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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Administrative Law Judge

Appellate Case No. 2024-000013

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

Tractor Supply Company,.....Appellant,

v.

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

RESPONSE BRIEF OF RESPONDENT TO THE AMICUS CURIAE BRIEF OF THE
CHAMBER OF COMMERCE OF THE UNITED STATES AND THE SOUTH CAROLINA
CHAMBER OF COMMERCE

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INTRODUCTION

Pursuant to Rule 213, SCACR and this Court's August 14, 2025 Order, Respondent South Carolina Department of Revenue (Department) files this Response to the Chamber of Commerce of the United States of America's and the South Carolina Chamber of Commerce's (collectively, the Chambers) *Amicus Curiae* Brief.¹

The Court should reject the Chambers' *amicus* brief, both on procedural grounds and on the merits. Procedurally, the Department objects to the Chambers' *amicus* brief because it does little, if anything, to advance this Court's understanding of the issues and arguments. Instead, it largely presents repackaged versions of the arguments already made by Appellant Tractor Supply Company (TSC) in this case. This is no surprise, given that TSC is a paying member of the Chambers. Regardless, the Chambers' arguments reveal they are acting merely as a proxy for TSC and not a true friend of the court. *United States v. State of Mich.*, 940 F.2d 143, 164–65 (6th Cir. 1991) (“The orthodox view of *amicus curiae* was, and is, that of an impartial friend of the court—not an adversary party in interest in the litigation.”) (emphasis in original).

Moreover, TSC exhausted the page limitations for its Brief and Reply. Thus, permitting the Chambers to file their *amicus* brief—which simply re-argues points already raised by TSC in its briefing—effectively permits TSC to orchestrate an “end run around court-imposed limitations on the length of parties' briefs.” *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 544 (7th Cir. 2003).

¹ Under Rule 240(e), SCACR, “[a]ny party opposing a motion or petition shall have ten (10) days from the date of service thereof to file a return with the clerk.” The Chambers served the Department with their Motion for Leave to File Amici Curiae Brief in Support of Tractor Supply Company on August 7, 2025. On August 14, 2025, the Chambers' motion was granted—before the Department filed its return and before the ten-day time period had run. Although the Department sought leave to file its return opposing the Chamber's motion, the Clerk notified the Department on August 18, 2025, that it would not take any further action on the Department's request.

Finally, the last-minute filing of the Chambers’ *amicus* brief—eighteen months after the appeal was filed, eight months after briefing was complete, and weeks before oral arguments are scheduled—also calls into question whether this *amicus* brief is really intended to be a “friend of the court.” The Court should not tolerate this sort of litigation gamesmanship, which is designed primarily to prejudice the Department by requiring it to respond to redundant *amicus* filings instead of preparing for oral argument. *Cf.* U.S. Sup. Ct. Rule 37(1) (“An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored.”).

On the merits, the Chambers’ brief is unhelpful because it does not provide any additional material or analysis that will aid this Court in its consideration of the issues on appeal. The Chambers’ brief neatly summarizes generic principles about the rule of resolving ambiguous statutes in favor of taxpayers and the importance of predictable tax systems.² But the brief conveniently ignores the relevant South Carolina Supreme Court case (*Media General*) that directly speaks to the statutory provisions at issue in this appeal and held that these alternative apportionment provisions are *unambiguous*. Further, the Chambers’ assertion that *Alltel* requires this Court to rule in TSC’s favor would render meaningless operative portions of the statute at issue, and the Chambers’ policy arguments are simply anti-tax and disconnected from the specific statutes and issues that form the basis of this appeal.

² Without doubt, the Chambers are concerned with these issues: the first six pages of its brief were copied-and-pasted (nearly verbatim) from the *amicus* brief it filed less than a year ago in support of another taxpayer challenging the Department’s application of South Carolina’s tax laws. *See* Brief of Amici Curiae the Chamber of Commerce of the United States and the South Carolina Chamber of Commerce et al. at 3, *Amazon Services LLC v. S.C. Dep’t of Revenue*, Appellate Case No. 2024-000625 (May 15, 2024) (arguing the Court of Appeals had undermined and weakened established rules that make tax laws predictable).

ARGUMENT

- I. **The Chambers' generic arguments about resolving statutory ambiguities in favor of taxpayers are wholly irrelevant to and detached from the issues on appeal because the Supreme Court has already held that the alternative apportionment provisions of Section 12-6-2320(A)(4) are clear and unambiguous.**

The Chambers devote two-thirds of their brief reciting basic platitudes about rules of statutory construction and predictable tax systems, but fail to address how these general rules are at all relevant to the specific statute at issue in this case (section 12-6-2320). (Chambers Br. at 10). The Chambers never identify which part(s) of section 12-6-2320 they contend are ambiguous and therefore should be construed in favor of TSC. Instead, they appear to apply a convoluted version of this principle, in reverse: because the Chambers believe the Administrative Law Court should have rules in favor of TSC, therefore the statute must be ambiguous and should be construed in TSC's favor.

Conspicuously absent from the Chambers' brief is any mention of the *Media General* case. As this Court is aware, in *Media General* the Supreme Court unequivocally held that the rules of statutory interpretation (e.g. construing ambiguous statutes in favor of taxpayers) were unnecessary with respect to section 12-6-2320(A)(4) because that statute—on its face—clearly and unambiguously authorizes the Department to use combined unitary reporting as an alternative apportionment method. *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 151, 694 S.E.2d 525, 531 (2010). If there is no ambiguity, there is no need to employ statutory construction canons. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute."). Thus, regardless of whether the Chambers have accurately summarized the reasons that underscore the "established rule," that general rule is irrelevant where the Supreme Court has already held that this particular statute is not ambiguous. Omitting any discussion of *Media General* from the Chambers' brief does not make *Media General* any less binding or make the statute ambiguous.

For this reason, the *Alltel* case that the Chambers rely upon is also inapplicable in this appeal. See *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 731 S.E.2d 869 (2012). The rule of statutory construction in *Alltel* applies only with respect to ambiguity in tax imposition statutes and whether a tax statute applies to a particular person. See *Alltel Commc'ns, Inc.*, 399 S.C. 313 at 321, 731 S.E.2d at 873 (considering whether the term “telephone company” applied to taxpayer).³ But section 12-6-2320(A)(4) is not an imposition statute, and there is no question that TSC is subject to South Carolina income tax. As a result, the rule articulated in *Alltel* is inapplicable to this case, which also explains why this pro-taxpayer rule of statutory interpretation has not been mentioned in any of the previous South Carolina alternative apportionment cases.⁴

At the heart of the Chambers’ argument is their belief that the Department should not be allowed to require combined unitary reporting—even when there is a finding that separate entity reporting does not fairly represent a taxpayer’s business activity. (Chambers Br. at 11-13).⁵ Under the

³ The “venerable rule” referenced in Chambers’ brief and stemming from English law is clearly focused on whether a statute imposes a tax on a certain person: “if the *person* sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the crown, seeking to recover the tax, cannot bring the *subject* within the letter of the law, the *subject* is free, however apparently within the spirit of the law the case might otherwise appear to be.” *United States v. Merriam*, 263 U.S. 179, 44 S. Ct. 69, 68 L. Ed. 240 (1923) (emphasis added) (quoting *Partington v. Attorney General*, L.R. 4 H.L. 100, 122); see also *S.C. Nat. Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 376 S.E.2d 512 (1989) (considering whether statute applied to taxpayer); *Cooper River Bridge v. S.C. Tax Comm'n*, 182 S.C. 72, 188 S.E. 508 (1936) (considering whether statute applied to taxpayer); *Fuller v. S.C. Tax Comm'n*, 128 S.C. 14, 121 S.E. 478 (1924) (“where the language relied upon to bring the particular person or subject within the law is ambiguous or is reasonably susceptible of an interpretation that would exclude the person or subject sought to be taxed, the well-established general rule requires that any substantial doubt should be resolved against the government and in favor of the taxpayer”).

⁴ See *Media Gen. Commc'ns, Inc.*, 388 S.C. 138, 694 S.E.2d 525 (2010); *Carmax Auto Superstores W. Coast, Inc. v. S.C. Dep't of Revenue*, 411 S.C. 79, 767 S.E.2d 195 (2014); *Rent-A-Ctr. W. Inc. v. S.C. Dep't of Revenue*, 418 S.C. 320, 792 S.E.2d 260 (Ct. App. 2016).

⁵ See the Department’s final brief at pages 22-25 for a detailed response to the Chamber’s assertions, repeated from and citing TSC’s brief, (1) that the ALC erred by failing to require the Department to make showing that the sales factor did not fairly represent TSC’s business

Chamber's reasoning, the only permissible deviation from standard separate entity reporting is if/when a taxpayer requests an alternative apportionment method (like combined reporting), which of course would only occur when the deviation benefits the taxpayer. This reasoning—heads the taxpayer wins, tails the Department loses—conflicts with the plain language of the statute, which contemplates both a taxpayer requesting an alternative apportionment method and the Department requiring one. *See* S.C. Code Ann. § 12-6-2320(A) (2022). Further, that reasoning conflicts with the South Carolina Supreme Court holding that the Department's alternative apportionment method need only be reasonable; the Department does not have to prove that its alternative formula is more reasonable than any competing method. *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’”). The Chambers’ argument leads to absurd conclusions that render statutory language meaningless; this Court should disregard these arguments. *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 365, 798 S.E.2d 555, 559 (2017).

As discussed above, *Media General* has already addressed this issue, and the Chambers make no effort to discuss, distinguish, or otherwise engage with *Media General*'s holding on this point. *See Media Gen.* at 151, 694 S.E.2d at 531 (“[T]he plain language of [Section 12-6-2320(A)(4)] clearly authorizes the Department to use ‘any other method’ to effectuate an equitable apportionment of the taxpayer’s income, including the combined entity apportionment method.”). In effect, the Chambers are asking this Court to ignore—or overturn—the clear holding in *Media General* and the plain language of section 12-6-2320(A)(4) and instead find that the statute is ambiguous. This Court should reject the Chambers’/TSC’s argument, as the ALC properly did. (R. pp. 118–28).

activities and (2) that the ALC erred because section 12-6-2320(A) can only be used to apportion TSC’s income because only TSC is the “taxpayer.”

II. Contrary to the Chambers' contention, the predictability of South Carolina's tax laws is furthered—not undermined—by the Administrative Law Court's decision affirming the Department's statutory authority to require an alternative method that effectuates an equitable apportionment of TSC's income to South Carolina.

The Chambers' brief argues that the ALC's decision impairs the predictability of South Carolina's tax laws, but the brief (predictably) offers no real concrete analysis of how or why. In reality, predictability and certainty are advanced through the objective application of statutory language to the facts of a particular case, which is precisely what the ALC did in this case. The ALC received thousands of pages of exhibits into evidence and heard hours of testimony from expert and fact witnesses. The ALC's Amended Final Order was over 70 pages long, containing extensive factual findings and a thorough examination of TSC's business activities, the nature of the intercompany transactions between the members of TSC's unitary group, and the impact of TSC's planned "tax restructuring" on its South Carolina income tax liability. The ALC's final order also carefully and thoughtfully applied the provisions of section 12-6-2320(A)(4) and relevant case law to these facts to determine whether the Department had properly required TSC to use an alternative apportionment method.

Objectively interpreting tax statutes advances predictability by ensuring that the tax laws are applied fairly and that neither the taxpayer nor the government is unfairly advantaged. In fact, one of the primary reasons the General Assembly has included the alternative apportionment provisions of section 12-6-2320(A)(4) is to safeguard against taxpayer manipulation of South Carolina's tax laws in ways that create *un*predictable tax revenues and *un*fair tax burdens. As TSC's own expert has observed, corporate taxes are designed to

reimburse states for the significant services provided to the business community. Requiring corporations to pay for services provided by the community [transportation infrastructure, public safety operations, the judicial system, schools and education system, etc.] satisfies the benefits theory of taxation—that is, that tax liabilities are imposed to compensate for the benefits received. . . . A corporation's success depends on the adequate provision of these services. . . . The only way the true beneficiaries of public services provided to corporations can reimburse the state is through the corporate income tax.

Richard D. Pomp, *Ruminations on Reforming Aspects of Connecticut's Tax Structure*, 41 State Tax Notes 651 (2006). Although tax-minimization strategies are not illegal, when taxpayers employ tax-planning techniques to exploit the weaknesses of a particular reporting system, it erodes the state's tax base and short-changes the state for the valuable services it provides to those businesses.

Ironically, the Chambers lament that unpredictability in the tax laws inflicts significant harms on the business community and the economy in South Carolina, including unnecessary compliance costs. (Chambers Br. at 5, 14) ("When tax obligations are unclear, businesses must hire lawyers and accountants to navigate the uncertainty, creating a deadweight economic loss."). The Chambers also suggest that alternative apportionment rules stand to interfere with all South Carolina businesses, including small businesses.

Yet the only businesses that benefit from the tax-avoidance schemes at issue in this case are large multistate businesses like TSC with the means to engage in complex tax planning strategies. (Chambers Br. at 14).⁶ Alternative apportionment rules, by definition, have no impact on small intrastate businesses. And it was TSC who first hired tax planners at a "big four" accounting firm to create and implement a self-described "Tax Restructuring" as a "strategy for reduction of [TSC's] state income tax expenses." (R. pp. 506–07, 532–34, 1031, 1315–19, 4456–67). The Chambers apparently have no quarrel with businesses hiring lawyers and accountants to form creative business structures designed to shift income out of South Carolina or reduce the business's South Carolina's

⁶ As TSC's tax policy expert has previously explained, the techniques that TSC employed as a result of its Tax Restructuring (e.g. intercompany expenses between members of a unitary group, or setting the prices charged for the provision of goods or services between affiliated entities within a unitary group) are "popular strategies" used by "multistate and multinational corporate groups to minimize state income taxes." Richard D. Pomp, *State Tax Reform: Proposals for Wisconsin*, MARQUETTE L. REV. at 56 (2006).

apportionable income by isolating the very profitable parts of its unitary business in corporations that are not taxable here.⁷

Consequently, the General Assembly has expressly delegated authority to the Department to require alternative apportionment methods as a way to correct those tax-avoidance techniques. This ensures a predictable tax base and helps level the playing field so that those corporate taxpayers who are engaged in business only in South Carolina do not bear a disproportionate share of the tax burden simply because they cannot use the same tax-avoidance strategies that multi-state taxpayers can. All taxpayers are entitled to predictability and fairness in the collection of tax revenues, not just those with the ability to hire “lawyers and accountants” to develop aggressive or sophisticated tax-planning techniques.

Further, although the Chambers’ brief makes the conclusory statement (citing TSC’s briefs as its authority) that the Department’s Revenue Ruling #15-5 provides no concrete guidance for taxpayers, the Chambers provide no actual analysis of why the Revenue Ruling is “vague” or imprecise. In fact, it is unclear whether the Chambers have actually read Revenue Ruling #15-5. Regardless, the Chambers’ predictability argument fails to meaningfully explain how the Department’s published guidance—which contains thirteen pages of detailed explanations concerning the application of section 12-6-2320(A)(4) and “when and how the Department will use combined unitary reporting as an alternative apportionment method” in light of the *Media General* decision—is unclear. (R. pp. 3728–36).⁸ In short, Revenue Ruling #15-5 gave taxpayers ample notice of the Department’s authority to

⁷ The Chambers’ reasoning actually encourages large multistate businesses to engage in form over substance restructuring to avoid South Carolina income tax, thereby shifting the overall state business tax burden from large profitable businesses to small intrastate businesses.

⁸ The Department’s issuance of Revenue Ruling #15-5 in the years following the *Media General* decision was predictable. Just five years prior in 2010, the South Carolina Taxation Realignment Commission (TRAC) issued its final report to the General Assembly, specifically noting that the Department “has the authority to require forced combinations under the recent *Media General* ruling.” (R. p. 3941).

require combined unitary reporting and the factors it would consider when determining whether to do so. (*See* Chambers Br., p. 14; TSC Br. p. 10).

Finally, in arguing that the ALC's decision undermines the predictability of businesses' tax obligations, the Chambers completely ignore the critical fact that TSC was filing in South Carolina using a combined reporting methodology prior to the years at issue in this dispute. After an audit of TSC's corporate income tax returns for 2008–2010, the Department informed TSC that it should file using an alternative apportionment method (combined unitary reporting) to fairly reflect TSC's business activity in South Carolina. (R. pp. 1296, 633-634; 4470-4508). TSC did so, then (without notice to the Department) subsequently reverted back to filing under the standard method. (R. p. 635). Nevertheless, the Chambers cannot credibly argue that the ALC's decision affirming the Department's imposition of combined reporting on TSC undermines predictability when TSC knew—and for a time, complied with—the Department's position with respect to how TSC should return its income in South Carolina.

At bottom, the Chambers' arguments are simply anti-tax. However, whether to tax is a policy decision that is squarely within the purview of the legislature; here, the General Assembly has chosen to impose an income tax and tasked the Department with administering its provisions. As the Supreme Court has confirmed, section 12-6-2320(A)(4) authorizes the Department to require combined unitary reporting, and the ALC correctly found that the facts of this case supported the Department's decision to require an alternative apportionment method for TSC—the same method that TSC had previously used in its South Carolina tax filings. The Chambers' unhelpful brief should be disregarded.

III. The Chambers' criticisms of the ALC's reasoning are without merit.

The Chambers identified six reasons that “the ALC’s reasoning undermines the rule that statutory ambiguities are resolved in the taxpayer’s favor.” (Chambers Br. at 12–13). Upon close examination, the reasons lack merit and provide no credible or substantive basis for reversing the ALC’s final order.

First, the ALC had no reason to mention or consider the *Alltel* holding or the rule therein because, as explained above, there is no ambiguity in the statute at issue as a matter of law under *Media General*.

Second, the ALC had no reason to “grapple” with the text of section 12-6-2320(A)(4) because binding precedent establishes that the plain language of section 12-6-2320(A)(4) allows the Department to require combined unitary reporting. The ALC is without authority to overturn the South Carolina Supreme Court’s rulings.

Third, TSC’s interpretation of section 12-6-2320(A)(4) is in direct conflict with the holding of *Media General*, and under *Media General* there is no reason to resort to tools of statutory interpretation because there is no ambiguity in section 12-6-2320(A)(4) on the specific issue here.

Fourth, the ALC’s holdings at the first and second steps of the analysis are in fact consistent as demonstrated in the Department’s Final Brief at pages 25–45. Here, the Chamber’s fourth reason is nothing more than simply a recitation of TSC’s previous arguments, illustrating another reason for the Court to disregard the Chambers’ brief.

Fifth, the Chambers (again parroting TSC) paradoxically argue that the income base element of the statutory allocation and apportionment formula is somehow not an element of the statutory allocation and apportionment formula. The Department responded to this argument when TSC raised it, and the Department’s response adequately addresses the Chambers’ version as well. (See Department’s Final Brief at 18–25).

Sixth, the Chambers cannot credibly claim that Revenue Ruling #15-5 is unclear as to whether and when combined unitary reporting may be required under section 12-6-2320(A)(4). Even if Revenue Ruling #15-5 were insufficient or imprecise, that would not render section 12-6-2320(A)(4) ambiguous as to whether the Department has authority to require combined unitary reporting—especially in light of *Media General*. Again, this argument was recycled from TSC’s brief, and the Department adequately addressed it before. (*See* Department’s Final Brief at 27–36).

CONCLUSION

For the reasons stated above, the Department objects to the Chambers’ *amicus* brief. The Chambers’ brief does not provide any helpful or beneficial material or analysis that assist in resolving this case; instead, it mostly reads as additional briefing on behalf of TSC. Moreover, the brief completely ignores relevant South Carolina law, attempts to rewrite an unambiguous statute with inapplicable rules of statutory interpretation, and advances irrelevant and misleading policy arguments. Accordingly, the Department respectfully requests that this Court reject the Chambers’ *amicus* brief in its entirety.

{Signature on following page}

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No.: 2024-000013

Administrative Law Court Case No. 19-ALJ-17-0416-CC

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 Response Brief of Respondent to the Amicus Curiae Brief of the Chamber of Commerce of the United States and the South Carolina Chamber of Commerce via electronic mail:

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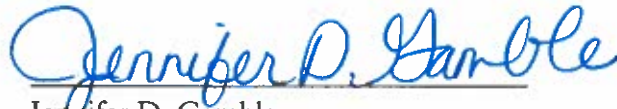
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Subject: Tractor Supply Company v. SC Department of Revenue
Date: Wednesday, September 3, 2025 1:07:00 PM
Attachments: [2025.09.02 Respondent's Response Brief.pdf](#)

Good Afternoon:

Please find attached and served upon you Response Brief of Respondent to the Amicus Curiae Brief of the Chamber of Commerce of the United States and the South Carolina Chamber of Commerce in the referenced matter.

Thank you,

Jennifer

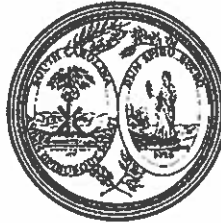
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September 3, 2025

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The Honorable Jenny Abbott Kitchings
SC Court of Appeals
Clerk of Court
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Re: Tractor Supply Company v. South Carolina Department of Revenue
Appellate Case No.: 2024-000013

Dear Ms. Kitchings:

Enclosed please find Response Brief of Respondent to the Amicus Curiae Brief of the Chamber of Commerce of the United States and the South Carolina Chamber of Commerce in the above referenced matter. Additionally, I have enclosed a Proof of Service for the same.

We will also have one bound copy delivered to the court today.

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

Sincerely,

Marcus D. Antley III, Esquire

MDA/jdg

c: C. Mitchell Brown, Esq.
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