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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Opinion No. 6148 (S.C. Ct. App. Filed June 17, 2026)

Appellate Case No. 2024-000013

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

Tractor Supply Company, Appellant,

v.

South Carolina Department of Revenue, Respondent.

APPELLANT'S PETITION FOR REHEARING

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Pursuant to Rules 221(a) and 240 of the South Carolina Appellate Court Rules, Appellant Tractor Supply Company ("Appellant" or "TSC") respectfully requests rehearing of the appeal resulting in this Court's Opinion filed on June 17, 2026, which affirmed the decision of the Administrative Law Court ("ALC") in favor of Respondent South Carolina Department of Revenue ("Respondent" or the "Department"). *See Tractor Supply Co. v. S.C. Dep't. of Rev.,* Op. No. 2026-UP-6148 (S.C. Ct. App. filed June 17, 2026) (the "Opinion" or "Slip Op.").[1] Respectfully, the Court overlooked or misapprehended several important controlling points of law and failed to follow binding precedent. It also failed to review the questions of law presented here (including the interpretation and application of South Carolina statutes and case law) de novo. TSC Br. at 11-12; TSC Reply Br. at 2-3. This Court should consequently grant rehearing, vacate its Opinion, and file a new Opinion reversing the ALC's ruling based on the arguments below.[2]

ARGUMENT

I. THIS COURT MISAPPREHENDED OR OVERLOOKED CONTROLLING SOUTH CAROLINA SUPREME COURT PRECEDENT, THE ALTERNATIVE APPORTIONMENT STATUTE, AND THE RULES OF STATUTORY CONSTRUCTION AS TO THE STEP ONE TEST.

The Court misapprehended the controlling South Carolina Supreme Court case—*CarMax Auto Superstores W. Coast, Inc. v. S.C. Dep't of Rev.*, 411 S.C. 79, 767 S.E.2d 195 (2014)—which sets forth the correct legal test under Step One of the alternative apportionment statute at § 12-6-2320 (the "AA Statute").[3] That test is whether the *sales factor* fairly represents the taxpayer's

[1] The Opinion received by TSC contains no page numbers; cites herein are to the page numbers in the pdf of the Opinion.

[2] Appellant further incorporates and asserts into this Petition all prior arguments raised in its briefing and at oral argument and does not abandon any such arguments.

[3] All code sections referenced herein are from the South Carolina Code of Laws Annotated unless otherwise noted. In addition, the Legislature passed S. 298 (signed into law by the Governor on March 11, 2024), which amended § 12-6-2320. As this amendment does not apply to cases at the

business activity in South Carolina. The Court correctly cited *CarMax* and the Step One test therein (*see* Slip Op. at 6) but failed to apply that test, thus showing the Court misunderstood *CarMax* and/or misunderstood or overlooked TSC's arguments on the Step One test.[4] The proper Step One test was a primary issue in this appeal, which must be examined by this Court de novo.[5] *See CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (stating that the interpretation of a statute is a question of law that an appellate court may decide de novo).

Here, the Court overlooked or misunderstood that the ALC (and now this Court) applied a different (and legally incorrect) test than the one established in *CarMax*,[6] and it overlooked or

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ALC or the appellate courts, all cites to § 12-6-2320 herein will be to the prior version unless stated otherwise.

[4] The Court misapprehended the issues in *CarMax*. *See, e.g.*, Slip. Op. at 6 ("The ALC affirmed the Department's use of the alternate formula and CarMax appealed, arguing that the Department should not have used *separate reporting* when calculating the tax liability of its unitary business." (emphasis added)); *id.* at 16 ("In . . . *CarMax*, the taxpayer sought to use CUR to its advantage to lessen its tax liability."). The taxpayer in *CarMax* challenged the Department's attempted use of separate accounting (versus separate reporting), and nothing in that case involved the use of CUR. The Court also misunderstood the meaning of "formula" in this context by using it to describe both reporting methods (e.g., separate reporting and CUR) and apportionment methods (e.g., the sales factor and gross receipts methods). In South Carolina (both case law and statutes), "formula" is used to refer to the applicable apportionment method (i.e., the fraction). *See, e.g.*, TSC Br. at Arg. §I(A).

[5] It is unclear whether the Court understood this point as it focused most of its Step One analysis on what constitutes substantial evidence, and whether the Department's evidence met that evidentiary standard, versus what the proper Step One standard is. *See* Slip Op. at 6-9. Additionally, the Court failed to apply the proper de novo standard to a number of other issues in this appeal, including, but not limited to, all issues involving the interpretation of a South Carolina statute or South Carolina case law as well as the application of such statutes and case law to the facts of this case. *See supra* p. 1.

[6] *See, e.g.*, Slip. Op. at 6 (title of Section I, which inaccurately suggests the ALC required the Department to prove that TSC's sales factor did not fairly represent TSC's business activity in South Carolina as opposed to what the ALC actually required the Department prove for Step One). The ALC did not apply the standard in *CarMax* and instead incorrectly focused on whether "separate reporting" fairly represented "business activity" and while doing so, it also incorrectly conflated "business activity" with "taxable income." *See, e.g.*, TSC Br. at Arg. §I.

misunderstood TSC's arguments on this point.[7] This Court (like the ALC) appears to confuse or conflate *taxable income* with *business activity*[8] and appears to believe that proof of Step One merely requires proof that TSC's income subject to apportionment is too low.[9] The Court misapprehended *CarMax's* Step One test, which here would require proof that the *sales factor* did not fairly represent the portion of TSC's total *business activity* that occurred in South Carolina. *See CarMax*, 411 S.C. at 89, 767 S.E.2d at 200.[10] The Court also misapprehended related case law that makes clear the test's meaning,[11] particularly considering the purpose of apportionment and the text of this state's apportionment statutes (including the AA Statute). *See* TSC Br. at Argument ("Arg.") §I(A); *see also Rent-A-Ctr. W., Inc. v. S.C. Dep't of Rev.*, 418 S.C. 320, 333-34, 792 S.E.2d 260, 267-68 (Ct. App. 2016).[12]

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[7] *See e.g.*, Slip Op. at 6 (stating "TSC argues the ALC employed the wrong standard in making this determination by considering whether separate reporting resulted in distortion of TSC's business activity rather than focusing solely on whether the sales factor resulted in distortion."). That is not TSC's argument. *See* TSC Br. at Arg. §I; TSC Reply Br. at Arg. §I.

[8] The Court overlooked or misunderstood TSC's argument explaining that the ALC forcibly construed (in effect) the AA Statute by deciding (with no supporting authority) that in this case TSC's "income" was a proxy for "business activity." *See* TSC Br. at Arg. §I(C).

[9] The Court (also like the ALC) focused on whether TSC's income subject to apportionment was too low due to transfer pricing related to an intercompany charge for procurement services and found that evidence that allegedly proved the charge was too high such that TSC's income was "artificially shifted" (via the fee) to an affiliate established Step One. *See* Slip. Op. at 6-9.

[10] This Court at least once inaccurately describes the *CarMax* decision as it relates to the Step One standard when it says: "The South Carolina Supreme Court granted certiorari and found the Department failed to satisfy its burden of proving that the standard 'gross receipts' formula *distorted CarMax's income*." *See* Slip. Op. at 7 (emphasis added).

[11] Other courts interpreting similar statutes agree Step One should be focused solely on whether the statutory formula fairly represents the taxpayer's business activity in the state as opposed to income earned in the state. *See e.g. Twentieth Century-Fox*, 700 P.2d 1035 (Or. 1985) (interpreting Step One of its alternative apportionment statute (which is similar to South Carolina's) and stating that "[i]t is also important to note that it must be established that [the statutory formula] does not adequately reflect business activity, *not merely that it does not adequately reflect income earned in the state.*" (citing *Amoco Prod. Co.* v. *Arnold*, 518 P.2d 453 (Kan. 1974))(emphasis added)).

[12] In *Rent-A-Center*, this Court applied the same test as *CarMax*. *See Rent-A-Ctr.*, 418 S.C. 320, 333, 792 S.E.2d 260, 268 ("In this case, the burden was on the DOR to show the statutory formula did not fairly represent [the taxpayer's] business activity in South Carolina."). The statutory

Because the Court did not apply the same Step One test applied in *CarMax* (and *Rent-A-Center*),[13] it should have conducted its own statutory interpretation of the AA Statute by applying the rules of statutory construction, including the important taxpayer protection rule acknowledged by this Court (*see* Slip. Op. at 5 citing *Alltel*) requiring that ambiguities in taxing statutes be construed in the taxpayer's favor. *See* TSC Br. at 12-16 and 18-22; § 12-6-2320(A); *Alltel Commc'ns, Inc. v. S.C. Dep't of Rev.*, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012). Had this Court done its own interpretation of the AA Statute as to the Step One standard, it would have reached the same result as *CarMax*. *Id.*[14]

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formula there was also the gross receipts formula, and this Court properly recognized the gross receipts formula is supposed to represent the portion of the taxpayer's total (everywhere) business activity that was conducted within this state. *Id.* at 333-34, 792 S.E.2d at 267-68 (citing *Eastman Kodak Co. v. S.C. Tax Comm'n*, 308 S.C. 415, 419, 418 S.E.2d 542, 544 (1992)). The Court properly found the Department failed to prove that the gross receipts formula did not work as intended and thus failed to prove Step One. *Id.*

[13] It is not clear what caused the ALC (and now this Court) to apply a different Step One standard than the one established in *CarMax* and correctly applied by this Court in *Rent-A-Center*. Neither *CarMax* nor *Rent-A-Center* said Step One required the Department to prove the taxpayer's income or its South Carolina tax liability was too low, that the statutory formula failed to result in the correct tax owed to this state, that the statutory formula failed to accurately determine the taxpayer's net income or profit earned in this state, or that anything caused or resulted in "distortion of income." The test in both *CarMax* and *Rent-A-Center* was whether the *statutory formula*—there, the gross receipts formula—fairly represented the taxpayer's *business activity* in South Carolina. Here, where the "statutory formula" is the sales factor, the test is whether the *sales factor* fairly represents TSC's *business activity* in South Carolina.

[14] While not engaging in its own statutory interpretation of Step One, the Court appears to have indirectly and summarily rejected TSC's interpretation stating that TSC's construction was too narrow because it would allow any taxpayer to artificially shift income and eliminate its state tax burden without recourse. Slip. Op. at 8-9. However, this is not true. The Legislature gave the Department §482 powers (along with penalty rules specific to §482 issues per § 12-54-155(C)(2)) to address that exact issue.

II. THE COURT MISAPPREHENDED *CARMAX* AND THE AA STATUTE AS TO THE TYPE OF EVIDENCE THAT SATISFIES STEP ONE AND WRONGLY FOUND THE DEPARTMENT MET STEP ONE.

Under *CarMax* and the AA Statute, Step One requires proof that the sales factor does not fairly represent TSC's business activity here. *See supra* §I. Thus, the Department should have presented proof related to a problem with the sales factor, which was determined to be 2.83%. *See id.* and TSC Br. at 7-8, 16-18, and 22. The Department presented no evidence that anything was wrong with this percentage, or the fraction used to calculate the percentage, nor did the ALC or this Court find anything wrong with this percentage or fraction. *See* TSC Br. at 22. Because TSC's business activity in South Carolina and elsewhere is its retail stores, the sales factor is not only reasonable but the obvious choice for measuring its South Carolina business activity, and the apportionment provisions accomplished exactly what they were designed to accomplish. *See id.*[15]

III. THE COURT ALSO MISAPPREHENDED OR OVERLOOKED TSC'S ARGUMENTS IN FINDING THE DEPARTMENT MET ITS BURDEN OF PROOF UNDER THE WRONG STEP ONE STANDARD AND EFFECTIVELY SHIFTED THE BURDEN OF PROOF TO TSC IN VIOLATION OF *CARMAX*.

The ALC's wrong Step One standard essentially turned on whether the Department could prove the procurement charge was improper (as opposed to whether the sales factor worked as intended). Assuming arguendo the Department can meet its burden using this rationale, the Department bore the burden of proof under *CarMax* to prove that the procurement charge did not satisfy the Arm's Length Standard. *See* TSC Br. at Arg. §III. In affirming the ALC's decision that the Department met its burden on this (incorrect) Step One standard, the Court overlooked or misapprehended the following TSC arguments:

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[15] In fact, the ALC found that "but for the procurement charge issue, I would find that separate reporting resulted in a fair representation of TSC's business activity in this state." R. at 126. That is a clear concession that the sales factor is working as intended such that the Court should have found that Step One was not met here. *See* TSC Br. at Arg. §I(D).

- The Department presented no evidence of a correct arm's length standard or range of correct transfer prices and thus failed to meet its burden. TSC Br. at 29-33.
- The ALC concluded that a transfer price must both satisfy the Arm's Length Standard *and* be "reasonable" (*see, e.g.*, R. at 79, 81, n. 23, and 124, n. 64), but the § 482 Regulations contain no such "reasonableness" requirement or test. TSC Br. at 33-38; TSC Reply Br. at 12, n. 14. The ALC's application of this improper test was based on its subjective beliefs of what is reasonable and unreasonable and was not supported by facts, much less facts that were logically relevant or that would allow reasonable minds to reach the ALC's conclusions. *Id.*
- In applying its novel reasonableness test, the ALC failed to appropriately interpret and apply the § 482 Regulations and improperly relied on its findings that the PwC Study and/or Andrade's testimony were unreliable or unpersuasive, neither of which is evidence proving the charge did *not* satisfy the Arm's Length Standard. *See* TSC Br. at 29-38; TSC Reply Br. at 10-12.
- The ALC properly found the burden of proof rested on the Department (*see* R. at 56), but its application of the wrong standard (and its focus on whether TSC had presented sufficient evidence to prove the procurement charge *did satisfy* the Arm's Length Standard) caused an improper burden shift to TSC. *See* TSC Br. at 30-32 and 38-40.
- The ALC improperly rejected Andrade's testimony based on conclusory statements and unfounded or immaterial criticisms, and its finding that the Arm's Length Standard suggested by Andrade is incorrect is not supported by substantial evidence. *See* TSC Br. at 40-43 and TSC Reply Br. at 14-16.

IV. THE COURT MISAPPREHENDED OR OVERLOOKED CONTROLLING SOUTH CAROLINA LAW AND TSC'S ARGUMENTS WHEN IT FAILED TO CORRECTLY APPLY THE BURDEN OF PROOF FOR STEP TWO OF THE AA STATUTE.

A. The Department Did Not Meet its Burden of Proof for Step Two of the AA Statute.

The Court overlooked or misapprehended the *CarMax* burden of proof for Step Two and TSC's arguments related thereto. *See generally* TSC Br. at 43-48 and TSC Reply Br. at 20-23. The Court merely blessed the ALC's conclusion that the Department proved Step Two. *See* Slip Op. at 15-16. But the ALC's conclusion was woefully inadequate as the ALC never required the Department to prove Step Two, never explained how the Department proved Step Two, and never identified any evidence supporting its ruling that the Department met Step Two. This Court also overlooked that the ALC (and now this Court) improperly effectively placed the burden of proof on TSC by focusing on TSC's arguments explaining why CUR was *not* reasonable or equitable rather than the Department's lack of proof that it *was* reasonable and equitable. *See generally* TSC Br. at 43-48 and TSC Reply Br. at 20-23. The Department, not TSC, had the burden of proof.

More specifically, both parties and the ALC agree that the Department has the burden of proving Step Two under *CarMax* and that meeting this burden requires the Department to (at least) prove CUR passes the first and third components of the Reasonableness Test. *See id.* and Slip Op. at 15. However, neither the ALC nor this Court held the Department to this burden, which the Department failed to meet.

The first component of the Reasonableness Test has two parts. The first part ("Part A") requires the Department to prove that CUR fairly represents TSC's business activity in this State, and the second part ("Part B") requires the Department to prove that the use of CUR "if applied uniformly [i.e., by all states] would result in taxation of no more or no less than 100% of [TSC's] income[.]" *See Twentieth Century-Fox*, 700 P.2d at 1043; § 12-6-2320(A); Slip. Op. at 15. The ALC did not require that the Department prove—and the Department did not prove—that CUR met Part A *or* Part B. *See* TSC Br. at 43-48; TSC Reply Br. at 20-23. Neither the Department nor the ALC (nor this Court) even attempted to explain how CUR satisfies Part B much less provide / cite any evidence that could support such a claim.[16]

The third component requires the Department to prove that under CUR "the division of income reflects the economic reality of the business activity engaged in by [TSC] in [South Carolina]." *Twentieth Century-Fox*, 700 P.2d at 1043. The ALC did not require that the Department prove—and the Department did not prove—that CUR passed that third component. *See generally* TSC Br. at 47; TSC Reply Br. at 22-23.[17]

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[16] In affirming the ALC on this issue, this Court says: "... 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." Slip Op. 15. This is incorrect. Because CUR makes the procurement charge a 0% markup in violation of §482, TSC is being grossly overtaxed and is subject to double taxation. TSC Br. at 44-47; TSC Reply Br. at 20-23. The ALC effectively admits this is true. *See, e.g.*, TSC Br. at 45, n. 37.

[17] On this component, the Court says "... the ALC found CUR better reflected TSC's business activity within the state because it removed the effects of the inflated transfer price while also recognizing the value flowing from the TSC group and carving out only the income from retail sales associated with South Carolina." Slip Op. at 16. While this statement is not clear, it appears to ignore (among other things) that CUR is a gross overcorrection of the stated problem and that *no* problem has ever been identified with the sales factor such that CUR could be imposed. And the last two points in this statement (regarding value from the group and carving out income from retail sales) are vague, bald assertions supported by no evidence, the statement is incorrect (*see, e.g.*, TSC Br. at 45, n. 36), and one that would appear to effectively rubberstamp the Department as having proved Step Two whenever using CUR against any taxpayer that is part of a unitary group. The Court also noted that Professor Pomp likes CUR; however, this is not a legislative hearing on whether to adopt CUR, and Pomp being a CUR proponent does not in any way lead to the conclusion that the Department has proven Step Two in this case. Moreover, as Pomp testified, taxpayer reliance interests and separation of powers concerns would dictate that the rug not be pulled out from taxpayers in separate reporting states by having revenue departments impose CUR "through the backdoor of alternative apportionment." *See* TSC Br. at 28, n. 23.

The ALC and this Court also failed to require the Department to prove that CUR was equitable in this case (as required by § 12-6-2320(A)(4)) and overlooked or misapprehended the reasons TSC argued (and the evidence supporting the same) that CUR was *not* equitable. *See* TSC Br. IV(B) and TSC Reply Br. at Arg. VIII.

In sum, the Department did not meet its burden to prove Step Two.

B. Although Not TSC's Burden to Prove that CUR Fails Step Two, the Court also Overlooked / Misapprehended Ample Evidence Showing that it Does.

TSC set forth ample evidence showing CUR does not pass the Reasonableness Test, which the Court overlooked or misunderstood. TSC Br. 43-47 and TSC Reply Br. 20-23. One clear reason CUR fails Part A of the test is a result of the Department's <u>choice</u> to not let its transfer pricing expert provide an opinion on what he viewed as an arm's length price. *See id.* The ALC, and now this Court, say the allegedly inflated transfer price *caused* an unfair representation of TSC's South Carolina business activity. Assuming arguendo that is true, then the obvious way to actually meet Part A of the test would be to adjust the transfer price to one that supposedly is an arm's length price,[18] which also would have been consistent with the Department's public guidance. *See* TSC Br. at 43-48; TSC Reply at Br. 20-23.[19]

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[18] The Court says that TSC argues that the ALC erred in finding CUR is reasonable and equitable because the Department did not present evidence of an Arm's Length Standard the procurement charge supposedly failed to meet and because the Department did not make a transfer price adjustment. Slip Op. at 14. The Court then rejects that argument, saying similar arguments were rejected in *Media General* and in *CarMax*). *Id.* at 14-15. However, the Court misunderstands TSC's argument. *See supra* § IV(B) (and cites therein) for TSC's argument. TSC does not disagree that the Department has discretion to choose an alternative method (provided, of course, that it is reasonable and equitable and otherwise consistent with the statutory text).

[19] Another reason CUR fails Part A is because no aspect of CUR is based on TSC, much less based on TSC's South Carolina business activity. The business income being apportioned (or divided) under CUR to South Carolina is the Group's income (and mostly TSC Texas' income), and the sales factor used to apportion (or divide) that income is also based on the Group. The result of that process is not going to fairly represent TSC's South Carolina business activity, and CUR is not designed to reach that result.

CUR also fails the first component of the Reasonableness Test (both Parts A and B) because it grossly overtaxes TSC as CUR effectively makes the procurement charge a 0% markup (versus the actual 9.7% markup), which is prohibited by the § 482 Regulations and is clearly a non-arm's length price. *See id.* The Court also appears to have overlooked or misapprehended TSC's additional arguments (including the significance of the fact that TSC of Texas did not charge anything for TSC's use of its intellectual property) as to why CUR fails to meet the first and third components of the Reasonableness Test. *See id.* In sum, TSC need not prove that CUR fails to pass the Reasonableness Test, but TSC nonetheless showed that CUR fails that test.

V. THE COURT MISAPPREHENDED OR OVERLOOKED THE AA STATUTE AND *MEDIA GENERAL* REGARDING VARIOUS STEP TWO ISSUES.

A. The Court Overlooked or Misunderstood TSC Arguments Showing that CUR is Not Authorized by the AA Statute in this Case.

The Court misapprehended or overlooked that subsection (A)(4) of the AA Statute does not grant the Department authority to require CUR in this case. *See* TSC Br. at Arg. §II(A)(discussing that the Court should have applied statutory construction rules, interpreted the statute consistent with the statutory scheme, and interpreted (A)(4) to provide that "any other method" must "effectuate an equitable . . . apportionment of *the taxpayer's income*." *Id.* Moreover, while TSC submits this statutory language is clear and unambiguous, if the Court disagrees, TSC's interpretation is at least reasonable, and, therefore, the AA Statute must be construed in TSC's favor. TSC Br. at Arg. §II(A), citing *Alltel*, 399 S.C. at 321, 731 S.E.2d at 873. Finally, both the ALC and this Court ignored the heightened "equitable" standard in (A)(4) as well as TSC's arguments regarding the same. *See* TSC Br. at Arg. IV(C) and TSC Reply Br. at 20, n. 28.

B. The Court Misunderstood the Method Approved by the Court in *Media General Commc'ns, Inc. v. S.C. Dep't of Rev.*, 388 S.C. 138, 694 S.E.2d 525 (2010).

The Court (like the ALC) appears to have overlooked or misapprehended the *Media General* decision and TSC's arguments related thereto. *See* TSC Br. at 25-28; TSC Reply Br. at 18-20. The "combined entity apportionment method" approved by the Court in *Media General* was plainly allowing the members of the unitary group—each of which (unlike the present case) conducted business within this state—to combine themselves solely for purposes of determining the ratio / the fraction that would then be used by each member of the unitary group to determine each's tax owed to this state. *Id.*; *see also* Slip Op. at 12 (the *Media General* Court "described the combined method, stating that it 'considers the entities that are part of the unitary business such that the numerator represents all of the unitary entities' gross receipts from within the taxing state and the denominator consists of all of the unitary entities' gross receipts from everywhere.").[20]

The Court also misunderstood the holding in *Coca Cola Co. v. Dep't of Rev.*, 533 P.2d 788 (Or. 1975). *See* Slip Op. at 11 and 14.[21] The Oregon Tax Court makes clear that it did not view

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[20] This Court also overlooked the significance of the Supreme Court's statement that allowing the use of the method requested by the group of taxpayers in that case "does not change the fact that the entities will be reporting the taxes due for each entity." *Media General,* 388 S.C. at 152, 694 S.E.2d at 532. CUR is a single tax return (including when used by multiple entities conducting business in this state), and thus, this statement further shows the Court viewing the method approved therein as only discussing the ratio that each member of the group would then use when each filed its own South Carolina tax return. This Court also appears to misapprehend or overlook the significance of the Court in *Media General* overruling *NCR Corp. v. S.C. Tax Comm'n,* 304 S.C. 1, 402 S.E.2d 666 (1991) and *NCR Corp. v. S.C. Tax Comm'n,* 312 S.C. 52, 439 S.E.2d 254 (1993). Both cases involved disputes about the apportionment formula (i.e., the ratio / fraction), and thus, *Media General* overruling those cases is entirely consistent with TSC's view of the method approved in *Media General*.

[21] TSC also notes (as this Court recognized) that *Coca Cola* involved only two entities, both of which were conducting business in Oregon and thus filing Oregon tax returns. Slip Op. at 11 (noting that "[e]ach filed a separate tax return.").

(A)(4) of a Section 18 UDITPA statute as providing statutory authority for a taxing agency to require the use of CUR. *See Cook v. Dep't of Rev.*, 23 Or. Tax 107, 121-26 (2018).[22]

C. The Court Overlooked that TSC's Arguments are Not Dependent on the Method Approved in *Media General.*

The Court overlooked the fact that TSC has no arguments that turn or depend on what *Media General* actually approved. *See* TSC Br. at 25-28; TSC Reply Br. at 18-20. Accepting as true this Court's belief that *Media General* approved CUR in that case does not answer the question of whether CUR is authorized in this case. *Id.* In addition, this Court finding that CUR is not authorized by (A)(4) under the facts of this case is not in any way contrary to the *Media General* decision (even if the Court there did approve the use of CUR) as the use of CUR in *Media General* would have been combining the net income solely of entities that were conducting business in this state (and entities that requested use of the alternative method), which is not the case here.[23] The Court overlooked that TSC's arguments are specifically based on the facts in this case and that TSC's arguments are ones the Department did not make in *Media General*, including that CUR here does not "apportion[] the taxpayer's income" thus violating the plain language of subsection

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[22] The Court also misapprehended the holdings in other non-South Carolina cases (and the significance thereof) as having supposedly authorized the use of CUR. Slip Op. at 14 (citing *Leathers v. Jacuzzi, Inc.*, 935 S.W.2d 252, 254 (Ark. 1996) and *Pioneer Container Corp. v. Beshears*, 684 P.2d 396 (Kan. 1984)). Neither case supports the conclusion that the use of CUR is authorized under the facts of this case. TSC further submits this Court need not look at decisions from other states to determine if CUR is authorized under the facts of this case because applying the rules of statutory interpretation makes clear that it is not authorized here. *See* TSC Br. at 23-25; TSC Reply Br. at 17-18. Nonetheless, if the Court does look elsewhere, it should rely on *Columbia Sportswear USA Corp. v. Indiana Department of State Revenue*, 45 N.E.3d 888 (Ind. T.C. 2015) as it is the most persuasive outside authority on the relevant issues here. TSC Br. at 24-25.

[23] Even the parties' stipulated description of the method (which is not the same as the Supreme Court's description of the method it approved (*see, e.g.*, TSC Br. at 25-27)) highlighted by this Court is plainly describing a method for a unitary group where (unlike this case) every member of the group is conducting business in this state. *See* Slip Op. at 10.

(A)(4) of the AA Statute.[24] *See id.* In addition, TSC is <u>not</u> arguing that CUR can *never* be allowed under (A)(4). *See, e.g.,* TSC Reply Br. at 18-20. The ALC, and now this Court, erred by appearing to view *Media General* as having already determined whether CUR is allowed in this case. The ALC and this Court should have applied rules of statutory construction to ascertain and effectuate the legislative intent of (A)(4) to determine whether CUR is authorized in this case because that would have made clear that CUR is not authorized here. *See supra* § V(A).

VI. THE COURT MISAPPREHENDED OR OVERLOOKED CONTROLLING LAW AND/OR TSC'S ARGUMENTS WHEN IT ERRONEOUSLY CONCLUDED THAT THE FORCED USE OF CUR HERE DOES NOT VIOLATE THE APA.

Both the ALC and this Court misunderstood TSC's argument on how the use of CUR here violates the APA as being that Revenue Ruling 15-5 should have been promulgated as a regulation and then dismissed that argument because the Department has discretion to decide when to require CUR. *See e.g.* Slip Op. 17. However, TSC's argument is that the Department regularly targets a specific group of taxpayers and applies Step One of the AA Statute differently and incorrectly against them such that it should have presented that policy choice (and the numerous other policy choices made in Rev. Rul 15-5 such as the way CUR will be implemented by the Department when required) as a regulation. *See* TSC Br. at Arg. §V; TSC Reply Br. at Arg. § IX. The Court also overlooked controlling law that should have led it to conclude that the use of CUR in this case violates the APA. *Id.* The Court also overlooked or misapplied controlling law that close calls should result in a regulation versus a ruling. *See id.* Finally, the Court improperly rejected TSC's argument that at a minimum CUR should not be applied to tax years 2014-2015 as Revenue Ruling

[24] This Court effectively agreed that the use of CUR in this case violates the plain language of (A)(4), which restricts the Department to the use of a method that is apportioning "the taxpayer's income." Slip Op. at 14 ("In this case, CUR effectively recalculates TSC's tax base by substituting the TSC *group's* 'sales everywhere' income for TSC's *individual* 'sales everywhere' income." (Court's emphasis)).

15-5 did not exist until June 12, 2015, and thus should not retroactively apply to time periods prior to that date. TSC Br. at Arg. §V.[25]

VII. MISCELLANEOUS ISSUES

A. The Court Overlooked or Misunderstood TSC's Arguments Explaining that The ALC's and this Court's Rulings Make South Carolina an Outlier and Negatively Impact the Business Community.

The Court overlooked or misapprehended TSC's arguments (and controlling law supporting the same) that the Department's misapplication of the AA Statute makes South Carolina an outlier and will negatively impact South Carolina taxpayers' reliance interests and the business community generally, and that it violates separation of powers principles. *See* TSC Br. at Arg. § II(C); TSC Reply Br. at 20; *S.C. Pub. Int. Found. v. S.C. Transp. Infrastructure Bank*, 403 S.C. 640, 649, 744 S.E.2d 521, 526 (2013) (citations omitted). The Court states that CUR is neither pro-taxpayer nor pro-Department because some taxpayers prefer it and that the AA Statute is neither pro-taxpayer nor pro-Department because both may seek to use CUR (though TSC would note that the Department may require CUR, while a taxpayer may only request it, and the Department may refuse it). Slip Op. 16-17. However, these statements fail to address the substance of TSC's arguments. *See* TSC Br. at Arg. § II(C); TSC Reply Br. at 20.

[25] The Court rejected TSC's argument on this issue because TSC chose to file using CUR in its 2012 return (which the Court notes was three years after *Media General*) and thus "cannot now credibly argue that it was unfairly surprised when the Department required CUR in 2014 and 2015." Slip Op. at 17. TSC's filing using CUR one year (as the Department instructed it to do) (*see id.* at 4) does not excuse the Department's practice of invoking CUR on retailers that are unitary businesses, which violates the APA, particularly when the *CarMax* decision in 2012 made clear that the Department bore the burden of proof to invoke alternative apportionment, which it had not met in that case.

B. The Court Misapprehended the Revisions to § 12-6-2320, which are Inapplicable in this Case.

It is not clear why the Court substantively discusses the revisions to § 12-6-2320 that are not applicable to the years at issue in this case, or whether / how that version of the statute impacted the Court's opinion. *See* Slip Op. at 16, n. 5. The Court appears to imply the new statute is blessing the Department's use of CUR, but that is not accurate. The statute specifically instructs the Department to use its §482 powers—not the AA Statute—to address a transfer pricing issue, and it only authorizes the Department to require a combined return in very limited circumstances and only after the Department first uses its §482 powers. § 12-6-2320(B) (Supp. 2025).[26]

CONCLUSION

Appellant respectfully requests that this Court grant rehearing, vacate its Opinion, and file a new Opinion reversing the ALC's ruling based on the above arguments.

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[26] Briefly, subsection (B)(1) instructs the Department to gather information from the taxpayer when it believes a transfer pricing issue may exist (which the statute refers to as an intercompany transaction that is not at fair market value). Subsection (B)(8) then instructs the Department to apply the §482 Regulations to determine whether there in fact is a transfer pricing issue (and the §482 Regulations require the Department to adjust a non-arm's length price to an arm's length price). Subsection (B)(2) allows the Department to require a combined return only <u>after</u> using §482 powers and only if the use of those powers fails to fix the problem.

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July 2, 2026

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Opinion No. 6148 (S.C. Ct. App. Filed June 17, 2026)

Appellate Case No. 2024-000013

Trial 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 Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified, pursuant to the Supreme Court Order 2022-05-06-04:

Pleading: APPELLANT'S PETITION FOR REHEARING

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Cc: Mitch Brown; Bryson Geer; John Von Lehe; Bobby Streisel; Eileen Hindman
Subject: Tractor Supply Company v. SCDOR - Appellate Case No. 2024-000013
Attachments: 2026.07.02 TSC - Petition for Rehearing at SCCA.pdf; 2026.07.02 TSC - (POS) Petition for Rehearing at SCCA.pdf

Good afternoon,

Attached for service upon you in the above matter is Appellant Tractor Supply Company's Petition for Rehearing as well as a Proof of Service regarding the same. We plan to file this petition with the Court shortly.

Please feel free to call me if you have any questions or concerns.

Thank you,

NELSON MULLINS

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