006 SD 76, 721 NW2d 83.

Relevant Statutory and Constitutional Provisions:

S.D. Const. Art. III, §24

S.D. Const. Art. IV, §8

SDCL 10-45-35

SDCL 10-45-37

SDCL 10-45-39 (repealed)

SDCL 10-45-43 (repealed)

SDCL 10-59-11

SDCL 10-59-16

SDCL 10-59-30

**2. WHETHER THE CIRCUIT COURT ERRED IN AWARDING
FARMER ATTORNEY'S FEES.**

The circuit court held that the "position taken by the Department in this action in refusing to satisfy and release the jeopardy assessment and lien filed against [Farmer] was unreasonable and not substantially justified," and therefore Farmer is entitled to recover his attorney fees and costs incurred in bringing this action. SR 61; APP 9.

Relevant Cases:

NSP v. South Dakota Dept. of Revenue, 578 NW2d 579, 582 (SD 1998).

Van Emmerik v. Montana Dakota Utilities, 332 NW2d 279, 282 (SD 1983).

Relevant Statutory Provisions:

SDCL 10-59-34