THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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Appellate Case No. 2024-000013

Case No. 19-ALJ-17-0416-CC

Tractor Supply Company,……………………….……..Appellant,

v.

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

RESPONDENT SOUTH CAROLINA DEPARTMENT OF REVENUE'S RETURN TO PETITION FOR REHEARING

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Pursuant to Rules 221(a) and 240, SCACR, and the Court's request dated July 14, 2026, the South Carolina Department of Revenue (Department) files this Return to Appellant Tractor Supply Company's (TSC) Petition for Rehearing.

STANDARD FOR REHEARING

Rule 221(a), SCACR, authorizes a party who believes the Court overlooked or misapprehended points of law or fact to petition the Court for rehearing. Our Supreme Court has long held that:

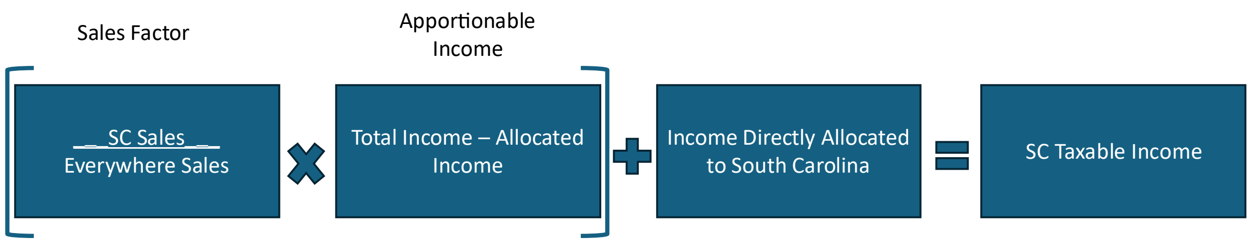
> It is a rare thing when the court grants such a petition. Usually, they are dismissed with a simple order to that effect, for the reason that they contain nothing but a "rehash" of what the losing party has said before, matters which the court has already considered well and disposed of.

Arnold v. Carolina Power & Light Co., 168 S.C. 163, 167 S.E. 234, 238 (1933). The purpose of the petition for rehearing is not to have the case tried in the appellate court a second time. *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). TSC's petition for rehearing should be dismissed because it contains nothing but a "rehash" of what TSC has said before about matters which the Court has already considered well and disposed of. Further, the Court should disregard arguments that TSC relegates to its single-spaced, excessive footnotes (roughly half of its Petition) in an effort to circumvent the fifteen (15) page limit. *See* Rules 221(a) and 267(c), SCACR; *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) ("the South Carolina Appellate Court Rules are not mere technicalities"), *see also, e.g., Mueller v. Angelone*, 181 F.3d 557, 582 (4th Cir. 1999) (dismissed claims raised in footnotes), *Fleming v. County of Kane, State of Ill.*, 855 F.2d 496 (1988) ("litigants should not attempt to hide excess text…in footnotes"), *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512 (1988) (use of excessive single-spaced footnotes violated the spirit, if not the letter, of the appellate court rules), and *Beasley v. Lucky Stores, Inc.*, 400 F.Supp.3d 942 (2019) (the court would not consider arguments inappropriately contained in 19 footnotes although technically compliant with the 15-page limit).

ARGUMENT

I. THIS COURT CORRECTLY APPREHENDED AND CONSIDERED RELEVANT APPELLATE COURT DECISIONS, THE ALTERNATIVE APPORTIONMENT STATUTE, AND THE RULES OF STATUTORY CONSTRUCTION.

TSC misapprehends the alternative apportionment statute by repeating its argument that "allocation and apportionment provisions of this chapter" means "sales factor." While the allocation and apportionment provisions include the sales factor, the sales factor is not the only provision. *See* apportionment formula graphic below from Department's Brief at 1:



"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). The alternative apportionment statute itself echoes this language equating business activity and income: "If the allocation and apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's **business activity** in this State, …the department may require, in respect to all or any part of the taxpayer's **business activity**, if reasonable:…the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's **income**." S.C. Code Ann. § 12-6-2320 (2014) (emphasis added); *see also DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 83, 804 S.E.2d 633, 646 (Ct. App. 2017) ("[Taxpayer's] treatment of its **income tax** did not reasonably represent its **business activity** in the state" (emphasis added)). "The obvious purpose of the apportionment formula is the determination of **income** from **business activities** within this State."

Covington Fabrics Corp. v. S.C. Tax Comm'n, 264 S.C. 59, 66, 212 S.E.2d 574, 577 (1975) (emphasis added). "[A]ll that is required is a reasonable approximation." *Id.*

TSC misapprehends *Carmax Auto Superstores W. Coast, Inc. v. S.C. Dep't of Revenue*, 411 S.C. 79, 767 S.E.2d 195 (2014), which is a case about who has the burden of proof and whether that burden was met. *CarMax* did <u>not</u> hold that alternative apportionment is only appropriate if the sales factor viewed in isolation unfairly represents a taxpayer's business activity. This case and *CarMax* are factually distinct and were tried differently—here, the South Carolina Administrative Law Court (ALC) properly placed the burden on the Department. As noted in the Department Determination (**R. p. 3744**), the Department focused on the sales factor in *CarMax* and *Rent-A-Center*. Unsurprisingly, the decisions in *CarMax* and *Rent-A-Center* focus on the sales factor, but as noted above, the allocation and apportionment provisions are not so limited.

Even if TSC could rewrite the statute to delete "allocation and apportionment provisions of this chapter" and insert "sales factor," the sales factor cannot fairly represent TSC's business activity if it is multiplied by a distorted apportionable income amount. By way of illustration, if a taxpayer distorts its apportionable income to be zero despite the sales factor, in isolation, reflecting substantial business activity in South Carolina, the allocation and apportionment provisions would fail in their purpose of imposing an income tax ""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); *Hertz Corp. v. S.C. Tax Comm'n*, 246 S.C. 92, 142 S.E.2d 445 (1965).

TSC misapprehends the rules of statutory construction. Instead of adopting TSC's rewriting of the statute, this Court correctly applied a plain language construction of S.C. Code Ann. § 12-6-2320 consistent with *Media General.*

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. The determination of legislative intent is a matter of law. 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. The best evidence of intent is in the statute itself: What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature. If a statute's terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense, unless it fairly appears from the context that the Legislature intended to use such terms in a technical or peculiar sense. The prime object, of course, in the construction of a statute is to ascertain and give effect to the legislative intent.

Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue, 388 S.C. 138, 147–48, 694 S.E.2d 525, 529–30 (2010) (internal citations and quotations omitted). Inherently holding S.C. Code Ann. § 12-6-2320 unambiguous and its application not patently absurd, *Media General* interpreted the statute according to its plain language. *Id.* at 151.

TSC misapprehends *Alltel* to mean all tax statutes are construed in favor of the taxpayer. *Alltel* and the *Cooper River Bridge* case that it cites make clear that the principle of resolving substantial doubt in the taxpayer's favor only applies in the case of an imposition statute (i.e. the question of whether a taxpayer is subject to a particular tax). *Cooper River Bridge* explicitly held "where the language relied upon to bring a particular person within a tax law...then the person will be excluded…" The question in *Alltel* was whether the taxpayer was subject to license fees for telephone companies. There is no dispute, much less substantial doubt, that TSC is subject to South Carolina corporate income taxes. Significantly, *CarMax* makes no mention of *Alltel*, which the Supreme Court decided two years earlier, in construing the alternative apportionment statute.

II. THE COURT CORRECTLY APPREHENDED *CARMAX* AND THE SUBSTANTIAL EVIDENCE SUPPORTING THAT STEP ONE OF THE ALTERNATIVE APPORTIONMENT STATUTE WAS MET.

TSC continues in its misapprehension of *CarMax* and overlooks the substantial evidence supporting that the allocation and apportionment provisions did not fairly represent TSC's business activity in this State. *See* the above section and Section II of the Department's Brief.

III. THE COURT CORRECTLY APPREHENDED AND CONSIDERED TSC'S ARGUMENTS ABOUT BURDEN SHIFTING.

TSC misapprehends the burden of proof and overlooks the substantial evidence supporting the ALC finding that the Department met its burden of proof. Under the plain language of the alternative apportionment statute, the Department only had to show that "the allocation and apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in this State." The Department not only showed this but exposed how TSC intentionally caused that unfair representation or distortion—through its Tax Restructuring and non-arm's length transfer pricing. This is consistent with our Supreme Court precedent. *See Geoffrey, Inc. v. S.C. Tax Comm'n*, 313 S.C. 15, 22, 437 S.E.2d 13, 18 (1993) ("The real source of Geoffrey's income is not a paper agreement, but South Carolina's Toys R Us customers.").

The ALC was in the best position to judge the credibility and weight of evidence. "The judging of the credibility of witnesses and the weighing of evidence in a law case are uniquely functions of the trial court." *Bivens v. Watkins*, 313 S.C. 228, 235, 437 S.E.2d 132, 136 (Ct. App. 1993). Further, the trial court is "in a superior position to judge the witnesses' demeanor and veracity and, therefore, his findings should be given broad discretion." *Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996). Substantial evidence supported the ALC's finding that the allocation and apportionment provisions did not fairly represent TSC's business activity.

TSC overlooks this substantial evidence and misapprehends the purpose of a transfer pricing study. The purpose of a transfer pricing study is penalty protection in the event of a substantial or gross valuation misstatement, but even then, the study must be both reliable and in existence at the time of filing the return. *See* 26 U.S.C. § 6662(e)(1)(B)(ii) and 26 C.F.R. § 1.6662-6(e). Besides this case lacking penalties, TSC's transfer pricing study could not serve this purpose due to its unreliability. The mechanism by which TSC achieved the distorted representation of its business activity in this State was intercompany transactions, most notably an artificially inflated procurement charge.

At trial, the parties agreed that the transfer pricing study establishing the procurement charge was unreliable. The ALC found that TSC's transfer pricing study was unreliable and Dr. Andrade's testimony supporting the transfer pricing was not credible. In contrast, the ALC found that Dr. DeRamus' expert testimony that the intercompany charge did not meet the arm's length standard was credible. Nothing requires the Department to complete a transfer pricing study for TSC's intercompany transactions. The applicable alternative apportionment statute makes no mention of transfer pricing adjustments, much less say that a proponent of alternative apportionment must prove what the correct arm's length standard is. Nevertheless, Dr. DeRamus testified that apportioning TSC's income to South Carolina using combined unitary reporting **reasonably approximates** the same income and tax if TSC had implemented an arm's length transfer price. *See* Hr'g Tr. 653:10–656:14 (**R. pp. 1043–1046**) (emphasis added). Ultimately, the ALC properly exercised its role as fact finder, and substantial evidence supports its finding that the Department met Step One.

IV. THE COURT CORRECTLY APPREHENDED AND CONSIDERED SOUTH CAROLINA LAW AND TSC'S ARGUMENTS ABOUT THE BURDEN OF PROOF FOR STEP TWO.

TSC misapprehends reasonable and equitable as two separate standards. As noted in the Department's Brief, the terms "alternative apportionment" and "equitable apportionment" are interchangeable. The term "equitable apportionment" does not create additional tests or places additional burdens on the proponent of a reasonable alternative apportionment method. *See* Department's Brief fn 17 at 21. TSC's own tax policy expert, Professor Pomp, was the hearing officer for the 2013 MTC Report, which used these terms interchangeably: "The 2013 MTC Report says that 'Section 18, or alternative or equitable apportionment, recognizes that one size does not fit all." *Formulary Apportionment is not a Panacea* (PART 5), 25 *J. Int'l Tax'n* 33, 40, 2014 WL 4704720, 4. Professor Pomp also co-authored a law review article that uses the term "equitable apportionment" in place of "alternative apportionment":

> A tax department should have the authority to achieve equitable apportionment in such circumstances. *See* UDITPA…at § 18 (allowing adjustments if the apportionment rule otherwise applied does not "fairly represent the extent of the taxpayer's business activity in the state")

Michael J. Mcintyre, Paull Mines, and Richard D. Pomp, *Designing A Combined Reporting Regime for A State Corporate Income Tax: A Case Study of Louisiana*, 61 La. L. Rev. 699, 761 (2001).

In a law review article on combined reporting in the wake of *Media General*, the author uses "alternative apportionment" and "equitable apportionment" interchangeably:

> South Carolina Department of Revenue and taxpayers should be allowed to invoke combined reporting as equitable apportionment…use of combined reporting as a form of alternative apportionment in South Carolina is a necessary step toward securing the most equitable corporate income tax.

Richard I. Simons, *Fair Representation in the South Carolina Corporate Income Tax: Combined Reporting As Equitable Apportionment After Media General Communications, Inc. v. South Carolina Department of Revenue*, 62 S.C. L. Rev. 743, 745–46 (2011). Professor Swain, an author of the Hellerstein treatise on State and Local Taxation and tax policy expert in *DIRECTV*, also used "equitable apportionment" and "alternative apportionment" interchangeably within the same sentence: "the framers of UDITPA expected that the equitable apportionment provisions of section 18 would provide ample authority for the development of alternative apportionment methods." John A. Swain, *Reforming the State Corporate Income Tax: A Market State Approach to the Sourcing of Service Receipts*, 83 Tul. L. Rev. 285, 300 (2008). The above examples demonstrate some of the many interchangeable uses of "equitable apportionment" and "alternative apportionment."

Notwithstanding the above, TSC overlooks the substantial evidence supporting the ALC's finding that combined unitary reporting is a reasonable and equitable apportionment of TSC's income in South Carolina. *See* Department's Brief Section III. TSC concedes that combined unitary reporting can be allowed under subsection (A)(4). *See* TSC Petition for Rehearing at 13. While the Department considers some of the reasonableness **factors** in the *Twentieth Century-Fox* case for an alternative apportionment, the case itself is an Oregon state court decision and thus non-binding. Among those factors, combined unitary reporting avoids double taxation. *See* Department's Brief at 44-45. The Court properly apprehends this when it writes: "In other words, TSC may have to pay taxes on the income it sought to shelter from taxes using the overly aggressive procurement charge, but it will not be subject to double taxation." Opinion at 15. As another factor, combined unitary reporting reflects the economic reality. *See* Department's Brief Section III.

TSC misapprehends what the Department must prove for Step Two and wrongly contends that the Department must show that its alternative method is the most reasonable method. *CarMax* and *Media General* directly rejected this argument. *See Carmax Auto Superstores W. Coast, Inc. v. S.C. Dep't of Revenue*, 411 S.C. 79, 88, 767 S.E.2d 195, 199 (2014) ("we agree with the Department that the court of appeals misapplied *Media General* in holding the Department must prove that its alternate formula is 'more reasonable than any competing method'"); s*ee also Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 151, 694 S.E.2d 525, 531–32 (2010) (The Department "has the discretion to select an alternative method that fairly measures the taxpayer's income in South Carolina.").

TSC overlooked the substantial evidence that the income apportioned to South Carolina is TSC's portion and is representative of TSC's business activity in South Carolina. Our Supreme Court has long held that tax follows substance over form. *See Beard v. S.C. Tax Comm'n*, 230 S.C. 357, 370, 95 S.E.2d 628, 635 (1956) ("Our search is for substance, not form,—for the realities of the transaction, not book entries"). "It is the substance, not the form, of the intercorporate transaction that determines its tax consequences." *City of Columbia v. Niagara Fire Ins. Co.*, 249 S.C. 388, 396, 154 S.E.2d 674, 678 (1967). The Court properly apprehended that substance trumps form and considered TSC's artificial structure and inflated intercompany transactions.

V. THE COURT CORRECTLY APPREHENDED AND CONSIDERED THE ALTERNATIVE APPORTIONMENT STATUTE AND *MEDIA GENERAL*.

TSC misapprehends *Media General* and the alternative apportionment statute. The Department addressed *Media General* in Section I of its Brief, and the Department's Brief at 12 provides additional context on *Media General*. TSC effectively makes the "taxpayer" vs. "taxpayers" argument from *NCR Corp. v. S.C. Tax Comm'n*, 304 S.C. 1, 402 S.E.2d 666 (1991), which *Media General* rejected. TSC's misapprehension about "taxpayer's income" is similar to its misapprehension of double taxation, rightly repudiated by this Court. Combined unitary reporting only subjects the taxpayer's portion of apportionable income to taxation. TSC contradicts itself by saying that members of the unitary group like TSC of Texas did not conduct business in this State yet argues that TSC of Texas provided valuable procurement services to the TSC retail stores in South Carolina. TSC argues that the Court should not look to other states but then points the Court to a single trial court decision from Indiana that it believes supports its argument. *See* TSC PFR at 12. Section III of the Department's Brief explains why combined unitary reporting is appropriate in this case. The Court properly apprehended that law and considered the substantial evidence supporting that combined unitary reporting is an appropriate alternative apportionment method in this case.

VI. THE COURT CORRECTLY APPREHENDED AND CONSIDERED TSC'S ARGUMENTS ABOUT THE SOUTH CAROLINA ADMINISTRATIVE PROCEDURES ACT (APA).

TSC misapprehends the APA. The Department addressed TSC's argument regarding the APA in Section IV of the Department's Brief. Revenue Ruling #15-5 does not have the force and effect of law. *See* S.C. Code Ann. § 1-23-10(4) (2005) ("Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law."). By its own terms, it is an "advisory opinion," and the APA explicitly excludes advisory opinions from its definition of a regulation. *Id.* ("The term 'regulation'…does not include…advisory opinions of agencies…"). TSC also misapprehends the effect if Revenue Ruling #15-5 were somehow improper. The remedy is to strike it or not give it the force of law, but that would not change the outcome in this case. The Court correctly held that "the Department's use of combined unitary reporting was authorized by statute and the court's ruling in *Media General*, not the Revenue Ruling." Opinion at 17. The Department, the ALC, and this Court properly apprehended and applied S.C. Code Ann. § 12-6-2320. TSC overlooks the substantial evidence supports that TSC's business activity is not fairly represented under the default method and that combined unitary reporting is a reasonable alternative for all the tax years at issue. It does not matter when, or even if, Revenue Ruling #15-5 was published. The Department published Revenue Ruling #15-5 as general guidance for all taxpayers. From a prior audit, TSC knew the Department's position that combined unitary reporting was an appropriate alternative apportionment method, and TSC voluntarily filed using combined unitary reporting in 2012. *See* Department's Brief at 13. Therefore, TSC misapprehends Revenue Ruling #15-5 and its effect on this case.

VII. THE COURT CORRECTLY APPREHENDED AND CONSIDERED TSC'S POLICY ARGUMENTS.

TSC misapprehends the separation of powers principle and the role of tax policy in this case. TSC makes policy arguments for the Court to rewrite the alternative apportionment statute in violation of the separation of powers principle. However, determinations of policy "are chiefly within the province of the legislature, whose authority on these matters [the judiciary] must respect." *ArrowPointe Fed. Credit Union v. Bailey*, 438 S.C. 573, 580, 884 S.E.2d 506, 509 (2023).

TSC overlooks the substantial evidence supporting the ALC finding that the Department met its burden of proof in the application of the alternative apportionment statute. To the extent tax policy is relevant, the ALC heard testimony from tax policy experts, which as the fact finder, it was able to judge their credibility and apply the proper weight to their testimony. Further, the Court correctly apprehended that combined unitary reporting is neither pro-taxpayer nor pro-Department. This is demonstrated by the fact that in *Media General* the taxpayer was the proponent of combined unitary reporting while the Department is the proponent here. Moreover, the Court is not alone in this position:

> In *Media General Communications, Inc. v. South Carolina Department of Revenue*, the South Carolina Supreme Court unanimously approved the use of combined entity reporting methods under the statutory corporate income tax distortion relief provision. Combined entity apportionment, or "combined reporting," is a neutral corporate income tax apportionment method that diminishes corporate tax avoidance by capturing intercompany transactions that shift the income of multistate corporations from one state to another. Going forward, *Media General* is significant because it provides the South Carolina Department of Revenue with a potentially significant tool in its efforts to restore and levy a fair state corporate income tax.

Richard I. Simons, *Fair Representation in the South Carolina Corporate Income Tax: Combined Reporting As Equitable Apportionment After Media General Communications, Inc. v. South Carolina Department of Revenue*, 62 S.C. L. Rev. 743, 745 (2011). As TSC's tax policy expert co-wrote, the benefits of combined unitary reporting include:

> a strong bulwark against the use of tax-haven jurisdictions to avoid state taxation, a significant reduction in administrative burdens on the tax department and on complying taxpayers, and the removal of the competitive disadvantage currently imposed on local firms that are unable to engage in cross-border tax-avoidance.

Michael J. Mcintyre, Paull Mines, and Richard D. Pomp, *Designing A Combined Reporting Regime for A State Corporate Income Tax: A Case Study of Louisiana*, 61 La. L. Rev. 699, 701 (2001).

Policy concerns are properly the province of the legislative branch. Our General Assembly allowed "any other method" in the applicable alternative apportionment statute (and explicitly allowed combined unitary reporting in the amended statute). In *Media General*, our Supreme Court held that the alternative apportionment statute allowed combined unitary reporting. The Department published guidance on the use of combined unitary reporting as an alternative apportionment method and properly applied the alternative apportionment statute in this case. All three branches fulfilled their proper roles and approved combined unitary reporting as an alternative apportionment method.

CONCLUSION

TSC rehashes points correctly apprehended and considered by this Court. TSC's Petition for Rehearing reveals that TSC—not this Court—misapprehended and overlooked points. As our Supreme Court held, "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended." *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). Therefore, the Department asks that this Court deny TSC's Petition for Rehearing.

Respectfully Submitted,

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July 24, 2026

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

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Tractor Supply Company,..Appellant,

v.

South Carolina Department of Revenue,...Respondent.

PROOF OF SERVICE

I, the undersigned paralegal with the Respondent, South Carolina Department of Revenue, hereby certify that I have served all counsel listed below with a copy of Respondent's Return to Petition for Rehearing via electronic mail:

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July 24, 2026

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The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals
Clerk of Court
1220 Senate Street
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Re: Tractor Supply Company v. South Carolina Department of Revenue
Appellate Case No.: 2024-000013
Civil Action No.: 19-ALJ-17-0416-CC

Dear Ms. Kitchings:

Enclosed please find Respondent's Return to Petition for Rehearing 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,

Marcus D Antley III

Marcus D. Antley III, Esquire

MDA/tm

c: C. Mitchell Brown, Esquire - via electronic mail
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