**IN THE SUPREME COURT OF FLORIDA**

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CASE NO.: 2026-0017
L.T. CASE NO.: 1D2024-2098

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STATE OF FLORIDA, DEPARTMENT OF REVENUE,

PETITIONER,

V.

SEI FUEL SERVICES, INC.,

RESPONDENT.

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# DEPARTMENT OF REVENUE'S JURISDICTIONAL BRIEF

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## STATEMENT OF THE ISSUES

This case concerns whether mandamus may compel the state to pay a disputed statutory interest claim on a previously adjudicated tax refund, where no tribunal has found that any of the statutory criteria for interest are satisfied. This case implicates potentially thousands of interest claims totaling millions of dollars annually.

The trial court dismissed SEI Fuel Services, Inc.'s ("SEI") mandamus petition seeking interest under section 213.255, Florida Statutes, because it found mandamus was inappropriate: SEI had an adequate legal remedy and could have sought interest during its refund adjudication. The court also held that section 72.011(1) bars a taxpayer who administratively contests a refund denial and seeks interest from later bringing a related circuit court action.

The First District Court of Appeal reversed. In doing so, it created an express and direct conflict with decisions from this Court and other districts by simultaneously holding that (1) the Department of Revenue ("Department") is precluded from contesting SEI's interest claim because the interest claim was not addressed in the prior refund proceeding, and (2) the interest claim was not ripe

in the refund proceeding and so could be brought anew in circuit court.

The issues are:

1. Whether the Department may be precluded from disputing SEI's interest claim under section 213.255 when that statute was never litigated in the prior refund action and the First District held that the interest claim was then unripe.

2. Whether an interest claim under section 213.255 only becomes ripe upon issuance of a tax refund.

3. Whether a taxpayer may initiate a new mandamus action for payment of disputed interest after completing the administrative refund process and appeal, and where no prior determination of entitlement to interest exists.

## STATEMENT OF THE CASE AND FACTS

The Department audited SEI for motor fuel and pollutant taxes and found that SEI made two payments of a certain fuel tax under section 206.414—one to its vendor ("vendor payment"), and one directly to the Department ("direct payment"). *SEI Fuel Services, Inc. v. Florida Department of Revenue*, 379 So. 3d 607, 609 (Fla. 1st

DCA 2024) ("*SEI Fuel I*"). The Department issued an assessment to SEI following the audit addressing various fuel tax issues. *Id.*

SEI informally protested the assessment under section 213.21 before the Department, demanding a refund of the *vendor payment.* Within the protest, SEI filed its 2019 refund application. On June 5, 2020, the Department denied the refund claim for the vendor payment. SEI then filed a chapter 120 petition, again seeking a refund of the vendor payment.[1] It was only in April 2021, with its amended petition, that SEI abandoned its claim for the vendor payment and, for the first time, demanded a refund of the *direct payment* and interest. *SEI Fuel Services, Inc., v. Dep't of Revenue*, Case No. 21-1403, Amended Petition at ¶ 28-29 (Fla. DOAH Apr. 27, 2021). After the administrative proceeding, the hearing officer concluded that the direct payment of tax to the Department was proper, and that section 206.414(3) barred a refund of SEI's unlawful payment of tax to SEI's vendor. *SEI Fuel Services, Inc., v.*

[1] *SEI Fuel Services, Inc., v. Dep't of Revenue*, Case No. 21-1403, Petition at ¶ 4.a. and Exhibit B (Fla. DOAH Apr. 27, 2021). *SEI Fuel I* ordered a refund of the *direct payment*. SEI now seeks mandamus ordering interest on its 2019 *vendor payment* refund application. The Department notes this here not to show conflict jurisdiction, only to point out there are factual as well as procedural defects with SEI's interest claim that the Opinion improperly precluded.

*Dep't of Revenue*, Case No. 2022-074-FOI (Fla. DOR Final Order Sept. 22, 2022).

SEI appealed the Final Order in *SEI Fuel I*. SEI did not raise any claim for interest under section 213.255 on appeal, and the Department did not address interest either.

The First District found that SEI was not pursuing the vendor payment, but did order a refund of the direct payment:

> [SEI] acknowledged that it was statutorily barred from getting a refund for the first tax payment made through Sunshine [i.e., the vendor payment].
> …
> Since the second payment was made directly, and nothing bars refunds for direct tax payments mistakenly made to the Department, [SEI] should not have been disqualified under § 206.414(3) from receiving a refund of the $3,179,675.11 payment made directly to the Department [i.e., the direct payment].

*SEI Fuel I*, 379 So. 3d at 609, 610. *SEI Fuel I* did not address the 2019 application, did not award interest, and did not find that any requirement in section 213.255 for the award of interest was satisfied. *Id.*

After SEI received a refund of the direct payment, it demanded about $1.2 million in interest from the Department based on its September 24, 2019, application. App. at 8. In light of the prior

denial of SEI's interest claim and SEI's failure to challenge or appeal it, the Department did not pay.

SEI then filed a mandamus action in circuit court seeking interest on its 2019 refund application. The court dismissed the action, finding that administrative finality precluded litigating SEI's interest claim, that section 72.011 barred a new circuit court action tied to the previously-adjudicated chapter 120 proceeding, that SEI had an adequate remedy in that proceeding, and that mandamus did not lie. *SEI Fuel Services, Inc. v. Dep't of Revenue*, Case No. 2024CA797, Final Order at 3-4, (Fla. 2nd Cir. Ct. Aug. 1, 2024).

SEI appealed. The First District reversed, holding that SEI's interest claim "is a separate action for interest that became ripe, due, and owing when the warrant was issued for the refund," and so did not have to be raised earlier. The Opinion also sua sponte declared that because in "*SEI Fuel I*, the Department never argued that Appellant's refund application did not meet all the conditions in section 213.255 or that it was not complete, [] it cannot make that argument now." App. 7-8.

SEI did not argue in circuit court or on appeal that *SEI Fuel I* barred any defenses. The Department had no opportunity to

address this new theory. Nevertheless, the Department's motion for rehearing, rehearing en banc, and certification were summarily denied.

## SUMMARY OF THE ARGUMENT

"It is axiomatic that a premature claim not ripe for adjudication when a prior judgment or order was made is not subject to the doctrine of res judicata…" *Keller Kitchen Cabinets v. Holder*, 586 So. 2d 1132, 1142 (Fla. 1st DCA 1991).

By precluding the Department from disputing SEI's statutory interest claim on the ground that the issue was not addressed in *SEI Fuel I*, while simultaneously holding that the interest claim was not ripe then, the Opinion ignored this axiom. And it expressly and directly conflicts with this Court's holding that "a premature compensation claim, not ripe for adjudication, does not meet the required elements of identity in the thing sued for or identity of the cause of action necessary for application of the doctrine of res judicata." *Holder v. Keller Kitchen Cabinets*, 610 So. 2d 1264, 1267 (Fla. 1992).

The First District's decision also expressly and directly conflicts with the Second District Court's—and its own—holding

that an unripe claim cannot be precluded. *Shuck v. Bank of Am., N.A.*, 862 So. 2d 20, 24 (Fla. 2d DCA 2003) (dismissal of a premature claim does not operate as res judicata); *Myers v. Hillsborough Cty. Sch. Bd.*, 982 So. 2d 735, 736 (Fla. 1st DCA 2008) (a "claim [that] was not ripe for review at the earlier hearing…is not barred by res judicata.").

The Department's position is simple—if SEI's interest claim was not ripe in the refund action, that proceeding cannot preclude the Department from disputing the interest claim now.

## ARGUMENT FOR JURISDICTION

### I. The First District's opinion expressly and directly conflicts with this Court and other districts on whether an unripe claim has preclusive effect in subsequent proceedings.

The First District's decision is founded on a doctrinal paradox. It held that SEI's interest claim was not ripe in the prior refund proceeding, yet also that the refund proceeding precludes the Department from disputing the same claim. This Court and other districts have expressly rejected this paradox.

For example, when considering whether a party could pursue a workers' compensation claim for a surgery necessitated by a

compensable injury, this Court held unequivocally that "a premature compensation claim, not ripe for adjudication, does not meet the required elements of identity in the thing sued for or identity of the cause of action necessary for application of the doctrine of res judicata." *Holder v. Keller Kitchen Cabinets*, 610 So. 2d 1264, 1267 (Fla. 1992).

Similarly, the Second District held that a dismissal on the pleadings of a prematurely filed claim does not implicate res judicata. *Shuck v. Bank of Am., N.A.*, 862 So. 2d 20, 24 (Fla. 2d DCA 2003).

Courts nationwide follow the same rule: res judicata cannot bar a claim that was not ripe in the earlier action. *See, e.g., Sikorsky v. City of Newburgh*, 136 F.4th 56, 63-64 (2d Cir. 2025); *Ohio ex rel. Boggs v. City of Cleveland*, 655 F.3d 516, 522 (6th Cir. 2011); *Eagle Oil & Gas Co. v. TRO-X, L.P.*, 619 S.W. 3d 699, 706 (Tex. 2021).

The express and direct conflict in the First District's decision should be addressed by this Court. If SEI is not barred from pursuing a new interest claim action in circuit court under section

213.255 that was previously unripe in the chapter 120 proceeding, the Department cannot be barred from disputing it.

## II. This Court should exercise its discretion to address the critical problems created by the First District's opinion.

The volume of persons impacted, and the compelling sovereign immunity and separation of powers interests implicated by the sua sponte ruling in the Opinion, weigh heavily in favor of this Court's attention.

The Opinion's rule—that interest claims become ripe only after a tax refund warrant is issued—will force tax refund claimants to litigate disputed interest claims only after refund issuance, spawning serial proceedings. The impact is substantial, reaching potentially thousands of refund and interest claims annually. The breadth of affected taxpayers underscores the need for this Court's intervention. *Young v. State*, 678 So. 2d 427, 429 (Fla. 4th DCA 1996); *see also Ortiz v. State*, 24 So. 3d 596, 618 (Fla. 5th DCA 2009) (Cohen, J., dissenting) (discussing various factors weighing on the exceptional importance of a case).

Since section 213.255 was enacted in 1999, taxpayers, the Department, and adjudicatory bodies have uniformly treated

interest as an issue that can—and should—be resolved alongside the underlying tax refund. *See Maronda Homes Inc. of Florida v. Dep't of Revenue*, Case No. 2018 CA 0733 (Fla. 2nd Cir. Ct.) (Feb. 4, 2020) (simultaneously awarding both a tax refund and interest on that refund); *Southeast Petro Distributors, Inc. v. Dep't of Revenue*, Case No. 19-5900 (Fla. DOAH Oct. 19, 2020) Recommended Order at pgs. 1-2. (noting that the issues to be determined were whether the taxpayer was "entitled to a refund for taxes paid…and if so, whether [the taxpayer] is entitled to statutory interest on the amount of any refund paid, pursuant to section 213.255, Florida Statutes."). Consolidating these determinations promotes efficiency, avoids duplicative litigation, and aligns with section 72.011(1)(a)'s requirement that tax and interest refund challenges proceed in a single forum. This Court too has long recognized that if a party believes it was improperly not awarded interest in an initial proceeding, the proper remedy is by seeking review of that ruling, not by commencing a new mandamus action. *State ex rel. Boulevard Mortg. Co. v. Thompson*, 151 So. 704 (Fla. 1933).

The Opinion also negates critical sovereign immunity and separation of powers interests. Under common law, there is no right

to a refund of taxes paid in error, or interest on such refunds. *See State ex rel. Victor Chemical Works v. Gay*, 74 So. 2d 560, 562 (Fla. 1954); *Kuhnlein v. Dep't of Revenue*, 662 So. 2d 308 (Fla. 1995). Statutes allowing tax refunds and interest are exceptions to the common law, waive sovereign immunity, and must be strictly construed. *See Dep't of Revenue v. Bank of Am., N.A.*, 752 So. 2d 637, 641 (Fla. 1st DCA 2000); *Levine v. Dade Cty. Sch. Bd.*, 442 So. 2d 210, 212 (Fla. 1983).

Sovereign immunity bars an interest claim against the state unless it is provided for by statute or contract. *State v. Fam. Bank of Hallandale*, 623 So. 2d 474, 479 (Fla. 1993); *Boulis v. Dep't of Transp.*, 733 So. 2d 959, 963 (Fla. 1999). And even where there is a lawful judgment against the state—notably absent here—separation of powers only permits mandamus to force the state to pay money from the treasury when there is explicit statutory authority to pay it. *Fla. Dep't of Envtl. Prot. v. ContractPoint Fla. Parks, L.L.C.*, 986 So. 2d 1260 (Fla. 2008).

The Legislature has only allowed interest on tax refunds if the conditions in section 213.255 are met. *Kuhnlein v. Dep't of Rev.*, 662 So. 2d 308 (Fla. 1995) (holding pre-section 213.255 that there

was no entitlement to prejudgment interest on tax refund claims). Yet by excusing tax refund claimants from satisfying section 213.255 when claimants file successive mandamus actions after refund claims are adjudicated, the Opinion reaches far beyond the parties in this case and nullifies the express conditions and limited waiver of sovereign immunity that the Legislature set in section 213.255. Neither the Opinion, nor the trial court, nor *SEI Fuel I* found section 213.255 was satisfied. Rather, the Opinion precludes the Department from disputing interest after a refund proceeding, but also ruled that an interest claim cannot be disputed in a refund proceeding because it is unripe then. This effective nullification of section 213.255 is an issue of great public importance.

The finality and timely resolution of tax refund and related interest claims is also a matter of great public importance. *See* § 72.011(1) and (2), Fla. Stat. (permitting a challenge to a tax refund denial to be commenced within 60 days). The Opinion offers no limiting principle on when and where interest actions may be filed if ripeness arises only after refund payment, inviting open-ended, duplicative litigation in multiple forums.

## CONCLUSION

The decision below creates an express and direct conflict with this Court's precedent and the Second District by holding that an unripe claim can nevertheless preclude later litigation. That contradiction cannot be reconciled with *Holder*, *Shuck*, and the long-established rule that premature claims do not trigger res judicata. And the Opinion effectively nullifies the Legislature's limited waiver of sovereign immunity in section 213.255, disrupts the unified review structure for tax refund and interest claims mandated by section 72.011, and invites serial mandamus actions for potentially thousands of refund-interest claims processed each year.

Because the decision expressly and directly conflicts with case law and presents issues of great public importance, this Court should accept jurisdiction and review the Opinion below.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** on this 15th day of January 2026 a true and correct copy of the foregoing has been furnished via the court system ePortal to: **Michael J. Bowen, Esquire**, and **Kristen M. Fiore, Esquire**, Akerman LLP, 50 N. Laura Street, Suite 3100, Jacksonville, FL 32202, and Akerman LLP, 201 E. Park Ave., Suite 300, Tallahassee, Florida 32301 michael.bowen@akerman.com, maggie.hearon@akerman.com, jennifer.meehan@akerman.com,

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this brief complies with the requirements of Florida Rules of Appellate Procedure 9.045(e), 9.210(a)(2)(A) and 9.210(f). This brief uses Bookman Old Style 14-point font and is within the word count limit requirements, containing approximately 2490 words.

*/s/Randi E. Dincher*
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