

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Watertoys, L.L.C., d/b/a Tidalwave Watersports,)
)
Petitioner,)
)
v.)
)
South Carolina Department of Revenue,)
)
Respondent.)

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

AFFIDAVIT OF MICHAEL FIEM

Personally appeared me, Michael Fiem, who being duly sworn does depose and say:

I am Michael Fiem, and one of the owners and operators of Tidalwave Water Sports, and I am the person responsible for all bookkeeping, tax-filing, and business related duties, including contact with the Department of Revenue since 2005. Because of this dispute and other reasons, Tidalwave is in the process of closing down, and looking at bankruptcy options. 2024 will be the final year for Tidalwave tax returns for proceeds of equipment asset liquidation sales only. Tidalwave has no operation income for 2024.

Tidalwave began business in 2005, when I purchased it as a going concern. The original Tidalwave began in 1996.

We provided sightseeing charters, excursion/tours as set forth in the Stipulation of Facts.

Prior to closing down in 2023, we offered sightseeing, charter excursion tours, eco tours, and chartered parasailing. If a passenger wished to go aloft, we launched him or her from the boat while we were underway and we returned the passenger to the deck of the boat while underway. In other words, we did not offer parasailing rides like other companies in Myrtle Beach and other

places operated. (There are even other companies that offer parasailing using a motor vehicle on land. See photo below discussed more fully below.)

Participation in Tidalwave's parasailing is only a part of a minimum 2-hour excursion, charter, tour, but other passengers take in sights either seated or standing, and we take passengers on tours whether one or more elect to parasail. Each passenger pays the same fee whether he or she goes aloft or not (although we did offer a discount for parents who insisted that they be present to monitor their children). Even though we were in business since 2005, and audited by the Department of Revenue in 2014, it was not until late 2018 that the Department of Revenue made for the first time, a demand that we collect an admissions/amusement tax for parasailing passengers. The Department has never grasped that what our company specifically offered is different from other parasailing offerings. Tidalwave's activity is a minimum 2-hour private sightseeing, excursion charter, which may or may not include parasailing. That decision is left entirely to the paying customer, and a typical charter usually does not have 100% parasailing participation. Passengers pay the same amount whether they go aloft or remain seated during the entire charter. Every charter included a discussion of the sights, history, marine life, plant life, bird life, *etc.*

Finally, as mentioned above, the Department of Revenue audited us in 2014 and found some deficiencies unrelated to admissions/amusement tax, but did not claim we were supposed to be collecting an admissions/amusement tax, and our operation did not change in any way from 2014 until we closed up in 2023. The Department of Revenue has never identified a definition of para-sailing other than its unsupported assertion. The Department of Revenue fails to acknowledge the undisputed fact that the activity of parasailing can be offered/conducted in significantly different manners. For example, parasailing is offered in the Midwest as a carnival


ride behind a motor vehicle. Closer to home, companies in South Carolina have launched customers from the beach and landed them on the beach, all without ever being a passenger on a vessel or participating in a minimum 2-hour charter, excursion, sightseeing tour, which distinguished our operation from others. See sample photo:



Simply stated, we offered charter tours that included sightseeing and educational components. We offered charter tours, which is why Exemption 13 specifically applied to our operation.

Our operation has not materially changed since 2005, and all our activities took place on the water.

Further your deponent says not.



Michael Fiem

SWORN TO BEFORE ME THIS

6th day of May, 2024



Notary Public for South Carolina

My Commission expires: April 22, 2030
Thomas R. Goldstein

