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**Jun 19 2024**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals**

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**APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT**

**Honorable Debra B. Durden, Administrative Law Judge**

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**Appellate Case No. 2024-000962  
Administrative Law Court Case No. 23-ALJ-17-0362-CC**

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**Watertoys, L.L.C., d/b/a Tidalwave Watersports,.....Appellant,**

**v.**

**South Carolina Department of Revenue,.....Respondent.**

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**MOTION TO DISMISS APPEAL WITH PREJUDICE  
AND MEMORANDUM IN SUPPORT**

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Pursuant to Rule 240, SCACR, Respondent South Carolina Department of Revenue (the Department) requests that the Court dismiss Appellant Watertoys, L.L.C. d/b/a Tidalwave Watersports' appeal. Appellant is attempting to appeal a proposed tax assessment issued by the Department and affirmed by the Administrative Law Court (ALC). Appellant, however, has neither paid these taxes nor posted a bond<sup>1</sup> for such taxes as required by S.C. Code Ann § 12-60-3370 (2014). Appellant's appeal should therefore be dismissed based on a lack of appellate jurisdiction.

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<sup>1</sup> The Department disputes that the document titled "Appeal Bond & Personal Surety" that Appellant filed with the Court constitutes a bond under section 12-60-3370.

On April 18, 2024, the ALC issued its Order Granting the Department's Motion for Summary Judgment and Denying Appellant's Motion for Summary Judgment. *See* attached April 18, 2024 Order. The Order concluded that Appellant was subject to admissions tax and penalties. On May 14, 2024, the ALC issued its Order Denying Appellant's Motion for Reconsideration. *See* attached May 14, 2024 Order. On or about May 21, 2024, the Department provided Appellant with the amount of interest and penalties updated through June 13, 2024.<sup>2</sup> *See* attached Email Thread with Appellant's counsel. Further, the Department explained to Appellant that taxes includes interest. *See id.* As of June 17, 2024, Appellant has not paid or posted a bond for the amount of the tax including interest. *See* attached Affidavit of Denise Blackwell.

Because Appellant failed to pay the tax determined to be due by the ALC or post a proper bond for such tax prior to the appeal filed with the South Carolina Court of Appeals (Court) in this matter, this Court lacks appellate jurisdiction. *See State v. Brown*, 358 S.C. 382, 596 S.E.2d 39 (2004). The Administrative Procedures Act (APA) provides for the appeal of an ALC decision:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

S.C. Code Ann. 1-23-610(A)(1) (Supp. 2020).

When an appeal is made of an ALC decision related to taxes, section 12-60-3370 provides, in relevant part: "Except as otherwise provided, a taxpayer shall pay, or post a bond for, all taxes,

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<sup>2</sup> The Department Determination (final agency decision) issued on August 18, 2023 included the amount of tax, penalties, and interest computed through September 18, 2023. *See* attached Department Determination.

not including penalties or civil fines, determined to be due by the administrative law judge before appealing the decision to the court of appeals.” (emphasis added).<sup>3</sup>

Even if Appellant’s filed document constituted a bond, the amount does not include the full amount of tax due. “‘Tax’ or ‘taxes’ means taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, imposed by this title, or subject to assessment or collection by the department.” S.C. Code Ann. § 12-60-30 (2014) (emphasis added). Section 12-60-3370 explicitly excludes penalties and civil fines from the tax that the taxpayer must pay or post a bond for, but makes no such exclusion of interest. S.C. Code Ann. § 12-54-25(A) (2014) mandates, “[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety.” Therefore, Appellant must pay or post a bond for the tax, which includes interest.<sup>4</sup>

In *State v. Brown*, the South Carolina Supreme Court concluded that the “failure of a party to comply with the procedural requirements for perfecting an appeal may deprive the court of

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<sup>3</sup> This Court recently dismissed two other appeals for failure to comply with section 12-60-3370. See *CDT, Inc. v. S.C. Dep’t of Rev.* (Appellate Case No. 2021-001528) and *Vimlesh V. Patel and Punita Patel v. S.C. Dep’t of Rev.* (Appellate Case No. 2021-001547).

<sup>4</sup> Although not precedent, in an unpublished decision *Anonymous Taxpayer v. S.C. Dep’t of Rev.*, 2008-UP-124, available at 2008 WL 9837290, this Court, citing to *State v. Brown*, found it lacked appellate jurisdiction in the matter because Appellant failed to pay or post a bond for the amount of tax and interest prior to the appeal to the circuit court pursuant to section 12-60-3370. At the time, the taxpayer appealed the ALC decision, such appeals were taken to the circuit court pursuant to then existing sections 12-60-3370 and 1-23-610. In 2006, these sections, in addition to S.C. Code Ann. § 12-60-3380, were amended to provide that appeals from ALC decision are to the Court of Appeals. See 2006 Act No. 387, § 5, eff. July 1, 2006 (amending 1-23-610); 2006 Act No. 387, § 12, eff. July 1, 2006 (amending 12-60-3370); and 2006 Act No. 387, § 13, eff. July 1, 2006 (amending 12-60-3380). Section 53 of 2006 Act 387 further provides:

This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.

‘appellate’ jurisdiction over the case, but it does not affect the court’s subject matter jurisdiction.” *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (citing *Great Games, Inc. v. S.C. Dep’t of Rev.*, 339 S.C. 79, 82 at n. 5, 529 S.E.2d 6, 7 at n. 5 (2000)). The Supreme Court reiterated that holding in *Allison v. W.L. Gore & Associates*, stating that questions of compliance with rules, regulations, and statutes governing an appeal are questions of appellate jurisdiction. *Allison v. W.L. Gore & Associates*, 714 S.E.2d 547, 549, 394 S.C. 185, 188 (2011) (citing *In Re November 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 686 S.E.2d 683 (2009)). In *Allison*, the Supreme Court held that the failure to appeal a decision from a single Commissioner to the Full Workers Compensation Commission within 14 days, as required by South Carolina Code Ann. § 42-17-50 (Supp. 2010), deprived the Commission of appellate jurisdiction.

Section 12-60-3370 explicitly provides that a taxpayer shall pay or post a bond for all taxes determined by the ALC to be due, before appealing the decision to this Court. As our Supreme Court has stated, “a statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous....” *Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). The requirements of section 12-60-3370 are clear—the taxes must be paid or bond must be posted before appealing, not after appealing to this Court. Appellant has neither paid nor posted bond for the tax determined by the ALC. Accordingly, Appellant is not in compliance with section 12-60-3370. To permit Appellant to now pay the taxes or post bond would render the “before appealing the decision to the court of appeals” language superfluous. Because no statute shall be interpreted in a manner that renders any term in the statute superfluous, Appellant cannot now pay the tax or post bond, as it has already appealed and the time for filing an appeal has passed. Appellant’s failure to comply with the requirements of section 12-60-3370 deprives this Court of appellate jurisdiction and this appeal should be dismissed.

The failure of Appellant to pay the tax ordered by the ALC or post sufficient bond prior to filing its notice of appeal prejudices the Department. The statutory mandate of section 12-60-3370 ensures that the tax monies owed, as determined by the ALC, will be held in trust for the benefit of the citizens of South Carolina pending the outcome of Appellant's appeal.<sup>5</sup> The posting of a bond ensures that these tax monies will be available in the event the State ultimately prevails. Here, Appellant has not paid the tax or a posted a bond on such tax imposed by the ALC in its Order. Such action harms the State and its citizens. The documents filed by Appellant do not evidence that Appellant or a surety has available the full tax monies in the event Appellant's appeal is unsuccessful. Importantly, interest continues to accrue until the tax is paid in its entirety. While payment of the tax to the Department would stop interest during the pendency of the appeal, a proper bond would need to account for the accruing interest. Therefore, Appellant failed to ensure that South Carolina will be paid the tax and interest due if its appeal is unsuccessful. Ostensibly, this is precisely the situation the General Assembly sought to avoid by enacting section 12-60-3370 in 1995.

It is important for this Court to understand Appellant's conduct regarding its tax obligations. Since at least 2005, the Department has published guidance that parasail rides were subject to admissions tax. *See* S.C. Rev. Rul. #05-14 and April 18, 2024 Order at p. 3. Despite operating parasailing rides, Appellant did not collect or file admissions tax returns or hold an admissions tax license from September 1, 2018 to December 31, 2021 (Periods at Issue). *See* attached Stipulations at ¶ 6. On February 17, 2022, the Department issued Appellant a proposed assessment for admissions tax, interest, and penalties. *Id.* at ¶ 8. On April 18, 2024, the ALC upheld

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<sup>5</sup> Notably, should Appellant prevail in this matter, the State must issue a refund of the tax paid.

the proposed assessment and denied Appellant's motion to reconsider on May 14, 2024. Now, Appellant seeks to further delay paying the taxes it owes for the Periods at Issue.

Accordingly, because Appellant has neither paid nor posted bond for the taxes determined by the ALC, it is not in compliance with section 12-60-3370. Because Appellant is not in compliance with section 12-60-3370, the Department respectfully submits this Court lacks appellate jurisdiction in this matter and respectfully requests the appeal be dismissed.



Marcus D. Antley, III, Esquire (Bar No. 102176)

Senior Counsel, Tax

W. Allen Myrick, Esquire (Bar No. 14718)

Associate General Counsel

Jason P. Luther, Esquire (Bar No. 78021)

Chief Legal Officer

300 A Outlet Pointe Blvd.

Columbia, SC 29210

803-898-5623

[Marcus.Antley@dor.sc.gov](mailto:Marcus.Antley@dor.sc.gov)

[courtorders@dor.sc.gov](mailto:courtorders@dor.sc.gov)

Attorneys for Respondent South Carolina  
Department of Revenue

Other Counsel of Record:

Thomas R. Goldstein

P. O. Box 71121

N. Charleston, SC 29415-1121

Attorney for Appellant

June 19, 2024

MTD006

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Watertoys, LLC, d/b/a Tidalwave  
Watersports,

Petitioner,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 23-ALJ-17-0362-CC

**ORDER GRANTING  
RESPONDENT'S MOTION FOR  
SUMMARY JUDGMENT  
AND DENYING PETITIONER'S  
MOTION FOR  
SUMMARY JUDGMENT**

This case is before the Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed on September 5, 2023, by Watertoys, LLC, d/b/a Tidalwave Watersports (Petitioner). Petitioner contests a determination by the South Carolina Department of Revenue (Respondent, DOR, or Department) finding it liable for admissions taxes arising out of parasailing rides for which it charged passengers admission fees from September 1, 2018, to December 31, 2021 (the Audit Period). On March 25, 2024, Petitioner filed a Motion for Summary Judgment. On March 29, 2024, DOR filed its own Motion for Summary Judgment. Responses and Replies were filed with respect to each of the motions.

Under SCALC Rule 68, this Court may apply the South Carolina Rules of Civil Procedure in contested case proceedings where no ALC rule applies. Therefore, Rule 56, SCRPC, applies in determining whether summary judgment is proper in this case. Summary judgment is proper when there is no issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 33, 530 S.E.2d 369, 371 (2000); Rule 56(c), SCRPC. Summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusions or inferences to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000). When determining whether any triable issue of fact exists, "the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Quail Hill, LLC v. Cty. of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment can be granted. Trico Surveying, Inc. v. Godley Auction Co., Inc., 314 S.C. 542, 544, 431 S.E.2d 565, 566 (1993).

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“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). A party may not rest upon the mere allegations or denials of his pleadings. Rule 56(e), SCRPC. A party opposing summary judgment must come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial. Doe ex rel. Doe v. Batson, 345 S.C. 316, 320, 548 S.E.2d 854, 856 (2001). One may not create a genuine issue of material fact and, thus, avoid summary judgment by asserting that the trier of fact may disbelieve uncontradicted evidence. Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010).

In this case, the parties agree that there is no genuine issue of material fact relevant to the transactions at issue. Therefore, it is appropriate to resolve the issues related to those transactions by summary judgment.

#### **PETITIONER'S MOTION**

Petitioner moves for summary judgment finding Petitioner's parasailing ticket sales income is exempted from the admissions tax. S.C. Code Ann. § 12-21-2420 (2014 & Supp. 2023) imposes an admissions tax on amounts paid to enter places of amusement. For purposes of that section, “admission” is defined in S.C. Code Ann. § 12-21-2410 (2014) as “the right or privilege to enter into or use a place or location.” Petitioner argues parasailing falls under an exemption from admissions taxes found at section 12-21-2420(13), which states “[N]o tax may be charged or collected: . . . [o]n admissions to boats which charge a fee for pleasure fishing, excursions, sight-seeing and private charter.” Petitioner argues parasailing falls within the language, “excursions, sight-seeing and private charter” in section 12-21-2420(13). Additionally, Petitioner points to S.C. Rev. Rul. #05-14, a policy statement issued by the Department, which states:

It should be noted that it has been the longstanding position of the Department that . . . fees for boat, carriage, helicopter, plane or bus rides for touring, charter, fishing, or excursion . . . are not subject to the admissions tax.

In its motion, Petitioner states the following:

[‘]Excursion[’] means: ‘a short journey or trip, especially one engaged in leisure activity.’ (Oxford Dictionary) or ‘a usually brief pleasure trip’ (Webster’s Seventh New Collegiate Dictionary)[.] [‘]Sight-seeing[’] means: ‘the activity of visiting

places of interest in a particular location.’ (Oxford Dictionary) or ‘the act or pastime of seeing sights.’ (Webster’s Seventh New Collegiate Dictionary[.] [‘]Private charter[’] means: ‘the reservation of an aircraft, boat, or bus for private use.’ (Oxford Dictionary) or ‘a mercantile lease of a ship or some principal part of it.’ (Webster’s Seventh New Collegiate Dictionary)[.]

Petitioner argues section 12-21-240(13) is unambiguous and that the definitions Petitioner cites of “excursion,” “sight-seeing,” and “private charter” plainly encompass parasailing.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute. Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citation omitted). In the alternative, Petitioner argues if section 12-21-240(13) is ambiguous, then the Court is required to construe the ambiguity against the Department, citing Alltel Commc’ns, Inc. v. S.C. Dep’t of Revenue, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012). (Where the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor.)

### RESPONDENT’S MOTION

The Department moves for summary judgment finding Petitioner liable for admissions taxes on ticket sales for parasailing rides Petitioner conducted during the Audit Period. Section 12-21-2420 imposes an admissions tax on amounts paid to enter places of amusement. For purposes of that section, “admission” is defined in section 12-21-2410 as “the right or privilege to enter into or use a place or location.” A “place of amusement” is “any enclosure or location consisting of an activity that occupies one’s spare time, distracts the mind, relaxes, entertains, or gives pleasure.” S.C. Rev. Rul. # 05-14. The Department’s published policy statement specifically includes “para sail rides” as an example of a place of amusement subject to admissions taxes. Id.

The Department also argues Petitioner does not qualify for a tax exemption. Section 12-21-2420 provides exemptions for admissions taxes. “The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption.” Home Med. Sys., Inc. v. S.C. Dep’t of Revenue, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009).

Additionally, the Department argues Petitioner is liable for penalties for failing to file its admissions tax returns during the Audit Period. S.C. Code Ann. § 12-54-43(C)(1) (2014) states:

In the case of failure to file a return on or before the date prescribed by law, determined with regard to any extension of time for filing, there must be added to the amount required to be shown as tax on the return, a penalty of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of the month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43(C)(1) (2014). Section 12-54-43(E) states:

In case of failure to pay any amount of any tax required to be shown on a return which is not shown, including an assessment within ten days of the date of the notice and demand for payment, there must be added to the amount of tax stated in the notice and demand one-half of one percent of the amount of the tax if the failure is for not more than one month, with an additional one-half of one percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.

S.C. Code Ann. § 12-54-43(E) (2014).

#### **ANALYSIS OF THE MOTIONS**

The parties do not dispute any of the material facts of this case. Both parties agree parasailing is a form of amusement. Therefore, the parties' respective motions turn on the issue of whether parasailing is exempted from the admissions tax. Section 12-21-2420(13) provides an exemption for "admissions to boats which charge a fee for pleasure fishing, excursion, sight-seeing and private charter." Petitioner points to S.C. Rev. Rul. #05-14 which states the Department does not consider "fees for boat, carriage, helicopter, plane or bus rides for touring, charter, fishing, or excursion" subject to admissions taxes. However, the same Department ruling specifically notes "para sail rides" are subject to admissions taxes. "If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014); quoting Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843 (1984). "[C]ourts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations 'unless there is a compelling reason to differ.'" Kiawah, 411 S.C. at 34, 766 S.E.2d at 718.

Section 12-21-2420(13) is silent with respect to whether parasailing falls under "excursion, sight-seeing and private charter." Therefore, the statute is ambiguous with respect to whether

parasailing falls under the exemption. Petitioner argues South Carolina precedent requires the Court to resolve the ambiguity in favor of Petitioner. However, the Alltel case cited by Petitioner relates to whether a taxpayer is subject to a tax rather than whether the taxpayer is exempt from the tax. Both parties admit the admissions charged for Petitioner's parasailing rides are subject to an admissions tax pursuant to section 12-21-2420 unless an exemption applies to parasailing. Therefore, the Alltel case is inapplicable to this matter because there is no ambiguity about whether section 12-21-2420 applies to Petitioner.


Instead, the statute in question in this matter is a tax exemption. South Carolina law requires tax exemption statutes to be construed strictly against the claimed exemption. Home Med. Sys., 382 S.C. at 564, 677 S.E.2d at 587. The Department's interpretation of this matter in S.C. Rev. Rul. #05-14 states "para sail rides" are subject to the admissions tax. Parasail rides are not specifically exempted under either of the above code sections. Although section 12-21-2420(13) exempts "admissions to boats which charge a fee for . . . excursion, sight-seeing and private charter," the statute does not specifically exempt parasailing. In contrast, there is no ambiguity in the Department's interpretation. The Department explicitly states "para sail rides" are subject to the admissions tax. The later language in S.C. Rev. Rul. #05-14 regarding the Department's longstanding position that "fees for boat . . . rides for touring, charter, fishing, or excursion . . . are not fees to enter or use a place of amusement and are not subject to the admissions tax," merely supplements the preceding statement that "The following list of places of amusements is not all inclusive and is merely provided as guidance." The Department's longstanding interpretation, published in a policy statement, is entitled to deference. Moreover, the language of the exemption does not unambiguously include parasailing. Therefore, a strict construction of the exemption excludes parasail rides from its terms. Since Petitioner's admissions for parasailing rides are subject to the admissions tax as a matter of law, the Court grants the Department's motion for summary judgment and denies Petitioner's motion for summary judgment. Accordingly,

#### **ORDER**

**IT IS HERREBY ORDERED** that the Petitioners' Motion for Summary Judgment is **DENIED**.

**IT IS FURTHER ORDERED** that the Department's Motion for Summary Judgment is **GRANTED**. Furthermore, Petitioner is liable for penalties pursuant to section 12-54-43.

**AND IT IS SO ORDERED.**

  
Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

April 18, 2024  
Columbia, South Carolina

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Watertoys, LLC, d/b/a Tidalwave  
Watersports,

Petitioner,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 23-ALJ-17-0362-CC

**ORDER DENYING  
PETITIONER'S MOTION  
FOR RECONSIDERATION**

This case is before the Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed on September 5, 2023, by Watertoys, LLC, d/b/a Tidalwave Watersports (Petitioner). Petitioner contests a determination by the South Carolina Department of Revenue (Respondent, DOR, or Department) finding it liable for admissions taxes arising out of parasailing rides for which it charged passengers admission fees from September 1, 2018, to December 31, 2021 (the Audit Period). The parties entered into stipulations of fact dated March 20, 2024. On March 25, 2024, Petitioner filed a Motion for Summary Judgment. On March 29, 2024, DOR filed its own Motion for Summary Judgment. Responses and Replies were filed with respect to each of the motions. On April 18, 2024, this Court issued an Order Granting Respondent's Motion for Summary Judgment and Denying Petitioner's Motion for Summary Judgment. On April 24, 2024, Petitioner filed a Motion for Reconsideration. On May 7, 2024, DOR filed a response to the motion.

In its Motion to Reconsider, Petitioner raises for the first time an assertion that a genuine issue of material fact exists as to whether parasail rides fall under the exemption to the admissions tax for admission to boats which charge a fee for pleasure fishing, excursions, sight-seeing and private charter. Petitioner failed to raise this issue in its brief in support of its Motion for Summary Judgment or in response to Respondent's Motion for Summary Judgment. A party cannot use a Rule 59(e) motion to raise for the first time an issue that the party could have raised prior to judgment but did not. Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990).

Moreover, if Petitioner intended for the Court to find that a genuine issue of fact exists to foreclose summary judgment, it was incumbent upon Petitioner to file an affidavit or other evidence setting forth the factual dispute. A party may not rest upon the mere allegations or denials

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of his pleadings. Rule 56(e) SCRPC. A party opposing summary judgment must come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial. Doe v. Batson, 345 S.C. 316, 321, 548 S.E.2d 854, 856 (2001). One may not create a genuine issue of material fact and, thus, avoid summary judgment by asserting that the trier of fact may disbelieve uncontradicted evidence. Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 694 S.E.2d 1 (S.C. 2010).

The remaining arguments in Petitioner's Motion for Reconsideration merely reiterate the arguments made in the Motions for Summary Judgment, which have been carefully considered and ruled upon by this Court. This motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Accordingly,

**ORDER**

**IT IS THEREFORE ORDERED** that Petitioner's Motion for Reconsideration is **DENIED**.

**AND IT IS SO ORDERED.**



Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

May 14, 2024  
Columbia, South Carolina

**DEPARTMENT DETERMINATION**

**Taxpayer:**

Watertoys, LLC  
d/b/a Tidalwave Watersports  
1285 Llewellyn Road  
Mount Pleasant, SC 29464-3818

**Periods Involved:**

September 1, 2018 – December 31, 2021

**Matters in Dispute:**

1. Is the price paid to Watertoys, LLC d/b/a Tidalwave Watersports (the Taxpayer) for parasailing rides subject to admissions tax?
2. Is Taxpayer liable for penalties?

Tax	\$ 33,998.40
Penalty	\$ 14,356.74
Interest*	\$ 4,808.41
<b>Amount Due</b>	<b>\$ 53,163.55</b>

*\*The interest amount has been updated from the Proposed Notice of Assessment and is computed through September 18, 2023, and will continue to accrue until this matter is resolved.*

**Determinations:**

1. The price paid to the Taxpayer for parasailing rides is subject to admissions tax.
2. The Taxpayer is liable for penalties.

**Relevant Facts:**

1. During the Periods Involved, the Taxpayer operated a parasailing ride business based out of Isle of Palms, South Carolina.
2. The Taxpayer charges \$85.00 for a parasailer and \$35.00 for an observer.
3. The South Carolina Department of Revenue (the Department) conducted an audit examination of the Taxpayer to determine the Taxpayer's compliance with admissions tax requirements for the periods of September 1, 2018 – December 31, 2021. During the audit, the Department discovered the Taxpayer did not file admissions tax returns, nor did it collect or remit admissions tax for the amounts received for parasailing rides.

*MBC*

4. The Department issued the Taxpayer a Proposed Assessment on February 17, 2022, assessing admissions tax and interest, as well as penalties for failure to file returns and failure to pay taxes due.<sup>1</sup>
5. The Taxpayer timely protested the Proposed Assessment by correspondence dated March 17, 2022.
6. The Department conducted an appeals conference with the Taxpayer on June 15, 2022 to discuss the audit. Despite the conference, the Department and the Taxpayer were unable to resolve the issues in dispute and the file was forwarded to the Office of General Counsel for issuance of this Determination.

**Analysis:**

**I. The price paid to the Taxpayer for parasailing rides is subject so admissions tax.**

S.C. Code Ann. § 12-21-2420 (2014) imposes an admissions tax on amounts paid to enter places of amusement. For purposes of that section, “admission” is defined in S.C. Code Ann. § 12-21-2410 (2014) as “the right or privilege to enter into or use a place or location.” Thus, the admissions tax, a license tax of five percent, is imposed upon the paid right or privilege to enter into or use a place of amusement. A place of amusement is “any enclosure or location consisting of an activity that occupies one’s spare time, distracts the mind, relaxes, entertains, or gives pleasure.” S.C. Rev. Rul. # 05-14. Further, S.C. Rev. Rul. # 05-14 specifically includes “para sail rides” as a places of amusement subject to admissions tax. Here, the Taxpayer charges for admission to its parasailing rides. Therefore, the price paid to Taxpayer for parasailing rides is subject to admissions tax.<sup>2</sup>

**II. The Taxpayer is liable for penalties.**

S.C. Code Ann. § 12-54-43(C)(1) (2014) states:

In the case of failure to file a return on or before the date prescribed by law, determined with regard to any extension of time for filing, there must be added to the amount required to be shown as tax on the return, a penalty of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of the month during which the failure continues, not exceeding twenty-five percent in the aggregate.

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<sup>1</sup> The original assessment included an admissions tax assessment on the \$35.00 observer charges, which the Department later removed from the assessment.

<sup>2</sup> The Taxpayer argues that its parasailing rides fall under § 12-21-2420(13), which exempts admissions to boats which charge a fee for pleasure fishing, excursion, sight-seeing and private charter. However, parasailing is not pleasure fishing, excursion, sight-seeing and private charter but rather its own distinct amusement activity. *See Home Med. Sys., Inc. v. S.C. Dep’t of Revenue*, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009) (“The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption.”).

Pursuant to the foregoing, a taxpayer is liable for failure to file penalties if it fails to file a return before the due date prescribed by law plus any extension. The Taxpayer did not file admissions tax returns for any of the periods at issue despite being required to file. Because the Taxpayer failed to file admissions tax returns, it is liable for failure to file penalties.

In addition, S.C. Code Ann. § 12-54-43(E) (2014) states:

In case of failure to pay any amount of any tax required to be shown on a return which is not shown, including an assessment within ten days of the date of the notice and demand for payment, there must be added to the amount of tax stated in the notice and demand one-half of one percent of the amount of the tax if the failure is for not more than one month, with an additional one-half of one percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.

Therefore, a taxpayer is liable for failure to pay penalties if it fails to pay a tax on or before the date prescribed by law. The Taxpayer did not pay any admissions tax for the periods at issue despite being required to pay. Because the Taxpayer failed to timely pay its admissions tax liability, it is liable for failure to pay penalties.

**Conclusion:**

The amounts collected by the Taxpayer from its customers are paid admissions for the privilege of entering a place of amusement and are accordingly subject to admissions tax pursuant to § 12-21-2420. Further, because the Taxpayer failed to file and failed to pay its admissions tax, it is liable for failure to file and failure to pay penalties pursuant to §§ 12-54-43(C)(1) and 12-54-43(E). Therefore, the Taxpayer is liable for admissions tax, interest<sup>3</sup>, and penalties.

**Department Determination drafted by Department Representative:**

Marcus D. Antley, III, Esquire  
Associate Counsel  
South Carolina Department of Revenue

August 18, 2023

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<sup>3</sup> S.C. Code Ann. § 12-54-25(A) (2014) mandates, “[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety.”

## Marcus 'Trey' Antley, III

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**From:** Marcus 'Trey' Antley, III  
**Sent:** Thursday, June 13, 2024 8:15 AM  
**To:** tgoldstein  
**Subject:** RE: [EXTERNAL] Notice of Appeal

Good morning Tommy,

My June 10<sup>th</sup> email cited the statute defining tax to include interest, but for your convenience, it states: "'Tax' or 'taxes' means taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, imposed by this title, or subject to assessment or collection by the department." S.C. Code Ann. § 12-60-30. Section 12-60-3370 only carves out penalties and civil fines, not interest. Interest is not a penalty.

I do not see how the document filed with the Court of Appeals constitutes posting a bond. However, I am glad to consider any law in support that you may have.

Section 12-60-3370 must be complied with "before appealing a decision to the court of appeals." Therefore, if the bond and interest issues are not resolved today (the deadline to file an appeal), the Department will file a Motion to Dismiss.

Give me a call if you would like to discuss. I have some time this morning before 10:00 am, and my afternoon today is flexible before 4:00 pm.

Thank you,  
Trey

**From:** tgoldstein <tgoldstein@cobblaw.net>  
**Sent:** Wednesday, June 12, 2024 5:14 PM  
**To:** Marcus 'Trey' Antley, III <Trey.Antley@dor.sc.gov>  
**Subject:** RE: [EXTERNAL] Notice of Appeal

### **This Message Is From an External Sender**

This email came from outside the SCDOR. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am currently out of town and have limited access to e-mail. (I've piggy backed on to my daughter's WiFi, and I'm using a cribbed version of my e-mail program.) I do have my cell phone with me, and you can reach me on that. 843 729 0928. (Of course, we've just arrived, and I haven't unpacked yet, so when I say I have my cell phone with me, what I'm really saying is I'm pretty sure I threw it with clothes in the mad rush to get out of town--I just cannot say precisely where it is at this moment.)

When you say until the bond issues are "remedied," can you be clear about what you contend is the deficiency and cite me to a statute. (Although, I will have difficulty doing any meaningful research until I return on the 18th.)

We agree the appeal bond must be for the disputed taxes. I'm not sure how interest and penalties are part of the disputed taxes. The statute is clear that it addresses "taxes," not interest and not penalties. In fact, my recollection is that the statute specifically excludes "penalties." Wouldn't interest be a "penalty"?

Like I said above, I am in Jacksonville until the 18th and would prefer to discuss this with you as I'll keep an open mind. Your mind, by contrast, seems closed on the issue, and if there is no possibility that you will entertain any possibility of compromise or finding common ground, then there is no point in putting me through an exercise of futility.

On 06/12/2024 8:37 AM EDT Marcus 'Trey' Antley, III <[trey.antley@dor.sc.gov](mailto:trey.antley@dor.sc.gov)> wrote:

Tommy,

Although I disagree with your position, I believe your email makes it clear. I am available today between 2:00 pm and 5:00 pm if you would like to discuss, but I plan to file a motion to dismiss if the bond and interest issues are not remedied prior to the deadline to appeal.

Thanks,

Trey



**Marcus 'Trey' Antley, III**  
Senior Counsel, Tax  
Office of General Counsel  
803-898-5623 | [Trey.Antley@dor.sc.gov](mailto:Trey.Antley@dor.sc.gov)  
South Carolina Department of Revenue | [dor.sc.gov](http://dor.sc.gov)

---

The content of this email and any attachments may be confidential and legally protected from disclosure. If you are not the intended recipient of this email, please reply immediately to notify the sender, then delete it from your system. You are prohibited from sharing any part of this message with a third party.

**From:** [tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net) <[tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net)>  
**Sent:** Monday, June 10, 2024 7:15 PM  
**To:** Marcus 'Trey' Antley, III <[Trey.Antley@dor.sc.gov](mailto:Trey.Antley@dor.sc.gov)>  
**Subject:** RE: [EXTERNAL] Notice of Appeal

I'm happy to call and discuss it with you, but the statute clearly says without penalties, which would include interest. Even if you were right, which would be a misreading of the statute, your legal position would raise grave Vth, VIIIth, and XIVth amendment issues. If you give me a date and time to call you, I'll call you at the pre-arranged time. Or you can call me.

Tommy

(843) 554 4291

From: Marcus 'Trey' Antley, III <[Trey.Antley@dor.sc.gov](mailto:Trey.Antley@dor.sc.gov)>

Sent: Monday, June 10, 2024 4:53 PM

To: [tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net)

Subject: RE: [EXTERNAL] Notice of Appeal

Good afternoon Tommy,

We do not believe this qualifies as a bond under S.C. Code Ann. § 12-60-3370. Further, the taxes must include interest. See S.C. Code Ann. § 12-60-30(27). Also, interest will continue to accrue on any tax, interest, or penalty not paid to the Department.

I gave you these amounts when we spoke on May 21, 2024, but I wanted to be sure you have them handy:

Tax: \$33,998.40

Penalty: \$15,536.14

Interest \$7,151.37

Total: \$ 56,685.91

Feel free to give me a call.

Best,

Trey



**Marcus 'Trey' Antley, III**  
Senior Counsel, Tax  
Office of General Counsel  
803-898-5623 | [Trey.Antley@dor.sc.gov](mailto:Trey.Antley@dor.sc.gov)  
South Carolina Department of Revenue | [dor.sc.gov](http://dor.sc.gov)

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**From:** [tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net) <[tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net)>  
**Sent:** Monday, June 10, 2024 10:59 AM  
**To:** Marcus 'Trey' Antley, III <[Trey.Antley@dor.sc.gov](mailto:Trey.Antley@dor.sc.gov)>  
**Subject:** [EXTERNAL] Notice of Appeal

Marcus,

I am sending you by regular mail the attached Notice of Appeal, Appeal Bond, and a copy of my letter to the Court of Appeals. I did not include another set of paper copies of the Orders being appealed because you already have those. I have the disputed taxes in my escrow account, which I assume is a satisfactory deposit.

Tommy

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Honorable Debra B. Durden, Administrative Law Judge

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Administrative Law Court Docket No.: 23-ALJ-17-0362-CC

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Watertoys, L.L.C., d/b/a Tidalwave Watersports,.....Appellant,

v.

South Carolina Department of Revenue,.....Respondent.

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**AFFIDAVIT OF DENISE BLACKWELL**

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COMES NOW, Denise Blackwell, being duly sworn, deposes and states:

1. I am employed by the South Carolina Department of Revenue (Department) as a Statewide Sales Tax Audit Manager.
2. As part of my duties with the Department, I have access to the Department's records concerning proposed tax assessments and outstanding tax liabilities.
3. At the request of the Department's Office of General Counsel, I was asked to determine the amount of Appellant's proposed tax assessments based upon the Department's interpretation of the Administrative Law Court's April 18, 2024 Order. Those proposed tax assessments are as follows:

Tax	\$ 33,998.40
Penalty	\$ 15,536.14
Interest*	\$ 7,151.37
<b>Amount Due</b>	<b>\$ 56,685.91</b>


\*Interest is accrued through June 13, 2024.

4. At the request of the Department's Office of General Counsel, I was asked to verify the status of Appellant's proposed tax assessments as outlined above. Such proposed tax assessments remain outstanding in that Appellant has not paid any of the amounts.

FURTHER AFFIANT SAYETH NOT.

  
Denise Blackwell

Sworn to and subscribed before me this 18<sup>th</sup>  
day of June 2024.

  
Notary Public for South Carolina  
My Commission Expires: 12/17/2029



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State of South Carolina  
**Department of Revenue**  
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214  
Website Address: <http://www.sctax.org>

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SC REVENUE RULING #05-14

- SUBJECT:** Places of Amusement  
(Admissions Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S. C. Code Ann. Section 12-21-2420 (2000; Supp. 2004)  
S. C. Code Ann. Section 12-21-2410 (2000)  
S. C. Code Ann. Section 12-21-2430 (2000)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (Supp. 2004)  
SC Revenue Procedure #03-1
- SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Ruling does not have the force or effect of law, and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

**Introduction:**

The State of South Carolina imposes an admissions tax for the privilege of entering and using a place of amusement. The purpose of this advisory opinion is to provide examples of places of amusements that are subject to this tax. The list of examples is not all-inclusive and is being provided as guidance for taxpayers.

## **Law and Discussion:**

Code Section 12-21-2420 imposes the admissions tax and states in part:

There must be levied, assessed, collected, and paid upon paid admissions to places of amusement within this State a license tax of five percent. The license tax may be listed separately from the cost of admission on an admission ticket. ...

Code Section 12-21-2410 defines the terms "admissions," "place," and "person" and states:

For the purpose of this article and unless otherwise required by the context:

- (1) The word "admission" means the right or privilege to enter into or use a place or location;
- (2) The word "place" means any definite enclosure or location; and
- (3) The word "person" means individual, partnership, corporation, association, or organization of any kind whatsoever.

In summary, the admissions tax is imposed upon the paid right or privilege to enter into or use a place of amusement.

It is important to note that the statute taxes charges to "use" a place of amusement, as well as charges to enter a place of amusement. This is seen in *Beach v. Livingston*, 248 SC 135, 149 SE2d 328 (1966), where the South Carolina Supreme Court held that the admissions tax applied to charges paid for the "use" of a bowling alley even though no charge was required for a person to "enter" the bowling alley. Additionally, an Attorney General's Opinion dated August 2, 1956 (See Attorney General's Report, July 1, 1955 to June 30, 1957) concluded the charge made by a person operating a golf driving range was subject to the admissions tax.

The statute, however, does not define the term "amusement." However, the following from SC Revenue Ruling #89-8 outlines the Department's longstanding position as to what constitutes an "amusement" and a "place of amusement."

One of the primary rules of statutory construction is that words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. *Hughes v. Edwards*, 265 S.C. 529, 220 S.E. 2d 231 (1975); *Investors Premium Corp. v. South Carolina Tax Commission*, 260 S.C. 13, 193 S.E. 2d 642 (1973). Also, where the terms of a statute are clear and unambiguous and leave no room for construction, they must be applied according to their literal meaning. *Mitchell v. Mitchell*, 266 S.C. 196, 222 S.E. 2d 217 (1976); *Green v. Zimmerman*, 269 S.C. 535, 238 S.E. 2d 323 (1977).

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see *Hay v. South Carolina Tax Commission*, 273 SC 269, 255 SE 2d 837 (1979); *Fennell v. South Carolina Tax Commission*, 233 S.C. 43, 103 SE2d 424 (1958); *Etiwan Fertilizer Co. v. South Carolina Tax Commission*, 217 SC 484, 60 SE2d 682 (1950).

Black's Law Dictionary, Fifth Edition, defines the term "amusement" to mean: "Pastime, diversion, enjoyment. A pleasurable occupation of the senses or that which furnishes it."

The Second College Edition of the American Heritage Dictionary provides the following definitions:

"Amusement"	1. The state of being amused, entertained, or pleased. 2. Something that amuses.
"Pastime"	An activity that occupies one's spare time pleasantly.
"Diversion"	Something that distracts the mind and relaxes or entertains.
"Enjoyment"	1. The act or state of enjoying. 2. The use or possession of something beneficial or pleasurable. 3. Something that gives pleasure.

In summary, a "place of amusement" is any enclosure or location consisting of an activity that occupies one's spare time, distracts the mind, relaxes, entertains, or gives pleasure.

Further, in *Radcliff v. Query*, 153 S.C. 76, 150 S.E. 352 (1929), an Admission's Tax case, the Supreme Court of South Carolina held:

The statute is broad enough to include all classes of public exhibitions,.... (emphasis added).

Black's Law Dictionary, Fifth Edition, defines "public" in part, as:

Public, adj. Pertaining to a state, nation, or whole community; proceeding from, relating to, or affecting the whole body of people or an entire community. Open to all; notorious. Common to all or many; general; pen to common use. Belonging to the people at large; relating to or affecting the whole people or a state, nation, or community; not limited or restricted to

any particular class of the community. *Peacock v. Retail Credit Co.*, D.C.Ga., 302 F.Supp.418, 423 (emphasis added).

In addition, the Appellate Division of the New York Supreme Court held in *Wien v. Murphy*, 284 N.Y.S. 2d 303, 28 A.D. 2d 222 (1967) that:

... if in fact a place or facility provides something edifying or educational in addition to enjoyment, entertainment or amusement, it is no less a place of amusement.

In other words, the term "place of amusement" is not to be strictly construed so as to exclude places which may also have a business or other purpose. If a place distracts the mind, relaxes, entertains, or gives pleasure, then such place is a "place of amusement".

Finally, Code Section 12-21-2420 establishes various exemptions from the admissions tax and states in part:

... , no tax may be charged or collected:

- (1) On account of any stage play or any pageant in which wholly local or nonprofessional talent or players are used;
- (2) On admissions to athletic contests in which a junior American Legion athletic team is a participant unless the proceeds inure to any individual or player in the form of salary or otherwise;
- (3) On admissions to high school or grammar school games or on general gate admissions to the State Fair or any county or community fair;
- (4) On admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific, or educational purposes; or the presentation of performing artists by an accredited college or university; provided, that the license tax herein levied and assessed shall be collected and paid upon all paid admissions to all athletic events of any institution of learning above the high school level; provided, however, that carnivals, circuses, and community fairs operated by eleemosynary or nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, or educational purposes shall not be exempt from the assessment and collection of admissions tax on charges for admission for the use of or entrance to rides, places of amusement, shows, exhibits, and other carnival facilities, but not to include charges for general gate admissions except when the proceeds of any such carnival, circus, or community fair are donated to a hospital; provided, further, that no admission tax shall be charged or collected by reason of any charge made to any member of a nonprofit organization or corporation for the use of the facilities of the organization or corporation of which he is a member.

- (5) On admissions to nonprofit public bathing places;
- (6) On admissions to any hunting or shooting preserve;
- (7) On admissions to privately owned fish ponds or lakes; and
- (8) On admissions to circuses operated by eleemosynary, nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, or educational purposes when the proceeds derived from admissions to the circuses shall be used exclusively for religious, charitable, scientific or educational purposes.
- (9) On admissions to properties or attractions which have been named to the National Register of Historical Places.
- (10) On admissions charged to classical music performances of a nonprofit or eleemosynary corporation organized and operated exclusively to promote classical music.
- (11) On admissions to events other than those events enumerated in item (4) of this section, sponsored and operated exclusively by eleemosynary, nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, civic, fraternal, or educational purposes when the net proceeds derived from admissions to the events shall be immediately donated to an organization operated exclusively for charitable purposes. The term "net proceeds" shall mean the portion of the gross admissions proceeds remaining after necessary expenses of the event have been paid. This item shall not apply to an event in which the above organizations receive a percentage of gross proceeds or a stated fixed sum for the use of its name in promoting the event.
- (12) On admissions charged by nonprofit or eleemosynary community theater companies or community symphony orchestras, county and community arts councils and departments and other such companies engaged in promotion of the arts.
- (13) On admissions to boats which charge a fee for pleasure fishing, excursion, sight-seeing and private charter.
- (14) On admissions to a physical fitness center subject to the provisions of Chapter 79 of Title 44, the Physical Fitness Services Act, that provides only the following activities or facilities:
  - (a) aerobics or calisthenics;
  - (b) weightlifting equipment;
  - (c) exercise equipment;

- (d) running tracks;
- (e) racquetball;
- (f) swimming pools for aerobics and lap swimming; and
- (g) other similar items approved by the department.

The entire admission charge of a physical fitness center which provides any other activity or facilities is subject to the tax imposed by this article. Physical fitness facilities or centers of the State of South Carolina and any of its political subdivisions which are exempt from the Physical Fitness Services Act, pursuant to Section 44-79-110 and, therefore, subject to the admissions tax under this article are nevertheless exempt from the admissions tax if they meet other requirements of this subsection.

(15) for entry into the pit area of NASCAR sanctioned motor speedways or racetracks for drivers, crew members, or car owners where a participation fee is charged these persons by NASCAR, or by the speedway or racetrack, where a charge to these persons is made on a per event basis for entry into the pit area, or where a combination of annual and per event charges to these persons is made for entry into the pit area.

The tax imposed by this section must be paid by the person or persons paying the admission price and must be collected and remitted to the South Carolina Department of Revenue by the person or persons collecting the admission price. The tax imposed by this section does not apply to:

- (a) any amount separately stated on the ticket of admission for the repayment of money borrowed for the purpose of constructing an athletic stadium or field by any accredited college or university; or
- (b) any amount of the charge for admission, whether or not separately stated, that is a fee or tax imposed by a political subdivision of the State.

The revenue derived from the provisions of this section from fishing piers along the coast of South Carolina is allocated for use of the Commercial Fisheries Division of the Department of Natural Resources.

Also, Code Section 12-21-2430 provides an exemption for certain ponds, and states:

No private pond shall be declared an amusement for tax purposes. But this section shall not apply to a pond stocked with fish from a State or Federal hatchery.

## **Examples of Places of Amusements Subject to the Admissions Tax**

The following list of places of amusements is not all inclusive and is merely provided as guidance. Charges to enter or use these places, events, facilities and rides and all other amusement facilities are subject to the tax **unless specifically exempted under Code Section 12-21-2420 or Code Section 12-21-2430:**

air shows

amusement parks

amusement rides, shows and exhibits

animal shows

antique shows

aquariums

aquatic shows

archery range

art and craft exhibitions (See SC Revenue Ruling #89-8.)

automobile shows

balloon shows

baseball batting cages (See SC Revenue Ruling 91-14.)

basketball courts

boat cruises (See, however, Code Section 12-21-2420(13). Charges for cruises with entertainment, such as one in which patrons attempt to solve a murder mystery, do not come within the exemption in Code Section 12-21-2420(13).)

boat shows

botanical gardens

bowling alleys

bungee jumping

carnival, circus and fair entrance fees, rides, shows, exhibits, games and other amusement charges

college, professional and other sporting events (football, basketball, baseball, or hockey games; golf tournaments, tennis tournament, rodeos, car racing, polo, horse racing, wrestling, boxing, etc.)

comedy clubs

cruises that offer entertainment (i.e. bands, audience role participation, or plays)

dance halls

dance shows

dinner theaters and attractions (See SC Private Letter Ruling #92-5.)

dog shows

fishing piers and ponds

flight and similar simulators

go cart or car racing tracks to include "pit passes"

golf courses and country clubs (green fees, range fees, membership dues) (See SC Revenue Ruling #91-18 and SC Private Letter Ruling #91-5.)

golf driving ranges

gun and knife shows

handball courts

health clubs (See, however, SC Revenue Ruling 92-1 for a discussion of exempt health clubs.)

historical attractions (See, however, Code Section 12-21-2420(9). Note: Charges for entertainment events, such as rock concerts, on the grounds of a location on the National Register of Historical Places do not come within the exemption in Code Section 12-21-2420(9).)

holiday celebrations and events (Halloween haunted houses, New Year Eve parties, firework shows, crop circles and mazes, etc.)

historical dramas

home shows

home tours (new homes, historical homes, Christmas tours, etc.)

horse shows

laser tag

mazes, including crop mazes

miniature golf or putt-putt courses

miniature or slot car tracks

“monster” truck shows

motorcycle expositions, races and shows

movie theaters or movie “peep show” machines

museums

music concerts

nightclubs, lounges, or bars with a cover charge

pageants

paint ball or laser gun facilities

para sail rides

Parade of Homes tours

planetariums

plays

promotional events such as boat shows, home shows, antique shows, gun and knife shows, and wildlife shows (See SC Revenue Ruling #89-8.)

race car or similar tracks (reality racing, ATV tracks, etc.)

racquetball courts

rock climbing facilities

rodeos

serpentariums

skating rinks or skate board parks

shooting ranges (target, skeet, trap sporting clays, etc.)

spas

spectator events (football, basketball, baseball, or hockey games; golf tournaments, tennis tournaments, rodeos, car racing, polo, horse racing, wrestling, boxing, etc.)

sport clubs

sporting events for spectators (football, basketball, baseball, or hockey games; golf tournaments, tennis tournaments, rodeos, car racing, polo, horse racing, wrestling, boxing, etc.)

squash courts

stage plays or performances

swimming pools and clubs (pool fees, membership dues)

target, skeet, trap or sporting clay ranges

theaters

tractor pulls

tennis or racquetball courts (court fees, membership dues)

water parks

water-skiing shows

water slides

wildlife preserves

wildlife expositions and shows

zoos

It should be noted that it has been the longstanding position of the Department that (1) fees for golf, tennis, dancing, and self-defense lessons from an instructor; (2) tournament participant entry fees (exclusive of the normal and customary charges to utilize the place of amusement, i.e. green or court fees); (3) fees for boat, carriage, helicopter, plane or bus rides for touring, charter, fishing, or excursion (see SC Technical Advice Memorandum #95-2.); (4) golf cart fees (subject to sales tax as rentals); (5) "trail fees" (fees charged by golf courses for someone using their own golf cart); (6) boat or jet ski rental fees (subject to sales tax); (7) fees for using tanning beds; (9) initiation fees for country clubs, golf clubs, tennis clubs and similar facilities<sup>1</sup> provided the initiation fee is a one-time (nonrecurring) charge paid as a prerequisite to joining the club; and (10) fees for equestrian lessons are not fees to enter or use a place of amusement and are not subject to the admissions tax.

**Note: Organizations, event organizers, and others operating places of amusement should review Code Sections 12-21-2420 and 12-21-2430 to determine if their organization, location or event falls within one of the statutory exemptions. The burden of proof that an organization, location or event falls within an exemption rests with the operator of the place of amusement.**

**An application for admissions tax exemption under Code Section 12-21-2420 may be submitted to the Department on Form L-2068. A copy of this "License Tax" form can be found on the Department's website ([www.sctax.org](http://www.sctax.org)) under "Quick Links" ("Forms and Instructions"). An organization, location or event does not need to apply for the exemption in order to be exempt, but must be able to document (charter, by-laws, financial records, etc) that an exemption is applicable.**

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III  
Burnet R. Maybank III, Director

September 15, 2005  
Columbia, South Carolina

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<sup>1</sup> An initiation fee should not allow a person to utilize the facilities of the club without payment of a recurring charge (membership dues). In other words, a one-time charge that is a substitute for recurring membership dues is not an initiation fee.



9. Petitioner timely protested the Proposed Assessment by correspondence dated March 17, 2022.
10. The Tax Code (Title 12) does not contain a definition of "parasailing."

THE PARTIES SO STIPULATE.

WATERTOYS, LLC D/B/A TIDALWAVE WATERSPORTS

By: /s/ Thomas R. Goldstein  
Thomas R. Goldstein (Bar No. 2186)  
P.O. Box 71121  
Charleston, SC 29415-1121  
(843) 554.4291 (Telephone)  
(843) 554.5566 (Fax)  
[rgoldstein@cobblaw.net](mailto:rgoldstein@cobblaw.net)

Attorney for Watertoys, LLC d/b/a Tidalwave Watersports

SOUTH CAROLINA DEPARTMENT OF REVENUE

By: /s/Marcus D. Antley, III  
Marcus D. Antley, III, Esquire (Bar No. 102176)  
Senior Counsel, Tax  
W. Allen Myrick, Jr., Esquire (Bar No. 14718)  
Associate General Counsel  
Jason P. Luther, Esquire (Bar No. 78021)  
Chief Legal Officer  
300 \ Outlet Pointe Boulevard  
Columbia, SC 29210  
(803) 898.5623 (Telephone)  
(803) 896.0171 (Fax)  
[Marcus.Antley@dor.sc.gov](mailto:Marcus.Antley@dor.sc.gov)  
[Court.orders@dor.sc.gov](mailto:Court.orders@dor.sc.gov)

Attorneys for South Carolina Department of Revenue

**RECEIVED**

**Jun 19 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Honorable Debra B. Durden, Administrative Law Judge

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Appellate Case No. 2024-000962  
Administrative Law Court Case No. 23-ALJ-17-0362-CC

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Watertoys, L.L.C., d/b/a Tidalwave Watersports,.....Appellant,

v.

South Carolina Department of Revenue,.....Respondent.

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**PROOF OF SERVICE**

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I, the undersigned Paralegal with the South Carolina Department of Revenue, attorneys for the Respondent, hereby certify that I have served all counsel listed below with a copy of the Motion to Dismiss Appeal with Prejudice via electronic mail:

Thomas R. Goldstein  
PO Box 71121  
N. Charleston, SC 29415-1121  
[tgoldstein@cobblaw.net](mailto:tgoldstein@cobblaw.net)

*Counsel for Appellant*

  
Jennifer D. Gamble  
Senior Paralegal

June 19, 2024

## Jennifer Gamble

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**From:** Jennifer Gamble  
**Sent:** Wednesday, June 19, 2024 12:52 PM  
**To:** tgoldstein@cobblaw.net  
**Cc:** Marcus 'Trey' Antley, III; Jason Luther; Allen Myrick  
**Subject:** Watertoys, L.L.C. d/b/a Tidalwave Watersports v. SCDOR (2024-000962)  
**Attachments:** MTD.pdf

Good Afternoon:

Attached and served upon you please find Motion to Dismiss Appeal with Prejudice in the above referenced matter.

Thank you,

Jennifer

STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
OFFICE OF GENERAL COUNSEL

**RECEIVED**

**Jun 19 2024**

**SC Court of Appeals**

300A Outlet Pointe Blvd.  
Columbia, SC 29210



Main Line: 803.898.5130  
Facsimile: 803.896.0171

June 19, 2024

**VIA ELECTRONIC MAIL**

The Honorable Jenny Abbott Kitchings  
SC Court of Appeals  
Clerk of Court  
1220 Senate Street  
Columbia, SC 29201  
ctappfilings@sccourts.org

**Re: Watertoys, L.L.C., d/b/a Tidalwave Watersports v. South Carolina  
Department of Revenue  
Appellate Case No. 2024-000962**

Dear Ms. Kitchings:

Enclosed please find Motion to Dismiss Appeal with Prejudice in the above referenced matter. Additionally, I have enclosed a Proof of Service for the same.

By copy of this letter to counsel of record, we are serving them with a copy of the same.

With kind regards, I am

Sincerely,

A handwritten signature in blue ink that reads "Marcus D. Antley III".

Marcus D. Antley III, Esquire

MDA/jdg

cc: Thomas R. Goldstein, Esquire