

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Honorable Milton G. Kimpson, Administrative Law Judge  
Honorable Robert L. Reibold, Administrative Law Judge (on Reconsideration)

Appellate Case No. 2024-001577  
Administrative Law Court Case No. 20-ALJ-17-0168-CC

U.S. Bank National Association.....Appellant,

v.

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

**RESPONDENT SOUTH CAROLINA DEPARTMENT OF REVENUE'S  
INITIAL BRIEF**

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## INTRODUCTION

U.S. Bank is a bank engaged in business in South Carolina and thus subject to the South Carolina Bank Tax imposed by Chapter 11 of Title 12 (Bank Tax). Specifically, U.S. Bank originates, sells, and services mortgages on real property located in South Carolina in addition to other loans to South Carolina borrowers. U.S. Bank also issues credit cards to South Carolinians and processes credit card transactions that occur in South Carolina. Despite substantial receipts from these activities in the form of interest, gains, and fees, U.S. Bank sourced none of those receipts to South Carolina when calculating its Bank Tax. Instead, it adopted an approach rejected by this Court in its most recent opinion addressing the sourcing of income (*DIRECTV, Inc. v. S.C. Dep't of Revenue*)—even relying on the same expert witness whose opinion this Court rejected in *DIRECTV*. Still, U.S. Bank's expert witness testified that some of those receipts should have been attributed to South Carolina, and U.S. Bank admits it owes additional Bank Tax. Ultimately, U.S. Bank failed to carry its burden at trial to support its treatment of those receipts for Bank Tax purposes. The Administrative Law Court (ALC) correctly rejected U.S. Bank's argument and did not err in upholding the Department's determination that U.S. Bank owes additional bank tax, interest, and penalties to South Carolina. Respectfully, this Court should affirm.

## COUNTER-STATEMENT OF THE ISSUES ON APPEAL

- I. Does substantial evidence support the ALC's findings that U.S. Bank's receipts from mortgages used in South Carolina should be sourced to South Carolina?
- II. Does substantial evidence support the ALC's findings that U.S. Bank's receipts from credit cards used in South Carolina should be sourced to South Carolina?
- III. Did the ALC err by declining to waive the statutorily mandated penalties for U.S. Bank's substantial understatement, where U.S. Bank is a sophisticated party, whose own expert testified that some of the receipts at issue should have been sourced to South Carolina?

## STATEMENT OF THE CASE

The Department audited U.S. Bank National Association (U.S. Bank) for the Bank Tax periods ending December 31, 2011 to December 31, 2016 (Audit Period). In its final Determination dated June 18, 2020, the Department concluded that: (1) applicable South Carolina law require U.S. Bank to source its receipts from loans, credit card interest and fees based where the loans and credit cards are used; (2) U.S. Bank must include the gain on its sale of Visa stock in its calculation of apportionable income; and (3) U.S. Bank was subject to statutory substantial understatement of tax penalties. *See* Department Determination, Joint Ex. 1 (**R. pp.**). On June 18, 2020, U.S. Bank requested a contested case hearing to challenge the Department Determination. *See* Request for a Contested Case Hr'g (filed July 8, 2020) (**R. pp.**). Following a contested case hearing on July 17-18, 2023, the ALC issued a Final Order on June 25, 2024, upholding the Department's Determination in all respects except that the ALC partially waived the penalties for U.S. Bank's substantial understatement of tax. *See* Final Order (**R. p.**).<sup>1</sup> The case was reassigned to a different administrative law judge. *See* Notice of Reassignment (**R. pp.**). On August 19, 2024, the ALC denied U.S. Bank's Motion for Reconsideration on all issues except the Visa gain—which the ALC described as “a close one”—after reviewing the record

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<sup>1</sup> The ALC issued an amended final order to correct an incomplete sentence in its initial final order on the same date. The Final Order refers to the amended final order.

evidence. *See* Order on Petr.'s Motion for Reconsideration. (**R. pp.**). U.S. Bank filed its Notice of Appeal on September 18, 2024.

### STATEMENT OF THE FACTS

#### 1. U.S. Bank's business operations.

U.S. Bank is a national bank and wholly-owned subsidiary of U.S. Bancorp. U.S. Bank provides a wide range of banking and trust services for retail and commercial clients. *See* Joint Ex. 1 (**R. pp.**). U.S. Bank is headquartered in Minnesota and engaged in a banking business in South Carolina and other states. *Id.* From December 2012 to December 2016, U.S. Bank had forty (40) to fifty-four (54) employees in South Carolina and filed on average 1,583 South Carolina property tax returns. *See* Hr'g Tr. 134:4-22 (**R. pp.**). In addition to other sources, U.S. Bank earns income from: (1) interest from residential mortgages, commercial loans and consumer loans; (2) credit card interest and fees; and (3) merchant and interchange fees from credit and debit card transactions. *See* Hr'g Tr. 150:1-151:12 (**R. pp.**). U.S. Bank also earns income from mortgage servicing fees and gains from the sale of mortgages.<sup>2</sup> *See* Hr'g Tr. 150:15-18 (**R. pp.**).

#### A. Residential Mortgages

A residential mortgage is a loan secured by a lien on a one to four family property. *See* Hr'g Tr. 45:4-7 (**R. pp.**). As part of its normal operations, U.S. Bank originates, sells, and services residential mortgages. *See* Hr'g Tr. 45:8-10; 49:23-50:1; and 50:2-5 (**R. pp.**). U.S. Bank earned interest from the mortgage loans to purchase South Carolina real property. *See* Hr'g Tr. 150:2-4 (**R. pp.**). Yet, U.S. Bank sourced no interest income to South Carolina. *See* Hr'g Tr. 150:5-7 (**R. pp.**).

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<sup>2</sup> U.S. Bank did divide the income streams from mortgages into interest, servicing fees, and gains from the sale of mortgages until nearly three years after the issuance of the Department Determination. *See* Hr'g Tr. 138:21-139:4 (**R. pp.**). Regardless, as discussed below, application of the allocation and apportionment statutes results in sourcing all three income streams to the location of the borrower.

U.S. Bank sold ninety-five percent (95%) of the residential mortgages it originated in South Carolina. *See* Hr’g Tr. 37:4-13 (**R. pp.**). U.S. Bank earned income when it sold mortgages used or located in South Carolina. *See* Hr’g Tr. 150:15-18 (**R. pp.**). Despite this, U.S. Bank did not source to South Carolina any of the income it earned from the sale of those mortgages. *See* Hr’g Tr. 150:19-21 (**R. pp.**).

U.S. Bank services the residential mortgages it originates even if the mortgages are sold. *See* Hr’g Tr. 38:24-39:8 and 41:3-11 (**R. pp.**). U.S. Bank received income for servicing mortgages secured by real property in South Carolina. *See* Hr’g Tr. 150:8-11 (**R. pp.**). However, U.S. Bank did not source any income from mortgage servicing receipts to South Carolina. *See* Hr’g Tr. 150:8-11 (**R. pp.**).

U.S. Bank performs mortgage-related activities in South Carolina, including: advertising (*See* Hr’g Tr. 45:16-46:8 (**R. pp.**)); borrower providing application documents (*See* Hr’g Tr. 47:15-48:1 (**R. pp.**)); appraisal of the real property (*See* Hr’g Tr. 48:9-15 and 49:19-22 (**R. pp.**)); payment of property taxes (*See* Hr’g Tr. 51:2-21 (**R. pp.**)); payment of homeowner’s insurance (*See* Hr’g Tr. 51:22-52:7 (**R. pp.**)); placing a lien on the real property (*See* Hr’g Tr. 52:8-11 (**R. pp.**)); payment of principal, interest and fees, customer service, and collections (*See* Hr’g Tr. 50:10-20 (**R. pp.**)); and foreclosure (*See* Hr’g Tr. 12-19 (**R. pp.**)). *See also* Hr’g Tr. 333:5-10 (**R. pp.**). Up to the point of U.S. Bank approving or denying a mortgage application, U.S. Bank produces only costs and no income. *See* Hr’g Tr. 48:25-49:18 (**R. pp.**).

An inextricable link exists among a mortgage, real property, and the location of the real property because a mortgage’s value comes from the real property it secures—which is situated in a specific location/state. *See* Hr’g Tr. 141:9-11; 333:2-4 (**R. pp.**). Without the real property in South Carolina, U.S. Bank would receive no interest, gain from the sale, or servicing fees from the South Carolina mortgages. *See* Hr’g Tr. 141:12-19 (**R. pp.**). The Department used the borrower as an approximation instead of the real property because U.S. Bank provided market-based sourcing

apportionment papers that sourced to the location of the borrower/mortgagor, not the real property. *See* Hr'g Tr. 166:5–6 (**R. pp.**). Ultimately, income from a mortgage comes from the borrower through the payment of interest, making the South Carolina borrower a reasonable proxy for the mortgaged property. *See* Hr'g Tr. 140:16–18; 141:4-6 (**R. pp.**); *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 80, 804 S.E.2d 633, 644 (Ct. App. 2017) (recognizing the use of a proxy as a reasonable approximation).

B. Credit Card Interest and Fees

A credit card is an unsecured line of credit used to facilitate the purchase of goods and services. *See* Hr'g Tr. 80:2-5; 87:7-16; and 107:5-7 (**R. pp.**). A physical card is not necessary for a customer to use the unsecured line of credit. *See* Hr'g 82:25-83:9 (**R. pp.**). U.S. Bank acts as an issuer bank by issuing credit cards to a cardholder and authorizing payment on the cardholder's behalf. *See* Hr'g Tr. 144:2-5 (**R. pp.**). As the issuer, U.S. Bank provides an unsecured line of credit—i.e. a credit card—to its credit cardholders. *See* Hr'g Tr. 57:12-17; 144:2-5 (**R. pp.**). When a U.S. Bank-issued card is used, U.S. Bank receives an interchange fee from the merchant. *See* Hr'g Tr. 147:9–11 (**R. pp.**).

U.S. Bank also acts as an acquirer bank (the merchant's bank). It contracts with a merchant (the person or entity selling goods or services to its customers) to process credit card transactions for that merchant, thereby enabling the merchant to consummate cashless transactions with its customers (regardless of whether the customer is a U.S. Bank cardholder) via the credit card network. *See* Hr'g Tr. 144:6-145:12 (**R. pp.**). U.S. Bank receives a fee from the merchant (merchant fee) every time it processes a transaction on behalf of the merchant. *See* Hr'g Tr. 147:4–8 (**R. pp.**).

U.S. Bank performs many credit card-related activities in South Carolina. For example, U.S. Bank offers co-branded cards with partners (e.g. Harley-Davidson and Kroger) who are physically present in South Carolina. *See* Hr'g Tr. 62:12–18; 80:6-8 (**R. pp.**). U.S. Bank also acts as the agent bank

through Elan<sup>3</sup> for banks physically present in South Carolina. *See* Hr’g Tr. 80:9-11 (**R. pp.**). Further, U.S. Bank reaches out to South Carolina customers by soliciting through direct mail, in-person at partners or online; advertising co-branded cards through its partners’ mailing lists; mailing credit cards to South Carolina customers; and offering customer service to South Carolina card holders. *See* Hr’g Tr. 65:14-66:2; 80:12-14; 81:6-8; and 82:17-24 (**R. pp.**) In addition, potential U.S. Bank customers can apply for an Elan credit card through the mail, email, website, phone, or onsite with a partner in South Carolina. *See* Hr’g Tr. 80:15-22 (**R. pp.**). U.S. Bank cardholders initiate credit card transactions at merchant locations in South Carolina. *See* Hr’g Tr. 209:6-12 (**R. pp.**).

U.S. Bank receives income from its credit cards from three primary sources: interest, interchange fees, and other fees like annual fees and late fees. *See* Hr’g Tr. 75:14-76:1 (**R. pp.**). Interest from credit cards is effectively the same as interest from a loan. *See* Hr’g Tr. 142:21-23 (**R. pp.**). Whether interest is from a secured loan, unsecured loan, mortgage, or credit card, the customer pays for the extension of funds—i.e. the use or forbearance of money. *See* Hr’g Tr. 186:23-187:5 (**R. pp.**). Interchange fees are income paid to U.S. Bank when one of its credit cards is used. *See* Hr’g Tr. 142:2-6 (**R. pp.**). Although late fees are technically a different revenue stream from interest, they are effectively treated the same because the late fee is an interest rate adjustment for the incremental risk of a delinquent credit cardholder. *See* Hr’g Tr. 142:24-143:1 and 204:16-205:9 (**R. pp.**). U.S. Bank’s expert witness also treated annual fees the same as interest and late fees. *See* Hr’g Tr. 207:1-4 and 208:17-19 (**R. pp.**). U.S. Bank admits that “allowing a person to make a purchase at point of sale without delivering funds from their checking account” is how U.S. Bank earns interest income. *See* Hr’g Tr. 76:4-14 (**R. pp.**).

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<sup>3</sup> Elan is a division of U.S. Bank that issues, markets, services, underwrites credit cards on behalf of smaller banks and credit unions. *See* Hr’g Tr. 63:8-15 (**R. pp.**).

Up to the point a customer receives an un-activated credit card in the mail, U.S. Bank does not produce any income, only costs. *See* Hr'g Tr. 81:1-5 (**R. pp.**). No income (except in rare instances of an annual fee<sup>4</sup>) is produced if a customer never uses the credit card. *See* Hr'g Tr. 82:6-10 (**R. pp.**). No income is produced other than interchange fees or rare annual fees if a customer pays off their credit card balance every month. *See* Hr'g Tr. 81:14-22 (**R. pp.**).

## 2. The Department's audit

The Department initiated its audit of U.S. Bank in September 2017. *See* Hr'g Tr. 128:23-129:3 (**R. pp.**). The initial audit covered the periods ending December 31, 2014 through December 31, 2016, but the Department found U.S. Bank had substantially understated their tax liability and extended the audit to include the periods December 31, 2011 to December 31, 2013. *See* Hr'g Tr. 129:5-14 (**R. pp.**); *see also* S.C. Code Ann. § 12-54-85(C)(3) (2014). The Department found that U.S. Bank had sourced only receipts from leasing tangible personal property in South Carolina and some fees related to trusts to South Carolina. *See* Hr'g Tr. 113:14-22 (**R. pp.**). In addition to not sourcing any income from loans and credit cards to South Carolina, U.S. Bank excluded from its apportionable base the gain from the sale of Visa stock connected to its business. *See* Hr'g Tr. 131:4-18 (**R. pp.**). Sourcing income from South Carolina loans, credit cards, and merchant processing to South Carolina and including the gain from the Visa stock in the apportionable income, the Audit resulted in a proposed assessment of additional tax in the amount of \$3,833,961.00 in addition to penalties and interest. *See* Joint Exhibits 1, 2, and 12 (**R. pp.**). Ultimately, the ALC removed the gain from the Visa stock from the apportionable income, which the parties agreed reduced the additional tax to \$2,827,928.00 in addition to penalties and interest. *See* Order on Motion for Reconsideration at 19 (**R. pp.**).

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<sup>4</sup> Annual fees typically are not due until a year after issuance of the card. *See* Hr'g Tr. 82:3-5 (**R. pp.**).

## STANDARD OF REVIEW

The Administrative Procedures Act governs appellate review of decisions from the ALC. This Court may not substitute its judgment for that of the ALC as to the weight of the evidence on questions of fact, and may reverse the ALC only if its finding, conclusion, or decision was:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B); *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 68, 804 S.E.2d 633, 638 (Ct. App. 2017).

Judicial review of the ALC's findings of fact is limited to determining if the findings are supported by "substantial evidence." *MRI at Belfair, LLC v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 1, 6, 664 S.E.2d 471, 474 (2008). Substantial evidence is evidence which, when considering the record as a whole, would allow reasonable minds to reach the conclusion that the ALC reached. *Books-A-Million, Inc. v. S.C. Dep't of Revenue*, 430 S.C. 388, 391, 844 S.E.2d 399, 400–01 (Ct. App. 2020). When the evidence conflicts on an issue, the court's substantial evidence standard of review defers to the findings of the fact-finder, and the mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. *Risher v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 435 (2011).

This Court should affirm the ALC's decision because the applicable standards of review compel it. U.S. Bank had failed to satisfy its burden to prove the Department's assessment was incorrect to source receipts from loans to South Carolina borrowers and credit card transactions in South Carolina to South Carolina. See *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 80–81, 804 S.E.2d 633, 644, (Ct. App. 2017). It should be noted U.S. Bank produced no evidence

about loans other than residential mortgages and abandoned any argument against the Department's sourcing of non-mortgage loans. In light of the evidence or lack thereof, the ALC found U.S. Bank's arguments unpersuasive. Further, this matter was considered by two separate judges at the ALC who split on the issue of the Visa gain—which is not an issue on appeal—but both agreed with the Department on how to source receipts from South Carolina mortgages and credit card transactions.

Additionally, the ALC did not err by declining to completely waive penalties for U.S. Bank's substantial understatement of tax because the law mandates the assessment of penalties when, as here, the taxpayer understates tax by more than the greater of 10% or \$5,000.<sup>5</sup> While it disputes the extent, U.S. Bank admits it had an understatement of tax for every year of the Audit Period. The ALC properly found U.S. Bank failed to prove it relied on substantial authority for its position.

Therefore, this Court should affirm the ALC's decision under the substantial evidence standard of review.

#### **ARGUMENT**

South Carolina imposes a Bank Tax of 4.5 % on the entire net income of every bank engaged in business in the State. *See* S.C. Code Ann. § 12-11-20 (2014). The Bank Tax is separate and distinct from the income tax imposed in Chapter 6 of Title 12. However, the General Assembly has provided that certain specific provisions related to income tax are adopted for Bank Tax purposes. *See* S.C. Code Ann. § 12-11-40 (2014). Specifically, Section 12-11-40 provides that “[f]or the purpose of . . . allocation and apportionment . . . [and] penalties, . . . all of the provisions of Chapter 6 of this title<sup>6</sup> that may be appropriate or applicable are adopted and made a part of this chapter for the enforcement and administration of this chapter . . . .” Therefore, the income tax rules for allocation, apportionment,

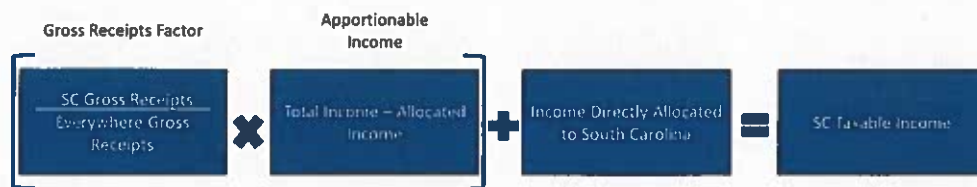
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<sup>5</sup> Even removing the gain from the Visa stock, U.S. Bank still had a substantial understatement of tax. *See* Order on Motion for Reconsideration at 19 (**R. pp.**)

<sup>6</sup> Chapter 6 of Title 12 is titled “South Carolina Income Tax Act.”

and penalties apply to the Bank Tax. Additionally, the Department has issued guidance directing taxpayers that banks will comply with sourcing principles similar to those used by multistate non-bank financial businesses, such as finance companies. *See* SC Information Letter #94-35. For taxpayers that do business in more than one state, Article 17 of the South Carolina Income Tax Act sets forth the rules for allocation and apportionment to determine the proper share of the taxpayer’s income that may be taxed by South Carolina. *See* S.C. Code Ann. § 12-6-2210 to -2320. Certain types of income are statutorily allocated to a specific state to be taxed by that jurisdiction. *See* S.C. Code Ann. § 12-6-2220. The remaining income is apportioned among the states in which the taxpayer does business. *See* S.C. Code Ann. § 12-6-2240 (2014).

Consistent with constitutional limitations, South Carolina only taxes income that is apportionable to this state. “If a taxpayer is transacting or conducting business partly within and partly without this State, the South Carolina income tax is imposed upon a base which *reasonably represents* the proportion of the trade or business carried on within this State.” S.C. Code Ann. § 12-6-2210(B) (2014) (emphasis added). Unless an item of income is directly allocated, it must be included in the apportionment income and the apportionment factors. *See* S.C. Code Ann. § 12-6-2220 (2014). Section 12-6-2290 requires taxpayers like U.S. Bank to use the single gross receipts apportionment formula:



S.C. Code Ann. § 12-6-2295 (2014) provides a non-exclusive list of the items to be sourced, or included, in the gross receipts apportionment ratio:

- (A) The terms “sales” as used in Section 12-6-2280 and “gross receipts” as used in Section 12-6-2290 include, but are not limited to, the following items if they have not been separately allocated:

(1) receipts from the sale or rental of property maintained for sale or rental to customers in the ordinary course of the taxpayer's trade or business including inventory;

(2) receipts from the sale of accounts receivable acquired in the ordinary course of trade or business for services rendered or from the sale or rental of property maintained for sale or rental to customers in the ordinary course of the taxpayer's trade or business if the accounts receivable were created by the taxpayer or a related party. For purposes of this item, a related person includes a person that bears a relationship to the taxpayer as described in Section 267 of the Internal Revenue Code;

(3) receipts from the use of intangible property in this State including, but not limited to, royalties from patents, copyrights, trademarks, and trade names;

(4) net gain from the sale of property used in the trade or business. For purposes of this subsection, property used in the trade or business means property subject to the allowance for depreciation, real property used in the trade or business, and intangible property used in the trade or business which is:

- (a) not property of a kind that properly would be includible in inventory of the business if on hand at the close of the taxable year; or
- (b) held by the business primarily for sale to customers in the ordinary course of the trade or business;

(5) receipts from services if the entire income-producing activity is within this State. If the income-producing activity is performed partly within and partly without this State, sales are attributable to this State to the extent the income-producing activity is performed within this State.

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Other than the gain from the Visa stock, the parties do not dispute that the receipts at issue are to be included in the gross receipt apportionment ratio.<sup>7</sup> Which specific subsection of § 12-6-2295(A)(1)-(4) applies does not change how U.S. Bank's income is sourced. *See* Hr'g Tr. 135:8-20 (R. pp.).

“[T]he apportionment formula is a reasonable basis for establishing the income tax of corporations which...do business on a multistate level.” *Eastman Kodak v. S.C. Tax Com'n*, 308 S.C. at 415, 419, 418 S.E.2d at 542, 544 *citing Covington Fabrics v. S.C. Tax Comm'n*, 264 S.C. 59, 212 S.E.2d 574

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<sup>7</sup> For this reason, U.S. Bank's reliance on *Alltel* is misguided. First, *Alltel* relates to a tax imposition statute, and no one denies that U.S. Bank is subject to Bank Tax. Second, there is no substantial doubt as to the statute's application as this Court made no such holding and did not to cite *Alltel* in *DIRECTV* when it examined the same statute.

(1975). “The obvious purpose of the apportionment formula is the determination of income from business activities within this State and is a proper subject for legislative action.” *Covington Fabrics*, 264 S.C. at 66 citing *State Ex Rel. Maxwell v. Kent Coffey Mfg. Co.*, 168 S.E. 397 (N.C. 1933), *affd. per curiam* 291 U.S. 642 (1934). The method of apportionment applicable to any particular taxpayer depends upon the nature of the taxpayer’s business in this state.

Although exactness in apportionment is desirable, all that is required is a reasonable approximation. “Furthermore, this Court has long realized the practical impossibility of a state’s achieving a perfect apportionment of expansive, complex business activities such as those of appellant, and has declared that ‘rough approximation rather than precision’ is sufficient. *Illinois Central Ry. Co. v. State of Minnesota*, 309 U.S. 157, 161 (1940). Unless a palpably disproportionate result comes from an apportionment, a result which makes it patent that the tax is levied upon interstate commerce rather than upon an interstate privilege, this Court has not been willing to nullify honest state efforts to make apportionments.” *International Harvester Co. v. Evatt*, 329 U.S. 416, reh. den., 329 U.S. 834 (1947).

*Covington Fabrics*, 264 S.C. at 66-67.

**I. Substantial evidence supports the ALC’s findings that U.S. Bank’s receipts from mortgages used in South Carolina should be sourced to South Carolina.**

**A. Mortgages for real property in South Carolina are intangibles used in South Carolina.**

A taxpayer who uses intangibles in South Carolina must include revenue from those intangibles in computing its gross receipts from South Carolina. *See* § 12-6-2295(A)(3); *see also Geoffrey, Inc. v. S.C. Tax Comm’n*, 313 S.C. 15, 437 S.E.2d 13 (1993) (royalty income from trademark licenses used in South Carolina was subject to South Carolina income tax). The General Assembly has defined mortgages not as a service but as an intangible. In Title 12 (South Carolina’s tax code), S.C. Code Ann. § 12-49-1110(8) (2014) defines mortgage as “a mortgage, deed of trust, or other written instrument covering or affecting real property as security for the payment of money.” Absent is any mention of service. Further, the South Carolina Income Tax Act defines intangible property as “all property other than tangible property.” S.C. Code Ann. § 12-6-30(12) (2014). The definition of tangible property

provides it “does not include money, bank deposits, shares of stock, bonds, credits, evidences of debt, choses in action, or evidences of an interest in property” S.C. Code Ann. § 12-6-30(11) (2014) (emphasis added). S.C. Code Ann. § 12-16-20(4) defines intangible personal property as “incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, creditors, evidences of an interest in property, evidences of debt, and choses in action generally.” (emphasis added). Therefore, under South Carolina law, mortgages are intangibles for tax purposes.

The record evidence supports that the Department properly sourced the gross receipts of loan interest income to the location of the borrower. A mortgage is a loan secured by real property. *See* Hr’g Tr. 138:11-14 (**R. pp.**). Debts owed to a taxpayer are intangibles, rather than a service. *See* Hr’g Tr. 137:10-11 (**R. pp.**). U.S. Bank describes mortgages as an asset, rather than a service. *See* Hr’g Tr. 39:6 and 40:2 (**R. pp.**). As U.S. Bank’s 30(b)(6) fact witness testified, mortgages are “an asset that we hold.” *See* Hr’g Tr. 44:3–9 (**R. pp.**). Even mortgage servicing rights are intangible assets. *See* Hr’g Tr. 316:18-22 (**R. pp.**). They are bought and sold like a receivable. U.S. Bank retains mortgage servicing rights for the mortgages it originated but later sells. *See* Hr’g Tr. 50:2-5 (**R. pp.**). Debts generate income from interest—money paid for the use or forbearance of money. Like the royalty income from trademarks in *Geoffrey*, the interest income from loans to debtors in South Carolina should be sourced to South Carolina. This is consistent with the Department’s longstanding administrative practice of sourcing income from loans to the location of the borrower. *See* Hr’g Tr. 155:17–23 (**R. pp.**). A mortgage is used at the location of the real property and the borrower is a reasonable proxy. *See* Hr’g Tr. 139:12-14; 140:16-18; and 258:23-259:2 (**R. pp.**).<sup>8</sup> Accordingly, payments on loans are receipts from within South Carolina when paid by a borrower located in South Carolina.

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<sup>8</sup> The Multistate Tax Commission model statute sources receipts from mortgages to the location of the real property and receipts from other loans to the location of the borrower. *See* Hr’g Tr. 310:7-24

**B. Even if U.S. Bank's mortgage activities are a service, the income-producing activity for mortgages on real property in South Carolina occurs in South Carolina.**

A taxpayer that derives revenue from performing services both inside and outside of South Carolina must source its gross receipts to South Carolina to the extent it performs its income-producing activity within this State. *See* S.C. Code Ann. § 12-6-2295(A)(5). The statute does not define “income producing activity.” Generally, income-producing activity is the purpose or reason that participants pay to enter a transaction (or combination of transactions), which produces income for the service provider (taxpayer). That is, with respect to the transactions that provide the taxpayer’s income, the income-producing activity is what participants in that transaction(s) want in exchange for payment. For example, when sourcing the income of a multistate engineering firm, the income-producing activity is providing engineering services, so the income is sourced to the location of the engineer. *Lockwood Greene Engineers, Inc. v. S.C. Tax Comm’n*, 293 S.C. 447, 361 S.E.2d 346 (Ct. App. 1987). Under its longstanding policy, the Department sources the loan income of banks to the location of the borrower because a bank’s income-producing activity with respect to a loan is loaning money to a borrower. *See* Hr’g Tr. 155:17-23 (**R. pp.**).

More recently, in *DIRECTV, Inc. & Subsidiaries v. South Carolina Dept. of Revenue*, 421 S.C. 59, 804 S.E.2d 633 (Ct. App. 2017), this Court examined the phrase “income-producing activity” in § 12-6-2295(A)(5). *DIRECTV*, a corporation headquartered in California, provided access to television entertainment via satellite to residential and commercial customers across the United States in exchange for a fee. Other than local collection facilities, equipment rental and sale, and one or two employees, nearly all of *DIRECTV*’s assets, employees, and property involved in providing its services

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(**R. pp.**); *see also* *Formula for the Apportionment and Allocation of Net Income of Financial Institutions Amended by the Multistate Tax Commission* – July 29, 2015. According to state and local tax policy expert Professor John Swain, attributing mortgage receipts (interest, servicing fees, and gains) to the location of the real property is good tax policy, and the borrower is a reasonable proxy. *See* Hr’g Tr. 315:7-317:20 (**R. pp.**).

to subscribers were located outside of South Carolina. Nevertheless, the Court of Appeals concluded that DIRECTV's customers are paying for the delivery of a satellite signal into their homes and businesses. Thus, the activity that produces DIRECTV's income is delivery of the satellite signal, not other activities that DIRECTV may have conducted outside of South Carolina. *DIRECTV* 421 S.C. at 75, 804 S.E.2d at 642. Furthermore, the Court agreed the South Carolina customers' subscription payments, which allowed for delivery of a signal to them, represented 100% of DIRECTV's South Carolina subscription receipts. Therefore, the numerator—the receipts sourced to South Carolina—was best represented by including 100% of DIRECTV's South Carolina subscription receipts.

In response to DIRECTV's argument that its income-producing activity should include the groundwork in developing the package of services,<sup>9</sup> the Court found those activities were preparatory and performed in anticipation of customers signing up for DIRECTV's services and of future profits. *See Mercury Motor Express, Inc. v. S.C. Tax Comm'n*, 244 S.C. 134, 135 S.E.2d 756 (1964) (excluding "incidental" activities from determination of a taxpayer's income-producing activity). Therefore, "these activities cannot be [income producing activities] because they do not produce income, but rather, are 'income-anticipatory' activities. . . . While the other activities occurring prior to the delivery of signal are important for DIRECTV in that it can help lead to income, section 12-6-2295(A)(5) requires activities that actually produce income." *DIRECTV* at 78; *see also Synthes USA HQ, Inc. v. Commonwealth*, 289 A.3d 846, 878 (Pa. 2023) (the Court adopted the benefit-received method for determining income-producing activity and sourced "the sale of services to where the service is fulfilled and the income finally produced, which is at the customer's location.").

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<sup>9</sup> "DIRECTV's expert economist, Dr. Brian J. Cody, identified four primary value drivers—content development, marketing, broadcast operations, and customer service—that influence customers' decisions in subscribing to DIRECTV's services." *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 73, 804 S.E.2d 633, 640 (Ct. App. 2017). However, the Court of Appeals rejected Dr. Cody's (the same Dr. Cody U.S. Bank hired as an expert economist in this case) equating value drivers to income producing activities. *See id.*

Here, like DIRECTV, U.S. Bank's income-producing activity for its mortgage receipts occurs within the State because U.S. Bank is extending a loan to a borrower in South Carolina, who will use the loan to purchase real property in this State. Thus, even if the mortgage is a service, the service (lending) is provided to the borrower (who pays to use or hold the proceeds of the loan) in South Carolina in the same way a DIRECTV subscriber pays to receive and use a digital television signal in South Carolina.<sup>10</sup> Instead of subscription fees, the borrowers pay interest. The income-producing activity is loaning money to the borrower and that occurs where that borrower who receives the loan is located. However, U.S. Bank argues the income-producing activities are the tasks it performs outside of South Carolina, such as soliciting the borrower and checking the borrower's creditworthiness and ancillary administrative activities if a loan is approved. U.S. Bank essentially argues that the income from these "services" should not be sourced to South Carolina because the cost to perform these services is incurred out of state. As a result, U.S. Bank sourced income based on cost of performance. *See* Hr'g Tr. 113:1-11; 136:10-16 (**R. pp.**).<sup>11</sup> This Court rejected a similar cost of performance argument in *DIRECTV*. The borrower is not paying to be solicited, to have its creditworthiness checked, or for U.S. Bank's other administrative work. Like the preparatory activities in *DIRECTV*, U.S. Bank conducts these activities "in anticipation" of loaning money to a customer, but those income-anticipatory activities do not produce income and therefore are not income-producing activities. Instead, the borrower pays U.S. Bank to use or hold money. U.S. Bank earns income from loaning

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<sup>10</sup> From an economic perspective, U.S. Bank is more like DIRECTV than a professional services firm. *See* Hr'g Tr. 264:13-266:4 (**R. pp.**).

<sup>11</sup> Cost of performance generally assigns service and intangible receipts to where the taxpayer has property and payroll. *See* Hr'g Tr. 297:8-19 (**R. pp.**). "South Carolina is not a 'cost of performance state;' i.e., a state where receipts are always sourced to the state where the costs to produce the receipts are incurred. It is also not a 'market state;' i.e., a state where receipts are always sourced to the state where the item or service is consumed or the location of the payer." *See* Petitioner's Ex. A at p. 17(**R. pp.**); Hr'g Tr. 154:1-11 (**R. pp.**). Instead, South Carolina sources income from services to the location of the income producing activity and income from intangibles to where they are used.

money to the debtor. For loans to South Carolina borrowers, that income-producing activity occurs in South Carolina.<sup>12</sup>

The ALC also correctly found that U.S. Bank's argument for sourcing based on the location of government sponsored entities approximates an origin-of-payment argument rejected by South Carolina. *See* Order on Motion for Reconsideration at 6 (**R. pp.**). As noted in *DIRECTV*, this Court rejected the "origin of payment" approach in *Lockwood Greene Engineers, Inc. v. S.C. Tax Comm'n*, 293 S.C. 447, 361 S.E.2d 346 (Ct. App. 1987). South Carolina mortgages are serviced in South Carolina. As described in the Statement of Facts, payment of property taxes, payment of homeowner's insurance, placing a lien on the real property, payment of principal, interest and fees, customer service, collections, and foreclosure all occur in South Carolina. Therefore, the income-producing activity for mortgage servicing receipts related to South Carolina mortgages is performed in South Carolina.

**II. Substantial evidence supports the ALC's findings that U.S. Bank's receipts from credit cards used in South Carolina should be sourced to South Carolina.**

**A. Credit card receivables generated by South Carolina transactions are intangibles used in South Carolina.**

Like mortgages, credit card receivables are intangibles. Similarly, credit card receivables should be sourced to the location where the transaction is initiated. *See* Hr'g Tr. 305:22-306:4 (**R. pp.**). As its name implies, credit cards represent an extension of credit. Section 12-16-20(4) defines intangible personal property to include "debts" and "receivables." U.S. Bank's expert economist repeatedly described credit cards, like mortgages, as an "extension of credit." *See* Hr'g Tr. 201:13, 202:14, 210:20-22, and 222:25-223:1 (**R. pp.**). U.S. Bank's 30(b)(6) fact witness admitted that a credit card is "an unsecured line of credit used to facilitate the purchase of goods and services." *See* Hr'g Tr. 80:2-

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<sup>12</sup> U.S. Bank performs many of the same or similar administrative tasks on loan applications that are ultimately denied.

5 (**R. pp.**) (emphasis added). In other words, the intangible credit card is used where that transaction occurs. Therefore, receipts from credit cards used in South Carolina should be sourced to South Carolina.

**B. Even if credit card receivables are a service, the income-producing activity for South Carolina transactions occurs in South Carolina.**

U.S. Bank offers credit cards to its customer in exchange for interest and fees (late fees, annual fees). Even if these credit card receivables are treated as a service, an income-producing activity approach reaches the same result. Like with its loans, U.S. Bank mistakenly characterizes its income-anticipatory activities—such as soliciting the customer and checking the customer’s creditworthiness and ancillary administrative activities after the customer receives a credit card—as income producing activities. However, the solicitation of customers, evaluation of the credit card applications, and administrative tasks supporting the credit card do not produce income. Credit cards exist for the purpose of obtaining money, property, labor, or services on credit. When a customer pays interest and fees related to a credit card, the customer is paying for the ability to spend money now on credit and pay later. This loan is the activity that produces income for U.S. Bank. For credit card holders in South Carolina, that income-producing activity occurs in South Carolina.

Unless and until the cardholder carries a balance, the borrower owes U.S. Bank no interest or late fees. *See* Hr’g Tr. 81:1-5; 82:6-10; and 107:14-19 (**R. pp.**). Carrying a balance is essentially a loan with credit card interest and fees being analogous to the interest from a loan. *See* Hr’g Tr. 142:24-143:1; 201:9–10; 204:16-205:9 (**R. pp.**) Notably, U.S. Bank did not challenge the Department’s sourcing receipts from loans other than mortgages to the location of the borrower. For the same reasons loan interest should be sourced to the location of the borrower, credit card interest and late fees should be sourced to the location of the cardholder (borrower). The cardholder is paying U.S. Bank interest/late fees for a loan—the use of funds now while deferring repayment.

Besides the loan aspect of a credit card, U.S. Bank also earns income from its role as a necessary party in the credit card network. The credit card association, merchant/acquirer bank, and issuing bank form the network that enables merchants and cardholders to transact without cash. U.S. Bank receives interchange fees when it acts as an issuing bank. It also receives merchant fees when it acts as the merchant/acquirer bank. The merchant pays the interchange fee and the merchant fee to U.S. Bank. *See* Hr’g Tr. 104:8–9; 319:15–18 (**R. pp.**). The merchant receives the net of the amount charged to its customer less the fees paid to the credit card association, issuing bank, and merchant bank. Merchants pay these fees each time a credit/debit card is “swiped”; that is, whenever the merchant and customer access the credit card network in order to consummate a cashless transaction for the sale of goods or services. *See* Hr’g Tr. 157:4–22 (**R. pp.**).<sup>13</sup>

The merchant pays those fees in exchange for U.S. Bank authorizing the transaction and ensuring the merchant is ultimately paid for the transaction. U.S. Bank performs these services (authorization, clearing, and settlement) by obtaining certain data from the merchant at the point of sale (where the merchant is located), and then delivering data back to the merchant (again, at the point of sale) so that the merchant can complete the transaction. All the background activities that U.S. Bank performs support the income that ultimately produces income for U.S. Bank—the delivery of electronic data from and to the merchant at the point of sale. Like the satellite signal that DIRECTV delivered to its South Carolina subscribers, the data U.S. Bank delivers to its South Carolina merchants is the income-producing activity it performs in this State. Therefore, the ALC correctly found that the receipts from merchant and interchange fees should be sourced to the merchant’s location where the transaction occurs. *See* Order on Motion for Reconsideration at 12-14 (**R. pp.**).

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<sup>13</sup> The cardholder and the merchant are reasonable proxies for each other because both come together to consummate cashless transaction. *See* Hr’g Tr. 142:2–15 (**R. pp.**).

Unless and until the cardholder uses the credit card to pay a merchant—i.e. complete a transaction, the merchant owes U.S. Bank no interchange fees. *See* Hr’g Tr. 108:8-109:8 (**R. pp.**).<sup>14</sup> U.S. Bank argues the preparatory and ancillary administrative support activities produce its income. However, the activities that U.S. Bank points to are too attenuated to be income-producing activities, because U.S. Bank can perform all of those activities and still never generate income. However, all the activities of the parties to the credit card network support the provision of the network, which extends into South Carolina and allows consummation of South Carolina transactions. In particular, U.S. Bank plays an indispensable role within the credit card network ecosystem by delivering/transmitting electronic information to and from its South Carolina merchants’ point of sale with respect to each transaction the merchants initiate and complete. Its merchants pay U.S. Bank a fee for providing this service. Therefore, these fees should be sourced to South Carolina if the transaction occurs at the merchant’s location in South Carolina.<sup>15</sup> The source of the income is the in-state merchant; and the purchase of goods or services, which generates the transaction fees, is from within the South Carolina.

U.S. Bank urges this Court to approve a cost of performance or payroll and assets method of sourcing that this Court previously rejected. *See DIRECTV, Inc. & Subsidiaries v. S.C. Dep’t of Revenue*, 421 S.C. 59, 80, 804 S.E.2d 633, 644 (Ct. App. 2017) (“we agree with the ALC’s assessment that DIRECTV’s payroll and assets proxy is not a reasonable approximation of its [income-producing activity] in South Carolina.”). The out-of-state activities identified by U.S. Bank related to loans and

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<sup>14</sup> U.S. Bank asserts that if it approves a transaction but never funds it, the merchant does not pay the interchange fee. *See* U.S. Bank’s Brief at 18. However, the record indicates that funding always follows approval. *See* Hr’g Tr. 9:16–21; 73:22–74:3; 103:5–16; 188:24 (**R. pp.**). In other words, this hypothetical cannot exist according to the record. Regardless, the income-producing activity would not change. U.S. Bank’s hypothetical would be analogous to a DIRECTV subscriber refusing to pay his/her bill after DIRECTV provided the subscriber with satellite television.

<sup>15</sup> For online sales, the merchant is considered located where the customer is located. *See* Joint Ex. 1 at fn. 4 (**R. pp.**).

credit cards do not reasonably represent U.S. Bank’s income-producing activity. Instead, U.S. Bank’s income producing activity is loaning money and enabling merchants and cardholders to consummate cashless transactions for goods and services. U.S. Bank performs these income producing activities both in South Carolina and elsewhere. Therefore, the receipts that U.S. Bank generates from providing these loans to South Carolina borrowers and facilitating the credit card transactions that occur in South Carolina should be sourced to the location of the cardholder and where the transaction is initiated—South Carolina.

**III. The ALC did not err by declining to waive the statutorily mandated penalties for U.S. Bank’s substantial understatement, where U.S. Bank is a sophisticated party whose own expert testified that some portion of the receipts at issue should have been sourced to South Carolina.**

Title 12 imposes penalties in situations where a tax has not been paid—or has been underpaid by a certain amount. “If there is an underpayment attributable to . . . a substantial understatement of tax for a taxable period . . . there **must** be added to the tax an amount equal to twenty-five percent of the amount of the underpayment.” S.C. Code Ann. § 12-54-155(A)(1) (emphasis added).<sup>16</sup> For purposes of this subsection, “understatement” means the excess of the amount of the tax required to be shown on the return for the taxable period over the amount of the tax imposed which is shown on the return. The understatement is substantial if the amount of the understatement for the taxable period exceeds the greater of ten percent of the tax required to be shown on the return for the taxable period or five thousand dollars. *Id.* Like in *DIRECTV*, this Court should affirm the ALC’s finding that the Department properly imposed understatement penalties. 421 S.C. at 84, 804 S.E.2d at 646.

While the penalty is mandatory for a substantial understatement, there are two instances in which the penalty may be reduced. First, section 12-54-155(B)(2)(b) allows for a reduction of the

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<sup>16</sup> These civil penalties are applicable to all taxes that require a return under South Carolina law, including bank taxes. *See* S.C. Code Ann. § 12-54-43. Penalties are considered a tax owed to this State. *Id.*

understatement (and thereby the resulting penalty) if the taxpayer had substantial authority for its tax treatment of the item. Second, section 12-54-155(D)(1) prohibits the penalty for a portion of the understatement if the taxpayer had reasonable cause and acted in good faith with respect to the portion of the understatement. As provided in section 12-54-155, “substantial authority,” and “reasonable cause” and “good faith” are interpreted in accordance with Treasury Regulation Sections 1.6662-4 and 1.6664-4, respectively. Under those federal regulations, substantial authority is present “only if the weight of authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment.” Determining whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, considering all pertinent facts and circumstances. “Generally, the most important factor is the extent of the taxpayer’s effort to assess the taxpayer’s proper tax liability” when considering the “experience, knowledge, and education of the taxpayer.” *See* 26 C.F.R. § 1.6664-4(b)(1). Here, the ALC properly declined to further abate the statutorily mandated penalties based on the evidence in the record.

U.S. Bank produced no evidence that the penalty should be reduced. Instead, it simultaneously argues both that the Department should have published guidance as to how its income should be sourced but also that any statutory construction by the Department would be owed no deference. If U.S. Bank wanted guidance, it could have followed the established process for making such a request. *See* S.C. Revenue Procedure #09-3. However, U.S. Bank never contacted the Department to ask how to source its receipts from loan interest, credit card interest and fees, and merchant fees. *See* Hr’g Tr. 159:25-160:5 (**R. pp.**). U.S. Bank never amended its returns to make them consistent with the audit and Department Determination. *See* Hr’g 160:15-19 (**R. pp.**). Instead, U.S. Bank’s chose a sourcing method that contravenes established case law. The ALC Order in *DIRECTV* was issued on May 12, 2015. *See DIRECTV, Inc. & Subsidiaries v. S.C. Dep’t of Revenue*, Docket No. 14-ALJ-17-0158-CC (S.C. Administrative Law Court May 12, 2015). Section 12-6-2295(A) and *Geoffrey, Inc. v. S.C. Tax Comm’n*,

313 S.C. 15, 437 S.E.2d 13 (1993) clearly require a taxpayer who uses intangibles in South Carolina to include revenue from those intangibles in its gross receipts from South Carolina. U.S. Bank's own expert economist opined that U.S. Bank had incorrectly sourced its income from mortgage interest, credit interest, credit card late fees, and credit card annual fees. *See* Hr'g Tr. 235:12-21; 236:18-21; and 236:22-237:13 (**R. pp.**). Even U.S. Bank concedes that "there remains a tax deficiency for each of the tax years at issue." *See* U.S. Bank Proposed Order at p. 32 (**R. pp.**).<sup>17</sup>

U.S. Bank, a sophisticated multistate bank, failed to identify the substantial authority upon which it relied because it had none. U.S. Bank's treatment of income did not reasonably represent its business activity in the state, so it could not have relied on substantial authority. *See DIRECTV* at 83 ("Because DIRECTV's treatment of its income tax did not reasonably represent its business activity in the state, DIRECTV could not have relied on substantial authority for its treatment of the subscription receipts."). Therefore, the substantial understatement penalties are both proper and required by statute.

### **CONCLUSION**

The substantial record evidence supports the ALC's finding that mortgages and credit card receivables are intangibles, but even if they were services, the results would be the same. Receipts from South Carolina mortgages, credit card holders, and credit card transactions should be sourced to South Carolina. The ALC also correctly declined to further abate penalties when U.S. Bank admitted it incorrectly attributed income outside of South Carolina when calculating its Bank Tax. The ALC appropriately considered and weighed the record evidence to find that U.S. Bank failed to meet its burden of proof on the issues under appeal. For the reasons explained above, the Department respectfully requests this Court affirm the ALC's decision.

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<sup>17</sup> U.S. Bank contradicts itself by titling section I of its brief: "U.S. Bank Properly Sourced its Income to South Carolina."

Respectfully submitted,

Handwritten signature of Marcus D. Antley, III in blue ink.

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Columbia, South Carolina  
May 12, 2025

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Honorable Milton G. Kimpson, Administrative Law Judge  
Honorable Robert L. Reibold, Administrative Law Judge (on Reconsideration)

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Appellate Case No. 2024-001577  
Administrative Law Court Case No. 20-ALJ-17-0168-CC

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U.S. Bank National Association.....Appellant,

v.

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

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**RESPONDENT SOUTH CAROLINA DEPARTMENT OF REVENUE'S  
DESIGNATION OF MATTER**

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Pursuant to 209 of the South Carolina Appellate Court Rules, Respondent South Carolina Department of Revenue proposes that the following items be included in the Record on Appeal:

**ORDERS**

1. Administrative Law Court Final Order dated June 25, 2024
2. Administrative Law Court Amended Final Order dated June 25, 2024
3. Notice of Reassignment dated July 10, 2024
4. Administrative Law Court Order on Motion for Reconsideration dated August 19, 2024

**PLEADINGS**

1. U.S. Bank's Request for Contested Case Hearing dated July 8, 2020

2. South Carolina Department of Revenue's Pre-Hearing Statement dated September 3, 2020
3. U.S. Bank's Pre-Hearing Statement dated September 17, 2020

**TRANSCRIPTS**

1. Contested Case Hearing Transcript of July 17-18, 2023
2. Motion for Reconsideration Hearing Transcript of July 30, 2024

**EXHIBITS**

1. Joint Exhibits 1-32
2. Petitioner's Exhibit A

The undersigned counsel hereby certifies, pursuant to Rule 209(c) of the South Carolina Appellate Court Rules that this Designation contains no matter that is irrelevant to this appeal.



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*Counsel for Respondent South Carolina Department of Revenue*

May 12, 2025

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Honorable Milton G. Kimpson, Administrative Law Judge  
Honorable Robert L. Reibold, Administrative Law Judge (on Reconsideration)

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Appellate Case No. 2024-001577  
Administrative Law Court Case No. 20-ALJ-17-0168-CC

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U.S. Bank National Association.....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 Initial Brief of Respondent and Designation of Matter to be Included in the Record of Appeal via electronic mail:

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May 12, 2025