

Exhibit B
(May 5, 2016 Order)

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC Court of Appeals

Rent-A-Center East, Inc., and Rent Way, Inc.,)
)
Petitioners,)
)
vs.)
)
South Carolina Department of Revenue,)
)
Respondent.)

Docket No. 13-ALJ-17-0601-CC

ORDER DENYING PETITIONERS'
MOTION FOR
RECONSIDERATION AND/OR TO
ALTER OR AMEND

FILED

MAY 05 2016

SC ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") on a Motion for Reconsideration and/or to Alter or Amend filed by Rent-A-Center East, Inc., and Rent Way, Inc., ("RAC" or "Petitioners").¹ Petitioners request that the Court reconsider and alter or amend its Order dated March 30, 2016, which found that gross proceeds from Petitioners' sale or rental of tangible personal property includes fees from the sale of Liability Damage Waivers ("Waiver" or "Waivers"), thereby upholding the South Carolina Department of Revenue's ("Respondent" or "Department") Determinations. Petitioners, in their motion, claim that "the ALC may have overlooked, misinterpreted or failed to apply South Carolina law and/or overlooked or misunderstood certain evidence and arguments presented[.]"² After review, the Court denies Petitioners' motion.

¹ These cases were consolidated under case number 13-ALJ-17-0601-CC by consent order dated June 9, 2015.

² Petitioners filed their Motion for Reconsideration and/or to Alter or Amend on April 11, 2016. Respondent filed its Response in Opposition to Petitioners' Motion for Reconsideration on April 21, 2016. Petitioners filed a Reply in Support of their Motion for Reconsideration and/or to Alter or Amend on April 28, 2016. SCALC Rule 29(D)(1) makes no reference to a reply. However, SCALC Rule 19(A) states that "[a]ny party may file a written reply within five (5) days of the filing of a response, unless otherwise ordered by the administrative law judge." SCALC Rule 3(A) states:

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after the designated period of time begins to run is not included

When the period prescribed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

This Court will consider Petitioners' Reply in Support of their Motion for Reconsideration and/or to Alter or Amend because, although not specifically allowed under SCALC 29(D)(1), SCALC Rule 19(A) does permit a reply. Additionally, the Reply was timely filed pursuant to the computation required by SCALC Rule 3(A).

EXHIBIT B

Petitioners, in their motion, argue that the Court failed to appropriately construe the statutes at issue. The statutes at issue are not ambiguous, and therefore, the Court must follow the plain meaning rule. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”). The South Carolina tax statutes are broad and tax amounts “proceeding or accruing from the sale.” *Compare Rent-A-Center W., Inc. v. Utah State Tax Comm'n*, 367 P.3d 989 (2016)³ (concluding that the Utah’s tax statute was much narrower in reach than other states) with *Rent-A-Center E., Inc. v. Lincoln Par. Sales & Use Tax Comm'n*, 60 So. 3d 95, 99 (La. App. 2 Cir. 2011) (*writ denied*, 63 So. 3d 985 (2011)) (which found that Waivers constituted “gross proceeds derived from the lease or rental of tangible personal property.”).

Petitioners also argue that the Court overlooked or misunderstood the factual issues in this case and how the facts apply to the tax statutes. The general rule is that statutory interpretation is a question of law, but whether the facts of a case are correctly applied to a statute or whether activities meet a statutorily defined term is a question of fact. *See Boggero v. S.C. Dep’t of Revenue*, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015) (citing *Hopper v. Terry Hunt Constr.*, 373 S.C. 475, 483, 646 S.E.2d 162, 167 (Ct. App. 2007) (*aff’d* by 383 S.C. 310, 680 S.E.2d 1 (2009)); *Burse v. S.C. Dep’t of Health & Envtl. Control*, 369 S.C. 176, 184-85, 631 S.E.2d 899, 904 (2006); *Dreher v. S.C. Dep’t of Health & Envtl. Control*, 412 S.C. 244, 251, 772 S.E.2d 505, 509 (2015)). This Court found that the Waiver was not a separate transaction, but rather a part of the Rental-Purchase Agreement. The ALC found that the Waiver fees are part of the “value proceeding or accruing from the sale, lease, or rental of tangible personal property” and became part of the income on which Petitioners pay tax.⁴ Although Petitioners continue to argue that the Waiver is an entirely separate transaction from the Rental-Purchase Agreement and therefore not taxable, this Court is unpersuaded. Case law, including *Meyers Arnold v. S.C. Tax Comm’n*, 285 S.C. 303, 328 S.E.2d. 920 (Ct. App. 1985) and *Travelscape, LLC v. S.C. Dep’t of*

³ In this Court’s Order, the *Rent-A-Center W.* case was not yet published in the Pacific Reporter and was subject to revision. The case has since been published.

⁴ The “value” in this context is not the price of the durable good, which, as Petitioners correctly observe, is not changed by the Waiver. It is the value of the transaction to the consumer. The purchaser, in exchange for the price of the Waiver, avoids the cost for certain types of damage to the durable good.

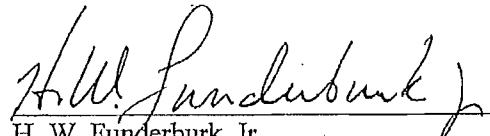
Revenue, 391 S.C. 89, 705 S.E.2d 28 (2011), suggests that different items, when bundled, become, in legal fact, a single taxable transaction. *See Boggero* at 280, 777 S.E.2d at 843.

ORDER

Petitioners' Motion for Reconsideration and/or to Alter or Amend is **DENIED**.

AND IT IS SO ORDERED.

May 5, 2016
Columbia, South Carolina


H. W. Funderburk, Jr.
Administrative Law Judge

FILED

MAY 05 2016

SG ADMIN. LAW COURT

CERTIFICATE OF SERVICE

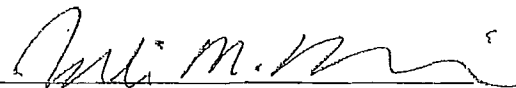
I, Julia M. Miller, hereby certify that I have this date served this upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

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Julia M. Miller
Judicial Law Clerk

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