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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2026-001993

Tractor Supply Company Petitioner,

v.

South Carolina Department of Revenue Respondent,

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

Pursuant to Rule 242(f), SCACR, Respondent South Carolina Department of Revenue (“Department”) submits this Return to Tractor Supply Company’s (“TSC”) Petition for Writ of Certiorari (“Petition”).

“A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR. The Court considers a number of reasons in determining whether to exercise its discretion to grant review in general, including: (1) where there are novel questions of law; (2) where there is a dissent in the decision of the Court of Appeals; (3) where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; (4) where substantial constitutional issues are directly involved; and (5) where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. *See* Rule 242(b), SCACR.

No special or important reasons in this case warrant granting a writ of certiorari, nor does this case present any of the above “character of reasons” that the Court typically considers. *Id.* The Court of Appeals correctly affirmed the Administrative Law Court’s (“ALC”) decision. This case has no novel questions of law. The Court answered the legal questions of who has the burden in *Carmax Auto Superstores W. Coast, Inc. v. S.C. Dep’t of Revenue*, 411 S.C. 79, 767 S.E.2d 195 (2014) and whether combined unitary reporting is a permitted alternative apportionment method in *Media General Commc’ns, Inc. v. S.C. Dep’t of Rev.*, 388 S.C. 138, 694 S.E.2d 525 (2010).

The decision of the Court of Appeals comports with Supreme Court precedent. The ALC and Court Appeals decisions properly followed *Carmax* and *Media General*. The Court of Appeals’ decision also comports with *Alltel Commc’ns, Inc. v. S.C. Dep’t of Rev.*, 399 S.C. 313, 731 S.E.2d 869 (2012). However, this case is distinguishable from *Alltel* because the statute is unambiguous and there is no dispute that TSC is subject to South Carolina corporate income tax.

Furthermore, TSC asks that the Court contravene the separation of powers principle to make a legislative policy decision based on speculation of how national and international companies view “the State’s tax environment.” This naked assertion is easily disregarded as only the Legislature can set tax policy for the state. Accordingly, for the reasons discussed below, this Court should deny TSC’s Petition.

COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals correctly affirm the ALC’s factual finding that separate reporting did not fairly represent the extent of the TSC’s business activity in South Carolina, and combined unitary reporting was a reasonable and equitable apportionment of TSC’s income in South Carolina?

COUNTER-STATEMENT OF THE CASE

The Department mailed TSC a Department Determination on November 8, 2019 concluding: (1) TSC’s use of separate entity reporting in the standard apportionment formula does not fairly represent the extent of its business activity in South Carolina and (2) the Department’s application of combined unitary reporting is a reasonable alternative apportionment method pursuant to section 12-6-2320(A)(4). *See* Department Determination (**R. pp. 2241–2258**). On December 11, 2019, TSC filed its request for a contested case hearing with the ALC challenging whether the Department could meet its burden to establish “(1) that the standard formula fails to fairly represent the extent of the taxpayer’s business activity in the state, or (2) that the proposed alternative method of combination is reasonable.” *See* Req. for Contested Case Hr’g (**R. pp. 154–160**).

The ALC held a contested case hearing from January 23–27, 2023. On August 8, 2023, the ALC issued a final order finding that the Department had met its burden and ruling in its favor. *See* Initial Order (**R. pp. 1–64**). On August 18, 2023, TSC filed a motion for reconsideration. *See* TSC’s Initial Motion to Reconsider (**R. pp. 2531–2695**). On August 21, 2023, the ALC rescinded its Initial Order. *See* Rescission Order (**R. p. 65**). On December 4, 2023, the ALC issued an order granting TSC’s motion for reconsideration and an amended final order still finding that the Department had

met its burden and ruling in its favor. *See* Order Granting TSC's Motion to Reconsider (**R. pp. 138–145**) and Amended Order (**R. pp. 66–137**). TSC filed another motion for reconsideration on December 14, 2023. *See* TSC's Second Motion to Reconsider (**R. pp. 2708–2874**). On January 3, 2024, TSC filed a Notice of Appeal; the ALC issued an order denying TSC's second motion for reconsideration and TSC filed an amended notice of appeal. *See* Order Denying TSC's Second Motion to Reconsider (**R. pp. 146–153**). On January 8, 2024, the parties filed a joint motion to recognize the inapplicability of the automatic stay to the ALC's Order on TSC's Second Motion to Reconsider, which this Court granted on January 18, 2024.

TSC appealed to the Court of Appeals, and the Court of Appeals affirmed the ALC decision on June 17, 2026 after oral argument. The Court of Appeals found there was no basis for rehearing and denied TSC's Petition for Rehearing on August 7, 2026.

STATEMENT OF FACTS

1. The Tractor Supply Company

TSC and its subsidiaries (collectively, the "TSC Group") operate the largest retail store chain of rural lifestyle products in the United States. *See* Joint Ex. 3; Hr'g Tr. 51:3–7 (**R. pp. 3039–3123; 441**). As of 2016, TSC operated 42 retail stores in South Carolina. *Id.*; Hr'g Tr. 60:19–22; Joint Ex. 3 (**R. pp 450; 3039–3123**). The TSC Group has approximately 26,000 employees: 98% work in the retail stores or distribution centers, while the remaining 2% work in TSC's corporate headquarters in Brentwood, Tennessee. *See* Hr'g Tr. 551: 6–25; 1544:1–5; Respondent's Ex. 33, slide 36 (**R. pp. 941, 1934; 4574**). Similarly, 99% of TSC's revenue is derived from its retail operations. *See* Hr'g Tr. 60:8–11 (**R. p. 450**). In 2016, TSC generated approximately \$6.761 billion in sales, with each retail store averaging \$4.4 million in sales. Between 2014 to 2016, TSC's South Carolina stores generated over \$135–160 million in sales revenues annually. *See* Hr'g Tr. 550:7–12 (**R. p. 940**).

2. Tax Restructure

In 2001, after consulting with PricewaterhouseCoopers (PwC), TSC implemented a “strategy for reduction of state income tax expenses” referred to as the “Tax Restructuring.” Hr’g Tr. 116:16–117:14, 142:13–144:5; Respondent’s Ex. 12 (R. pp. 506–507, 532–534; 4456–4467); *see also* Hr’g Tr. 925:11–929:6 (R. pp. 1315–1319). The strategy was “largely, if not entirely, a tax driven transaction.” *See* Hr’g Tr. 641:16–18 (R. p. 1031). The Tax Restructuring had no operational change or commercial effects on the company. *See* Hr’g Tr. 464:14–19, 639:1–641:22 (R. pp. 854, 1029–1031). The physical location and place of operation for all procurement functions remained unaffected; the only meaningful change was the legal employer of the merchandising/procurement employees. *See* Hr’g Tr. 139:20–24 (R. p. 529).

TSC’s subsidiaries Tractor Supply Company of Texas, LP (“TSC of Texas”) and Tractor Supply of Michigan, LLC (“TSC of Michigan”) were both formed as part of the 2001 Tax Restructuring. *See* Hr’g Tr. 90:20–25, 100:24–101:3 (R. pp. 480, 490–491). TSC of Michigan leases all its employees from TSC. *See* Hr’g Tr. 89:12–92:2, 891:11–21; Respondent’s Ex. 7 (R. pp. 479–482, 1281; 4423–4431). TSC does not have a transfer pricing study related to this transaction or any idea how the fee or markup was determined. *Id.* Leasing employees and using a limited partnership like TSC of Texas are consistent with tax avoidance strategies before Michigan and Texas moved to combined unitary reporting. *See* Hr’g Tr. 387:19–389:3 (R. pp. 777–779). TSC officers signed intercompany agreements on behalf of TSC of Texas and TSC of Michigan. *See* Hr’g Tr. 92:10–17; Respondent’s Ex. 7 at TSC_00004354; Respondent’s Ex. 8 at TSC_00004366 (R. pp. 482; 4431; 4440). TSC provides administrative/management services to TSC of Texas and TSC of Michigan. *See* Hr’g Tr. 93:16–95:6; Respondent’s Ex. 8 (R. pp. 483–485; 4432–4440). TSC has no transfer pricing study related to this transaction. *Id.*

TSC of Texas “purchases” all inventory from third party vendors that will ultimately be sold to customers in all the Tractor Supply retail stores, including all inventory sold in South Carolina stores. *See* Hr’g Tr. 98:21–101:21; Joint Ex. 23 (**R. pp. 488–491; 3835–3850**). TSC (not TSC of Texas) pays those vendors and maintains insurance on the purchased inventory while it is in transit. *See* Hr’g Tr. 69:1–72:8, 883:12–20; Respondent’s Exhibit 10 (**R. pp. 459–462, 1273; 4453–4455**). Upon purchasing the inventory, TSC of Texas immediately “sells” the inventory to TSC and TSC of Michigan at cost plus a 9.7% markup. *See* Hr’g Tr. 100:2–6; 157:14–158:3; Joint Ex. 20, 21, and 23 (**R. pp. 490, 547–548; 3762–3822; 3823–3825; 3835–3850**). No money is exchanged or deposited for any intercompany transactions, which are simply documented in TSC’s books and records as a journal entry. *See* Hr’g Tr. 92:3–9, 95:7–14, 100:14–20, 1003:19–1004:9 (**R. pp. 482, 485, 490, 1393–1394**). TSC of Texas’ decision to charge a 9.7% markup was based on a transfer pricing study provided by PwC and commissioned by TSC (not TSC of Texas). *See* Hr’g Tr. 100:2–9; Joint Ex. 20; Hr’g Tr. 929:25–930:5 (**R. pp. 490; 3762–3822; 1319–1320**). “Both the Department and TSC presented expert testimony, and both experts agreed that the PwC pricing study was faulty.” Opinion at 8. TSC of Texas employees performing the procurement function for the TSC Group are physically located in Tennessee. *See* Hr’g Tr. 101:4–21 (**R. p. 491**). The procurement group/team does not physically hold the inventory; rather, once it is purchased from third party vendors it is shipped to and held by the TSC Group’s distribution centers and retail stores. *Id.*

TSC of Texas owns the intellectual property for “Tractor Supply Company” but allows the TSC Group to use the intellectual property through a Licensing Agreement. *See* Hr’g Tr. 82:12–22; Respondent’s Ex. 9; Hr’g Tr. 95:20–96:6; (**R. pp. 472; 4441–4452; 485–486**). Even though PwC analyzed and recommended an appropriate price to charge for use of the “TSC brand value,” TSC of Texas allows the TSC Group to use the trademarks for free. *See* Hr’g Tr. 96:7–24; Joint Ex. 20 at TSC_00004317) (**R. pp. 486; 3803**). This is likely to avoid TSC of Texas having a South Carolina

corporate income tax obligation under *Geoffrey, Inc. v. South Carolina Tax Commission*, 313 S.C. 15, 437 S.E.2d 13 (1993). *See* Hr'g Tr. 324:1–327:11 (**R. pp. 714–717**).

3. The Department's Audits of TSC

In a prior audit covering tax years 2008–2010, the Department audited TSC's corporate income tax returns and determined that combined unitary reporting was an appropriate alternative apportionment method to fairly reflect TSC's business activity in South Carolina. *See* Hr'g Tr. 906:7–11, 243:22–244:3 (**R. pp. 1296, 633–634**); Respondent's Ex. 18 (**R. pp. 4470–4508**). Following this audit, TSC filed a unitary combined return in South Carolina for tax year 2012. *See* Hr'g Tr. 245:8–20 (**R. p. 635**). However, in tax year 2013, TSC reverted to filing under a separate entity reporting method in South Carolina. *Id.*

After discovering that TSC had stopped filing on a combined reporting basis, the Department audited TSC's corporate income tax returns for the Periods at Issue. *See* Hr'g Tr. 224:11–22; Joint Ex. 32 and 33 (**R. pp. 614; 3971–4009; 4010–4014**). The Department's audit determined that because of TSC's corporate structure and implementation of intercompany transactions, apportioning TSC's income under the default separate reporting method did not fairly represent the extent of TSC's business activity in this state. *See* Hr'g Tr. 237:5–9; Joint Ex. 13 and 14 (**R. pp. 627; 3700–3714; 3715–3717**). Instead, a significant portion of TSC's profits from its retail operations are shifted via intercompany transactions to TSC of Texas, which does not file in South Carolina. *See* Hr'g Tr. 251:9–11, 255:9–256:13 (**R. pp. 641, 645–646**). Because of the distortion caused by TSC's intercompany transactions, the Department determined that requiring TSC to file a combined unitary return pursuant to section 12-6-2320(A)(4) fairly represented the extent of TSC's business activity within the State. *See* Hr'g Tr. 255:9–20; 261:17–263:15 (**R. pp. 645, 651–653**). As a result, the Department recalculated TSC's taxable income for the Periods at Issue, using the method described in S.C. Revenue Ruling #15-5. *See* Hr'g Tr. 274:23–282:4; Respondent's Ex. 31. (**R. pp. 664–672; 4512–4522**).

RELEVANT LAW

The South Carolina Income Tax Act (Act), S.C. Code Ann. § 12-6-10 et seq., imposes a 5% corporate income tax on the taxable income of every corporation doing business in South Carolina. For multistate corporations, the Act's allocation and apportionment provisions seek to impose this tax on "a base that reasonably represents the proportion of the trade or business carried on within this State." S.C. Code Ann § 12-6-2210(B). If the standard allocation and apportionment provisions fail to fairly reflect a taxpayer's business activity, the taxpayer may petition or the Department may require an alternative method. Specifically, the relevant version of S.C. Code Ann. § 12-6-2320 provided:

(A) 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 taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of one or more of the factors;
- (3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in the State; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Effective March 11, 2024, the Legislature amended the statute providing additional procedural requirements.

ARGUMENT

I. THE ARGUMENTS IN THE PETITION DO NOT PRESENT THE TYPE OF SPECIAL OR IMPORTANT REASONS FOR WHICH CERTIORARI SHOULD BE GRANTED UNDER RULE 242, SCACR.

TSC argues a writ of certiorari should be granted because the decision of the Court of Appeals conflicts with a prior decision of the Supreme Court, "impacts understanding and application of the relevant tax statutes and this Court's precedent," and affects perception of "the State's tax environment." As elaborated below, each of these arguments are misplaced, and none of these

arguments present special or compelling reasons for the Court to grant certiorari. Therefore, TSC's Petition should be denied.

A. The Court of Appeals' interpretation of § 12-6-2320 comports with prior Supreme Court decisions.

Alltel citing *Media General* recites that “[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 320, 731 S.E.2d 869, 873 (2012). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 8, 809 S.E.2d 223, 226 (2018) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). “In interpreting a statute, the court will give words their plain and ordinary meaning[] and will not resort to forced construction that would limit or expand the statute.” *State v. Johnson*, 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011). Further, “[a] statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute.” *Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 363 S.C. 612, 621, 611 S.E.2d 297, 301 (Ct. App. 2005). The purpose of the allocation and apportionment statutes “is to provide for the imposition of the South Carolina income tax, where the taxpayer is also subject to income tax in other states, ‘upon a base which reasonably represents the proportion of the trade or business carried on within this State.’” *Hertz Corp. v. S.C. Tax Comm'n*, 246 S.C. 92, 94–95, 142 S.E.2d 445, 446 (1965).

The Court of Appeals applied the rules of statutory construction consistent with Supreme Court precedent. While interpreting section 12-6-2320 in *CarMax* and *Media General*, the Supreme Court never held the statute to be ambiguous. To the contrary, the Supreme Court held “that the **plain language** of subsection (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.” (emphasis added) *Media General* at 151. Later, the Supreme Court found “the statutory language of section 12-6-2320(A) **clearly evinces...**” (emphasis added) *CarMax* at 89. The

Court of Appeals properly applied this Court's precedents¹ and the plain language of the statute to achieve the legislative purpose of imposing income tax on a base which reasonably represents TSC's business activity in this State.

TSC misapprehends *Alltel* to mean all tax statutes are construed in favor of the taxpayer. Obviously, this absolute cannot be true because ambiguity in tax exemption statutes is construed against the taxpayer. See e.g. *Home Medical Systems, Inc. v. S.C. Dep't of Rev.*, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009). Instead, as *Alltel* makes clear, the principle of resolving substantial doubt in the taxpayer's favor only applies to the question of whether a taxpayer is subject to a particular tax. *Alltel* relies on *Cooper River Bridge, Inc. v. S.C. Tax Comm'n*, 182 S.C. 72, 76, 188 S.E.2d 508, 509 (1936), in which the Supreme Court held "where the language relied upon to bring a particular person within a tax law is ambiguous...then the person will be excluded..."² The question in *Alltel* was whether the taxpayer was subject to the license fee tax for telephone companies. This case contains no dispute, much less substantial doubt, that TSC is subject to South Carolina corporate income tax. Significantly, *CarMax* makes no mention of *Alltel*, which the Supreme Court decided two years earlier, in construing the alternative apportionment statute.

B. The Court of Appeals' decision does not change the understanding and application of the relevant tax statutes and this Court's precedent.

As discussed above, the Supreme Court has already interpreted section 12-6-2320, and the Court of Appeals' decision comports with prior Supreme Court precedent. Additionally, the South

¹ Curiously, TSC claims that "[t]he lower courts ignored this Court's precedents" (specifically *CarMax*, *Media General*, and *Alltel*) despite the Court of Appeals expressly referencing these cases in its Opinion.

² *Cooper River Bridge* involved whether the plaintiff was a public service corporation subject to the license fee. *Cooper River Bridge* relied on *Fuller v. S.C. Tax Comm'n*, 128 S.C. 14, 128 S.E.2d 14 (1924) (whether property was subject to inheritance tax). *Fuller* relied on *Gould v. Gould*, 245 U.S. 151 (1917) (whether alimony was subject to income tax). *Gould* relied on *Am. Net & Twine Co. v. Worthington*, 141 U.S. 468 (1891) (whether gilling twine was subject to a tariff). *Am. Net Twine* relied on *United States v. Isham*, 84 U.S. 496, 504 (1873) (whether a check is subject to a stamp duty). *Isham* relied on *Conroy v. Warren* 3 Johns.Cas. 259, 2 Am.Dec. 156 (N.Y. Sup. Ct. 1802) (whether a check is subject to a stamp duty).

Carolina Taxation Realignment Commission (TRAC)³, Department, and Legislature have consistently articulated the relevant tax statutes.

In 2010, the TRAC reported to the Legislature that the *Media General* ruling confirmed the Department has the authority to require “forced combinations” under section 12-6-2320(A)(4). *See Final Report of S.C. Taxation Realignment Commission*, Joint Exhibit 30 at p. 162, 170 (**R. pp. 3933, 3941**). The TRAC Report noted that although separate entity reporting is the standard method, combined reporting is “better equipped to handle the complexities of multi-state corporate structures, particularly when such structures impact the ability of the state to properly tax corporate income.” *Id.* at 166 (**R. p. 3937**). The Report specifically noted that combined reporting “captures the true income of a multi-state corporation” and prevents the use of “tax loopholes linked to corporate structure” in which multi-state corporations utilize out-of-state subsidiaries to shift profits out of the state to avoid taxation on those profits. *Id.* at 163–64 (**R. pp. 3934–3935**).

In 2015, in response to *Media General* and requests from corporate taxpayers for published guidance on how the Department would utilize combined unitary reporting, the Department issued S.C. Revenue Ruling #15-5.⁴ *See* S.C. Revenue Ruling #15-5, Joint Ex. 17 (**R. pp. 3724–3736**). Among other things, S.C. Revenue Ruling #15-5 addresses how the Department will apply combined unitary reporting when it is used as an alternative apportionment method and explains some of the common situations in which the Department has required or approved combined unitary reporting (including the use of purchasing companies, management fee companies, and east/west companies within a unitary group). *Id.*

³ The TRAC was charged by the Legislature with conducting a thorough assessment of the State’s current tax structure. S.C. Code Ann. § 12-3-10.

⁴ Revenue Ruling #15-5 was drafted following a series of public meetings between the Department and tax professionals and representatives from businesses and business associations.

Further, as stated above, the Legislature amended section 12-6-2320 effective March 11, 2024. The amendment added procedural requirements. Specifically, the amendments address intercompany transactions and explicitly allow for the use of combined unitary reporting as an alternative apportionment method. To the extent Petitioner seeks further understanding of the application of the relevant tax statute, the Legislature has spoken. Additionally, the amendment of the statute poses two fatal issues for the Petition. First, it greatly diminishes the importance of the interpretation of an old version of the statute. Second, the amended statute is not before the Court, so the Court is unable to opine on it.⁵

C. Speculation regarding the perception of the State's tax environment is a policy concern and under the exclusive province of the Legislature.

Under the separation of powers principle, the courts have no role in the creation of policy. Our state constitution provides:

In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

S.C. Const. art. I, § 8. The core powers of the branches are well settled: “[t]he legislative department makes the laws, the executive department carries the laws into effect, and the judicial department interprets and declares the law.” *Butts v. Mace*, 448 S.C. 39, 51, 930 S.E.2d 698, 704 (2026), *reh'g denied* (June 29, 2026). 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). The character of reasons in Rule 242(b), SCACR, do not even remotely approach the Court weighing in on policy impacts.

⁵ The amendments do not apply to this case. *See* S.C. LEGIS 113 (2024), 2024 South Carolina Laws Act 113 (S.298) (“This act takes effect upon approval by the Governor and applies to all open tax periods excluding assessments under judicial review by the South Carolina Administrative Law Court, Court of Appeals, or Supreme Court as of the date of the Governor's approval.”).

To the extent tax policy is relevant, that was a factual question properly judged and weighed by the ALC. In that context, the ALC and Court of Appeals highlighted that TSC's own expert witness testified that combined unitary reporting "is a reasonable method, even preferable to separate reporting for equitably apportioning all of the business of a unitary group." *See* Opinion at 16; *see also* TRAC Report at 166 (**R. p. 3937**) ("Combined reporting does not inhibit economic growth."). The Court of Appeals also found that combined unitary reporting "is neither pro-taxpayer nor pro-Department." Opinion at 17.

The tax avoidance scheme utilized by TSC is not available to companies operating exclusively in South Carolina. If the Court accepted TSC's argument, it would provide a tax advantage to national and international companies over South Carolina companies based on form over substance. *See* TRAC Report at 155 (**R. p. 3926**) (South Carolina companies "operate at a competitive disadvantage with these multi-state corporations."). This contradicts the "fairly," "reasonable," and "equitable" language in the alternative apportionment statute. It also contradicts long established precedent 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).⁶ Regardless, TSC asks this Court to make a policy decision that the judiciary cannot make.

II. TSC MISAPPREHENDS FACTUAL QUESTIONS AS LEGAL QUESTIONS.

Throughout the Petition, TSC misunderstands factual questions to be legal questions. Determinations regarding the credibility of witnesses are properly within the discretion of the trial court, and appellate courts generally defer to those findings. "The judging of the credibility of witnesses and the weighing of evidence in a law case are uniquely functions of the trial court." *Bivens*

⁶ Further bolstering this, the Legislature added "economic substance" language in the amended statute.

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). The ALC, as the fact finder, heard testimony and weighed all the evidence to correctly determine the facts in this case.

The ALC and the Court of Appeals both properly applied *CarMax* and recognized that the Department had to prove that: (1) the statutory formula does not fairly represent the taxpayer’s business activity in South Carolina and (2) its alternative formula is reasonable. *See* Amended Order at fn. 52 (**R. p. 107**) and Court of Appeals Opinion at 6. This burden is a matter of law that the Department does not dispute. However, whether that burden is met is a factual question. The ALC correctly found that the allocation and apportionment provisions of the Act did not fairly represent the extent of TSC’s business activity in this State and the employment of combined unitary reporting effectuated an equitable allocation and apportionment of TSC’s income. This finding was supported by substantial record evidence. The Court of Appeals distinguished the evidence in this case from *CarMax*: “Where only scant and conclusory evidence was presented by the Department in *CarMax*, here the Department presented substantial evidence supporting its use of an alternate formula.” Opinion at 7.

This Court has already addressed the legal questions related to the interpretation of the relevant statutes, which the lower courts properly applied. The remaining issues are factual questions. The Court of Appeals appropriately concluded,

in this case the Department presented a wealth of testimony showing that TSC’s inflated transfer pricing resulted in distortion of TSC’s South Carolina business activity under that standard sales factor formula because it allowed TSC to artificially shift income from TSC to TSC Texas.

Opinion at 18. Therefore, substantial evidence supports the ALC’s findings of fact.

III. THE COURT OF APPEALS CORRECTLY CONSIDERED AND REJECTED THE ARGUMENTS TSC RAISED BEFORE IT.

The Court of Appeals carefully considered the arguments before it and rightfully affirmed the ALC's decision. To the extent TSC rehashes its earlier arguments, the Department addresses those arguments in the Department's Brief and Return to TSC's Petition for Rehearing at the Court of Appeals. However, the Department briefly addresses TSC's allegation of "fundamental legal errors" below:

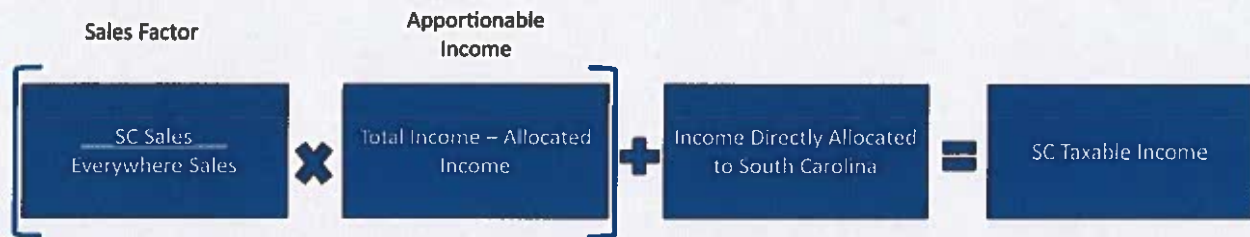
A. TSC asks the Court to rewrite the alternative apportionment statute.

i. TSC's proposed statutory edits

TSC asks the Court to apply the following edits to section 12-6-2320(A): "If the ~~allocation and apportionment provisions of this chapter~~ sales factor does not fairly represent the extent of the taxpayer's business activity in this State..." Under the separation of powers principle, the Court cannot rewrite the statute. On the other hand, the Legislature can rewrite the statute and, in fact, did. Significantly, the Legislature left untouched the language TSC seeks to replace and did not add any language about the sales factor. Instead, the Legislature added language that expressly allows combination of a unitary group as an alternative apportionment method when a taxpayer's business activities are not fairly represented through the use of transactions that lack economic substance or are not at fair market value between members of an affiliated group of entities. The procedural requirements of the amended statute make clear that alternative apportionment is appropriate for taxpayers like TSC.

ii. The default apportionment formula under the allocation and apportionment provisions

The sales factor is only part of the allocation and apportionment provisions. The purpose of the apportionment formula is to reach a base (i.e. South Carolina taxable income) that reasonably represents a taxpayer's business activity in South Carolina. The default apportionment formula is:



iii. *Fair representation under alternative apportionment*

As businesses naturally evolve and accounting firms develop new tax avoidance schemes, the default apportionment formula may fail to fairly represent a taxpayer's business activity in an infinite number of ways. One such way is exploiting South Carolina's default reporting method by shifting income (on paper) to out-of-state subsidiaries like TSC did. Besides when a taxpayer engages in a tax avoidance scheme (e.g. TSC), the standard formula may just not work for a particular taxpayer (e.g. Media General). The Legislature recognized the importance of alternatives for instances when the standard method did not work as intended by enacting the alternative apportionment statute, which allows "any other method." The distortion may result from the sales factor, apportionable income, separate reporting, or any other allocation and apportionment provision, so "any other method" allows flexibility. If the distortion arises under separate entity reporting, combined unitary reporting provides a court-approved remedy.

iv. *TSC's misreading of CarMax*

TSC's rewriting of the statute seems to derive from its fundamental misapprehension of *CarMax*, which is a case about who has the burden of proof and whether that burden was met. *CarMax* did not hold that alternative apportionment is only appropriate if the sales factor viewed in isolation unfairly represents a taxpayer's business activity. That is not what the statute says. This case and *CarMax* are factually distinct and were tried differently—here, the ALC properly placed the burden

on the Department.⁷ As noted in the Department Determination (**R. p. 3744**), the Department's imposition of an alternative apportionment method is distinguishable from *CarMax* and *Rent-A-Ctr. W. Inc. v. S.C. Dep't of Revenue*, 418 S.C. 320 792 S.E.2d 260 (Ct. App. 2016). In those cases, the Department chose an alternative method that adjusted the apportionment ratio—i.e. the sales factor. That is why those opinions discuss the sales factor and not separate reporting. Notably, CarMax argued against the Department's alternative method because the ALC failed to consider that CarMax operated as part of a unitary business. In a later audit, the Department considered the unitary nature of CarMax and required combined unitary reporting as an alternative apportionment method, which like here the ALC upheld. *See CarMax Auto Superstores, Inc. v. S.C. Dep't of Rev.*, Docket No. 21-ALJ-17-0182-CC (S.C. Admin. Law Ct. August 15, 2024) 2024 WL 3916836 (appeal dismissed).

B. The ALC and Court of Appeals properly applied the burden of proof.

TSC misunderstands how the burden of proof works. As the ALC points out, TSC “cannot simply rest upon its allegations or denials once the Department has met its burden.” *See Amended Final Order (R. p. 123)*.

C. As a factual matter, combined unitary reporting corrects the distortion caused by TSC's accounting tricks.

Whether income “belongs” to an affiliate is a factual question. Substantial record evidence showed that the income apportioned to South Carolina belongs to TSC. The ALC rightly rejected TSC's accounting tricks that shifted income on paper. This is consistent with the Court of Appeals

⁷ In *CarMax*, “[t]he ALC placed the burden of proof on CarMax West, and accordingly its findings of fact and conclusions of law are premised on that error of law. It is therefore not surprising that as the majority states, ‘the Department relied on CarMax West to refute [the Department's] use of an alternate formula,’ or that the Department, lacking any burden of proof, largely offered evidence of **what** it did rather than **why** it did it.” *Carmax Auto Superstores W. Coast, Inc. v. S.C. Dep't of Revenue*, 411 S.C. 79, 92, 767 S.E.2d 195, 201 (2014) (Pleicones, J. dissenting). In contrast, the Department tried this case knowing that it had the burden.

holding, “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.

D. The alternative apportionment statute is unambiguous.

As discussed in section I.A. above, the ALC and Court of Appeals properly applied the plain language of the statute consistent with how this Court previously interpreted the same statute.

E. Combined reporting is a reasonable alternative apportionment method under these facts.

In reporting to the Legislature, the TRAC directly contradicted TSC’s argument that forced combinations are not allowed when a taxpayer is the only unitary group member doing business here. TRAC Report at 162 (**R. p. 3933**) (“This would entail the South Carolina DOR...forcing the corporate entity that does have nexus with the state to file a report that includes the income of its parent and subsidiaries, whether they have nexus with the state or not...”). Further, the amended statute expressly allows the Department to require a combined return and provides: “The department may require a combined return under this section regardless of whether the members of the affiliated group are or are not doing business in this State.”

F. The Court of Appeals properly held that substantial record evidence supports the ALC’s factual findings that the allocation and apportionment provisions (specifically separate reporting) did not fairly represent the extent of the TSC’s business activity in South Carolina, and the alternative method (combined unitary reporting) was a reasonable and equitable apportionment of TSC’s income in South Carolina.

In seeking *de novo* review, TSC attempts to reframe factual questions as legal questions despite making numerous factual assertions. The ALC’s disagreement with TSC’s factual assertions does not constitute an error of law. Substantial record evidence supports the ALC’s factual findings that separate reporting did not fairly represent the extent of the TSC’s business activity in South Carolina and combined unitary reporting was a reasonable and equitable apportionment of TSC’s income in South Carolina. As discussed earlier, this Court already answered the legal questions, and the ALC answered the factual questions.

CONCLUSION

Certiorari is not appropriate in this case under Rule 242(b), SCACR. The Court of Appeals' decision does not raise any special and important reasons that weigh in favor of granting the writ. Instead, the Court of Appeals correctly affirmed the ALC's Order based on relevant precedent and substantial evidence. Consequently, this Court should deny TSC's Petition.



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October 8, 2026