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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

Appellate Case No. 2026-001993

Court of Appeals Case No. 2024-000013

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

Tractor Supply Company, ... Petitioner,

v.

South Carolina Department of Revenue, ... Respondent.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

The Department's Return (the "Return") confirms that this Court's review is needed. This case turns on the meaning of the alternative apportionment statute at § 12-6-2320(A)[1] (the "AA Statute"),[2] which neither lower court construed. The Return never engages with Tractor Supply Company's ("TSC") actual reading of the text and offers no coherent reading of its own: on Step One,[3] it attacks a misstated version of TSC's reading while shifting among competing positions; and on whether § 12-6-2320(A)(4) ("(A)(4)") authorizes CUR here, it ignores TSC's reading and offers none of its own. Instead, the Return recasts every issue as a dispute over the weight of the evidence. That label does not fit the five key questions. On the first three, the Return's own arguments turn on statutory text and precedent; on the last two, it identifies no relevant Step One proof or Step Two findings to weigh. Each is a question of law, reviewed de novo.

First, the lower courts departed from *CarMax*'s Step One standard by substituting "separate reporting" for "the statutory formula"—a substitution the Return ultimately concedes. If, as the Return elsewhere suggests, *CarMax* did not set the Step One standard, then it is an unsettled question of statutory construction. *Second*, (A)(4) permits only methods that apportion "the taxpayer's income," yet over 70% of the income combined unitary reporting ("CUR") apportioned here belonged to affiliates doing no business here. The Return never confronts that text, relying instead on *Media General Commc'ns, Inc. v. S.C. Dep't of Rev.*, 388 S.C. 138, 694 S.E.2d 525

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[1] All code sections are from the South Carolina Code of Laws Annotated unless otherwise noted.
[2] After this case began, subsection (A)(4) of the AA Statute was amended and a new subsection (B) added. § 12-6-2320 (2024) (the "2024 Amendment" or the "Amendment"). As the Amendment does not apply here, cites to the AA Statute are to the prior version unless stated otherwise.
[3] The AA Statute has two steps. Step One requires the Department to prove the taxpayer's statutory formula (here, the sales factor) does not fairly represent its South Carolina business activity, and Step Two requires proof the proposed alternative method is reasonable. *CarMax Auto Superstores W. Coast, Inc. v. S.C. Dep't of Rev.*, 411 S.C. 79, 88-90, 767 S.E.2d 195, 199-200 (2014).

(2010), which never addressed the question. *Third*, the Court of Appeals recited the rule that the taxpayer receives the benefit of the doubt in construing tax statutes, *Alltel Commc'ns, Inc. v. S.C. Dep't of Rev.*, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012), but never applied it, and each of the Return's three defenses of that omission rests on a false premise. *Fourth*, the Department offered no Step One proof—even under the wrong standard—yet the lower courts faulted TSC for failing to rebut a showing the Department never made, shifting the burden to TSC in conflict with *CarMax*. *Fifth*, the Return does not defend the ALC's missing Step Two findings or explain how CUR is "equitable" here when the Department never attempted a targeted § 482 price adjustment. Finally, the Return's reliance on the 2024 Amendment fails on its own terms: even if the Amendment applied, it would permit forced CUR only after the Department's § 482 powers failed to correct a transfer pricing issue—yet the Department went straight to CUR without trying to use those powers.[4]

All five questions turn on statutory meaning or legal sufficiency, not the weight of the evidence or a policy question. Any one of them could change the outcome here, and together they will shape alternative-apportionment disputes going forward. They therefore warrant review under SCACR 242(b), and this Court should grant the Petition.

ARGUMENT

I. THE PROPER STEP ONE STANDARD IS A POTENTIALLY DISPOSITIVE LEGAL QUESTION THAT WAS DECIDED IN CONFLICT WITH *CARMAX* OR IS UNSETTLED.

This Court should grant certiorari to decide the proper Step One standard under the AA Statute. *CarMax* set that standard: the Department must prove that "the statutory formula does not

[4] The Petition noted that the 2024 Amendment does not apply here and limited its arguments accordingly. *See* Pet. at 2. TSC discusses it here only to correct the Return's characterizations of it.

fairly represent the taxpayer's business activity in South Carolina." 411 S.C. at 89, 767 S.E.2d at 200. The lower courts recited that standard but applied a different one, substituting "separate reporting" for "the statutory formula"—as the Return ultimately concedes. That conflict alone warrants review under SCACR 242(b)(3). The Return implies, at various points, that *CarMax*'s standard is limited to that case, is dictated by the Department's legal theory, or was never determined at all. Each suggestion is wrong, but if any were right, the proper Step One standard would be a novel question of statutory construction warranting review under SCACR 242(b)(1). Either way, the question merits review; it could be dispositive here and remains important going forward.[5]

A. Whether the Lower Courts Applied the Text-Based *CarMax* Standard Is a Pure Legal Question Reviewed De Novo.

The Return characterizes every issue in the Petition as factual (*see, e.g.*, Ret. at II), but the Step One issue is legal under either of TSC's grounds. Whether the lower courts applied the standard *CarMax* derived from the AA Statute's text, and what that text requires if *CarMax* did not decide it, are both questions of law reviewed de novo. Pet. at I and V. The Return's own arguments confirm as much: it urges rejection of TSC's (misstated) position because it would *rewrite the statutory text*. Ret. at 14; *see also id.* at 15 ("*That is not what the statute says*." (emphasis added)).

B. The Department's Unclear and Inconsistent Views of the Proper Step One Standard and *CarMax* Show Why This Court's Guidance Is Necessary.

The Return takes no clear or consistent position on the proper Step One standard or on what *CarMax* held. It suggests—often only by implication—that the lower courts applied the *CarMax* standard; that *CarMax* is distinguishable because of how that case was tried and the Department's legal theory there; that *CarMax* never determined the standard; and that "separate reporting" is an allocation or apportionment provision. Ret. at 13, 15-16. Each suggestion is wrong,

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[5] The 2024 Amendment did not change the Step One standard. *See infra* I.C.

and together they leave taxpayers, the Department, and the lower courts needing clarity.

1. The Lower Courts Departed from the *CarMax* Step One Standard as the Return Ultimately Concedes.

At one point, the Return implies that the lower courts applied the *CarMax* Step One standard. Ret. at 13 (saying they "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[.]"). That is incorrect—the lower courts recited the *CarMax* test but applied a materially different one. Pet. at I. The Return elsewhere concedes this, acknowledging they substituted "separate reporting" for the "statutory formula." *See, e.g.*, Ret. at 2 (restated question presented with the "separate reporting" Step One standard); *id.* at 17 (ALC held "that *separate reporting* did not fairly represent [TSC's business activity here.]") (emphasis added).[6]

2. The *CarMax* Step One Standard Comes from the AA Statute's Text, Not the Department's Legal Theory, So It Governs Here.

The Return also suggests that *CarMax*'s Step One standard does not apply here because *CarMax* had different facts and was tried under a different legal theory. Ret. at 15-16. Nothing in *CarMax* (or elsewhere) supports so narrow a reading. To the contrary, *CarMax* framed the Step One standard so it would apply beyond that case. There, the taxpayer was required to use the gross receipts formula. *CarMax*, 411 S.C. at 86, 767 S.E.2d at 198. After acknowledging that the Court of Appeals had described the standard as requiring proof the gross receipts formula did not fairly represent the taxpayer's business activity here (*id.* at 87-88, 767 S.E.2d at 199), this Court replaced "gross receipts formula" with "statutory formula" when establishing the Step One standard. *Id.* at

[6] Any suggestion in the Return that the *CarMax* "statutory formula" means or includes "separate reporting" is wrong. A statutory formula apportions income (e.g., the sales factor); separate reporting is a type of tax return—a distinction the Department itself draws. S.C. Rev. Rul. 15-5 at pp. 1-2; S.C. Rev. Proc. 15-2 at pp. 1-2.

89, 767 S.E.2d at 200. South Carolina law provides numerous "statutory formulas,"[7] and this rephrasing allows the standard to apply to whichever statutory formula governs. *Id.* at 89, 767 S.E.2d at 200 ("Accordingly, when a party seeks to deviate from ***a*** statutory formula [using the AA Statute], the proponent . . . bears the burden of proving . . . that: (1) ***the*** statutory formula does not fairly represent the taxpayer's business activity in South Carolina[.]" (emphasis added)).

The Return's "tried differently" point suggests that the Department's chosen method and arguments dictated how *CarMax* framed Step One:

> In those cases [referring to *CarMax* and *Rent-A-Center*], 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***[8] [sic] ***and not separate reporting***.

Ret. at 16 (emphasis added). But the Step One standard is based on the AA Statute's text, not the Department's chosen method or legal theory. Neither this Court in *CarMax* nor the Court of Appeals in *Rent-A-Center* suggested they framed Step One as they did because of the Department's chosen method.

3. *CarMax* Decided Not Only Who Bears the Burden of Proof but also What that Burden Requires.

The Department oddly reads *CarMax* as not having decided the burden's requirements. *See, e.g.*, Ret. at 15 (describing *CarMax* as merely "a case about who has the burden of proof and whether that burden was met"); *id.* at 1 (saying this case "has no novel questions of law" because *CarMax* already established "who has the burden"). That reading is wrong. *CarMax* decided not only who bears the burden of proof but also *what that burden requires*, which for Step One is proof that "the

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[7] There are currently eight statutory formulas—sales factor (§ 12-6-2252(A)), gross receipts (§ 12-6-2290), and six additional formulas in § 12-6-2310.

[8] Both *CarMax* and *Rent-A-Center W., Inc. v. S.C. Dep't of Rev.*, 418 S.C. 320, 332, 792 S.E.2d 260, 266 (Ct. App. 2016) involved the gross receipts formula, not the sales factor.

statutory formula does not fairly represent the taxpayer's business activity in South Carolina[.]" 411 S.C. at 89, 767 S.E.2d at 200. This Court then applied that standard, examining the record and holding the evidence insufficient as a matter of law to satisfy it. *Id.* at 90-91, 767 S.E.2d at 200-01.

4. Separate Reporting Is Not an Allocation or Apportionment Provision.

The Return lists separate reporting alongside the sales factor as an "allocation and apportionment provision," implying that the lower courts' standard tracks the AA Statute's text. Ret. at 15 ("The distortion may result from the sales factor, . . . *separate reporting*, *or any other* allocation and apportionment provision[.]") (emphasis added). The Return cites no authority for that characterization, and there is none.

In sum, whether the lower courts departed from *CarMax* or *CarMax* left the question open, review is warranted under SCACR 242(b)(1) or (b)(3).

C. The 2024 Amendment Did Not Change the Step One Standard, Which Could Be Dispositive Here and Will Govern Future Disputes.

The Return agrees the Amendment did not change the standard. Ret. at 14 ("Significantly, the Legislature left untouched the language [governing the Step One standard.]"). The Step One standard, and *CarMax*'s reading of it, apply equally to the current AA Statute. The issue is potentially outcome-determinative here,[9] and clarity is also needed to guide future disputes.

II. THE RETURN SIDESTEPS WHETHER (A)(4) AUTHORIZES CUR TO REACH NON-CONSENTING AFFILIATES THAT DO NO BUSINESS IN SOUTH CAROLINA—AN UNRESOLVED QUESTION OF STATUTORY MEANING.

The Return treats *Media General* as dispositive when it is not, claims the 2024 Amendment diminishes the question's importance when it does not, and never explains how (A)(4) permits CUR when more than 70% of the income apportioned was not "the taxpayer's income" but income

[9] *See* R. 126 (ALC concluding that, but for the transfer pricing issue, "I would find that separate reporting resulted in a fair representation of TSC's business activity in this state.").

of affiliates doing no business here. The question turns on statutory meaning and warrants review.

A. The Return Incorrectly Frames the Question, Which *Media General* Did Not Resolve and the Lower Courts Wrongly Treated as Foreclosed.

The Return frames the issue as whether CUR can *ever* be authorized under (A)(4) and claims *Media General* settled that. *See, e.g.*, Ret. at 1. But *Media General* held (A)(4) allowed the combined entity apportionment method ("CEAM"), not CUR. Pet. at III.A; *see also* Ret. at 8 (quoting *Media General*'s approving CEAM). And even if *Media General* had allowed CUR, that is not dispositive of the narrower question here: whether (A)(4) empowered the Department to force CUR on a taxpayer that is the only member of its unitary group doing business here. Pet. at III.A. *Media General* did not address that question, and the Return points to nothing in the opinion suggesting otherwise.[10]

B. The Question Survives the 2024 Amendment.

The Return argues that the Amendment "greatly diminishes the importance of the interpretation of an old version of the statute." Ret. at I.B. Not so. Whether (A)(4) authorizes CUR here could decide this case and remains important going forward.

Columbia Sportswear USA Corp. v. Ind. Dep't of State Rev., 45 N.E.3d 888 (Ind. Tax Ct. 2015)—which the Court of Appeals conceded "support[s] TSC's argument that CUR is improper," Slip Op. at 26, and which the Return ignores—shows why. The method rejected there was not CUR, but it worked the same way. *Id.* at 891-93. The court held the method unauthorized under Indiana's UDITPA § 18 statute because it increased the taxpayer's federal taxable income

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[10] TSC identified four distinctions between *Media General* and this case, and the Return disputes none. Pet. at III.A. In *Media General*, every entity did business in South Carolina; the taxpayers requested combined treatment; only apportionment factors, not income, were combined; and the parties stipulated that Steps One and Two were met. *Id.* Each distinction goes to the question presented: whether the Department may, over the taxpayer's objection, combine the income of affiliates that do no business here.

("FTI")—and thus its apportionable income—by including affiliates' income before apportionment. *Id.* at 893-96; Pet. at III.C.

CUR uses the same mechanics, and they are equally unlawful here. (A)(4) permits only methods that apportion "the taxpayer's income." CUR inflates TSC's FTI—and thus its apportionable income—by adding the FTI of affiliates that do no business here. Pet. at Facts, C.[11] Any method that does this—whether CUR, the *Columbia Sportswear* method, or something else—apportions more than "the taxpayer's income" and violates (A)(4)'s plain text.

The Amendment limits only forced CUR, not other methods—like the one rejected in *Columbia Sportswear*—that inflate a taxpayer's FTI or apportionable income before apportionment. *See infra* VI. Resolving whether (A)(4) authorizes CUR here thus would guide future disputes over any such method.

C. The Return Offers No Textual Basis for Concluding (A)(4) Allows CUR Here.

(A)(4) authorizes "any other method," but only if it apportions "the taxpayer's income." Pet. at III.B.[12] CUR disregards that restriction: only 26.1% of the 2014 income it apportioned here was TSC's; the other 73.9% was earned by affiliates that do no business here. *Id.*

The Return ignores TSC's arguments on this issue. It does not contest TSC's distinctions of *Media General*. Pet. at III.A; *supra* n.10. It identifies no flaw in TSC's reading of the text and offers no competing reading. Pet. at III.B. And it never mentions *Columbia Sportswear* or responds

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[11] In 2014, for example, CUR added $421,222,876 of affiliate income to TSC's FTI, raising it from $130,998,512 to $552,221,388, and raised the income subject to apportionment by the same amount, from $148,476,938 to $569,699,814. Pet. at Facts, C. None of the added income is TSC's. *Id.* Roughly three-quarters of the resulting total belongs to two affiliates doing no business here, yet a share of that total is apportioned to South Carolina for taxation. *Id.*

[12] Under the AA Statute, "the taxpayer's income" is TSC's FTI as modified by Article 9—that is, TSC's total business income. Pet. at III.B.

to TSC's point that it "has found no case where a court interprets subsection (A)(4) of a UDITPA § 18 statute to authorize forced CUR under facts like these." *Id.* at III.C.

What the Return does offer fails. *First*, it says TSC seeks "a policy decision that the judiciary cannot make." Ret. at I.C. But TSC asks only that this Court interpret the statute at the heart of this case—which neither lower court did. *Second*, it invokes the TRAC Report. Ret. at III.E (citing R. 3933). But a commission's description of what forced CUR would allow if adopted is not law and cannot substitute for this Court's construction of the statute. *Third*, it relies on the 2024 Amendment. *Id.* at III.E. But the Amendment confirms TSC's reading. It *now* empowers the Department to require CUR and to include in the combined return entities that do not conduct business here. § 12-6-2320(B)(6) (2024). The entire (B)(6) would be unnecessary if the prior version of (A)(4) already conferred that power. *See, e.g.*, *Key Corp. Cap., Inc. v. Cnty. of Beaufort*, 373 S.C. 55, 60-61, 644 S.E.2d 675, 678 (2007) (recognizing presumption that Legislature intended to change existing law when it amends a statute). *Fourth*, it inaccurately describes CUR as an "apportionment method" and suggests the Amendment does the same. *See, e.g.*, Ret. at 11, 16, and 17 (title of III.E). CUR is a tax return (i.e., a reporting method), not an apportionment method: the Department's policy documents and the Amendment recognize the distinction. S.C. Rev. Rul. 15-5 at pp. 1-2; S.C. Rev. Proc. 15-2 at pp. 1-2; § 12-6-2320(B) (2024).

III. THE COURT OF APPEALS CITED *ALLTEL* BUT NEVER APPLIED IT, AND THE RETURN'S DEFENSES OF THAT OMISSION FAIL.

The Court of Appeals quoted *Alltel*'s rule that "in the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt" but never applied it. Slip Op. at 18. Applying it required attempting to construe the text—which neither lower court did—and then asking whether § 12-6-2320(A) is reasonably susceptible to TSC's readings: that Step One measures "the statutory formula," not separate reporting, and that (A)(4) permits only methods that apportion

"the taxpayer's income," not mostly the income of affiliates doing no business here. *Alltel*, 399 S.C. at 321, 731 S.E.2d at 873. The Return offers three reasons *Alltel* need not be applied: *CarMax* held the statute unambiguous, *Media General* did too, and *Alltel* governs only whether a taxpayer is subject to tax at all. Ret. at 8-9. Each rests on a false premise, and TSC's readings are at least reasonable—which is all *Alltel* requires.

A. *CarMax* Not Mentioning *Alltel* Supports TSC's Reading.

CarMax adopted TSC's reading of the statute, holding that Step One requires proof that "the statutory formula does not fairly represent the taxpayer's business activity in South Carolina," 411 S.C. at 89, 767 S.E.2d at 200—a reading the Return at times concedes, *see, e.g.*, Ret. at 13. *CarMax* had no reason to invoke *Alltel* because it found the text clear in TSC's favor; that silence does not make *Alltel* irrelevant when the text is disputed. And if the lower courts' substitution of "separate reporting" for "statutory formula" is not clearly wrong, it at least creates the very doubt *Alltel* requires be resolved in TSC's favor.

B. *Media General* Not Mentioning *Alltel* Does Not Foreclose TSC's Reading.

Media General had no reason to invoke *Alltel* because it never construed the language TSC relies on—no party put it at issue. The Court construed (A)(4)'s "any other method," not "the taxpayer's income," and never addressed whether (A)(4) permits apportioning the income of affiliates that do no business here. It had no need to: the method it approved—CEAM, not CUR—applies each entity's ratio solely to its own income, 388 S.C. at 147, 694 S.E.2d at 529, so "the entities will be reporting the taxes due for each entity." *Id.* at 152, 694 S.E.2d at 532. *Media General* could not have held unambiguous language it never construed. And if TSC's reading—that (A)(4) permits only methods that apportion "the taxpayer's income"—is reasonable, *Alltel* requires that the resulting doubt be resolved in TSC's favor.

C. *Alltel* Applies to Tax Statutes Generally, Not Just to Whether a Taxpayer Is Subject to Tax.

The Return's limit on *Alltel* has no basis in South Carolina law. South Carolina courts construe tax statutes in the taxpayer's favor generally, excepting only matters of legislative grace (e.g., credits and exemptions). *See, e.g.*, *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 139-40, 796 S.E.2d 165, 173 (Ct. App. 2016); *S.C. Nat'l Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989); *Pacolet Mfg. Co. v. Query*, 174 S.C. 359, 177 S.E. 653, 655 (1934). TSC seeks no credit or exemption here; the Department is using § 12-6-2320(A) to collect more tax. The Department's own authorities confirm the point: most decided whether an item was taxable, not whether a person was subject to tax.[13]

In sum, the Court of Appeals recited *Alltel* without applying it, and none of the Return's defenses cures that error. Properly applied, *Alltel* resolves both statutory questions in TSC's favor because TSC's readings are at least reasonable. And the Return's attempt to confine *Alltel* to whether a taxpayer is subject to tax at all would narrow a settled rule of construction for every South Carolina tax dispute. This Court should grant certiorari under SCACR 242(b) to apply *Alltel* here and reject that limit.

IV. THE RETURN DOES NOT FILL THE GAP IN THE DEPARTMENT'S STEP ONE PROOF, AND THE LOWER COURTS' BURDEN SHIFT CONFLICTS WITH *CARMAX*.

The Department bore the burden of proof. *CarMax*, 411 S.C. at 89-90, 767 S.E.2d at 200.

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[13] *See* Ret. at 9 n.2 (citing cases on the taxability of property *(Fuller)*, alimony *(Gould)*, gilling twine *(American Net & Twine)*, and a check *(Isham; Conroy)*). Even the Return's quotation from *Cooper River Bridg*e fits: "where the language relied upon to bring a particular person within a tax law is ambiguous . . . then the person will be excluded." *Id.* at 9. Section 12-6-2320(A) is that language; the Department invoked it to override TSC's sales-factor filing and impose CUR, producing the entire $1,383,064 assessment.

TSC does not contend, as the Return suggests, that the burden can never shift (Ret. at 16)—only that the Department did not present enough evidence to shift it, even under the wrong Step One standard. Pet. at II. The ALC required TSC to disprove Step One before the Department offered any evidence to prove it. *Id.*

The Department's Step One theory shortly before trial became that the procurement charge was not at arm's length, but it offered no evidence to support that theory. Pet. at II. Instead, the trial focused on whether the charge *was* arm's length—first through the PwC Study, then through TSC's expert. *Id.* The ALC essentially faulted TSC for failing to rebut a Step One showing the Department never made, *see, e.g.*, R. 123-24, which the Court of Appeals improperly affirmed.

The Return tries to fill that gap with tax-avoidance rhetoric: PwC's "strategy for reduction of state income tax expenses," testimony the 2001 restructuring was tax-driven (Ret. at 4-5), and references to "tax avoidance schemes" and "accounting tricks" (*id.* at 12, 15-16). These assertions are inaccurate, irrelevant to Step One, or both, and the lower courts rightly disregarded them. Tax planning is lawful and does not satisfy Step One. *CarMax*, 411 S.C. at 90–91, 767 S.E.2d at 200–01 (lower tax or tax-minimization strategies do not meet Step One burden). And if the restructuring within the tax years at issue in *CarMax* did not satisfy Step One, *id.* at 82-83, 767 S.E.2d at 196, TSC's decade-old restructuring cannot. Pet. at 6 n.4.

Nor do the Return's criticisms of the PwC Study fill the gap. Both experts agreed the study used an unreliable method, but as the ALC properly held, that does not mean the price was wrong. R. 81. TSC's expert used a different, reliable method and confirmed the 9.7% markup was arm's length. Pet. at Facts, E. The Department's expert offered no price or range at all—simply criticizing the method. *Id.* And even if the Department had proven the markup excessive, that showing still would not have carried its burden to justify CUR: an excessive markup would support, at most, a

§ 482 price adjustment and penalties under § 12-54-155(C)(2)—remedies the Department never invoked. Pet. at I, II.A, III, IV.D.

In sum, even under the wrong Step One standard, the Department offered no proof that the procurement charge was not at arm's length, and the lower courts erred by requiring TSC to disprove a showing the Department never made. This Court should grant certiorari and confirm that the burden of proof remains with the Department.

V. THE RETURN DOES NOT DEFEND THE ALC'S MISSING STEP TWO FINDINGS OR ITS CONFLATION OF "REASONABLE" AND "EQUITABLE"—BOTH LEGAL QUESTIONS.

The Return does not address the missing Step Two findings on Parts A, B, and C (as TSC labels them, Pet. at IV.A) of the *Twentieth Century-Fox* Reasonableness Test. And it treats "reasonable" as synonymous with "equitable" without explaining how equity permits CUR when the Department never attempted a targeted § 482 adjustment. Both issues concern legal sufficiency and statutory meaning, not the weight of the evidence, and each satisfies SCACR 242(b).

A. The ALC's Step Two Conclusions Lack the Findings *Porter* Requires, and the Return Identifies None.

Under *Porter*, a substantial-evidence affirmance requires findings on each part of the agreed Step Two test, and the Department must show that CUR satisfies all three. Pet. at IV.A-B (citing *Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 21-22, 507 S.E.2d 328, 332-33 (1998) (reversing where agency findings were lacking)). The Return does not dispute this. Yet the ALC's findings satisfy *none* of them: its Part A findings are irrelevant to the question Part A asks; it made no Part B findings; and its Part C conclusion rests on "reasons stated above" that neither lower court ever identified. Pet. at IV.B.

The Return fills none of these gaps. It does not explain how the evidence the ALC cited for Part A is relevant, much less how it would allow *reasonable minds* to reach the ALC's conclusion

as the substantial-evidence standard requires. *Risher v. S.C. Dep't of Health & Env't Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 434 (2011). And it cites no record evidence for Part B or Part C, asserting only that substantial evidence supports the ALC's ultimate conclusions. Ret. at III.F. But irrelevant evidence is not substantial evidence, no evidence can support a finding that does not exist, and a conclusory reference to "reasons stated above" that do not exist is not a finding. *See, e.g.*, *Porter*, 333 S.C. at 21-22, 507 S.E.2d at 332-33.

The missing findings matter. CUR apportioned 8.64% of TSC's income to South Carolina—more than three times TSC's 2.83% sales factor. Pet. at IV.C. A conclusion that this result "fairly represents" TSC's in-state activity and avoids taxing more than 100% of its income demanded an explanation. None was given. The Return thus misses the mark in asserting that TSC "misapprehends factual questions as legal questions." Ret. at II. TSC does not ask the Court to reweigh evidence; where there is no relevant finding, there is nothing to weigh. Under *Porter*, conclusions resting on no findings cannot be affirmed, and the Court of Appeals' affirmance conflicts with *Porter* and its progeny, thus warranting this Court's review. Pet. at IV.B.

B. The Return Repeats the Lower Courts' Conflation of "Reasonable" and "Equitable."

(A)(4) requires that an alternative method be both reasonable and equitable, and under settled rules of construction each word must be given meaning: "equitable" (consistent with principles of justice) is not the same as "reasonable" (fair or moderate). Pet. at IV.D. The Return ignores that distinction. Section III.E argues only that CUR is "reasonable," and Section III.F merges the two terms into a single finding. Nor does the Return explain how forced CUR is equitable when the Department never attempted the targeted § 482 price adjustment the Legislature provided and never offered any arm's-length price or range.

In sum, the ALC approved a reporting method that more than tripled TSC's tax liability without the findings *Porter* requires and without giving "equitable" any meaning apart from "reasonable." The Return defends neither. Both errors concern legal sufficiency and statutory meaning, not the weight of the evidence, and this Court should grant certiorari to correct them.

VI. THE DEPARTMENT CANNOT BOTH DISCLAIM AND RELY ON THE 2024 AMENDMENT, WHICH CONFIRMS TSC's READING AND MAKES CUR A LAST RESORT.

The Department wants it both ways. It properly concedes that the 2024 Amendment does not govern this case. Ret. at 11 & 11, n.5. Yet the Return repeatedly relies on the Amendment for support (*see, e.g.*, *id.* at I.B, III.A.1, III.E, and 12 n.6) despite it undercutting the Department's positions (*see supra* II.C). The Return also suggests the Amendment blesses the Department's use of CUR here. *See, e.g.*, Ret. at III.A.1, III.E. It does the opposite. Even if it applied, the Amendment directs the Department to address a suspected transfer-pricing issue with its § 482 powers, not the AA Statute, and permits forced CUR to reach income of non-consenting affiliates that do no business here only if those powers fail to fix the problem. § 12-6-2320(B) (2024).[14] The Amendment thus makes CUR a last resort; the Department made it the first step, without even considering its § 482 powers. Pet. at Facts, D. Far from supporting the Department, the Amendment confirms its error.

CONCLUSION

For the reasons stated above and in the Petition for Writ of Certiorari, TSC respectfully requests that the Court grant the Petition and review the decision of the Court of Appeals.

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[14] The Amendment requires the Department, when it suspects a transfer pricing issue, to request information from the taxpayer, § 12-6-2320(B)(1), and to apply the § 482 Regulations to correct any non-arm's-length price, § 12-6-2320(B)(8). Only if those adjustments fail may it require a combined return. § 12-6-2320(B)(2).

Respectfully submitted,

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