

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT COUNTY

H. W. Funderburk, Jr., Administrative Law Judge

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

Appellate Case No. 2016-001210

Rent-A-Center East, Inc. and Rent Way, Inc.,

Appellants,

v.

South Carolina Department of Revenue,

Respondent.

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VOLUME I of II

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SC Court of Appeals

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Rent-A-Center East, Inc., and Rent
Way, Inc.,

Petitioners,

v.

South Carolina Department of Revenue,

Respondent.

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

ORDER

FILED

MAY 30 2016

SC ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") on requests for contested cases filed by Rent-A-Center East, Inc., and Rent Way, Inc., ("RAC" or "Petitioners") under S.C. Code Ann. § 12-60-460 (Supp. 2009).¹ Petitioners challenge the South Carolina Department of Revenue's ("Department" or "Respondent") Determinations that gross proceeds from Petitioners' sale or rental of tangible personal property should include proceeds from the sale of Liability Damage Waivers ("Waiver" or "Waivers") in the total amount of \$851,622.31 as of November 30, 2013.² A hearing was held before this Court on September 24 and 25, 2015.

The appealed assessment of taxes and interest includes the following details:

RENT-A-CENTER			
Audit Period	Tax	Interest	Total
4/1/07-10/31/10	\$521,694.93	\$96,652.51	\$618,347.44
RENT WAY			
4/1/07-12/31/09	\$192,158.64	\$41,116.23	\$233,274.87
TOTALS	\$713,853.57	\$137,768.74	\$851,622.31

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

² The Department originally included penalties, but these have been dropped and are not included in the assessments disputed. The amount claimed is from the Department's determinations on which interest continues to accrue.

The sole issue in dispute is whether the sale of Waivers is properly subjected to sales tax under the provisions of South Carolina law.

FINDINGS OF FACT

Having taken evidence and observed the witnesses and exhibits presented at the hearing and having taken into consideration the burden of proof and the credibility of witnesses, the Court makes the following findings of fact by a preponderance of the evidence.

Petitioners are in the business of renting and selling tangible personal property in South Carolina and other states.

The rental/sale is initiated by execution of The Rental-Purchase Agreement ("Agreement") that defines the process by which ownership of the property can be transferred to the customer. The customer selects a contract term: weekly, semi-monthly, or monthly. The Agreement includes a total of scheduled payments with an initial payment, a number of regular payments, and a final payment. The Agreement also provides means by which the customer can make an early purchase any time after the first periodic payment by paying a specified percentage of the difference between the total scheduled payments and the total paid on the account.³

Regular periodic payments are due at the beginning of each term. The customer may choose to renew the Agreement by making an advance rental payment at the beginning of the next term (or change the term by making a payment in the amount required for a different term option). Each term payment is a renewal of the Agreement. The Agreement may be terminated at any time by the customer's surrendering or returning the property in good repair along with any past due rental payments or by carrying out the early purchase option. The customer is under no obligation to purchase the Waiver or, if purchased, to continue its effect past the term for which payment has been made.

Petitioners maintain and service the property during the payment period but are not responsible for unauthorized repairs or for damage caused by improper use. Under the terms of the Agreement, the customer is "responsible for the fair market value of the property if and as of the

³ For the purposes of this transfer, as stated in the Agreement, the payments scheduled on the account do not include any late charges or Waiver payments.

time it is lost, stolen, damaged, or destroyed.”

In addition to the disclosures about rental payments, the Agreement includes fees for the Waiver, taxes, and charges imposed for late payments. Under the terms of the Waiver, if loss is caused by means specified in the Waiver (lightning, fire, smoke, windstorm, theft, or flood) and occurs during the time in which both the Agreement and the Waiver provision remain in effect, Petitioners waive the customer’s liability. If the customer is not current with payments under the Agreement or has not purchased the Waiver for the period in which the damage or loss occurs, the Waiver is void or inapplicable.

The Optional Liability Waiver Provision, although a separate document, according to its terms, “is an additional part of the Rental Agreement,” specifies the amount charged for the Waiver, and provides that the fee is to be paid “with [the] weekly/semi-monthly/monthly rental payment while this Provision is in effect.” The Waiver fee is calculated as a percentage of the term rental.⁴ The Waiver may be enforced only so long as the Agreement’s “periodic payments including the liability waiver fee” have been paid through the date of loss. Waivers are only available on items acquired from Petitioners or an affiliated entity and are not available independently.

Petitioners contend that the Agreement and the Waiver are “two separate agreements, which for two separate charges provide two separate benefits to the customer.” The Court finds that the Agreement and Waiver are not separate agreements.

The documents are fundamentally interconnected. Both state the amount of the Waiver fee that the customer agrees to pay. The Waiver itself is self-described in its title as a “Provision” and explicitly states that it is “an additional part of the Rental Agreement.” A provision is “[a] clause in a statute, contract, or other legal agreement.” BLACK’S LAW DICTIONARY 1262 (8th ed. 2004). Moreover, without the underlying agreement to supply a durable good to the customer, the Waiver has no function or value that can be purchased separately. In his direct examination, Professor Pomp stated that the Agreement and the Waiver do not comprise a mixed or bundled transaction because the Waiver is optional. However, on cross-examination, Professor Pomp conceded that there would be no optional waiver unless there was some risk to waive. Further, in

⁴ Testimony indicates that the Waiver fee is 7.5% of the rental-purchase term payment.

responding to a hypothetical based on the purchase of a trophy divided into three optional stages — unassembled trophy, assembled trophy, and assembled trophy with engraving — Professor Pomp opined, “once you bought all three together, it wasn’t optional anymore.”

From the explicit terms of the documents and the testimony of the witnesses, the Court finds that there is one transaction, one document consisting of two forms: one in which liability damages to the subject durable good(s) are imposed on the customer and one in which the customer pays a fee to shift the risk of liability for specified damages to Petitioners.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Court concludes the following as matters of law. The ALC has jurisdiction to hear this contested case pursuant to S.C. Code Ann. §§ 1-23-600 (Supp. 2015) and 12-60-460.

Burden of Proof and Standard of Review

The standard of proof in this administrative proceeding is a preponderance of the evidence. *See Anonymous v. State Bd. of Med. Exam’rs*, 329 S.C. 371, 496 S.E.2d 17 (1998). In general, the party asserting the affirmative issue in an adjudicatory administrative proceeding has the burden of proof. *See Leventis v. S.C. Dep’t of Health & Envtl. Control*, 340 S.C. 118, 133, 530 S.E.2d 643, 651 (2000) (citing 2 Am. Jur. 2d Admin. Law § 360 (1994)). Here, Petitioners requested a contested case hearing and, therefore, have the burden of proof to show by a preponderance of the evidence that the Department’s tax assessments for the periods at issue were incorrect.

Applicable Tax Provisions

S.C. Code Ann. § 12-36-910(A) (2009) provides that “[a] sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person⁵ engaged or continuing within this State in the business of selling tangible personal property at retail.” The essential terms used in this provision are defined in related sections of Chapter 36 of Title 12.

Section 12-36-90 (2009) defines “gross proceeds of sales” as follows:

Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.... [and] includes...

⁵ Pursuant to S.C. Code Ann. § 12-36-30 (2009), “person” includes “any individual, firm, partnership . . . corporation . . .” As such, the Petitioner is a “person” in that it operates as a corporation.

(b) the proceeds from the sale of tangible personal property without any deduction for:

- (i) the cost of goods sold;
- (ii) the cost of materials, labor, or service;
- (iii) interest paid;
- (iv) losses;

* * *

(vii) any other expenses.

S.C. Code Ann. § 12-36-60 (2009) defines the term “tangible personal property” to mean:

... personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and **intangibles**, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt.⁶ [Emphasis added].

In applying these statutes, “[t]he cardinal rule of statutory interpretation is to determine the intent of the legislature.” *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230, 612 S.E.2d 719, 723 (2005). Furthermore, “[t]he legislature’s intent should be ascertained primarily from the plain language of the statute.” *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” *Bayle v. S.C. Dep’t of Transp.*, 344 S.C. 115, 122, 542 S.E.2d 736, 740 (Ct. App. 2001). “Revenue laws are generally construed in favor of the taxpayer and against the taxing authority.” *Clark v. S.C. Tax Comm’n*, 259 S.C. 161, 169, 191 S.E.2d 23, 26 (1972) (internal quotation marks omitted).

Analysis

In addressing sales tax statutes, South Carolina appellate courts have analyzed the statutory scope and application in three cases particularly relevant to circumstances in this case. The South Carolina Supreme Court in *Travelscape, LLC v. S.C. Dep’t of Revenue*, 391 S.C. 89, 705 S.E.2d 28 (2011), held that facilitation and service fees added to room rental rates were part of the actual

⁶ An intangible is “something that lacks a physical form; an abstraction, such as responsibility.” BLACK’S LAW DICTIONARY 823 (8th ed. 2004). As used in the UCC, a “payment intangible” is “a general intangible under which the account debtor’s principal obligation is a monetary obligation. S.C. Code Ann. § 36-9-102 (61) (2003). An account debtor is a person obligated to pay “for property that has been or is to be sold [or] leased.” S.C. Code Ann. § 36-9-102 (2) and (3) (2003). In this case, the customer is obligated to reimburse Petitioners “for the fair market value of the property if and as of the time it is lost, stolen, damaged or destroyed.”

price charged to the customer and were, therefore, includable in the gross proceeds of the sale and subject to the sales tax imposed by S.C. Code Ann. § 12-36-920(A).⁷ Although the fees in *Travelscape* were imposed on the customer and were not optional, services sold with the tangible personal property were part of the gross proceeds retained by the seller in addition to the costs for the rooms and labor involved in obtaining and reselling the right to use the rooms.

Likewise, the South Carolina Court of Appeals held that fees added to the cost of property sold on "layaway" were part of the transaction and taxable as part of the gross proceeds of the sale. *Meyers Arnold v. S.C. Tax Comm'n*, 285 S.C. 303, 328 S.E.2d. 920 (Ct. App. 1985). The purpose of the fee was to make the sale possible. Hence the sale and the fee were inextricably connected. The Court of Appeals found the layaway fee to be part of the gross proceeds. Like the service fees in *Travelscape*, the fees were not optional.

However, *Meyers Arnold* also addresses another question: whether gift wrapping is subject to sales tax. Although the Court ultimately found that because the service was free unless a more expensive paper was selected, the charge was for the paper, not the wrapping service, and was, therefore, exempt under S.C. Code Ann. § 12-35-550 (now S.C. Code Ann. § 12-36-2120 (14)). Without this fact-specific exemption, the exercise of this option by the customer would have subjected the fees to sales tax. Thus, merely being optional does not prevent a part of the transaction from being subject to sales tax.

More recently, in *Boggero v. S.C. Dep't of Revenue*, 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015), the Court of Appeals considered whether "gross proceeds from the rental and servicing of portable toilets [were] subject to sales tax." The Court identified the issue on appeal as whether the ALC "erred in finding that the true object of [the taxpayer's] business was not a service and that [the] gross proceeds were therefore subject to the state sales and use tax." The Court, after analyzing cases from other jurisdictions, decided that the "true object test" focuses on a factual inquiry into what a customer's essential purpose is in a given transaction. The Court of Appeals also relied on *Palmetto Net, Inc. v. S.C. Tax Comm'n*, 318 S.C. 102, 105, 456 S.E.2d 385, 387 (1995) in which the South Carolina Supreme Court "deferred to the trial court's factual findings

⁷ This section imposes a sales tax on accommodations and is complementary to S.C. Code Ann. § 12-36-910, the statute at issue here, which imposes a sales tax on tangible personal property.

when deciding whether a particular transaction was subject to a statutorily-based tax.” 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*, 414 S.C. at 280, 777 S.E.2d at 843 (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)); *Bursey 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)).

Petitioners contend that the Agreement and the Waiver are two separate and distinct transactions and that because the Waiver is optional it “is not inextricably linked to or embodied in the sale of tangible personal property.” This Court disagrees. In its Findings of Fact, this Court specifically found that the Agreement and Waiver are not separate agreements. Although purchasing the Waiver may be optional, once purchased it is merged into and becomes inextricable from the transaction and has no value apart from the underlying transaction. The amount of the fee is included in the Agreement, and the Waiver agreement, in turn, provides that it “is an additional part of the Rental Agreement.” *See generally S.C. Dep’t of Consumer Affairs v. Rent-A-Center, Inc.*, 345 S.C. 251, 547 S.E.2d 881 (Ct. App. 2001), *cert. dismissed*, 352 S.C. 419, 575 S.E.2d 547 (2002) (The Court of Appeals treats the Waiver as part of the Agreement.).

Petitioners also argue that a recent case before the ALC rejected Respondent’s characterization of *Meyers Arnold*. *See Alltel Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 2015 WL 7681302 (S.C. Admin. Law Ct. Nov. 15, 2015). Although the decision of another Administrative Law Judge is not binding, it is instructive to consider how the facts of that case differ from those in this case. *See* ALC Rule 70 (f). *Alltel* involves two distinct, optional contract offers. One offered extended warranty coverage “against electrical/mechanical malfunction.” Alltel conceded that these charges were included in proceeds for which sales tax was due under a now-repealed section of the law.⁸ The second contract offered indemnification coverage providing repair or replacement for a lost, stolen, or damaged device. This coverage was provided for different costs under

⁸ S.C. Code Ann. 12-36-910 included a clause imposing sales tax on “gross proceeds accruing from the sale or renewal of a warranty, maintenance, or similar service contracts.” This tax was repealed by 2011 S.C. Act No. 32, § 2.b, effective September 1, 2011.

insurance policies covering Alltel. Alltel collected and remitted the premiums to its insurers, which reported and paid taxes as required to the South Carolina Department of Insurance. Unlike the cases cited, *Travelscape*, *Meyers Arnold*, and *Boggero*, and this case, Alltel did not retain the premiums. Thus, the payments did not become part of the gross proceeds; that is, they did not become part of "the value accruing from the sale, lease, or rental of tangible personal property."

Here, the facts show that the Waiver fees are part of the "value proceeding or accruing from the sale, lease, or rental of tangible personal property" and (as Professor Pomp testified) become part of the income on which Petitioners pay tax. Customers who obtain durable goods from Petitioners could reasonably consider that the value of their doing so would be enhanced by avoiding the obligation to pay for lost or damaged items by shifting that risk to Petitioners. Thus, the true object of a transaction would be to obtain the use of an item while minimizing the financial risk for its damage, loss, or destruction.

Other jurisdictions have dealt with the taxability of these Waivers. Recently, the Utah Supreme Court, in *Rent-A-Center W., Inc. v. Utah State Tax Comm'n*, 2016 WL 67693 (Jan. 5, 2016), held that the Waiver was not subject to sales and use tax.⁹ The Utah Court reviewed its state tax code, specifically Utah Code Ann. § 59-12-103(1)(k), which reads: "(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is: (i) stored; (ii) used; or (iii) otherwise consumed." The Utah Court interpreted "paid or charged for" in its tax statute as much narrower in reach than statutes in other states. The Utah Supreme Court found that the Utah statute "does not tax amounts 'derived from' the rental of tangible personal property, nor does it specifically include 'services, for which tangible personal property' is leased." *Id.* at *4. Although the Utah Court rejected the argument that, because the Waiver was optional and separately itemized, it is not taxable, the Court concluded that "Rent-A-Center's liability waiver fee is not 'paid or charged for leases or rentals of tangible personal property.'" *Id.*

The Louisiana Court of Appeals, in *Rent-A-Center E., Inc. v. Lincoln Par. Sales & Use Tax Comm'n*, 60 So. 3d 95 (La. App. 2 Cir. 2011) (*writ denied*, 63 So. 3d 985 (2011)), found that

⁹ The Supreme Court of Utah issued its decision with the caveat that "(t)his opinion is subject to revision before final publication in the Pacific Reporter."

Waivers were taxable. The Louisiana Court reviewed the pertinent statutes, specifically, La. Stat. Ann. § 47:302 (B)(1), which reads:

B. There is hereby levied a tax upon the lease or rental within this state of each item or article of tangible personal property, as defined herein; the levy of said tax to be as follows:

(1) At the rate of two per centum (2%) of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to the said business.

The Louisiana Court found that Waiver sales constituted “gross proceeds derived from the lease or rental of tangible personal property.” *Lincoln Par.*, 60 So.3d at 99.

The South Carolina tax statutes in question are broader than Utah’s. Specifically, S.C. Code Ann. § 12-36-90 defines “gross proceeds of sales” as “the value proceeding or accruing from the sale, lease, or rental of tangible personal property.” The Utah statute only taxes amounts that were specifically “paid ‘for’ the lease or rental of tangible personal property.” However, in South Carolina, the statute taxes amounts: “proceeding or accruing from the sale,” language far broader and more inclusive than the Utah statute in controversy. The South Carolina statute is more closely analogous to the Louisiana statute, in that the language, “derived from,” is similar to “proceeding or accruing from.” Therefore, other jurisdictions support the decision that Waivers are taxable under South Carolina’s tax statutes, as Waiver fees proceed or accrue from the sale or rental of tangible personal property.

In an analogous case, Louisiana discussed the taxability of collision damage waivers. In *Enterprise Leasing Co. of New Orleans v. Curtis*, 977 So. 2d 975, 980 (La. App. 1 Cir. 2007) (*writ denied*, 976 So. 2d 719 (2008)), the court observed,

... the real object of the transaction is the lease of tangible personal property, the motor vehicle. Clearly, the [collision damage waiver] can only be made available with the lease or rental of a motor vehicle. Enterprise cannot separate the [collision damage waiver] from the principal lease as the [collision damage waiver] does not exist without the automobile lease. Nor can the [collision damage waiver] be purchased from another lessor.

The Louisiana appellate court concluded that collision damage waiver payments were part of the gross proceeds derived from the lease or rental of automobiles since the parties contracted for the

collision damage waivers as part of the lease agreement and found that the payments were "merely incidental to the lease of the tangible property." *Id.*¹⁰

The analysis of the Louisiana appellate court is instructive. The Waivers here are nearly identical to Collision Damage Waivers. Both waivers shift risk, responsibility for damage or destruction, from the consumer to the company, and both are optional and obtained by fees additional to the rental price and should be included in the amount subjected to sales tax.

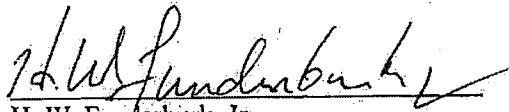
ORDER

For the reasons above, the Court finds that gross proceeds from Petitioners' sale or rental of tangible personal property should include fees from the sale of Liability Damage Waivers.

IT IS THEREFORE ORDERED THAT the Determinations of the Department are upheld.

IT IS FURTHER ORDERED THAT that the Department shall inform Respondents of the total amount due, from the tax liabilities of \$851,622.31 and accrued interest. Respondents shall remit payment to the Department within sixty (60) days of Department issuing the total amount due.

AND IT IS SO ORDERED.


H. W. Funderburk, Jr.
Administrative Law Judge

March 30, 2016
Columbia, South Carolina

FILED

MAR 30 2016

SC ADMIN. LAW COURT

¹⁰ In S.C. Rev. Rul. #93-1, dealing with automobile rentals, the Department determined that charges for a Collision Damage Waiver were "includable in 'gross proceeds of sales' and therefore subject to the sales tax." The Department specifically noted that the Collision Damage Waiver was optional and explained the waiver as follows:

The customer pays a fee for a release of financial responsibility to the company for any damages occurring to the car during use. For example, if the customer is involved in an accident, the customer will not be responsible to the company for repair costs if he or she purchased the collision damage waiver. The fee is separately stated from the rental price.

"The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006).

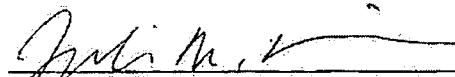
CERTIFICATE OF SERVICE

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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March 30, 2016
Columbia, S.C.


Julia M. Miller
Judicial Law Clerk

FILED

MAR 30 2016

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rent-A-Center East, Inc., and Rent Way, Inc.,)

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

Petitioners,)

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

vs.)

South Carolina Department of Revenue,)

FILED

Respondent.)

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).

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))); *Bursey 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.

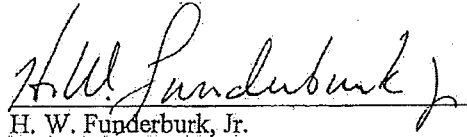
Revenue, 391 S.C. 89, 705 S.E.2d 28 (2011), suggests that different items, when bundled, become, in legal fact, a single taxable transaction. *See Boggero* at 280, 777 S.E.2d at 843.

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

SC ADMIN. LAW COURT

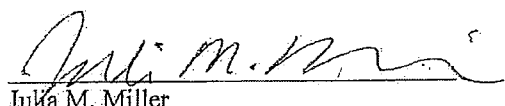
CERTIFICATE OF SERVICE

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).

Sean G. Ryan, Esquire
Lauren Acquaviva, Esquire
South Carolina Department of Revenue
P.O. Box 12265
Columbia, SC 29211-9979

John C. von Lehe, Esquire
Bryson Geer, Esquire
Nelson Mullins
151 Meeting Street, Sixth Floor
Charleston, SC 29401

May 5, 2016
Columbia, S.C.


Julia M. Miller
Judicial Law Clerk

FILED

MAY 05 2016

SC ADMIN. LAW COURT

SCDOR

C-245

Rev. 08/17/01-TM

PROTEST

Section I: Taxpayer Identification

Misty Johnson, Tax Coordinator RENT A CENTER EAST INC 5501 Headquarters Drive Plano, TX 75024	File Number: various Tax Type: Sales Tax Audit Control #: 01/21/4888 Telephone #: 972-801-1429 Fax #: Audit periods: From 04/01/2007 To 10/31/2010

Section II: Department of Revenue Document to be Attached:

Please attach a copy of the Department of Revenue document or notice you received which led to the filing of this protest.

Section III: Reasons for Protest:

State all the reasons you disagree, including a statement of facts supporting your position and the law or other authority upon which you rely. (If the amount of proposed assessments is for income less than \$2,500 you need not provide your authority unless you are a partnership, S corporation, an exempt organization or an employee plan.)

(Add additional sheets if necessary.)

SEE ATTACHED

Taxpayer's Signature: _____ Date: _____

Spouse's Signature: _____ Date: _____

Corporation name: RENT-A-CENTER EAST, INC.

By: *[Signature]* Title: SVP-TAX Date: 7/30/12

RICARDO CORDON

INSTRUCTIONS

The purpose of this form is to reduce to writing those facts and issues with which you disagree. If more space is needed, additional sheets may accompany this form. A protest may be filed by letter rather than using this form; however, all of the information required by this form must be included in the letter and you must comply with the requirements concerning signatures. If you filed a joint income tax return, both you and your spouse must sign. If the protest is for a corporation, it must include the corporation's name followed by the signature and title of the corporate officer authorized to sign. If the dispute concerns a partnership or S corporation, then a separate form must be signed by each partner or shareholder. If you have any questions concerning this matter, please call the telephone number on the notice or document with which you disagree. Please return document to the Department of Revenue address shown on the notice or document with which you disagree.

ROA_00016

RENT-A-CENTER EAST, INC.
Attachment to Form C-245 PROTEST

Section III: Reasons for Protest

1. Tax assessment on reinstatement fees. Taxpayer correctly taxes reinstatement fees and remits tax collected on monthly sales tax returns. Auditor calculated additional tax due based on the tax collected that shows up in the receipts detail. There is not a "reinstatement tax" column and it appears the auditor believed that this meant taxpayer did not collect tax on this revenue stream. The tax collected on reinstatements was included in the "total tax" column of the receipts detail. Taxpayer does not report revenues based on the amount of taxes collected. It is the taxpayer's process to calculate taxes due based on total revenue and then determine taxable and non-taxable revenue streams. Tax remitted is based on taxable revenues – NOT on tax collected.
2. Tax assessment on tax exempt sales. The exempt sales schedule is summarized by month without any detail for transactions or stores which have been deemed as errors. Taxpayer is not able to determine which transactions have been scheduled as errors. Per the auditor, she "scheduled all transactions in which no tax was collected" as an error. There is not a separate revenue account for tax exempt sales – the revenue goes into the GL account which corresponds to the type of revenue collected. Any revenues collected without the corresponding tax will cause a variance between the "collected" tax and the "calculated" tax. Our process is such that the "calculated" tax is remitted. If a tax exempt sale is allowed to stand the revenue amount must be manually adjusted out of a taxable column on our work papers. During the entire audit period, Rent-A-Center East, Inc. did not have any tax exempt transactions that were allowed to stand – this means that tax was remitted to the state even though it was not collected from the customer.
3. Tax assessment on "NSF revenue." Tax should not be assessed on this item because it is not revenue due to the fact the customer's check ^{received} did not clear the bank. Rental revenues and the appropriate taxes are reported as they are collected. If for some reason, the funds fail to clear the bank, the revenues are not adjusted. It is our procedure to attempt to collect re-payment from the customer. This "NSF revenue" is the re-collected revenue/tax. Assessing tax on these transactions is equivalent to double taxation.
4. Tax assessment on "Prepaid" revenue. Prepaid revenue includes two revenue streams – that of prepaid phone minutes (Phones-Nontaxable) and in-home phone service (Phones-Nontaxable-DPI). Taxpayer disputes taxability of "Phones-Nontaxable-DPI." Taxpayer is performing a service in regards to the in-home phone service – our customers have the ability to pay their bill for their existing DPI service in our stores. DPI is the phone company that provides in-home phone service; DPI bills customer for phone charges and all applicable taxes. DPI remits the sales tax on the taxable revenues collected. The additional fee that taxpayer collects is for a service in which service is the true object of the transaction – customers have the ability to pay their phone bill at a local place of business. S.C. Code Ann. §12-36-90 & S.C. Code Regs. 117-308
5. Tax assessment on Liability Damage Waivers (LDW). Sales tax is imposed on the "gross proceeds of sales" [S.C. Code Ann. §12-36-910(A).] The term means the value proceeding or accruing from

sales, leases or rentals of tangible personal property. [S.C. Code Ann. §12-36-90.] Sales of services, when the services are the true object of a transaction, are exempted from tax unless specifically designated as taxable. [S.C. Code Regs. §117-308.] Taxable services include communications, laundry and related services, the furnishing of accommodations, and sales of electricity. [S.C. Code Ann. §12-36-60; S.C. Code Ann. §12-36-910(B); S.C. Code Ann. §12-36-920; S.C. Code Ann. §12-36-1310(B).] LDW is a separate, optional agreement that the customer can elect that protects the customer from risk of loss upon the occurrence of certain events set forth in the LDW agreement. The fee for LDW is separately stated and the rental fee does not change if the customer declines the LDW. It is not part of the rental of tangible personal property. Acceptance of the damage waiver has no effect on the rental agreement and the customer is able to stop paying for the damage waiver at any time and the rental fee will remain the same. The LDW is not tangible personal property and is therefore not taxable.

6. Tax assessment on "Other Income" and "Other Tax Income." There was an error in the parameter selection for the receipt details report. Various amounts of "other income" were also included with "other tax income." Other income is miscellaneous revenue that the store receives which does not fall into a usual revenue stream. Other tax income is the tax collected on this other income. The total amount of other income can be verified by reviewing the P&L reports. The issue was corrected and a new report had previously been generated. The corrected report was sent to the auditor prior to issuance of final work papers. An additional copy of this report has been included on the CD attached with this protest.
7. Data for Rainbow Rentals, Inc. and RAC RR, Inc. was inadvertently included in the sales detail. These stores merged into Rent A Center East, Inc. as of the January 2008 sales and use tax returns. Prior to this time, they were filed under separate FEINs. The following locations should not be included in the audit for periods prior to January 2008:

Store	Company	FEIN
03846	RAINBOW	34-1512520
03880	RAINBOW	34-1512520
04006	RAINBOW	34-1512520
03941	RAC RR	73-1702183
03964	RAC RR	73-1702183
03987	RAC RR	73-1702183

8. Penalty waiver request. Taxpayer's sales tax returns have not been audited by South Carolina previously. A negligence penalty was applied "because the taxpayer failed to tax numerous items for such a long period of time." Taxpayer believes that they have correctly reported and collected tax on the appropriate revenue streams. This statement will not be pertinent once outstanding issues outlined in this protest are resolved. Rent A Center East, Inc. makes every effort to collect and remit tax in an accurate and timely manner.

As additional backup, taxpayer has included a reconciliation of the sales detail to the tax returns on the enclosed CD. This reconciles the total taxable from the sales detail to the total taxable reported for the

month. This reconciliation is for the sample months that the auditor, Jack Cain, selected before turning the audit over to Dawn Taylor. Taxpayer does not believe it is necessary to reconcile the entire audit period given that this information is already available in the Revenue Worksheets.

Taxpayer reserves the right to present additional concerns and/or issues regarding audit findings and to supplement this protest at a later date.

Taxpayer respectfully requests a conference to discuss these issues further. Please contact Hugh Tollack, Director of Tax Audits at (972) 801-1331 or hugh.tollack@rentacenter.com if you have questions or need additional information.

THE OPTIONAL LIABILITY DAMAGE WAIVER

Rent-A-Center policy states that the customer's purchase of Liability Damage Waiver (LDW) is optional; therefore, we cannot require a customer to purchase LDW as a condition to rent.

OPTIONAL LIABILITY WAIVER PROVISION

You agree to pay an Optional Liability Waiver with your weekly/semi-monthly payment while this Provision is in effect. Rent-A-Center agrees to waive its liability for damage to the property if the property is damaged, except:

4. Windstorm
5. Theft
6. Flood

"Theft" means the criminal taking of the merchandise shown in the Agreement by making felonious entry through force or by the use of a key or other device. Damage to the premises at the point of entry shall be covered by the renter's insurance. Rent-A-Center will waive your liability for damage to the property if the property is damaged, except as provided above, and you have paid all applicable fees through the Rent-A-Center, and you have complied with all other terms of the Agreement.

at this Optional Liability Waiver Pro

Optional Liability Waiver Provision and accept responsibility for damage, loss or property pursuant to the terms of my/our

Rental Agreement No. _____

Rental Agreement and the terms of this Optional Liability Waiver Provision.

This Provision shall remain in effect until it is canceled.

You or your agent shall be responsible for the Optional Liability Waiver fee.

which shall be the same as the fee for the Optional Liability Waiver Provision.

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Approval to rent requires:

- Verification of the information on the Rental Order Form
- The customer's acceptance of the "risk of loss"

The "risk of loss" is the customer's agreement that while they have our merchandise, they will pay its value if it is accidentally lost, damaged or destroyed.

The customer can eliminate the "risk of loss" by purchasing an optional **Liability Damage Waiver** (except in California). In Texas, LDW is called "Loss Damage Waiver."

If the customer accepts the risk of loss but chooses not to purchase optional LDW, *you cannot refuse to rent to the customer or require proof of homeowner's/renter's insurance.*

SCDOR**C-245**

Rev. 08/17/01-TM

PROTEST**Section I: Taxpayer Identification**

Misty Johnson, Tax coordinator
RENT WAY INC
5501 HEADQUARTERS DR
PLANO, TX 75024

File Number: various
Tax Type: Sales Tax
Audit Control #: 01/21/4887
Telephone #: 972-801-1429
Fax #:

Audit periods: From 04/01/2007 To 12/31/2009

Section II: Department of Revenue Document to be Attached:

Please attach a copy of the Department of Revenue document or notice you received which led to the filing of this protest.

Section III: Reasons for Protest:

State all the reasons you disagree, including a statement of facts supporting your position and the law or other authority upon which you rely. (If the amount of proposed assessments is for income less than \$2,500 you need not provide your authority unless you are a partnership, S corporation, an exempt organization or an employee plan.)

(Add additional sheets if necessary.)

SEE ATTACHED

Taxpayer's Signature: _____ Date: _____

Spouse's Signature: _____ Date: _____

Corporation name: RENT-WAY, INC.

By: *[Signature]* Title: SVP-TAX Date: 7/30/12

RICARDO CORDON

INSTRUCTIONS

The purpose of this form is to reduce to writing those facts and issues with which you disagree. If more space is needed, additional sheets may accompany this form. A protest may be filed by letter rather than using this form; however, all of the information required by this form must be included in the letter and you must comply with the requirements concerning signatures. If you filed a joint income tax return, both you and your spouse must sign. If the protest is for a corporation, it must include the corporation's name followed by the signature and title of the corporate officer authorized to sign. If the dispute concerns a partnership or S corporation, then a separate form must be signed by each partner or shareholder. If you have any questions concerning this matter, please call the telephone number on the notice or document with which you disagree. Please return document to the Department of Revenue address shown on the notice or document with which you disagree.

RENT-WAY, INC.

Attachment to Form C-245 PROTEST

Section III: Reasons for Protest

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3. Tax assessment on "NSF revenue." Tax should not be assessed on this item because it is not revenue due to the fact the customer's check did not clear the bank. Rental revenues and the appropriate taxes are reported as they are collected. If for some reason, the funds fail to clear the bank, the revenues are not adjusted. It is our procedure to attempt to collect re-payment from the customer. This "NSF revenue" is the re-collected revenue/tax. Assessing tax on these transactions is equivalent to double taxation.
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sales, leases or rentals of tangible personal property. [S.C. Code Ann. §12-36-90.] Sales of services, when the services are the true object of a transaction, are exempted from tax unless specifically designated as taxable. [S.C. Code Regs. §117-308.] Taxable services include communications, laundry and related services, the furnishing of accommodations, and sales of electricity. [S.C. Code Ann. §12-36-60; S.C. Code Ann. §12-36-910(B); S.C. Code Ann. §12-36-920; S.C. Code Ann. §12-36-1310(B).] LDW is a separate, optional agreement that the customer can elect that protects the customer from risk of loss upon the occurrence of certain events set forth in the LDW agreement. The fee for LDW is separately stated and the rental fee does not change if the customer declines the LDW. It is not part of the rental of tangible personal property. Acceptance of the damage waiver has no effect on the rental agreement and the customer is able to stop paying for the damage waiver at any time and the rental fee will remain the same. The LDW is not tangible personal property and is therefore not taxable.

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As additional backup, taxpayer has included a reconciliation of the sales detail to the tax returns on the enclosed CD. This reconciles the total taxable from the sales detail to the total taxable reported for the month. This reconciliation is for the sample months that the auditor, Jack Cain, selected before turning the audit over to Dawn Taylor. Taxpayer does not believe it is necessary to reconcile the entire audit period given that this information is already available in the Revenue Worksheets.

Taxpayer reserves the right to present additional concerns and/or issues regarding audit findings and to supplement this protest at a later date.

Taxpayer respectfully requests a conference to discuss these issues further. Please contact Hugh Tollack, Director of Tax Audits at (972) 801-1331 or hugh.tollack@rentacenter.com if you have questions or need additional information.

THE OPTIONAL LIABILITY DAMAGE WAIVER

Rent-A-Center policy states that the customer's purchase of Liability Damage Waiver (LDW) is optional; therefore, we cannot require a customer to purchase LDW as a condition to rent.

OPTIONAL LIABILITY WAIVER PROVISION

you agree to pay an Optional Liability Waiver fee with your weekly/semi-monthly payment while this Provision is in effect. Rent-A-Center agrees to waive this fee if the property is damaged, destroyed or stolen.

4. Windstorm
5. Theft
6. Flood

"Stolen" means the criminal taking of the property shown in the Agreement without the consent of the owner, evidenced by visual marks or physical damage to the property at the point of entry.

Rent-A-Center with a police report showing the rental property was stolen. The Optional Liability Waiver Provision does not apply to mysterious disappearance of property, moisture, intentional damage, or loss only if you have paid all pending the liability waiver fee through the Rent-A-Center.

at this Optional Liability Waiver Provision

Optional Liability Waiver Provision and accept responsibility for damage, loss or

Rental Agreement No. _____

Rental Agreement and the terms of this Optional Liability Waiver Provision.

This Provision is optional. You or Rent-A-Center may cancel this Provision at any time. If you cancel this Provision, you will be responsible for any damage, loss or theft which occurs after the date of cancellation.

Optional Liability Waiver Provision is a part of the Rental Agreement.

RENT-A-CENTER CONTRACT OFFERS, AS AN OPTIONAL, A LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE RENTAL PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE OPTIONAL LIABILITY DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN HOMEOWNERS OR CASUALTY INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL PROPERTY, AND THE AMOUNT OF DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS OPTIONAL LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED.

insurance.

Approval to rent requires:

- Verification of the information on the Rental Order Form
- The customer's acceptance of the "risk of loss"

The "risk of loss" is the customer's agreement that while they have our merchandise, they will pay its value if it is accidentally lost, damaged or destroyed.

The customer can eliminate the "risk of loss" by purchasing an optional Liability Damage Waiver (except in California). In Texas, LDW is called "Loss Damage Waiver."

If the customer accepts the risk of loss but chooses not to purchase optional LDW, *you cannot refuse to rent to the customer or require proof of homeowner's/renter's insurance.*

FILED

APR 12 2016

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Rent-A-Center East, Inc. and Rent Way,
Inc.,)

Petitioners,)

vs.)

South Carolina Department of Revenue,)

Respondent.)

Civil Action No. 13-ALJ-17-0601-CC

MOTION FOR RECONSIDERATION
UNDER ALC RULE 29(D) AND/OR TO
ALTER OR AMEND UNDER SCRC
RULE 59(E) AND MEMORANDUM
SUPPORTING SAME

Pursuant to South Carolina Rule of Civil Procedure 59(e) and Rule 29(D) of the Rules of Procedure for the Administrative Law Court ("ALC"), Petitioners Rent-A-Center East, Inc. ("RAC East") and Rent Way, Inc. ("Rent Way") (collectively, "Petitioners") respectfully request that the ALC reconsider and alter or amend its Order dated March 30, 2016 (the "Order"), a copy of which is attached hereto as Ex. A, which found in favor of Respondent South Carolina Department of Revenue ("SCDOR") in this matter. This motion is based upon the grounds that the ALC may have overlooked, misinterpreted or failed to apply South Carolina law and/or overlooked or misunderstood certain evidence and arguments presented, which, when considered, necessitate a finding in favor of Petitioners.

ARGUMENT

- A. The ALC, in Finding as a Fact that the Rental-Purchase Agreement and the Waiver Constituted One Agreement and that the Waiver was Inextricably Linked to the Rental-Purchase Agreement, Overlooked or Misunderstood Certain Evidence Which Requires a Contrary Finding.

The ALC found that the Consumer Rental-Purchase Agreement (the "Rental-Purchase Agreement") and the Optional Liability Waiver Provision (the "Waiver") constituted one

agreement or one transaction and found that these documents were "fundamentally interconnected" or "inextricably linked." See Order at pp. 3 and 7. The ALC based these conclusions primarily on the following:

- That the Waiver is entitled "Optional Liability Waiver Provision" and states that it is "an additional part of the Rental Agreement." Order at p. 3.
- That the Waiver fee is calculated as a percentage of the rental fee and may only be enforced while the Rental-Purchase Agreement is in effect. Id.
- That the Waiver fee is listed on the Rental-Purchase Agreement. Id.
- That the Waivers are only available on items acquired from Petitioners. Id.
- That Professor Pomp agreed in his testimony as to the engraved trophy example that once the trophy was purchased, engraving and assembly were no longer optional. Id. at p. 4

The ALC then erroneously concluded that the Waiver may be optional, but "once purchased it is merged into and becomes inextricably linked to or embodied in the sale of tangible personal property" Id. at p. 7.

While all of the above findings are not determinative in this matter,¹ they are contrary to substantial evidence in the record establishing that the Rental-Purchase Agreement and the Waiver are, in fact, two separate agreements or transactions and that they are not inextricably linked. It is unclear whether the ALC considered all such evidence and arguments related to its conclusion or whether the ALC might have misunderstood some of the evidence and arguments, and, therefore, Petitioners would respectfully request that the ALC reconsider the following:

- The Waivers are entirely optional, and if purchased, they have a separate fee that is noted separately on the customer's receipt. Ex. 3 and 4; Tr. 78:6-10 and 83:17- 84:8. Payment of that fee does not count toward the rental charge or the purchase of the rental property. Ex. 1 and 3; Tr. 78:11- 79:12.

¹ See infra §E.

- The Waiver can be purchased at any time and canceled at any time without impacting the Rental-Purchase Agreement in any way. Ex. 3 and 5; Tr. 79:13-17 and 81:14- 82:3.
- The two agreements provide two different benefits to the customer: the Rental-Purchase Agreement provides the benefit of renting to own an item, while the Waiver provides the benefit of avoiding the risk of loss (*i.e.* avoiding responsibility for paying the fair value of the property) in case of certain enumerated damages to or theft of the property. Tr. at 84:15-85:3 and 85:20-87:5; see also Ex. 1 & 3. Each agreement has its own separate offer, acceptance and consideration. Id.
- The labeling of the Waiver as a "provision" and as an "additional part of the rental agreement" is not determinative. Calling a dog a cat does not change the fact that the dog is still a dog. The Waiver is an optional, separate and independent contract. Calling it a provision does not change those facts.
- The terms of the two agreements (the rental contract and the Waiver) are completely contradictory and could not be one agreement- the Rental-Purchase Agreement places responsibility for certain damage to or loss of the property on the consumer, while the Waiver reverses such responsibility.
- The reference to the cost of the Waiver in the Rental-Purchase Agreement and the incorporation by reference of some terms of the Rental-Purchase Agreement into the Waiver were both required by law. More specifically, as stated in the testimony, and perhaps overlooked by the Court, certain consumer protection laws require that the cost of the Waiver be reflected in the Rental-Purchase Agreement versus being only set forth in the Waiver. Tr. 82:13-23. Various consumer protection laws also require that the Waiver include some of the disclosures made in the Rental-Purchase Agreement. Tr. 85:4-19. These laws should not be used to convert the Waiver into something that is dependent and inextricably linked to the Rental-Purchase Agreement when the facts establish that the Waiver is optional, separate and independent.
- Professor Pomp's testimony might have been misunderstood. He states that "once you bought all three together" [*i.e.* the trophy assembled and engraved], "it wasn't optional anymore." Of course, after you buy any item with an additional item, that additional item is no longer optional. The purchase with the additional item has been made. The key point illustrated in the trophy example is that once the trophy is assembled and engraved, the trophy has been altered or improved such that assembly and engraving are no longer optional if one is going to purchase that trophy. The improvements have been physically incorporated into the trophy. In contrast, unlike the trophy, the Waiver does not alter or improve the property being rented by the customer and is not physically incorporated into the rental property but rather remains a separate and

independent item of value. See Tr. 84:9-14. Thus, the Waiver remains optional at all times prior to purchase.

- The ALC may have misunderstood the facts related to the value of the Waiver and the value of the property rented. The Order states that the Waiver "has no value apart from the underlying transaction" and states that customers could consider that the value of the rented property "would be enhanced by avoiding the obligation to pay for lost or damaged items by shifting that risk to Petitioners." Order at pp. 7-8. But the Waiver has the same value before and after its purchase. It is a separate value-- the value of relief from liability for damage to the item rented. It does not suddenly lose its value or have its value merged into the property rented upon purchase. The value of the Waiver always remains the same, whether exercised or not. Additionally, the Waiver does not enhance or increase the value of the property rented. The value of the property rented is the same whether or not a Waiver is purchased. There is no merger of value between the two.

Petitioners respectfully request that the ALC reconsider the above facts and alter or amend its Order to reflect that two transactions and independent agreements are at issue here and that the two are not inextricably linked.

B. The ALC May have Overlooked or Failed to Apply the Appropriate Rules of Statutory Construction.

The Order does not mention or apply the cardinal rule of statutory construction that requires a court to narrowly construe a tax imposition statute in favor of the taxpayer and against imposition of the tax. The law is clear that where there is a question of imposition of tax (or coverage) and not one of exemption, the imposition statute should be construed narrowly against the imposition of the tax (as opposed to an exemption statute, which is construed narrowly against the taxpayer claiming the exemption). United States v. Merriam, 263 U.S. 179, 188 (1923) (citations omitted) (stating that if the words in a tax statute are in doubt then "the doubt must be resolved against the Government and in favor of the taxpayer."); Clark v. S.C. Tax Comm'n, 259 S.C. 161, 191 S.E.2d 23 (1972) (holding that "[r]evenue laws are generally construed in favor of the taxpayer and against the taxing

authority"); Taylor v. Aiken County Assessor, 402 S.C. 559, 741 S.E.2d 31 (Ct. App. 2013) (same).

As Petitioner's tax policy expert testified, there are policy reasons underlying this longstanding canon of construction. First, the Fifth Amendment of the U.S. Constitution, which prohibits deprivation of property without due process of law, requires that taxpayers be given clear notice and warning of the circumstances that will lead to their payment of taxes. Tr. at 133:11- 134:8. Ambiguities in a tax statute interfere with these rights, and thus, they are construed against the government. Additionally, the State drafted the tax law, and, thus, just as contracts are construed against the drafter, so too are tax laws construed against the State. Tr. at 134:8-19. The Order fails to mention this cardinal rule.

The Order also does not mention or apply the "plain meaning" rule. The sole function of the Court in construing statutes is to determine and give effect to the intent of the legislature, and the starting point in doing so should always be the text of the statute itself. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). In interpreting the text, the plain meaning rule requires that "words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand that statute's operation," and when the language of the statute is clear, "a court cannot rewrite the statute and inject matters into it which are not in the legislature's language. . . ." State v. Leopard, 349 S.C. 467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002); see also Rosmer v. Pfizer, 263 F.3d 263 (4th Cir. 2001) (holding that when a statute is plain on its face, the court's inquiry is at an end).² See also Alltel v. S.C. Dept. of

² See also House Bill 3700, Part IB, Section 90, Proviso 90.21 (Act No. 73) (proviso adopted by Legislature for year of this audit that emphasizes this rule and states that "the Department's interpretation of South Carolina's revenue statutes must be based solely on the plain meaning of the statute's text and the legislative intent giving rise to the enactment of the statute. Terms in tax statutes may not be given broader meaning beyond the meaning of the statute.").

Rev., 2015 WL 7681302, at pp. 17-20 (S.C. Admin. Law Ct. Nov. 13, 2015) (applying plain meaning rule to imposition statute to determine whether a taxpayer's proceeds are subject to sales tax) and infra, § C and D (for additional discussion of Alltel court's application of plain meaning rule applied to imposition statute).

Petitioners respectfully request that the ALC consider these rules of statutory construction and apply them to the facts of this case.

C. The ALC Appears to have Overlooked the Fact that No Imposition Statute Imposes a Tax on Waivers.

Although properly citing the relevant imposition statute, the Order does not explain how the imposition statute imposes a tax on the subject Waivers. As set forth in Petitioners' proposed order, the South Carolina sales and use tax statute contained in S.C. Code §12-36-910 imposes a 5% tax on "the gross proceeds of sales" of tangible personal property sold at retail, as well as certain enumerated services. Such a statute is known as an imposition statute because it imposes a tax and places taxpayers on notice of what activities will be subject to taxation. See Tr. at 138:3-17. Although the Order cites to this statute (see Order at p. 4), it does not explain how the Waivers are subject to tax there under.

"Tangible personal property" is defined by statute as "personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter. . . ." S.C. Code Ann. §12-36-60.³ In other words, only the

³ The services enumerated in this chapter include: operating a laundry (S.C. Code Ann. §12-36-910(b)(1)), providing accommodations (S.C. Code Ann. §12-36-920), providing communications services (S.C. Code Ann. §§12-36-910(b)(3)&(5) and 12-36-1310), and selling electricity (S.C. Code

sales of services that are specifically identified in this chapter are subject to sales tax. S.C. Code Ann. §§12-36-910 and 12-36-60.⁴

The parties agree that the sale of a Waiver is not the sale of tangible personal property. See Tr. at 205:17-206:6. No South Carolina statute identifies the sale of something similar to a Waiver (whether it be a service as SCDOR contends or an intangible as Petitioners believe) as taxable. See S.C. Code Ann. §12-36-910; Tr. at 207:17-24. Furthermore, SCDOR's manager of policy correctly agreed that if the Waiver was sold by a third party or even by an affiliate of Petitioners, it would not be taxable, which provides compelling support for the conclusion that no imposition statute imposes a tax on Waivers. Tr. at 209:19-210:2. Because this Court must give effect to the plain meaning of the statute at issue and because no imposition statute imposes a sales tax on Waivers (thus providing notice to taxpayers that a tax will be owed), the Waiver proceeds are not subject to sales tax in South Carolina. S.C. Code Ann. §12-36-910. See also Alltel, 2015 WL 7681302, at pp. 16-18 (finding that sales proceeds from optional contracts sold by Alltel for indemnification coverage in the form of repair or replacement for lost, stolen or damaged wireless communication devices sold in conjunction with sales of the devices themselves were not subject to sales tax because no statute imposed a tax on this type of indemnification coverage).

Petitioners respectfully request that the ALC consider the above law and identify that portion of the imposition statute that imposes a tax upon the Waivers, and if none is identified, then the ALC should find that the Waivers are not taxable.

Ann. §12-36-910(b)(2)).

⁴ The only exception to this rule is that where a bundled transaction is at issue, certain services that are inextricably linked or tied to the sale of tangible personal property can be subject to sales tax if the "true object" of the sale is the purchase of property and not the purchase of a service. No such transaction is at issue here. See infra §E.

D. The ALC Appears to Have Misapplied the Law in Reaching the Measure of Tax Statute where No Imposition Statute was Invoked.

The ALC appears to have overlooked the imposition statute and instead incorrectly applied only the measure of tax statute contained in S.C. Code §12-36-90 (the definition of "gross proceeds") in order to impose a tax on Petitioners. Additionally, it is not clear whether the ALC considered Petitioners' tax policy arguments as to why a measure of tax statute should not be reached if no imposition statute has been invoked, and it appears the ALC may have overlooked, misunderstood or misapplied the Alltel and Brock decisions.

As explained in Petitioners' Proposed Order, from a tax policy perspective, an imposition statute places a taxpayer on notice that a tax will be owed if he conducts certain activities, while a measure of tax statute tells the taxpayer the amount of tax he will owe. Tr. at 138:13-22. As stated by Petitioners' tax policy expert and as reflected in the tax cases cited by Petitioners, one must "pass through the first statute [i.e. the imposition statute] before you get to the second [i.e. the measure of tax statute], because the second is irrelevant if you are not subject to the imposition in the first place. So assuming that you pass through the first statute, you get to the second one, and now we go ahead and calculate the gross proceeds of sales, and that's what you will pay your tax on the basis of." Tr. at 138:22-139:5. If you do not have an imposition statute, then that is "the end of the game. You don't ever get to 12-36-90, because there is no sales tax in play." Tr. at 144:12-15. Because no imposition statute applies in this case, the measure of tax statute (i.e. §12-36-90) is never reached and cannot be used to justify imposing a sales tax on the Waiver proceeds. Id.; see also Alltel, 2015 WL 7681302, at pp. 18-20 (rejecting SCDOR's arguments that sales proceeds from optional indemnification contracts sold in conjunction with wireless communications devices were

subject to sales tax as "value proceeding or accruing from the sale of tangible personal property" under the gross proceeds of sales statute where no imposition statute imposed such a tax); Brock Serv., LLC v. Ala. Dept. of Rev., No. S. 14-1236 (Ala. Tax Tribunal Sept. 28, 2015) (stating that labor services provided in conjunction with renting of scaffolding were not subject to sales tax under the imposition statute (which mirrors the South Carolina imposition statute) and thus Alabama Department of Revenue could not look to the gross proceeds of sales statute (which mirrors the South Carolina gross proceeds of sales statute) to justify imposing a tax).

The ALC appears to have distinguished the Alltel decision because in that case Alltel paid the premiums received from its customers for the insurance coverage to a third party insurer. Order at pp. 7-8. While the ALC in Alltel did make that factual finding, a review of the ALC's full opinion in Alltel makes it clear that this should not alter the outcome. Similar to this case, SCDOR argued in Alltel that "anything associated with that sale of tangible personal property goes into the bucket of gross proceeds." Alltel, 2015 WL 7681302, at p. 19. The ALC in Alltel rejected this argument and held that only gross proceeds of sale are subject to tax in South Carolina explaining that accepting SCDOR's position "would require the court "to read language into the statute that is absent [which] . . . "violates the plain meaning rule." Id. The ALC further held that SCDOR's position would also "require the court to read out of the statute language that limits the application of sale tax to 'services and intangibles . . . the sale . . . of which is subject to tax under Chapter 36 of Title 12 . . . [which] . . . also violates the plain meaning rule." Id. Moreover, accepting SCDOR's interpretation of the statute would render the statute ambiguous, and thus the statute would have to be construed in favor of the taxpayer and against imposition of the tax. See supra § A and Alltel, 2015 WL 7681302, at

pp. 19-20 (stating that "even if this Court were to agree with the Department on this point, however, the Department would not prevail because the statute would be rendered ambiguous and therefore inapplicable to Alltel"). This law and analysis would apply regardless of whether Alltel retained the proceeds and paid them out of its own accounts to satisfy a bill from a third party insurer or remitted payments directly to the third party insurer. That factual distinction is simply irrelevant and does not change the law that requires that an imposition statute first be invoked before the measure of tax statute can be reached.

Petitioners respectfully request that the ALC reconsider the law requiring that an imposition statute be invoked prior to reaching a measure of tax statute, the Alltel and Brock decisions (which recognize that rule), and the tax policy considerations underlying the statutes and case law (which support the same), and alter or amend its Order to find that the Waivers are not taxable.

E. The ALC May Have Misunderstood the Law in Finding the Waiver Proceeds to be Part of Petitioners' Gross Proceeds of Sales.

The ALC found that the Waiver proceeds were part of Petitioners' "gross proceeds of sale" and thus subject to sales tax. Order at pp. 8 and 10. The ALC appears to have based this conclusion, in large part, on the fact that it found that one agreement or transaction is at issue and that the true object of this agreement or transaction "would be to obtain the use of an item while minimizing the financial risk of damage, loss, or destruction." Order at p. 8.

First, even if the ALC finds that only one agreement or transaction is at issue here, that does not end the inquiry. The court must still examine whether the two separate components of a single agreement or transaction are subject to tax. See e.g. Southeastern Cinema Entertainment v. S.C. Dept. of Rev., 2014 WL 2417715 (S.C. Admin. Law Ct.

2014)(analyzing whether the proceeds from both the sale of an IMAX theater cinema and the sale of intangible trademarks pursuant to a single agreement were subject to sales tax); Brock Serv., LLC v. Ala. Dept. of Rev., No. S. 14-1236, slip op. at p. 2 and 10 (finding that labor services provided in conjunction with renting of scaffolding pursuant to a single agreement were not subject to sales tax and noting that this result would follow "whether the separate labor services are included in the rental agreement or in a separate contract").

Where a taxpayer sells both tangible personal property and a service or intangible, the service or intangible does not become taxable merely because it is sold in conjunction with tangible property where the service or intangible is separate from and not embodied in or inextricable from the tangible property. See Alltel, 2015 WL 7681302, at pp. 18-20 (finding that sales proceeds from Alltel's optional contracts for indemnification coverage for wireless communication devices sold in conjunction with the devices were not subject to sales tax because no statute imposed such a tax); Brock, No. S. 14-1236, slip op. at p. 7 (finding that labor services provided in conjunction with renting of scaffolding pursuant to a single agreement were not subject to sales tax under any imposition statute); Pot-O-Gold Rentals, L.L.C. v. City of Baton Rouge, 155 So.3d 511, 512 (La. 2015) (holding that Pot-O-Gold's proceeds from the sale of optional cleaning services to a customer in conjunction with the rental of a portable toilet were not part of its gross proceeds and noting the absurdity of a conclusion that would find cleaning services for portable toilets not taxable if the toilet is owned by a third party but would find it a taxable service if the toilet is owned by the lessor.); Snite v. Ill. Dept. of Rev., 74 N.E.2d 877, 880 (Ill. 1947) (holding that "[i]f the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the

vendor is engaged in the business of selling at retail, and also engaged in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other.").

Additionally, in the Order, the ALC in applying the "true object" or "object of the transaction" test, determined that the object of the subject transaction was to obtain the property rented while minimizing the risk of loss. Order at p. 8. It is submitted that such a conclusion is a misapplication of the "true object" test. When properly applied, that test seeks to determine which element of the transaction dominates (i.e. whether the purchase of tangible personal property or the purchase of a service or intangible is the dominant transaction); here, instead of finding a dominant transaction, the Order points to both elements. However, had the ALC found that the tangible personal property component was the dominant or true object, this would also have been a misapplication of the test because this is not a bundled transaction requiring application of the "true object" test.

As previously stated, the "true object" test is used where a bundled transaction exists (i.e. where the transactions at issue are inextricably linked), and the court must examine the "true object" of the transaction (i.e. whether the true object is the sale of tangible personal property or the sale of a service) to determine if it is subject to sales tax. See e.g. Boggero v. S.C. Dept. of Rev., 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015); see also Tr. 149:24-150:9 (Petitioners' tax policy expert explaining that where you have one integrated transaction with two elements, the true object test seeks to determine "which elements are going to dominate and control how we characterize the transaction"). In Boggero, the taxpayers' invoices did not separately identify the charges for the rental of portable toilets versus the charges for the service of waste removal. The transaction was bundled and could not be

separated, and therefore the Court applied the "true object" test to determine whether a customer's true object was to obtain the use of the toilet or obtain the service of waste removal. Another example can be found in Southeastern Cinema where the issue was whether proceeds from the sale of a trademark sold in conjunction with the sale of an IMAX theater were part of "gross proceeds" and thus subject to sales tax. Southeastern Cinema Entertainment v. S.C. Dept. of Rev., 2014 WL 2417715, slip op. at p. 2 (S.C. Admin. Law Ct. 2014). The ALC concluded that the trademark proceeds were part of "gross proceeds" because the purchase agreement, which covered both the theater and the trademark, did not itemize the cost of the two items (*id.* at 5) and because the IMAX theater could not be used without the trademark license such that the trademark was inextricably linked to or embodied in the purchase of the system. *Id.* at 6.

Unlike Boggero and Southeastern Cinemas, the transaction here is not bundled such that it cannot be separated. The Waiver is optional and its charge is separately delineated on a customer's receipt. *See* Ex. 3 and 4; Tr. 78:6-10 and 83:17- 84:8; *see also* Tr. at 153:4- 154:2 (testimony of Petitioners' tax policy expert stating that because the Waiver here is optional, the transaction is not bundled). Additionally, the Waiver does not alter or improve the rented property and is not physically incorporated into the property, as in the engraved trophy example, or permit the rented property to be used, as in Southeastern Cinemas, such that its value cannot be separated from the value of the rented item or such that it is inextricably linked to the rented item. *See* Tr. 84:9-14 and Ex. 3. Accordingly, the true object test need not be applied.

Finally, application of the plain meaning of the relevant statutes to the facts of this case (and construing the statute against imposition of the tax as South Carolina law requires)⁵ establishes that the Waiver proceeds do not qualify as "gross proceeds of sales." South Carolina law defines "gross proceeds of sales" as "the value proceeding or accruing from sales and leases or rental of tangible personal property." S.C. Code Ann. §12-36-90 (2014). Here, the proceeds from the rental of property under the **Rental-Purchase Agreements** are clearly "a value proceeding or accruing from" the sale or rental of tangible personal property (such as, for example, the rental of a television). On the other hand, the Waiver proceeds are "a value proceeding or accruing from" the sale of **the Waiver**, which provides the customer, via a separate, optional agreement and for a separate charge, with the option to avoid the risk of loss of the property rented. Tr. at 86:4-10; 93:2-12. As SCDOR agreed, the Waiver is not tangible personal property, and, therefore, the value proceeding or accruing from its sale is not from the sale of tangible personal property. See S.C. Code Ann. §12-36-90 (2014) (providing an item is taxable only if it proceeds or accrues from the rental of tangible personal property).⁶

Petitioners respectfully request that the ALC reconsider the above law, arguments and facts and find that (1) whether there is a single agreement at issue or not is not determinative; both components of the transaction(s) must be examined to determine whether they are taxable; (2) the transactions at issue are not bundled but rather are separable; (3) the Waiver proceeds

⁵ See supra § A.

⁶ SCDOR's manager of policy correctly agreed that if the Waiver was sold by a third party or even by an affiliate of Petitioners, it would not be taxable (Tr. at 209:19-210:2), which, as the Pot-O-Gold court noted, would produce an absurd result. Pot-O-Gold Rentals, 155 So.3d at 512.

do not proceed or accrue from the sale of tangible personal property; and, therefore, (4) the Waiver proceeds do not constitute gross proceeds and are not taxable.

F. The ALC May Have Misunderstood or Misapplied Travelscape and Meyers Arnold.

Petitioners respectfully submit that the ALC may have misunderstood or misapplied Travelscape, LLC v. S.C. Dept. of Rev., 391 S.C. 89, 705 S.E.2d 28 (2011) and Myers Arnold v. S.C. Tax Comm., 285 S.C. 303, 328 S.E.2d 920 (Ct. App. 1985). Both cases involve mandatory versus optional fees. In Meyers Arnold, a layaway fee (as the ALC recognized) was required in order to make a layaway purchase and in Travelscape, a "service and facilitation" fee was added to the price of booking a hotel room. In other words, the fees were required in order for the sales to take place. See Alltel, 2015 WL 7681302, at p. 24 (noting that the facts in Meyers Arnold and Travelscape both involve fees where the customer could not make the purchase without paying the fee). Additionally, both of these cases can be viewed as attempts by the taxpayer to deduct a service cost from revenues. Id.

Unlike the Meyers Arnold court, the ALC in this case did not find that Petitioners had improperly deducted a service cost and appears to acknowledge that unlike the facts in Meyers Arnold, the Waivers are optional. Thus, the ALC should find that Meyers Arnold and Travelscape support Petitioners' position in this matter and not SCDOR's.

The Order also appears to conclude that the gift wrapping issue addressed in Meyers Arnold supports SCDOR's position. However, this should not alter the above analysis. In Meyers Arnold, the court addressed whether charges for the service of gift wrapping where the service was free unless more expensive paper was chosen were taxable. It found that the charge was really for the wrapping paper and not the service of wrapping and found that the

transaction would have been taxable except for a statutory exemption from sales tax for wrapping paper. The Order in this case then concludes: "Without this fact-specific exemption, the exercise of this option would have subjected the fees to tax. Thus merely being optional does not prevent part of a sales transaction from being subject to sales tax." Order at p. 6.

The ALC's above statement is correct, but clarification of the reason it is correct is warranted. The wrapping paper charges would be taxable absent an exemption because the paper is tangible personal property. In this case, the Court has made no determination, nor is one supported by the facts, that the fee for Waivers is not a charge for the service or intangible of providing the Waivers, but is instead really a charge for purchasing tangible personal property. Being optional cannot save an otherwise taxable transaction from being taxable, but if a transaction is not taxable (like the Waivers here), then being optional is a key factor to be considered in resolving whether an otherwise non-taxable transaction (i.e. the Waiver) that is related to a taxable transaction (i.e. the rented property) becomes taxable. See Alltel, 2015 WL 7681302, at p. 20 (finding that wrapping paper holding in Meyers Arnold does not require contrary conclusion in Alltel because wrapping paper itself is tangible personal property). Petitioners submit that in this case, the fact that the Waivers are optional is one of many factors that establishes that the two components are not inextricably linked and thus that the Waiver proceeds are not taxable. See supra §E. Accordingly, Petitioners respectfully request that the ALC reconsider Meyers Arnold and Travelscape and alter or amend its Order to find that the Waivers are not taxable.

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Charleston, South Carolina

April 11, 2016

FILED

APR 12 2016

SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

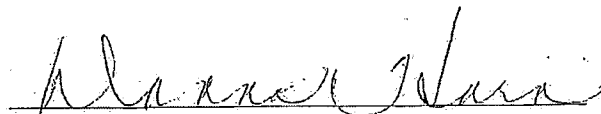
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Rent-A-Center East, Inc. and Rent Way, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

MOTION FOR RECONSIDERATION UNDER ALC RULE 29(D)
AND/OR TO ALTER OR AMEND UNDER SCRPC RULE 59(E)

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April 11, 2016

FILED

APR 12 2016

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Rent-A-Center East, Inc., and Rent
Way, Inc.,

Petitioners,

v.

South Carolina Department of Revenue,

Respondent.

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

ORDER
FILED

MAR 30 2016

SC ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") on requests for contested cases filed by Rent-A-Center East, Inc., and Rent Way, Inc., ("RAC" or "Petitioners") under S.C. Code Ann. § 12-60-460 (Supp. 2009).¹ Petitioners challenge the South Carolina Department of Revenue's ("Department" or "Respondent") Determinations that gross proceeds from Petitioners' sale or rental of tangible personal property should include proceeds from the sale of Liability Damage Waivers ("Waiver" or "Waivers") in the total amount of \$851,622.31 as of November 30, 2013.² A hearing was held before this Court on September 24 and 25, 2015.

The appealed assessment of taxes and interest includes the following details:

RENT-A-CENTER			
Audit Period	Tax	Interest	Total
4/1/07-10/31/10	\$521,694.93	\$96,652.51	\$618,347.44
RENT WAY			
4/1/07-12/31/09	\$192,158.64	\$41,116.23	\$233,274.87
TOTALS	\$713,853.57	\$137,768.74	\$851,622.31

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

² The Department originally included penalties, but these have been dropped and are not included in the assessments disputed. The amount claimed is from the Department's determinations on which interest continues to accrue.

EXHIBIT A

The sole issue in dispute is whether the sale of Waivers is properly subjected to sales tax under the provisions of South Carolina law.

FINDINGS OF FACT

Having taken evidence and observed the witnesses and exhibits presented at the hearing and having taken into consideration the burden of proof and the credibility of witnesses, the Court makes the following findings of fact by a preponderance of the evidence.

Petitioners are in the business of renting and selling tangible personal property in South Carolina and other states.

The rental/sale is initiated by execution of The Rental-Purchase Agreement ("Agreement") that defines the process by which ownership of the property can be transferred to the customer. The customer selects a contract term: weekly, semi-monthly, or monthly. The Agreement includes a total of scheduled payments with an initial payment, a number of regular payments, and a final payment. The Agreement also provides means by which the customer can make an early purchase any time after the first periodic payment by paying a specified percentage of the difference between the total scheduled payments and the total paid on the account.³

Regular periodic payments are due at the beginning of each term. The customer may choose to renew the Agreement by making an advance rental payment at the beginning of the next term (or change the term by making a payment in the amount required for a different term option). Each term payment is a renewal of the Agreement. The Agreement may be terminated at any time by the customer's surrendering or returning the property in good repair along with any past due rental payments or by carrying out the early purchase option. The customer is under no obligation to purchase the Waiver or, if purchased, to continue its effect past the term for which payment has been made.

Petitioners maintain and service the property during the payment period but are not responsible for unauthorized repairs or for damage caused by improper use. Under the terms of the Agreement, the customer is "responsible for the fair market value of the property if and as of the

³ For the purposes of this transfer, as stated in the Agreement, the payments scheduled on the account do not include any late charges or Waiver payments.

time it is lost, stolen, damaged, or destroyed.”

In addition to the disclosures about rental payments, the Agreement includes fees for the Waiver, taxes, and charges imposed for late payments. Under the terms of the Waiver, if loss is caused by means specified in the Waiver (lightning, fire, smoke, windstorm, theft, or flood) and occurs during the time in which both the Agreement and the Waiver provision remain in effect, Petitioners waive the customer’s liability. If the customer is not current with payments under the Agreement or has not purchased the Waiver for the period in which the damage or loss occurs, the Waiver is void or inapplicable.

The Optional Liability Waiver Provision, although a separate document, according to its terms, “is an additional part of the Rental Agreement,” specifies the amount charged for the Waiver, and provides that the fee is to be paid “with [the] weekly/semi-monthly/monthly rental payment while this Provision is in effect.” The Waiver fee is calculated as a percentage of the term rental.⁴ The Waiver may be enforced only so long as the Agreement’s “periodic payments including the liability waiver fee” have been paid through the date of loss. Waivers are only available on items acquired from Petitioners or an affiliated entity and are not available independently.

Petitioners contend that the Agreement and the Waiver are “two separate agreements, which for two separate charges provide two separate benefits to the customer.” The Court finds that the Agreement and Waiver are not separate agreements.

The documents are fundamentally interconnected. Both state the amount of the Waiver fee that the customer agrees to pay. The Waiver itself is self-described in its title as a “Provision” and explicitly states that it is “an additional part of the Rental Agreement.” A provision is “[a] clause in a statute, contract, or other legal agreement.” BLACK’S LAW DICTIONARY 1262 (8th ed. 2004). Moreover, without the underlying agreement to supply a durable good to the customer, the Waiver has no function or value that can be purchased separately. In his direct examination, Professor Pomp stated that the Agreement and the Waiver do not comprise a mixed or bundled transaction because the Waiver is optional. However, on cross-examination, Professor Pomp conceded that there would be no optional waiver unless there was some risk to waive. Further, in

⁴ Testimony indicates that the Waiver fee is 7.5% of the rental-purchase term payment.

responding to a hypothetical based on the purchase of a trophy divided into three optional stages — unassembled trophy, assembled trophy, and assembled trophy with engraving — Professor Pomp opined, “once you bought all three together, it wasn’t optional anymore.”

From the explicit terms of the documents and the testimony of the witnesses, the Court finds that there is one transaction, one document consisting of two forms: one in which liability damages to the subject durable good(s) are imposed on the customer and one in which the customer pays a fee to shift the risk of liability for specified damages to Petitioners.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Court concludes the following as matters of law. The ALC has jurisdiction to hear this contested case pursuant to S.C. Code Ann. §§ 1-23-600 (Supp. 2015) and 12-60-460.

Burden of Proof and Standard of Review

The standard of proof in this administrative proceeding is a preponderance of the evidence. *See Anonymous v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 496 S.E.2d 17 (1998). In general, the party asserting the affirmative issue in an adjudicatory administrative proceeding has the burden of proof. *See Leventis v. S.C. Dep't of Health & Envtl. Control*, 340 S.C. 118, 133, 530 S.E.2d 643, 651 (2000) (citing 2 Am. Jur. 2d Admin. Law § 360 (1994)). Here, Petitioners requested a contested case hearing and, therefore, have the burden of proof to show by a preponderance of the evidence that the Department’s tax assessments for the periods at issue were incorrect.

Applicable Tax Provisions

S.C. Code Ann. § 12-36-910(A) (2009) provides that “[a] sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person⁵ engaged or continuing within this State in the business of selling tangible personal property at retail.” The essential terms used in this provision are defined in related sections of Chapter 36 of Title 12.

Section 12-36-90 (2009) defines “gross proceeds of sales” as follows:

Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.... [and] includes ...

⁵ Pursuant to S.C. Code Ann. § 12-36-30 (2009), “person” includes “any individual, firm, partnership . . . corporation” As such, the Petitioner is a “person” in that it operates as a corporation.

(b) the proceeds from the sale of tangible personal property without any deduction for:

- (i) the cost of goods sold;
- (ii) the cost of materials, labor, or service;
- (iii) interest paid;
- (iv) losses;

* * *

(vii) any other expenses.

S.C. Code Ann. § 12-36-60 (2009) defines the term "tangible personal property" to mean:

... personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt.⁶ [Emphasis added].

In applying these statutes, "[t]he cardinal rule of statutory interpretation is to determine the intent of the legislature." *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230, 612 S.E.2d 719, 723 (2005). Furthermore, "[t]he legislature's intent should be ascertained primarily from the plain language of the statute." *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 122, 542 S.E.2d 736, 740 (Ct. App. 2001). "Revenue laws are generally construed in favor of the taxpayer and against the taxing authority." *Clark v. S.C. Tax Comm'n*, 259 S.C. 161, 169, 191 S.E.2d 23, 26 (1972) (internal quotation marks omitted).

Analysis

In addressing sales tax statutes, South Carolina appellate courts have analyzed the statutory scope and application in three cases particularly relevant to circumstances in this case. The South Carolina Supreme Court in *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 705 S.E.2d 28 (2011), held that facilitation and service fees added to room rental rates were part of the actual

⁶ An intangible is "something that lacks a physical form; an abstraction, such as responsibility." BLACK'S LAW DICTIONARY 823 (8th ed. 2004). As used in the UCC, a "payment intangible" is "a general intangible under which the account debtor's principal obligation is a monetary obligation. S.C. Code Ann. § 36-9-102 (61) (2003). An account debtor is a person obligated to pay "for property that has been or is to be sold [or] leased." S.C. Code Ann. § 36-9-102 (2) and (3) (2003). In this case, the customer is obligated to reimburse Petitioners "for the fair market value of the property if and as of the time it is lost, stolen, damaged or destroyed."

price charged to the customer and were, therefore, includable in the gross proceeds of the sale and subject to the sales tax imposed by S.C. Code Ann. § 12-36-920(A).⁷ Although the fees in *Travelscape* were imposed on the customer and were not optional, services sold with the tangible personal property were part of the gross proceeds retained by the seller in addition to the costs for the rooms and labor involved in obtaining and reselling the right to use the rooms.

Likewise, the South Carolina Court of Appeals held that fees added to the cost of property sold on "layaway" were part of the transaction and taxable as part of the gross proceeds of the sale. *Meyers Arnold v. S.C. Tax Comm'n*, 285 S.C. 303, 328 S.E.2d 920 (Ct. App. 1985). The purpose of the fee was to make the sale possible. Hence the sale and the fee were inextricably connected. The Court of Appeals found the layaway fee to be part of the gross proceeds. Like the service fees in *Travelscape*, the fees were not optional.

However, *Meyers Arnold* also addresses another question: whether gift wrapping is subject to sales tax. Although the Court ultimately found that because the service was free unless a more expensive paper was selected, the charge was for the paper, not the wrapping service, and was, therefore, exempt under S.C. Code Ann. § 12-35-550 (now S.C. Code Ann. § 12-36-2120 (14)). Without this fact-specific exemption, the exercise of this option by the customer would have subjected the fees to sales tax. Thus, merely being optional does not prevent a part of the transaction from being subject to sales tax.

More recently, in *Boggero v. S.C. Dep't of Revenue*, 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015), the Court of Appeals considered whether "gross proceeds from the rental and servicing of portable toilets [were] subject to sales tax." The Court identified the issue on appeal as whether the ALC "erred in finding that the true object of [the taxpayer's] business was not a service and that [the] gross proceeds were therefore subject to the state sales and use tax." The Court, after analyzing cases from other jurisdictions, decided that the "true object test" focuses on a factual inquiry into what a customer's essential purpose is in a given transaction. The Court of Appeals also relied on *Palmetto Net, Inc. v. S.C. Tax Comm'n*, 318 S.C. 102, 105, 456 S.E.2d 385, 387 (1995) in which the South Carolina Supreme Court "deferred to the trial court's factual findings

⁷ This section imposes a sales tax on accommodations and is complementary to S.C. Code Ann. § 12-36-910, the statute at issue here, which imposes a sales tax on tangible personal property.

when deciding whether a particular transaction was subject to a statutorily-based tax.” 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*, 414 S.C. at 280, 777 S.E.2d at 843 (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)); *Bursey 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)).

Petitioners contend that the Agreement and the Waiver are two separate and distinct transactions and that because the Waiver is optional it “is not inextricably linked to or embodied in the sale of tangible personal property.” This Court disagrees. In its Findings of Fact, this Court specifically found that the Agreement and Waiver are not separate agreements. Although purchasing the Waiver may be optional, once purchased it is merged into and becomes inextricable from the transaction and has no value apart from the underlying transaction. The amount of the fee is included in the Agreement, and the Waiver agreement, in turn, provides that it “is an additional part of the Rental Agreement.” *See generally S.C. Dep’t of Consumer Affairs v. Rent-A-Center, Inc.*, 345 S.C. 251, 547 S.E.2d 881 (Ct. App. 2001), *cert. dismissed*, 352 S.C. 419, 575 S.E.2d 547 (2002) (The Court of Appeals treats the Waiver as part of the Agreement.).

Petitioners also argue that a recent case before the ALC rejected Respondent’s characterization of *Meyers Arnold*. *See Alltel Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 2015 WL 7681302 (S.C. Admin. Law Ct. Nov. 15, 2015). Although the decision of another Administrative Law Judge is not binding, it is instructive to consider how the facts of that case differ from those in this case. *See* ALC Rule 70 (f). *Alltel* involves two distinct, optional contract offers. One offered extended warranty coverage “against electrical/mechanical malfunction.” Alltel conceded that these charges were included in proceeds for which sales tax was due under a now-repealed section of the law.⁸ The second contract offered indemnification coverage providing repair or replacement for a lost, stolen, or damaged device. This coverage was provided for different costs under

⁸ S.C. Code Ann. 12-36-910 included a clause imposing sales tax on “gross proceeds accruing from the sale or renewal of a warranty, maintenance, or similar service contracts.” This tax was repealed by 2011 S.C. Act No. 32, § 2.b, effective September 1, 2011.

insurance policies covering Alltel. Alltel collected and remitted the premiums to its insurers, which reported and paid taxes as required to the South Carolina Department of Insurance. Unlike the cases cited, *Travelscape*, *Meyers Arnold*, and *Boggero*, and this case, Alltel did not retain the premiums. Thus, the payments did not become part of the gross proceeds; that is, they did not become part of "the value accruing from the sale, lease, or rental of tangible personal property."

Here, the facts show that the Waiver fees are part of the "value proceeding or accruing from the sale, lease, or rental of tangible personal property" and (as Professor Pomp testified) become part of the income on which Petitioners pay tax. Customers who obtain durable goods from Petitioners could reasonably consider that the value of their doing so would be enhanced by avoiding the obligation to pay for lost or damaged items by shifting that risk to Petitioners. Thus, the true object of a transaction would be to obtain the use of an item while minimizing the financial risk for its damage, loss, or destruction.

Other jurisdictions have dealt with the taxability of these Waivers. Recently, the Utah Supreme Court, in *Rent-A-Center W., Inc. v. Utah State Tax Comm'n*, 2016 WL 67693 (Jan. 5, 2016), held that the Waiver was not subject to sales and use tax.⁹ The Utah Court reviewed its state tax code, specifically Utah Code Ann. § 59-12-103(1)(k), which reads: "(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is: (i) stored; (ii) used; or (iii) otherwise consumed." The Utah Court interpreted "paid or charged for" in its tax statute as much narrower in reach than statutes in other states. The Utah Supreme Court found that the Utah statute "does not tax amounts 'derived from' the rental of tangible personal property, nor does it specifically include 'services, for which tangible personal property' is leased." *Id.* at *4. Although the Utah Court rejected the argument that, because the Waiver was optional and separately itemized, it is not taxable, the Court concluded that "Rent-A-Center's liability waiver fee is not 'paid or charged for leases or rentals of tangible personal property.'" *Id.*

The Louisiana Court of Appeals, in *Rent-A-Center E., Inc. v. Lincoln Par. Sales & Use Tax Comm'n*, 60 So. 3d 95 (La. App. 2 Cir. 2011) (*writ denied*, 63 So. 3d 985 (2011)), found that

⁹ The Supreme Court of Utah issued its decision with the caveat that "[t]his opinion is subject to revision before final publication in the Pacific Reporter."

Waivers were taxable. The Louisiana Court reviewed the pertinent statutes, specifically, La. Stat. Ann. § 47:302 (B)(1), which reads:

B. There is hereby levied a tax upon the lease or rental within this state of each item or article of tangible personal property, as defined herein; the levy of said tax to be as follows:

(1) At the rate of two per centum (2%) of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to the said business.

The Louisiana Court found that Waiver sales constituted "gross proceeds derived from the lease or rental of tangible personal property." *Lincoln Par.*, 60 So.3d at 99.

The South Carolina tax statutes in question are broader than Utah's. Specifically, S.C. Code Ann. § 12-36-90 defines "gross proceeds of sales" as "the value proceeding or accruing from the sale, lease, or rental of tangible personal property." The Utah statute only taxes amounts that were specifically "paid for" the lease or rental of tangible personal property." However, in South Carolina, the statute taxes amounts "proceeding or accruing from the sale," language far broader and more inclusive than the Utah statute in controversy. The South Carolina statute is more closely analogous to the Louisiana statute, in that the language, "derived from," is similar to "proceeding or accruing from." Therefore, other jurisdictions support the decision that Waivers are taxable under South Carolina's tax statutes, as Waiver fees proceed or accrue from the sale or rental of tangible personal property.

In an analogous case, Louisiana discussed the taxability of collision damage waivers. In *Enterprise Leasing Co. of New Orleans v. Curtis*, 977 So. 2d 975, 980 (La. App. 1 Cir. 2007) (*writ denied*, 976 So. 2d 719 (2008)), the court observed,

... the real object of the transaction is the lease of tangible personal property, the motor vehicle. Clearly, the [collision damage waiver] can only be made available with the lease or rental of a motor vehicle. Enterprise cannot separate the [collision damage waiver] from the principal lease as the [collision damage waiver] does not exist without the automobile lease. Nor can the [collision damage waiver] be purchased from another lessor.

The Louisiana appellate court concluded that collision damage waiver payments were part of the gross proceeds derived from the lease or rental of automobiles since the parties contracted for the

collision damage waivers as part of the lease agreement and found that the payments were "merely incidental to the lease of the tangible property." *Id.*¹⁰

The analysis of the Louisiana appellate court is instructive. The Waivers here are nearly identical to Collision Damage Waivers. Both waivers shift risk, responsibility for damage or destruction, from the consumer to the company, and both are optional and obtained by fees additional to the rental price and should be included in the amount subjected to sales tax.

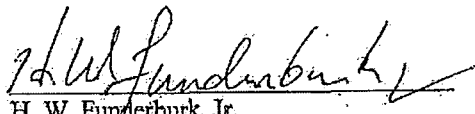
ORDER

For the reasons above, the Court finds that gross proceeds from Petitioners' sale or rental of tangible personal property should include fees from the sale of Liability Damage Waivers.

IT IS THEREFORE ORDERED THAT the Determinations of the Department are upheld.

IT IS FURTHER ORDERED THAT that the Department shall inform Respondents of the total amount due, from the tax liabilities of \$851,622.31 and accrued interest. Respondents shall remit payment to the Department within sixty (60) days of Department issuing the total amount due.

AND IT IS SO ORDERED.


H. W. Funderburk, Jr.
Administrative Law Judge

March 30, 2016
Columbia, South Carolina

FILED

MAR 30 2016

SC ADMIN. LAW COURT

¹⁰ In S.C. Rev. Rul. #93-1, dealing with automobile rentals, the Department determined that charges for a Collision Damage Waiver were "Includable in 'gross proceeds of sales' and therefore subject to the sales tax." The Department specifically noted that the Collision Damage Waiver was optional and explained the waiver as follows:

The customer pays a fee for a release of financial responsibility to the company for any damages occurring to the car during use. For example, if the customer is involved in an accident, the customer will not be responsible to the company for repair costs if he or she purchased the collision damage waiver. The fee is separately stated from the rental price.

"The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006).

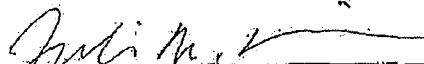
CERTIFICATE OF SERVICE

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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March 30, 2016
Columbia, S.C.


Julia M. Miller
Judicial Law Clerk

FILED

MAR 30 2016

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Rent-A-Center East, Inc. and Rent Way,
Inc.,

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

Petitioners,)

VS.)

South Carolina Department of Revenue,)

Respondent.)

**RESPONDENT'S RESPONSE IN
OPPOSITION TO PETITIONERS'
MOTION FOR RECONSIDERATION**

Comes Now Respondent, the South Carolina Department of Revenue (Department), and pursuant to ALC Rule 29(D), files the following Response in Opposition to the Petitioners' Motion for Reconsideration (Petitioners' Motion). The Department opposes the Petitioners' Motion because the Administrative Law Court's (ALC or Court) Final Order (Order) properly and thoroughly addressed the issues in this matter. The Petitioners' Motion makes numerous arguments, and while these arguments have been fully addressed previously, the Department will respond to each argument to aid the ALC in addressing the Petitioners' Motion.

1. The ALC Properly Found That The Rental Purchase Agreement and the Waiver Constitute One Transaction.

The ALC properly focused on the entire transaction at issue, found that what occurs in Petitioners' stores is one transaction, and determined that the one transaction is subject to sales tax. Despite the Petitioners' attempts to have this Court focus on form over substance, this Court properly found that the Optional Liability Waiver Provision (Waiver) and the Consumer Rental-Purchase Agreement (Agreement) together constitute one taxable transaction.

The Court set forth several findings which demonstrate the inextricable link between the Agreement and Waiver. Petitioners list these finding on page 2 of their Motion and then assert such findings are "contrary to substantial evidence in the record." This assertion is neither accurate nor supported by the record. The Court properly recognized and found that the Waiver explicitly states "[t]his Optional Liability Waiver Provision is an additional part of the Rental Agreement." (Order at p.3) This is unquestionably what the Waiver states, and contrary to the Petitioners' assertion, there is nothing in the record to contradict this finding. The Court properly found that the Waiver fee is calculated as a percentage of the rental fee and may only be enforced while the Agreement is in effect. Id. The fact that the Waiver fee is a percentage of the rental fee is undisputed. The Waiver itself provides that the Waiver may only be enforced while the Agreement was in effect. Id. see also Exhibit 3. The Petitioners' Motion fails to set forth what evidence in the record contradicts this finding, and in fact, there is no evidence contradicting this finding. The Court properly found that the Waiver fee is listed on the Agreement, and Waivers are only available on items acquired from Petitioners. Id. Here again, these findings are supported by the record, and the Petitioners fail to identify the evidence they assert contradicts these findings.

Throughout the Petitioners' Motion, the Petitioners argue that the Court should not focus on the clear evidence that shows the Agreement and Waiver are inextricably linked, but instead should focus on the reasons why they assert the Agreement and Waiver are separate. The Petitioners ask this Court to focus on individual portions of the transaction and treat such as though the other parts of the transaction did not occur simultaneously. The ALC properly disregarded this form over substance argument and

looked at the transaction for what it truly is – one transaction, wherein, a customer chooses to rent a durable consumer good free from liability in certain situations. Despite the Court's proper analysis, the Petitioners are asking this Court to find that the Agreement provides a different benefit than the Waiver and, therefore, such are separate. Such argument requires the Court to disregard the fact that no Waiver can exist without the underlying Agreement, as there is no liability to waive without an Agreement. The benefits associated with the Waiver only exist if an Agreement is in place. The undisputed evidence shows that a customer cannot come into Petitioners' store and purchase a waiver unless there is also an Agreement. (Hr'g Tr. 106:7 – 18, 115:12 – 21) Furthermore, there can be no price on the Waiver, as the price of the Agreement determines the price of the Waiver. (Hr'g Tr. 116:8 – 12)

Similarly, the Petitioners want this Court to find that the Waiver has a value separate from the Agreement and, therefore, is an independent transaction. The value of the Waiver is that it shifts the liability set forth in the Agreement from the customer to the Petitioners. (See Exhibits 1 and 3) There is no liability to shift if there is no Agreement, as there is nothing subject to being damaged. Here again, the Waiver cannot and does not exist without the Agreement. Despite asserting the Waiver has its own value before the purchase of an Agreement, the Petitioners have not explained what the value of the Waiver is when there is no Agreement. Petitioners have not done this because there is no value to the Waiver, unless there is an Agreement. Moreover, the Petitioners argue that the Waiver and Agreement are independent because the Waiver can be cancelled at any time. However, the Petitioners' argument fails to recognize the undisputed fact that the Waiver cannot survive if the Agreement is cancelled. (See Exhibit 3) As the evidence in

this matter demonstrates, the Waiver is dependent upon the Agreement, and the Agreement and the Waiver are inextricably linked. That link supports the Court's ruling in this matter.

In an attempt to make the Agreement and Waiver seem less interconnected, the Petitioners ask that this Court disregard some of the explicit terms found in the Agreement and the Waiver that the Petitioners themselves drafted. Specifically, the Petitioners ask this Court to disregard the fact the Waiver is labeled as a provision, and that the Waiver itself states it is "an additional part of the rental agreement." (Exhibit 3) The Petitioners then assert that some of the terms of the Agreement and Waiver are included because such are required by unidentified consumer protection laws.¹ The Petitioners chose the language of their Waiver and Agreement, yet now, want this Court to find that they are not bound to the terms they themselves drafted. While they may have chosen that language so they were able to accomplish certain goals or utilize certain business practices, they cannot avoid the consequences that come with those choices. The Petitioners want that language included when it benefits them, but ask this Court to disregard it when it causes their actions to be taxable. The Court should not be persuaded by this argument and should affirm the Order as issued.

The Petitioners next attempt to clarify what they assert their expert, Professor Pomp, intended by his testimony. Contrary to the Petitioners' efforts, Professor Pomp's testimony does not include the clarification they ask this Court to follow. Professor Pomp, neither on direct nor on cross examination, limited or clarified his answers

¹When the Department asked Mr. Tollack to explain the consumer protection laws that he claims necessitated the Petitioners' draft the Waiver and Agreement the way they did, Mr. Tollack could not provide a specific explanation. (See Hr'g Tr. 96:6 - 98:1)

regarding the optional nature of a transaction as only addressing physical improvements or alterations incorporated into tangible personal property. As the Court properly recognized, Professor Pomp testified that when optional aspects of an agreement are elected, they are no longer optional. Specifically, Mr. Pomp testified that even though the assembly and engraving parts of the transaction were optional initially, "once you bought all three together, it wasn't optional anymore. You bought all three together. That's what you wanted." (Hr'g Tr. 165:18 - 24) Similarly here, once the Petitioners' customers added a Waiver to their rentals, that Waiver was no longer optional because the customers bought both together; it is what the customer wanted. Thus, Mr. Pomp's testimony supports the Court's holding that the rental of tangible personal property combined with the Waiver constitutes a single taxable transaction. While the Petitioners may wish Professor Pomp had provided the limitations they now assert, the record demonstrates that he did not testify to such limitations, and to follow the Petitioners argument, requires speculation not supported by the record. This Court properly recognized that the optional aspect of the Waiver prior to being elected do not determine its taxability once elected. In agreement with what Professor Pomp testified to, once the Waiver is purchased, it is no longer optional and becomes part of the taxable transaction.

2. The Court Properly Applied the Statutes At Issue in This Matter.

The Petitioners take issue with the Court's Order not mentioning what the Petitioners assert is the "cardinal rule" of statutory construction in tax cases. (Pet'rs' Mot. 4) As they did in their Proposed Order, the Petitioners assert that the imposition statute in this case, S.C. Code Ann. § 12-36-910 (2010), "should be construed narrowly against the imposition of the tax." The Petitioners have not set forth a case stating this so

called "cardinal rule," and the case cited to support this assertion does not actually state that a taxing statute should be narrowly construed. Even if the rules of statutory interpretation need to be used in this case, which the Department maintains they do not because the statute's language is plain and unambiguous,² the Petitioners mischaracterize the rule. Neither the cases cited by the Petitioners nor any of the case law reviewed by the Department, states that an imposition statute should be *narrowly* construed against the imposition of the tax, as the Petitioners assert. Instead, the rule is that "[r]evenue laws are generally construed in favor of the taxpayer and against the taxing authority." Clark v. S.C. Tax Comm'n, 259 S.C. 161, 169, 191 S.E.2d 23, 26 (1972) (quoting 82 C.J.S. Statutes s 396). The Court properly cited and relied upon this rule on page 5 of its Order. However, if a taxing statute is ambiguous, the ambiguity should simply be resolved in favor of the taxpayer, not narrowly construed. Since the imposition statute at issue here is plain and unambiguous, this Court does not need to apply any rules of statutory interpretation.

The Petitioners further dispute that the Court failed to mention or apply the "plain meaning" rule. (Pet'rs' Mot. 5) Contrary to this assertion, the Court stated "[f]urthermore, 'the legislature's intent should be ascertained primarily from the plain language of the statute.'" (Order p. 5) (quoting State v. Landis, 362 S.C. 97, 102 606 S.E.2d 503, 505 (Ct. App. 2004) (emphasis added). Therefore, the Court clearly mentioned and applied the plain meaning rule in its Order.

²"Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Travelscape, LLC v. S. Carolina Dep't of Revenue, 391 S.C. 89, 98, 705 S.E.2d 28, 33 (2011) (citing Gay v. Ariail, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009)).

Furthermore, the ALC's Order is supported by other case law regarding statutory construction as our Supreme Court stated "[w]here the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Travelscape, LLC v. S. Carolina Dep't of Revenue, 391 S.C. 89, 98, 705 S.E.2d 28, 33 (2011) (citing Gay v. Ariail, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009)). Here, the language of § 12-36-910(A), which clearly imposes a sales tax on the gross proceeds of sales on every person *engaged in the sale of tangible personal property* at retail, is plain and unambiguous. The Petitioners have never identified any ambiguity in the statutes at issue that would require statutory construction principles to be applied. Therefore, because the language of the statute is plain and unambiguous, this Court does not need to utilize the rules of statutory interpretation.

3. The ALC Properly Followed Applicable Relevant Statutory Law and Case Law In Imposing Sales Tax On The Waivers.

a. The Court Properly Found Section 12-36-910 Imposed a Sales Tax on the Transaction at Issue.

The Petitioners next assert that the Court "overlooked the fact that no imposition statute imposes a tax on waivers." (Pet'rs' Mot. 6) Contrary to the Petitioners' assertion, the Court properly found that § 12-36-910(A) imposes a sales tax on "every person engaged . . . in the business of selling tangible personal property at retail." (Emphasis added). Thus, a plain reading of the statute indicates that the tax is imposed on a retail business that sells tangible personal property. Here, Petitioners are in the business of selling/renting tangible personal property at retail. Specifically, they rent and sell durable

consumer goods. Therefore, § 12-36-910 imposes a sales tax on Petitioners' business in this State.

Because the Petitioners are in the business of selling tangible personal property, their gross proceeds of sales are subject to sales tax. Id. The Petitioners seemingly argue that the sales tax imposed, pursuant to § 12-36-910, applies only to the sale of tangible personal property, but a full and complete reading of § 12-36-910, shows that the sales tax is applied to the gross proceeds of sales. Gross proceeds of sales by definition include the "value proceeding or accruing from the sale of tangible personal property." S.C. Code Ann. § 12-36-90 (2010). Because the Court properly found that the Waiver and Agreement constitute one transaction, the total amount of proceeds from both the Waiver and the Agreement constitutes the value proceeding or accruing from the rental of tangible personal property. Therefore, § 12-36-910 imposes a sales tax on the total amount of proceeds from both the Waiver and the Agreement.

The Petitioners attempt to bolster their arguments against taxability by claiming that the Department's Manager of Policy, John McCormack, agreed that waivers sold by third parties or by an affiliate would not be taxable. Petitioners' argument neglects to explain that Mr. McCormack based his answer on a hypothetical that involved specific facts. (Hr'g Tr. 207:25 – 208:11) Mr. McCormack testified that if the Waiver was sold in a completely separate transaction, unlike the facts in this case, the proceeds from the Waiver fee would not be taxable.³ (Hr'g Tr. 208:12 – 210:5) Thus, based on Mr. McCormack's testimony, the transaction at issue in this case is taxable because the

³In the hypothetical, the business selling the waiver would be in the business of providing a service, not in the business of selling tangible personal property. This is an important distinction.

Waiver fee is a part of the sale/rental of tangible personal property and is not part of a separate transaction.

b. The Court Gave Proper Weight to Professor Pomp's Opinions.

The Petitioners next assert that the ALC should have followed the tax policy arguments put forth by their tax policy expert, Professor Pomp. As Professor Pomp himself testified, he did not advise the General Assembly in drafting § 12-36-910 or § 12-36-90. (Hr'g Tr. 161:7 – 11) His opinions regarding how tax should be applied are in no way binding on this Court. In fact, Mr. Pomp testified that he does not even evaluate how states actually treat the taxability of waivers, so his opinions do not reflect how taxes are actually implemented, rather just how he thinks they should be implemented. (Hr'g Tr. 161:15 – 163:1) Moreover, to the extent Mr. Pomp opined that the Waivers at issue are not subject to sales tax, such opinion is in direct contradiction to case law addressing these very Waivers. See Rent-A-Center East, Inc., v. Lincoln Parish Sales & Use Tax Comm'n, 60 So. 3d 95 (La. App. 2 Cir 2011) (writ denied, 63 So. 3d 985 (2011)); and In the Matter of: *** Taxpayers, 2008 WL 5582992 (R.I.Div.Tax.).

Even if the Petitioners had set forth some precedent, whereby, this Court should have given weight to Professor Pomp's policy perspective, much of his testimony supports the Department's position and the Court's ruling. In testifying, Professor Pomp agreed that one must look at the whole transaction to determine whether it is taxable, and that separate contracts do not cause separate transactions to exist. See e.g. (Hr'g Tr. 163:15 – 165:20) Specifically, Mr. Pomp agreed that when determining what is subject to sales tax, one must look at the whole transaction, and when that transaction involves both services and tangible personal property, one must determine what the object of the

whole transaction is, as opposed to breaking the transaction down into parts. (Hr'g Tr. 125:6 – 15, 149:24 – 153:3, 155:10 – 18) Mr. Pomp also agreed that if a customer enters into three contracts – one to purchase unassembled parts of a trophy for \$20.00, one to assemble the trophy for \$80.00, and one to engrave the trophy for \$10.00 – the *entire* transaction would be subject to sales tax. (Hr'g Tr. 163:15 – 165:20) In other words, the gross proceeds of the sale would be \$110.00, even though there were three separate contracts. Mr. Pomp reasoned that because the customer wants an engraved trophy, the object of the transaction is to get an engraved trophy. (Hr'g Tr. 165:18 – 24) Applying Mr. Pomp's reasoning here, because the customer wants to rent property for which he or she will not be liable for certain damage, the object of the transaction is to rent tangible personal property.

c. The Court Properly Elected Not to Follow the ALC's Decision in Alltel.

The Petitioners ask this Court to put greater emphasis on the ALC's ruling in Alltel Communications, Inc. v. S.C. Dept. of Revenue, 2015 WL 7681302 (S.C. Admin. Law Ct. Nov. 15, 2015). This Court's Order properly distinguished the facts in present matter from the facts in Alltel and properly chose not to follow Alltel. This Court's decision not to follow Alltel is proper for two reasons: 1) the facts in Alltel are distinguishable from the facts in this case; and 2) Alltel is based upon several errors of law and is, hence, currently under appeal. In Alltel, the taxpayer was in the business of selling wireless communication services and wireless communication devices. 2015 WL 7681302 *1. The taxpayer also offered its customers the option to add insurance coverage provided by an independent third-party insurance company to the wireless

communication device purchased by the customer. Id. The taxpayer remitted the fees that it collected for the insurance coverage to its insurance agent. 2015 WL 7681302 *2. The taxpayer's insurance agent then remitted those fees to the third-party insurance company, who paid premium taxes on those fees to the South Carolina Department of Insurance. Id.

The case at bar involves liability damage waivers, not insurance. In fact, the Waiver itself explicitly states that it is not insurance. Exhibit 3. The Waiver at issue here, allows the Petitioners to shift the risk of loss from the customer to the Petitioners. The insurance at issue in Alltel, allowed the taxpayer's customers to become additional insureds under the taxpayer's insurance policy, which allowed the customer to be reimbursed by the insurance company if the customer's device was lost, stolen, or damaged. 2015 WL 7681302 *5. The insurance policy also allowed the taxpayer's customer to have his or her device repaired, subject to paying a deductible. Id. Clearly, the Waiver at issue here is distinguishable from insurance.⁴ Additionally, in Alltel, the insurance premiums paid by the taxpayer's customer passed through the taxpayer to the third-party insurance company, who paid premium taxes on those fees. 2015 WL 7681302 *2. The ALC found that those fees passed through to the third-party insurance company, without any deduction by Alltel. 2015 WL 7681302 *16. In this case, however, the Petitioners kept the Waiver fee as payment for the service they provided to the customer and did not pay any tax on the fees they collected. (Hr'g Tr. 86:18 - 25) (discussing how the Petitioners record the revenue from the Waiver fees). Thus, while

⁴The Petitioners even admit that they do not insure their rental merchandise. (Hr'g Tr. 77:10 - 12)

the taxpayer in Alltel passed the fee it collected on to a third party, the Petitioners retained the Waiver fees they collected.

Nevertheless, even if the facts in this case were identical to the facts in Alltel, that decision is not applicable here because the court's analysis in Alltel is incorrect. In Alltel, the Court mischaracterized the issue as follows:

The principal question of law to be addressed is **whether the insurance coverage purchased by Alltel customers is "tangible personal property"** pursuant to S.C. Code Ann. § 12-36-60 such that the amounts collected by Alltel for the insurance coverage constitute "gross proceeds of sales" pursuant to S.C. Code Ann. § 12-36-90, therefore making them subject to sales taxation pursuant to the plain meaning of S.C. Code Ann. § 12-36-910.

2015 WL 7681302 *4 (emphasis added). The Court also stated that "[i]n order for the insurance coverage amounts collected by Alltel to be subject to sales tax, these insurance contracts must fit within the definition of tangible personal property under § 12-36-60." 2015 WL 7681302 *12. Clearly, the Court misunderstood § 12-36-910, which states that the sales tax is imposed on every *person* selling tangible personal property at retail in this State.

The Court in Alltel appears to have interpreted § 12-36-910 to mean that the sales tax is only imposed on tangible personal property and not also on services incident to the sale of such property. However, the Court should have determined whether Alltel was in the business of selling tangible personal property, and it should have looked at the *whole* transaction at issue – the sale of an insured wireless communication device – and determined what should have been included in the gross proceeds of that sale. If the Alltel Court had followed those steps, it would have determined that Alltel should have

included the insurance premiums in its gross proceeds of sales because the insurance premiums constituted value proceeding or accruing from the sale of the device. See § 12-36-90. Stated differently, but for the sale of the device, Alltel would not have collected the insurance premiums. See Meyers Arnold v. S.C. Tax Comm'n, 285 S.C. 303, 328 S.E.2d 920 (1985). Therefore, Alltel incorrectly interpreted § 12-36-910, and any reliance on the Alltel ruling is misplaced.

d. The True Object Test and South Carolina Case Law Supports the ALC's Order.

The ALC's Order in this matter is supported by both South Carolina case law and cases from other jurisdictions addressing gross proceeds of sales. Both Southeast Cinema Entertainment, Inc. v. S.C. Dep't of Revenue and Boggero v. S.C. Dep't of Revenue support the ALC's Order. See Southeast Cinema Entertainment, Inc. v. S.C. Dep't of Revenue, 2014 WL 2417715 (S.C. Admin. Law Ct. May 28, 2014) and Boggero v. S.C. Dep't of Revenue, 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015). While the Petitioners try to distinguish these cases, both cases support the ALC's ruling. A quote within Southeast Cinema succinctly demonstrates exactly why that case supports the ALC's Order in this case. The ALC in Southeast Cinema states "the Department argues the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to sales tax. This Court agrees with the Department." 2014 WL 2417715 *4. The Southeast Cinema Court found the trademark and theater at issue to be inextricably linked and, therefore, the entire amount charged is subject to sales tax. Id. at 6. Similarly here, the facts demonstrate, and this Court properly found, that the Waiver and Agreement are inextricably linked. The total amount charged to the Petitioners'

customers in conjunction with the rental of tangible personal property is subject to sales tax. That total amount charged includes the amount charged for the Waiver.

Similarly in Boggero, the Court of Appeals utilized the true-object test to determine whether the service of cleaning portable toilets had to be included in the gross proceeds of renting those toilets. 414 S.C. 277, 777 S.E.2d 842. The Court found the true object to be the rental of a toilet and because the cleaning and rental were a bundled transaction, the entire amount was subject to sales tax. Id. The Petitioners assert that this holding results because the cost of cleaning was not separately identified from the other charges. (Pet'rs' Mot. 12) The holding in Boggero does not support such limitation. The Court of Appeals applied the true-object test and determined taxability based upon that test. The Court of Appeals did not limit application of the true-object test to only those instances when the amounts in dispute are not individually stated. Nothing in the Boggero opinion supports the conclusion that the Court of Appeals would have ruled differently had the two amounts been stated independently.

The Petitioners' assertions regarding the applicability of the true-object test to only instances where the charge at issue is not separately delineated, is contradicted by other case law from the ALC. In Tronco's Catering, Inc., v. South Carolina Department of Revenue, the ALC addressed whether sales taxes for service, labor, and room charges separately stated for catering events needed to be included in the taxpayer's gross proceeds of sales. 2010 WL 5781622 (S.C. Admin. Law Ct. Apr. 12, 2010). The ALC agreed with the Department and included each of those items in the taxpayer's gross proceeds of sales, despite the fact they were separately stated. Id. In so holding, the ALC applied the Meyers Arnold "but for" analysis, as well as, the true-object test to each of

the line items in dispute. In applying the true-object test, the Court stated “[t]he true test then is one of basic purpose of the buyer.” Id. at 4. The basic purpose of the buyer in Tronco was to obtain food. The basic purpose of the buyer in the present matter is to rent merchandise. Because the Tronco case applied the true-object test to items that were separately stated, the Petitioners’ assertion that the true-object test only applies when the charges at issue are not separately stated, is incorrect and contradicted by this case law.

The Tronco case also contradicts the Petitioners’ assertion that the true-object test only applies to things that alter or improve the tangible personal property or are incorporated into the tangible personal property. (Pet’rs’ Mot. 13) In Tronco, catering customers could pay room charges for the service of using the taxpayer’s facility. 2010 WL 5781622 *7. The tangible personal property at issue in that case was catered meals. Tronco, 2010 WL 5781622 *3. The use of the room did not alter or improve the catered meal provided by the taxpayer, nor was the room incorporated into the catered meal. The ALC applied both the Meyers Arnold “but for” test and the true-object test and found the room charges to be taxable under both tests. Tronco, 2010 WL 5781622. Therefore, the Petitioners contention that the true-object test only applies in instances where the tangible personal property is altered or improved, is not supported by case law from the ALC.

Moreover, the facts in this matter clearly support the Court’s application of the true-object test. Here again, the Petitioners want this Court to buy into the fiction of there being two independent transactions, therefore, argue the true-object test should not be applied. As the Court properly found and the Department already addressed herein, there is only one transaction at issue. There is a bundled transaction involving the rental of tangible personal property and a Waiver. As this Court found here, and numerous other

courts have done facing similar facts, the true-object test applies in determining taxability. The Petitioners are in the business of renting tangible personal property, they are not in the business of selling waivers. A customer does not come into one of Petitioners' stores to just purchase a waiver. In fact, the undisputed evidence demonstrates a customer cannot come in Petitioners' store and simply purchase a waiver. (Hr'g Tr. 106:7 – 18; 115:12 – 21) When a customer rents an item and obtains a Waiver for that item from Petitioners, the true object of that transaction is, undoubtedly, the rental of the item. To find otherwise would be illogical, as it requires a customer coming in to Petitioners' store wanting just a waiver, which the customer cannot obtain without renting an item from Petitioners or an affiliate of Petitioners.

4. The ALC Properly Applied Travelscape and Meyers Arnold.

The Petitioners assert that the ALC misunderstood or misapplied the Travelscape and Meyers Arnold decisions, but such assertion is incorrect. Contrary to their assertion, it is the Petitioners and not the ALC who misunderstands Meyers Arnold. The Petitioners assert that the lay-away fees in Meyers Arnold were not optional. (Pet'rs' Mot. 15) This assertion is simply not correct; a customer could enter a Meyers Arnold store and purchase an item outright without incurring lay-away fees. That same customer had the option to purchase the item through lay-away. When a customer chose to utilize the option of purchasing an item on lay-away, that customer incurred a lay-away fee. The Court of Appeals found that when a customer utilized the optional lay-away program and incurred lay-away fees, that fee became part of the gross proceeds of the sale and, therefore, subject to sales tax. Meyers Arnold, 285 S.C. at 307, 328 S.E.2d at 923. Therefore, the Petitioners' assertion that Meyers Arnold needs to be analyzed in terms of

non-optional vs optional is simply not correct. Similarly here, a customer can rent an item without a Waiver or rent an item with a Waiver. When the customer chooses to include a Waiver, there is a fee, and that fee is included in the gross proceeds.

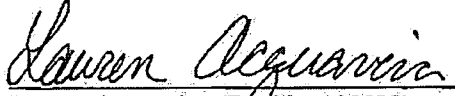
The Petitioners also assert that the ALC misunderstood or misapplied Travelscape, but the Petitioners fail to explain how they feel the ALC misunderstood or misapplied that decision. (Pet'rs' Mot. 15) To the extent the Petitioners intended to assert the Court in Travelscape made distinction between optional and non-optional fees, the decision in Travelscape makes no such distinction. In fact, the Court in Travelscape never even discusses whether the fees at issue were optional or not. Instead, the Court in Travelscape focused on the definition of gross proceeds of sales and held that "[b]ecause the cost of services is specifically included in the definition of gross proceeds of sales, we find the fees retained by Travelscape for its services are taxable as gross proceeds." 391 S.C. 89, 98, 705 S.E.2d 28, 33. Moreover, the holding of Travelscape would remain the same regardless of whether those service fees were optional or non-optional. Therefore the Petitioners' assertion that this Court misunderstood or misapplied Travelscape is incorrect.

CONCLUSION

For all of the foregoing reasons, as well as the arguments and analysis contained in the Department's Proposed Order, the Department asks that this Court deny the Petitioners' Motion and allow the Court's Order to remain unchanged.

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Respectfully submitted,



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Columbia, South Carolina

April 21, 2016

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

PROOF OF SERVICE

Don. W. Moore

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FILED

APR 28 2016

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Rent-A-Center East, Inc. and Rent Way,
Inc.,

Petitioners,

vs.

South Carolina Department of Revenue,
Respondent.

Civil Action No. 13-ALJ-17-0601-CC

**PETITIONERS' REPLY IN SUPPORT
OF THEIR MOTION FOR
RECONSIDERATION AND/OR TO
ALTER OR AMEND**

Petitioners Rent-A-Center East, Inc. ("RAC East") and Rent Way, Inc. ("Rent Way") (collectively, "Petitioners") hereby file this Reply in Support of their Motion for Reconsideration and/or to Alter or Amend (the "Motion").

I. Imposition Statutes Must be Construed in Favor of the Taxpayer and Against the Taxing Authority.

In its Response to Petitioners' Motion (the "Response"), the South Carolina Department of Revenue ("SCDOR") takes issue with Petitioners' contention that imposition statutes should be "narrowly construed" in favor of the taxpayer and against imposition of the tax. Response at pp. 5-6. However, the law is replete with cases that say that imposition statutes (unlike deduction or exemption statutes) are construed against the tax and in favor of the taxpayer. See Motion at pp. 4-5 and cases cited therein. Petitioners would submit that this cardinal rule necessarily means construing an imposition statute narrowly. In any event, it is clear, and SCDOR does not disagree (see Response at p. 6), that imposition statutes must be construed in favor of the taxpayer and against the taxing authority.

Additionally, SCDOR asserts that the imposition statute is not ambiguous. Petitioners agree. As is discussed in the Motion and in § II below, the imposition statute provides that the 5% sales tax is imposed on sales of tangible personal property and certain enumerated services. No service or intangible like the Waivers are included therein. See S.C. Code Ann. § 12-36-910; see also Motion at § C, pp. 6-7.

However, several of SCDOR's arguments regarding how the imposition statute should be interpreted would create an ambiguity in the statute such that the rules of statutory construction must be applied. For example, SCDOR argues that the imposition statute only imposes a tax on a class of parties (i.e. people in business of selling tangible personal property) as opposed to Petitioners' interpretation that it imposes a tax on the sale of tangible personal property and certain enumerated services. Response at pp. 7-8. The heading of the imposition statute supports Petitioners' interpretation as it states "Five percent tax on tangible personal property; laundry services, electricity, communication services, and manufacturer-consumed goods." S.C. Code Ann. § 12-36-910. To the extent SCDOR's interpretation that the sales tax applies to everything that a retailer of tangible personal property does is considered, the statute is at least ambiguous. SCDOR has also argued in the past that the "but for" test in Meyers Arnold should be applied here (although its Response does not focus on this as its Proposed Order did), which would similarly render the statute ambiguous. See Alltel Communications, Inc. v. S.C. Dept. of Rev., 2015 WL 7681302, * 19-20 (S.C. Admin. Law Ct. Nov. 13, 2015) (stating that "even if this Court were to agree with the Department on this point, however, the Department would not prevail because the statute would be rendered ambiguous and therefore inapplicable to Alltel).

If credence is given to these statutory interpretations by SCDOR, then the imposition statute is rendered ambiguous, and the rules of statutory construction must be applied. In this case, that means that the imposition statute must be construed in favor of the taxpayer and against the tax and that the words in the statute must be given their plain and ordinary meaning. See Motion at pp. 4-6 (for more in depth discussion of these issues).

II. The Imposition Statute Imposes a Sales Tax on the Sale of Tangible Personal Property and Certain Enumerated Services.

SCDOR claims that the imposition statute (S.C. Code Ann. § 12-36-910) only imposes a tax on a class of parties (i.e. people in the business of selling tangible personal property) and that one must look to the measure of tax statute (S.C. Code Ann. § 12-36-90, which defines "gross proceeds of sales") to determine which items are subject to tax (see Response at pp. 7-8.), as opposed to the imposition statute imposing a tax on the sale of tangible personal property and certain enumerated services as Petitioners contend.

However, as previously discussed, the title of the imposition statute clearly states: "Five percent tax on tangible personal property; laundry services, electricity, communication services, and manufacturer-consumed goods." S.C. Code Ann. §12-36-910. This confirms that the sales tax statute imposes the tax on the sale of tangible personal property and the services listed therein.

While the statute does also state that the sales tax is imposed on retail businesses selling tangible personal property, this simply addresses who is responsible for paying the sales tax (i.e. the retailer and not the purchaser). It does not mean that every service performed by a retail business selling tangible personal property is taxable, and SCDOR cannot argue otherwise. For example, SCDOR does not require an automobile repair shop selling parts at

retail, which are subject to sales tax, to pay sales tax on the retailer's labor charges to install those parts. See S.C. Code Reg. 117-313.3 (providing that "charges for installation incident to the sale of tangible personal property" that are "separately stated from the sales price of the property" if documented as to "the reasonableness of such labor in relation to the sales price of the property" are not subject to sales tax). This regulation recognizes that the labor to install tangible personal property is not subject to sales tax as that service could be performed by the purchaser or another service provider, neither of whom would be subject to sales tax. Alltel, 2015 WL 7681302, * 21.

Moreover, SCDOR's promulgation of this regulation is only permissible because it is consistent with the plain meaning of the imposition statute, (i.e. S.C. Code Ann. § 12-36-910, which lists as taxable only certain enumerated services and which list does not include the services of auto retailers) as well as the measure of tax statute (i.e. S.C. Code Ann. § 12-36-90, which defines gross proceeds as "the proceeds from the sale of tangible personal property without any deduction for . . . the cost of labor[] or service"). See Alltel, 2015 WL 7681302, * 21 (as to consistency with S.C. Code Ann. § 12-36-90). If labor or services accompanying the sale of tangible personal property were always subject to tax under the imposition statute or prohibited from being deducted under the measure of tax statute, then this regulation would be unenforceable as "the Department has no authority to exempt by regulation from taxation that which the General Assembly has included in the tax base by statute." Id. at 21-22 (citing Home Medical Systems, Inc. v. S.C. Dept. of Rev., 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009) and Goodman v. City of Columbia, 318 S.C. 488, 490, 458 S.E.2d, 531, 532 (1995) ("Regulations authorized by the Legislature have the force and effect of law.' Nonetheless, a regulation may not alter or add to a statute")). Under SCDOR's interpretation, even a

veterinarian's services would be taxable if he sold dog food, leashes and collars at his office. The statute should not be interpreted to reach such an absurd result.

Additionally, if the statute only imposed sales taxes upon retailers of tangible personal property, then it would not cover service providers such as those providing laundry services or supplying electricity or communications, which the statute clearly states are taxable services. Thus, the statute is more logically construed to mean that the seller must pay the sales tax, and that tangible personal property and the services set forth therein are the items that are subject to the sales tax. S.C. Code Ann. § 12-36-910. On the other hand, the gross proceeds of sales statute is instructive as to the amount or measure of the base of the tax not as to which items are subject to sales tax. S.C. Code Ann. § 12-36-90.

III. Petitioners' Tax Policy Arguments are Instructive and Consistent with Case Law.

SCDOR's Response appears to say that Professor Pomp's testimony regarding tax policy is not relevant or binding on the Court. Response at pp. 9-10. Petitioners, of course, agree that his testimony is not binding; however, it is extremely instructive and gives valuable context and background to the Court on issues such as (1) why imposition statutes are construed in favor of taxpayers, (2) why a court should not reach a measure of tax statute if no imposition statute has been triggered, (3) how to evaluate bundled transactions, and (4) when to apply the true object test. This testimony is also consistent with the many cases cited in Petitioners' Motion. See Motion at pp. 4-5 (as to imposition statutes), 8-9 (as to imposition and measure of tax statutes issue) and 10-13 (as to bundled transactions and the true object test).

Additionally, SCDOR continues to misunderstand and misapply Professor Pomp's testimony on the trophy example. Response at pp. 9-10. Once assembled and engraved (but prior to sale), the trophy has been altered or improved such that the services are embodied in the tangible personal property, and, thus, the transaction is bundled and cannot be separated out. In other words, if a customer desires to purchase that trophy, the services of assembly and engraving are no longer optional. In contrast, the Waiver at issue here is never bundled with or embodied in the rental/sale of the tangible personal property. It remains a separate and distinct item of value that is, at all times prior to and after purchase, entirely optional and separable from the rental of property.

IV. Alltel is Instructive and Properly Interprets S.C. Code Ann. § 12-36-910.

SCDOR contends that the ALC should not look to or rely upon Alltel because the facts are different and because it contains errors of law and is on appeal. Response at p. 10. To the contrary, Alltel contains very similar facts to this case and properly interprets and applies the law.

The ALC in Alltel found that the imposition statute did not impose a tax on the service of providing insurance to its customers. Alltel, 2015 WL 7681302, *16-27. SCDOR asserts that the ALC misstated the issue as "whether the insurance coverage purchased by Alltel customers is 'tangible personal property' pursuant to S.C. Code Ann. § 12-36-60 such that the amounts collected by Alltel for the insurance coverage constitute 'gross proceeds of sales' pursuant to S.C. Code Ann. § 12-36-90, therefore making them subject to sales taxation pursuant to the plain meaning of S.C. Code Ann. § 12-36-910." Response at p. 12 (quoting Alltel, 2015 WL 7681302, *12) (emphasis added by SCDOR). This is, in fact, exactly the issue in Alltel, and a similar issue is before the ALC in this case, namely whether the Waivers

are either tangible personal property or an enumerated service under the imposition statute such that they are subject to sales tax. See Motion at § C, pp. 6-7 (for full discussion).

As previously stated, SCDOR mistakenly argues that the sales tax is imposed on retailers of tangible personal property for everything they do and asserts that "the sales tax is also imposed on services incident to the sale of such property" (i.e. tangible personal property). First, the imposition statute has no such language and cannot be interpreted to impose a sales tax on all services incident to sales of property as this would be illogical and inconsistent with the relevant tax statutes, regulations and case law. See supra §II.

Additionally, the Waiver fee (unlike the lay away fee in Meyers Arnold) is not a service fee incident to the rental of tangible personal property. See Myers Arnold v. S.C. Tax Comm., 285 S.C. 303, 307, 328 S.E.2d 920, 923 (Ct. App. 1985) (stating that "[t]he fees are obviously charged for the service rendered in making lay away sales"). No services, such as maintenance, warranty or financing, for example, are performed under the Waiver incident to the rental of property. Instead, an intangible waiver of liability or forbearance is provided in the event the rental property is lost or damaged. Stated differently, Petitioners are agreeing not to take action if the rented items are lost or damaged. This is not a service but rather is an intangible right held by the customers. Because only the sales of tangible personal property and the services specifically identified in § 12-36-910 are subject to sales tax, the Waivers at issue are not subject to tax.¹

¹ The code defines tangible personal property to include "personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses" as well as "services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter." S.C. Code Ann. § 12-36-60. The sale of something akin to a Waiver, whether it be a service or an intangible, would not be subject to tax as no such service or intangible is set forth as "subject to tax under this chapter." S.C. Code Ann. § 12-36-60.

V. The True Object Test is Not Applicable Here.

As set forth in the Motion, the "true object" test is used where a bundled transaction exists (i.e. where the transactions at issue are inextricably linked), and the court must examine the "true object" of the transaction (i.e. whether the true object is the sale of tangible personal property or the sale of a service) to determine if it is subject to sales tax. See Motion at p. 12 (citing Boggero v. S.C. Dept. of Rev., 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015); and Tr. 149:24- 150:9 (Petitioners' tax policy expert explaining that where you have one integrated transaction with two elements, the true object test seeks to determine "which elements are going to dominate and control how we characterize the transaction")). A simple example would be an attorney providing a will. The paper containing the will also embodies the services of the attorney so the services and tangible personal property are inextricably linked. The true object test would ask whether the object of the transaction is to obtain the services of the attorney or the piece of paper. The answer is that the client is seeking to obtain the services of the attorney and that the paper is incidental.

However, where the service and the tangible personal property are not inextricably linked, the true object test should not be applied. Motion at pp. 10-12. SCDOR does not address or otherwise appear to dispute this. Its only comment on Southeastern Cinema Entertainment v. S.C. Dept. of Rev., 2014 WL 2417715, slip op. at p. 2 (S.C. Admin. Law Ct. 2014), which Petitioners cited in support of this proposition, was that it supported SCDOR's position that the Waiver proceeds were taxable because the ALC found the trademark and theater to be inextricably linked with no showing of separation and thus the entire amount was subject to sales tax. Response at p. 13. That "inextricable link," however, is exactly what is missing in this case. In Southeastern Cinema, the ALC found an

"inextricable link" because the purchase agreement, which covered both the theater and the trademark, did not itemize the cost of the two items (Southeastern Cinema, 2014 WL 2417715, * 5) and because the IMAX theater could not be used without the trademark license such that the trademark was inextricably linked to or embodied in the purchase of the system. Id. at 6. Such is not the case here. The Waiver is separately itemized on the customer's receipt, and the rented item can be used without the Waiver. Thus, the true object test need not be applied because the Waiver is not inextricably linked to the rented property.

SCDOR also states that Petitioners have argued that the true object test is only applicable where the "charge at issue is not separately delineated." Response at p. 15. SCDOR then cites Tronco's Catering, Inc. v. S.C. Dept. of Rev., 09-ALJ-17-0089-CC (Admin. Law Ct. April 12, 2010) in support of its contention that separate charges are not determinative as in Tronco's, the charges of a catering company for providing a catered meal (which included both tangible personal property (the meal) and services (the preparation of the meal, serving the meal and use of a room)) were separately delineated, and the ALC still held them to be taxable. Id.

Petitioners agree that separate charges are not necessarily determinative and have not argued otherwise. However, separate charges are certainly one factor in determining whether there is an inextricable link between the tangible personal property and the service. While the charges were separately delineated in Tronco's, the ALC found that "the service of the meal, the labor associated with it, and the room used for service of the meal are inseparable from the sale of the catered meal. In other words, the service, labor, and room charges incident to the sale of a catered meal merely enhances its value." Id. at 7 (emphasis on "inseparable" added, emphasis on "enhances" in original). This makes perfect sense as you cannot have a catered

meal without having someone prepare and serve it as well as having a place to serve it, thus, those services are necessary and enhance the value of the tangible personal property. Thus, the ALC concluded that there was an inextricable link.

The key here is whether the Waiver and the rented property are inextricably linked. Tronco's and the other cases cited in Petitioners' Motion show that the factors to consider in making that determination include, but are not limited to, whether the charges are separately delineated; whether the service is optional; whether the service allows the property to be used or enhances the value of, alters or is otherwise embodied in the tangible personal property. Motion at pp. 10-13. Because the charge for the Waiver is separately stated, the Waiver is optional, the property may be used without the Waiver, and the Waiver does not enhance the value of or alter the rented property and is not otherwise embodied in the rented property, no inextricable link exists here.

VI. Travelscape and Meyers Arnold Do Not Support a Finding that the Waivers are Subject to Sales Tax.

SCDOR asserts that Travelscape and Meyers Arnold support its position that the Waivers are subject to sales tax, and it claims that Petitioners misunderstand these cases. Response at pp. 16-17. As to Travelscape, SCDOR claims that Petitioners failed to explain in the Motion how that case was misunderstood or misapplied by the ALC. Response at p. 17. However, Petitioners did, in fact, address this and asserted that that the ALC should have found that Travelscape supports Petitioners' position and not SCDOR's because the fee at issue in Travelscape was mandatory² and was an improper attempt by the taxpayer to deduct a cost

² Travelscape involved a service facilitation fee that was added to the purchase of booking an online hotel reservation. Travelscape, 391 S.C. at 95, 705 S.E.2d at 31. Although SCDOR is correct that the Court does not use the word "mandatory" to discuss this fee, the facts of the case establish that it was charged on all room bookings and was not optional (which makes perfect sense). Id.

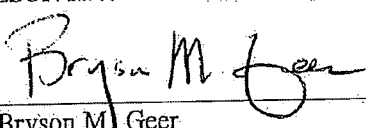
of service, unlike the charges for the Waivers here, which are optional and are not a cost of service. Motion at p. 15; see also Travelscape, LLC v. S.C. Dept. of Rev., 391 S.C. 89, 705 S.E.2d 28 (2011). SCDOR also argues that whether the fee is optional or mandatory is irrelevant because the Travelscape service charge would have been subject to tax even if it was optional. Response at p. 17. This could very well be true because optional versus mandatory is only one of the factors to be considered and because the fee was determined to be a cost of service (i.e. cost of service for booking the online hotel reservation), which cannot be deducted from gross proceeds of sales. See Travelscape, 391 S.C. at 97-98, 705 S.E.2d at 32-33 and S.C. Code Ann. § 12-36-90.

Similarly, SCDOR argues that the lay away fees in Myers Arnold are optional and that once the customer made the lay away purchase, those proceeds became part of the taxpayer's gross proceeds of sales. Response at p. 16. Petitioners still contend that the lay away fees were mandatory in that case in order to make a lay away purchase. See Motion at p. 15. However, as in Travelscape, the key to the Myers Arnold holding was the determination that the lay away fees were a cost of service. Myers Arnold v. S.C. Tax Comm., 285 S.C. 303, 307, 328 S.E.2d 920, 923 (Ct. App. 1985) (finding lay away fee subject to tax because it was a fee "charged for the service rendered in making the lay away sales" and citing the former gross proceeds of sales statute which prohibits "any deduction for service cost"). The Waiver fees at issue here are neither mandatory nor, more importantly, a cost of service, and, thus, Travelscape and Myers Arnold do not support a finding that the Waivers are subject to sales tax but instead support Petitioners' position that they are not subject to tax.

CONCLUSION

For the reasons set forth in their Motion and herein, Petitioners respectfully request that the ALC reconsider and alter or amend its Order to find that the Waivers at issue are not subject to sales tax.

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Charleston, South Carolina
April 28, 2016

FILED

APR 28 2016

SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Rent-A-Center East, Inc. and Rent Way, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

PETITIONERS' REPLY IN SUPPORT OF THEIR MOTION FOR
RECONSIDERATION AND/OR TO ALTER OR AMEND

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Donna Horn
Administrative Assistant

April 28, 2016

FILED

APR 28 2016

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 13-ALJ-17-0601-CC

Rent A Center East, Inc.,)

Petitioner,)

v.)

South Carolina Department of)
Revenue,)

Respondent.)
-----)

COPY

ADMINISTRATIVE HEARING

Thursday, September 24, 2015

9:59 a.m. - 3:53 p.m.

Friday, September 25, 2015

10:06 a.m. - 11:58 a.m.

The hearing before the Honorable H. W. Funderburk, Jr., was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 24th and 25th days of September, 2015, before Mary H. Occhipinti, Court Reporter and Notary Public in and for the State of South Carolina.



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(The original exhibits were retained by the Court.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.



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1 THE COURT: Good morning ladies and gentlemen. I'm
2 Judge Funderburk. We're here today for a
3 contested case initiated by a Petitioner, Rent-
4 A-Center East, against the South Carolina
5 Department of Revenue. The case number is 13-
6 ALJ-17-0601-CC. Originally there were two
7 cases, this one and 13-ALJ-17-0602-CC. They
8 were consolidated by the Order of this Court
9 with consent of the parties on June 9th, 2015.
10 This morning I believe the Petitioner is
11 represented by John von Lehe, is that correct,
12 and Bryson Geer?

13 MR. VON LEHE: That is correct, Your Honor.

14 MS. GEER: Yes, Your Honor.

15 THE COURT: All right. And Respondent, Sean Ryan
16 and Lauren Acquaviva.

17 MR. RYAN: Good morning, Your Honor.

18 MS. ACQUAVIVA: Good morning.

19 THE COURT: All right. Now, we've got, first off,
20 this is a contested case concerning the
21 imposition of sales tax on Petitioner's sale of
22 liability damage waivers, is that correct?

23 MR. VON LEHE: Yes, sir.

24 THE COURT: Now, we've got several things pending.
25 And is there any preference about how we would



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1 like to proceed this morning?

2 MR. VON LEHE: No, sir.

3 MS. ACQUAVIVA: Your Honor, if I may, I'm Lauren

4 Acquaviva on behalf of the Department. The

5 Department submitted it's Motion for Summary

6 Judgment, and then as part of our reply to

7 Petitioner's Response to the Department's

8 Motion, we also included a Motion to Exclude

9 Professor Pomp's , supporting Affidavit and

10 reports, and then Exhibit "E", which that issue

11 has been withdrawn and it's been cleared up.

12 The Department would prefer to address the

13 substance of the Summary Judgment Motion first,

14 and allow the parties to go back and forth on

15 that, and then address the Motion to Exclude

16 Professor Pomp's Affidavit subsequent to that,

17 if that is okay with Your Honor, and then take

18 up the Motion in Limine as part of the pre-

19 trial motions.

20 THE COURT: Okay.

21 MS. ACQUAVIVA: If that makes sense?

22 THE COURT: Is that satisfactory?

23 MR. VON LEHE: That's satisfactory, Your Honor.

24 THE COURT: All right. Then we'll go with that

25 sequence. So we'll start with the Department's



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1 Motion for Summary Judgment.

2 MS. ACQUAVIVA: Thank you, Your Honor. Good
3 morning. As I stated, my name is Lauren
4 Acquaviva. This is my co-counsel, Sean Ryan,
5 and together we represent the Respondent, South
6 Carolina Department of Revenue, in this matter.
7 We're here this morning on the Department's
8 Motion for Summary Judgment. As the Department
9 stated in its initial Motion and in its Reply,
10 there are no material facts in dispute in this
11 matter. In brief, or as brief as possible, the
12 undisputed facts are as follows: the Department
13 conducted an audit of both Petitioners in this
14 case. There is Rent-A-Center East, and in that
15 audit, the audit period was from April 1st,
16 2007 through October 31st, 2010. The second
17 Petitioner is Rent Way, and the audit period
18 for Rent Way was April 1st, 2007 through
19 December 31st, 2009. For purposes of this
20 Motion, and obviously my understanding for the
21 rest of the hearing, we're going to refer to
22 Rent Way and Rent-A-Center East as Petitioners
23 or taxpayers together, because the facts are
24 substantially the same. So during the
25 respective audit periods, the Petitioners



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1 operated retail stores in South Carolina and
2 rented and sold tangible personal property.
3 That property included durable consumer goods
4 such as electronics, appliances, furniture,
5 televisions and computers. A customer who
6 wanted to rent an item from one of the
7 Petitioners would enter into a Consumer Rental-
8 Purchase Agreement with that Petitioner. The
9 Agreement set forth or contained, among other
10 things, the rental term which could be monthly,
11 semi-monthly or weekly. The customer would
12 essentially, the customer and Petitioner, would
13 choose which term they wanted. It set forth
14 the amount of the initial rental payment, the
15 amount of the renewal rental payment, and it
16 also contained other charges which include the
17 liability damage waiver. And for purposes
18 going forward, I'm just going to refer to the
19 liability damage waiver as a waiver. The
20 Petitioners did not require a customer who
21 rented property from them to continue renting
22 the property past the initial term. Instead,
23 the Rental-Purchase Agreement terminated at the
24 end of the initial term, unless the customer
25 exercised his option to renew the Rental-



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1 Purchase Agreement beyond that initial term,
2 for as many terms as the customer would like,
3 up until the acquired ownership of the
4 property. So, for example, if the customer
5 chose a weekly term, and the entire Rental-
6 Purchase Agreement stated that after 52 weeks,
7 or 52 payments, the customer acquired ownership
8 of a television, for example, at the end of
9 that first week the customer makes its initial
10 payment. At the end of the first week or term,
11 the Rental-Purchase Agreement terminates. Then
12 if the customer wants to continue renting the
13 television, they make a second payment, and
14 that continues for a second week or another
15 term, and so on and so forth. Or the customer
16 can say, I don't want this television anymore
17 after week one. I'm returning the television
18 to one of the Petitioners, and the term is
19 over, the contract is over. Additionally, once
20 a customer makes all of their rental payments,
21 so again as using my example of 52 weeks, if
22 the customer makes all 52 payments, they would
23 acquire ownership of that television. The
24 Petitioner has also allowed the customers to
25 exercise what they call an early purchase



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1 option that could shorten the duration of the
2 Rental-Purchase Agreement. So instead, a
3 customer could come in at week 30, for example,
4 and satisfy the remaining 52 weeks, what would
5 be 22 weeks, and purchase the TV instead of
6 having to continue weekly payments for the
7 remaining 20 weeks or 22 weeks. The Rental-
8 Purchase Agreement stated that the customer was
9 responsible for the fair market value of the
10 property if and as of the time it was lost,
11 stolen, damaged or destroyed. However, for an
12 additional monthly fee, the Petitioners offered
13 a waiver to its customers. The cost of the
14 waiver was calculated based on a percentage of
15 the rental payment. And, essentially, what the
16 waiver did was take the liability from the fair
17 market value away from the customer. So
18 without the waiver, the customer is responsible
19 for the fair market value of the item if it is
20 damaged or destroyed. With the waiver, the
21 customer will no longer be responsible for that
22 fair market value. Instead, the Petitioner
23 essentially accepts responsibility for the fair
24 market value, if a certain event occurs. And
25 those types of events are things like the item



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1 is damaged or destroyed through lightening,
2 fire, smoke, wind storm, theft or flood. So
3 the waiver doesn't cover the customer dropping
4 the TV and damaging it, that's separate, but
5 the customer was going to be responsible for
6 that no matter what. But regarding the waiver
7 and the Petitioner's willingness to waive the
8 customer's liability for the fair market value
9 of the item, the Petitioner has required that
10 the customer pay all periodic rental payments,
11 including the liability waiver fee, through the
12 date of loss, otherwise they would not be
13 covered. Additionally, if the customer stops
14 paying his rental payment, but maybe tries to
15 continue paying for the waiver, the waiver
16 expires if the customer stops making the rental
17 payment for that item. Moreover, the optional
18 liability waiver provision explicitly stated
19 that this optional liability waiver provision
20 is an additional part of the rental agreement.
21 So if a customer didn't have a waiver and the
22 property was damaged prior to making all of the
23 rental payments, because at that point they
24 would acquire ownership, the customer would be
25 responsible for the fair market value of the



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1 property. If the customer had a waiver and the
2 item was damaged pursuant to one of the covered
3 events, the customer would be relieved of
4 having to pay the fair market value of the
5 property and instead the Petitioners accept --
6 they take that loss. They are not going to get
7 the fair market value paid by the customer.
8 During the periods at issue, there are two
9 types of transactions that took place. The
10 simpler, more straight forward transaction, is
11 where the customer rented an item from
12 Petitioners and purchased the liability waiver
13 during the initial contract. That was --
14 that's one transaction. The other type of
15 transaction that occurred during this -- the
16 audit period, was when the customers came in
17 and purchased the waiver at some point later in
18 time. So, for example, a customer comes in,
19 they entered into a weekly term, and they just
20 are making the rental payments. They say, I
21 don't want the waiver. Four weeks later they
22 come in and they want to renew the contract,
23 which would essentially be starting a new
24 transaction, as every week is a new
25 transaction. So during that fourth week they

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1 come in, they want to continue renting the
2 item, and now they want to add the waiver. So
3 that transaction is similar to the first type
4 of transaction I just discussed, except it's
5 happening at week four or week 30 and so on.
6 So applying the law issue to those undisputed
7 facts, the Department is entitled to judgment
8 as a matter of law. The law in this case is as
9 follows: the relevant statutes are Section 12-
10 36-910, and that statute imposes a sales tax of
11 five percent on the gross proceeds of sales on
12 anyone and everyone engaged or continuing
13 within this State who sells tangible personal
14 property at retail. Clearly, the Petitioners,
15 by renting tangible personal property to
16 customers, are engaged in selling tangible
17 personal property at retail, because the term
18 selling includes rental as well. The next
19 statute at issue then becomes the definition of
20 gross proceeds of sales which is 12-36-90. The
21 gross proceeds of sales means the value
22 proceeding or accruing from the sale, lease or
23 rental of tangible personal property. Here, as
24 I've stated, there are two different types of
25 transactions at issue, but they're essentially



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1 the same. So when we look at the transaction,
2 which is the rental of property and the
3 purchase of a waiver, clearly the entire
4 transaction, which includes the waiver, the
5 proceeds from the waiver, constitutes value
6 proceeding or accruing from the transaction,
7 the rental of the tangible personal property.
8 Additionally, 12-36-90 goes on to state that
9 gross proceeds of sales includes proceeds from
10 the sale of tangible personal property without
11 any deduction for it. And it lists various
12 items, such as the cost of service, other
13 expenses, cost of goods sold, interest, losses,
14 etcetera. Here the waiver is an incidental
15 service or benefit to the rental of the
16 tangible personal property and the taxpayers or
17 Petitioners cannot deduct that cost. It is
18 includable under gross proceeds. And this
19 analysis is supported by the Court of Appeals
20 decision in Meyers Arnold, where the Court set
21 forth a "but for" test to explain what value
22 proceeding or accruing means. And in Meyers
23 Arnold, the Court stated that if but for the
24 rental of tangible personal property, the
25 taxpayer would not receive proceeds from the

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1 service, benefit, fees, whatever it is, that
2 service benefit or fee is included in gross
3 proceeds of sale and therefore subject to tax.
4 Applying that logic to the facts at issue in
5 this case, it's clear that the waiver fees
6 should be includable in gross proceeds of sales
7 and subject to tax. Because but for the rental
8 of durable consumer goods, the Petitioners
9 would not receive proceeds from the waiver
10 fees. And, therefore, when applying the law to
11 the facts in this case, the Department
12 respectfully submits to this Court that we are
13 entitled to judgment as a matter of law and
14 would ask that you grant our Motion for Summary
15 Judgment.

16 THE COURT: Thank you.

17 MR. VON LEHE: Your Honor, may we respond?

18 THE COURT: Please.

19 MR. VON LEHE: Your Honor, of course it's always
20 amazing how differently people see facts, but
21 we certainly do not agree that the material
22 facts are not in dispute in this case. Without
23 going back through the well presented
24 presentation that counsel just gave, without
25 going back through all of it, I'd like to point



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1 to some of the things which are in the
2 materials in front of you, the -- most
3 particularly to the Response of the Department
4 of Revenue in their Reply to Petitioner's
5 Response in Opposition to Respondent's Motion
6 for Summary Judgment. Basically, what this is,
7 is the Department of Revenue's response to say
8 that there are no material facts in issue.
9 This is basically, among other things, an
10 argument of law, but primarily this is the
11 purpose of this document that they've sent it.
12 So it might be easier, so far as examining the
13 facts that we believe, the material facts that
14 are in dispute, to look at their list of so-
15 called undisputed facts and why they say that
16 these facts are not disputed. The first one
17 that they put forward, they say Petitioners,
18 that's us, state that they dispute the fact
19 that the Rental Agreement sets forth certain
20 terms of that Agreement and other charges
21 including the waiver. Petitioners argue, we
22 argue, that a more accurate description would
23 be that the waiver sets forth the waiver fee
24 and the Rental-Purchase Agreement simply
25 references the fee that would be charged if the



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1 customer chooses the waiver. This is then
2 characterized as semantics. These are not
3 semantics, these are facts. This Rental-
4 Purchase Agreement does set forth terms of the
5 waiver, but as Your Honor will learn as the
6 trial goes on, that there's a reason for that,
7 and that is to comply with the Consumer
8 Protection laws. But it is the waiver that
9 sets forth the facts of the waiver, even though
10 they are mirrored in the Rental-Purchase
11 Agreement. So I would say our dispute with
12 that is, we see it as an incomplete factual
13 statement. It's a factual statement which
14 would tend to sway the Court's judgment in a
15 way that we think don't support the facts of
16 the case. Secondly, they say that the damage,
17 that the waiver -- Petitioners' assert that the
18 Department incorrectly stated the following in
19 paragraph nine of their Motion for Summary
20 Judgment. A damage waiver cannot be purchased
21 without simultaneously renting an item. Now,
22 they have clarified that and come back and say
23 that they don't state that this is a fact of
24 the case at bar, but rather they are
25 paraphrasing the facts set forth in the Rhode

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1 Island Court decision. And that may well be,
2 as of receiving this of yesterday or whenever
3 we got it, but it does bring up the question
4 of, why state the facts in this Rhode Island
5 case, which are inconsistent with the facts in
6 the matter before you? Certainly there's no
7 question, as she mentioned a moment ago, that
8 this waiver can be added during the term. We
9 reached the question of, in number three, they
10 say, the Department does not dispute, as
11 Petitioners suggest, that a customer could rent
12 a durable consumer good from Petitioner and
13 then purchase the waiver from an affiliate of
14 the Petitioners or vice-versa. All right.
15 This is something that we received yesterday
16 and it is a new statement of fact. It is
17 accurate. However, they go on to say about
18 this that -- and by the way, just to repeat on
19 this for a moment, because this is a situation
20 in which someone would purchase -- excuse me,
21 would enter into a Rental-Purchase contract in
22 one state where, say, Petitioners operate, then
23 they could -- would move to another state, this
24 is in testimony deposition which is before the
25 Court, then they would move to another state

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1 where they would get a waiver which they did
2 not get originally. That the Department agrees
3 that now that that can in fact be done.
4 However, they add on that, because no
5 transactions involving the aforementioned facts
6 occurred during the period at issue, these
7 facts are not relevant. There's nothing in the
8 record that indicates that this did not occur.
9 There's nothing to base that upon. We dispute
10 that. We dispute that. We didn't keep records
11 on that because we would have to go to
12 individual stores to make that determination,
13 but there's certainly nothing in this record
14 that says that that did not occur. So that is
15 disputed. They say in number -- these do get
16 a bit stronger, Your Honor, by the way, in my
17 judgment, they say in item number four,
18 Petitioners assert that the question as to
19 whether the waiver constitutes value proceeding
20 or accruing from the sale, lease or rental of
21 tangible personal property constitutes a
22 question of fact. To the contrary, whether the
23 waiver constitutes value proceeding or accruing
24 from the rental of the durable consumer goods
25 is clearly a question of law. Of course, this



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1 is a question of fact versus whether something
2 is a question of law or a question of fact
3 that's been debated for generations of lawyers.
4 There's no question about that, certainly it
5 has been. But we believe this is a question of
6 fact as to whether or not this waiver has added
7 any value to this television set. And it has
8 not, as you will see later today. And I'm
9 going to assume that testimony will be
10 consistent with the depositions, to see whether
11 the Tax Commission or the Department, excuse
12 me, I'm living in the past, you will see where
13 the Department of Revenue's witnesses do
14 believe that it does add value. It does not
15 add value, that's a disputed fact. The value
16 proceeding, as I read this, it says, and I'm
17 still on the same point, the Department does
18 dispute, however, that the waiver did not
19 constitute the value proceeding or accruing
20 from the rental of the television. It's kind
21 of a double negative there, but the Department
22 -- I'm not sure I could do any better with it,
23 but it says 'the Department does dispute,
24 however, that the waiver did not constitute the
25 value. The waiver didn't constitute value



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1 proceeding or accruing from the rental of the
2 television. I'm reading that to mean a waiver
3 does constitute -- they dispute, excuse me,
4 they allege the waiver does constitute value
5 the proceeding from the rental agreement. That
6 the waiver does constitute value proceeding
7 from the rental. Well, we dispute that. The
8 waiver does not constitute value proceeding
9 from the rental agreement, the waiver is
10 completely separate from the rental agreement
11 for a separate price. It is not a value
12 proceeding from the rental agreement at all.
13 As a matter of fact, that's one of the main
14 things this case is all about. And we dispute
15 that as a fact, and so we believe it is a key
16 fact, and we dispute it. You can -- the rental
17 agreement stands on its own as we will argue.
18 The waiver agreement stands on its own. When
19 you rent this property, it has nothing to do
20 with this waiver unless you pay an additional
21 charge to get this waiver. So the rental
22 agreement, that is to say the rental of
23 tangible personal property upon which the sales
24 tax is imposed, this rental agreement, and the
25 funds received for the renting of this



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1 property, they do not constitute the same
2 charge as the waiver. It is the waiver charge
3 for the waiver that constitutes the value for
4 the waiver, not the Rental-Purchase Agreement.
5 So that's a disputed fact. We go on to number
6 five. It's says -- they say look, they don't
7 dispute the fact that there are two agreements.
8 Obviously, there are two pieces of paper, Your
9 Honor, so they don't dispute that. There are
10 two pieces of paper, as I understand this, but
11 they don't dispute the fact that the two
12 agreements existed. But they go on to say
13 there's only one transaction at issue. They
14 state that at the bottom of their facts on page
15 four. "Though the Petitioners separately
16 stated the two fees, only one transaction is at
17 issue." This fact is not accurate. There are
18 two transactions at issue, not one. So we
19 believe this fact is disputed, highly disputed.
20 And they restate that again on page seven, just
21 simply another statement on page seven. The
22 rental transaction and the rental of the
23 durable customer goods and the purchase of the
24 waiver constitute one transaction. We dispute
25 that. There are two transactions from a

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1 factual standpoint, not one transaction. In
2 item number six in which they state -- pardon
3 me, Your Honor, that's also included in their
4 item number five. But this is the fact,
5 finally whether or not the waiver was an
6 expense or cost of service, that is of the
7 Rental-Agreement I've implied, to Petitioners
8 is a question of law. We don't agree with
9 that. This is a question of fact. Was this
10 waiver charge an expense of the costs of the
11 rental agreement. That is a question of fact,
12 and is one of the most highly disputed facts in
13 this case. The -- our factual proof, which you
14 will hear from our witness later, is that this
15 waiver is not a cost or expense of the rental
16 agreement. That is a disputed fact. So then
17 we get -- then we also, in this area of facts
18 which are disputed, this sort of -- that
19 concept kind of dovetails into some of the
20 arguments which have been made about the Meyers
21 Arnold case, which is the controlling or a
22 controlling case in this area. There's a
23 statement in their Reply here, that there's a
24 slight variation, that this case before Your
25 Honor is a slight variation from the facts of



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1 the Meyers Arnold case. This shows a vast
2 disparity in our view of the facts and their
3 view of the facts. This case is significantly
4 different from Meyers vs. Arnold. And one of
5 the reasons it is, is back to this, was this
6 waiver a cost of service of not, which, of
7 course, our argument is and we'll show you the
8 facts that it was not. And then we get to
9 these other facts, which we hope to prove, Your
10 Honor, that today we will learn that from your
11 ruling later. Obviously, we know they are
12 making a Motion to exclude testimony of our
13 expert witness, but he will, as his report
14 shows, which has been presented to the Court,
15 he will be a factual witness who will testify
16 about tax policy as accepted throughout the
17 jurisdictions throughout the country, their
18 testimony concerning that tax policy is
19 admissible to the Court. Of course, they will
20 argue that he's making legal arguments, we
21 argue differently. We believe he's saying he's
22 here to aid the Court in making factual
23 determinations. But there are a number of
24 facts set forth in his report that pertain to
25 things that are relevant to this case, like the



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1 purpose of sales taxes versus income taxes,
2 like what is a mixed transaction and when is it
3 better separated. What is -- what are the
4 facts that are associated with the object of
5 the transaction rule. All these things will
6 create arguments from both Petitioners and
7 Respondent. So, Your Honor, we certainly
8 believe that this is a highly factual case.
9 That we have -- that we do have disputes over
10 these facts, and it's not a matter of a case in
11 which facts are not disputed. Going on to, for
12 a moment, with regard to the Motion for Summary
13 Judgment, and to put some of our view of the
14 law before you, Your Honor, as they put theirs
15 a moment ago, that the legal issues before the
16 Court -- of course, the primary legal issue is
17 going to be whether or not the waiver is
18 taxable as a part of the gross proceeds of
19 sale, is going to be the legal issue before the
20 Court. They say it is, we say it isn't. And
21 this is an imposition section, this gross
22 proceeds section, is an imposition section.
23 And the South Carolina Courts, as well as
24 courts across the country, have ruled that when
25 you are attempting to tax someone based on an



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1 imposition of a tax, you have got to have a
2 plain meaning in that imposition statute to tax
3 it. Imposition taxing statutes are construed
4 in favor of a taxpayer. Without that, there
5 can be no question based on our courts rulings
6 here in this state. This is not a question of
7 a deduction. It may be different in their
8 minds, but in our minds, and what we hope to
9 show the court is, this is an imposition
10 question, is this tax imposed? We can find
11 nowhere in the South Carolina tax law where
12 this tax is imposed on a waiver. And, of
13 course, it therefore begs the question of is it
14 in gross proceeds. We say it's not in gross
15 proceeds, they obviously will argue that it is.
16 But in any case, hopefully, obviously they can
17 prepare their own case, but it is clear that
18 the question is imposition, not a question of
19 deduction. To the issue of the proceeds from
20 the waivers being a value proceeding or
21 accruing from the sale of the tangible personal
22 property, again, this is a matter as I
23 mentioned a moment ago, it's a critical matter
24 in this case in which we have a factual
25 difference of opinion. But the value -- the



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1 gross proceeds statute states, the value
2 proceeding or accruing from the rental of
3 tangible personal property. So in order to tax
4 this, this is -- the waiver is going to have to
5 be a value. It's going to have to be -- the
6 payment for the waiver is going to have to be
7 a payment or a value that proceeds or accrues
8 from the leasing of tangible personal property,
9 which it is not. The waiver fee is for the
10 waiver. The rental fee is for the rental.
11 You've got separate transactions. The proceeds
12 from the rental of the property, under the
13 Rental-Purchase Agreement, is clearly a value
14 proceeding or accruing from the sale or rental
15 of that tangible personal property. But on the
16 other hand, proceeds from the sale of the
17 waivers are not a value proceeding or accruing
18 from the sale of tangible personal property.
19 Then we look at some arguments which they have
20 made in their briefs, in their Motion for
21 Summary Judgment, excuse me. And I look at
22 some of the cases in South Carolina in which
23 the Department of Revenue is arguing. Now, the
24 gross proceeds section does say, it says, gross
25 proceeds from the sale or lease of tangible



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1 personal property, it says with no reduction
2 for, and it adds this. Things like, cost of
3 goods sold. In other words, we believe it is
4 those things which are associated with the
5 property which is being rented. That which
6 goes into producing that property or that which
7 goes into acquiring that property. These are
8 the expenses that we believe and the costs we
9 believe that the statute is referring to. They
10 say, look. They say, here are some cases they
11 cite. They say, look at the Travelscape case
12 in the South Carolina Supreme Court. In
13 Travelscape, it was a sales tax case in which
14 -- the issue there was, when you go on a dot-
15 com website and you get a hotel room there, and
16 let's say that hotel room is \$100.00, but the
17 dot-com network, which in this case was
18 Travelscape, it has purchased the right to
19 lease you that hotel room from local hotels,
20 and maybe it paid them \$80.00. I'm paying them
21 \$100.00 to say in the hotel room through that
22 dot-com. They've tied up these rooms for
23 \$80.00 with the hotel. And the argument was,
24 is the gross proceeds of sale \$100.00 or is it
25 \$80.00, that was the question in that case.



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1 The Court said, it's \$100.00. But in doing
2 that, they looked at the elements that went
3 into producing that \$100.00. And they were
4 service -- they were service charges that the
5 dot-com was trying to take out of gross
6 proceeds, which were clearly associated with
7 its actions in presenting this room to the
8 ultimate customer who purchased it. It
9 asserted that the fees were not subject to
10 sales tax, because the fees were derived from
11 the services it provided, not from the rental
12 charge for the room, and the Court disagreed,
13 holding that the costs of services were not
14 deductible under the plain meaning of the
15 statute. This makes perfect sense in the light
16 of the facts that the services were provided
17 for a cost to the seller, which it included in
18 the price of the room. Fees were not optional.
19 The service was not the subject of the separate
20 agreement. Here it is completely opposite.
21 The fee for the waiver is not included as a
22 part of the cost or services associated with
23 the rental of the tangible personal property in
24 the Rental Agreement. So it is a -- this case
25 is one of the strongest cases for us in the



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1 state, which breaks it down as to when the
2 service costs are included and when they're
3 not. This is an example of when they should be
4 included. The case before Your Honor today is
5 an example of when they're not included. They,
6 of course, will also rely, as they have stated
7 in their Motion and in Counsel's presentation
8 a moment ago, on the case of Meyers Arnold. We
9 say the Meyers Arnold case has no applicability
10 here. In Meyers Arnold, we had a furniture
11 store offering furniture for sale on a layaway
12 plan. If you entered into this layaway plan,
13 then you paid an extra fee. And in Meyers
14 Arnold, the Court determined that that extra
15 fee was a service provided by Meyers Arnold and
16 you were paying for that service. There was
17 only one transaction in Meyers Arnold, and that
18 was that layaway transaction. There were not
19 two separate transactions as there are here.
20 The only way you could get into that layaway
21 plan was to pay that fee. There was nothing
22 voluntary about it. And, but more importantly,
23 the service in question, which were the
24 services that the store provided, the Court
25 didn't delineate what they were, but apparently



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1 there were storage costs involved while you're
2 waiting to get this thing for Christmas.
3 You're paying on it, you know, you want to get
4 it for Christmas to give as a present for
5 somebody. Whatever the reason may have been,
6 there are some costs incurred by that store in
7 offering that plan. And because those costs
8 were associated with that plan and the
9 acquisition of that furniture, the Court said,
10 that is a part of gross proceeds of sale. We
11 believe the case is for us. I'm sure this is
12 not the first time you've heard sides argue
13 cases both for themselves and against. We
14 believe the case is for us. They have
15 mentioned -- they have mentioned long-standing
16 administrative construction. They do have a
17 ruling of some time back and a Tax Commission
18 decision in which they ruled that waivers are
19 taxable. Well, we certainly -- we don't
20 dispute that they exist. We do dispute whether
21 or not they are in any way controlling. It is,
22 Your Honor, the -- the question is, does the
23 law tax it. We get to a recent case of Media
24 General Communications, which was a well known
25 recent case having to do with the allocation



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1 and apportionment of income taxes. In that
2 case, the Court discusses the Department's
3 long-standing administrative construction,
4 which is one of the matters before the Court.
5 It says, the Administrative Law Court, this is
6 from the Supreme Court looking back at the
7 opinion, the Administrative Law Court
8 acknowledged that a Court generally gives
9 deference to an administrative agency's
10 interpretation of an applicable statute or
11 regulation. However, the Administrative Law
12 Court found the Department's interpretation was
13 contrary to the plain language of the statute
14 and it was not entitled to deference. An
15 agency's long-standing interpretation of a
16 statute is usually entitled to be given
17 deference, should not be overruled by a
18 reviewing court in the absence of cogent
19 reasons, but the interpretation will not be
20 sustained if it contradicts a statute's plain
21 language. We believe that plain language of
22 the statute, and I don't think there is any
23 question that the plain language of this
24 statute is that to which the Court must look,
25 certainly in the first instance, that it simply



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1 does not impose this tax on a waiver. Thank
2 you.

3 THE COURT: Ms. Acquaviva?

4 MS. ACQUAVIVA: Thank you, Your Honor. To try and
5 attempt to go in any order for purposes of
6 being clear that Mr. von Lehe went in, first,
7 I'm not really clear on whether or not they are
8 taking issue still with the Department's
9 assertion of fact that the Rental-Purchase
10 Agreement sets forth the terms of the waiver.
11 I heard them say, they agree that it does, but
12 that it was an incomplete fact. Again, the
13 Department does not dispute, it's just a matter
14 of terminology. The Court can look at the
15 Rental-Purchase Agreement and see that there is
16 a spot in there for the waiver fee in the
17 Rental-Purchase Agreement. That is a fact and
18 I don't see how either party can dispute that
19 fact. What inferences the Court draws from
20 that fact we may dispute, but that's not up to
21 us, that's up to Your Honor. So again, we
22 would submit that fact is not in dispute. The
23 second issue the Petitioners raised had to do
24 with our citing facts in the Rhode Island case
25 and why would we cite a fact that's different



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1 from the facts in this case? Well, we cited
2 those facts because we don't want to mislead
3 the Court. And the facts in the Rhode Island
4 case may have been slightly different, but
5 those are the facts that the Rhode Island case
6 used to determine that Rent-A-Center East was
7 subject -- that their gross proceeds of sales
8 included the same waiver fees that we're
9 talking about today. So while the facts may be
10 slightly different between the facts presented
11 before Your Honor and the facts in Rhode
12 Island, the fact has been included simply to
13 show that those are the facts they relied on.
14 We're not saying the fact in this case is that
15 they have to be purchased simultaneously. We
16 don't dispute that they can be purchased
17 otherwise. However, we have not been provided
18 any evidence, whether during the audit itself
19 or through discovery, that transactions existed
20 where the waiver was purchased by one of the
21 Petitioners or from one of the Petitioners, and
22 the property was rented from Rent-A-Center
23 West, for example. There are no transactions,
24 no invoices, nothing that show that, therefore
25 we don't know how that can even be a fact in



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1 issue. We would submit that if Petitioners are
2 now going to try and add those facts, we would
3 have to continue this matter for further
4 discovery. Again, as I said, the Petitioners
5 gave the Department a representative sample of
6 the transactions that occurred during this
7 audit period. We've never been provided with
8 any type of receipt, invoice, anything that
9 shows that a transaction where a customer may
10 have purchased the waiver from one of the
11 Petitioners, but rented the item from someone
12 else, existed. But for purposes of the Summary
13 Judgment Motion, we're not disputing that that
14 can happen, we're just saying there's no
15 evidence that it happened during the audit
16 period which is what's before this Court. They
17 take issue with the waiver adding value. I'm
18 not going to get into that too much because
19 it's in our Reply Motion. The Department's
20 position is the question as to whether the
21 waiver constitutes value proceeding or accruing
22 from the sale or rental of tangible personal
23 property is a question of law. The facts
24 underlying that are not disputed, the waiver
25 has value, the rental of the property has



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1 value, when this happens together. The
2 Department's position is, when you're looking
3 at that whole transaction, the waiver
4 constitutes value proceeding or accruing from
5 the rental of tangible personal property.
6 Next, they take issue with the number of
7 transactions at issue. The Department's
8 position is that this is one transaction, the
9 Petitioner's position is that it is two
10 transactions. Again, that is not a factual
11 dispute, that is a question of law. South
12 Carolina courts have set forth what's called a
13 true object test. That is how courts determine
14 how we're suppose to determine whether it's --
15 what type of transaction is at issue and
16 whether that transaction is subject to tax.
17 The true object test basically says, you need
18 to look at the primary purpose of the
19 transaction. So when a customer goes into
20 Rent-A-Center, what is their primary purpose,
21 to rent tangible personal property. People
22 don't go into Rent-A-Center because they want
23 to buy a damage waiver. So again, that is a
24 question of law for Your Honor to decide, does
25 one or two transactions exist. That's not a



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1 question of fact. The facts are still the
2 same. There's two agreements, the waiver is
3 based off of a percentage of the rental fee.
4 The waiver absolves the customer of liability
5 for paying the fair market value which is
6 imposed by the Rental-Purchase Agreement.
7 Those are the facts. Whether or not that's one
8 or two transactions is a question of law for
9 this Court. The Petitioners also argue that
10 the facts in this case differ from the facts in
11 Meyers Arnold. The Department doesn't dispute
12 that. However, that does not change the test
13 set forth in Meyers Arnold. In Meyers Arnold,
14 the court determined what does value proceeding
15 or accruing mean? What does that phrase mean?
16 And according to the Court, that phrase means,
17 but for the rental or purchase of tangible
18 personal property, the taxpayer would not
19 receive whatever associated fee is at issue.
20 In Meyers Arnold it was layaway fees, here it's
21 a waiver fee. Again, to get back to the
22 transaction, the Petitioners keep trying to
23 make it look like the transaction at issue is
24 solely the purchase of a waiver. But it's
25 pretty clear that the customers don't just go



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1 in and purchase a waiver. They rent tangible
2 personal property and sometimes they purchase a
3 waiver. So the transaction at issue is not I'm
4 buying tangible personal property and I'm
5 buying a waiver, they go together. There's
6 nothing to waive if you don't have tangible
7 personal property. There is no liability to
8 waive. Furthermore, sales tax is a
9 transactional tax. So we have to look at every
10 transaction individually. In my initial
11 argument I discussed two transactions at issue.
12 It seems now possibly that the Petitioners are
13 suggesting that there is third type of
14 transaction at issue. If that's true, which we
15 haven't, again, been giving any evidence of,
16 the Court can't look at that transaction and
17 say, well that transaction means all these
18 transactions are taxable. We have to look at
19 each transaction. So when you're looking at a
20 customer who comes in, enters a Rental-Purchase
21 Agreement and purchases a waiver, that is one
22 transaction. And the Department submits that
23 that transaction is taxable. Now, if we want
24 to look at a customer that goes in, went to
25 Rent-A-Center West, they lived in that of



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1 state, they rented a TV, four weeks later they
2 moved to South Carolina and they go into Rent-
3 A-Center East and purchase a waiver, that's a
4 totally different type of transaction. And
5 honestly I can't tell you if that transaction
6 -- if the Department believes that transaction
7 would be taxable or not, because we don't have
8 any of those facts. We do not know how that
9 transaction works. But again, based on what
10 the Petitioners have led the Department to
11 believe since the inception of this case, again
12 the Department determination was written in
13 2013, it's now 2015, if they wanted to make
14 this an issue, they could have provided us in
15 discovery with -- one invoice would be enough
16 to say this type of transaction exists, we need
17 to look at that, but they didn't. So the
18 agreement was that the Petitioners gave us a
19 representative sample. Their representative
20 sample showed two types of transactions that
21 exist. Those are the transactions the
22 Department submits and are before this Court.
23 And when looking at those two types of
24 transactions, the Court should find that they
25 are subject to sales tax. Finally, the last



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1 thing I want to address is Travelscape and the
2 cost of service. The Petitioners seem to argue
3 that the cost of service only means things that
4 go -- costs that go into making a product.
5 However, Meyers Arnold looked at the service of
6 layaways. The cost of service was a layaway,
7 which occurs after the product, whatever they
8 are purchasing is made. So clearly that's an
9 illogical explanation of what cost of service
10 means. If you look at Southeast Cinema, the
11 issue there was, in that case, it was the costs
12 of an intangible. A trademark does not go into
13 the construction of the equipment that was
14 being purchased. The trademark is just a name
15 stamped on that afterwards. Again, it doesn't
16 necessarily have to be a cost that goes into
17 making the tangible personal property. It's a
18 cost of service associated with a tangible
19 personal property. And if you look at the
20 waiver, the cost of the waiver is that the
21 taxpayer is not receiving the fair market value
22 of the damaged item, because they are waiving
23 that. That is a cost to the Petitioners. So
24 again, we would submit that there are no facts
25 in dispute, and when applying the law to these



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1 facts, we are entitled to judgment as a matter
2 of law. Thank you.

3 THE COURT: Do you have any response to that? I
4 know I don't have to ask you that, but I will.

5 MR. VON LEHE: Your Honor, I would ask to be allowed
6 a brief response. Insofar as I think one of
7 the major facts here which had been repeated a
8 moment ago, is this cost of service issue, this
9 is a factual issue. And without Your Honor
10 having a view of the facts and the ability to
11 make a ruling on that fact, we say the cost of
12 service is completely unrelated to this rental
13 transaction. This is just simply not a cost of
14 service. The only cost which they classified
15 as a cost of service is on the waiver. That's
16 a payment for the waiver. The waiver has got
17 nothing to do -- you walk into a Rent-A-Center
18 building, store, and you see two television
19 sets sitting up there. One is going to be sold
20 with a waiver on it and one is going to be sold
21 without a waiver. They are exactly the same.
22 The waiver expense does not go into the
23 availability to rent that television set and
24 the condition of that television set is exactly
25 the same, so with or without the waiver. So



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1 this -- we've got a factual dispute with them
2 as to whether or not that expense of services,
3 whether or not that goes into this Rental-
4 Purchase Agreement or not. We also have an
5 ongoing factual dispute with them concerning
6 whether or not this -- the proceeds received
7 for the Rental-Purchase Agreement include any
8 value for that waiver. They do not. That's
9 just a completely separate transaction and it's
10 highly factual. Thank you, Your Honor.

11 THE COURT: All right. Well, it looks like I've got
12 to make some kind of decision, so I guess I
13 essentially have to do my job. It appears to
14 me that what we have here is a question of law.
15 And that question is whether or not this
16 particular sales tax is imposable, I'll accept
17 that language Mr. von Lehe, is imposable on
18 these transactions. Now, having said that,
19 there are some issues that I think are
20 susceptible to clarification by testimony. Mr.
21 Tollack is testifying, I believe?

22 MR. VON LEHE: Yes, Your Honor.

23 THE COURT: And he can answer some questions about
24 these, what would happen if a contract were
25 transferred from one Rent-A-Center to another.



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1 And I think that's perhaps the kind of factual
2 question that the court would be -- would have
3 some assistance from that testimony. So on
4 that basis, I'm going to deny the Motion for
5 Summary Judgment. Next, again, Ms. Acquaviva,
6 it's your Motions to Exclude, so I'm going to
7 call it Motions to Exclude, because I think
8 there are really two, there is a Motion to
9 Exclude Report and then a Motion in Limine. I
10 will hear from you on those, unless you all
11 want a minute or two to settle this case.

12 MR. VON LEHE: I think we'll go forward, Your Honor.

13 THE COURT: All right.

14 MS. ACQUAVIVA: I guess I can combine, if you would
15 like, the Motion to Exclude and the Motion in
16 Limine. I'll address ---

17 THE COURT: I think there are really two aspects to
18 it, so you might want to argue them separately.

19 MS. ACQUAVIVA: The Motion to Exclude Professor
20 Pomp's Affidavit is essentially to exclude it
21 from the record of the Summary Judgment Motion
22 which Your Honor just denied. And so now we're
23 looking more for purposes of preserving the
24 record for appeal. The Department's position
25 is that Mr. Pomp's supporting affidavit and



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1 associated reports are inadmissible or not
2 proper, as far as being a supporting affidavit
3 to the Petitioner's Response Motion. Pursuant
4 to Rule 56(e), supporting and opposing
5 affidavits shall set forth such facts as would
6 be admissible in evidence. When you look at
7 Professor Pomp's affidavit and supporting
8 reports, he doesn't set forth -- the majority
9 of his report does not set forth any facts.
10 Rather, he gives his legal opinion as to how
11 this Court should interpret South Carolina law.
12 And a great example of one of those opinions is
13 that he says, the "but for" -- we are making --
14 taking the "but for" test too far. That's
15 something for Your Honor to decide, not
16 something for a witness to tell the Court.
17 There is a case on point that supports our
18 motion, and that's the Dawkins v. Fields case.
19 And in that case, essentially the court said
20 that because the expert witness' affidavit
21 primarily contained legal arguments and
22 conclusions, they determined that the trial
23 court properly refused to consider that
24 affidavit, and we think the same analysis
25 should apply here. Because the majority of the



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1 supporting affidavit provides legal argument,
2 that the affidavit should not be considered by
3 the court for purposes of deciding whether or
4 not to grant our Summary Judgment Motion.
5 Therefore, we would ask, for purposes of the
6 Summary Judgment Motion and that record, that
7 you exclude Professor Pomp's affidavit and
8 report, because it does not present any facts
9 that would be in dispute. That's the purpose
10 of summary judgment and affidavits, to bring
11 forth facts that are in dispute. Professor
12 Pomp's affidavit and reports do not do that.
13 They talk about the law and legal policy.

14 THE COURT: Can we stop here?

15 MS. ACQUAVIVA: Yes.

16 THE COURT: Mr. von Lehe, would you respond to that?

17 MR. VON LEHE: Yes, Your Honor.

18 THE COURT: All right.

19 MR. VON LEHE: Ms. Geer will.

20 MS. GEER: Yes, Your Honor. So the affidavits as
21 well as Professor Pomp's reports are providing
22 factual testimony in the form of tax policy.
23 So -- and this type of testimony has been
24 allowed in South Carolina and many other
25 jurisdictions. It is not new. The -- I could



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1 give you a few examples. So -- and I'll just
2 look at the reports, which is, I believe,
3 incorporated into the affidavit. Section B of
4 the report discusses the policy rationale or
5 the structure of South Carolina's definition of
6 gross proceeds. This section discusses tax
7 policy perspectives on the purpose of a sales
8 tax versus an income tax in general. It is not
9 interpreting South Carolina sales tax statutes
10 or South Carolina income tax statutes. It is
11 discussing the tax policy goals of sales tax
12 statutes generally that deny deductions for
13 cost of service. If you look at page five of
14 his report, actually if you first look at page
15 three, in the middle under analysis, I was not
16 asked to opine on South Carolina law, which is
17 the province of this Court. Instead, I was
18 asked to provide a tax policy perspective that
19 might enhance the analysis and decision making.
20 And on page five, the Section B that I was just
21 talking about, at the end of the first
22 paragraph, this Court will have to decide the
23 applicability of the definition of cost of
24 service. My purpose is quite different, to
25 provide a rationale under sales tax policy or



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1 the structure of this position. So the Dawkins
2 case that the Department cites had attorneys
3 testifying as to the law. It made the comment
4 that the attorneys themselves could make these
5 arguments before the court. Professor Pomp's
6 purpose is to provide factual testimony on what
7 is tax policy. What is tax policy behind a
8 sales tax, what is tax policy behind an income
9 tax, generally, not to look at South Carolina
10 law or interpret that law, that is correct that
11 that is Your Honor's province. He is not
12 providing any legal opinions or interpreting
13 South Carolina law. He is saying what the tax
14 policy context behind certain statutes and tax
15 concepts are -- and these are factual matters.
16 He is also assisting the Court in interpreting
17 the facts that are at issue here by providing
18 testimony on things like cost of service
19 concept. That, as Mr. von Lehe discussed
20 earlier, it's -- Petitioner's believe a
21 factual matter, whether something is a cost or
22 not, and he is providing tax policy facts that
23 will assist the Court in looking at that
24 evidence. That is something that Mr. von Lehe
25 and I are not -- do not have the expertise to



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1 provide this Court, the tax policy. That is,
2 if we started arguing tax policy, I'm sure the
3 Department would jump up and say, there's no
4 tax policy evidence at issue here. That's not
5 a legal argument, that's a policy argument.
6 So, Your Honor, that's our position on why the
7 affidavit, as well as the reports, should not
8 be excluded from the motion -- from our
9 response to the Department's Motion for Summary
10 Judgment. Oh, and Your Honor, Professor Pomp's
11 testimony, and I was going to go over this in
12 the context of the Department's Motion in
13 Limine to exclude him, but he has provided
14 testimony in this Court on a number of
15 occasions, both for the Department and for
16 taxpayer -- taxpayers, including -- and I was
17 going to go through those later, but I can give
18 Your Honor specific examples of where that type
19 of testimony has been allowed in..

20 THE COURT: Well, Ms. Geer, I think what we're
21 limited to right now is the reports. We'll get
22 to the testimony question in a minute.

23 MS. GEER: Okay.

24 THE COURT: Okay. And my question then, for you,
25 you talk about policy rationale, was Professor



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1 Pomp testifying before the Legislature when
2 these statutes were passed?

3 MS. GEER: No. And, Your Honor, he is not talking
4 about -- he is talking about the tax policy
5 rationale behind, for example, a sales tax in
6 general, not looking at -- not saying the South
7 Carolina Legislature had this policy when they
8 enacted.

9 THE COURT: Okay. All right.

10 MS. GEER: Thank you, Your Honor.

11 THE COURT: Anything else?

12 MS. ACQUAVIVA: If I could just briefly respond.

13 THE COURT: All right.

14 MS. ACQUAVIVA: And I think Your Honor kind of made
15 clear, the testimony issue we'll take up
16 separately. For purposes of, again, supporting
17 affidavits, supporting affidavits are supposed
18 to set forth facts. There are no facts in
19 these reports. The Department doesn't know of
20 any cases, and I didn't hear the Petitioner
21 cite any cases, where they have had that tax
22 policy is a fact. And when I get into our
23 Motion in Limine or when my co-counsel gets
24 into that motion, we have no objection to Mr.
25 Pomp testifying about tax policy. We don't



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1 think it's relevant to the matter at hand,
2 because it's general tax policy, but we don't
3 think it's a fact. And I will leave it at that
4 before I -- I'm going to get too into the
5 Motion in Limine.

6 THE COURT: All right. As I understand your
7 argument, you're suggesting that Professor
8 Pomp's reports are essentially legal argument
9 rather than assistance of a factual nature?

10 MS. ACQUAVIVA: Correct, Your Honor.

11 THE COURT: And that's what you disagree with, I
12 guess?

13 MS. GEER: Yes, Your Honor.

14 THE COURT: And, unfortunately, I tend to agree with
15 the Department on this particular point. I'm
16 going to grant that Motion to Exclude Professor
17 Pomp's affidavit and reports as to tax policy
18 or whatever. Now, I'll be glad to hear the
19 Motion in Limine. Mr. Ryan, are you going to
20 start the Motion in Limine?

21 MR. RYAN: Apparently it's my time to talk now, Your
22 Honor.

23 THE COURT: All right.

24 MR. RYAN: Good morning. I want to formally
25 introduce myself, Sean Ryan on behalf of the



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1 Department. Your Honor, I'll handle the Motion
2 in Limine as to Professor Pomp's reports and
3 his testimony going forward to the extent that
4 it's clear they want to have him provide you
5 with legal opinions. I've heard opposing
6 counsel say and write that they claim this is
7 tax policy, and that's how they frame it, to
8 try to get it in, when it's clear that a lot of
9 what he's trying to offer is going to be issues
10 of law. And in our Rule 702 of our Rules of
11 Evidence provide that you can provide expert
12 testimony if it helps the trier of fact
13 understand evidence or facts at issue, but you
14 cannot provide legal opinions. And as my co-
15 counsel cited, there are numerous cases on that
16 issue in this case, in this state, including
17 Green vs. State, Dawkins vs. Fields. They all
18 hold that issues of law are not subject to
19 expert testimony. Mr. Pomp is not here to
20 provide testimony on facts at issue. He's not
21 going to testify to how the rent-to-own
22 industry works. He's not going to testify as
23 to how waivers work. He's going to testify as
24 to what he thinks tax policy is and how you
25 should apply the law to conform with what he



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1 thinks tax policy should be. As Your Honor
2 pointed out or asked, he did not advise our
3 legislature on this. He's giving an overall
4 general view of how he thinks tax policy
5 nationwide should be applied. He's trying to
6 define the parameters for how you should rule,
7 and say -- and show you why he thinks their
8 waivers aren't taxable. That's an issue of
9 law. That's not an issue of fact. Looking at
10 his report, it demonstrates all of the issues
11 of law that he's trying to testify to by
12 claiming they're tax policies. I'll give you
13 some examples. Mr. Pomp's report contains an
14 explanation of why he thinks our General
15 Assembly intended, or what our General Assembly
16 intended, when it passed a proviso. In
17 stating, he says, I understand what the
18 dissatisfaction that the Department's broad
19 interpretation of tax debt issues, in general,
20 that led to the legislature to adopt. That's
21 clearly not tax policy, that's legislative
22 interpretation. On page eight his report he
23 talks about the Department's "but for" analysis
24 and if it goes too far. Does our General
25 Assembly not agree with that? Do our past

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1 determinations not agree with that? Those
2 aren't questions of fact, those are questions
3 of law. He's trying to imply, do our
4 determinations, are they consistent with what
5 we're doing here? Not a question of fact,
6 that's a question of law. In another example,
7 Mr. Pomp states that the Department is an
8 executive branch agency. It cannot make the
9 law, that is the providence of legislator.
10 That's not tax laws perspective, that's a legal
11 opinion. His opinions are pervasive throughout
12 his report and I expect they will be pervasive
13 throughout his testimony. If he wants to
14 testify to the generalized, what is the sales
15 tax, what is an income tax, I can understand.
16 We will not object to that. It's when he tries
17 to limit the parameters to how you rule, then
18 I believe it's an inadmissible legal opinion.
19 Thank you.

20 THE COURT: Ms. Geer?

21 MS. GEER: Thank you, Your Honor. So the
22 Department, I understand now that they are not
23 saying that the tax policy all together is off
24 limits. But tax policy has been allowed in a
25 much broader capacity then what the Department



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1 is asking you to limit it to. It has been
2 allowed to assist the court in evaluating and
3 determining how tax policy relates to facts in
4 evidence in a case. It has been allowed to
5 explain the tax policy rationale behind
6 statutes, behind a court's or Revenue
7 Department's interpretations of statutes, and
8 to discuss tax statutes and other
9 jurisdictions. Professor Pomp has over 40
10 years of experience, has the leading case book
11 in this area, and has testified over 100 times
12 in about 30 states, including South Carolina,
13 along the lines and providing the same type of
14 reports that he has provided in this case.
15 Some examples from South Carolina and from this
16 Administrative Law Court, he testified for the
17 Department, I think it was around 2005, in a
18 case against a taxpayer. And the Department --
19 the taxpayer's motion to exclude on the same
20 basis that the Department is arguing here, was
21 denied. He testified on behalf of an affiliate
22 of the taxpayer here in this Court about two
23 years ago where he discussed the tax policy
24 rationale behind certain statutes, cases, and
25 other tax policy matters. The Department



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1 actually presented an economist in that case,
2 not a tax policy expert, but who discussed the
3 same type of thing. The economic implications
4 of one party or the other's interpretation of
5 the statutes and cases at issue. He testified
6 in a tax matter for a different taxpayer this
7 year and discussed the tax policy
8 considerations and rationales behind certain
9 allocation and apportionment statutes and the
10 tax policy implications of a "but for" test
11 that was being used by the Department in that
12 case. The Department offered an economist and
13 a tax policy expert in that case to counter
14 that testimony and provide similar testimony.
15 And there was another case, the taxpayer in
16 that on, I believe, was CarMax, where we had a
17 different expert, not Professor Pomp, but
18 another state tax policy expert, that discussed
19 the implications of the tax statutes at issue.
20 So it's not just to discuss policy in general.
21 You can discuss -- it has been allowed to
22 discuss -- experts have been allowed to discuss
23 the implications of certain interpretations of
24 cases and statutes. Professor Pomp has never
25 been excluded in a case in South Carolina from



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1 providing this type of testimony. And so our
2 position would also be that it's not fair for
3 the Department to agree and sponsor testimony
4 that would use tax policy in this matter in one
5 case, where they are offering an expert, and
6 then argue that it's inadmissible in another
7 case where it doesn't serve them to have that
8 testimony come in. Now, the argument that
9 Professor Pomp is providing just legal
10 conclusions, we agree that that's the sole
11 province of this Court, as I've said before.
12 If there are discreet sentences within the
13 reports that the Court believes constitute
14 legal conclusions, we agree that the Court
15 should disregard those statements and we would
16 be happy to redact any such statements from the
17 reports. As to his testimony, of course, no
18 one at this point can know what he is exactly
19 going to say, so I think the best course on
20 that is to deal with that as it comes, but he
21 does not intend to provide legal conclusions in
22 his testimony before this Court. And I'll just
23 go through a couple of the examples as Mr. Ryan
24 did. So that the Section B that I was talking
25 about earlier, the policy rationale, he's



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1 discussing tax policy goals of sales tax
2 statutes generally. He is explicitly stating
3 that he is not going to discuss the
4 applicability of the gross proceeds definition
5 in the South Carolina statute, that that is
6 Your Honor's job. Section C, the title of that
7 section is "The Department misunderstands the
8 policy underlying the definition of gross
9 proceeds". In that section, he goes through
10 the tax policy rationale behind sales tax
11 statutes in general and he's not telling this
12 Court how to interpret that statute. He also
13 talks about the tax policy rationale behind
14 statutory construction rules that relate to
15 imposition statutes versus exemption statutes.
16 And then on page seven, he says, that this
17 Court will have to decide the applicability of
18 this principal. He is not trying to tell Your
19 Honor how you need to interpret these, but what
20 the tax policy rationale is between those two
21 types of statutes. The Department's -- Section
22 D. The Department's "but for" reasoning proves
23 too much. In this case, in this section, he's
24 -- he states that the Court will have to decide
25 whether this test is proper under the South



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1 Carolina statute, but he is going to discuss
2 the tax policy reasons -- the tax policy
3 implications of the Department's "but for"
4 test. He also discusses the tax policy reasons
5 why statutes should be construed based on their
6 plain meaning. Obviously, the Department --
7 the Court will need to make its own
8 interpretation of the law on that. He's just
9 going to assist the Court by explaining what
10 the tax policy considerations would be behind
11 -- in making that decision. In Section E, the
12 taxpayer does not engage in a bundled
13 transaction and the object of the transaction
14 test is irrelevant. In here, he discusses the
15 tax policy rationale behind the bundled
16 transaction test generally and the object of
17 the transaction test. He does not tell the
18 Court how to apply those tests. So, I guess,
19 in sum, Your Honor, we all believe that the law
20 is in your hands only. Professor Pomp can
21 provide testimony, and in his reports also --
22 we think provide both factual and policy
23 assistance to help this Court in understanding
24 facts in evidence and to understand the policy
25 implications behind certain interpretations. I



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1 believe that his comment, the one comment about
2 the proviso and the background on that, I think
3 Professor Pomp got that from testimony that the
4 Department's witness, John McCormick, provided
5 in his testimony. So I don't think he was
6 trying to opine on his own, of his own
7 knowledge, what the legislature intended with
8 that proviso. I think that covers my response,
9 Your Honor.

10 THE COURT: Mr. Ryan, do you have anything further?

11 MR. RYAN: If you'll allow me such, Your Honor.
12 Let's see. Where should I start. Yes, he's
13 testified in numerous courts, again though,
14 Counsel didn't give me a whole lot of case
15 names there. I agree he does. The man is a
16 tax expert and I will agree to that every day.
17 He understands tax better than anybody in this
18 room. I have no doubt about that. In fact,
19 he's testified in courts -- we don't know what
20 he testified to. We don't know if he was
21 giving legal conclusions that day. I -- he did
22 testify here in Rent-A-Center, discussing
23 complex tax theories regarding unitary
24 businesses and nexus and can provide the Court
25 with understanding those complex tax concepts.



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1 We're talking about sales tax here. And if he
2 wants to talk about the principals behind sales
3 tax, as I said earlier, we're okay with that.
4 Counsel has just said, in other cases he's been
5 allowed to interpret statutes. He's been
6 allowed to provide the Court with guidance on
7 how to follow statutes and case law. That's
8 legal opinion. I'm not aware of any case where
9 we've allowed that to happen. And we've called
10 Professor Pomp to help explain complex tax
11 issues, yes. If that's what they want to put
12 him up for, we won't stop that. It's when he's
13 called to input legal opinion, which pervades
14 through his report. If he's here to testify,
15 we can deal with everything he says one
16 question at a time, rather than try to piece
17 through this report that has legal conclusions
18 throughout. So I would move, Your Honor, that
19 the report be excluded and as he testifies we
20 go through question by question whether it's a
21 legal conclusion or not. Thank you.

22 MS. GEER: Just one brief ---

23 THE COURT: Go ahead.

24 MS. GEER: I did not -- I was not saying that
25 Professor Pomp has testified in previous cases.



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1 that -- interpretations of a statute. That
2 that was not -- that was not what I meant, if
3 those words came out of my mouth. He is not --
4 has not been allowed to interpret a particular
5 statute.

6 **THE COURT:** Okay. The rule is, that an expert's
7 testimony that will assist the trier of fact in
8 understanding evidence or to determine a fact.
9 Now, it seems to me that my problems in this
10 case are going to be questions of what does
11 this mean. And insofar as Professor Pomp can
12 assist the Court, then I'm inclined to deny the
13 Motion in Limine and say, when he gets over the
14 edge in your opinion, either party is welcome
15 to withdraw a question or to move to object.
16 So I'm going to allow him to testify. I would
17 remind him that we're not here to allow him a
18 chance to make legal arguments, but he's
19 welcome -- I think he's an attorney somewhere.
20 We'll be glad to admit him and let him make
21 your legal argument if you'd like, although
22 that would involve a different court and
23 payment of fees, I believe. But we'll go
24 forward with Professor Pomp's testimony. I
25 will -- I have granted the Motion to Exclude



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1 his reports. Now, we are about a quarter after
2 eleven ---

3 MS. ACQUAVIVA: Your Honor, if I may, as we were
4 just looking at the clock too, I think before
5 we break for lunch, we have one more motion we
6 would like to add, based on your ruling on our
7 Summary Judgment Motion. If I understood
8 correctly, and maybe I misunderstood, so please
9 correct if I'm wrong, you believe that there
10 are some facts in dispute?

11 THE COURT: I believe there are -- that the Court
12 would be assisted by testimony that would
13 clarify the application of some of the contract
14 language and some issues of what kind of
15 relationship exists if a contract were
16 transferred. And I think Mr. Tollack can
17 answer those questions. I don't think we have
18 to remand this for -- back to the Department
19 for additional discovery. I think we can get
20 testimony from him that will assist us in
21 understanding that.

22 MS. ACQUAVIVA: In light of that, the Department
23 would move this Court to then limit the merits
24 hearing in this matter to just the factual
25 issues that are in dispute or that Your Honor



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1 thinks need to be clarified for the purposes of
2 judicial economy.

3 MR. VON LEHE: Your Honor, may I?

4 THE COURT: Yes, please.

5 MR. VON LEHE: Yes, we certainly would object to
6 that, Your Honor. We believe that the entire
7 -- our entire case should be presented to the
8 Court for the Court's full understanding of the
9 facts, to then, of course, make a decision
10 based on everything that you hear. You can't
11 determine at this moment exactly what is going
12 to be in dispute and what is not. Even though
13 I've tried to certainly go through and
14 enumerate as much as I can see, but as the
15 testimony develops, it's the only way that
16 you're really going to be able to hear all the
17 testimony to understand the two -- what we
18 would consider to be two separate
19 transactions and how they occur. So we would
20 object to any limitation on the Court's ability
21 to try the facts.

22 THE COURT: I agree with that. I think -- so I'm
23 going to have to -- if that was a motion, I'm
24 going to deny it. I think we're going to have
25 to deal with this, as Mr. Ryan pointed out,



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1 question by question.

2 MS. ACQUAVIVA: Thank you, Your Honor.

3 THE COURT: And if you think we're going too far
4 afield, either party is welcome to call our
5 attention to it. The question that I have is,
6 Mr. von Lehe, do you want to start, go ahead
7 and start now, would you like a break for a few
8 minutes, or would you like for us to take our
9 lunch early and come back a little bit early?

10 MS. GEER: What time is it?

11 THE COURT: It's a quarter -- about 11:20 now.

12 MR. VON LEHE: Your Honor, if it suits the
13 Department, perhaps an early lunch and come
14 back early, if it suits the Court, primarily.

15 THE COURT: That's why I asked the question. It
16 makes some sense to keep a person's testimony
17 together.

18 MS. ACQUAVIVA: The Department agrees with Mr. von
19 Lehe.

20 THE COURT: So it's 11:20 now. We'll take an early
21 lunch. And since I know we'll be fighting for
22 seats anywhere you go, shall we say come back
23 early at about 1:00?

24 MS. ACQUAVIVA: That's perfect.

25 MR. VON LEHE: That would be fine.



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1 THE COURT: That will give you about an hour and a
2 half.

3 MS. ACQUAVIVA: Thank you so much.

4 MS. GEER: Thank you, Your Honor.

5 THE COURT: All right. We will be at ease until
6 1:00.

7 (Off the Record)

8 COURT REPORTER: All rise.

9 THE COURT: Be seated please. I hope everybody got
10 back as dry as possible. All right. We're
11 back on the record in 13-ALJ-17-0601-CC, the
12 matter of Rent-A-Center and the Department of
13 Revenue. And, Mr. von Lehe, I believe the
14 kickoff is yours.

15 MR. VON LEHE: Your Honor, thank you Your Honor.
16 Ms. Geer will do that.

17 THE COURT: All right.

18 MS. GEER: Thank you Your Honor. We'd like to --
19 actually, as a preliminary matter, the parties
20 have stipulated that Exhibits One through Eight
21 in both of the Exhibit Notebooks are
22 admissible. So I didn't know if it might save
23 us some time if we go ahead and enter those
24 into evidence.

25 THE COURT: Okay. All right.



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1 MR. VON LEHE: Add Ten to that.

2 MS. GEER: What's that?

3 MR. VON LEHE: You can add Ten to that.

4 MS. GEER: Oh, and add Ten to that, Your Honor.

5 THE COURT: All right. So in the Notebook, Exhibits

6 One through Eight and Ten ---

7 MS. GEER: Yes, sir.

8 THE COURT: --- are admitted with the consent of the

9 parties.

10 (Exhibit Numbers One through Eight and Ten from the

11 Exhibit Notebooks were admitted into evidence.)

12 MS. GEER: Thank you, Your Honor. And we would now

13 like to call our first witness, and that will

14 be Mr. Hugh Tollack.

15 THE COURT: All right. Mr. Tollack come up here and

16 you'll be sworn and then we'll give you a

17 chance to sit down.

18 MR. TOLLACK: Thank you, Your Honor.

19 THE COURT: Remain standing until we have the oath.

20 HUGH L. TOLLACK, II, CPA, being duly sworn, testifies

21 as follows:

22 THE COURT: Be seated. And if you will, state and

23 spell your name for the record please, after

24 you get comfortable there?

25 MR. TOLLACK: Thank you. My name is Hugh L.



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1 Tollack, II. The last name is spelled T-O-L-L-
2 A-C-K.

3 MS. GEER: Thank you, Your Honor.

4 MR. TOLLACK - DIRECT-EXAMINATION BY MS. GEER:

5 Q: Mr. Tollack, what is your current position with
6 Rent-A-Center?

7 A: I am the Director of the Tax Audits, Planning
8 and Research.

9 Q: Tell us a little bit about your educational
10 background?

11 A: I have a bachelor's in administration with
12 majors in accounting and finance from the
13 University of Wisconsin, Whitewater.

14 Q: And do you have any other certifications?

15 A: I am a licensed CPA in Wisconsin and Texas.

16 Q: Okay. Now if you could tell us about your work
17 experience upon finishing school through the
18 present, just a summary, please?

19 A: Okay. I spent the first five years working for
20 one of the big four firms now known as KPMG.
21 I spent another ten plus years working in
22 various positions including director and vice-
23 president of tax in some insurance holding
24 companies. I also worked in small or smaller
25 public accounting firms, and then in 2001 I



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1 started working for Rent-A-Center.

2 Q: And what is your -- you told us your current
3 position, but what is your primary
4 responsibility as, and can I just summarize it
5 as the tax director, is that a fair title?

6 A: Yes. My title describes my -- what I currently
7 do, my responsibilities. I manage all of our
8 controversy and audits and I also review all
9 updates on legislation, court cases in order to
10 advise the company accordingly and to prepare
11 or determine planning opportunities when
12 possible.

13 Q: And were you involved in the audit process for
14 RAC East and Rent Way?

15 A: I wasn't involved in the actual auditing, but
16 I was involved in the issues that came up as a
17 result of the audit.

18 Q: Okay. And did you -- have you reviewed copies
19 of the audit reports in this matter?

20 A: Yes, I have.

21 Q: And the specific Notebook, is there one on the
22 witness stand?

23 COURT REPORTER: She can use this.

24 MS. GEER: Your Honor, do you mind if I approach
25 him?



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1 THE COURT: Go ahead.

2 MS. GEER: Your Honor, for the record, we do have
3 two Exhibit Notebooks, one for Rent-A-Center
4 East and one for Rent Way. The documents are
5 virtually identical, so just for convenience
6 and efficiency purposes, we will just look at
7 one of the notebooks as we're going through
8 these questions.

9 Q: All right. So is Exhibit Six a copy of an
10 audit report you received? And do you have the
11 Rent Way or the RAC East Notebook?

12 A: I have the Rent Way.

13 Q: Okay. Is that a copy of the audit report you
14 received?

15 A: Yes, it is.

16 Q: Okay. And did you receive one for RAC East as
17 well?

18 A: Yes.

19 Q: And is Exhibit Seven, what is that?

20 A: That's the Department determination for Rent
21 Way.

22 Q: Okay. And did you receive Department
23 determinations for both RAC East and Rent Way?

24 A: Yes, we did.

25 Q: All right. Now tell us a little about the



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1 Rent-A-Center business generally. What does
2 Rent-A-Center do?

3 A: Rent-A-Center offers durable consumer goods to
4 the customers, such as electronics,
5 televisions, furniture, appliances on a rent to
6 own basis, using a -- what we usually refer to
7 as a Rental-Purchase Agreement. And it also
8 sells an optional liability waiver provision.

9 Q: Okay. And I'm going to ask you some more
10 detailed questions on these two businesses in
11 a minute, but let me get a little bit more
12 background from you first. Where are your
13 stores located?

14 A: We have stores located in all 50 states, as
15 well as Canada, Puerto Rico and Mexico.

16 Q: All right. And tell us about RAC East, one of
17 the taxpayers in this matter. What -- where
18 does RAC East own stores?

19 A: RAC East owns stores roughly in the eastern
20 half of the country.

21 Q: And who owns the Rent-A-Center Stores in other
22 states?

23 A: Rent-A-Center Texas, LP, owns all the stores in
24 Texas and Rent-A-Center West, Inc., owns the
25 remaining stores in the United States.



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- 1 Q: And tell us about Rent Way.
- 2 A: Rent Way was a publicly traded company that we
- 3 acquired on November 15, 2006. And at that
- 4 point, they had about 780 stores located in the
- 5 eastern half of the United States and Texas.
- 6 We subsequently re-branded all of their stores
- 7 from the name of Rent Way to the name of Rent-
- 8 A-Center ---
- 9 Q: Okay.
- 10 A: --- during 2007. And then we merged that
- 11 entity into RAC East at 12/31, 2009.
- 12 Q: All right, thank you. Let's next talk about
- 13 these Consumer Rental-Purchase Agreements that
- 14 you mentioned. When a customer decides to rent
- 15 an appliance, do they enter into one of these
- 16 agreements?
- 17 A: Yes. All customers have to enter into their
- 18 own Rental-Purchase Agreement.
- 19 Q: Okay. And if you could look at Exhibit One for
- 20 me and tell me what that document is?
- 21 A: That's a blank sample copy of a Consumer
- 22 Rental-Purchase Agreement used in South
- 23 Carolina.
- 24 Q: So this is not one that a customer has entered
- 25 into, it's just a blank form?



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- 1 A: That's correct.
- 2 Q: Okay. And is this blank form the same form
3 that a customer would enter?
- 4 A: Yes, it is.
- 5 Q: And now if you would look at Exhibit Two and
6 tell me what that document is?
- 7 A: That is the same form, but it's actually --
8 this has actual customer data entered into it.
- 9 Q: Okay. And is the blacked out portion, what is
10 that?
- 11 A: We redacted the name and street address of the
12 customer.
- 13 Q: Okay. And what are the basic terms of this
14 agreement?
- 15 A: The basic terms are the customer picks out an
16 item of merchandise that he or she wishes to
17 use or own and enter this contract. And the
18 customer -- the customer -- Rent-A-Center can't
19 cancel the contract if the customer relies on
20 all -- fulfills all the terms of the contract,
21 but it allows the customer to make payments for
22 the duration of the term, and at the end of
23 that term, the customer owns the item.
- 24 Q: Okay. So it's a rent to own?
- 25 A: Rent to own, yes.



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- 1 Q: And under this agreement, who is responsible if
2 the item rented is damaged or stolen?
- 3 A: The customer is responsible or -- yes, the
4 customer is responsible.
- 5 Q: And would you mind just reading the relevant
6 section?
- 7 A: Yes. It says under -- in the box in the top
8 one-third of the form, it says, Risk of Loss
9 and Damages. "You are responsible for the fair
10 market value of the property if and as of the
11 time it is lost, stolen, damaged or destroyed."
- 12 Q: All right. Now, is there a way for a customer
13 to avoid some of that risk?
- 14 A: Yes. The customer can enter into an optional
15 liability waiver provision.
- 16 Q: Let's talk about those. First, if you could
17 look at Exhibit Three for me and tell me what
18 that is.
- 19 A: That's a copy of an Optional Liability Waiver
20 Provision.
- 21 Q: Okay. And is this a blank form or one that has
22 been completed?
- 23 A: This is one that has been completed.
- 24 Q: Okay. Now, just for convenience purposes, does
25 it suit you if we refer to these as waivers?



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- 1 A: Yes.
- 2 Q: Okay. And what is the gist of the waiver?
- 3 A: Well, if a customer so elects and pays the
- 4 waiver fee, Rent-A-Center agrees to waive the
- 5 customer's liability to Rent-A-Center if the
- 6 property is damaged, destroyed or lost through
- 7 lightning, fire, smoke, windstorm, theft or
- 8 flood.
- 9 Q: And would you mind reading us the relevant
- 10 provision in the waiver that discusses that
- 11 agreement to waive liability?
- 12 A: Yeah. The very first sentence says, "By
- 13 signing below, you agree to pay an Optional
- 14 Liability Waiver fee with your weekly/semi-
- 15 monthly/monthly rental payment while this
- 16 Provision is in effect. By accepting this fee,
- 17 Rent-A-Center agrees to waive your liability to
- 18 Rent-A-Center if the property is damaged,
- 19 destroyed or lost through lightning, fire,
- 20 smoke, windstorm, theft or flood.
- 21 Q: And is there any other provision in this
- 22 agreement that discusses what benefit the
- 23 customer is receiving from this agreement?
- 24 A: The last paragraph, in bold and all capital
- 25 letters says, "Notice: This contract offers,



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- 1 for an additional charge, an optional liability
2 damage waiver to cover your responsibility for
3 damage to the property. Before deciding
4 whether to purchase the optional liability
5 waiver, you may wish to determine whether your
6 own homeowners or casualty insurance affords
7 you coverage for damage to the rental property,
8 and the amount of the deductible under your own
9 insurance coverage. The purchase of this
10 optional liability waiver is not mandatory and
11 may be declined.
- 12 Q: All right. Now, under the waiver, does Rent-A-
13 Center repair or replace the item rented if it
14 is stolen or damaged?
- 15 A: No, they do not.
- 16 Q: Okay. What about, is Rent-A-Center responsible
17 for warranting maintenance or service of items
18 rented under the waiver?
- 19 A: No, not under the waiver. That's -- they're
20 responsible for that under the Rental-Purchase
21 Agreement itself.
- 22 Q: Okay. Now, let's flip back to that Rental-
23 Purchase Agreement. Would you mind pointing us
24 to the language in that agreement that
25 discusses that?



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- 1 A: Okay. It's roughly in the bottom fourth of the
2 form under the heading Warranty and
3 Maintenance. It says, "We are responsible for
4 maintaining the goods while they are being
5 rented. We will not be responsible for the
6 costs or the results of any unauthorized
7 repairs or damage caused by improper use. If
8 any part of the manufacturer's warranty covers
9 the goods at the time you acquire ownership of
10 them, it shall be transferred to you, if
11 allowed by the terms of the warranty."
- 12 Q: All right. And just so I'm clear, does the
13 waiver provide any of those services that
14 you've just mentioned?
- 15 A: No, it does not.
- 16 Q: Okay. Is the waiver a warranty or a
17 maintenance or a service agreement?
- 18 MS. ACQUAVIVA: Objection, Your Honor.
- 19 A: No, it is not.
- 20 MS. ACQUAVIVA: It calls for a legal conclusion.
- 21 MS. GEER: Your Honor, I think that there are both
22 actual matters that are involved in that
23 question and you could construe it to ask a
24 legal question if you were looking at the law,
25 but I'm not asking for a legal conclusion, I'm



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1 asking him factually, is this a warranty,
2 service or maintenance agreement.

3 THE COURT: I think the answer has to be understood
4 in light of what Rent-A-Center East is doing
5 rather than what we think of that in terms of
6 having a legal outcome. So I'm going to let
7 him answer in that way.

8 MS. ACQUAVIVA: Thank you, Your Honor.

9 THE COURT: So overruled.

10 Q: Now you can answer the question.

11 A: Could you repeat the question, please?

12 Q: Would you like me to repeat it?

13 A: Yes.

14 Q: Is the waiver a warranty or a maintenance or a
15 service agreement?

16 A: No, it's not.

17 Q: Okay. And why not?

18 A: Because we are already responsible for that
19 under the terms of the Rental-Purchase
20 Agreement and the cost or the customer's cost
21 of doing that is already built into the Rental-
22 Purchase Agreement.

23 Q: Would you mind reading us that provision?

24 A: Which provision?

25 Q: In the Rental-Purchase Agreement.



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- 1 A: You mean the one that ---
- 2 Q: You may have already read it.
- 3 A: Yeah, the warranty maintenance?
- 4 Q: Yeah. I think that's already in the record.
- 5 A: Yes.
- 6 Q: Thank you. Does Rent-A-Center provide any
- 7 service to its customers in connection with the
- 8 waiver?
- 9 A: No, it does not.
- 10 Q: Does Rent-A-Center insure its rental
- 11 merchandise?
- 12 A: No. We never insured our rental merchandise.
- 13 Q: Is there any expense or cost or cost of service
- 14 associated with the waiver that is passed on to
- 15 the customer?
- 16 A: No, there is not.
- 17 Q: Is the waiver tangible personal property?
- 18 A: No, it is not.
- 19 Q: Could you characterize the waiver as a cost or
- 20 a cost of service of the Rental-Purchase
- 21 Agreement?
- 22 A: No, I wouldn't.
- 23 Q: And why not?
- 24 A: Because it's -- there is a separate agreement,
- 25 a totally separate agreement for a separate



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- 1 fee.
- 2 Q: And is it a cost in any way?
- 3 A: No, it's not a cost at all.
- 4 Q: Okay. Is the optional waiver insurance?
- 5 A: No, it's not insurance.
- 6 Q: All right. I think we've already covered this,
7 but just to make sure we're clear, are
8 customers required to purchase waivers?
- 9 A: No. It's totally optional and it says optional
10 multiple times in the form itself.
- 11 Q: And if a customer chooses not to purchase the
12 waiver, then does it cost -- does Rent-A-Center
13 charge more to rent the item?
- 14 A: No. The cost of the rental item is exactly the
15 same, with or without the waiver.
- 16 Q: Okay. What about does payment of the waiver
17 fees count towards the rental charge or the
18 total purchase price to purchase -- to rent or
19 purchase the property?
- 20 A: It does not, and that provision is contained,
21 again, on the Rental-Purchase Agreement in that
22 box I referred to earlier. The very sentence
23 states, "The total of scheduled payments does
24 not include the late charges and Optional
25 Liability Damage Wavier fee."



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1 Q: Okay. So if I'm a customer and I enter into
2 both of these agreements, and I stop payments
3 on the waiver, what happens?

4 A: Nothing as far as the Rental-Purchase Agreement
5 is concerned. All of the terms of that remain
6 in effect and the customer continues to pay the
7 same amount of rental-purchase fee.

8 Q: Okay. So if I stop payments on the waiver but
9 I continue making payments under the Rental-
10 Purchase Agreement, I can still own the
11 property?

12 A: Yes, you can.

13 Q: Okay. Now, when can a customer purchase a
14 waiver?

15 A: A customer can purchase a waiver at any time
16 that the Rental-Purchase agreement is in
17 effect.

18 Q: Now, does the waiver have a section where the
19 customer is asked to decline the waiver if they
20 do not wish to produce it -- to purchase it,
21 excuse me?

22 A: Yes. There is two lines for signature on the
23 waiver. One, the customer can sign that -- if
24 they choose the waiver, the other one there is
25 a designated section that states, "I/We decline



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- 1 the Optional Waiver Provision" and there is
2 another line for a signature there.
- 3 Q: Okay. And is the customer required to sign
4 that?
- 5 A: No, he's not.
- 6 Q: Okay. So if I decide I don't want to purchase
7 it, I don't have to sign it?
- 8 A: No.
- 9 Q: It's optional?
- 10 A: Totally optional. And we don't require them to
11 sign if they decline it. If they don't want to
12 sign the form at all, we still offer the rental
13 merchandise to them at the same price.
- 14 Q: Okay. And the question I asked you earlier
15 about when can a customer purchase a waiver, is
16 that actually stated somewhere in the Rental-
17 Purchase Agreement?
- 18 A: It's not in the Rental-Purchase Agreement or
19 the optional Liability Waiver Provision, but it
20 is one of our written policy statements.
- 21 Q: Okay. And I'll ask you to look at Exhibit
22 Number Five and tell us what that is.
- 23 A: And that we refer to as a Liability Damage
24 Waiver policy statement.
- 25 Q: Okay. And could you read the relevant portion



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1 that you were just referring to?

2 A: Yes. It's in the one, two, three, the fourth
3 paragraph. The third sentence, it says,
4 "Customer may begin coverage for LDW at any
5 time, but coverage will only be in effect
6 during the time period when payments are made
7 and the agreement is current.

8 Q: All right. And this agreement uses the term
9 LDW. We've been referring to them as waivers.
10 What does LDW stand for?

11 A: Well, that's the initials for Liability Damage
12 Waiver, which is what we refer to it as
13 internally.

14 Q: All right. Can the waiver be cancelled?

15 A: Yes, it can be cancelled by either party and at
16 any time.

17 Q: And where is that provision?

18 A: That's in the waiver, and it's in the right-
19 hand column, about almost halfway down, it
20 says, "This optional liability waiver provision
21 -- excuse me. It says, ---

22 Q: It might be right above that, maybe.

23 A: Yeah. "You and Rent-A-Center may terminate
24 this Optional Liability Waiver at any time
25 without notice and the termination will become



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1 effective at the end of the current period for
2 which you have paid the Optional Liability
3 Waiver fee."

4 Q: All right. And what does -- you testified
5 earlier that nothing happens to the Rental-
6 Purchase Agreement if someone doesn't make all
7 the waiver fee payments, but what happens to
8 the waiver? If you don't make all the waiver
9 fee payments, does something happen to it?

10 A: The waiver expires.

11 Q: Okay. So you no longer get that protection?

12 A: That's correct, for that period.

13 Q: All right. Now, if we look back at the sample
14 Rental-Purchase Agreement, Exhibit Two, does
15 that agreement reference the amount of the
16 waiver fee?

17 A: Yes, it does.

18 Q: And why is that?

19 A: In the spirit of full disclosure, most states
20 have consumer protection laws that require
21 disclosure of all relevant fees, the possible
22 fees a customer might pay. And this disclosure
23 is included there for those reasons.

24 Q: And is the waiver fee referenced on the
25 agreement whether or not the person decides to



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- 1 purchase the waiver?
- 2 A: Yes. It would be on the waiver. It would be
3 on there even if the customer declined.
- 4 Q: Okay. Now, could a customer who has rented an
5 item from one Rent-A-Center entity, purchase
6 the waiver from another Rent-A-Center entity?
- 7 A: Yes, they could.
- 8 Q: Give us an example of that.
- 9 A: Well, if a customer lived in a state, let's say
10 Texas, where Rent-A-Center Texas owned stores,
11 and they did not purchase a waiver at the time
12 that the Rental- Purchase Agreement was entered
13 into, and subsequently moved to South Carolina
14 where Rent-A-Center East owns the stores, the
15 customer could enter into a waiver at that
16 time.
- 17 Q: Okay. All right. Do the customers receive
18 receipts that memorialize the purchase of
19 either the rental agreement or the waiver?
- 20 A: Yes. They receive receipts for all payments.
- 21 Q: Okay. And let me ask you to look at Exhibit
22 Four and tell us if you recognize that
23 document?
- 24 A: Yes. That is a copy of a receipt that would
25 have been given to the customer.



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1 Q: Okay. And what does that receipt show?

2 A: Every receipt shows the customers' names, the
3 details, the dates. And it also itemizes each
4 of the payments received with that -- with the
5 customer. So there is a separate line for the
6 rental fee, a separate line for the waiver fee,
7 a separate line for this tax and then the
8 total.

9 Q: Okay. Now does the waiver enhance or increase
10 the value of the item rented by the customer?

11 A: No, it does not.

12 Q: Does the waiver alter or improve the item
13 rented in any way?

14 A: No, it does not.

15 Q: Now, if the customer enters into a Rental-
16 Purchase Agreement and a waiver, how many
17 agreements are there?

18 A: There are two separate agreements.

19 Q: Okay. And what benefit does the Rental-
20 Purchase Agreement provide the customer?

21 A: The benefit, the benefit of renting the item,
22 obtaining possession of the personal property.

23 Q: Okay. And what benefit does the waiver
24 provide?

25 A: The waiver provides a separate benefit in that



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1 a Rent-A-Center will assume the risk of loss of
2 the fair market value of that item in those
3 circumstances specified.

4 Q: All right. Now I'm going to ask you to look
5 back at Exhibit Three, the waiver. Do you see
6 where it states in the waiver that the waiver
7 is an additional part of the rental agreement?

8 A: Yes, I do.

9 Q: And why does it say that?

10 A: Well, the intent of Rent-A-Center in putting
11 that sentence into this agreement was to comply
12 with the various consumer protection laws which
13 require certain disclosures. And all of those
14 disclosures that are required are made in the
15 Rental-Purchase Agreement itself. Therefore,
16 the reference in the Waiver Provision to the
17 Rental-Purchase Agreement, adds the disclosure,
18 all the necessary disclosures to the Waiver
19 Provision without having to repeat them all.

20 Q: Now, you were in the courtroom earlier. Did
21 you understand that the Department's position
22 in this matter is that there is a single
23 transaction involved here?

24 A: I understand that's their position, I don't
25 understand why.



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1 Q: Okay. And so I take that to mean you disagree?

2 A: Yes, I do.

3 Q: Okay. And tell us why?

4 A: Well, because they are separate agreements.
5 The fees are separate. They are determined
6 separately. The customer can pay one without
7 paying the other. It's totally optional and
8 the customer can cancel it at anytime. And
9 there are, you know, separate benefits to
10 derive from each one of those fees.

11 Q: Now, does Rent-A-Center, do they prepare both
12 the Rental-Purchase Agreement and the waiver?
13 Are they the drafters of those agreements?

14 A: Yes.

15 Q: Okay. And what is Rent-A-Center's intent with
16 respect to whether these are two separate
17 agreements or two transactions?

18 A: Well, the intent of Rent-A-Center is that they
19 are two separate identifiable documents,
20 contracts. They have their own offer and
21 acceptance. We record the revenue from them
22 in separate general ledger accounts, so we can
23 track which is which. It's relevant to us,
24 from the financial statement, for purposes as
25 well.



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- 1 Q: Okay. So just to make sure I'm clear, what is
2 Rent-A-Center's intent with respect to how many
3 transactions there are?
- 4 A: We intend for these to be two separate
5 documents, two separate transactions.
- 6 Q: Now, are you familiar with a case entitled, In
7 the Matter of Taxpayers? The cite is actually
8 2008 Westlaw I582992 and it's a Rhode Island
9 Tax Division case?
- 10 A: Yes. I'm familiar with that.
- 11 Q: And how are you familiar with that?
- 12 A: I was working for Rent-A-Center when that case
13 was litigated.
- 14 Q: And was Rent-A-Center the taxpayer in that
15 matter?
- 16 A: Rent-A-Center East was the taxpayer, yes.
- 17 Q: Okay. And was Rent-A-Center East audited by
18 the Department of Rhode Island after that
19 decision?
- 20 A: Yes, they were.
- 21 Q: Okay. And tell us what happened after that
22 audit was issued?
- 23 A: We received another assessment on rental-
24 purchase fees and at the time of -- well, I
25 should say, back up, the auditor raised this as



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1 an issue, as an audit issue, during the course
2 of the audit.

3 Q: Right.

4 A: And informed me that he was planning to assess
5 tax on that optional waiver fee again. I did
6 some research and determined that the law had
7 changed, and I communicated that law change to
8 the auditor. The auditor was not persuaded by
9 that. Apparently he didn't think it was
10 relevant because he didn't withdraw or drop the
11 issue.

12 Q: Okay.

13 A: So when he actually issued his audit report, he
14 formally assessed the tax on the wavier fees.
15 So thereupon I wrote a protest which again
16 explained how the law had changed, how I
17 thought that was relevant. It made no
18 difference. We had a hearing on the matter,
19 which I attended via telephone conference, and
20 the hearing officer upheld the assessment.

21 Q: Okay. What happened next.

22 A: Well, in looking at another matter, I
23 determined that the policy that we had looked
24 at earlier was in existence and I was unaware
25 of that prior to that time.



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1 Q: That's the waiver policy that you're referring
2 to?

3 A: Yes, the waiver policy.

4 Q: And what specifically about that policy?

5 A: The statement that the customer could enter
6 into a waiver at any time ---

7 Q: Okay.

8 A: --- the Rental-Purchase Agreement is in effect.

9 Q: Okay.

10 A: Because that was a fact that was not known at
11 the time of the original litigation, the first
12 case.

13 Q: So that policy was not introduced as evidence
14 in the initial case?

15 A: That is correct. It existed, but it was not
16 introduced into evidence. And so I contacted
17 our legal counsel, legal counsel in Rhode
18 Island, and sent him copies of the waivers and
19 communicated that. And thereupon he got
20 involved and arranged for another conference,
21 and he turned those documents over to the
22 Department.

23 Q: And what happened next?

24 A: After that hearing was held and discussed the
25 matter, we received a notice from Rhode Island



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1 that said they were ---

2 MS. ACQUAVIVA: Objection, Your Honor. Hearsay.

3 MS. GEER: He's testified that he received a notice.

4 MS. ACQUAVIVA: He went on to say, that said, and was
5 about to testify what the notice said.

6 MS. GEER: Your Honor, we're not offering it for the
7 truth of the matter, we're offering it as to
8 what Mr. Tollack -- what the Department is
9 conveying, saying, to Mr. Tollack, not whether
10 it's true or not.

11 THE COURT: Anything else?

12 MS. ACQUAVIVA: That is the truth of the matter
13 asserted, Your Honor. There is wanting what
14 was in the notice to say that that was the
15 truth. That's what the Department, the Rhode
16 Island Department of Revenue's position was.
17 That's the purpose of introducing the notice.

18 THE COURT: And that's binding in this Court how?

19 MS. GEER: It's not binding on this Court.

20 THE COURT: He's providing information, I'll let him
21 do that.

22 MS. ACQUAVIVA: Thank you, Your Honor.

23 THE COURT: Overruled.

24 Q: All right. So you received a notice. If you
25 could flip to Exhibit Twelve and tell me if



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- 1 that is what you're referring to?
- 2 A: Yes, it is.
- 3 Q: All right. So that is the letter from whom?
- 4 A: From the Department of Revenue.
- 5 Q: All right.
- 6 A: Rhode Island.
- 7 Q: And what are they conveying to you there?
- 8 A: They are saying that the Department amenable to
- 9 abating the current deficiency notice to the
- 10 extent that any of the deficiency notice is
- 11 based upon the assessment of liability damage
- 12 waiver fees. Furthermore, these fees will be
- 13 henceforth deemed to be deductible from taxable
- 14 receipts as optional service charges under
- 15 Section 44-18-12 until such time as there has
- 16 been a change to the law or there has been a
- 17 change in how Rent-A-Center imposes and treats
- 18 liability damage waiver fees.
- 19 Q: Okay. And so based on your experience in
- 20 communications with the Department of Rhode
- 21 Island, what did you feel was the factor that
- 22 caused them to change their mind?
- 23 A: Well, the arguments that I raised were solely
- 24 based upon the change in the law. It had no
- 25 impact, but when we did bring the policy



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1 statements to the attention of the Department,
2 I know that after that happened is when they
3 dropped the assessment.

4 Q: Okay. And I apologize, and you may have
5 testified about this earlier, but what are
6 audit periods at issue here?

7 A: In this case or in the Rhode Island case?

8 Q: In this case. I'm sorry. I'm moving past
9 Rhode Island, back to South Carolina.

10 A: Yeah. The audit period for both Petitioners
11 begins on April 1, 2007 and the audit period
12 for Rent Way ends on December 31, 2009 when it
13 was merged into Rent-A-Center East.

14 Q: Right.

15 A: But the audit period for Rent-A-Center East
16 continues on until October 31, 2010.

17 Q: Okay. And are the proceeds from the sales of
18 the Rental-Purchase Agreements, for the rental
19 of tangible personal property, subject to sales
20 tax in South Carolina?

21 A: The rental-purchase fees are subject to sales
22 tax in South Carolina, yes.

23 Q: Okay. And so for the periods at issue, did
24 Petitioners collect all such taxes and remit
25 them to the Department?



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1 A: Yes, we did.

2 Q: And are the proceeds from the sales of the

3 waivers in South Carolina subject to sales tax

4 here?

5 A: No, they're not.

6 Q: And why not?

7 A: Because they are not proceeds of -- gross

8 proceeds accruing or proceeding from the sale

9 of tangible person property.

10 Q: What do the waiver proceeds proceed or accrue

11 from?

12 A: The proceed or accrue from the waiver itself.

13 MS. GEER: Your Honor, that's all the questions that

14 I have.

15 THE COURT: All right. Ms. Acquaviva.

16 MS. ACQUAVIVA: Thank you, Your Honor.

17 MR. TOLLACK - CROSS-EXAMINATION BY MS. ACQUAVIVA:

18 Q: Good afternoon, Mr. Tollack. I believe we have

19 talked over the phone but now officially get to

20 meet in person. I would like to go back

21 through some of the things that Ms. Geer left

22 out. If you could turn back to Exhibit Two.

23 This Rental-Purchase Agreement discusses an

24 initial payment and a renewal payment, correct?

25 A: Yes.



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- 1 Q: And isn't it true that that's because the term
2 ends and then has to be renewed by an
3 additional payment?
- 4 A: Well, the customer has to know how long she's
5 going to pay, and that's why the amounts are
6 disclosed on the Rental-Purchase Agreement.
- 7 Q: Okay. It's true that Rent-A-Center offers
8 three different terms, correct?
- 9 A: I'm not certain -- what do you mean?
- 10 Q: A customer can pay on a weekly basis, semi-
11 monthly basis or monthly basis, correct?
- 12 A: Yes.
- 13 Q: And Rent-A-Center calls that a term, correct?
- 14 A: I'm not sure what we refer to it as internally.
15 It's a payment schedule.
- 16 Q: I'm sorry. This is hard to read, so I'm just
17 trying to find it. Okay, under initial
18 payment, does it not say, payments are due at
19 the beginning of each term that you choose to
20 lease the property?
- 21 A: Yes.
- 22 Q: So Rent-A-Center calls this monthly, semi-
23 monthly or weekly payment a term, correct?
- 24 A: Yes.
- 25 Q: And once a customer comes in and pays, and



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1 let's assume it's -- they've elected a weekly
2 term, they pay for the first week. The
3 agreement terminates at the end of that term,
4 correct?

5 A: Yes.

6 Q: Then a customer has to come in and make a
7 payment for the next, or week two, correct?

8 A: Yes.

9 Q: And that renews the agreement?

10 A: Yes.

11 Q: That's a new transaction, correct?

12 A: No.

13 Q: Why not?

14 A: It's part of the same transaction.

15 Q: Can you explain how?

16 A: It's a new term. It's a part of the same
17 transaction, the Rental-Purchase Agreement, but
18 it's a new term to that agreement.

19 Q: Isn't it true that after the end of the term,
20 the customer can stop making payments and
21 return the item to Rent-A-Center?

22 A: Yes.

23 Q: Now, to take a look at the waiver itself, which
24 I believe is Exhibit Three, isn't it true that
25 if a customer stops payment their rental



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1 payment, the waiver automatically expires?

2 A: That's correct, at the end of the term.

3 Q: So at the end of the week, if it was a weekly
4 term, correct?

5 A: Yes.

6 Q: Now, you mentioned in your direct testimony the
7 paragraph or the sentence that says, "This
8 optional liability waiver is an additional part
9 of the rental agreement." It's included due to
10 consumer protection laws, correct?

11 A: Yes.

12 Q: And it has to do with certain disclosures?

13 A: Yes.

14 Q: What are the disclosures that you're referring
15 to?

16 A: Well, you see, a lot of the information is
17 provided in the Rental-Purchase Agreement
18 itself. It spells out the amounts. First of
19 all, the purchase price of the items, whether
20 it's new or used. The amount of the payments
21 that are needed to acquire ownership, those are
22 calculated in various terms, and it also
23 includes an amount, discloses an amount, for
24 the option of -- the optional liability waiver.

25 Q: Why, based on your understanding, do consumer



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1 protection laws require a separate agreement to
2 refer back to a different agreement due to
3 disclosures?

4 A: Well, there are other disclosures that may be
5 required in various states as well. So some of
6 the other verbiage in this agreement. So we
7 try to maintain the same agreement and use it
8 virtually in every state. So we may have
9 disclosures that aren't necessary in one state,
10 just to have a uniform contract.

11 Q: Okay. So let's focus on South Carolina.
12 That's what's at issue before the Court today.
13 What do you know about consumer protection laws
14 in South Carolina and how those affect these
15 two agreements?

16 A: I don't know much about specific consumer laws
17 in South Carolina.

18 Q: And you may not be able to answer this, but for
19 South Carolina purposes, why is it necessary
20 that the waiver refer back to the Rental-
21 Purchase Agreement if they are completely
22 separate?

23 A: Again, in order to avoid having to repeat
24 whatever disclosures are relevant, that's the
25 purpose and the intent of that sentence, as we



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- 1 discussed earlier.
- 2 Q: And also, if you look at the waiver itself, it
- 3 says in the first paragraph, and I think it's
- 4 the second sentence, "By accepting this fee,
- 5 Rent-A-Center agrees to waive your liability to
- 6 Rent-A-Center." Did I read that correctly?
- 7 A: Yes.
- 8 Q: In the waiver provision that we're looking at,
- 9 it's for Rent Way, correct?
- 10 A: Well, this is stamped as a Rent Way Exhibit,
- 11 but there is no distinction on the form itself
- 12 as to which entity is issuing it.
- 13 Q: Would there ever be a distinction on the form
- 14 itself as to which entity is issuing the
- 15 wavier?
- 16 A: No.
- 17 Q: Then how do you keep track of which waivers are
- 18 with which entity?
- 19 A: We don't have any reason to do that
- 20 necessarily.
- 21 Q: And why not?
- 22 A: Because we are all related companies, separate
- 23 legal entities, but related companies.
- 24 Q: And what are those related companies?
- 25 A: At what point in time?



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1 Q: The time of the audit period.

2 A: There would have been Rent Way, there would
3 have been Rent-A-Center East, Rent-A-Center
4 West, Rent-A-Center Texas. There may have been
5 other entities that may have been merged
6 subsequent to that time. We have lots of
7 entities that we acquire and merge.

8 Q: And are they all -- do they have the same
9 accounting? How are they related? How do they
10 work together or not work together?

11 A: They're all commonly owned.

12 Q: By whom?

13 A: By Rent-A-Center, Inc.

14 Q: You also testified, the last signature line on
15 the waiver, you don't require customers to sign
16 that, even if they don't want the waiver,
17 correct?

18 A: That's correct.

19 Q: Then why do you have it on the form?

20 A: It's to -- if the customer does sign it, it
21 says they decline. If they later try to
22 present a claim, we would then have proof that
23 they didn't elect the waiver in the first
24 place.

25 Q: And what happens if a customer doesn't sign it



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1 and then presents a claim?

2 A: They wouldn't have a waiver agreement.

3 Q: So what's the difference between whether they
4 sign this or don't sign it?

5 A: Well, in practicality, I guess there is none.
6 But this proves that -- if they do sign it, it
7 proves that it was offered to them.

8 Q: Okay, thank you. If we could take a look at
9 Exhibit Five. That is the policy statement.
10 The very last sentence above procedures says,
11 "All approved LDW or waiver claims must be
12 charged off by the district manager within 24
13 hours. What is charged off mean?

14 A: That's entering information into our system
15 that basically takes that item of rental-
16 purchase merchandise out of our system.

17 Q: Can you explain what that means?

18 A: Well, we have inventory of all of our rental
19 merchandise that we would keep for financial
20 purposes, report the revenue related to that
21 item, depreciation. And so when that item is
22 either purchased or stolen, we have some way to
23 adjust our accounting records to delete that
24 item from our accounting records. That's what
25 a charge-off is.



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1 Q: And when you said we, did we mean Rent-A-Center
2 East, Rent Way, or did we mean Rent-A-Center,
3 Inc., the company that owns all of these
4 companies?

5 A: The procedures would be the same for all of the
6 companies that own stores.

7 Q: Who actually owns the inventory?

8 A: The entity that owns the store.

9 Q: Okay. Tell me if my understanding of the
10 waiver is correct. If a customer has a waiver,
11 isn't it true that if something -- a covered
12 event occurs and the item is damaged or
13 destroyed, Rent-A-Center will not receive the
14 fair market value of that item?

15 A: That's correct.

16 Q: And I want to talk to you about your testimony.
17 It sounded like your testimony was generally
18 that a customer could rent an item, for
19 example, from Rent-A-Center West or Rent-A-
20 Center Texas, I think was the example you used,
21 move to South Carolina, and then purchase a
22 waiver from Rent-A-Center East. So is that an
23 accurate explanation of your earlier testimony?

24 A: That's correct.

25 Q: Okay. Do those types of transactions occur --



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1 did those types of transaction occur in South
2 Carolina during the audit period?

3 A: I would anticipate that they would have.

4 Q: But do you know if those transactions occurred
5 in South Carolina during the audit period?

6 A: I don't have any documentation to that effect
7 with me, but we have customers that move from
8 state to state all the time. So if you asked
9 me if it's likely, I would say yes.

10 Q: Okay. But I'm asking you if you know if it
11 happened in South Carolina during the audit
12 period?

13 A: We have not performed any kind of investigation
14 to know whether that's the case.

15 Q: Okay. So then, generally, if that type of
16 transaction were to occur, logistically how
17 would it happen?

18 A: The customer who was a customer in Texas and
19 rented merchandise and wanted to continue to
20 possession that, make the payments, get the
21 ownership of the item, for whatever reason
22 relocates and they want to continue to own it,
23 so they have to, you know, continue to make
24 their payments somewhere, so they would come
25 into a store in wherever they moved to.



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- 1 Q: So you're saying that if a customer moves from
2 Texas, where they entered into the initial
3 Rental-Purchase Agreement, moves to South
4 Carolina, they make their rental payments in
5 South Carolina?
- 6 A: Most of our customers make their payments in
7 cash. So they wouldn't travel back to Texas
8 every week to make their payments. I would
9 assume that they would actually go to a store
10 that was close to where they were currently
11 living to do that.
- 12 Q: And who keeps that payment?
- 13 A: Who keeps the payment?
- 14 Q: Uh-huh (affirmative response). Would Rent-A-
15 Center East keep the payment or Rent-A-Center
16 -- or would Rent-A-Center East have to send
17 that payment to Rent-A-Center Texas?
- 18 A: I'm not sure.
- 19 Q: Okay. Does the Rental-Purchase Agreement
20 change at all when a customer moves?
- 21 A: No, it doesn't.
- 22 Q: So tell me how Rent-A-Center East could waive
23 a customer's liability to Rent-A-Center Texas?
- 24 A: I don't know why it couldn't.
- 25 Q: Tell me how it can?



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- 1 A: It accepts the payment.
- 2 Q: Who accepts what payment?
- 3 A: Rent-A-Center East accepts the waiver fee
4 payment, thereby the waiver -- the waiver
5 becomes in force and effect.
- 6 Q: And then when Rent-A-Center Texas' dishwasher
7 is destroyed, Rent-A-Center Texas is out the
8 fair market value. Would Rent-A-Center East
9 reimburse Rent-A-Center Texas for the fair
10 market value?
- 11 A: I don't understand.
- 12 Q: Let's go back to the all in South Carolina
13 transaction. You stated that the waiver
14 basically absolves the customer of liability to
15 Rent-A-Center East in this situation for
16 payment of fair market value of the damaged or
17 destroyed item, correct?
- 18 A: Yes.
- 19 Q: Now let's say we're in Texas. If the whole
20 transaction was occurring in Texas, the waiver
21 that was sold by Rent-A-Center Texas would
22 waive the customer's liability to pay the fair
23 market value to Rent-A-Center Texas, correct?
- 24 A: Right.
- 25 Q: So if a customer is renting an item from Rent-



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- 1 A-Center Texas and it's damaged without the
2 waiver, they owe the fair market value to Rent-
3 A-Center Texas, correct?
- 4 A: Correct.
- 5 Q: So in this instance, the customer has a waiver
6 from South Carolina, Rent-A-Center East not
7 Rent-A-Center Texas, correct, in my example?
- 8 A: Okay.
- 9 Q: How can Rent-A-Center East waive the customer's
10 liability for the fair market value to Rent-A-
11 Center West or Rent-A-Center Texas?
- 12 A: Because they are related entities.
- 13 Q: In the Rental-Purchase Agreement, and that's
14 back to Exhibit Two or Three, whichever one you
15 prefer, towards the bottom it says, title and
16 taxes. It says, "We retain title to the
17 property at all times and will pay any taxes
18 which might be levied on the property.",
19 correct?
- 20 A: Yes.
- 21 Q: We, in this instance, indicates that it would
22 be Rent-A-Center East, correct?
- 23 A: Yes.
- 24 Q: Okay. So when a customer moves from Texas to
25 South Carolina, who owns and pays the taxes on



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- 1 the item that's rented?
- 2 A: I'm not sure what taxes are involved.
- 3 Q: Okay. Who owns the washing machine that the
- 4 customer rented in Texas but now is using in
- 5 South Carolina?
- 6 A: Rent-A-Center Texas.
- 7 Q: Okay. If a customer rents an item from one of
- 8 Rent-A-Center's competitors, they cannot come
- 9 into Rent-A-Center and purchase a waiver,
- 10 correct?
- 11 A: On what?
- 12 Q: A customer goes into a competitor and rents a
- 13 TV. They then cannot come into Rent-A-Center
- 14 and purchase a liability damage waiver for that
- 15 TV, correct?
- 16 A: For the TV owned by the other party?
- 17 Q: Correct.
- 18 A: That's correct.
- 19 Q: Why does Rent-A-Center then allow that
- 20 situation to happen with affiliate companies,
- 21 but not third parties?
- 22 A: Because they're affiliated.
- 23 Q: And what difference does that make?
- 24 A: Because they're all owned by the same party.
- 25 Q: You talked earlier about a Rhode Island case.



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1 Do you recall who testified during that case in
2 Rhode Island?

3 A: No, I don't.

4 Q: Do you know if it was someone who worked for
5 Rent-A-Center?

6 A: Yes.

7 Q: Isn't it true that that person who testified on
8 behalf of Rent-A-Center told the court that a
9 customer cannot obtain a damage waiver for
10 goods from a store different from the store
11 from which the goods are rented?

12 A: I don't have any personal knowledge of that.

13 Q: Are you aware of that ever having been Rent-A-
14 Center's policy?

15 A: If there are two stores owned by the same
16 entity within proximity to each other, the
17 customer is always continuing the contract or
18 the affiliation with the store that originally
19 rented them the item. But if they moved
20 someplace away from that proximity, then they
21 have an affiliation or a relationship with a
22 new store.

23 Q: Do you know why that distinction was not made
24 in the Rhode Island case?

25 A: No, I don't.



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1 Q: So is it your testimony that as far as you
2 know, even during the Rhode -- when the Rhode
3 Island case was occurring, that audit period,
4 a customer could rent an item from Rent-A-
5 Center Texas and buy a waiver from Rent-A-
6 Center East?

7 A: Well, I know what I've already testified to,
8 that if a customer moves, they can continue to
9 own the item, purchase the item, rent the item,
10 from a store located to where -- closer to
11 where they move. So I don't know what the
12 questions were in that proceeding, because I
13 didn't attend that proceeding.

14 MR. VON LEHE: Your Honor, since this is a
15 stipulated matter in this case, in the sense
16 that in their response to disputed facts which
17 I read this morning, they say this is not a
18 disputed fact. They say that someone can move.
19 Their belief that is it an undisputed fact that
20 someone can move from one jurisdiction to
21 another and they're obtaining a waiver from an
22 affiliated store. They agreed to that for
23 purposes of this case.

24 THE COURT: Well, I think -- I may be
25 misunderstanding what the question was, but



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1 she's asked about specific facts in this Rhode
2 Island matter. Mr. Tollack has testified that
3 if people are living in Texas, rent in Texas,
4 and move to South Carolina, they can then --
5 apparently, their contract then moves to
6 wherever they are in South Carolina. And they
7 can move to this other entity which owns the
8 stores in South Carolina. Now, that's been his
9 testimony from deposition forward, I believe.

10 MR. VON LEHE: Yes.

11 THE COURT: So this -- the matter that Ms. Acquaviva
12 is asking about, apparently has something to do
13 with testimony in the Rhode Island case which
14 you all have opened the door to. So I'm not
15 quite sure what your objection is.

16 MR. VON LEHE: Well, my objection is it's not
17 relevant to this proceeding, because it is
18 agreed among the parties that if someone moves
19 to another jurisdiction and they don't have a
20 waiver already, they can get a waiver from an
21 affiliated store.

22 THE COURT: Well, that's the testimony. I don't
23 know that anybody ---

24 MR. VON LEHE: That's agreed. That's an undisputed
25 fact according to their motion that they filed



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1 this morning.

2 MS. ACQUAVIVA: Your Honor ---

3 MR. VON LEHE: It's an undisputed fact.

4 MS. ACQUAVIVA: --- if I may?

5 THE COURT: Please.

6 MS. ACQUAVIVA: The undisputed facts were for
7 purposes of the summary judgment motion which
8 you denied. We are now at trial, and as far as
9 we're concerned, all facts are now in dispute.
10 We had asked earlier to limit the case to just
11 the facts in dispute and were told to go
12 forward and examine all the facts, so that's
13 what we're doing.

14 MR. VON LEHE: Your Honor, I fail to understand
15 that. If they have agreed that these are the
16 facts -- they've agreed that these are the
17 facts. It doesn't matter if it's in a Motion
18 for Summary Judgment or during a trial of the
19 case. They can't change their mind because
20 their Motion for Summary Judgment was denied
21 and say, well, now we don't agree.

22 THE COURT: I'm not -- well, I'm not going to speak
23 for her. So let me hush and let her respond to
24 that.

25 MS. ACQUAVIVA: Your Honor, I think we made it



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1 pretty clear, and I think I said several times,
2 for purposes of the summary judgment motion, we
3 are not disputing these facts. We also said,
4 and there is a footnote, that we don't think
5 these facts are relevant because there was no
6 evidence that this type of transaction occurred
7 in South Carolina. Based on Mr. Tollack's
8 testimony, he still doesn't have any evidence
9 that these types of transactions occurred in
10 South Carolina during the audit period. But
11 for purposes of the record, the Department's
12 exploring the transaction, trying to understand
13 the transaction. Again, the Rhode Island case
14 that they brought up has different facts, but
15 it's the same entity. So we're just trying to
16 bring out all the facts so that it's all on the
17 record and there's no confusion.

18 THE COURT: Well, if your purpose is, as you just
19 said, to distinguish the facts that were
20 brought out in the Rhode Island case, then the
21 question to Mr. Tollack is, why were these
22 facts different? And Mr. Tollack's answer is,
23 I don't know.

24 MS. ACQUAVIVA: Correct.

25 THE COURT: Seems to me we would be finished with



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1 that question at that point.

2 MS. ACQUAVIVA: That's correct, Your Honor.

3 MR. VON LEHE: Thank you, Your Honor.

4 THE COURT: All right. So for the purpose of the
5 record, if you've made an objection, I'm
6 overruling it.

7 MR. VON LEHE: Thank you, Your Honor.

8 Q: To get back to Rhode Island on a different
9 note, you talked about a law change in Rhode
10 Island and that you personally thought that
11 made a difference, is that correct?

12 A: That's correct.

13 Q: What was the law, if you can recall, during the
14 earlier case, the one from the 2008 decision?

15 A: I do not recall.

16 Q: If I showed you the opinion, would that help
17 you recall what the law was?

18 A: If it's repeated in the opinion, you know,
19 verbatim.

20 MS. ACQUAVIVA: Your Honor, may I show the witness
21 the opinion?

22 MR. VON LEHE: Yes, Your Honor. We have no
23 objection to that.

24 THE COURT: All right.

25 Q: And you're welcome to look through the entire



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1 thing, if you would like. Let the record
2 reflect that I'm showing Mr. Tollack the
3 Opinion entitled "In the matter of
4 Taxpayers". It's the 2008 WL5582992 Rhode
5 Island Division of Taxation.
6 A: Okay.
7 Q: What was the law then, the relevant law, during
8 that time period?
9 A: Well, assuming that this is an actual quote of
10 the statute that was in existence at the time,
11 it says, "Rhode Island General Law Section 44-
12 18-12 states in part as follows: 'sales price'
13 defines - (a) 'sales price' means the total
14 amount for which tangible personal property is
15 sold or leased or rented, and the total amount
16 charged for the furnishing or distributing of
17 electricity, natural gas, artificial gas,
18 steam, refrigeration, water,
19 telecommunications, telegraph, cable and radio
20 message service, community antenna television,
21 subscription television and cable television
22 service." And then there's a gap. And it
23 says, "Furthermore, sales price means the total
24 amount charged for the rental of living
25 quarters in any hotel, rooming house or tourist

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1 camp, valued in money, whether paid in money or
2 otherwise, including all of the following."
3 And then there's a section (1), "Any services
4 that are a part of the sale valued in money,
5 whether paid in money or otherwise." I believe
6 that's the conclusion of the quotations.

7 Q: Do you know when that law changed?

8 A: I don't remember the year it changed, but it
9 changed when Rhode Island joined streamlined
10 sales tax, streamlined it sales tax agreement.

11 Q: What did it change to?

12 A: It changed to the uniform definitions that are
13 contained in the streamlined sales tax
14 agreement.

15 Q: Specifically, do you know what it changed to?
16 What does the new language say?

17 A: I don't have it memorized.

18 Q: Is it true that the word, necessary services,
19 was inserted into part of the definition?

20 A: There is a relevant reference to services
21 necessary to complete the sales that are
22 involved.

23 Q: And what does it say regarding services as far
24 as the old statute?

25 A: Any services that are a part of the sale,



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1 valued in money, whether paid in money or
2 otherwise.

3 Q: Okay. And so is it accurate to say that the
4 former Rhode Island statute said, any services,
5 and the current Rhode Island statute says,
6 services necessary to the transaction?

7 A: That's one change. I'm sure there are other
8 changes that are relevant as well.

9 Q: You don't know those, though, do you?

10 A: I don't keep all the statutes of every state
11 memorized.

12 Q: Just to clear up a few things. Rent-A-Center,
13 being Rent-A-Center and all of its affiliates,
14 do not sell waivers to customers unless an item
15 has been rented from Rent-A-Center or one of
16 its affiliates, correct?

17 A: That's correct.

18 Q: And isn't it true that the waiver fee is
19 determined based on a percentage of the rental
20 fee?

21 A: Yes, it is.

22 Q: So that means you cannot calculate the price
23 for a wavier without the corresponding rental
24 agreement, correct?

25 A: We could. We could do it in a different



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1 manner, this is just the way we choose to do it
2 at this point in time. We could make it
3 \$10.00, we could make it \$12.00, we could make
4 it \$15.00, we could make it anything we wanted
5 to, but this seemed to be the simplest, most
6 fairest, way to take into consideration the
7 relative value of the item.

8 Q: So I'll rephrase my question then. In South
9 Carolina, during the audit period, Rent-A-
10 Center did not price a waiver without a
11 corresponding rental agreement, correct?

12 A: That's correct.

13 Q: If I stopped, or if a customer stops paying his
14 rental payment, can he continue to pay for the
15 waiver?

16 A: No.

17 Q: Why not?

18 A: Because the Rental-Purchase Agreement has been
19 terminated. There is nothing for the customer
20 or Rent-A-Center to waive at that point.

21 MS. ACQUAVIVA: I have no further questions, Your
22 Honor.

23 MR. TOLLACK - RE-DIRECT EXAMINATION BY MS. GEER:

24 Q: Just a very minor cleanup issue. Mr. Tollack,
25 when Rent Way was acquired, how did it -- under



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1 what name did it do business once it was
2 acquired by Rent-A-Center?

3 A: The stores were re-branded from Rent Way to
4 Rent-A-Center as quickly as was physically
5 possible.

6 Q: Okay. So the agreements would have said Rent-
7 A-Center, not Rent Way, customers?

8 A: Well, we would have started using all of our
9 agreements in their stores ---

10 Q: Okay.

11 A: --- virtually immediately.

12 Q: And looking at the waiver, Exhibit Three that
13 we were looking at before, when it says Rent-A-
14 Center agrees to waive their liability to Rent-
15 A-Center, that's the form that all entities
16 use?

17 A: Yes.

18 Q: Okay. So there's not a form that says, Rent-A-
19 Center Texas waives their liability, they all
20 say Rent-A-Center?

21 A: That's correct.

22 Q: Okay.

23 MS. GEER: That's all I have.

24 MS. ACQUAVIVA: I have no followup.

25 THE COURT: Mr. Tollack, we've reached the end of



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1 our abuse of you.

2 MR. TOLLACK: Thank you very much, Your Honor.

3 THE COURT: Thank you.

4 MR. VON LEHE: Your Honor, I was wondering if before

5 we call our next witness, if we could have

6 about a ten minute break?

7 THE COURT: Sure. We'll take ten minutes.

8 MR. VON LEHE: Thank you.

9 THE COURT: 2:15 to 2:25.

10 MR. VON LEHE: Thank you.

11 (Off the Record)

12 MR. VON LEHE: The Taxpayer would like to call

13 Professor Richard Pomp to the stand please.

14 (Witness sworn.)

15 PROFESSOR RICHARD POMP, having been duly sworn,

16 testifies as follows:

17 THE COURT: Please state your name and spell it for

18 the record, please?

19 MR. POMP: Richard D. Pomp. P as in Peter, O, M as

20 in Mary, P as in Peter.

21 THE COURT: Professor.

22 PROFESSOR POMP - DIRECT EXAMINATION BY MR. VON LEHE:

23 Q: Professor Pomp, what has been your involvement

24 in this matter?

25 A: I was retained to opine from the principles of



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1 sales tax as to how the issue in this case
2 should be treated.

3 Q: And what is your understanding of what the
4 issue in this case is?

5 A: My understanding is we have an optional waiver
6 of damages and the Department wishes to impose
7 sales tax on that.

8 Q: All right, sir. Your Honor, I'd like to ask
9 some questions of Professor Pomp, and the
10 purpose of which is to qualify him as an expert
11 witness in tax policy.

12 MR. RYAN: I concede he's an expert witness in tax
13 policy.

14 THE COURT: We will accept him as a witness with the
15 consent of the parties as an expert in tax.

16 MR. VON LEHE: Your Honor, could we, for the purpose
17 of -- for the benefit of the Court, could we
18 allow Professor Pomp to give just kind of an
19 overview of his background?

20 MR. RYAN: No objection.

21 THE COURT: All right.

22 Q: Where are you currently employed?

23 A: I have a dual employment, Your Honor. I am the
24 Alva, A-L-V-A , Loiselle, L-O-I-S-E-L-L-E,
25 Professor of Law at the University of



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1 Connecticut Law School and Adjunct Professor of
2 Law at NYU in the LLM program in taxation.

3 Q: And could you summarize your employment history
4 for us?

5 A: For about 40 years I have basically taught,
6 with the normal amount of writing, lecturing,
7 and some consulting work.

8 Q: Now, this concept of tax policy, what is this
9 concept?

10 A: These are the basic principles that should
11 inform a tax system, so that if you're
12 approaching the issue of sales taxation, what
13 are the correct principles that you guide that
14 decision.

15 Q: Are these generalized principles?

16 A: These are sort of consensus principles. These
17 are the principles that the tax policy
18 theorists have developed over the years.

19 Q: And what areas of taxation do you specialize
20 in?

21 A: Essentially, state and local taxation. At NYU
22 I give a course, a 14 week course, exclusively
23 on the sales tax. I think it's the only law
24 school course in the country exclusively on
25 sales taxation.



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- 1 Q: And is that current?
- 2 A: Yes. It's -- well, it's next semester.
- 3 Q: Okay.
- 4 A: Once a semester.
- 5 Q: And have you published a treatise?
- 6 A: I published a case book, the eighth edition
- 7 just came out. I noticed that the Department
- 8 has not yet purchased it, so -- but it just
- 9 came out and it has quite a few chapters on the
- 10 sales taxation.
- 11 Q: And is one of your treatises used here at the
- 12 University of South Carolina School of Law?
- 13 A: Yes. The case book is used in about over 100
- 14 law schools and it's used at the University of
- 15 South Carolina in a course taught by the former
- 16 general counsel of the tax department here.
- 17 Q: Now, have you appeared in this Court on behalf
- 18 of both the Taxpayers and the Department of
- 19 Revenue, the South Carolina Department of
- 20 Revenue?
- 21 A: I have.
- 22 Q: And do you recall how many times that has been
- 23 here?
- 24 A: Maybe six or seven.
- 25 Q: All right. And what about on a national level,



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1 how many times have you testified on tax
2 policy?

3 A: I think over 100 times nationally.

4 Q: Were you present in the courtroom a moment ago
5 for Mr. Tollack's testimony?

6 A: I was.

7 Q: First of all, a question before going into
8 that. From what sources did you gain
9 knowledge, if you gained any knowledge, from
10 what sources did you gain knowledge about the
11 issue before this Court? Where did you -- from
12 what sources did you learn any facts?

13 A: I read the depositions in this case. I looked
14 at the documents, the consumer Rental-Purchase
15 Agreement, the optional liability Waiver
16 Provision. I looked at the audit report, the
17 Department determination, the audit file. I
18 looked at some background material on some
19 cases in South Carolina, not to opine on South
20 Carolina law, but just to get a feel for where
21 the Department was coming from in this case.
22 I think I looked at some revenue rulings, the
23 Department determinations.

24 Q: And you mentioned that this opinion which you
25 -- these opinions which you intend to give in



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1 this matter for which you have been qualified
2 as an expert, you mentioned that these are not,
3 at least not designed by you, to be legal
4 opinions, is that correct?

5 A: That is correct. And when I testify for the
6 Department, I basically took exactly the same
7 approach, that to the extent I have useful
8 background and it is to really help advance the
9 decision making. So I try to put a context on
10 the issue before His Honor, so.

11 Q: And how does that -- how does this concept of
12 tax policy relate to the facts in this case, or
13 to the facts in any case, for that matter?

14 Q: Well, you don't talk about policy in the
15 abstract, if you're in court. You talk about
16 it as it's applied to a particular set of facts
17 and what would good sound principles of tax
18 policy dictate. Because I think at least in my
19 experience, every decision maker wants to reach
20 a decision that advances the law in a positive
21 direction. And by that I mean, in a direction
22 that's consistent with the underlying sound
23 principles of policy or rationale for the tax,
24 rather than a decision that's going to somehow
25 set back the state of the law. So ...



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- 1 Q: And were you here in the courtroom when Mr.
2 Tollack testified a few minutes ago? Did you
3 hear his testimony?
- 4 A: I did.
- 5 Q: Without repeating all of it in detail, there
6 are some things I want to ask you about that he
7 testified to. First of all, what's your
8 general understanding of the nature of the
9 business that Rent-A-Center is in?
- 10 A: Sir, the rent to own business.
- 11 Q: And in that regard, what do they do?
- 12 A: They will rent appliances, durable goods, but
13 could be washing machines, dryers,
14 refrigerators, computers, televisions, to
15 lessees.
- 16 Q: And I will please direct your attention to the
17 exhibit notebook, which is before the Court,
18 which you have in front of you?
- 19 A: Yes.
- 20 Q: And to Exhibit Number One, entitled Consumer
21 Rental Purchase Agreement; Exhibit Number Two,
22 a sample Consumer Rental Purchase Agreement,
23 trying to understand the differences, one has
24 been signed and one has not.
- 25 A: Correct.



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- 1 Q: Optional liability waiver provision and sample
2 receipt.
- 3 A: Yes.
- 4 Q: And waiver policy statement, Number Five.
- 5 A: Yes.
- 6 Q: And have you read those documents?
- 7 A: I have.
- 8 Q: Have you studied them?
- 9 A: Yes.
- 10 Q: What does the Rental-Purchase Agreement say
11 about who is responsible if the property being
12 rented is damaged, lost or stolen?
- 13 A: Well, if you look at whether, at least in my
14 binder is tab one, headed Consumer Rental-
15 Purchase Agreement and then there's a little
16 box with disclosures. And in that box, the
17 very last heading in all caps, RISK OF LOSS AND
18 DAMAGES. You, and that's the lessee, you are
19 responsible for the fair market value of the
20 property, if and as at the time, it is lost,
21 stolen, damaged or destroyed.
- 22 Q: All right, sir. And with regard to the
23 optional liability waiver that is there before
24 you, what does it say about risk of loss?
- 25 A: So that's found at my tab three, and what is



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1 says, if you enter into this, Rent-A-Center,
2 and it doesn't specify, you know, Rent-A-Center
3 East or anything else, but Rent-A-Center agrees
4 to waive your liability to Rent-A-Center if the
5 property is damaged, destroyed or lost,
6 through, and then we have six conditions,
7 lightning, fire, smoke, windstorm, theft,
8 flood.

9 Q: All right, sir. And are the Rental-Purchase
10 Agreements contingent on one agreement or more
11 than one agreement?

12 A: Well, in my opinion, you have two agreements
13 here.

14 Q: And I want to ask you about some of the facts
15 testified to by Mr. Tollack and how they are
16 relevant to what -- any opinions that you might
17 give this Court today about tax policy. What
18 about Mr. Tollack's testimony with regard to
19 the voluntary and the nature of the waiver
20 agreement?

21 A: Well, I mean, I think it's clear, certainly
22 from the heading of optional and from
23 everything that we heard, that this is not
24 mandatory. It is not built into the price of
25 the good. It is not a warranty that comes with



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1 the good. This is what it says. It's an
2 optional way for you to get Rent-A-Center to
3 assume the risk, the risk that would otherwise
4 be yours, as part of a risk management
5 approach.

6 Q: And how would that be viewed from a tax policy
7 point of view, and technically determine if
8 these are one single transaction as the
9 Department of Revenue alleges, or two separate
10 transactions as the Taxpayer alleges?

11 A: Well, from sales taxation, we often have to
12 take a single transaction and figure out
13 whether we're going to -- how we're going to
14 characterize it, if it has different elements
15 to it. Where you have two transactions, you're
16 sort of spared that inquiry. So let me give an
17 example. A single transaction, I'd go to a
18 dentist and, certainly at my age, going to get
19 a crown. You can't save that tooth. So a
20 crown consists of gold. So when I get done, I
21 have gold and I have the services of the
22 dentist. Gold would normally be taxable if you
23 went and just bought gold, and dental services
24 are exempt. So you have here what we call a
25 bundle transaction. Do we break it up into two



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1 parts and say, okay, dentist, you're going to
2 have to collect sales tax on the gold and we'll
3 exempt your services or are we going to treat
4 it as simply professional services that are
5 exempt? When we have two clearly separate
6 transactions, then we're typically spared that
7 inquiry.

8 Q: With regard to the issue of warranty or
9 separate maintenance charge, a service or
10 separate maintenance charge on warranty, what
11 does the Rental-Purchase Agreement say, if
12 anything, about a warranty or a maintenance
13 charge?

14 A: When I know initially ---

15 Q: Would you read that language, if you would?

16 A: Yes.

17 Q: Locate that language, please.

18 A: I know initially I believe that the Department
19 was describing this optional waiver as a
20 warranty or maintenance agreement. I don't
21 know if that's their current position, but I
22 think it's hard to contend that, because if you
23 look at the Consumer Rental-Purchase Agreement,
24 about maybe three quarters of the way down, you
25 see a bolded heading, Warranty and Maintenance.



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1 We, meaning Rent-A-Center, are responsible for
2 maintaining or servicing the goods while they
3 are being rented. We will not be responsible
4 for the cost or the results of any unauthorized
5 repairs or damage caused by improper use. If
6 any part of the manufacturer's warranty covers
7 the goods at the time you acquire ownership of
8 them, it shall be transferred to you if allowed
9 by the terms of the warranty. So they are
10 taking on the maintenance and servicing of the
11 goods, which makes good business sense when you
12 think about it. They want to make sure that if
13 they're going to end up renting this product
14 again, this appliance again, it is indeed going
15 to be in working condition. So from a business
16 perspective, it's easy to see why they are
17 taking on the warranty and the maintenance.

18 Q: Did you find any language in that waiver
19 associated with a warranty?

20 A: No. There's nothing in the waiver that
21 purports to have anything to do with a waiver
22 or a maintenance agreement. This is simply
23 addressing the otherwise liability that the
24 lessee would have if the property is damaged or
25 destroyed through the six conditions.



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1 Q: All right. So with regard to the facts that
2 Mr. Tollack testified to concerning the
3 cancellation of the waiver, what did he testify
4 to concerning the cancellation of the waiver,
5 which in your opinion might be relevant to the
6 Court?

7 A: That the waiver can be cancelled by either the
8 lessee or Rent-A-Center, without notice, and
9 becomes effective at the end of the current
10 period for which the lessee has paid for the
11 waiver. So I could cancel for a couple of
12 weeks, a month, and then I could actually
13 reinstate it, if I wanted to.

14 Q: And how might that fact be relevant, the issue
15 before the Court?

16 A: Well, it certainly underscores the fact that
17 this is optional, not mandatory, and not billed
18 into the sales price. This is a separate
19 agreement in place by its own rules.

20 Q: Did you hear Mr. Tollack's testimony with
21 regard to the fact that the waiver does not
22 count towards the purchase price?

23 A: Yes. That the rental payments are the same
24 whether the lessee takes out this waiver
25 protection or not. So two people renting the



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1 identical television, for example, will pay
2 the same amount, if they both choose to make
3 weekly payments, and that won't change even if
4 one of them decides they want to pay for the
5 damage waiver, so.

6 Q: And how might that be relevant to the -- to the
7 analysis of the facts by the Court?

8 A: It shows that it is an independent second
9 agreement. It's not part of the sales price or
10 the rental price of the asset.

11 Q: Have you seen the receipt?

12 A: I've seen the receipt that's in number ---

13 Q: Tab four.

14 A: --- four..

15 Q: Tab four. All right. So have you read that?

16 A: Yes, where the waiver fee is set out separate
17 from the rental fee.

18 Q: And how might that be relevant to the Court in
19 its factual analysis?

20 A: It's just that -- another mosaic in this whole
21 picture, that we are dealing with a separate
22 transaction.

23 Q: All right. So I want to ask you some questions
24 now about imposition statutes. And from a tax
25 policy standpoint, what are imposition



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1 statutes?

2 A: That's the statute that will impose the tax.
3 Every tax is going to start, typically at the
4 beginning, with some statute that is going to
5 notify the taxpayer that there is going to be
6 a tax imposed on some base, some tax base. But
7 that imposition statute tells you what the
8 subject of the tax is. In this case, it will
9 be a sales tax at a particular rate of tax.

10 Q: All right, sir. And if the parties were to
11 agree, which I believe they have, of course
12 they'll object if they don't, that the gross
13 proceeds statute is the imposition statute in
14 this case, what would be relevant to the Court
15 in making the determination of -- in reviewing
16 facts and making the determination as to the
17 application of such a statute?

18 MR. RYAN: Objection, Your Honor. It calls for
19 legal conclusion. Why should he tell you what
20 is relevant?

21 MR. VON LEHE: It doesn't call for legal conclusion,
22 Your Honor. I'm asking him what facts in the
23 record would relate to this. That conclusion,
24 of course, is completely within your purview.
25 We are not attempting to in any way encroach on



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1 that.

2 THE COURT: And Professor Pomp and I might disagree
3 what those facts are.

4 MR. VON LEHE: Indeed.

5 THE COURT: So I'm going to overrule and allow that
6 question.

7 A: Well, after making the determination as to what
8 are the facts, one would then ask the question
9 whether those facts are described by the
10 imposition statute.

11 Q: And are imposition statutes, how are they, from
12 a tax policy standpoint, generally construed?

13 A: They are construed, and I think this is almost
14 uniformly, Your Honor, they are construed
15 against the state. So any ambiguities get
16 resolved against the state. And there's a very
17 good policy reason for that. That under the
18 Fifth Amendment, if not just under basic
19 doctrines of fairness, we can't deprive you of
20 your property without due process of law. We
21 are a rule of law country, it's not North
22 Korea. We just can't come in and take your
23 property. And so we have to provide notice to
24 you. We have to make sure the law is clear so
25 you know your obligations so that you can plan



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1 your transactions. And so you know what the
2 rules are. You know what the game is that
3 you're playing. And so the Fifth Amendment
4 requires that the statute be unambiguous,
5 clear, certain, and if it's not, and we know
6 that in so many situations it is not going to
7 be crystal clear, than any ambiguity gets
8 resolved against the state. There's another
9 good reason for it. The state drafted the
10 statute, so there's almost a parallel rule in
11 the commercial area that contracts are resolved
12 against the party who drafted them. After all,
13 they're the ones that had the opportunity to
14 get it right, and if they don't, they shouldn't
15 hide under either intentional, poor drafting,
16 or unintentional poor drafting. And so we sort
17 of apply the same principle in the area of
18 taxation, and again, I think underscored by the
19 Fifth Amendment of the Constitution.

20 Q: Now, with regard to your statement a moment ago
21 that imposition statutes are narrowly
22 construed, I would like for you to turn to
23 Exhibit Number Nine, which we have generally
24 been referring to, I think, Your Honor, in the
25 briefs back and forth, as the proviso. Do you



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1 see Exhibit Number Nine in the notebook?

2 A: I do.

3 Q: And if you will look at the second page of
4 Exhibit Number Nine, you'll see provision
5 90.21?

6 A: I do.

7 Q: See that on the second page?

8 A: I do.

9 Q: And if you will follow that down to the next
10 paragraph, that paragraph begins with the
11 words, "During the current fiscal year." Do
12 you see that?

13 A: I have it.

14 Q: Would you please read that to the Court?

15 MR. RYAN: Objection, Your Honor, on the grounds of
16 relevance.. This document is irrelevant. This
17 is a proviso dealing with the 2011 fiscal year.
18 The tax years at issue are not for 2011, and we
19 are before this Court regarding a Department
20 determination issued in 2013. Pursuant to Rule
21 -- the Revenue Procedures Act, 12-64-60, a
22 taxpayer can protest a Department determination
23 to this Court. Therefore, what would be
24 relevant would be the law when tax years were
25 at issue or when we issued the determination,



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1 neither of which are 2011 when this proviso was
2 issued.

3 THE COURT: Okay. I'm going to sustain that
4 objection.

5 MR. VON LEHE: Your Honor, we ---

6 THE COURT: The language that you want him to read -
7 --

8 MR. VON LEHE: --- yes.

9 THE COURT: --- is standard statutory construction
10 language from almost every case that construes
11 language in South Carolina. I don't think it
12 adds anything more to the case than what we
13 already know.

14 MR. VON LEHE: Thank you, Your Honor. Your Honor, I
15 would like to pass up to Professor Pomp and to
16 Your Honor, and I've already given a copy of
17 this to the Department of Revenue, but these
18 are the statutes which I would like to ask him
19 about in very general terms. That would be
20 Sections 12-36-910 and 12-36-90.

21 THE COURT: Yes, sir. Ask the question.

22 MR. VON LEHE: Yes.

23 Q: Professor Pomp, have you read these statutes?

24 A: I have.

25 Q: With regard to 12-36-910, would you please read



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1 subsection "A", the first section?

2 A: A sales tax, equal to five percent of the gross
3 proceeds of sales, is imposed upon every person
4 engaged or continuing within the State in the
5 business of selling tangible personal property
6 at retail.

7 Q: All right, sir. And with regard to Section 12-
8 36-90 entitled "Gross proceeds of sale", would
9 you please read that statute?

10 A: "Gross proceeds of sales, or any similar term,
11 means the value proceeding or accruing from the
12 sale, lease or rental of tangible personal
13 property".

14 Q: And subsection "B" of that statute, please?

15 A: Of ---

16 Q: Well, excuse me.

17 A: --- of 910?

18 Q: Of 12-36-90, 1(b).

19 A: Okay. One small (b)?

20 Q: See 1(a), see 1 little (b).

21 A: Yes. "The proceeds from the sale of tangible
22 personal property without any deduction for:
23 the cost of goods sold; the cost of materials,
24 labor or service; any interest paid; losses;
25 transportation costs; manufacturers or



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1 importers excise taxes imposed by the United
2 States; or any other expenses".

3 Q: All right. So then from a tax policy
4 standpoint, how would you characterize these
5 statutes?

6 A: 12-36-910 is what we would refer to as the
7 imposition statute. It tells taxpayers there
8 was a sales tax. It's going to be five
9 percent. It's on the gross proceeds of sales
10 upon every person engaged or continuing within
11 the State. What's the activity, the business
12 of selling tangible personal property at
13 retail. So there is your notice to taxpayers.
14 You are on notice that if you conduct these
15 activities, there will be a five percent tax on
16 the gross proceeds of your sales. So this is
17 the imposition statute. The second statute is
18 what we call the measure of the tax, okay.
19 Well, now that you're on notice and now that
20 you have conducted yourself in a way that
21 triggers the imposition of the tax, how much do
22 you owe? So you have to kind of pass through
23 the first statute before you get to the second,
24 because the second is irrelevant if you are
25 not subject to the imposition in the first



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1 place. So assuming you pass through the first
2 statute, you get to the second one, and now we
3 go ahead and calculate the gross proceeds of
4 sales, and that's what you will pay your tax on
5 the basis of. So we have the subject or
6 imposition of the tax and then we have the
7 measure of the tax.

8 THE COURT: And for the purpose of clarification,
9 you've presented these statutes to him, 910
10 first, 90 second?

11 MR. VON LEHE: Yes.

12 THE COURT: Is that how you are referring to them,
13 sir?

14 A: Correct, Your Honor.

15 THE COURT: Okay.

16 A: I'm not sure of your numbering system, but
17 logically 910 comes before 90.

18 THE COURT: Just checking.

19 A: You're quite right.

20 Q: And that is a list which you read in 12-36-
21 90(b), excuse me, 1(b). You read that list a
22 moment ago?

23 A: Yes.

24 Q: And read that list again, please?

25 A: "The proceeds from the sale of tangible



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1 personal property without any deduction for:
2 the cost of goods sold; the cost of materials,
3 labor or service; interest paid; losses;
4 transportation costs; manufacturers or
5 importers excise taxes imposed by the United
6 States; or any other expenses".

7 Q: All right, sir. I want to move a bit more
8 generally now, with a general question. Could
9 you distinguish for us the difference from a
10 tax policy standpoint in sales taxes and income
11 taxes?

12 A: Yes. They are fundamentally different from
13 each other. An income tax is a levy on a
14 taxpayer's net income or taxable income or
15 profit, all synonyms. And in the determining
16 that profit, one of the common ways of doing so
17 would be to start with your gross proceeds of
18 sales, if you're a retailer, and then subtract
19 all of your costs of doing business, which
20 would include the items found in 12-36-90(b),
21 because these are commonly the ordinary and
22 necessary expenses in determining profit.
23 Costs of goods sold, you bought something for
24 \$80, you sold it for \$100. Subtract your \$80
25 and there is your profit. The cost of



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1 materials, labor or service, especially if
2 you're a manufacturer, what did the materials
3 cost you? How much did you pay your employees
4 to manufacture those raw materials? Service,
5 did you pay an independent contractor, a third
6 party, accountants, lawyers, ad agencies?
7 Interest paid, how did you finance your
8 business? Any losses, it's a cruel tax system
9 that doesn't let you deduct your losses.
10 Transportation costs, moving your inventory to
11 market. Any other expenses. So these -- so in
12 running an income tax system, the essence of an
13 income tax system is profit. And so we give
14 you all of the deductions that went into
15 generating your profit. Sales tax is
16 diametrically opposite. We don't care about
17 your profit. We don't care if you're operating
18 at a loss. All we really care about is your
19 gross proceeds. So big, big difference. Some
20 would say, well, that's one of the beauties of
21 a sales tax. Even in a recession, when
22 businesses are operating at losses, sales tax
23 will still be collected. Indeed, the sales
24 tax, and I'm not sure when it was adopted in
25 South Carolina, but it enters this country



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1 during the great depression in the 30s,
2 because it was the one thing people were still
3 doing, they were still buying stuff. So
4 unemployment was high, profits were
5 nonexistent. So a whole different philosophy,
6 diametrically opposite.

7 Q: All right. So then you gave an example of an
8 item selling for \$100 and in an effort to buy
9 -- it could be, you proposed, it could be an
10 effort by a taxpayer to split that item up into
11 labor and material costs?

12 A: Correct.

13 Q: And you've given that example?

14 A: Well, yes, but I can make that example more
15 relevant. I gave it in the context of an
16 income tax. In a sales tax, Your Honor, in any
17 state, and this is true of almost every state,
18 labor is not sales taxable. Services are not
19 sales taxable unless they're enumerated. A lot
20 of things you see here -- interest is not sales
21 taxable. As you look around this room,
22 everything we see that is tangible personal
23 property consists of labor and capital. There
24 would be a temptation without a section like
25 12-36-90(b) for me to give you a bifurcated



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1 receipt. So suppose you bought something from
2 me for \$100, and I paid my people to make it,
3 and their services cost me \$80, it would be
4 very tempting for me to give you a receipt that
5 said \$100, less services, so owe only \$20,
6 because only the tangible part of the property
7 would be taxable. And I would try to back out
8 all of the labor and all of the services that
9 went into producing the TV that you were
10 buying. And that's what this section, which is
11 a very common section, you see this in most
12 states, this is what is prevented. We cannot
13 sell you something and then try to lower the
14 sales tax by carving out exempt features of
15 what it is I just sold you. So this prevents
16 that, otherwise there would be a great
17 temptation to do that.

18 Q: From what you have read in the Department's
19 determination, and I know you've read the
20 pleadings back and forth from the parties, and
21 I don't think there is any question about this,
22 but how is the Department of Revenue
23 characterizing the waiver fee?

24 A: I think they are characterizing it as a cost of
25 service. And they are saying that Rent-A-



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1 Center wants to somehow subtract out the cost
2 of service, an argument I don't quite
3 understand.

4 Q: Well, what policy considerations should come
5 into play in trying to determine, based on the
6 facts, from a factual analysis, what policy
7 considerations come into play in trying to make
8 that decision?

9 A: Well, I think His Honor first has to determine
10 whether we have a sale of a waiver. That that
11 is a separate transaction, and if so, is it
12 covered by the impositions statute? If it's
13 not covered by the imposition statute, that's
14 the end of the game. You don't ever get to 12-
15 36-90, because there is no sales tax in play.
16 So logically, the first thing is to say, is
17 this transaction one that is described in 12-
18 36-910 (A), and if the answer to that is yes,
19 only then would you turn to 12-36-90 and say,
20 okay, what are the gross proceeds in that
21 situation. But you would never go right to 12-
22 36-90, because that's putting the cart before
23 the horse. That's assuming that this
24 transaction is indeed described under the
25 imposition statute.



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1 Q: And from a tax policy perspective, what facts
2 in this case, that have been put forward in
3 this case, would be relevant to the question of
4 whether the waiver is a service charge?

5 A: You would have to examine what the terms of the
6 waiver agreement are. You would have to look
7 at it and say, okay, I'm going to go over to
8 the imposition statute. That talks about a
9 person engaged in the business of selling
10 tangible personal property at retail. Is the
11 damage waiver considered the sale or rental of
12 tangible personal property at retail? Is that
13 tangible personal property, the damage waiver?
14 I think the Department describes it as a
15 service. Well, then you would have to go and
16 see if it is a enumerated service. Is it set
17 forth, are damage waiver agreements set forth
18 as one of the taxable services? And if Your
19 Honor concludes it is not, and that it is
20 indeed a service as the Department has
21 characterized it, then the imposition statute
22 is not triggered.

23 Q: Is it relevant, and in what way, that the
24 waiver is not -- is the fact, is the
25 determination of this fact relevant to the



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1 question of could tax policy -- the fact that
2 the waiver is or is not a cost of producing or
3 acquiring the property rented? How does that
4 impact this issue?

5 A: If you were to determine contrary to what the
6 Taxpayer is arguing, that the Department is
7 somehow right that this is indeed covered by
8 the imposition statute, so that it is somehow
9 the gross proceeds from the sale of tangible
10 personal property, then the Taxpayer would not
11 be able to deduct any of the costs associated
12 with that waiver, because that's what 12-36-90
13 says. But you wouldn't reach that issue unless
14 you decided that this is the kind of service
15 that is indeed set out in the statute.

16 Q: Is there any evidence in the record that you
17 have read that pertains to whether or not the
18 cost of this waiver is a service cost?

19 A: I -- well, when you say service cost ---

20 Q: The cost of service. The cost of service. In
21 other words, as described, a cost of service in
22 the production or acquiring of this property?

23 A: No. I mean, you have two separate
24 transactions. The TV that Rent-A-Center is
25 leasing has some cost to it. They purchased it



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1 for rental. That cost has nothing to do with
2 the damage waiver. So any costs they have that
3 are associated with the damage waiver have
4 nothing to do with their cost of acquiring the
5 television. Now, when you and I go into Rent-
6 A-Center and we each walk out with the
7 identical television, it has the identical
8 cost, whether I take out a waiver and you
9 don't. It's what did they pay the manufacturer
10 to purchase the television.

11 Q: From the facts that you've seen in the record,
12 what facts, if any, relate to whether or not
13 the waiver enhances the value of the appliance
14 being rented?

15 A: I think it has nothing to do with the value of
16 the appliance. If I come into your home and I
17 ---

18 MR. RYAN: Objection, Your Honor. He's here as a
19 tax policy expert and now he's testifying on
20 the value of rented equipment. I don't see how
21 a tax policy expert can testify on the value of
22 rented equipment.

23 MR. VON LEHE: Your Honor, it's an analysis of the
24 facts for an expert witness to aide the Court
25 in analyzing the facts.



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1 MR. RYAN: If he was an expert economist, perhaps.
2 He's a tax policy expert.

3 THE COURT: Well, I don't think his -- the question
4 requires him to be an expert on the prices of
5 TVs. I think the question is asking him
6 whether the waiver, as I see it, adds to the
7 profit of the -- well, not the profit. It's
8 the value which the customer is paying for. Is
9 that a fair answer?

10 MR. VON LEHE: That is the question, yes, Your
11 Honor. Any facts in this record that relate to
12 ---

13 THE COURT: I think he can answer that and I think
14 we can understand it for what it's worth. So
15 overruled.

16 A: That if I go into your home and I see that TV,
17 and I say, gee, I just saw the identical
18 television at Best Buy, and you know what, you
19 have leased yourself a \$1,000 television,
20 because I just priced it this morning. You
21 don't say to me, well, you know, I have a
22 damage waiver, the television is worth even
23 more. Well, no, it has nothing to do with the
24 television. That television is a \$1,000
25 television, because I just saw it at Best Buy.



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1 It's just the way the value of your home is
2 independent of your mortgage. If I come
3 looking at your home and I say, wow, that's a
4 half a million dollar home, and you say, oh,
5 well, you know, I have a big mortgage on it.
6 And I go, well, that doesn't mean it's not a
7 half a million dollar home. That may mean you
8 get less money at the closing because your
9 equity is less, but if you have a big mortgage
10 and I have no mortgage, and we have identical
11 homes, side by side, those homes are going to
12 have pretty close to the same fair market
13 value. Because the market that's doing the
14 valuing has no idea you have a mortgage and I
15 don't or vice versa. So it's just like the TV,
16 the market doesn't know that you took out a
17 damage waiver. That has nothing to do with the
18 value of the television. You may have peace of
19 mind by doing it, but it has nothing to do with
20 the value of the television.

21 Q: From a tax policy point of view, what is a
22 mixed transaction in general? What is that
23 term?

24 A: A mixed or a bundle transaction, Your Honor, is
25 when we have a -- one integrated transaction



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1 and it has two elements, that if isolated,
2 would receive different sales tax treatment.
3 And because they are bundled together, in many
4 cases we have the issue of how are you going to
5 characterize that transaction. It has elements
6 of services, intellectual property and tangible
7 personal property. And so which elements are
8 going to dominate and control how we
9 characterize the transaction. I'll give you an
10 example. Let's buy a new car which comes with
11 a warranty. So the warranty we could look at
12 as a service, the way the Department looks at
13 the waiver. Services are not taxable. So
14 should we say, gee, that warranty that came
15 with your new car, that's an exempt service.
16 That should be the tail that wags the dog, and
17 the entire car will now be viewed as an exempt
18 service, because after all, a lot of people
19 also worked on that car with labor and we know
20 that's exempt. Or do we say, you know what, by
21 custom and tradition, a car is tangible
22 personal property, it is true it has a lot of
23 intangibles as part of it. I mean, look at all
24 the programming that goes into a car today.
25 And, yes, so there is a lot of intangible



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1 elements to the car, there's a lot of services
2 to the car, it's a bundle transaction as most
3 things are. And the question is, how do we
4 characterize it? And that is sometimes a
5 matter of custom and tradition. That is a car,
6 and we are not going to let the little tail wag
7 the big dog. And it's -- we sometimes call
8 this the object of the transaction test,
9 because we know that there are always taxpayers
10 out there that are going to say, gee, you know,
11 really, the object of this transaction is not
12 to get the tangible property, but to get the
13 intellectual property. And indeed the Tax
14 Department has had to deal with this with
15 software, as many states have. When I give
16 Your Honor a disc that has all of my services
17 on it, because I've done some programming for
18 you and I hand you that thumb drive, I guess
19 today, are you buying from me tangible personal
20 property or can I exempt the whole transaction
21 by saying, oh, what you really wanted was my
22 intellectual efforts. The Tax Department
23 actually has a regulation saying, well, what's
24 the object of the transaction? And they
25 answered it by saying, in this case, it was to

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1 get that thumb drive. Perfectly sensible.
2 It's just, you know, from a policy perspective,
3 this is a conundrum we have in the sales tax.
4 And we often have to answer the question
5 whether the transaction is taxable, tangible,
6 or an exempt service. It comes up in a lot of
7 places. Luckily, most things we don't begin to
8 worry about this, laptops, computers, articles
9 of clothing, cars, even paintings. And
10 paintings is a nice example, because most of
11 the value of a painting is in the services of
12 the artist. It's not the canvas. It's not the
13 paint. It's not the stretchers. It's the
14 service of the artist, but yet we tax it as
15 tangible. So we do struggle with this. And
16 that object of the transaction is a ubiquitous
17 test that we see throughout the country, so.
18 And indeed we saw it in a ruling here in South
19 Carolina. It's useful, and it has its limits,
20 but it's useful to think about things that way.
21 What was really the object of what you wanted.
22 So you really wanted the services of the
23 dentist, so that's going to be an exempt
24 transaction. Even though there may be taxable
25 gold from it, we're going to exempt the whole



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1 thing, so -- because the sales tax is basically
2 either or. We don't bifurcate into it's little
3 parts.

4 Q: Now, when you reviewed the facts of this case,
5 which you say you have reviewed, when you
6 reviewed the facts of this case, are you faced
7 -- is one faced to you and His Honor, are you
8 faced with the question of whether or not this
9 is a mixed transaction?

10 A: No, because this waiver is optional. If it
11 were built into the rental transaction, if it
12 were mandatory, if what I paid for it reduced
13 the price of my rental payments, if the two
14 were inextricably linked, then you have your
15 bundled transaction. But this is optional. I
16 don't think anyone denies that, it's optional.
17 And I don't care how people may elect it, it
18 doesn't turn it from being optional to being
19 mandatory. It's optional. And so you have a
20 second transaction. And so it does not become
21 a bundled transaction the way a warranty that
22 is embedded in the item comes with the item.
23 So sure, part of what you're paying for is that
24 warranty, there's not free warranty as we know.
25 Part of what you're paying for is for that



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1 warranty, but we don't have a bundled
2 transaction here.

3 Q: All right, sir. I want you to take two sets of
4 facts as you understand them. I want you to
5 take the facts that are before this Court today
6 with regard to this waiver, those facts. And
7 I want you to look at the facts in the case of
8 Meyers Arnold, which is a major case which is
9 relied upon by the Department of Revenue.
10 Would you please tell us what, in your opinion,
11 from the tax policy standpoint, the importance
12 of those facts which are similar, the
13 importance of those facts which are dissimilar?

14 A: Meyers Arnold involved a layaway plan and the
15 charge for the layaway plan. So I will take
16 the item, but not today. So I'll take it in 30
17 days from now. And I was charged for that.
18 And the question was whether that charge should
19 be sales taxable or not. And there it was, of
20 course, built into my deferring my purchase.
21 You want to defer your purchase, fine, but it's
22 going to add to your cost of the property,
23 okay. So, I'll take it, because I have no
24 choice, because I apparently can't pay for it
25 all now. In Meyers Arnold, it's actually a



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1 very short opinion, Your Honor. It's an
2 awfully -- I would say an awfully thin opinion
3 to tease so much out of it. They said
4 something ---

5 MR. RYAN: Objection, Your Honor. That's a legal
6 conclusion.

7 MR. VON LEHE: Just the facts, please. Mr. Pomp,
8 just the facts.

9 THE COURT: Okay. I'll sustain. Don't go there.

10 A: Meyers Arnold, in analyzing this, see today, I
11 think we would approach this and say, what was
12 the object of the transaction? And I would
13 answer it as, I want to obtain tangible
14 personal property at a date certain in the
15 future. Well, fine, then you'll be taxable on
16 that, because the object of your transaction is
17 to obtain tangible personal property. Nothing
18 so radical about that. But I will quote from
19 the opinion, "But for the layaway sales Meyers
20 Arnold would not receive the layaway fees".
21 But one could have said, but for the -- but for
22 the sale of the personal property, there would
23 not have been a layaway charge. You could go
24 either way. But for the layaway sale, the
25 layaway charge, there wouldn't have been a sale



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1 of the tangible, or you could say, but for the
2 sale of the tangible, there wouldn't have been
3 a layaway charge. That's the problem with "but
4 for" reasoning. So they sort of looked at half
5 of "but for" reasoning. But for the sale of
6 the property, there wouldn't be a layaway
7 charge, and therefore the layaway charge is
8 going to sort of ride the coattails of the sale
9 of the property and be taxable. But I could
10 have said, you know, but for the layaway
11 charge, you never would have made the sale.
12 And if the layaway charge is exempt, then I
13 could argue under "but for" reasoning, the sale
14 should therefore be exempt as a matter of
15 logic. And we call this in law kind of a but
16 for fallacy or the traitorous but for
17 reasoning. I think they teach it in torts
18 classes the following way, Your Honor. But for
19 my alarm clock having been defective, I
20 wouldn't have been late to work. And but for
21 being late to work, I wouldn't have been at
22 that intersection. And but for being at the
23 intersection, I wouldn't have had the accident.
24 And, therefore, I'm going to sue the
25 manufacturer of the alarm clock under "but for"



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1 reasoning. And, of course, we all know that
2 that is not to be taken seriously. So the "but
3 for" reasoning really proves way too much,
4 because there's no logical point to stop in the
5 chain of reasoning. You know, Your Honor buys
6 a car and they say, well, you know, for \$10.00
7 you can have a year's worth of car washes. And
8 the car washes ---

9 MR. RYAN: Objection, Your Honor. He's now
10 testifying on what the meaning of the "but ---
11 , you know, to what level the "but for" test
12 can properly go, and that's a legal conclusion.

13 THE COURT: All right. I'm going to agree with that
14 one too. I'll sustain the objection.

15 MR. RYAN: And strike it from the record, Your
16 Honor?

17 THE COURT: And confine yourself to the answer to
18 the questions that were asked, that were
19 allowed.

20 Q: Professor, may we get to some specifics on the
21 facts?

22 A: Okay.

23 Q: The charge, the layaway charge in Meyers
24 Arnold, did it count towards the purchase price
25 of the item?



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- 1 A: It was part of the entire price paid.
- 2 Q: Okay. And is that true in the case at hand?
- 3 A: No. In the case at hand, your rental fees are
- 4 independent of whether or not you lack a
- 5 waiver.
- 6 Q: In Meyers Arnold, was the layaway charge
- 7 optional?
- 8 A: No. If you wanted to defer your purchase, you
- 9 had to pay the layaway charge, or you didn't
- 10 get the property.
- 11 Q: And in the case at hand, is that also true?
- 12 A: No. You can walk out of the store with that
- 13 rented TV without ever electing the damage
- 14 waiver.
- 15 Q: Insofar as the cost of service issue is
- 16 concerned, could you distinguish, if there is
- 17 a distinguishing feature, between the Meyers
- 18 Arnold case and the matter that we're faced
- 19 with here?
- 20 MR. RYAN: Objection, Your Honor, that's clearly a
- 21 legal conclusion. It's going to be on the
- 22 generalized tax policy perspectives we're now
- 23 applying. We're having this witness apply
- 24 Meyers Arnold to the facts at issue.
- 25 MR. VON LEHE: It's factual, Your Honor, because of



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1 the following: because it was or titled by the
2 Court in Meyers Arnold as a cost of the
3 service, that's really the holding in Meyers
4 Arnold, it's not the "but for" test. The real
5 holding is, this was a cost of that service, of
6 that layaway service, so we're going to tax it.
7 And this is what I -- this is what I'm
8 addressing. This is a fact and it's a very
9 important one. But in Meyers Arnold, that was
10 a fact. Here, that is not a fact, because the
11 cost of -- the cost of the waiver has nothing
12 to do with the preparation of the transaction
13 for renting the rental equipment.

14 THE COURT: Okay.

15 MR. VON LEHE: It's a distinguishing fact, Your
16 Honor.

17 THE COURT: All right. You've made your argument.
18 You didn't need him to answer the question.
19 Sustained.

20 MR. VON LEHE: Thank you, Your Honor.

21 Q: I want to ask you about a longstanding
22 administrative construction here. Is it a term
23 you're familiar with?

24 A: Yes.

25 Q: And from a tax policy standpoint, what is



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1 longstanding administrative construction?

2 A: Well, usually it refers to an agency resolving
3 some ambiguity in the law in a correct manner,
4 sending notice to taxpayers that this is the
5 way that the Department is resolving that
6 ambiguity. And it deserves deference, assuming
7 that it is a correct interpretation. But if
8 your longstanding administrative position is in
9 error, and you can hardly cloak yourself with
10 immunity from being overruled, just because
11 you've been wrong for a very long time, so.

12 MR. VON LEHE: All right. Your Honor, that
13 concludes our direct-examination of Professor
14 Pomp.

15 THE COURT: All right. Mr. Ryan?

16 MR. RYAN: Can I just have a minute to concur with
17 my co-counsel?

18 THE COURT: Sure.

19 (Off the Record)

20 MR. RYAN - CROSS-EXAMINATION OF PROFESSOR POMP:

21 Q: Good afternoon, Professor Pomp. I'll introduce
22 myself again, but you and I know each other.
23 I'm Sean Ryan with the Department.

24 A: Yes, we do.

25 Q: It's good to see you again, sir. Thank you for



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1 coming down from Connecticut. As a tax policy
2 expert, would it be fair to say you're here to
3 tell the court what you think the law should
4 be?

5 A: No. I'm here to give the Court what I hope is
6 a useful way to think about these issues.

7 Q: Now, we talked about this earlier, but just to
8 put it on the record, you didn't actually
9 advise the South Carolina Legislature on 12-36-
10 910 or 12-36-90, did you?

11 A: I did not.

12 Q: Now, did you review any of our Legislative
13 history when you were reviewing this matter?

14 A: I did not.

15 Q: Would it be fair to say that different states
16 treat this issue differently?

17 A: This issue being?

18 Q: Sales tax on optional waivers?

19 A: I've not done a nose count, but we have 46
20 sales tax jurisdictions. It's almost fair to
21 say, in any gray area, you'll probably get a
22 difference among the states.

23 Q: So there's no real one tax policy. States do
24 it their own way, and then you have a
25 theoretical view, is that correct?



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1 A: No, I wouldn't put it that way. I would say
2 that tax policy considerations under this set
3 of facts may point in a particular direction,
4 but states are free as they often do to ignore
5 good sound, not only policy considerations, but
6 just good sound principles of the law in
7 general, so.

8 Q: Did you review all of the -- was it 46 states,
9 you said?

10 A: I said it was about 46.

11 Q: Did you review all 46 on how they deal with
12 damage waivers?

13 A: No. It's really not relevant to the policy
14 analysis. The policy analysis is more
15 normative than descriptive, so.

16 Q: Would you disagree with those states that would
17 apply sales tax to an optional damage waiver?

18 A: I would say I would conclude that those states
19 are acting inconsistently with sound principles
20 of sales taxation.

21 Q: Now, you heard us talk about the Rhode Island
22 case. Did you disagree with that Court's
23 holding?

24 A: You know what, I did not review anything having
25 to do with the Rhode Island case. It's not



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1 relevant to a policy analysis.

2 Q: From a policy analysis, if a court were to
3 apply what I call the true object test, if I
4 say that, do you know what I'm referring to?

5 A: Yes.

6 Q: If a court were to apply the true object test
7 to an optional damage waiver, do you think that
8 is an incorrect use of the true object test?

9 A: I would think so.

10 Q: Okay. So you would disagree with any state
11 that did that?

12 A: Well, I would say that they were acting
13 inconsistent with what I would suggest the true
14 object test should mean.

15 Q: Now, just so I'm understanding your version of
16 the true object test correctly, the true object
17 test only applies when there's a bundled
18 transaction, is that correct?

19 A: That's typically when it applies.

20 Q: And it's only a bundled transaction when the
21 second of the -- if there are two parts, one of
22 the parts is optional, it's not a bundled
23 transaction, is that your testimony?

24 A: That is correct.

25 Q: So if a court applied the true object test to



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1 something that had an optional aspect, you
2 would think that was an incorrect use of the
3 true object test?

4 A: You know, you would have to really give me the
5 facts. I could say that the true object test,
6 as applied to the facts that we are all now
7 very intimately familiar with, would be an
8 improper application.

9 Q: Let me give you a hypothetical. Let's say I
10 come up to beautiful Connecticut and you've
11 retired from teaching and now you own Pomp's
12 Trophy Shop. And I come in and say -- let's
13 still call you Professor Pomp. Professor Pomp,
14 I want to buy a trophy from you. You say,
15 Sean, for \$110, I'll sell you -- for \$100 I'll
16 sell you a trophy and for \$10 I'll put you won
17 first place on some or another thing. Would
18 that \$110 be subject to sales tax?

19 A: That \$110, we'd have to first answer the
20 question of what is the true object of that
21 transaction. You have a bundled transaction
22 here. I've given you \$110 and you've given me
23 an engraved trophy. And so the question goes
24 to the object of the transaction. If it was
25 decided that that was to get an engraved



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- 1 trophy, then yes, that would be sales taxable.
- 2 Q: Same hypothetically, let's change up the facts
- 3 just a little bit. Again, I come into your
- 4 shop. Professor Pomp, I'd like to buy a
- 5 trophy. And you say, Sean, for \$20, I'll sell
- 6 you the unassembled pieces of the trophy.
- 7 That's one agreement. If we do a separate
- 8 agreement for \$80, I'll assemble that trophy
- 9 for you. If we do a third agreement, for \$10
- 10 more dollars, I'll engrave the plaque on the
- 11 front. And in that example, three separate
- 12 transactions, three separate contracts, which
- 13 amount is subject to sales tax?
- 14 A: Your job should be what?
- 15 Q: Well, if I want the trophy again. So I'm going
- 16 to take -- I'm going to go into all three
- 17 contracts in that instance.
- 18 A: Uh-huh (affirmative response). To me, that
- 19 would be a bundled transaction. You're paying
- 20 a price to get an engraved trophy.
- 21 Q: Okay. We're optional. Why ---
- 22 A: Once you bought all three together, it wasn't
- 23 optional anymore. You bought all three
- 24 together. That's what you wanted.
- 25 Q: Now, throughout your report and throughout your



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1 testimony, let's just stick to your testimony,
2 throughout your testimony, you talked about
3 those as two separate transactions. Do you
4 understand how the waiver is priced?

5 A: The waiver, I believe, is a percentage of the
6 rental.

7 Q: So it if -- it depends. The waiver depends on
8 the rental agreement to determine the price.

9 A: That is the benchmark for determining the price
10 of the waiver.

11 Q: So when you previously testified that the
12 waiver was independent, how can you call it
13 independent when it depends on the other one to
14 know its price?

15 A: It's independent because it is not a -- it is
16 not built into the price of the rental
17 payments. It's simply a benchmark. They could
18 tie it to the closing value of Google stock at
19 the end of the day. They were just looking for
20 some easy to apply benchmark. It's not an
21 actuarial assumption. They just made it ten
22 percent of the sales price. Easy to do. You
23 have some clerk at the store doing it, easy to
24 do. So that doesn't make it a bundled
25 transaction.



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1 Q: Now, how are they separate, again, if the
2 waiver explicitly states that it's part of the
3 rental agreement?

4 A: You heard Mr. Tollack explain why it says that.
5 But even if you were to choose not to accept
6 his explanation, how the paperwork is done
7 can't override the fact that this is an option.
8 And I don't care how the paperwork is done, we
9 have to characterize it for the purposes of the
10 sales tax, and it's optional, and that's the
11 key.

12 Q: How does it impact your opinion knowing that I
13 cannot come into Rent-A-Center, Rent-A-Center
14 East or Rent Way and rent a waiver if I haven't
15 already rented a tangible personal property
16 from them. I cannot just get a waiver. How
17 does that impact your opinion?

18 A: It doesn't impact my opinion at all. It's an
19 optional waiver. Of course you're not going to
20 get an optional waiver unless there's some risk
21 to waive. So that doesn't impact my opinion.

22 Q: How is it a separate transaction if that
23 transaction can't exist without the rental?

24 A: It doesn't make it a bundled transaction. It
25 can still be a separate transaction. It has a



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1 factual predicate but that doesn't mean it's
2 not a separate transaction. I mean, if I buy
3 a car from you and you say, you know, for
4 \$10.00, you could get car washes for the next
5 year. Those car washes aren't going to become
6 taxable if they won't otherwise be taxable
7 because of the factual predicate I had to buy
8 the car. I'll sell you my casebook, and you
9 know that's tangible personal property, even
10 though most of the value of the book is an
11 intellectual property, but we do it as
12 tangible. And then I say, anyone who buys the
13 book today for a discounted price can get an
14 hour's worth of consultation with me. Normally
15 legal services aren't taxable. They don't
16 become taxable because you couldn't get those
17 services without purchasing the book. So you
18 can have a factual predicate, but that doesn't
19 make the second transaction somehow part of the
20 bundled transaction.

21 Q: Now, how about the fact that -- would you agree
22 with me that the waiver changes the terms of
23 the rental agreement?

24 A: What terms?

25 Q: Liability, who's liable?



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- 1 A: Oh, oh. It certainly shifts the risk, sure.
- 2 Q: So how can there be two separate independent
3 transactions when one can change the liability
4 in the other?
- 5 A: I don't know why it can't be. We have two
6 transactions and the second one shifts the
7 risk. That doesn't mean it's not an
8 independent, risk-shifting transaction. An
9 independent, risk-shifting transaction, is a
10 separate contract.
- 11 Q: Now, you talked about warranties and service
12 contracts not including waivers. Did you look
13 at any other states and see whether they
14 considered waivers to be service contracts?
- 15 A: No.
- 16 Q: You don't think it's relevant to know whether
17 or not -- what the other states are actually
18 doing?
- 19 A: Not from a policy analysis, it isn't. They may
20 be acting pursuant to sound policy or not. It
21 doesn't change the views as to what sound
22 policy is. My -- I was looking under the terms
23 of this agreement to see if I thought the way
24 it was characterized in the Department
25 Determination was correct. That was my



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1 purpose. I didn't need to look at any other
2 state to question what is under the Rental-
3 Purchase Agreement, where there is a heading
4 that says, Warranty and Maintenance, whether
5 this damage waiver could be viewed as a
6 warranty and maintenance, when there was
7 already a provision dealing with that. That
8 was my whole purpose, to see how to
9 characterize what this damage waiver really
10 was.

11 MR. RYAN: Your Honor, if I might just have a minute
12 to consult with my co-counsel.

13 THE COURT: All right.

14 MR. RYAN: No further questions of this witness.
15 Thank you, Professor Pomp.

16 THE COURT: Redirect?

17 MR. VON LEHE: Your Honor, yes. On redirect, with
18 regard to an example that Mr. Ryan used a few
19 minutes ago, I'd like to ask Professor Pomp
20 about this.

21 PROFESSOR POMP - REDIRECT EXAMINATION BY MR. VON

22 LEHE:

23 Q: Mr. Ryan gave the example of a trophy which was
24 assembled and he said it had different steps.
25 There was a trophy, and then the trophy was



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1 assembled, and then the trophy was also
2 engraved. And with regard to those steps, how
3 does this relate to the concept of the cost of
4 services, if it does?

5 A: Well, let's see. Those three steps add value
6 to the final product. The price paid for it is
7 sales taxable. There is no deduction that the
8 vendor is going to be taking for the cost of
9 these various steps, so I don't think it enters
10 into it. The vendor wouldn't be attempting to
11 take a deduction for a cost of that service.
12 The services add to the value of the ultimate
13 trophy.

14 Q: So would you consider Mr. Ryan's example then,
15 in which the -- which you said that the gross
16 proceeds include everything, the trophy, the
17 cost, and the engraving, that the gross
18 proceeds are the total of all of that, is that
19 example a good example of the inability to take
20 out a cost of service?

21 A: Yes. That the store would not be allowed, and
22 shouldn't be allowed under the measure of the
23 tax, to deduct any of its costs. Those costs
24 are passed along to the purchaser and become
25 part of the price that's paid.



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1 Q: All right, sir. Thank you.

2 THE COURT: If I might, Professor Pomp, before you
3 leave the stand. Just to make sure I
4 understood the questions that you asked, Mr.
5 von Lehe, you're saying in the trophy example,
6 that if I were to purchase or Mr. Ryan were to
7 purchase the trophy at any one of those stages,
8 it would be sales taxable?

9 PROFESSOR POMP: If -- well, at any one of those
10 stages, if I brought in my own trophy and said
11 to them, engrave it for me ---

12 THE COURT: No. Let's go back to the three examples
13 that we had here.

14 PROFESSOR POMP: The three. Yes, if I buy ---

15 THE COURT: You've got the unassembled trophy, the
16 assembled trophy, and the engraved trophy?

17 PROFESSOR POMP: Yes.

18 THE COURT: You would say they're sales taxable in
19 each stage?

20 PROFESSOR POMP: Correct.

21 THE COURT: Okay. I just wanted to make sure I
22 understood that.

23 MR. VON LEHE: Thank you, Your Honor.

24 THE COURT: Any follow-up?

25 MR. VON LEHE: Your Honor, no follow-up.



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1 THE COURT: Mr. Ryan?

2 MR. RYAN: No, Your Honor.

3 THE COURT: Okay. Professor Pomp, thank you for

4 your expertise.

5 PROFESSOR POMP: Thank you. I'm going back to

6 Connecticut where it's warmer, I believe.

7 THE COURT: That's scary.

8 MR. VON LEHE: Your Honor, if we could have just a

9 moment, Your Honor, please?

10 THE COURT: Sure.

11 MR. VON LEHE: Your Honor, with this we close our

12 case.

13 THE COURT: All right. Now, the Department, Mr.

14 Ryan, Ms. Acquaviva, are you all wanting to

15 start today or do you have anything you can do

16 for the rest of day? We're short of 4:00, but

17 not by much.

18 MS. ACQUAVIVA: If I could just have a moment to

19 confer, there may be something we can do today.

20 THE COURT: Okay. And then while everyone's

21 thinking about that, is there any preference

22 about what time we start tomorrow? Does

23 anybody want to come earlier?

24 MR. VON LEHE: Any time that suits you, Your Honor,

25 as far as we're concerned ---



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1 MR. RYAN: I think, I believe, tomorrow will not be
2 too long.

3 MR. VON LEHE: How many witnesses?

4 MR. RYAN: So I don't know that we -- if the concern
5 was, will we run out of time tomorrow, I don't
6 think that will be an issue.

7 MR. VON LEHE: How many witnesses, Your Honor, will
8 we be looking at? Do you have a decision on
9 that?

10 MR. RYAN: I think we're looking at one, but I need
11 to confirm that.

12 THE COURT: Well, in that case, 10:00 then.

13 MR. VON LEHE: All right, Your Honor.

14 MS. ACQUAVIVA: Your Honor, if I may, I would like
15 to move pursuant to Rule 41(b) of the South
16 Carolina Rules of Civil Procedure for
17 involuntary non-suit. Pursuant to the Rule, if
18 the Petitioner fails to prosecute or
19 essentially the presentation of the
20 Petitioner's evidence, just applying those
21 facts to the law at issue, they have -- they
22 are not entitled to the relief they are
23 seeking. We are entitled to dismissal for
24 involuntary non-suit. Now, all of the facts
25 that essentially the Department was saying were



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1 not disputed or in evidence and as we said in
2 our motion, and so I don't want to get into too
3 much detail right now, if you apply the law to
4 those facts, keeping in mind the facts are
5 still the two types of transactions that I
6 initially discussed in my motion, there is no
7 evidence and that's -- we look at the sample
8 receipt they provided under Exhibit Four, that
9 receipt shows a transaction where a waiver and
10 tangible personal property was rented. There
11 is no evidence that in South Carolina during
12 this audit period somebody rented an item out
13 of state and then bought the waiver in state.
14 So that is not a transaction at issue. If we
15 look at the two types of transactions at issue
16 and the Department's position, either way, the
17 purchase of the waiver and the rental of the
18 property is still one transaction, whether it
19 happens initially or it happens at week four or
20 it happens at week 50. But for the rental of
21 tangible personal property, the Petitioners
22 would not have received the waiver fees. Just
23 like in the trophy example, the waiver fees
24 cannot be separated out. Just like in Meyers
25 Arnold, the layaway fee, which happened after



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1 someone decided they wanted -- the good was
2 created and they wanted to purchase it, could
3 not be separated out. In Southeast Cinema, the
4 trademark could not be separated out from a
5 value proceeding or accruing from the tangible
6 personal property, and that is the same
7 analysis that should be applied to the facts
8 here. In applying that analysis, these
9 transactions are taxable and the Petitioners
10 have failed to prove otherwise.

11 MR. VON LEHE: May I, Your Honor?

12 THE COURT: Yes.

13 MR. VON LEHE: Your Honor, of course we are opposed
14 to that motion, obviously. But the reasons for
15 it, of course, are the important things. And
16 the question is, certainly one of the questions
17 that the Court will be deciding and perhaps the
18 Department of Revenue's witnesses will have
19 some enlightening information on this, but from
20 what has been shown by us, this concept of
21 theirs, of taking out the cost of services and
22 saying that we are trying to take out the cost
23 of services, is just completely unfounded by
24 the evidence. The waiver has nothing to do
25 with cost or the production of this product,



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1 which is what that gross receipts section is
2 saying. It is saying, look, first of all, you
3 have to have -- it has got to be taxed. It's
4 got to be tangible personal property, rented
5 tangible personal property. Well, we don't
6 have that obviously with the waiver. So the
7 only way it could be taxable is if it is a part
8 of this rental agreement and it's not. And
9 it's completely separate from the rental
10 agreement, and they want to phrase it,
11 according to their literature that they've
12 given us of their arguments, they want to
13 phrase it as the cost of service, but it is not
14 a cost of service, because, for example, in a
15 trophy case, that is a prime example of a cost
16 of associated services which cannot be taken
17 out. When I go into that shop to purchase that
18 trophy, I am going in there to buy an engraved
19 trophy, and that's what I get. I'm not going
20 in there and buying a trophy that is not
21 engraved, taking it home for awhile until I can
22 make up my mind. Then I decide at a later
23 time, well, I think I'll take it back in and
24 get it engraved so that it will be for a
25 particular reason. Those are not the facts in



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1 that case. Here, we don't -- here, we don't
2 have that. We don't have a service which is
3 associated with this rental agreement. And the
4 facts, to the extent that the facts that are in
5 this records, they show that. So, Your Honor,
6 of course we would oppose that motion. We feel
7 that we have made our case and that we will
8 wait to hear what the Department of Revenue's
9 witnesses have to say about it.

10 THE COURT: Frankly, I think it would be premature
11 for us to make a ruling at this point, so I'm
12 going to deny that motion and we will proceed
13 with the case. Do you have a witness you can
14 produce this afternoon or would you rather wait
15 until the morning. I sort of promised you we
16 would wait for your witness until Friday, so.

17 MS. ACQUAVIVA: Your Honor, our witnesses are all at
18 the Department.

19 THE COURT: Okay.

20 MS. ACQUAVIVA: It would probably take -- it's
21 almost 4:00. I think by the time they would
22 get here, I don't know if it would be worth
23 hearing part of the testimony and then starting

24 ---

25 THE COURT: That's fine. We're fine. We'll be back



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1 tomorrow morning at 10:00. We are adjourned
2 for the day.

3 MS. ACQUAVIVA: Thank you, Your Honor.

4 MR. VON LEHE: Thank you, Your Honor.

5 (There being nothing further, day one of two of the
6 trial was adjourned at 3:53 p.m.)

7 DAY 2 - FRIDAY, SEPTEMBER 25, 2015:

8 COURT REPORTER: All rise.

9 THE COURT: Be seated, please. All right. We're
10 back on the record in consolidated case number
11 13-ALJ-17-0601-CC in the matter of Rent-A-
12 Center East, Petitioner, vs. South Carolina
13 Department of Revenue. And we have Mr. John
14 von Lehe and Bryson Geer for the Petitioner,
15 and Sean Ryan and Lauren Acquaviva for the
16 Department of Revenue. Anything we need to
17 discuss before we begin this morning?

18 MR. VON LEHE: No, Your Honor.

19 THE COURT: All right. Ms. Acquaviva, Mr. Ryan,
20 it's your start this morning.

21 MS. ACQUAVIVA: Thank you. The Department would
22 call John McCormack to the stand.

23 (Witness sworn.)

24 JOHN MCCORMACK, having been duly sworn, testifies as
25 follows:



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1 THE COURT: Please state your name and spell it for
2 the court reporter, please?

3 MR. McCORMICK: My name is John Patrick McCormack, M-
4 C-C-O-R-M-A-C-K.

5 MR. McCORMACK - DIRECT EXAMINATION BY MS. ACQUAVIVA:

6 Q: Good morning, John.

7 A: Good morning.

8 Q: Where are you currently employed?

9 A: The South Carolina Department of Revenue.

10 Q: And what do you currently do for the South
11 Carolina Department of Revenue?

12 A: I'm the General Manager in the policy section
13 within the Office of General Counsel at the
14 Department of Revenue.

15 Q: How long have you been in that position?

16 A: It's changed its name a couple of times, but
17 I've been basically in that position for three
18 years.

19 Q: And what are your job responsibilities?

20 A: The policy section assists in setting forth the
21 guidance the Department issues through advisory
22 opinions. We prepare and draft revenue
23 rulings, revenue procedures, private letter
24 rulings, for review and hopefully approval by
25 the Director. And so those provide guidance



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1 not only to our employees but to the taxpayers.
2 Also, we assist with promulgation of
3 regulations. We also provide informal advice
4 to tax professionals as well as the director,
5 and within other areas, such as audit and
6 litigation and the other divisions within the
7 Department.

8 Q: What, if any, area of tax do you specialize in
9 or focus in?

10 A: My main focus is sales use tax.

11 Q: And can you give the Court a brief overview of
12 your educational background?

13 A: I graduated from Clemson University in 1978
14 with a Bachelor of Science Degree in
15 Accounting.

16 Q: Do you have any certifications?

17 A: No.

18 Q: And what has your employment history been since
19 you received your Bachelors Degree?

20 A: After graduation, for a short time, I was in a
21 management training program at Winn Dixie. And
22 then came to the Department of Revenue in 1980.
23 My first job there was within what is referred
24 to as the license/tax division, which handled
25 various miscellaneous taxes like anything from



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1 soft drinks to cigarettes to admissions tax.
2 And so I did that and then I was a licensed tax
3 auditor for several years. And I think it was
4 1985 that the Department reorganized and
5 created a -- divisions along functional lines
6 as opposed to tax divisions. And so I was
7 moved into what was called field services,
8 which is basically audit and collection. And
9 they set up an appeals section and I worked
10 there for I think probably about three years as
11 well. That's where I first started working
12 with sales and use taxes. And then in -- I
13 think it was like 1987, is when I -- there came
14 the policy section, which was to try to
15 centralize policy across division lines, so the
16 Department, through the Director, could speak
17 with one voice. So I've been in the policy
18 section since that time, either as a -- I first
19 started as what I would call an analyst. And
20 then I was the manager for the policy section.
21 And then in 19' -- excuse me, 2012, our general
22 counsel retired and I took that position. And
23 then through reorganization, I became a general
24 manager under a new general counsel for the
25 Department.



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1 Q: When you started in policy, did you always
2 focus on sales tax?

3 A: I've dealt with other taxes, you know, because
4 of my background in the license/tax division,
5 I dealt with things like admission taxes, soft
6 drinks and cigarette taxes, as well as motor
7 fuel taxes. I dealt with, you know, from time
8 to time, a few income tax issues. And then --
9 but most -- most of my concentration during
10 that time has been sales and use taxes.

11 Q: Now looking at sales and use tax, how does the
12 Department determine what is subject -- what
13 type of transaction is subject to the sales
14 tax?

15 A: Well, essentially, of course, we look at the
16 code. And the several main code sections that
17 we deal with, and one is the imposition, which
18 is Code Section 12-36-910. And that imposes a
19 tax on every person engaged or continuing
20 within the state in the business of selling
21 tangible personal property at retail, it
22 imposes the tax on them. It's imposed upon --
23 the measure of the tax under that section is
24 gross proceeds of sale. That's what the tax
25 rate is applied against. And then gross



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1 proceeds of sales is defined in Code Section
2 12-36-90. And so those are probably the two
3 main code sections we look at. Of course, we
4 also have to look at the definition of a sale,
5 which is in Code Section 12-36-60, which
6 essentially says that the sale by definition
7 includes a rental or a lease or a license to
8 use tangible personal property. Those are the
9 main ones. So we look at those and then, of
10 course, obviously, we have to look at
11 exclusions and exemptions, you know, in making
12 the final determination as to whether something
13 is subject to the tax or not.

14 Q: Sure. Now, you mentioned that 12-36-910
15 imposes sales tax on tangible personal
16 property, on someone in the business of selling
17 tangible personal property. How does the
18 Department determine whether a tax should be
19 imposed specifically, especially if it's a
20 mixed transaction, for example.

21 Q: Well, we look at, you know, the definition of
22 gross proceeds of sale. You know, that's --
23 when we're talking about a mixed transaction,
24 that's the key there. That code section
25 defines -- excuse me, that code section defines



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1 gross proceeds as the value proceeding or
2 accruing from the sale, lease or rental of
3 tangible personal property. It goes on to say,
4 without any deductions for cost of materials,
5 labor or services. And it further goes on to
6 talk about that it includes any -- any proceeds
7 from the sale.

8 Q: Why can't a taxpayer separate a contract into
9 several parts in an attempt to make some parts
10 taxable and some parts not taxable?

11 A: The ---

12 MS. GEER: Your Honor, may I just -- I have a brief
13 objection here. I am fine with Mr. McCormack
14 testifying as to what the Department did or how
15 they interpret things, I just don't want to get
16 into the danger area we talked about yesterday
17 of giving legal conclusions. So I just wanted
18 to pose that objection. We're okay with him
19 testifying as to what the Department did or how
20 the Department applies certain things, but not
21 to give legal conclusions on how they should be
22 applied.

23 THE COURT: Okay. I think what has been asked is
24 why they do something.

25 MS. GEER: And that is -- okay.



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1 THE COURT: And that would be their understanding of
2 their duties ---

3 MS. GEER: Right.

4 THE COURT: --- rather than a legal conclusion for
5 me. So I think I would overrule your objection
6 to that extent.

7 MS. GEER: Thank you, Your Honor.

8 MS. ACQUAVIVA: And if you would like, I can
9 rephrase slightly.

10 THE COURT: That would be helpful.

11 Q: Okay. Going off of what you just testified
12 about, gross proceeds and the various
13 deductions, what is the Department's
14 understanding regarding separate contracts and
15 what if they're separated out into different
16 parts? Do you understand where I'm going
17 there?

18 A: Well, what the Department looks at on those
19 things is, first of all, you always go to the
20 code. I mean, that's the first place. And in
21 this case where you're talking about the
22 various parts of a transaction, because again
23 the -- under the code, the way the Department
24 looks at it is, sales tax is a transactional
25 tax. We're looking at -- you're not really



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1 looking at the item, you're looking at the sale
2 or the lease or the rental of that item. We,
3 also, obviously, you know, look at court
4 decisions that are out there. The main one
5 that we've looked at for many years is the
6 Meyers Arnold case. I think it was 1984. That
7 dealt with two issues. The one that probably
8 most fits in with the area of, you know, a
9 service that is part of a transaction, is the
10 layaway fees. And we have relied on that for
11 many years, because the Department looks at it
12 that the court established a test. What we
13 call or we generally refer to as the "but for"
14 test. And in that case, the Meyers Arnold sold
15 a product for an established price. And then
16 the customer had an opportunity to, you know,
17 pay -- pay for the item by cash, by credit or
18 by layaway. And when they did it by layaway,
19 there was a separately stated charge on the
20 bill to the customer for the layaway fee. In
21 that case, it was like a \$1.00 or \$2.00, you
22 know, it was a flat fee. And so the Department
23 held that that was subject to a tax. And then
24 the court upheld that and said, you know,
25 again, they said the "but for" test. But for



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1 the layaway sale, Meyers Arnold would not
2 receive the layaway fee. And so based on that,
3 you know, when we have these kinds of
4 transactions where you have a service that's
5 incidental to the sale or service as part of
6 the sale, you know, a fee for that, then that
7 is ---

8 MR. VON LEHE: Your Honor, if I may, Your Honor, I
9 would like to object to this testimony. It's
10 going way beyond their view of what -- of
11 something, and it has now turned into what the
12 case says.

13 MR. RYAN: If I may, Your Honor, it's ---

14 MR. VON LEHE: It's an expression of what the law of
15 the case is. The case stands for itself.
16 Now, if you're saying why they did certain
17 things, why the Department did certain things,
18 that's one thing, but his testimony is that the
19 case says this. That's a legal conclusion.

20 THE COURT: All right.

21 MR. RYAN: I would ask that his objection be
22 stricken from the record, because there is only
23 one counsel per witness. Under the rules of
24 this Court, they have now used two.

25 THE COURT: And now you are, too. So ...



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1 MR. RYAN: You can strike me too.

2 THE COURT: I'm not going to be that technical about
3 it for the purposes of this. I would like it,
4 if you have a response to that, because I think
5 Mr. von Lehe is correct, that now that we're
6 talking about what the case stands for, we may
7 be edging past why the agency is doing -- the
8 Department is doing what it's doing, and
9 getting into interpretive matters that may be
10 stepping on one of my small toes.

11 MS. ACQUAVIVA: My follow-up question, when he
12 completes his testimony, would be, given the
13 Department's understanding of the Meyers Arnold
14 case, how has the Department applied the "but
15 for" test in Meyers Arnold going forward, to
16 kind of, you know -- or the Department's long
17 standing policy is to use the "but for" test to
18 interpret -- or how to define what value
19 proceeding or accruing is, so understanding
20 what the Department thinks it means, would help
21 the Court understand why and how we've applied
22 that test since 1985 and to the transaction at
23 issue in this case.

24 THE COURT: Mr. von Lehe, what do you have?

25 MR. VON LEHE: Your Honor, in accordance with what



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1 you said a moment ago, with which we agreed,
2 that question would be permissible.

3 THE COURT: Okay. Why don't we just go to that
4 question then, and I'll sustain the objection
5 to that extent.

6 MR. VON LEHE: Thank you, Your Honor.

7 MS. ACQUAVIVA: Given the Department's ---

8 MR. VON LEHE: And, Your Honor, if I may, and strike
9 his response to that last question from the
10 record, we would ask.

11 MR. ACQUAVIVA: Your Honor ---

12 MR. VON LEHE: She testified ---

13 THE COURT: I don't think that his testimony as to
14 that has gone any further than Professor Pomp's
15 testimony on that very same case. So I would
16 deny, strike him, but I will stop the inquiry
17 at that point.

18 MR. VON LEHE: Thank you, Your Honor.

19 MS. ACQUAVIVA: Thank you, Your Honor.

20 THE COURT: So denied the strike.

21 MR. VON LEHE: Thank you, Your Honor.

22 Q: Given the Department's understanding or
23 interpretation of the Meyers Arnold case, how
24 does the Department apply the "but for" test
25 from 1985 on from when the case came out?



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1 A: Well, it's been applied in many different
2 situations, if I understand your question
3 correctly. The Department has looked at it
4 with respect to things like extended
5 warranties. That if you buy a product and you
6 can, for a separate fee, you can purchase an
7 extended warranty, has held, but that's but
8 for, under the "but for" test, that is part of
9 the gross proceeds and is subject to the tax.
10 We have held it in situations with like a car
11 rental company. There was, in the car rental
12 company, there was, in the car rental company,
13 they had separate optional charges for various
14 insurance, as well as a collision damage
15 waiver. And, you know, that was part of it in
16 a Revenue ruling. You know, I believe it was
17 like 1993, I can't remember, but in a Revenue
18 ruling there. We've had situations with
19 maintenance contracts. Maintenance contracts.
20 Maintenance contracts are, probably the most
21 I've seen them is dealing with two areas.
22 Usually sometimes appliances, but also probably
23 the bigger area I've seen over the years has
24 been software. And most of it dealt with
25 software when it's sold in a tangible form,



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1 because that's the key thing there. But they
2 would provide maintenance contacts, where they
3 provide debugging, and they would provide
4 training, and they would provide telephone
5 assistance. And, you know, for that separate
6 charge, that was considered part of the sale,
7 part of the gross proceeds of the software, and
8 held subject to the tax, because it was part of
9 that gross proceeds. We've had issues ---

10 Q: I'm going to stop you there, because I think
11 the Court gets the general picture. And I want
12 to take the Department's analysis and look at
13 the facts of this case. What is your
14 understanding of what the transaction at issue
15 is in this case, factually?

16 A: Factually, my understanding is, that a customer
17 comes in and wants to rent some durable
18 consumer good, like a television or a
19 refrigerator or something like that. And that
20 they enter into a contract to do so. And that
21 as part of that contract, they basically are
22 paying a monthly, excuse me, either a weekly,
23 a semi-monthly or a monthly fee. And that,
24 basically, at that time when they enter into
25 the initial contract, they also are given the



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1 option to purchase, for a fee, a property
2 damage waiver, and so they can do that at that
3 time. They can also do that at a later date in
4 the contract. In other words, they can come in
5 and if they decide they don't want to get the
6 property damage waiver fee, but then maybe
7 three months later they decide on that next
8 payment that they would like to do that, for
9 whatever reason, then they can come in and
10 start paying the property damage waiver fee
11 beginning with that payment. My understanding
12 is, in both cases, they can also stop paying
13 that property damage waiver fee and therefore
14 not pay it, but still pay the rental.

15 Q: Okay. And looking at kind of the first set of
16 facts you mentioned, which was when the
17 customer enters into the initial purchase
18 agreement and purchases the waiver, essentially
19 on day one, what is the Department's
20 determination regarding whether that
21 transaction is subject to sales tax?

22 A: Well, again, we look at gross proceeds. We
23 look at the Meyers Arnold case. And in looking
24 at the idea that but for the rental of the
25 item, you would not be receiving the property



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1 damage waiver fee. And so we have held --
2 would hold that. In fact, there was a similar
3 decision, and I can't remember the -- oh,
4 1986, a commission decision, when we had a
5 commission, there was a similar decision with
6 that as well. The commission decision S-D-174,
7 but basically would hold that that's part of
8 gross proceeds, because the fee for the
9 property damage waiver ---

10 MS. GEER: Your Honor, I would object. He started
11 that sentence with, that decision would hold,
12 and so I do think we are stepping into the
13 legal conclusion area.

14 THE COURT: I'm going to sustain that. You can talk
15 about what the agency, the Department, excuse
16 me, does, if you can. I think you've
17 established from your testimony that you've
18 gotten this "but for" test from that case, and
19 if you -- beyond that, just talk about what
20 you've done, okay?

21 Q: And for clarification purpose, who issues
22 commission decisions ---

23 A: The Department.

24 Q: --- or issued?

25 A: The Department of Revenue. Well, what used to



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1 be called the Tax Commission, the precursor to
2 the Department of Revenue, was a -- well, tied
3 up in there was a -- was a three man
4 commission, and so it was appointed by the
5 Governor and approved by the Senate. And they
6 would hold a hearing on matters that taxpayers
7 disagreed with the section and then the issued
8 determination.

9 Q: Whose opinion is given in a Commission
10 decision?

11 A: It's the Department as a whole, the Commission
12 as a whole at that time.

13 Q: Okay. And, Your Honor, just to kind of clarify
14 the objection, I don't think he was testifying
15 to what a case would hold, he was testifying
16 what the Department determined back in 1986,
17 did you say?

18 A: Yes.

19 Q: In a similar issue, or a similar issue in front
20 of the Department, which is comparable to what
21 his job is now, making those determinations.
22 It's just called something different. To go
23 back where we left off, we were talking about
24 a Commission decision and what it held. But to
25 get back to the transaction at issue, just to



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1 sum up, why did the Department determine that
2 the transaction that we're talking about, the
3 customer gets the waiver on -- at the first
4 term, why is that taxable?

5 A: Well, because it was a part of the sale. You
6 know, the fee was sold in conjunction with, in
7 this case, the sale of the rental. The rental
8 obtainable for personal property at retail,
9 that it was part of gross proceeds and
10 therefore the whole, everything together, was
11 subject to a tax. So if you were renting it
12 \$100 a month, and the property damage waiver
13 fee, and I think in this case is like seven and
14 one-half percent, so you know, it would be
15 another \$7.50, the whole \$107.50 would be gross
16 proceeds and therefore subject to the tax for
17 that month's rental.

18 Q: Now, the second type of transaction we
19 discussed, when I asked you about what you
20 understood the facts were, was when a customer
21 purchases the waiver during a later term. What
22 is the Department's position regarding the
23 taxability of that transaction?

24 A: Well, looking at the contract, the agreement in
25 this case, it talks about, again, that it can



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1 be weekly, semi-monthly or monthly. It also
2 talks about that the customer does not have to
3 renew the transaction. They can stop after,
4 let's say it's a monthly, they can stop after
5 that month and they bring it back and it's
6 done. So -- and then it talks about that they
7 renew it, every -- and this is my example,
8 every month. So for sales tax purposes, we
9 look at that as being a -- each month is a
10 separate sales transaction. And so that even
11 though they didn't purchase it when they
12 initially, you know, came in to rent the item
13 in, let's say, month six, that's a new
14 transaction. They've come in to renew, make
15 that payment, and they decide at that time that
16 the previous five months they were paying \$100
17 a month, now they want to pay \$107.50, you
18 know, based on my example of a month. And so
19 because that month is a sale transaction in and
20 of by itself, there is again, the waiver fee is
21 sold, excuse me, a waiver is sold in
22 conjunction with the sale of obtainable
23 personal property, that month's rental, is
24 therefore the whole \$107.50 would be the gross
25 proceeds that is subject to the tax.

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1 MS. ACQUAVIVA: Can I have a moment to confer with
2 my co-counsel? I have no further questions.

3 THE COURT: All right. Mr. von Lehe, Ms. Geer?

4 MS. GEER: Yes, Your Honor.

5 THE COURT: Cross-examination.

6 MS. GEER: I have a few questions here.

7 MR. McCORMACK - CROSS-EXAMINATION BY MS. GEER:

8 Q: Mr. McCormack, I think in your testimony, we
9 may have actually agreed on some facts, and so
10 I just want to sort of clarify that we have
11 some facts that we aren't disputing anymore.
12 So you don't dispute that the waiver here is
13 optional, right?

14 A: I don't dispute that.

15 Q: Okay. And you don't dispute that it can be
16 purchased at any time, at the time of the
17 purchase of the rental item or later, correct?

18 A: Later on, yes, with another payment. Yes, I
19 know you can purchase it later.

20 Q: Okay. And you don't dispute that the waiver
21 can be cancelled at any time? I'm not sure if
22 you spoke to that earlier?

23 A: Yes. From what I've read in the contract, it
24 says that, you know, that it expires,
25 basically, if they don't make another payment.



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- 1 Q: Right, but they can affirmatively, yeah, just
2 decide to cancel it?
- 3 A: And so they can also decide not to do the
4 waiver as well.
- 5 Q: Okay. And you do understand that the waiver is
6 a separate charge on the customer's receipt?
- 7 A: Yes.
- 8 Q: And that that charge does not count towards the
9 purchase of the item?
- 10 A: Yes. That it is not towards the purchase
11 agreement, if a person chooses to purchase it.
- 12 Q: Right. In other words, the person could not
13 make his payments on the waiver, and still own
14 the property at the end of the rental term, as
15 long as he made all his rental payments,
16 correct?
- 17 A: Well, I wouldn't term it as the rental term,
18 because the way I read it, each term is each
19 payment. But as far as if they meet all --
20 let's say they -- that the agreement says that
21 they have to make 52 payments in order to own
22 it, if they make all 52 payments, then they
23 will own it.
- 24 Q: Right. And when you're referring to the 52
25 payments, you're saying that 52 payments due



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1 under the Rental-Purchase Agreement and not if
2 they chose to purchase the waiver. They don't
3 have to make all the payments of the fees due
4 under the waiver, correct?

5 A: If I understand you correctly, your question
6 correctly, they can choose to stop and start
7 the waiver, you know, at any time they want to,
8 if I understand your question correctly.

9 Q: Correct. And they can -- and that does not
10 impact in any way their ability to own the
11 item, as long as they make all the rental
12 payments?

13 A: As long as they make the payments that the
14 contract says to go toward that. Yeah, that
15 doesn't affect -- while those waiver fees are,
16 for our purposes, sales tax purposes, are part
17 of the gross proceeds of sale, they don't go
18 toward the ultimate purchase of the item if
19 they make all, in my example, 52 payments.

20 Q: Okay. And are you aware that Rent-A-Center
21 does not obtain insurance for this risk? In
22 other words, they're not passing on an
23 insurance cost in the waiver fee to the
24 customer?

25 A: I'm not aware of what they do, one way or the



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- 1 other, on that.
- 2 Q: Okay. You don't have any reason to dispute
- 3 that that's what that do?
- 4 A: I have no information on that.
- 5 Q: Okay. And would you agree with me that the TV
- 6 itself, let's just take the TV for example, is
- 7 physically the same whether it's purchased with
- 8 a waiver or not?
- 9 A: I would agree that it's physically the same
- 10 thing. That's not an issue for sales tax
- 11 purposes ---
- 12 Q: Right.
- 13 A: --- but it is physically the same the TV.
- 14 Q: Okay. So the TV itself is not altered or
- 15 improved in any way by the waiver?
- 16 A: The TV itself is the same TV. The -- but, you
- 17 know, for sales tax purposes, the value
- 18 proceeding or accruing from that sale, or in
- 19 this case rental, is increased because of the
- 20 waiver.
- 21 Q: Okay. And let me ask you another way. Let's
- 22 say that the TV cost \$500. The TV is still
- 23 worth \$500 whether you purchase the waiver or
- 24 not, right?
- 25 A: The TV has the same value of the TV, but the



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1 difference is, again, sales tax is not on the
2 value of the item, it's on the value proceeding
3 or accruing from the sale.

4 Q: I understand.

5 A: There's a big difference there.

6 Q: I understand what you're saying there. But
7 you're agreeing with me that the TVs themselves
8 have not increased in value?

9 A: Yes. That's what I said.

10 Q: Okay.

11 A: With the TV, I don't dispute the TV is the same
12 value ---

13 Q: Okay.

14 A: --- but the value for purposes of sales tax is
15 different.

16 Q: So just for an example, if I've got two TVs
17 that Rent-A-Center has sold to different
18 customers, you wouldn't be able to look at the
19 TVs and tell which one the customer purchased
20 a waiver for and which one they didn't, right?

21 A: Looking at the TV, no.

22 Q: Right.

23 A: You wouldn't be able to tell that.

24 Q: All right. Would you agree that when a
25 customer enters a rental agreement, he gets the



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1 benefit of renting an item?

2 A: He's coming in there to rent an item.

3 Q: Got you. And would you agree with, when a
4 customer enters into a waiver, he gets the
5 benefit of protection from certain risks, if
6 that rented item is damaged or stolen?

7 A: Yeah. That's what -- to me, that's what's, you
8 know, part of what is enhancing the value for
9 sales tax purposes.

10 Q: Would you agree that those are different
11 benefits? We're talking about two different
12 benefits from these two agreements?

13 A: I'm not sure I understand your question.

14 Q: It's not the same benefit. Each agreement has
15 a different, separate benefit, correct?

16 A: I will say, each agreement has a different
17 purpose, but again, for our purposes and again
18 for sales tax purposes, the issue is what value
19 proceeding or accruing from, in this case, the
20 rental.

21 Q: All right. And I understand your tax
22 decisions. I've kind of more, not the analysis
23 part yet, I'm in facts still. So factually
24 speaking, you would agree with me that the two
25 agreements provide two separate and different



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1 benefits to the customer?

2 A: I would agree that there are two different
3 agreements. I would agree, I think there --
4 when you enter into the second one, they are
5 related. And the second one, the waiver, is
6 incidental and part of the transaction for
7 sales tax purposes at the end of the day.

8 Q: All right. So back to my, let's stick to the
9 facts for now ---

10 MS. ACQUAVIVA: Your Honor, if I may ---

11 MS. GEER: Let me just move on. I'm just going to
12 move on. Thank you, Lauren.

13 Q: All right. Would you agree with me that
14 exemption statutes are generally construed in
15 favor of the government or the Department and
16 construed strictly against taxpayers?

17 A: Yes. You have to plain read, but you have to,
18 if there's any doubt, then it's in favor of the
19 government.

20 Q: Okay.

21 A: The state.

22 Q: For an exemption?

23 A: For an exemption.

24 Q: All right. And would you agree with me that,
25 for imposition statutes, on the other hand,



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1 that those are construed in favor of the
2 taxpayer and against the taxing authority,
3 correct?

4 A: If there's ambiguity, it goes in favor, but you
5 have to still read the plain reading of the
6 language of the law.

7 Q: All right. So we've talked about 12-36-910, is
8 that the imposition statute in this matter?

9 A: Yes.

10 Q: And that statute states, that a sales tax equal
11 to five percent of the gross proceeds of sales
12 is imposed upon every person engaged or
13 continuing within this state in the business of
14 selling tangible personal property at retail,
15 is that correct?

16 A: Yes.

17 Q: All right. Now, the Department doesn't contend
18 that the waivers themselves are the sale of
19 tangible personal property. You all believe
20 that it's a service, correct? The waivers are
21 a service?

22 A: The Department believes that they are a -- it
23 is a service or a fee that is part of this
24 gross proceeds of sale. It is part of the
25 value proceeding or accruing from that sale,



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1 and therefore part of the tax base, the measure
2 of the tax being gross proceeds.

3 Q: Okay. So some type of service, but it's not
4 itself tangible personal property?

5 A: In and of by itself, it's not tangible personal
6 property.

7 Q: All right. And am I correct that services in
8 South Carolina are taxable only if they're
9 specifically enumerated in a statute?

10 A: I would disagree with that.

11 Q: So you think that services in South Carolina
12 that are not enumerated in a statute are
13 taxable?

14 A: Yes, because -- when they are part of gross
15 proceeds. I think if you -- there's a footnote
16 in the Meyers Arnold case that somewhat
17 addresses that, dealing with the -- it deals
18 with the -- the footnote deals with the -- this
19 first issue in the Meyers Arnold case, which
20 was the gift wrapping. But basically, I don't
21 have that -- is there a copy of that here? I
22 think my memory is it basically says that the
23 court saying the Department in its brief set
24 forth that generally speaking, the sales tax is
25 imposed on tangible personal property, and not



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1 services. And then they go on -- the court
2 goes on to say, however, under your Code
3 Section 12-35-30, which is the old version of
4 gross proceeds definition, the 12-36-90 and 12-
5 35-510, which is the old version of the
6 imposition, the 12-36-910, services that are
7 part of the sale or part of the value
8 proceeding and accruing from the sale of
9 tangible personal property, are the taxes
10 imposed on those. Not exactly those words, but
11 that's basically what the footnote says. And
12 so in that sense, that services that are a part
13 of the sale of tangible personal property, fall
14 within the value proceeding or accruing from
15 the sale of the tangible personal property and
16 therefore are taxable as part of the tax base.

17 Q: Okay. Let me get into that in a second. Let
18 me first clarify, South Carolina statutes do
19 enumerate certain services that are taxable,
20 correct?

21 A: Yes.

22 Q: Okay. And is the sale of waivers one of those
23 specifically enumerated services?

24 A: No.

25 Q: Okay. Now, if a waiver is sold by a third



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1 party, this is kind of a follow-up question,
2 such as, let's just use the company
3 SquareTrade, we talked about those in the
4 deposition, you and I earlier, and let's assume
5 SquareTrade issues a waiver for insurance on a
6 TV that a customer purchased from Rent-A-
7 Center. You would agree with me that that
8 transaction is not taxable in South Carolina,
9 correct?

10 A: Well, as I mentioned in the deposition, it
11 depends on the facts.

12 Q: Okay. SquareTrade, third party, not related to
13 Rent-A-Center in any way, that transaction is
14 not taxable, right?

15 A: No, it depends on the facts.

16 Q: Okay. Tell me what facts?

17 A: If I go into Rent-A-Center ---

18 Q: Uh-huh (affirmative response).

19 A: --- and I entered into an agreement to rent
20 this thing, this item, let's say a television
21 set ---

22 Q: Right.

23 A: --- and they give me a brochure. And they say,
24 here, you can go online and you can -- from
25 SquareTrade, you can get this property damage



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1 waiver that will cover these circumstances,
2 whatever those circumstances are. And so I go
3 to SquareTrade online, I put my credit card in,
4 I pay. Then you have two transactions, two
5 sellers of different items ---

6 Q: Right.

7 A: --- and therefore the waiver is not includable
8 in the tax base.

9 Q: Okay.

10 A: However, if SquareTrade is working with Rent-A-
11 Center, and Rent-A-Center is then, you know,
12 charging it as part of their fee, so when you
13 walk in there, you're going to pay Rent-A-
14 Center the rental amount and you're going to
15 pay for the waiver that works its way through
16 Rent-A-Center and eventually to SquareTrade,
17 because they have an agreement, then that's
18 part of the gross proceeds of sale.

19 Q: Okay. But the situation where they're going --
20 the customer from Rent-A-Center, rents a TV at
21 Rent-A-Center, and then goes separately to the
22 online or a separate retailer, SquareTrade,
23 that transaction is not taxable?

24 A: The waiver transaction?

25 Q: Right.



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- 1 A: That is not, because that is a separate
2 transaction.
- 3 Q: Okay.
- 4 A: As opposed to the other one where it is part of
5 the same transaction.
- 6 Q: And I think you said also that even if that, if
7 you have those same facts we just talked about,
8 a separate online transaction, even if that
9 entity selling the waiver was an affiliate of
10 Rent-A-Center, as long as it's not the agency
11 issue, where they're in the same building or
12 Rent-A-Center is doing it as part of their
13 transaction, as long as that affiliate is
14 separate, as the SquareTrade example was, that
15 is not taxable, correct?
- 16 A: If you're not -- if it truly is a separate
17 transaction, you're selling to a third entity
18 of Rent-A-Center. And like if you're doing the
19 same thing, you're going online and you buy it
20 there, and you do it here.
- 21 Q: Right.
- 22 A: But if it's -- again, if it's working its way
23 through the ---
- 24 Q: Well, I don't want you to go back to that
25 example. Keep going with the first example.



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- 1 A: Well, you know, I'm done.
- 2 Q: Okay.
- 3 A: But with the first example, if it's -- if
- 4 you're going online and you're ordering it from
- 5 them and you're not doing it there, then that's
- 6 one thing. We would not tax ---
- 7 Q: And that's not taxable.
- 8 A: --- that as a separate, but if you go through,
- 9 if that entity goes through the Rent-A-Center
- 10 location that is paying the one payment with
- 11 rental and the waiver, that is treated the same
- 12 as it would be in your SquareTrade example.
- 13 Q: Okay.
- 14 A: Assuming that they are -- again, the one thing
- 15 I will add to that, a qualifier I will add to
- 16 that, assuming that there are not some strange
- 17 or different facts to that, with the sales tax,
- 18 you have to base all the facts ---
- 19 Q: Right.
- 20 A: --- and so we'd have to look at that in more
- 21 detail. But, I mean, essentially if they truly
- 22 are doing it separately, then that's, you know,
- 23 different, you know. But if they're running it
- 24 through the same company where you're writing
- 25 one check, then we would consider that part of



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1 the gross proceeds.

2 Q: And would it make any difference in your mind
3 if Rent-A-Center owns SquareTrade, but there's
4 no agreement between them? To me, that's the
5 same situation we talked about with an
6 affiliate of Rent-A-Center. That would be
7 still not taxable?

8 A: If, again, if it's -- if you're going online
9 and you're doing something completely separate
10 and distinct, but if you're running it through
11 the same -- making this one payment where
12 everything is in one payment and one company,
13 you know, or somehow you're making one payment,
14 you know, as opposed to paying it over here and
15 paying it over here, that's one thing, but if
16 you're -- because that -- then that makes that,
17 you know, that's not part of the transaction.
18 But if you're making one payment then, you
19 know, it's part of the transaction on this
20 month-to-month transaction by example and,
21 therefore, part of the sales transaction is
22 subject to the tax.

23 Q: All right. Would you agree with me that 12-36-
24 90 is the statute that defines gross proceeds
25 of sale?



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1 A: Yes.

2 Q: Okay. And that statute says that the gross
3 proceeds means the value proceeding or accruing
4 from the sale, lease or rental, of tangible
5 personal property. Is that your -- is that
6 correct?

7 A: That's sounds correct, yes.

8 Q: So in this case, you're saying that the
9 proceeds from the waiver, are accrued from the
10 sale of the TV, correct?

11 A: Yes.

12 Q: Isn't it more logical to say that the sale
13 proceeds from the waivers accrue from the sale
14 of the waivers?

15 A: No, I think because of two things. I think
16 you've got a couple of things going on there.
17 From a factual standpoint, I think a person is
18 coming in there to rent tangible personal
19 property, and they're given the option, you
20 know, I think the waiver talks about it being
21 an additional charge, but they are given the
22 option to buy or pay this waiver fee. And so
23 I think, you know, that it's part of the sale,
24 or in this case, rental of tangible personal
25 property. I also think, you know, from looking



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1 at the statute, I think we also have the
2 definition of sales price, which is for the
3 sales use tax. But it has similar language,
4 but it also has language that talks about any
5 services or transportation costs that are part
6 of the sale. And so I think you have to look
7 at those two things together, that basically,
8 because the sales tax measure of tax, gross
9 proceeds and use tax measure of tax sales
10 price, should be the same. If you look at
11 those -- I look at those as being, what I call,
12 you know, using language from another court
13 case, inextricably related and bound, and so
14 you have to look at those. So I think looking
15 at those things together, in the same way. The
16 court had a similar issue many years ago. I
17 think it was like 1971, but this case called
18 Edisto Fleets. And in Edisto Fleets you had
19 Edisto Dairies renting from Edisto Fleets.
20 They were related companies. They were renting
21 and the court held that was subject to the tax.
22 And the taxpayer was arguing that the
23 definition of sale, which at that time, was a
24 separate definition from purchase. The
25 definition of sale didn't say anything about



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1 rental, but the definition of purchase, which
2 applied to the sales use tax, did. And they
3 said that those were inextricably bound and
4 related. And I think the same thing happens
5 here. You've got the definition of gross
6 proceeds and you've got the definition of sales
7 price, so I think those are inextricably bound
8 and related. And I think then you've got that
9 added language there that, you know, which is
10 what I think that footnote I was mentioning
11 earlier in the Meyers Arnold case, I think that
12 kind of says the same thing, that it also
13 applies to any services that are part of the
14 sale. And so that's how I look at it from
15 looking at the statute.

16 Q: Well, and in the use tax statute that you're
17 talking about, the transportation, I think you
18 said, service or transportation costs that are
19 part of the sale, aren't they, in that statute,
20 also talking about the sale of tangible
21 personal property?

22 A: The use tax applies to the purchase at retail
23 of tangible personal property, with the tax
24 base being the sales price, which is defined in
25 another Code Section 12-36-130. And so, again,



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1 like I said, looking at those two together,
2 because you want, you know, for purposes of
3 making sure you're treating in-state purchases
4 and out-of-state purchases the same, you know,
5 you want those measures, those basis upon which
6 they tax those gross proceeds of sales price to
7 be the same. So I look at those being related.
8 And I think that additional part, because that
9 definition of sales price also has a similar
10 language about, you know, no deduction for cost
11 of material, labor and service ---

12 Q: Right.

13 A: --- but it adds the language about any services
14 that are a part of the sale.

15 Q: Right. And they all tie back to the sale of
16 the tangible personal property, correct?

17 A: Yeah. You have to have a sale of tangible
18 personal property in order for the services
19 associated with the sale of tangible personal
20 property be subject to the tax.

21 Q: Now, when you're looking to try to determine
22 the value proceeding or accruing from a sale,
23 aren't you looking at the value proceeding or
24 accruing to the seller?

25 A: I think that's essentially what it's saying.



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1 You know, the value proceeding and accruing.

2 Q: Okay.

3 A: So, you know, for example in this case, the
4 seller, the renter, you know, Rent-A-Center,
5 you know, is -- more value is proceeding or
6 accruing to them because they have, you know,
7 they've not only received, from my other
8 example, \$100.00 from the rental, but they've
9 received this \$7.50 for the waiver. Which
10 again, like I said, you get back to the "but
11 for" test.

12 Q: Right. We don't need to go that far. I just
13 wanted to get you -- to make sure that you
14 agreed with me that the perspective you're
15 looking at is the value proceeding or accruing
16 to the seller?

17 A: Yes. I mean, I think -- you know, I think an
18 argument can be made that there's also value to
19 the purchaser. They've got something in their
20 hands of more value, but I think from a
21 standpoint of the statute that, you know, it's
22 preceding and accruing to the seller.

23 Q: To the seller. Thank you. All right, so
24 you've mentioned the service cost or the cost
25 of service. And I understand the Department



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1 contends that the waivers might fall under that
2 definition as well, is that correct?

3 A: Could you repeat the question, I'm sorry?

4 Q: You've mentioned the term service or cost of
5 service. There's language in the statute that
6 we talked about earlier that says you can't
7 allow -- that deductions are not allowed for,
8 and you can probably quote it better than I
9 can, cost of labor, materials or service?

10 A: Yeah. Cost of materials, labor or service.

11 Q: Okay.

12 A: Because like I said, there's the other
13 provision in sales price that talks about ---

14 Q: Right.

15 A: --- service as a part of the sale.

16 Q: Okay. But for the sales tax portion, what
17 we're looking at now, am I correct in
18 understanding that the Department feels like
19 this might fall within that definition as well,
20 or are you just going under value proceeding or
21 accruing?

22 A: Well, I mean, you think -- you obviously have
23 to look at the whole definition of gross
24 proceeds. And so you have the value proceeding
25 or accruing from the sale of tangible personal



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1 property.

2 Q: Right.

3 A: You have the provision that says, it also
4 includes, and one of those is, the proceeds
5 from the sale of tangible personal property.
6 And that goes on further to say, without any
7 deduction for a list of things.

8 Q: Right.

9 A: Some of those things are, that we -- what you
10 talked about is, the cost of material, labor
11 and services. And then, like you said, you
12 know, you also have the relationship to the
13 sales price and, you know, the services
14 associated with the sale or a part of the sale,
15 I think is the language. And so in looking at
16 those things together, and obviously the
17 Department looks at the court cases, the "but
18 for" test ---

19 Q: Right.

20 A: --- that service is -- any services that are
21 part of the sale of tangible personal property,
22 come within gross proceeds, a fee for that
23 service, and therefore is subject to tax, when
24 you have a sale or rental or lease of tangible
25 personal property.



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1 Q: Okay. I'm not sure you answered my question,
2 but let me just say it one more time to make
3 sure we're on the same page. So is the
4 Department contending that this also, the
5 waiver proceeds, also fall under the section
6 that can't allow a deduction for cost of labor,
7 material and service. Is that at issue here or
8 not?

9 A: I think that's one issue.

10 Q: Okay.

11 A: Because ---

12 Q: That's -- I just didn't want to ask you
13 questions on it if that's not the Department's
14 position here, so. And you said earlier that
15 you didn't have any information one way or the
16 other on the issue of whether Rent-A-Center
17 insures their merchandise that they are
18 providing the waivers for, but I just want you
19 to assume with me for a moment that they do
20 not, they do not obtain insurance, and they are
21 not, when they make this waiver fee charge,
22 they're not passing along an insurance cost
23 that they have outlaid to their customers. So
24 just assume that fact for me for this question.
25 So this cost of service, if that's true, would



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1 not be a cost in the sense of a cost incurred
2 by Rent-A-Center that is passed along to their
3 customer, right?

4 A: Assuming that they are not paying any kind of,
5 you know, insurance ---

6 Q: Right.

7 A: --- or doing anything like that, obviously, in
8 your set of facts, there's no cost. You know
9 ---

10 Q: It's not a cost in that sense.

11 A: --- but it's still based on -- but that's not
12 an issue with respect to gross proceeds, in my
13 opinion.

14 Q: Okay. Doesn't a cost of service, when you're
15 looking to see whether something is a cost of
16 service, isn't the -- don't you look at whether
17 that cost is tied to the tangible personal
18 property? Let me just give you an example
19 before you answer. So you've got -- you're
20 familiar with the trophy engraving situation?
21 You weren't here yesterday, but we've talked
22 about it at length here. So you have a trophy
23 that's tangible personal property and then you
24 have engraving which could be the service of
25 putting the engraving on it. And in that



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1 situation, the taxpayer can't separate out
2 those two charges and say, well, I'm going to
3 not pay sales tax on the engraving, because
4 that's a service. In that situation, the
5 engraving is actually tied to increasing the
6 value of that tangible personal property. In
7 this case, we have tangible personal property,
8 a computer screen or TV, and that waiver is not
9 enhancing the TV itself. It's not enhancing
10 the tangible personal property itself. So back
11 to my initial question I asked you not to
12 answer yet, don't you think that the cost of
13 service is intended to be tied to the personal
14 property in the same way as the trophy example
15 is?

16 A: I don't think so. There's two things. One
17 thing is, gross proceeds is based on the value
18 proceeding or accruing from the sale, not from
19 the item itself. Not from the computer, but
20 from the sale of that item. So that's one
21 thing. The other thing is, I think getting
22 back to the Meyers Arnold case and that
23 footnote, you know, when they were citing that,
24 you know, when they say, however, you know,
25 under code sections, the definition of gross



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1 proceeds and the imposition section, it talks
2 about it and they actually -- I think that they
3 actually highlighted it in some way, without
4 any deduction for materials, labor, and the
5 cost of materials, labor and service. Then
6 they go on to say, you know, that that includes
7 -- that, you know, that a part -- that a
8 service that is part of -- that a service that
9 is part of the sale, is what's part of the
10 value proceeding and accruing from that sale.
11 So I think that the court has answered that in
12 that footnote, in saying that that's -- you
13 know, services, you know, come under that.

14 Q: All right. I want to -- let's look at that
15 language. So one part of Meyers Arnold -- do
16 you have a copy of it? Let me see if I can --
17 would it help to look at a copy of it?

18 A: I appreciate it. Thank you.

19 Q: Your Honor, may I approach the witness?

20 THE COURT: Yes.

21 A: Thank you.

22 Q: All right. So let's look at the language where
23 it says, I believe it's on the -- all right,
24 it's under the layaway section, and it's about
25 halfway down. The paragraph that starts with



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1 Section 12-35-30, defines gross proceeds of
2 sale. Do you see that paragraph?

3 A: Yes.

4 Q: All right. And then it says, "the fees are
5 obviously charged with a service rendered in
6 making layaway sales". Do you see that
7 language?

8 A: Yes.

9 Q: Okay. Now, in our case, the fees are not being
10 charged for the rental, are they?

11 A: I'm sorry. Say that again.

12 Q: In our case, the fees are not charged for the
13 rental of the personal property, they're
14 charged for the waiver, correct?

15 A: Yes. Separate fees charged for the waiver.
16 You know, but that doesn't make any difference
17 as far as determining whether it's part of the
18 gross proceeds or not.

19 Q: And I think you said in your testimony on
20 direct, but I may be mistaken, are you aware
21 that under the Rental-Purchase Agreement, that
22 it provides warranty and maintenance services,
23 under the Rental-Purchase Agreement?

24 A: I don't think -- I don't think I talked about
25 that.



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1 Q: Okay. Well, are you aware of that?

2 A: It provides what now?

3 Q: Warranty and maintenance services. In other
4 words, if I rent a TV and it doesn't work, I
5 can call Rent-A-Center, and under that Rental-
6 Purchase Agreement, they are required to make
7 it work?

8 A: Are we basically talking about they are trying
9 to -- that they warrant that it will work the
10 way that it is suppose to work?

11 Q: Exactly. Warrant, and then they will either
12 replace it or fix it, so warranty and
13 maintenance.

14 A: Yeah.

15 Q: The section under the ---

16 A: I've read the agreement, but I just don't
17 recall that.

18 Q: Okay. It's probably up there in front of you,
19 if you wanted to look at it. It's Exhibit --
20 One is probably the easier to read, because
21 it's the blank version. So it's about three-
22 fourths of the way down in Exhibit One and it
23 says warranty and maintenance. "We are
24 responsible for maintaining or servicing the
25 goods while they are being rented". Do you see



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1 that section?

2 A: Yes, I see that section.

3 Q: All right. So those would be services rendered
4 in making the rental agreement sale, correct?

5 A: Well, I think that's just a part of what
6 they're stating. I mean, they're -- it's a
7 service they're not charging you for. You
8 know, it's a part of the rental cost, I think.

9 Q: Part of the Rental-Purchase Agreement.

10 A: Exactly. Yeah, the rental price.

11 Q: Okay.

12 A: But, you know, the fact that they've got that
13 doesn't change anything on the waiver fee, at
14 least in my mind.

15 Q: All right. And also from Meyers Arnold, if you
16 look at the language, it's actually under the
17 gift wrapping service section, and it says,
18 taxes imposed on services which are part of the
19 value proceeding or accruing from a sale of
20 tangible personal property.

21 A: I'm sorry. Where are you at? I'm sorry.

22 Q: Not under the layaway. I think it's in a
23 footnote, actually. Oh yeah, so it's actually,
24 at least in my copy at the end, because the
25 footnotes are actually ...



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- 1 A: Which footnote is it?
- 2 Q: Two.
- 3 A: Yes.
- 4 Q: At the bottom of two.
- 5 A: Now, what was the question?
- 6 Q: No wait, John, that's the one we were talking
- 7 about earlier, I think. Okay, yeah. It just
- 8 says imposes -- the last section, the last
- 9 sentence. "However" and it cites the sections.
- 10 "Impose the tax on the value proceeding or
- 11 accruing from the sale of tangible personal
- 12 property". Do you see that section? I think
- 13 that's the same, that you've been saying that
- 14 all along, correct?
- 15 A: The however part?
- 16 Q: Yes?
- 17 A: Yes. It references two code sections, the
- 18 value proceeding and accruing from the sale of
- 19 tangible personal property without any
- 20 reduction for labor or service costs. Thus the
- 21 taxes imposed on services which are a part of
- 22 the value proceeding or accruing from the sale
- 23 of tangible personal property.
- 24 Q: All right. Services which are part of the
- 25 value proceeding or accruing from the sale of

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1 tangible personal property, is that right?

2 A: Yes. Services which are part of the value
3 proceeding or accruing from the sale of
4 tangible personal property.

5 Q: All right. So they have to be a part of that
6 value coming from the sale of the tangible
7 personal property, correct?

8 A: Yes. The services have to be involved with the
9 -- part of the sale of tangible personal
10 property. So this example, the rental, you
11 know, the rental of tangible personal
12 property, the waiver, as part of the value
13 proceeding and accruing.

14 Q: I mean, it does say that it has to be part of
15 that value, right? -

16 MS. ACQUAVIVA: Objection, Your Honor. Asked and
17 answered several times.

18 THE COURT: I think we've got it.

19 MS. GEER: You've got it?

20 THE COURT: We've got it. Yes.

21 MS. GEER: Okay.

22 THE COURT: I'm going to sustain that objection.

23 MS. ACQUAVIVA: Thank you, Your Honor.

24 Q: Now, you're familiar with the Department's
25 determination in this matter?



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- 1 A: I'm sorry?
- 2 Q: Have you read the Department's determination in
3 this matter?
- 4 A: Yes. It's been a little while since I've read
5 it, but yes, I've read it.
- 6 Q: Okay. Are you aware that the Department made
7 an argument that the waivers here were taxable
8 because they were either a warranty or a
9 maintenance or a service agreement?
- 10 A: Yes. In the Department determination, there
11 was that, because of a certain -- a special
12 position that was in place during part of the
13 argument.
- 14 Q: Okay. And I didn't hear you testify to that in
15 your direct, so is it fair for me to assume
16 that the Department is not pursuing that
17 argument any longer?
- 18 A: I'm not sure it's my place to answer. But, I
19 mean, I did not address it.
- 20 Q: Well, if you can't confirm for me, I guess I
21 better ask you about it. Would you agree with
22 me that the waiver is not a warranty or
23 maintenance agreement?
- 24 A: The -- it's -- I don't think it's a -- I'll put
25 it this way, it's not the type of warranty that

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1 we've faced before.

2 Q: Okay.

3 A: I think as we've talked before, I think that
4 the Department has -- the ones that we've seen
5 have been where the seller is saying that, you
6 know, if you purchase this, we'll guarantee its
7 working ability for whatever, usually an
8 extended period of time. So that's the type of
9 thing that we've seen.

10 Q: When in fact we just looked at the Rental-
11 Purchase Agreement, which does incorporate
12 within it, I think what you're referring to, is
13 what would be a standard warranty and
14 maintenance type provision or agreement. Where
15 they warranty the product.

16 A: Will you repeat that?

17 Q: That we just looked at that Rental-Purchase
18 agreement which incorporates a warranty
19 maintenance provision?

20 A: All right, yeah. There's not an extra fee for
21 that. I mean, it's just saying that ---

22 Q: Right, but if that was in the waiver, then you
23 might have a different answer for me. But that
24 is in the Rental-Purchase Agreement.

25 A: Well, I'm saying within the past, you know, if



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1 that was what they were doing in the waiver,
2 then yes, we would say that's a warranty.

3 Q: Okay. But there is no such language in the
4 waiver, correct?

5 A: No. I think the -- as I understand it, the
6 waiver is protecting the customer from certain
7 things like theft and lightning, and there's
8 like five or six things.

9 Q: Right. And would you also agree with me that
10 this waiver is not a service agreement as
11 that's defined in our statute?

12 A: Well, there's a definition that the Department
13 Determination used in, of course, a service
14 agreement, that's from another code section,
15 but there's no definition in sales tax for a
16 service agreement.

17 Q: Right. I'm sorry. I should have clarified,
18 under that statute, not under the sales tax
19 statute, but under that separate statute in the
20 code that defines a service agreement, would
21 you agree with me that that particular
22 definition does not cover the waiver?

23 A: I would have to read it again. I don't recall
24 the language in it. I know that it's, you
25 know, dealing with a separate situation, you



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1 know, as I think we talked about in our
2 deposition. I don't think it matters, because
3 I think the gross proceeds issue handles it,
4 but ---

5 Q: Right. And I think what you said in the
6 deposition was, that you agreed with me at the
7 time, that it didn't seem to fit under service
8 agreement, but you had not fully studied it.
9 Have you studied it anymore since the
10 deposition? Have you changed your mind on that
11 at all?

12 A: No. I have not studied it anymore.

13 A: Okay. All right. I have a few more questions
14 about the Meyers Arnold case that I somehow
15 skipped over. I'm going to go back to that.
16 And I know you weren't here yesterday, but
17 Professor Pomp testified, and he talked about
18 the "but for" language used in Meyers Arnold.
19 And he discussed the fallacy or problems with
20 "but for" reasoning. For example, in Meyers
21 Arnold, he said, you can just as easily say
22 that in Meyers Arnold, but for the layaway
23 option, Meyers Arnold wouldn't have made a
24 sale. And that customer comes in without
25 enough money to buy the product, but for them



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1 offering the layaway service, that Meyers
2 Arnold might not have made that sale. So you
3 can sort of flip flop the but for. When you
4 have two conditions present, it's hard to say
5 which one is -- or I should say it differently,
6 you could say that either one is but for. So
7 the question to you, would the problems or
8 fallacies with this "but for" language help us
9 explain, and I did some research just to see if
10 any other states have ever used this "but for"
11 language or cited Meyers Arnold for the "but
12 for" language, would these problems maybe
13 explain why I couldn't find a single other case
14 in any other state that has ever cited Meyers
15 Arnold for the "but for" language? Do you
16 think that's one of the reasons why it might
17 not have been cited?

18 A: I can't explain why it might not have been
19 cited. You know, I would disagree. I think a
20 person is going in there for a, you know, to
21 buy something. And so I would say the, you
22 know, the "but for" test established by the
23 Court of Appeals ---

24 Q: Uh-huh (affirmative response).

25 A: --- is correct. I agree with it.



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- 1 Q: Are you familiar with the Hellerstein treatise?
- 2 A: I've read parts of it before.
- 3 Q: Okay. It's, I think ---
- 4 A: You're talking about Hellerstein versus -- and
- 5 Hellerstein?
- 6 Q: Yes.
- 7 A: Yes. I've read part -- parts of it.
- 8 Q: You would agree that that is something that
- 9 people in the sales tax field would view as an
- 10 authoritative source?
- 11 A: Well, I think like just anything, you know, you
- 12 look at things for guidance. I mean ---
- 13 Q: Right.
- 14 A: --- it doesn't -- it's not controlling. It's
- 15 not determinative, you just look at things for
- 16 guidance.
- 17 Q: I understand that. Okay. But would you --
- 18 would it surprise you to learn that Hellerstein
- 19 does not -- this is an opinion of thousands and
- 20 thousands of cases and theories, would it
- 21 surprise you that is not mentioned in
- 22 Hellerstein either?
- 23 MS. ACQUAVIVA: Objection, Your Honor. What's the
- 24 relevancy? It's an outside of South Carolina
- 25 case. I don't know anything about Hellerstein



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1 (inaudible) in South Carolina.

2 THE COURT: Yeah, I think that's a case book or a
3 treatise?

4 MS. GEER: It's a treatise.

5 THE COURT: Okay, then that's not before the Court,
6 so.

7 MS. ACQUAVIVA: Thank you, Your Honor.

8 THE COURT: I sustained that objection.

9 Q: All right. Let me look -- let's look at some
10 of the facts in Meyers Arnold. Would you agree
11 with me that in Meyers Arnold the layaway fee
12 was part of the purchase price and that the
13 customer didn't own the item until they had
14 paid the purchase price in full, which in that
15 case included all the layaway fees?

16 A: I don't know what you mean by part of the
17 purchase price. It was a separately stated
18 item.

19 Q: Well, let's focus on the -- I'm viewing it as
20 part of the purchase price, because would you
21 agree with me that the customer can't own the
22 item until they've paid all of the layaway
23 fees?

24 A: They don't receive the possession of the item
25 until they've paid the payment on the item.



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1 Because in Meyers Arnold, they just paid a
2 \$1.00 or \$2.00 of a layaway fee. I believe
3 they probably paid that up front when they, you
4 know, started the layaway. So then they just
5 made the payments against the item at that
6 time, but they did not receive it until they
7 made all those payments.

8 Q: All right. So that would be, if you look at
9 our case, a difference, would you agree? That
10 in this case you don't have to pay the waiver
11 fee in order to own the property?

12 A: Well, in that case, too, you didn't have to pay
13 the layaway fee. You could have bought on cash
14 or you could have bought it on credit. You
15 know, this was just another option that they
16 had where you could pay this \$1.00 or \$2.00
17 layaway fee and then you could pay over time,
18 you know, before you received possession of it.
19 I do agree that in this particular case, the
20 customer is paying the rental and the waiver
21 fee, and they received it at that moment. You
22 know, people when they make a payment and they
23 get to keep it, you know, when they make the
24 subsequent -- when each individual subsequent
25 transaction, when they make those payments,



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1 they get to keep it, as long as they make the
2 rental payment. They don't, you know,
3 obviously they don't have to pay, and we talked
4 about that earlier. They don't have to pay the
5 waiver fee every time. They can choose to stop
6 doing that.

7 Q: All right. So you would agree with me that --
8 and I know you talk about a potentially
9 different transaction then happened in Meyers
10 Arnold, but the transaction that happened that
11 was at issue in Meyers Arnold was a transaction
12 where the customer made a layaway sale. So in
13 that situation, I'm comparing that situation to
14 the facts in our case, one case you don't have
15 to -- I'm sorry, in one case you do have to pay
16 the fee, in the other case you don't have to
17 pay the fee to get the property. Is that --
18 would you agree with me that those are -- that
19 is a factual distinction?

20 A: Well, I mean, in order to put something on
21 layaway, you have to pay the layaway fee. You
22 don't necessarily have to pay it in order to
23 obtain the property. As I said earlier, you
24 can buy it by cash or you can buy it by credit,
25 but there was an established price. You know,



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1 let's say whatever it was, \$50.00. You know,
2 it was an established price whether you bought
3 it by cash, by credit or by layaway. And then
4 you add the \$1.00 or \$2.00 that was added in
5 order to do it via layaway. You know, and the
6 court held that was part of the gross proceeds.

7 Q: I think we're on the same page, but you told me
8 earlier that you have to look at the
9 transaction that is at issue. So I know you
10 are saying there are other options out there in
11 Meyers Arnold, other transactions you can
12 enter, but the transaction that was entered,
13 you had to pay a layaway fee to get the
14 products, right?

15 A: I think you had to pay the layaway fee to put
16 it on layaway. You know, and then you had to
17 make all your payments in order to get the
18 product. So that, you know, in order to enter
19 into an layaway agreement, you had to pay the
20 \$1.00 or \$2.00 layaway fee. Well, in actuality
21 too, in that particular case, from what I
22 understand, you actually had to pay a down
23 payment. You know, like I think it was 20
24 percent, you know, toward the price at the
25 initial payment in order to put it on layaway.



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1 And then you had to also pay the \$1.00 or \$2.00
2 layaway fee to begin the layaway plan, I guess
3 you might say.

4 Q: But the way the Meyers Arnold court talked
5 about it is, in order to make the layaway sale,
6 you had to pay the fee. You had to have that
7 service associated with it. They're talking
8 about the layaway sale itself as a whole,
9 right?

10 A: Well, what they said was, that but for the
11 layaway sale, they would not have received,
12 Meyers Arnold would not have received the
13 layaway fee. And so that's what they held, it
14 subject to the taxing party, gross proceeds.

15 Q: I think we're on the same page, but I'm going
16 to move to a different topic. Now, in Meyers
17 Arnold, would you agree with me that the
18 layaway fee had to be paid at the time of the
19 purchase of the property, at the initial onset?

20 A: Yeah. I believe that's my understanding there.

21 Q: Okay.

22 A: Because you would pay a one-time payment, non-
23 refundable, that was paid at the time of --
24 when they entered into the layaway plan.

25 Q: Okay. And you agreed with me at the beginning



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- 1 that you understood that Rent-A-Center could
2 cancel the waiver at any time? I'm sorry, it
3 could be purchased at any time. I apologize.
- 4 A: Yes, at any time during -- you know, at any
5 time before they made a subsequent rental
6 payment transaction, they could add it or they
7 could take it off.
- 8 Q: Okay. Let's talk about take it off, too. In
9 Meyers Arnold, you couldn't cancel or drop the
10 layaway. If you're making a layaway sale,
11 you're making a layaway sale, right? You
12 can't, once you start into the -- after some
13 time has passed, say, oh wait, I didn't mean to
14 get that on layaway, I meant to buy that by
15 cash. You're in a layaway sale, right?
- 16 A: Well, I mean, if I understand you correctly, I
17 mean, I would imagine they could, you know, if
18 I put it on layaway and then I meant to pay
19 cash, they would just say, you know, I still --
20 I don't get a refund on my layaway fee ---
- 21 Q: Right, okay.
- 22 A: --- but I still have to make the payments.
- 23 Q: And you agreed with me earlier that you can
24 cancel the waiver at any time? I think you
25 just said that again just now?



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- 1 A: Yes, I mean, that's in your -- in the contract.
- 2 Q: Correct. Now, in Meyers Arnold, it said the
- 3 fees were charged for the service rendered in
- 4 making layaway sales, is that correct?
- 5 A: The fees are obviously charged for the service
- 6 rendered when making layaway sales.
- 7 Q: Yes, that's right. And here it is our position
- 8 that no services are rendered in this case.
- 9 What's being provided by the waiver is an
- 10 opportunity to avoid a risk, so that's not a
- 11 service is it?
- 12 A: Well, I look at it as a service of additional
- 13 protection for that customer, because they do
- 14 avoid that risk.
- 15 Q: So they're -- what Rent-A-Center is saying is,
- 16 just to use similar lay terms, is basically we
- 17 won't come after you, if these certain things
- 18 happened, for the fair market value of the
- 19 property. So how is saying we won't come after
- 20 you, how is that providing a service?
- 21 A: Well, I think it's like you said, it's a
- 22 service of additional protection for that
- 23 customer. Because the customer wouldn't buy it
- 24 unless they thought they were getting something
- 25 additional, you know, that they were getting



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1 additional protection. You know, in this case,
2 protection against about five or six different
3 things. But they feel that's important. You
4 know, maybe it's not covered by their
5 homeowners insurance and they feel that's
6 important. So it's a service that they are
7 providing, like I said, I think it's like a
8 service for the additional protection that a
9 waiver gives them. That's what the customer
10 is, in their mind, is purchasing.

11 Q: Would you at least agree with me that it is a,
12 whatever it is, is an act of passive not doing
13 anything? We're not going to come after you.
14 It's not, for example, like the maintenance and
15 service agreement, I'm going to come out and
16 fix your TV or computer. There's no action
17 happening, correct?

18 A: Well, I mean, there's all kinds of different
19 services that, you know, that you can have with
20 anything. You know, and so I think, you know,
21 yes, they're not coming out actively doing
22 something, but at the same time, they're
23 providing a service that again protects that
24 customer if something happens, you know, in one
25 of those five or six things.



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1 Q: I'm not going to badger you anymore on that.
 2 I'm going to just to agree to disagree, if
 3 that's okay.
 4 MS. GEER: Your Honor, if I could have one moment?
 5 THE COURT: Yes.
 6 MS. GEER: Your Honor, I don't have any further
 7 questions for this witness.
 8 THE COURT: Any re-direct?
 9 MS. ACQUAVIVA: Just very briefly, Your Honor.
 10 MR. McCORMACK - RE-DIRECT EXAMINATION BY MS.
 11 ACQUAVIVA:
 12 Q: Mr. McCormack, if I could take you back to the
 13 trophy example that Ms. Geer was telling you
 14 about.
 15 A: Uh-huh (affirmative response).
 16 Q: Two hopefully quick questions. Do the pieces
 17 of the trophy cost anymore if they don't get
 18 engraved?
 19 A: Well, I mean, the pieces that you are engraving
 20 on, those are all the same as they were before,
 21 you know. The only difference would be is, if
 22 there wasn't a plate there, then, you know, it
 23 depends on how they do that. But, I mean, all
 24 the pieces would be the same, yes.
 25 Q: Do you have to engrave a trophy in order to buy



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- 1 the trophy?
- 2 A: If you're going to -- you don't have to -- no,
3 you don't have to engrave it to buy it. You
4 can buy it, you know, if you're getting into
5 like a little league, at the beginning of the
6 season, before you know who's going to win.
- 7 Q: Okay. My last question, I just want to take
8 you to the warranty, maintenance or similar
9 service issue, if you could turn to Exhibit
10 Seven, Page Four talks about -- are you on page
11 four?
- 12 A: Yes.
- 13 Q: At the very top it talks about Section 12-36-
14 910, subsection (B)(6).
- 15 A: Yes, I see that.
- 16 Q: What does it -- what does the Determination say
17 regarding subsection (B)(6), and you can read
18 it out loud?
- 19 A: "In addition to being" -- where it starts off,
20 in addition being ---
- 21 Q: This section..
- 22 A: Okay, I'm sorry. "This section explicitly
23 states that sales tax applies to the 'sale or
24 renewal of warranty, maintenance or similar
25 service contracts for tangible personal



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1 property and whether or not such contracts are
2 purchased in conjunction with the sale of
3 tangible personal property'." And then it
4 cites Section 12-36-910(B)(6). And then, see
5 also S.C. Rev. Rul. #06-9.

6 MS. ACQUAVIVA: I have no further questions, Your
7 Honor.

8 THE COURT: Well, Mr. McCormack, without anything
9 else, I appreciate you letting us abuse you
10 this morning and I will let you sit down.

11 MR. MCCORMACK: Thank you, Your Honor.

12 MS. ACQUAVIVA: That's the Department's only witness,
13 Your Honor.

14 THE COURT: All right.

15 MS. GEER: Your Honor, can we have about a ten
16 minute break. We just need to maybe think
17 about whether we have any rebuttal witnesses we
18 want to put up and, if we do, it will probably
19 be very shortly.

20 THE COURT: Okay. We'll take ten minutes. It's
21 11:26, we'll be back at 11:36.

22 MS. GEER: Thank you, Your Honor.

23 (Off the Record)

24 THE COURT: Yes?

25 MR. VON LEHE: Your Honor, we would like a brief



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1 rebuttal, a couple of questions for Professor
2 Pomp, if we may?

3 THE COURT: Well, all right, sir. I'll allow that.
4 All right, sir, since we are on a different
5 day, I will ask that you take the oath again?

6 PROFESSOR POMP: Sure.

7 (Witness sworn.)

8 Professor Richard Pomp, having been duly sworn,
9 testifies as follows:

10 THE COURT: Professor, unless your name has changed
11 since yesterday, I think we'll go with what we
12 have already.

13 MR. POMP: Thank you, Your Honor.

14 PROFESSOR POMP - DIRECT EXAMINATION BY MR. VON LEHE:

15 Q: Professor Pomp, I want to ask you a couple of
16 questions mainly in response to what Mr.
17 McCormack has testified to in general. With
18 regard to the example which was laid out, I
19 believe by us, of the possibility of an
20 acquisition of this entity SquareTrade, which
21 it's my understanding does offer a similar
22 program to our waiver, with regard to this
23 example of SquareTrade being acquired by Rent-
24 A-Center and those producing a different
25 result, from a tax policy standpoint, what does



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1 this indicate?

2 A: It indicates a very formal distinction in this
3 case, Your Honor. It's what we call a formal
4 resubstance and it is a disfavored state of the
5 law, because if after going through all of the
6 expense and time of this trial, if Rent-A-
7 Center were to lose on this issue, the
8 Department has basically set forth a blue
9 print. You don't have to buy SquareTrade, you
10 could just set up a new entity to issue the
11 waivers. And as long as there's no, I'll say,
12 funny business between the two, there's no
13 commission that Rent-A-Center is getting paid
14 or there's no agency relationship between the
15 two, if Rent-A-Center were simply to create a
16 new entity that issues the waivers, the issue
17 before Your Honor would go away. And I think
18 that's right, because there is no sales tax on
19 damage waivers. It's not covered by the
20 imposition statute. I agree with Mr. McCormack
21 on that. So it clearly shows kind of the
22 silliness of the Department's position that,
23 well, yeah, because there's some reason that
24 they have for including the sale of, whether
25 you call it service or a contract right or



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1 intangible, to lump that in with the proceeds
2 from the sale of tangible personal property,
3 but yet with a very formal change in the
4 structure that would make it clear to the
5 Department that you now have a separate
6 independent transaction, this issue goes away.
7 That's an unstable decision that would be
8 issued here against Rent-A-Center. It's not
9 worthy of a Court's attention. And not only
10 would the State lose its sales tax, but if
11 there were a third entity set up, there would
12 go the income tax rate. Now Rent-A-Center is
13 paying income tax to South Carolina on the
14 proceeds from the damage waiver. And if they
15 were to set up some outside entity issuing just
16 damage waivers, there would be a very real
17 question of whether that entity would be
18 subject to income tax in this State. So you
19 would lose the income tax to boot. So it just
20 shows form over substance, which is not a
21 favored state in the laws and policy.

22 Q: Professor Pomp, I want to ask you a question
23 about this term, gross proceeds of sale and
24 hand you up again, as we did yesterday, another
25 copy of our gross proceeds statute. Would you



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1 please read he first sentence of Section 12-36-
2 90, gross proceeds of sales?

3 A: Sure. "Gross proceeds of sales or any similar
4 term means the value proceeding or accruing
5 from the sale, lease or rental of tangible
6 personal property."

7 Q: Now, from a tax policy standpoint, this value
8 of accruing, is this something you've seen
9 before in the tax policy area?

10 A: Yes. This is not uncommon in states that
11 impose the tax on the vendor, as opposed to
12 imposing the tax on the consumer, which is the
13 other way of designing a sales tax. There are
14 really two different ways of designing a sales
15 tax and South Carolina imposes it on the
16 vendor.

17 Q: And from a tax policy rationale, do you know
18 why this language is formulated?

19 A: I know what I teach and I know the way I've
20 think people in the profession interpret these
21 statutes. They're sort of a synonym for
22 consideration. You have transactions or you
23 worry about transactions where you don't have
24 any cash in each hands. Like a barter
25 transaction or perhaps a like kind swap. And



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1 so you don't have a sales price, you don't have
2 a cash price. And so if you're going to reach
3 that kind of decision, that situation, you're
4 going to need a broader approach to it. And
5 it's always been my understanding that that's
6 why we have the term the value proceeding or
7 accruing from the sale, lease or rental, from
8 the transaction. Also, it's possible that if
9 there's some chicanery and the price that's
10 stated is not the real price between the
11 parties, this gives you a chance to, you know,
12 go through that and override it. So that's
13 always been my understanding. I've never seen
14 it interpreted the way the Department is, and
15 indeed when you Shepardize the Meyers Arnold
16 case that's been cited only once in 30 years,
17 and not for the "but for" test, for the
18 wrapping paper issue. So it's really quite a
19 remarkable interpretation, I think, when we
20 look around the country.

21 Q: All right, sir. Thank you Professor Pomp.
22 Your Honor, that's ...

23 THE COURT: Any cross-examination for Professor Pomp,
24 the witness?

25 MR. RYAN: No, Your Honor.



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1 THE COURT: All right. Professor Pomp, we're done.

2 PROFESSOR POMP: Thank you very much.

3 MR. VON LEHE: Your Honor, that concludes our case.

4 We would, unless the Department of Revenue has
5 something further, we would like to make a
6 closing argument to you.

7 THE COURT: Well, sir, I would be glad to let you do
8 that. I will offer you an alternative. If in
9 lieu of closing arguments, you would like to
10 submit a proposed order.

11 MR. VON LEHE: Your Honor, we would like to submit a
12 proposed Order.

13 MS. ACQUAVIVA: The Department, we discussed this
14 beforehand, the Department would prefer to,
15 instead of the traditional, submit proposed
16 Orders instead of making a closing argument.
17 It's my understanding they still want to make
18 a closing argument.

19 MR. VON LEHE: I promise that it won't go over ten
20 or 15 minutes.

21 THE COURT: Well ---

22 MR. VON LEHE: We would like to submit a proposed
23 Order, Your Honor. Thank you for that
24 opportunity.

25 THE COURT: Well, I mean, I would hate to give you



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1 both and deny the them, deny the Department an
2 opportunity to make a closing argument, but
3 it's whatever you want to do.

4 MS. ACQUAVIVA: We would be willing to waive our
5 closing and just submit a proposed Order and
6 they can give a closing and not submit a
7 proposed Order.

8 MR. VON LEHE: No. Obviously, Your Honor, we would
9 prefer --if they don't want to make a closing
10 argument, you know, that's fine. I would like
11 to do that, but if they don't want to do that,
12 and whatever Your Honor thinks is best. We
13 certainly would appreciate the opportunity to
14 submit ---

15 THE COURT: Well, the reason I made the offer that
16 way is I'd like to keep the playing field
17 level.

18 MR. VON LEHE: Yes.

19 THE COURT: Keep everybody on the same footing.

20 MR. VON LEHE: Yes, yes. So if they prefer not to
21 make closing arguments then, Your Honor, we --
22 that's fine with us. We will just submit a
23 proposed Order.

24 THE COURT: All right. What timeframe would you
25 like?



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1 MS. GEER: Your Honor, usually we do 30 days from
2 receipt of the transcript so that we have all
3 the record in hand to be able to cite to in the
4 proposed Order. That's just been our standard
5 practice, but whatever Your Honor prefers is
6 fine.

7 MS. ACQUAVIVA: The Department is in agreement with
8 that as well.

9 THE COURT: All right. And would you like ten days
10 afer the Order to respond to anything that you
11 think has been unfairly characterized?

12 MS. ACQUAVIVA: That would be great if that's ---

13 THE COURT: We'll give you from the transcript --
14 from the recording or the transcript?

15 MS. ACQUAVIVA: The transcript.

16 THE COURT: The transcript. All right. Thirty days
17 from the transcript plus ten for a response.

18 MS. ACQUAVIVA: Perfect. Thank you, Your Honor.

19 THE COURT: And if you would do those by email with
20 no extensions for mailing, because of that.
21 All right.

22 MS. ACQUAVIVA: Do you want a word document or PDF,
23 or it doesn't matter?

24 THE COURT: Whatever works for you, works for me. I
25 can do either one.



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1 MS. ACQUAVIVA: Okay.

2 MS. GEER: One tiny housekeeping thing. I realized
3 yesterday when I was looking at our exhibit
4 notebooks that the Rent Way ones say Rent Way,
5 the Rent-A-Center East ones just say Rent-A-
6 Center, Inc. instead of Rent-A-Center East. So
7 just so no one later has confusion, if you
8 don't mind if I switch out the cover pages on
9 those notebooks.

10 THE COURT: That would be fine. Which one do you
11 want to switch out?

12 MS. GEER: The one that says Rent-A-Center, Inc.

13 MS. ACQUAVIVA: Another housekeeping matter in that
14 note, Your Honor, Exhibit tabs Nine, Eleven
15 and Twelve were not admitted into evidence, so
16 we would ask that those be removed from the
17 notebooks, as they are not in the record.

18 COURT REPORTER: That's correct.

19 THE COURT: Is that right?

20 COURT REPORTER: Yes, that's correct.

21 THE COURT: I remember there was some discussion of
22 Exhibit Twelve, but I don't think it was
23 admitted.

24 COURT REPORTER: It was Nine, Eleven and Twelve were
25 not admitted.



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1 THE COURT: Ten was admitted?

2 COURT REPORTER: Yes, Ten was, but Nine, Eleven and

3 Twelve were not.

4 THE COURT: Okay.

5 (Off the Record Conversation)

6 COURT REPORTER: Your Honor, are we adjourned or are

7 we still on the record?

8 THE COURT: We're not adjourned, I think, but I

9 don't think there's anything ...

10 COURT REPORTER: Okay.

11 THE COURT: --- if it's all the same, for the court

12 reporter's efficiency, we'll adjourn the case

13 at this point. So everything from now on is

14 off the record.

15 COURT REPORTER: Thank you.

16 (There being nothing further, the hearing was

17 concluded at 11:58 a.m.)

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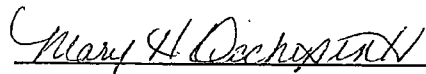
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CERTIFICATE

This is to certify that the within hearing consisting of two hundred and fifty five (255) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on November 30, 2015.



Mary H. Occhipinti
Court Reporter

Notary Public for South Carolina
My Commission Expires: October 18, 2020



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CONSUMER RENTAL-PURCHASE AGREEMENT
Consumer Rental-Purchase Agreement Number: _____
Date: _____
Lessor: _____
Consumer: _____

TERMS OF AGREEMENT: As used in this Agreement, "you" and "your" mean the person(s) signing the Agreement as lessee/renter/consumer; "we" and "our" mean the lessor/owner (the rental company); "property" means the items described in the disclosures; and "lease" means this Consumer Rental-Purchase Agreement including the disclosures.

DESCRIPTION OF PROPERTY:

Item #	Item Description	Serial #	Model #	Condition of Property:

RENTAL TERMS: Rental payments are due at the beginning of each term that you choose to rent the property. There are no refunds if you choose to return the property before the end of the term.

CONSUMER RENTAL-PURCHASE DISCLOSURES
TOTAL OF SCHEDULED PAYMENTS: The total of scheduled payments does not include late charges and Optional Liability Damage Waiver fee. See the remainder of your contract for an explanation of these charges.
Number of Payments: _____ payments: the initial rental payment of _____ payments of _____ and a final payment of _____ for a total of _____ in rent and sales tax of _____ for a Total of Payments of _____
YOU WILL NOT OWN THE PROPERTY BEING LEASED UNTIL ONE OF THE FOLLOWING EVENTS OCCUR:
(1) YOU MUST MAKE THE NUMBER OF PAYMENTS AND THE TOTAL OF SCHEDULED PAYMENTS, OR
(2) ANYTIME AFTER YOUR FIRST PERIODIC PAYMENT IS MADE, YOU MAY PAY _____ % OF THE DIFFERENCE BETWEEN THE TOTAL OF SCHEDULED PAYMENTS AND THE TOTAL YOU HAVE PAID ON THE ACCOUNT.
CONDITION OF PROPERTY: The property being leased is: _____
RISK OF LOSS AND DAMAGES: You are responsible for the fair market value of the property if and as of the time it is lost, stolen, damaged or destroyed.

INITIAL PAYMENT: Payments are due at the beginning of each term that you choose to lease the property. Your initial payment will include the following charges:

Rental Payment	Optional Liability Damage Waiver	Tax	Total

RENEWAL PAYMENTS: You are not obligated to renew this Agreement beyond the initial term. However, if you choose to renew this Agreement beyond the initial term, or beyond any subsequent renewal term, you may do so by making an advance rental payment on the _____ of each _____, or you may choose to make advance rental payments on a _____ or _____ basis.
Your first renewal payment is due _____

Payments	Rental Payment	Day	Date	Optional Liability Damage Waiver	Tax	Total
Weekly						
Semi-Monthly						
Monthly						

OTHER CHARGES:

Optional Liability Damage Waiver Fee	Late Fee:
_____/Month	_____ for payments not made within _____ business days of a monthly renewal date.
_____/Semi-Month	_____ for payments not made within _____ business days of a weekly or semi-monthly renewal date.
_____/Week	

PAYMENT OPTIONS: If you choose to acquire ownership, you must rent the property for the number of weeks, semi-months or months shown below. The Total of Payments does not include other charges, such as late payment charges or Optional Liability Damage Waiver fees. You should see the contract for an explanation of these charges.

Weekly: If you choose to acquire ownership through weekly rental, you will make _____ payments: the initial rental payment of _____ weekly payments of _____ and a final payment of _____ for a total of _____ in rent and sales tax of _____ for a Total of Payments of _____
Semi-monthly: If you choose to acquire ownership through semi-monthly rental, you will make _____ payments: the initial rental payment of _____ semi-monthly payments of _____ and a final payment of _____ for a total of _____ in rent and sales tax of _____ for a Total of Payments of _____
Monthly: If you choose to acquire ownership through monthly rental, you will make _____ payments: the initial rental payment of _____ monthly payments of _____ and a final payment of _____ for a total of _____ in rent and sales tax of _____ for a Total of Payments of _____

If you choose to renew this Agreement on a frequency different from your initial rental payment term, your total amount will be calculated based on the above amounts and on the number of payments made at each frequency. Free rent allowance will not reduce total rent or purchase-option amounts. Sales taxes are subject to changes in the applicable tax rate.

THE CASH PRICE OF THE PROPERTY: _____ plus sales tax.

TYPE OF TRANSACTION: THIS IS A RENTAL TRANSACTION.

REINSTATEMENT: If you fail to make timely periodic payment or payments, you have the right to reinstate the original consumer rental-purchase agreement without losing any rights or options previously acquired under the consumer rental-purchase agreement if both of the following apply: (a) The consumer rental-purchase agreement is not more than 60 days in default, and (b) One periodic payment has been missed and you have surrendered the item to us, if requested by us, during the time in which payments were missed. As a condition precedent to reinstatement of the consumer rental-purchase agreement, you will be charged the outstanding balance of any accrued payments and delinquency charges. If reinstatement occurs, we shall provide you with either the same item leased by you prior to reinstatement or a substitute item of comparable quality and condition.

TERMINATION: You may terminate the consumer rental-purchase agreement without penalty by voluntarily surrendering or returning the goods in good repair, reasonable wear and tear excepted, along with any past due rental payments at any time.

WARRANTY AND MAINTENANCE: We are responsible for maintaining or servicing the goods while they are being rented. We will not be responsible for the costs or the results of any unauthorized repairs or damage caused by improper use. If any part of a manufacturer's warranty covers the goods at the time you acquire ownership of them, it shall be transferred to you, if allowed by the terms of the warranty.

OUR RIGHTS TO TAKE POSSESSION: If you do not renew this lease or if you breach this lease, we have the right to possession of the property. If this happens, you agree to return the property or make arrangements for us to take possession of it.

ASSIGNMENT: We may sell, transfer, or assign this Consumer Rental-Purchase Agreement, but agree to notify you of any change.

TITLE AND TAXES: We retain title to the property at all times and will pay any taxes which might be levied on the property.

PROHIBITED ACTS: You cannot sell, mortgage, pawn, pledge, encumber, hock or dispose of this property. Except for property that is designed to be carried by the person, you cannot move the property from your current residence without our consent. Each of these acts is a breach of this lease.

ARBITRATION: An Arbitration Agreement comes with and is incorporated into this rental purchase agreement. You should read the Arbitration Agreement before signing this agreement.

NOTICE TO CONSUMERS: Do not sign this consumer rental-purchase agreement before you read it, including the Arbitration Agreement, or if it contains blank spaces. You are entitled to a copy of the agreement you sign. Keep it to protect your legal rights.

YOU AGREE BY SIGNING THIS LEASE THAT (1) YOU READ IT, (2) YOU UNDERSTAND IT AND (3) YOU RECEIVED A SIGNED COPY OF IT.

Date _____ Consumer _____

Lessor _____ Consumer _____

Consumer rental-purchase agreement pledged as collateral security to Chase Manhattan Bank as an administrative agent for the Bank group.
SC Revised 05/25/07

ROA_00342

Date: Jan 31, 2009
Lessor: Rent-A-Center
4036 River Oaks Dr
Myrtle Beach SC 29579-6818
(843) 603-3194 LOC: 2944-M

CONSUMER RENTAL-PURCHASE AGREEMENT
Consumer Rental-Purchase Agreement Number: ark00153
Consumer: [REDACTED]

Myrtle Beach SC 29579-1380
RT: 01

As used in this Agreement, "you" and "your" mean the person(s) signing the Agreement as lessee/renter/consumer; "we" and "our" mean the lessor/owner (the rental company); "property" means the items described in the disclosures; and "lease" means this Consumer Rental-Purchase Agreement including the disclosures.

Item #	Item Description	Serial #	Model #	Condition of Property:
0284400073	APPLIANCE /FULL SIZE WAS	CW3540380	WTW5300VW	NEW
0284400080	APPLIANCE /FULL SIZE DRY	MW4226634	WED6300VW	NEW

Weekly Rental payments are due at the beginning of each term that you choose to rent the property. There are no refunds if you choose to return the property before the end of the term.

CONSUMER RENTAL-PURCHASE DISCLOSURES
\$2,623.95 The total of scheduled payments does not include late charges and Optional Liability Damage Waiver fee. See the remainder of your contract for an explanation of these charges.
Number of Payments: 105 payments: the initial rental payment of \$3.00, 104 Weekly payments of \$24.69 and a final payment of \$24.69 for a total of \$2,623.95 in rent and sales tax of \$183.75 for a Total of Payments of \$2,807.70.
YOU WILL NOT OWN THE PROPERTY BEING LEASED UNTIL ONE OF THE FOLLOWING EVENTS OCCUR:
(1) YOU MUST MAKE THE NUMBER OF PAYMENTS AND THE TOTAL OF SCHEDULED PAYMENTS, OR
(2) ANYTIME AFTER YOUR FIRST PERIODIC PAYMENT IS MADE, YOU MAY PAY 55% OF THE DIFFERENCE BETWEEN THE TOTAL OF SCHEDULED PAYMENTS AND THE TOTAL YOU HAVE PAID ON THE ACCOUNT.
CONDITION OF PROPERTY: The property being leased is: NEW
You are responsible for the fair market value of the property if and as of the time it is lost, stolen, damaged or destroyed.

Payments are due at the beginning of each term that you choose to lease the property. Your initial payment will include the following charges:

	Rental Payment	Optional Liability Damage Waiver	Tax	Total
	\$3.00	\$1.67	\$0.00	\$1.67
If you choose to acquire ownership, you must rent the property for the number of weeks, semi-months or months shown below. The Total of Payments does not include other charges, such as late payment charges or Optional Liability Damage Waiver fee. You should see the contract for an explanation of these charges.				
Weekly	\$24.69	\$1.67	\$1.75	\$26.61
Semi-Monthly	\$54.09	\$4.05	\$3.79	\$61.84
Monthly	\$108.27	\$8.12	\$7.59	\$123.97
Optional Liability Damage Waiver Fee				
	\$8.12 /Month	\$9.20 for payments not made within 5 business days of a monthly renewal date.		
	\$4.05 /Semi-Month	\$6.00 for payments not made within 3 business days of a weekly or semi-monthly renewal date.		
	\$1.67 /Week			

If you choose to acquire ownership, you must rent the property for the number of weeks, semi-months or months shown below. The Total of Payments does not include other charges, such as late payment charges or Optional Liability Damage Waiver fee. You should see the contract for an explanation of these charges.

Weekly If you choose to acquire ownership through weekly rental, you will make 105 payments: the initial rental payment of \$3.00, 104 weekly payments of \$24.69 and a final payment of \$24.69 for a total of \$2,623.95 in rent and sales tax of \$183.75 for a Total of Payments of \$2,807.70.
Semi-monthly If you choose to acquire ownership through semi-monthly rental, you will make 50 payments: the initial rental payment of \$54.09 and a final payment of \$54.09 for a total of \$2,801.38.
Monthly If you choose to acquire ownership through monthly rental, you will make 20 payments: the initial rental payment of \$108.27 and a final payment of \$108.27 for a total of \$2,803.57.

If you choose to renew this Agreement on a frequency different from your initial rental payment term, your total amount will be calculated based on the above amounts and on the number of payments made at each frequency. Free rent advances will not reduce total rent or purchase option amounts. Sales taxes are subject to changes in the applicable tax rates.

THIS IS A RENTAL TRANSACTION.

If you fail to make timely periodic payment or payments, you have the right to reinstate the original consumer rental-purchase agreement without losing any rights or options previously acquired under the consumer rental-purchase agreement if both of the following apply: (a) The consumer rental-purchase agreement is not more than 90 days in default, and (b) One periodic payment has been missed and you have surrendered the item to us, if requested by us, during the time in which payments were missed. As a condition precedent to reinstatement of the consumer rental-purchase agreement, you will be charged the outstanding balance of any accrued payments and delinquency charges. If reinstatement occurs, we shall provide you with either the same item leased by you prior to reinstatement or a substitute item of comparable quality and condition.

You may terminate the consumer rental-purchase agreement without penalty by voluntarily surrendering or returning the goods in good repair, reasonable wear and tear excepted, along with any past due rental payments at any time.

We are responsible for maintaining or servicing the goods while they are being rented. We will not be responsible for the costs or the results of any unauthorized repairs or damage caused by improper use. If any part of a manufacturer's warranty covers the goods at the time you acquire ownership of them, it shall be transferred to you, if allowed by the terms of the warranty.

If you do not renew this lease or if you breach this lease, we have the right to possession of the property. If this happens, you agree to return the property or make arrangements for us to take possession of it.

We may sell, transfer, or assign this Consumer Rental-Purchase Agreement, but agree to notify you of any change.

We retain title to the property at all times and will pay any taxes which might be levied on the property.

You cannot sell, mortgage, pawn, pledge, encumber, hook or dispose of this property. Except for property that is designed to be carried by the person, you cannot move the property from your current residence without our consent. Each of these acts is a breach of this lease.

An Arbitration Agreement comes with and is incorporated into this rental purchase agreement. You should read the Arbitration Agreement before signing this agreement.

Do not sign this consumer rental-purchase agreement before you read it, including the Arbitration Agreement, or if it contains blank spaces. You are entitled to a copy of the agreement you sign. Keep it to protect your legal rights.

YOU AGREE BY SIGNING THIS LEASE THAT (1) YOU READ IT, (2) YOU UNDERSTAND IT AND (3) YOU RECEIVED A SIGNED COPY OF IT.

Date: 1-31-09
Lessor: [Signature]
Consumer: [Signature]
Consumer rental-purchase agreement pledged as collateral security to Chase Manhattan Bank as an administrative agent for the Bank group.
SC Revised 05/25/07

RAC East_0008

ROA_00343

OPTIONAL LIABILITY WAIVER PROVISION

Rental Agreement No. cct06497

By signing below, you agree to pay an Optional Liability Waiver fee of \$2.17/ \$4.71/ \$9.42 with your weekly/semi-monthly/monthly rental payment while this Provision is in effect. By accepting this fee, Rent-A-Center agrees to waive your liability to Rent-A-Center if the property is damaged, destroyed or lost through:

1. Lightning	4. Windstorm
2. Fire	5. Theft
3. Smoke	6. Flood

As used here "theft" means the criminal taking of the rental property from the residence shown in the Agreement by a person or persons making felonious entry through force or violence, as evidenced by visual marks or physical damage to the exterior of the premises at the point of entry. You must supply Rent-A-Center with a police report showing theft of or damage to the rental property.

This Optional Liability Waiver Provision does not apply to loss or damage due to mysterious disappearance, abandonment of the property, moisture, intentional acts or your neglect. Rent-A-Center will waive your liability for damage, destruction or loss only if you have paid all periodic rental payments including the liability waiver fee through the date of loss and have complied with all other terms of your

Rental Agreement and the terms of this Optional Liability Waiver Provision.

This Provision will remain in effect until it is canceled. You or Rent-A-Center may terminate this Optional Liability Waiver at any time without notice and the termination will become effective at the end of the current period for which you have paid this Optional Liability Waiver fee. This provision will automatically be canceled if you are more than 14 days past due.

This Optional Liability Waiver Provision is an additional part of the Rental Agreement.

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, AN OPTIONAL LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE OPTIONAL LIABILITY WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN HOMEOWNERS OR CASUALTY INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL PROPERTY, AND THE AMOUNT OF DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS OPTIONAL LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED

I/We understand that this Optional Liability Waiver Provision is not insurance.

Renter: [REDACTED]

Date: 10/16/67

Renter: _____

Date: _____

I/We decline the Optional Liability Waiver Provision and accept full responsibility for damage, loss or destruction to the property pursuant to the terms of my/our Rental Agreement.

Renter: _____

Date: _____

Renter: _____

Date: _____

LDW

RAC East_0001

ROA_00344

OPTIONAL LIABILITY WAIVER PROVISION

Rental Agreement No. A1500001

By signing below, you agree to pay an Optional Liability Waiver fee of ~~\$73.777.77~~ ~~\$73.777.77~~ ~~\$73.777.77~~ with your weekly/semi-monthly/monthly rental payment while this Provision is in effect. By accepting this fee, RENT-A-CENTER agrees to waive your liability to RENT-A-CENTER, if the property is damaged, destroyed or lost through:

1. Lightning	4. Windstorm
2. Fire	5. Theft
3. Smoke	6. Flood

As used here "theft" means the criminal taking of the rental property from the residence shown in the Agreement by a person or persons making felonious entry through force or violence, as evidenced by visual marks or physical damage to the exterior of the premises at the point of entry. You must supply RENT-A-CENTER with a police report showing theft of or damage to the rental property.

This Optional Liability Waiver Provision does not apply to loss or damage due to mysterious disappearance, abandonment of the property, moisture, intentional acts or your neglect. RENT-A-CENTER will waive your liability for damage, destruction or loss only if you have paid all periodic rental payments including the liability waiver fee through the date of loss and have complied with all other

terms of your Rental Agreement and the terms of this Optional Liability Waiver Provision.

This Provision will remain in effect until it is canceled. You or RENT-A-CENTER may terminate this Optional Liability Waiver at any time without notice and the termination will become effective at the end of the current period for which you have paid this Optional Liability Waiver fee. This provision will automatically be canceled if you are more than 14 days past due.

This Optional Liability Waiver Provision is an additional part of the Rental Agreement.

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, AN OPTIONAL LIABILITY DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE PROPERTY. BEFORE DECIDING WHETHER TO PURCHASE THE OPTIONAL LIABILITY WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN HOMEOWNERS OR CASUALTY INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL PROPERTY, AND THE AMOUNT OF DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS OPTIONAL LIABILITY DAMAGE WAIVER IS NOT MANDATORY AND MAY BE DECLINED

I/We understand that this Optional Liability Waiver Provision is not insurance.

Renter: _____

Date: _____

Renter: _____

Date: _____

I/We decline the Optional Liability Waiver Provision and accept full responsibility for damage, loss or destruction to the property pursuant to the terms of my/our Rental Agreement.

Renter: _____

Date: _____

Renter: _____

Date: _____

Rent-A-Center

Ask about our \$100 off referral program

Store #: 4662 RT: 02 Receipt #: 00113636
 5124 Fairfield Rd 05/09/14
 Columbia SC 29203-4314 15:54:55
 (803) 714-0706
 Received from:

Agreement#: dh106030
 Last Due: 12/11/10 Next Due: 12/18/10

TV ELP ELP298 MIT WD-6809 0357403972 CO 136389
 ACC STD STD139 MEL AV7364 0380003763 CO STAND
))) PHONE PAYMENT (((

R/C *****7701 Online Auth: 003906 Key: 046621012000465 A/N: 000465 Keyed

Thank You for Your Business!

RAC Rent-A-Center

45.49 Rent (1 Week)
 3.42 Waiver Fee
 5.85 Tax
 54.76 Total
 89.85 Tendered from prev receipt
 35.09 Tendered on next receipt

RAC East 0012

ROA_00346

Store #: 4662

RT: 02

Receipt #: 00113636

Received from:

Address:

Date: 12/06/10

Origin: PAY-BY-PHONE

Tender: CHARGE

Agreement #: dh106030 R0

Last Due: 12/11/10

Next Due: 12/18/10

Unit: DLP TV Plus Add-Ons

\$ 46.49 Rent

TELEVISION

.00 Rent Adj/Suspense

DIGITAL LIGHT PROCESS TV

3.49 Waiver Fee

MITSUBISHI

.00 Other Taxable

MODEL #: WD-60C9

.00 Other Non-taxable

Item #: 0357403972

3.25 Sales Tax Group:CIW

\$ 53.23 Total

Filed: 12/06/10 at 16:24 by ??SCANLON, TROY

(RETURN)

RAC East_0013

ROA_00347

Liability Damage Waiver

RELATED CONTENT LOCATED ON RACINET

P&P Definitions

Policy INV2.05 Charge Offs

DOCUMENT CONTROL

Topic ID:

OPS3.07

Ownership:

Sales Operations

Revised/Reviewed:

October 1, 2007

Prior Revised/Reviewed:

NEW

Policy Statement

Liability Damage Waiver ("LDW") is an optional contract that offers the Customer an optional loss / damage waiver for an additional fee. In the event of a covered loss, the Customer is relieved of future payments. If the loss or damage is a result of a criminal act, such as burglary, the Customer must provide a police report.

LDW does not apply to the loss or damage of property that is caused by unexplained disappearance, abandonment, intentional acts caused by the Customer, or as a result of willful or wanton misconduct.

LDW automatically expires and the Customer is NOT covered if the Rental Agreement is past due.

LDW remains in effect until canceled by either the Customer or the Company. If canceled, coverage applies until the end of the current period for which the Customer has paid. Customer may begin coverage for LDW at any time but coverage will only be in effect during the time period when payments are made and the agreement is current.

All approved LDW claims must be charged off by the District Manager within twenty four (24) hours.

Procedures

1. After it is determined the LDW claim is valid and approved, the Customer may want to re-rent item(s) similar to what was lost. At this point, the Store Manager must review the account in order to determine whether the Customer qualifies for replacement product at reduced cost, keeping in mind LDW is not insurance and thus does not provide for a replacement.
2. If the Customer's rental agreement is current, including the LDW fee, and a written police or fire report verifies the circumstances of the loss, a new Rental Order may be taken, allowing the Customer to open another Rental Agreement.
3. Similar to the Lifetime Reinstatement program, there should be an adjustment in the term of the new Rental Agreement to recognize a portion of prior rental payments on the item covered by the LDW claim.

Back to Top

SCDOR

P.O. Box 125
Columbia, SC 29214

April 30, 2012

RENT A CENTER EAST INC
RENT A CENTER EAST INC
5501 Headquarters Drive
Plano, TX 75024

Type Tax: Sales Tax
Period: 04/01/2007 to 10/31/2010
File #: various
Audit #: 01/21/4888
Response Date: 07/30/2012

Dear Misty:

The Department's audit of the above referenced tax return(s) has been completed. Enclosed is the audit report which explains our **Proposed Assessment**.

If you agree with the changes detailed in the enclosed report, the balance on Form AS-54 should be remitted to this office within 30 days from the date of this letter. Otherwise, additional interest, and penalties, if applicable, will accrue. Please include a copy of the AS-54 Distribution, or, Processing Report with your check to insure proper processing.

If you agree with the Department's adjustments, but are unable to make full payment at this time, please complete the enclosed Waiver of Restriction on Assessment (SC 870) and return it to this office as soon as possible. Upon receipt of this document, a final assessment will be issued.

If you disagree with any of the adjustments of tax, interest, or penalties that have been proposed by the Department, a written protest must be submitted to this office by the response date. Enclosed is an information guide (CID-6) which explains the information that must be included in your protest. The protest may be submitted on the enclosed form or by letter.

If you do not respond to this letter by the response date, you will have waived your right to appeal the proposed assessment and the Department will issue the final assessment and begin collection action.

Should you have any questions, please do not hesitate to contact this office.

Sincerely,
Columbia Taxpayer Service Center

Dawn Taylor
Foreign Tax Auditor
taylorde@sctax.org
(803) 898-5618

PROTEST

Section I: Taxpayer Identification

Misty Johnson, Tax Coordinator RENT-A CENTER EAST INC 5501 Headquarters Drive Plano, TX 75024	File Number: various Tax Type: Sales Tax Audit Control #: 01/21/4888 Telephone #: 972-801-1429 Fax #: Audit periods: From 04/01/2007 To 10/31/2010

Section II: Department of Revenue Document to be Attached:

Please attach a copy of the Department of Revenue document or notice you received which led to the filing of this protest.

Section III: Reasons for Protest:

State all the reasons you disagree, including a statement of facts supporting your position and the law or other authority upon which you rely. (If the amount of proposed assessments is for income less than \$2,500 you need not provide your authority unless you are a partnership, S corporation, an exempt organization or an employee plan.)

(Add additional sheets if necessary.)

Taxpayer's Signature: _____ Date: _____

Spouse's Signature: _____ Date: _____

Corporation name: _____

By: _____ Title: _____ Date: _____

INSTRUCTIONS

The purpose of this form is to reduce to writing those facts and issues with which you disagree. If more space is needed, additional sheets may accompany this form. A protest may be filed by letter rather than using this form; however, all of the information required by this form must be included in the letter and you must comply with the requirements concerning signatures. If you filed a joint income tax return, both you and your spouse must sign. If the protest is for a corporation, it must include the corporation's name followed by the signature and title of the corporate officer authorized to sign. If the dispute concerns a partnership or S corporation, then a separate form must be signed by each partner or shareholder. If you have any questions concerning this matter, please call the telephone number on the notice or document with which you disagree. Please return document to the Department of Revenue address shown on the notice or document with which you disagree.

WAIVER OF RESTRICTION ON ASSESSMENT
AND COLLECTION OF ADDITIONAL TAX OR
ACCEPTANCE OF OVERASSESSMENTMisty Johnson
RENT-A-CENTER EAST INC
5501 Headquarters Drive
Plano, TX 75024File Number: various
Tax Type: Sales Tax
Audit Control #: 01/21/4888

Audit periods: From 04/01/2007 To 10/31/2010

Increase (Decrease) in Tax, Interest and Penalties

Tax	Interest	Penalty	Total
767,004.50	106,154.80	92,103.42	965,262.72

Interest and Penalty computed through: 05/30/2012

This information was prepared by: Telephone: (803) 898-5618

CONSENT TO ASSESSMENT AND COLLECTION OF ADDITIONAL
TAX OR ACCEPTANCE OF REFUND DETERMINATION

I have read and understand the instructions on page two of this form. I consent to the assessment and collection of any additional tax and penalties or accept any decrease in tax and penalties shown above, plus any interest provided by law. I understand that by signing this waiver, I consent to the above determination(s) and must pay the additional amounts prior to contesting this matter any further.

Taxpayer's Signature: _____ Date: _____

Spouse's Signature: _____ Date: _____

Corporation name: _____

By: _____ Title: _____ Date: _____

Waiver of Restrictions on Assessment
and Collection of Additional Tax or
Acceptance of overassessment

General Information & Instructions

IMPORTANT: By signing this form, the taxpayer (1) agrees to pay the tax, interest, and penalties stated to be due; and (2) gives up the right to appeal this matter further. Interest and applicable penalties will continue to accrue until the balance due the Department is paid in full. Signing this form does **not** affect your right to file a claim for refund and it does **not** prevent the Department of Revenue from assessing additional tax found to be due at a later date.

NOTE: If you wish to give up your right to file a claim for refund and prevent the Department of Revenue from assessing additional amounts at a later date, a Form SC870AD should be executed in lieu of this SC870.

CLAIM FOR REFUND

Executing this document does not prevent you from seeking a refund of State taxes paid. The refund claim must be filed within three years from the date the returns was filed, or two years from the date of the payment of the tax, whichever is later. See SC Information Guide OGC-25 for more information about his claim for refund procedure.

EXECUTING THIS FORM

If this waiver relates to a joint individual income tax return, both husband and wife must sign the waiver.

If the SC870 is executed on behalf of a corporation, the waiver must include the corporation's name as well as the signature and title of the corporate officer executing this document

If this waiver is associated with an income tax examination of a partnership or "S" corporation, each partner or shareholder must execute a separate form.

If this waiver is signed by a person acting in a fiduciary capacity (for example, a personal administrator or trustee) Internal Revenue Service Form 56, Notice Concerning Fiduciary Relationship, must accompany this form unless previously provided.

An Attorney, CPA, or other agent may execute this form on behalf of a client provided such authority is granted in a power of attorney. The power of attorney must accompany this form unless previously provided.

GENERAL INFORMATION

We have an agreement with the Internal Revenue Service which provides for the exchange of tax information. If this change affects your income tax return(s), amended federal return(s) may need to be filed.

If you have any questions about this waiver, please contact the preparer.

SCIDOR

SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

TAXPAYER INFORMATION

Taxpayer ID [REDACTED]		Folder ID RENT A CENTER EAST INC		FEIN [REDACTED]	
Legal Name RENT A CENTER EAST INC			DBA RENT A CENTER EAST INC		
Mailing Address 1 5501 Headquarters Drive Plano, TX 75024			Record Location 1 5501 Headquarters Drive Plano, TX 75024		
Contact Person Misty Johnson			E-Mail misty.johnson@rentacenter.com		
Title Tax Coordinator		Telephone 972-801-1429		Fax [REDACTED]	
Date Case Started 05/06/2010		Date Case Completed 04/18/2012		No. Locations 81	
Taxpayer 2		Taxpayer 3		Taxpayer 4	
				Taxpayer 5	

SALES TAX AUDIT INFORMATION

Business Name RENT A CENTER EAST INC				License Number various		Audit Control Number 01/21/4888	
Location Address 1				Location ID		Tax Type Sales Tax	
Location Address 2				County Code		City Code	
Type of Ownership Corporation		Ownership Other		Date Audit Started 05/06/2010		Date Audit Completed 04/18/2012	
Beginning Period 04/01/2007		Ending Period 10/31/2010		Reporting Interval Monthly		Within City Limits N	
SIC Code 532299							
Auditor ID 1 0098	Auditor Name 1 Jack L. Cain	Percent 1 8	Hours 1 189	Business Category Rental and Leasing Services			
Auditor ID 2 1300	Auditor Name 2 Dawn Taylor	Percent 2 100	Hours 2 192.50	Type of Business All Other Consumer Goods Rental			
Auditor ID 3	Auditor Name 3	Percent 3	Hours 3	Audit Status Case closed			
Audit 1		Audit 2		Audit 3		Audit 4	
						Audit 5	
Schedules Used Deductions 100%.scd; Use - Expense Projection.scd; Use - Fixed Assets 100%.scd							
Report Date 04/30/2012	Interest & Penalty Date 05/30/2012	Tax 767,004.50	Interest 106,154.80	Penalty 92,103.42	Total 965,262.72		



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: [REDACTED]
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Distribution Report [6320]

AS-54-DIST
All Taxes

	G/L Code	Code	DLN	Tax	Interest	Penalty	Total	
1	34-2726	1002S		2,014.46	285.95	243.70	2,544.11	
2	34-2728	1007S		2,443.39	310.14	282.40	3,035.93	2
3	34-2728	1008S		2,857.43	236.17	260.96	3,354.56	3
4	34-2728	1010S		3,364.52	464.10	402.26	4,230.88	4
5	34-2726	1012S		995.57	80.34	90.80	1,166.71	5
6	34-2728	1018S		2,384.54	301.75	270.08	2,956.37	6
7	34-2726	1021S		3,890.75	524.86	457.00	4,872.61	7
8	34-2726	1024S		1,837.64	258.97	221.38	2,317.99	8
9	34-2726	1025S		6.60	0.00	0.33	6.93	9
10	34-2726	1026S		11,858.72	1,663.16	1,424.51	14,946.39	10
11	34-2726	1038S		2,753.74	345.03	310.19	3,408.96	11
12	34-2726	1043S		1,900.31	160.03	175.07	2,235.41	12
13	34-2726	1046S		2,572.41	336.95	299.01	3,208.37	13

Distribution

TaxMaster 4.4.0/807 - 03/30/2012

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ROA_00354



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID:
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Distribution Report [6320]

AS-54-DIST

All Taxes

G/L Code	Code	DLN	Tax	Interest	Penalty	Total	
14 34-2721	2054		902.03	183.98	137.10	1,223.11	14
15 34-2721	2057		1,995.00	275.56	237.56	2,508.12	15
16 34-2721	2062		556.26	38.96	47.29	642.51	16
17 34-2721	2103		558.43	131.32	93.58	783.33	17
18 34-2721	2130		3,085.04	431.80	376.25	3,893.09	18
19 34-2721	2133		1,673.88	254.64	211.01	2,139.53	19
20 34-2721	2139		993.07	80.01	91.57	1,164.65	20
21 34-2721	2160		9,586.68	1,318.59	1,138.67	12,043.94	21
22 34-2721	2200		3,454.40	526.10	435.71	4,416.21	22
23 34-2721	2208		2,941.07	410.47	352.30	3,703.84	23
24 34-2721	2286		3,578.50	519.85	438.88	4,537.23	24
25 34-2721	2330		358.40	25.06	30.45	413.91	25
26 34-2721	2342		2,138.57	319.40	266.62	2,724.59	26

Distribution

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ROA_00355



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: [REDACTED]
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Distribution Report [6320]

AS-54-DIST
All Taxes

G/L Code	Code	DLN	Tax	Interest	Penalty	Total	
27 34-2721	2380		544.65	37.06	45.77	627.48	2
28 34-2721	2392		1,657.07	320.39	243.13	2,220.59	21
29 34-2721	2400		475.68	33.45	40.53	549.66	29
30 34-2721	2463		1,889.72	276.44	232.69	2,398.85	30
31 34-2721	2470		398.27	28.21	34.02	460.50	31
32 34-2721	2498		389.42	26.14	32.53	448.09	32
33 34-2721	2585		2,089.22	301.34	255.13	2,645.69	33
34 34-2721	2588		2,442.34	413.61	328.94	3,184.89	34
35 34-2721	2600		3,011.81	448.00	374.59	3,834.40	35
36 34-2740	2615X		2,279.68	178.97	203.48	2,662.13	36
37 34-2721	2656		3,644.04	496.42	428.27	4,568.73	37
38 34-2721	2686		348.68	24.81	29.84	403.33	38
39 34-2721	2876		2,392.86	337.25	288.29	3,018.40	39



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: [REDACTED]
FEIN/SSN: xx-xxx4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Distribution Report [6320]

AS-54-DIST
All Taxes

	G/L Code	Code	DLN	Tax	Interest	Penalty	Total	
40	34-2721	2880		5,379.88	814.93	676.50	6,871.31	40
41	34-2721	2940		2,543.08	319.83	287.06	3,149.97	41
42	34-2721	2972		3,044.76	450.99	377.73	3,873.48	42
43	34-2730	5101		0.00	0.00	0.00	0.00	43
44	34-2730	5111		363.40	25.06	30.70	419.16	44
45	34-2730	5131		2,022.57	279.45	240.85	2,542.87	45
46	34-2730	5140		2,089.22	301.34	255.13	2,645.69	46
47	34-2730	5161		5,111.48	846.51	678.85	6,636.84	47
48	34-2730	5170		1,770.50	173.81	175.43	2,119.74	48
49	34-2730	5261		5,525.52	471.52	512.05	6,509.09	49
50	34-2730	5320		5,235.10	702.01	612.80	6,549.91	50
51	14-4701	SALE6		645,107.27	89,140.27	76,825.50	811,073.04	51
52	14-4702	USE6		(3,453.13)	223.80	598.93	(2,630.40)	52
Total (52)				767,004.50	106,154.80	92,103.42	965,262.72	



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: [REDACTED]
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Billing Summary

AS-54-GT
All Taxes

Audit: Sales Tax

Adjustment: Schedules: Deductions 100%, Use - Expense Projection, Use - Fixed Assets 100%

Tax Type	Tax	Interest	Penalty	Total
1 Aiken Cnty CP 02	2,014.46	285.95	243.70	2,544.11
2 Barnwell Cnty LO 06	902.03	183.98	137.10	1,223.11
3 Beaufort Cnty T 07	2,443.39	310.14	282.40	3,035.93
4 Berkeley Cnty LO 08	7,543.24	1,104.65	929.50	9,577.39
5 Berkeley Cnty T 08	2,857.43	236.17	260.96	3,354.56
6 Charleston Cnty LO 10	6,729.08	928.22	804.52	8,461.82
7 Charleston Cnty SD	0.00	0.00	0.00	0.00
8 Charleston Cnty T 10	3,364.52	464.10	402.26	4,230.88
9 Cherokee Cnty LO 11	358.40	25.06	30.45	413.91
10 Cherokee Cnty SD 11	363.40	25.06	30.70	419.16
11 Chester Cnty LO 12	993.07	80.01	91.57	1,164.65
12 Chester Cnty CP 12	995.57	80.34	90.80	1,166.71
13 Chesterfield Cnty LO 13	2,022.56	279.45	240.85	2,542.86
14 Chesterfield Cnty SD 13	2,022.57	279.45	240.85	2,542.87
15 Clarendon Cnty LO 14	2,089.22	301.34	255.13	2,645.69
16 Clarendon Cnty SD 14	2,089.22	301.34	255.13	2,645.69
17 Colleton Cnty LO 15	2,543.08	319.83	287.06	3,149.97
18 Darlington Cnty LO 16	5,111.47	846.49	678.84	6,636.80
19 Darlington Cnty SD 16	5,111.48	846.51	678.85	6,636.84



SOUTH CAROLINA DEPARTMENT OF REVENUE

Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: [REDACTED]
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Billing Summary

AS-54-G1

All Taxes

Tax Type	Tax	Interest	Penalty	Total	
20 Dillon Cnty LO 17	2,941.07	410.47	352.30	3,703.84	20
21 Dillon Cnty SD 17	1,770.50	173.81	175.43	2,119.74	21
22 Dorchester Cnty T 18	2,384.54	301.75	270.08	2,956.37	22
23 Fairfield Cnty LO 20	3,044.76	450.99	377.73	3,873.48	23
24 Florence Cnty LO 21	3,976.77	548.06	472.90	4,997.73	24
25 Florence Cnty CP 21	3,890.75	524.86	457.00	4,872.61	25
26 Greenwood Cnty CP 24	1,837.64	258.97	221.38	2,317.99	26
27 Hampton Cnty LO 25	544.65	37.06	45.77	627.48	27
28 Hampton Cnty CP 25	6.60	0.00	0.33	6.93	28
29 Myrtle Beach Tourism	2,279.68	178.97	203.48	2,662.13	29
30 Horry Cnty CP 26	11,858.72	1,663.16	1,424.51	14,946.39	30
31 Horry Cnty SD 26	5,525.52	471.52	512.05	6,509.09	31
32 Kershaw Cnty LO 28	558.43	131.32	93.58	783.33	32
33 Laurens Cnty LO 30	389.42	26.14	32.53	448.09	33
34 Lexington Cnty SD 32	5,235.10	702.01	612.80	6,549.91	34
35 Marion Cnty LO 34	2,442.34	413.61	328.94	3,184.89	35
36 Marlboro Cnty LO 35	556.26	38.96	47.29	642.51	36
37 Orangeburg Cnty CP 38	2,753.74	345.03	310.19	3,408.96	37
38 Richland Cnty LO 40	9,586.68	1,318.59	1,138.67	12,043.94	38
39 Saluda Cnty LO 41	1,995.00	275.56	237.56	2,508.12	39
40 Sumter Cnty LO 43	5,379.88	814.93	676.50	6,871.31	40

Billing Summary

TaxMaster 4.4.0.807 - 03/30/2012

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ROA_00359



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: [REDACTED]
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Billing Summary

AS-54-G
All Taxes

Tax Type	Tax	Interest	Penalty	Total
41 Sumter Cnty CP 43	1,900.31	160.03	175.07	2,235.41
42 Williamsburg Cnty LO 45	2,365.40	309.89	273.22	2,948.51
43 York Cnty CP 46	2,572.41	336.95	299.01	3,208.37
44 Sales Tax	645,107.27	89,140.27	76,825.50	811,073.04
45 Use Tax	(3,453.13)	223.80	598.93	(2,630.40)
Total (45)	767,004.50	106,154.80	92,103.42	965,262.72



SOUTH CAROLINA DEPARTMENT OF REVENUE

Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID:
FEIN/SSN: xx-xxx4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Billing Report for Sales Tax [SALE6]

AS-54
All Taxes

Audit: Sales Tax

Adjustment Schedules: Deductions 100%, Use - Expense Projection, Use - Fixed Assets 100%

	Period	Measure	Tax Due	Interest	Negligence	Total	
1	04/30/2007	251,553.34	12,577.67	3,394.21	2,325.99	18,297.87	1
2	05/31/2007	259,129.63	12,956.48	3,388.66	2,342.15	18,687.29	2
3	06/30/2007	283,145.36	16,988.72	4,302.77	3,000.82	24,292.31	3
4	07/31/2007	251,642.77	15,098.57	3,695.94	2,602.90	21,397.41	4
5	08/31/2007	262,676.41	15,760.58	3,725.16	2,650.61	22,136.35	5
6	09/30/2007	230,278.87	13,816.73	3,146.33	2,264.00	19,227.06	6
7	10/31/2007	238,250.88	14,295.05	3,144.08	2,286.79	19,725.92	7
8	11/30/2007	245,469.50	14,728.17	3,121.59	2,297.20	20,146.96	8
9	12/31/2007	251,129.40	15,067.76	3,073.08	2,289.93	20,430.77	9
10	01/31/2008	248,836.23	14,930.17	2,945.64	2,219.33	20,095.14	10
11	02/29/2008	248,848.77	14,930.93	2,846.92	2,170.01	19,947.86	11
12	03/31/2008	249,743.69	14,984.62	2,758.46	2,128.46	19,871.54	12
13	04/30/2008	240,962.89	14,457.77	2,580.30	2,013.04	19,051.11	13
14	05/31/2008	263,141.76	15,788.51	2,723.50	2,151.18	20,663.19	14
15	06/30/2008	230,997.39	13,859.84	2,317.69	1,851.84	18,029.37	15
16	07/31/2008	240,640.32	14,438.42	2,345.54	1,894.69	18,678.65	16
17	08/31/2008	252,562.94	15,153.78	2,382.51	1,948.94	19,485.23	17
18	09/30/2008	220,110.04	13,206.60	2,009.71	1,665.19	16,881.50	18
19	10/31/2008	237,318.34	14,239.10	2,083.69	1,753.80	18,076.59	19
20	11/30/2008	214,472.94	12,868.38	1,805.94	1,546.39	16,220.71	20
21	12/31/2008	219,376.29	13,162.58	1,784.07	1,550.16	16,496.81	21
22	01/31/2009	233,425.86	14,005.55	1,830.93	1,615.74	17,452.22	22
23	02/28/2009	196,158.90	11,769.53	1,487.70	1,332.33	14,589.56	23
24	03/31/2009	199,178.43	11,950.71	1,460.87	1,327.97	14,739.55	24
25	04/30/2009	184,675.02	11,080.50	1,313.70	1,210.88	13,605.08	25
26	05/31/2009	216,562.92	12,993.78	1,488.08	1,393.73	15,875.59	26
27	06/30/2009	198,672.49	11,920.35	1,324.45	1,258.24	14,503.04	27
28	07/31/2009	206,761.71	12,405.70	1,331.62	1,286.10	15,023.42	28
29	08/31/2009	201,096.45	12,065.79	1,248.38	1,227.48	14,541.65	29
30	09/30/2009	190,220.71	11,413.24	1,140.90	1,141.11	13,695.25	30
31	10/31/2009	216,930.16	13,015.81	1,252.54	1,277.06	15,545.41	31
32	11/30/2009	185,300.20	11,118.01	1,028.58	1,070.19	13,216.78	32
33	12/31/2009	204,563.61	12,273.82	1,091.50	1,159.44	14,524.76	33
34	01/31/2010	326,328.27	19,579.70	1,664.24	1,811.11	23,055.05	34
35	02/28/2010	314,998.14	18,899.89	1,543.64	1,716.81	22,160.34	35
36	03/31/2010	327,093.03	19,625.58	1,535.55	1,749.05	22,910.18	36
37	04/30/2010	355,693.13	21,341.59	1,594.29	1,864.22	24,800.10	37
38	05/31/2010	321,417.15	19,285.03	1,368.10	1,648.30	22,301.43	38

SCIDOR

SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: XXXXXXXXXX
FEIN/SSN: xx-xxx4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Billing Report for Sales Tax [SALE6]

AS-54
All Taxes

Period	Measure	Tax Due	Interest	Negligence	Total
39 06/30/2010	326,337.88	19,580.27	1,322.52	1,640.27	22,543.06
40 07/31/2010	346,592.84	20,795.57	1,329.30	1,704.43	23,829.30
41 08/31/2010	301,378.88	18,082.73	1,090.66	1,449.47	20,622.86
42 09/30/2010	308,799.34	18,527.96	1,053.04	1,452.92	21,033.92
43 10/31/2010	334,428.89	20,065.73	1,063.89	1,535.23	22,664.85
Total (43)	10,836,901.77	645,107.27	89,140.27	76,825.50	811,073.04

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SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID:
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Penalty Detail for Sales Tax [SALE6]

AS-54-PEN
All Taxes

	Period	Negligence	Total	
1	04/30/2007	2,325.99	2,325.99	1
2	05/31/2007	2,342.15	2,342.15	2
3	06/30/2007	3,000.82	3,000.82	3
4	07/31/2007	2,602.90	2,602.90	4
5	08/31/2007	2,650.61	2,650.61	5
6	09/30/2007	2,264.00	2,264.00	6
7	10/31/2007	2,286.79	2,286.79	7
8	11/30/2007	2,297.20	2,297.20	8
9	12/31/2007	2,289.93	2,289.93	9
10	01/31/2008	2,219.33	2,219.33	10
11	02/29/2008	2,170.01	2,170.01	11
12	03/31/2008	2,128.46	2,128.46	12
13	04/30/2008	2,013.04	2,013.04	13
14	05/31/2008	2,151.18	2,151.18	14
15	06/30/2008	1,851.84	1,851.84	15
16	07/31/2008	1,894.69	1,894.69	16
17	08/31/2008	1,948.94	1,948.94	17
18	09/30/2008	1,665.19	1,665.19	18
19	10/31/2008	1,753.80	1,753.80	19
20	11/30/2008	1,546.39	1,546.39	20
21	12/31/2008	1,550.16	1,550.16	21
22	01/31/2009	1,615.74	1,615.74	22
23	02/28/2009	1,332.33	1,332.33	23
24	03/31/2009	1,327.97	1,327.97	24
25	04/30/2009	1,210.88	1,210.88	25
26	05/31/2009	1,393.73	1,393.73	26
27	06/30/2009	1,258.24	1,258.24	27
28	07/31/2009	1,286.10	1,286.10	28
29	08/31/2009	1,227.48	1,227.48	29
30	09/30/2009	1,141.11	1,141.11	30
31	10/31/2009	1,277.06	1,277.06	31
32	11/30/2009	1,070.19	1,070.19	32
33	12/31/2009	1,159.44	1,159.44	33
34	01/31/2010	1,811.11	1,811.11	34
35	02/28/2010	1,716.81	1,716.81	35
36	03/31/2010	1,749.05	1,749.05	36
37	04/30/2010	1,864.22	1,864.22	37
38	05/31/2010	1,648.30	1,648.30	38

Penalty Detail

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04/30/2012 Page 178 of 189

ROA_00363



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: [REDACTED]
FEIN/SSN: xx-xx4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Penalty Detail for Sales Tax [SALE6]

AS-54-PEN
All Taxes

Period	Negligence	Total
39 06/30/2010	1,640.27	1,640.27
40 07/31/2010	1,704.43	1,704.43
41 08/31/2010	1,449.47	1,449.47
42 09/30/2010	1,452.92	1,452.92
43 10/31/2010	1,535.23	1,535.23
Total (43)	76,825.50	76,825.50

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SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INCSID:
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Billing Report for Use Tax [USE]

AS-54
All Taxes

Audit: Sales Tax

Adjustment Schedules: Deductions 100%, Use - Expense Projection, Use - Fixed Assets 100%

	Period	Measure	Tax Due	Interest	Negligence	Total	
1	04/30/2007	(1,593.10)	(79.65)	(7.36)	7.66	(79.35)	1
2	05/31/2007	3,831.83	191.59	50.12	34.64	276.35	2
3	06/30/2007	(737.11)	(44.23)	(3.69)	4.06	(43.86)	3
4	07/31/2007	1,425.14	85.51	20.96	14.76	121.23	4
5	08/31/2007	1,172.35	70.34	16.63	11.83	98.80	5
6	09/30/2007	1,615.14	96.91	22.07	15.88	134.86	6
7	10/31/2007	1,315.94	78.96	17.37	12.63	108.96	7
8	11/30/2007	1,497.72	89.86	19.05	14.02	122.93	8
9	12/31/2007	1,615.14	96.91	19.76	14.73	131.40	9
10	01/31/2008	1,615.14	96.91	19.12	14.41	130.44	10
11	02/29/2008	1,615.14	96.91	18.48	14.09	129.48	11
12	03/31/2008	1,530.14	91.81	16.90	13.04	121.75	12
13	04/30/2008	1,615.14	96.91	17.28	13.49	127.68	13
14	05/31/2008	(5,155.14)	(309.31)	(12.89)	21.91	(300.29)	14
15	06/30/2008	1,065.14	63.91	10.68	8.54	83.13	15
16	07/31/2008	(441.90)	(26.51)	(1.02)	1.84	(25.69)	16
17	08/31/2008	(1,121.72)	(67.30)	(2.42)	4.57	(65.15)	17
18	09/30/2008	(2,754.86)	(165.29)	(5.61)	11.07	(159.83)	18
19	10/31/2008	705.49	42.33	6.20	5.22	53.75	19
20	11/30/2008	(5,614.10)	(336.85)	(9.65)	21.67	(324.83)	20
21	12/31/2008	2,758.74	165.52	22.43	19.49	207.44	21
22	01/31/2009	6.39	0.38	0.00	0.02	0.40	22
23	02/28/2009	365.14	21.91	2.75	2.47	27.13	23
24	03/31/2009	(2,240.94)	(134.46)	(2.98)	8.21	(129.23)	24
25	04/30/2009	(3,311.46)	(198.69)	(4.24)	12.05	(190.88)	25
26	05/31/2009	(1,744.55)	(104.67)	(2.14)	6.30	(100.51)	26
27	06/30/2009	1,346.98	80.82	8.98	8.53	98.33	27
28	07/31/2009	1,575.68	94.54	10.14	9.80	114.48	28
29	08/31/2009	(1,303.26)	(78.20)	(1.41)	4.62	(74.99)	29
30	09/30/2009	(917.36)	(55.04)	(0.95)	3.23	(52.76)	30
31	10/31/2009	(19,622.55)	(1,177.35)	(19.15)	68.44	(1,128.06)	31
32	11/30/2009	(946.61)	(56.80)	(0.87)	3.28	(54.39)	32
33	12/31/2009	(17,042.43)	(1,022.55)	(14.90)	58.58	(978.87)	33
34	01/31/2010	(2,869.86)	(172.19)	(2.35)	9.78	(164.76)	34
35	02/28/2010	(20,009.14)	(1,200.55)	(15.47)	67.76	(1,148.26)	35
36	03/31/2010	1,590.69	95.44	7.46	8.50	111.40	36
37	04/30/2010	1,337.66	80.26	6.00	7.01	93.27	37
38	05/31/2010	1,056.64	63.40	4.49	5.42	73.31	38

SCIDOR

SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID:
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Billing Report for Use Tax [USE]

AS-54
All Taxes

Period	Measure	Tax Due	Interest	Negligence	Total
39 06/30/2010	1,615.14	96.91	6.56	8.13	111.60
40 07/31/2010	(534.86)	(32.09)	(0.28)	1.74	(30.63)
41 08/31/2010	1,615.14	96.91	5.84	7.77	110.52
42 09/30/2010	995.14	59.71	3.40	4.69	67.80
43 10/31/2010	(4,101.04)	(246.06)	(1.49)	13.05	(234.50)
Total (43)	(57,179.20)	(3,453.13)	223.80	598.93	(2,630.40)

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SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: [REDACTED]
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Penalty Detail for Use Tax [USE]

AS-54-PEN
All Taxes

	Period	Negligence	Total
1	04/30/2007	7.66	7.66
2	05/31/2007	34.64	34.64
3	06/30/2007	4.06	4.06
4	07/31/2007	14.76	14.76
5	08/31/2007	11.83	11.83
6	09/30/2007	15.88	15.88
7	10/31/2007	12.63	12.63
8	11/30/2007	14.02	14.02
9	12/31/2007	14.73	14.73
10	01/31/2008	14.41	14.41
11	02/29/2008	14.09	14.09
12	03/31/2008	13.04	13.04
13	04/30/2008	13.49	13.49
14	05/31/2008	21.91	21.91
15	06/30/2008	8.54	8.54
16	07/31/2008	1.84	1.84
17	08/31/2008	4.57	4.57
18	09/30/2008	11.07	11.07
19	10/31/2008	5.22	5.22
20	11/30/2008	21.67	21.67
21	12/31/2008	19.49	19.49
22	01/31/2009	0.02	0.02
23	02/28/2009	2.47	2.47
24	03/31/2009	8.21	8.21
25	04/30/2009	12.05	12.05
26	05/31/2009	6.30	6.30
27	06/30/2009	8.53	8.53
28	07/31/2009	9.80	9.80
29	08/31/2009	4.62	4.62
30	09/30/2009	3.23	3.23
31	10/31/2009	68.44	68.44
32	11/30/2009	3.28	3.28
33	12/31/2009	58.58	58.58
34	01/31/2010	9.78	9.78
35	02/28/2010	67.76	67.76
36	03/31/2010	8.50	8.50
37	04/30/2010	7.01	7.01
38	05/31/2010	5.42	5.42

Penalty Detail

TaxMaster 4.4.0.807 - 03/30/2012

04/30/2012 Page 182 of 189

ROA_00367



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: [REDACTED]
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Penalty Detail for Use Tax [USE]

AS-54-PEN
All Taxes

Period	Negligence	Total
39 06/30/2010	8.13	8.13
40 07/31/2010	1.74	1.74
41 08/31/2010	7.77	7.77
42 09/30/2010	4.69	4.69
43 10/31/2010	13.05	13.05
Total (43)	598.93	598.93

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SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: [REDACTED]
FEN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Filing Detail

AS-54-FILE
All Taxes

	Last Day of Period	Due Date	Date Filed	Negligence
1	04/30/2007	05/21/2007	05/21/2007	X
2	05/31/2007	06/20/2007	06/20/2007	X
3	06/30/2007	07/20/2007	07/20/2007	X
4	07/31/2007	08/20/2007	08/20/2007	X
5	08/31/2007	09/20/2007	09/20/2007	X
6	09/30/2007	10/22/2007	10/22/2007	X
7	10/31/2007	11/20/2007	11/20/2007	X
8	11/30/2007	12/20/2007	12/20/2007	X
9	12/31/2007	01/22/2008	01/22/2008	X
10	01/31/2008	02/20/2008	02/20/2008	X
11	02/29/2008	03/20/2008	03/20/2008	X
12	03/31/2008	04/21/2008	04/21/2008	X
13	04/30/2008	05/20/2008	05/20/2008	X
14	05/31/2008	06/20/2008	06/20/2008	X
15	06/30/2008	07/21/2008	07/21/2008	X
16	07/31/2008	08/20/2008	08/20/2008	X
17	08/31/2008	09/22/2008	09/22/2008	X
18	09/30/2008	10/20/2008	10/20/2008	X
19	10/31/2008	11/20/2008	11/20/2008	X
20	11/30/2008	12/22/2008	12/22/2008	X
21	12/31/2008	01/20/2009	01/20/2009	X
22	01/31/2009	02/20/2009	02/20/2009	X
23	02/28/2009	03/20/2009	03/20/2009	X
24	03/31/2009	04/20/2009	04/20/2009	X
25	04/30/2009	05/20/2009	05/20/2009	X
26	05/31/2009	06/22/2009	06/22/2009	X
27	06/30/2009	07/20/2009	07/20/2009	X
28	07/31/2009	08/20/2009	08/20/2009	X
29	08/31/2009	09/21/2009	09/21/2009	X
30	09/30/2009	10/20/2009	10/20/2009	X
31	10/31/2009	11/20/2009	11/20/2009	X
32	11/30/2009	12/21/2009	12/21/2009	X
33	12/31/2009	01/20/2010	01/20/2010	X
34	01/31/2010	02/22/2010	02/22/2010	X
35	02/28/2010	03/22/2010	03/22/2010	X
36	03/31/2010	04/20/2010	04/20/2010	X
37	04/30/2010	05/20/2010	05/20/2010	X
38	05/31/2010	06/21/2010	06/21/2010	X
39	06/30/2010	07/20/2010	07/20/2010	X
40	07/31/2010	08/20/2010	08/20/2010	X

Filing Detail

TaxMaster 4.4.0.807 - 03/30/2012

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ROA_00369



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: [REDACTED]
FEIN/SSN: xx-xxx4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Filing Detail

AS-54-FILE
All Taxes

	Last Day of Period	Due Date	Date Filed	Negligence
41	08/31/2010	09/20/2010	09/20/2010	X
42	09/30/2010	10/20/2010	10/20/2010	X
43	10/31/2010	11/22/2010	11/22/2010	X
Total (43)				

41
42
43



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INC

SID: [REDACTED]
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888

Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

GAL Distribution Report

AS-54-D/F

All Taxes

G/L Code	Tax Code	Local Name	Tax	Normal Interest	Interest Billed/Paid	GAL Portion	
1 34-2726	1002S	Aiken Cnty CP	2,014.46	285.95	285.95	0.00	1
2 34-2728	1007S	Beaufort Cnty TR	2,443.39	306.79	310.14	3.35	2
3 34-2728	1008S	Berkeley Cnty TR	2,857.43	236.17	236.17	0.00	3
4 34-2728	1010S	Charleston Cnty TR	3,364.52	462.72	464.10	1.38	4
5 34-2726	1012S	Chester Cnty CP	995.57	79.81	80.34	0.53	5
6 34-2728	1018S	Dorchester Cnty TR	2,384.54	301.75	301.75	0.00	6
7 34-2726	1021S	Florence Cnty CP	3,890.75	524.86	524.86	0.00	7
8 34-2726	1024S	Greenwood Cnty CP	1,837.64	258.97	258.97	0.00	8
9 34-2726	1025S	Hampton Cnty CP	6.60	0.00	0.00	0.00	9
10 34-2726	1028S	Horry Cnty CP	11,858.72	1,663.16	1,663.16	0.00	10
11 34-2726	1038S	Orangeburg Cnty CP	2,753.74	345.03	345.03	0.00	11
12 34-2726	1043S	Sumter Cnty CP	1,900.31	160.03	160.03	0.00	12
13 34-2726	1046S	York Cnty CP	2,572.41	335.67	336.95	1.28	13
14 34-2721	2054	Barnwell	902.03	183.98	183.98	0.00	14
15 34-2721	2057	Batesburg 41	1,995.00	275.56	275.56	0.00	15
16 34-2721	2062	Bennettsville	556.26	38.96	38.96	0.00	16
17 34-2721	2103	Camden	558.43	131.32	131.32	0.00	17
18 34-2721	2130	Charleston 10	3,085.04	423.45	431.80	8.35	18
19 34-2721	2133	Cheraw	1,673.88	254.64	254.64	0.00	19
20 34-2721	2139	Chester	993.07	78.57	80.01	1.44	20
21 34-2721	2160	Columbia 40	9,586.68	1,318.59	1,318.59	0.00	21
22 34-2721	2200	Darlington	3,454.40	526.10	526.10	0.00	22
23 34-2721	2208	Dillon	2,941.07	410.47	410.47	0.00	23
24 34-2721	2286	Florence	3,578.50	519.85	519.85	0.00	24
25 34-2721	2330	Gaffney	358.40	25.06	25.06	0.00	25
26 34-2721	2342	Goose Creek	2,138.57	319.40	319.40	0.00	26
27 34-2721	2380	Hampton	544.65	37.06	37.06	0.00	27
28 34-2721	2392	Hartsville	1,657.07	320.39	320.39	0.00	28
29 34-2721	2400	Hemingway	475.68	33.45	33.45	0.00	29
30 34-2721	2463	Kingstree	1,889.72	276.44	276.44	0.00	30
31 34-2721	2470	Lake City	398.27	28.21	28.21	0.00	31
32 34-2721	2498	Laurens	389.42	26.14	26.14	0.00	32
33 34-2721	2585	Manning	2,089.22	301.34	301.34	0.00	33
34 34-2721	2588	Marion	2,442.34	413.61	413.61	0.00	34
35 34-2721	2600	Moncks Corner	3,011.81	448.00	448.00	0.00	35
36 34-2740	2615X	Myrtle Beach	2,279.68	178.97	178.97	0.00	36
37 34-2721	2656	N. Charleston 10	3,644.04	502.07	496.42	(5.65)	37
38 34-2721	2686	Pageland	348.68	24.81	24.81	0.00	38
39 34-2721	2876	Summerville 08	2,392.86	337.25	337.25	0.00	39
40 34-2721	2880	Sumter	5,379.88	814.93	814.93	0.00	40

SCIDOR

SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT A CENTER EAST INC
5501 Headquarters Drive, Plano, TX 75024
RENT A CENTER EAST INCSID: [REDACTED]
FEIN/SSN: XX-XXX4367
File#: various
ACN: 01/21/4888Period: 04/01/2007 thru 10/31/2010 (43 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

GAL Distribution Report

AS-54-D/F

All Taxes

G/L Code	Tax Code	Local Name	Tax	Normal Interest	Interest Billed/Paid	GAL Portion	
41 34-2721	2940	Walterboro	2,543.08	319.83	319.83	0.00	41
42 34-2721	2972	Winnsboro	3,044.76	450.99	450.99	0.00	42
43 34-2730	5101	Charleston Cnty SD	0.00	0.00	0.00	0.00	43
44 34-2730	5111	Cherokee Cnty SD	363.40	25.06	25.06	0.00	44
45 34-2730	5131	Chesterfield Cnty SD	2,022.57	279.45	279.45	0.00	45
46 34-2730	5140	Clarendon Cnty SD	2,089.22	301.34	301.34	0.00	46
47 34-2730	5161	Darlington Cnty SD	5,111.48	846.51	846.51	0.00	47
48 34-2730	5170	Dillon Cnty SD	1,770.50	173.81	173.81	0.00	48
49 34-2730	5261	Horry Cnty SD	5,525.52	471.52	471.52	0.00	49
50 34-2730	5320	Lexington Cnty SD	5,235.10	702.01	702.01	0.00	50
51 14-4701	SALE6	Sales Tax	645,107.27	89,140.27	89,140.27	0.00	51
52 14-4702	USE6	Use Tax	(3,453.13)	(243.43)	223.80	467.23	52
Total (52)			767,004.50	105,676.89	106,154.80	477.91	

SCDOR

Misty Johnson, Tax Coordinator
RENT A CENTER EAST INC
5501 Headquarters Drive
Plano, TX 75024

File Number: various
Tax Type: Sales Tax
Audit Control #: 01/21/4888

Audit periods: From 04/01/2007 To 10/31/2010

Explanation of Audit Adjustments and Assessments

It was found that during the audit period, the taxpayer did not correctly accrue use tax. They were over-accruing on certain invoices (ex. contractors, non taxable freight, and labor) and not accruing at all on other invoices (ex. supplies, etc.). It was also found that the taxpayer did not tax some rentals, delivery fees, reinstatement fees, prepaid minutes, optional liability waivers, and various other items; all of which should be included in gross proceeds. As all of these transactions were listed as allowable deductions on the sales tax returns; my objection to these items causes the deductions to be substantially overstated.

The negligence penalty was applied because the taxpayer failed to tax numerous items for such a long period of time.

FOR AN ADJUSTMENT TO USE TAX

A use tax is imposed on the storage, use, or other consumption in the State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of five percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State:

SC Code Section 12-36-1310

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to:

- _ Section 12-36-920(A) - accommodations for transients
- _ Section 12-36-2110 - Items subject to a maximum sales and use tax
- _ Section 12-36-910(d)(1) - unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons.

SC Code Section 12-36-1110

Every person storing, using, or otherwise consuming in this State tangible personal property purchased at retail, is liable for the use tax, until the tax is paid to the state.

SC Code Section 12-36-1330

Schedule AS-36-3 lists all adjustments to use tax individually showing the vendor, the product and purchase price.

FOR AN ADJUSTMENT TO DEDUCTIONS

It is presumed that all gross proceeds are subject to the tax, until the contrary is established. The burden of proof that the sale of tangible personal property is not a sale at retail is on the seller.

SC Code Section 12-36-950

Schedule **AS-36-5** lists all adjustments to deductions individually.

Local Sales and Use Taxes

Counties may levy sales and use tax upon referendum approval. Such taxes are to be administered and collected by the SC Department of Revenue in the manner that sales and use taxes are administered and collected pursuant to Chapter 36 of Title 12. For more detailed information refer to SC Information Letter 05-1 of January 6, 2005 and Chapter 10 of Title 4.

Since a sale is not completed until delivery is made, items shipped from a local option County into a non-local option County for first receipt by the customer are not subject to the local option tax and deliveries made into a local option County are subject to the local option tax of that county.

INTEREST

Interest on taxes owed and refunds due is computed using the Internal Revenue Service interest rates <*> for underpayment compounded daily. Generally, interest is not paid during the first seventy-five days after filing a request for refund. SC Code Section 12-54-25

* Note reduction of interest rate on refunds. Section 72, Proviso 72.17 and Section 89, Proviso 89.142 of 2010 House Bill 4657, Part IB direct the Department to reduce the rate of interest paid on eligible refunds by a total of three percentage points from the above listed rates for refunds paid from July 1, 2010 through June 30, 2011.

NEGLIGENCE (ALL PERIODS)

If any part of an underpayment of tax or part of a claim for refund of tax is due to negligence or disregard of regulations, there must be added to the tax an amount equal to the sum of five percent of the underpayment and an amount equal to fifty percent of the interest payable under Section 12-54-25. SC Code Section 12-54-43(F)(1)

SCDOR

P.O. Box 125
Columbia, SC 29214

April 30, 2012

RENT WAY INC
RENT WAY INC
5501 HEADQUARTERS DR
PLANO, TX 75024

Type Tax: Sales Tax
Period: 04/01/2007 to 12/31/2009
File #: various
Audit #: 01/21/4887
Response Date: 07/30/2012

Dear Misty:

The Department's audit of the above referenced tax return(s) has been completed. Enclosed is the audit report which explains our **Proposed Assessment**.

If you agree with the changes detailed in the enclosed report, the balance on Form AS-54 should be remitted to this office within 30 days from the date of this letter. Otherwise, additional interest, and penalties, if applicable, will accrue. Please include a copy of the AS-54 Distribution, or, Processing Report with your check to insure proper processing.

If you agree with the Department's adjustments, but are unable to make full payment at this time, please complete the enclosed Waiver of Restriction on Assessment (SC 870) and return it to this office as soon as possible. Upon receipt of this document, a final assessment will be issued.

If you disagree with any of the adjustments of tax, interest, or penalties that have been proposed by the Department, a written protest must be submitted to this office by the response date. Enclosed is an information guide (CID-6) which explains the information that must be included in your protest. The protest may be submitted on the enclosed form or by letter.

If you do not respond to this letter by the response date, you will have waived your right to appeal the proposed assessment and the Department will issue the final assessment and begin collection action.

Should you have any questions, please do not hesitate to contact this office.

Sincerely,
Columbia Taxpayer Service Center

Dawn Taylor
Foreign Tax Auditor
taylorde@sctax.org
(803) 898-5618

ROA_00375

SCDOR

C-245

Rev. 08/17/01-TM

PROTEST

Section I: Taxpayer Identification

Misty Johnson, Tax coordinator	File Number: various
RENT WAY INC	Tax Type: Sales Tax
5501 HEADQUARTERS DR	Audit Control #: 01/21/4887
PLANO, TX 75024	Telephone #: 972-801-1429
	Fax #:
Audit periods: From 04/01/2007 To 12/31/2009	

Section II: Department of Revenue Document to be Attached:

Please attach a copy of the Department of Revenue document or notice you received which led to the filing of this protest.

Section III: Reasons for Protest:

State all the reasons you disagree, including a statement of facts supporting your position and the law or other authority upon which you rely. (If the amount of proposed assessments is for income less than \$2,500 you need not provide your authority unless you are a partnership, S corporation, an exempt organization or an employee plan.)

(Add additional sheets if necessary.)

Taxpayer's Signature: _____ Date: _____

Spouse's Signature: _____ Date: _____

Corporation name: _____

By: _____ Title: _____ Date: _____

INSTRUCTIONS

The purpose of this form is to reduce to writing those facts and issues with which you disagree. If more space is needed, additional sheets may accompany this form. A protest may be filed by letter rather than using this form; however, all of the information required by this form must be included in the letter and you must comply with the requirements concerning signatures. If you filed a joint income tax return, both you and your spouse must sign. If the protest is for a corporation, it must include the corporation's name followed by the signature and title of the corporate officer authorized to sign. If the dispute concerns a partnership or S corporation, then a separate form must be signed by each partner or shareholder. If you have any questions concerning this matter, please call the telephone number on the notice or document with which you disagree. Please return document to the Department of Revenue address shown on the notice or document with which you disagree.

ROA_00376

SCDOR

SC-870
Rev. 08/03/01-TMWAIVER OF RESTRICTION ON ASSESSMENT
AND COLLECTION OF ADDITIONAL TAX OR
ACCEPTANCE OF OVERASSESSMENTMisty Johnson
RENT WAY INC
5501 HEADQUARTERS DR
PLANO, TX 75024File Number: various
Tax Type: Sales Tax
Audit Control #: 01/21/4887

Audit periods: From 04/01/2007 To 12/31/2009

Increase (Decrease) in Tax, Interest and Penalties

Tax	Interest	Penalty	Total
309,654.51	52,458.18	42,995.79	405,108.48

Interest and Penalty computed through: 05/30/2012

This information was prepared by: Telephone: (803) 898-5618

CONSENT TO ASSESSMENT AND COLLECTION OF ADDITIONAL
TAX OR ACCEPTANCE OF REFUND DETERMINATION

I have read and understand the instructions on page two of this form. I consent to the assessment and collection of any additional tax and penalties or accept any decrease in tax and penalties shown above, plus any interest provided by law. I understand that by signing this waiver, I consent to the above determination(s) and must pay the additional amounts prior to contesting this matter any further.

Taxpayer's Signature: _____ Date: _____

Spouse's Signature: _____ Date: _____

Corporation name: _____

By: _____ Title: _____ Date: _____

Waiver of Restrictions on Assessment
and Collection of Additional Tax or
Acceptance of overassessment

General Information & Instructions

IMPORTANT: By signing this form, the taxpayer (1) agrees to pay the tax, interest, and penalties stated to be due; and (2) gives up the right to appeal this matter further. Interest and applicable penalties will continue to accrue until the balance due the Department is paid in full. Signing this form does **not** affect your right to file a claim for refund and it does **not** prevent the Department of Revenue from assessing additional tax found to be due at a later date.

NOTE: If you wish to give up your right to file a claim for refund and prevent the Department of Revenue from assessing additional amounts at a later date, a Form SC870AD should be executed in lieu of this SC870.

CLAIM FOR REFUND

Executing this document does not prevent you from seeking a refund of State taxes paid. The refund claim must be filed within three years from the date the returns was filed, or two years from the date of the payment of the tax, whichever is later. See SC Information Guide OGC-25 for more information about his claim for refund procedure.

EXECUTING THIS FORM

If this waiver relates to a joint individual income tax return, both husband and wife must sign the waiver.

If the SC870 is executed on behalf of a corporation, the waiver must include the corporation's name as well as the signature and title of the corporate officer executing this document

If this waiver is associated with an income tax examination of a partnership or "S" corporation, each partner or shareholder must execute a separate form.

If this waiver is signed by a person acting in a fiduciary capacity (for example, a personal administrator or trustee) Internal Revenue Service Form 56, Notice Concerning Fiduciary Relationship, must accompany this form unless previously provided.

An Attorney, CPA, or other agent may execute this form on behalf of a client provided such authority is granted in a power of attorney. The power of attorney must accompany this form unless previously provided.

GENERAL INFORMATION

We have an agreement with the Internal Revenue Service which provides for the exchange of tax information. If this change affects your income tax return(s), amended federal return(s) may need to be filed.

If you have any questions about this waiver, please contact the preparer.



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

TAXPAYER INFORMATION

Taxpayer ID: [REDACTED]		Folder ID: RENT WAY INC	FEIN: [REDACTED]	
Legal Name: RENT WAY INC		DBA: RENT WAY INC		
Mailing Address 1: 5501 HEADQUARTERS DR PLANO, TX 75024		Record Location 1: 5501 HEADQUARTERS DR PLANO, TX 75024		
Contact Person: Misty Johnson		E-Mail: misty.johnson@rentacenter.com		
Title: Tax coordinator	Telephone: 972-801-1429	Fax:	No. Locations: 39	
Date Case Started: 05/06/2010	Date Case Completed: 04/18/2012	Taxpayer 1:		
Taxpayer 2:	Taxpayer 3:	Taxpayer 4:	Taxpayer 5:	

SALES TAX AUDIT INFORMATION

Business Name: RENT WAY INC		License Number: various		Audit Control Number: 01/21/4887	
Location Address 1:		Location ID:		Tax Type: Sales Tax	
Location Address 2:		County Code:		City Code:	
Type of Ownership: Corporation		Ownership Other:		Date Audit Started: 05/06/2010	Date Audit Completed: 04/18/2012
Beginning Period: 04/01/2007		Ending Period: 12/31/2009		Reporting Interval: Monthly	Within City Limits: N
SIC Code: 532299					
Auditor ID 1: 0098	Auditor Name 1: Jack L. Cain	Percent 1: 186.75	Hours 1:	Business Category: Rental and Leasing Services	
Auditor ID 2: J300	Auditor Name 2: Dawn Taylor	Percent 2: 100	Hours 2: 31.5	Type of Business: All Other Consumer Goods Rental	
Auditor ID 3:	Auditor Name 3:	Percent 3:	Hours 3:	Audit Status: Case closed	
Audit 1:	Audit 2:	Audit 3:	Audit 4:	Audit 5:	
Schedules Used: Deductions 100%.scd; Use - Expense Projection.scd; Use - Fixed Assets 100%.scd					
Report Date: 04/30/2012	Interest & Penalty Date: 05/30/2012	Tax: 309,654.51	Interest: 52,458.18	Penalty: 42,995.79	Total: 405,108.48



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINA

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code

Distribution Report [6320]

AS-54-DIS

All Taxes

G/L Code	Code	DLN	Tax	Interest	Penalty	Total
1 34-2728	1007S		954.21	175.25	153.24	1,282.70
2 34-2728	1008S		1.04	0.00	0.08	1.12
3 34-2728	1010S		1,317.19	214.79	173.25	1,705.23
4 34-2726	1012S		86.32	9.61	9.14	105.07
5 34-2728	1018S		1,459.16	234.88	190.38	1,884.42
6 34-2726	1021S		2,799.80	445.37	368.47	3,613.64
7 34-2726	1024S		1,086.68	201.93	155.32	1,443.93
8 34-2726	1025S		1,356.96	207.52	171.61	1,736.09
9 34-2726	1026S		1,792.87	314.43	257.52	2,364.82
10 34-2726	1036S		1,017.97	198.96	150.43	1,367.36
11 34-2726	1038S		1,854.01	315.10	254.69	2,423.80
12 34-2726	1046S		225.78	52.78	37.76	316.32
13 34-2721	2062		1,997.10	317.34	258.52	2,572.96

Distribution

TaxMaster 4.4.0.807 - 03/30/2012

04/30/2012 Page 151 of 155

ROA_00380



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINA

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Distribution Report [6320]

AS-54-DIS
All Taxes

G/L Code	Code	DLN	Tax	Interest	Penalty	Total	
14 34-2721	2130		1,402.62	234.81	187.54	1,824.97	
15 34-2721	2139		937.68	162.83	128.34	1,228.85	
16 34-2721	2160		4,699.48	787.09	628.51	6,115.08	
17 34-2721	2208		447.99	105.09	75.05	628.13	1
18 34-2721	2230		393.62	84.84	62.15	540.61	11
19 34-2721	2286		1,710.62	264.48	221.52	2,196.62	19
20 34-2721	2330		329.12	33.47	33.18	395.77	20
21 34-2721	2342		225.82	52.93	37.86	316.61	21
22 34-2721	2380		1,356.96	207.52	171.61	1,736.09	22
23 34-2721	2400		1,430.59	241.85	198.67	1,871.11	23
24 34-2721	2470		1,161.41	200.37	160.30	1,522.08	24
25 34-2721	2498		1,252.59	203.87	164.60	1,621.06	25
26 34-2740	2615X		0.65	0.00	0.05	0.70	26



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Distribution Report [6320]

AS-54-DIS
All Taxe

G/L Code	Code	DLN	Tax	Interest	Penalty	Total	
27 34-2721	2653		216.73	51.02	36.43	304.18	
28 34-2721	2656		1,231.75	194.53	158.87	1,585.15	2
29 34-2721	2686		970.72	161.28	129.19	1,261.19	21
30 34-2721	2940		1,147.54	180.92	147.87	1,476.33	30
31 34-2721	2972		4.29	0.00	0.33	4.62	31
32 34-2730	5101		0.00	0.00	0.00	0.00	32
33 34-2730	5111		1,346.30	221.39	178.01	1,745.70	33
34 34-2730	5131		970.72	161.28	129.19	1,261.19	34
35 34-2730	5170		1.95	0.00	0.15	2.10	35
36 34-2730	5261		504.55	53.00	51.72	609.27	36
37 34-2730	5320		1,423.68	242.58	200.34	1,866.60	37
38 14-4701	SALE6		279,283.92	46,139.17	37,033.79	362,456.88	38
39 14-4702	USE6		(8,745.88)	(214.10)	680.11	(8,279.87)	39
Total (39)			309,654.51	52,458.18	42,995.79	405,108.48	



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINA

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Billing Summary

AS-54-C

All Taxes

Audit: Sales Tax

Adjustment Schedules: Deductions 100%, Use - Expense Projection, Use - Fixed Assets 100%

Tax Type	Tax	Interest	Penalty	Total
1 Beaufort Cnty T 07	954.21	175.25	153.24	1,282.70
2 Berkeley Cnty LO 08	225.82	52.93	37.86	316.61
3 Berkeley Cnty T 08	1.04	0.00	0.08	1.12
4 Charleston Cnty LO 10	2,634.37	429.34	346.41	3,410.12
5 Charleston Cnty SD	0.00	0.00	0.00	0.00
6 Charleston Cnty T 10	1,317.19	214.79	173.25	1,705.23
7 Cherokee Cnty LO 11	329.12	33.47	33.18	395.77
8 Cherokee Cnty SD 11	1,346.30	221.39	178.01	1,745.70
9 Chester Cnty LO 12	937.68	162.83	128.34	1,228.85
10 Chester Cnty CP 12	86.32	9.61	9.14	105.07
11 Chesterfield Cnty LO 13	970.72	161.28	129.19	1,261.19
12 Chesterfield Cnty SD 13	970.72	161.28	129.19	1,261.19
13 Colleton Cnty LO 15	1,147.54	180.92	147.87	1,476.33
14 Dillon Cnty LO 17	447.99	105.09	75.05	628.13
15 Dillon Cnty SD 17	1.95	0.00	0.15	2.10
16 Dorchester Cnty T 18	1,459.16	234.88	190.38	1,884.42
17 Edgefield Cnty LO 19	216.73	51.02	36.43	304.18
18 Fairfield Cnty LO 20	4.29	0.00	0.33	4.62
19 Florence Cnty LO 21	2,872.03	464.85	381.82	3,718.70



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINA

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code

Billing Summary

AS-54-C
All Taxes

Tax Type	Tax	Interest	Penalty	Total
20 Florence Cnty CP 21	2,799.80	445.37	368.47	3,613.64
21 Greenwood Cnty CP 24	1,086.68	201.93	155.32	1,443.93
22 Hampton Cnty LO 25	1,356.96	207.52	171.61	1,736.09
23 Hampton Cnty CP 25	1,356.96	207.52	171.61	1,736.09
24 Myrtle Beach Tourism	0.65	0.00	0.05	0.70
25 Horry Cnty CP 26	1,792.87	314.43	257.52	2,364.82
26 Horry Cnty SD 26	504.55	53.00	51.72	609.27
27 Laurens Cnty LO 30	1,252.59	203.87	164.60	1,621.06
28 Lexington Cnty SD 32	1,423.68	242.58	200.34	1,866.60
29 Marlboro Cnty LO 35	1,997.10	317.34	258.52	2,572.96
30 Newberry Cnty CP 36	1,017.97	198.96	150.43	1,367.36
31 Orangeburg Cnty CP 38	1,854.01	315.10	254.69	2,423.80
32 Pickens Cnty LO 39	393.62	84.84	62.15	540.61
33 Richland Cnty LO 40	4,699.48	787.09	628.51	6,115.08
34 Williamsburg Cnty LO 45	1,430.59	241.85	198.67	1,871.11
35 York Cnty CP 46	225.78	52.78	37.76	316.32
36 Sales Tax	279,283.92	46,139.17	37,033.79	362,456.88
37 Use Tax	(8,745.88)	(214.10)	680.11	(8,279.87)
Total (37)	309,654.51	52,458.18	42,995.79	405,108.48



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code

Billing Report for Sales Tax [SALE6]

AS-5
All Taxes

Audit: Sales Tax

Adjustment Schedules: Deductions 100%, Use - Expense Projection, Use - Fixed Assets 100%

	Period	Measure	Tax Due	Interest	Negligence	Total	
1	04/30/2007	124,147.40	6,207.37	1,675.11	1,147.92	9,030.40	
2	05/31/2007	134,199.46	6,709.97	1,754.94	1,212.97	9,677.88	
3	06/30/2007	157,204.50	9,432.27	2,388.94	1,666.08	13,487.29	
4	07/31/2007	140,060.74	8,403.64	2,057.12	1,448.74	11,909.50	
5	08/31/2007	154,055.26	9,243.32	2,184.73	1,554.53	12,982.58	
6	09/30/2007	135,359.80	8,121.59	1,849.44	1,330.80	11,301.83	
7	10/31/2007	144,830.25	8,689.82	1,911.24	1,390.11	11,991.17	
8	11/30/2007	152,354.58	9,141.27	1,937.47	1,425.80	12,504.54	
9	12/31/2007	152,477.30	9,148.64	1,865.90	1,390.38	12,404.92	
10	01/31/2008	155,601.62	9,336.10	1,841.95	1,387.78	12,565.83	
11	02/29/2008	156,959.28	9,417.56	1,795.68	1,368.72	12,581.96	
12	03/31/2008	150,631.93	9,037.92	1,663.76	1,283.78	11,985.46	
13	04/30/2008	143,601.43	8,616.09	1,537.72	1,199.66	11,353.47	
14	05/31/2008	157,982.18	9,478.93	1,635.09	1,291.49	12,405.51	
15	06/30/2008	142,225.08	8,533.50	1,427.02	1,140.19	11,100.71	
16	07/31/2008	146,621.79	8,797.31	1,429.13	1,154.43	11,380.87	
17	08/31/2008	158,512.14	9,510.73	1,495.30	1,223.19	12,229.22	
18	09/30/2008	145,971.59	8,758.30	1,332.80	1,104.32	11,195.42	
19	10/31/2008	156,558.36	9,393.50	1,374.60	1,156.97	11,925.07	
20	11/30/2008	141,618.59	8,497.12	1,192.46	1,021.09	10,710.67	
21	12/31/2008	152,685.32	9,161.12	1,241.71	1,078.91	11,481.74	
22	01/31/2009	164,023.92	9,841.44	1,286.56	1,135.35	12,263.35	
23	02/28/2009	140,670.40	8,440.22	1,066.85	955.44	10,462.51	
24	03/31/2009	138,787.06	8,327.22	1,017.96	925.34	10,270.52	
25	04/30/2009	127,256.62	7,635.40	905.26	834.40	9,375.06	
26	05/31/2009	141,576.04	8,494.56	972.81	911.13	10,378.50	
27	06/30/2009	131,861.85	7,911.71	879.08	835.13	9,625.92	
28	07/31/2009	134,104.48	8,046.27	863.67	834.15	9,744.09	
29	08/31/2009	123,417.95	7,405.08	766.17	753.34	8,924.59	
30	09/30/2009	118,985.56	7,139.13	713.65	713.78	8,566.56	
31	10/31/2009	133,271.22	7,996.27	769.51	784.57	9,550.35	
32	11/30/2009	111,777.21	6,706.63	620.44	645.55	7,972.62	
33	12/31/2009	128,398.70	7,703.92	685.10	727.75	9,116.77	
34	01/31/2010	0.00	0.00	0.00	0.00	0.00	
35	02/28/2010	0.00	0.00	0.00	0.00	0.00	
36	03/31/2010	0.00	0.00	0.00	0.00	0.00	
37	04/30/2010	0.00	0.00	0.00	0.00	0.00	
38	05/31/2010	0.00	0.00	0.00	0.00	0.00	



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINA

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code

Billing Report for Sales Tax [SALE6]

AS-5
All Taxes

Period	Measure	Tax Due	Interest	Negligence	Total
39 06/30/2010	0.00	0.00	0.00	0.00	0.00
40 07/31/2010	0.00	0.00	0.00	0.00	0.00
41 08/31/2010	0.00	0.00	0.00	0.00	0.00
42 09/30/2010	0.00	0.00	0.00	0.00	0.00
43 10/31/2010	0.00	0.00	0.00	0.00	0.00
Total (43)	4,697,789.61	279,283.92	46,139.17	37,033.79	362,456.88



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code

Penalty Detail for Sales Tax [SALE6]

AS-54-PE
All Taxe

	Period	Negligence	Total	
1	04/30/2007	1,147.92	1,147.92	
2	05/31/2007	1,212.97	1,212.97	
3	06/30/2007	1,666.08	1,666.08	
4	07/31/2007	1,448.74	1,448.74	
5	08/31/2007	1,554.53	1,554.53	
6	09/30/2007	1,330.80	1,330.80	
7	10/31/2007	1,390.11	1,390.11	
8	11/30/2007	1,425.80	1,425.80	
9	12/31/2007	1,390.38	1,390.38	
10	01/31/2008	1,387.78	1,387.78	10
11	02/29/2008	1,368.72	1,368.72	11
12	03/31/2008	1,283.78	1,283.78	12
13	04/30/2008	1,199.66	1,199.66	13
14	05/31/2008	1,291.49	1,291.49	14
15	06/30/2008	1,140.19	1,140.19	15
16	07/31/2008	1,154.43	1,154.43	16
17	08/31/2008	1,223.19	1,223.19	17
18	09/30/2008	1,104.32	1,104.32	18
19	10/31/2008	1,156.97	1,156.97	19
20	11/30/2008	1,021.09	1,021.09	20
21	12/31/2008	1,078.91	1,078.91	21
22	01/31/2009	1,135.35	1,135.35	22
23	02/28/2009	955.44	955.44	23
24	03/31/2009	925.34	925.34	24
25	04/30/2009	834.40	834.40	25
26	05/31/2009	911.13	911.13	26
27	06/30/2009	835.13	835.13	27
28	07/31/2009	834.15	834.15	28
29	08/31/2009	753.34	753.34	29
30	09/30/2009	713.78	713.78	30
31	10/31/2009	784.57	784.57	31
32	11/30/2009	645.55	645.55	32
33	12/31/2009	727.75	727.75	33
34	01/31/2010	0.00	0.00	34
35	02/28/2010	0.00	0.00	35
36	03/31/2010	0.00	0.00	36
37	04/30/2010	0.00	0.00	37
38	05/31/2010	0.00	0.00	38

Penalty Detail

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04/30/2012 Page 145 of 155

ROA_00387



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINA

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID:
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Cod

Penalty Detail for Sales Tax [SALE6]

AS-54-PE
All Tax

Period	Negligence	Total
39 06/30/2010	0.00	0.00
40 07/31/2010	0.00	0.00
41 08/31/2010	0.00	0.00
42 09/30/2010	0.00	0.00
43 10/31/2010	0.00	0.00
Total (43)	37,033.79	37,033.79



SOUTH CAROLINA DEPARTMENT OF REVENUE

Audit Services

FINAL

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code

Billing Report for Use Tax [USE]

AS-5
All Taxe

Audit: Sales Tax

Adjustment Schedules: Deductions 100%, Use - Expense Projection, Use - Fixed Assets 100%

	Period	Measure	Tax Due	Interest	Negligence	Total	
1	04/30/2007	489.06	24.45	6.61	4.53	35.59	
2	05/31/2007	254.06	12.70	3.31	2.29	18.30	
3	06/30/2007	(75.94)	(4.56)	(0.37)	0.41	(4.52)	
4	07/31/2007	189.06	11.34	2.76	1.95	16.05	
5	08/31/2007	489.06	29.34	6.95	4.94	41.23	
6	09/30/2007	(811.50)	(48.69)	(3.38)	4.12	(47.95)	
7	10/31/2007	(2,666.94)	(160.02)	(10.43)	13.22	(157.23)	
8	11/30/2007	(2,383.28)	(143.00)	(8.69)	11.50	(140.19)	
9	12/31/2007	(20,516.44)	(1,230.99)	(69.68)	96.39	(1,204.28)	
10	01/31/2008	489.06	29.34	5.79	4.36	39.49	
11	02/29/2008	(8,274.94)	(496.50)	(24.77)	37.21	(484.06)	
12	03/31/2008	2,725.06	163.50	30.09	23.22	216.81	
13	04/30/2008	2,713.06	162.78	29.07	22.67	214.52	
14	05/31/2008	(9,306.99)	(558.42)	(23.28)	39.56	(542.14)	
15	06/30/2008	(13,530.89)	(811.85)	(32.20)	56.69	(787.36)	
16	07/31/2008	(6,002.19)	(360.13)	(13.67)	24.84	(348.96)	
17	08/31/2008	(1,251.45)	(75.09)	(2.69)	5.10	(72.68)	
18	09/30/2008	(1,452.19)	(87.13)	(2.96)	5.84	(84.25)	
19	10/31/2008	(343.94)	(20.64)	(0.62)	1.34	(19.92)	
20	11/30/2008	489.06	29.34	4.11	3.52	36.97	
21	12/31/2008	(15,070.45)	(904.23)	(24.19)	57.31	(871.11)	
22	01/31/2009	(1,741.85)	(104.51)	(2.61)	6.53	(100.59)	
23	02/28/2009	(12,583.64)	(755.02)	(17.70)	46.60	(726.12)	
24	03/31/2009	(2,440.62)	(146.44)	(3.25)	8.95	(140.74)	
25	04/30/2009	(14,078.16)	(844.69)	(18.08)	51.27	(811.50)	
26	05/31/2009	(10,602.20)	(636.13)	(13.03)	38.32	(610.84)	
27	06/30/2009	64.06	3.84	0.42	0.40	4.66	
28	07/31/2009	(6,710.43)	(402.63)	(7.58)	23.92	(386.29)	
29	08/31/2009	(2,840.94)	(170.46)	(3.05)	10.05	(163.46)	
30	09/30/2009	(16,464.36)	(987.86)	(16.93)	57.86	(946.93)	
31	10/31/2009	(1,812.01)	(108.72)	(1.77)	6.32	(104.17)	
32	11/30/2009	(687.69)	(41.26)	(0.62)	2.37	(39.51)	
33	12/31/2009	(1,892.29)	(113.54)	(1.66)	6.51	(108.69)	
34	01/31/2010	0.00	0.00	0.00	0.00	0.00	
35	02/28/2010	0.00	0.00	0.00	0.00	0.00	
36	03/31/2010	0.00	0.00	0.00	0.00	0.00	
37	04/30/2010	0.00	0.00	0.00	0.00	0.00	
38	05/31/2010	0.00	0.00	0.00	0.00	0.00	

Billing Sheet

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ROA_00389



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code

Billing Report for Use Tax [USE]

AS-5
All Taxe

Period	Measure	Tax Due	Interest	Negligence	Total
39 06/30/2010	0.00	0.00	0.00	0.00	0.00
40 07/31/2010	0.00	0.00	0.00	0.00	0.00
41 08/31/2010	0.00	0.00	0.00	0.00	0.00
42 09/30/2010	0.00	0.00	0.00	0.00	0.00
43 10/31/2010	0.00	0.00	0.00	0.00	0.00
Total (43)	(145,639.79)	(8,745.88)	(214.10)	680.11	(8,279.87)



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINA

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Cod

Penalty Detail for Use Tax [USE]

AS-54-PE
All Tax

	Period	Negligence	Total	
1	04/30/2007	4.53	4.53	
2	05/31/2007	2.29	2.29	
3	06/30/2007	0.41	0.41	
4	07/31/2007	1.95	1.95	
5	08/31/2007	4.94	4.94	
6	09/30/2007	4.12	4.12	
7	10/31/2007	13.22	13.22	
8	11/30/2007	11.50	11.50	
9	12/31/2007	96.39	96.39	
10	01/31/2008	4.36	4.36	1
11	02/29/2008	37.21	37.21	1
12	03/31/2008	23.22	23.22	1
13	04/30/2008	22.67	22.67	1
14	05/31/2008	39.56	39.56	14
15	06/30/2008	56.69	56.69	15
16	07/31/2008	24.84	24.84	16
17	08/31/2008	5.10	5.10	17
18	09/30/2008	5.84	5.84	18
19	10/31/2008	1.34	1.34	19
20	11/30/2008	3.52	3.52	20
21	12/31/2008	57.31	57.31	21
22	01/31/2009	6.53	6.53	22
23	02/28/2009	46.60	46.60	23
24	03/31/2009	8.95	8.95	24
25	04/30/2009	51.27	51.27	25
26	05/31/2009	38.32	38.32	26
27	06/30/2009	0.40	0.40	27
28	07/31/2009	23.92	23.92	28
29	08/31/2009	10.05	10.05	29
30	09/30/2009	57.86	57.86	30
31	10/31/2009	6.32	6.32	31
32	11/30/2009	2.37	2.37	32
33	12/31/2009	6.51	6.51	33
34	01/31/2010	0.00	0.00	34
35	02/28/2010	0.00	0.00	35
36	03/31/2010	0.00	0.00	36
37	04/30/2010	0.00	0.00	37
38	05/31/2010	0.00	0.00	38

Penalty Detail

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04/30/2012 Page 149 of 155

ROA_00391



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code

Penalty Detail for Use Tax [USE]

AS-54-PE
All Taxe

Period	Negligence	Total
39 06/30/2010	0.00	0.00
40 07/31/2010	0.00	0.00
41 08/31/2010	0.00	0.00
42 09/30/2010	0.00	0.00
43 10/31/2010	0.00	0.00
Total (43)	680.11	680.11



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: xx-xxx7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

Filing Detail

AS-54-FIL
All Taxe

	Last Day of Period	Due Date	Date Filed	Negligence	
1	04/30/2007	05/21/2007	05/21/2007	X	
2	05/31/2007	06/20/2007	06/20/2007	X	
3	06/30/2007	07/20/2007	07/20/2007	X	
4	07/31/2007	08/20/2007	08/20/2007	X	
5	08/31/2007	09/20/2007	09/20/2007	X	
6	09/30/2007	10/22/2007	10/22/2007	X	
7	10/31/2007	11/20/2007	11/20/2007	X	
8	11/30/2007	12/20/2007	12/20/2007	X	
9	12/31/2007	01/22/2008	01/22/2008	X	
10	01/31/2008	02/20/2008	02/20/2008	X	10
11	02/29/2008	03/20/2008	03/20/2008	X	11
12	03/31/2008	04/21/2008	04/21/2008	X	12
13	04/30/2008	05/20/2008	05/20/2008	X	13
14	05/31/2008	06/20/2008	06/20/2008	X	14
15	06/30/2008	07/21/2008	07/21/2008	X	15
16	07/31/2008	08/20/2008	08/20/2008	X	16
17	08/31/2008	09/22/2008	09/22/2008	X	17
18	09/30/2008	10/20/2008	10/20/2008	X	18
19	10/31/2008	11/20/2008	11/20/2008	X	19
20	11/30/2008	12/22/2008	12/22/2008	X	20
21	12/31/2008	01/20/2009	01/20/2009	X	21
22	01/31/2009	02/20/2009	02/20/2009	X	22
23	02/28/2009	03/20/2009	03/20/2009	X	23
24	03/31/2009	04/20/2009	04/20/2009	X	24
25	04/30/2009	05/20/2009	05/20/2009	X	25
26	05/31/2009	06/22/2009	06/22/2009	X	26
27	06/30/2009	07/20/2009	07/20/2009	X	27
28	07/31/2009	08/20/2009	08/20/2009	X	28
29	08/31/2009	09/21/2009	09/21/2009	X	29
30	09/30/2009	10/20/2009	10/20/2009	X	30
31	10/31/2009	11/20/2009	11/20/2009	X	31
32	11/30/2009	12/21/2009	12/21/2009	X	32
33	12/31/2009	01/20/2010	01/20/2010	X	33
34	01/31/2010	02/22/2010			34
35	02/28/2010	03/22/2010			35
36	03/31/2010	04/20/2010			36
37	04/30/2010	05/20/2010			37
38	05/31/2010	06/21/2010			38
39	06/30/2010	07/20/2010			39
	07/31/2010	08/20/2010			40

Filing Detail

TaxMaster 4.4.0.807 - 03/30/2012

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ROA_00393



SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

FINAL

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
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Interest & Penalty Date: 05/30/2012 County/Municipality Code

Filing Detail

AS-54-FIL
All Taxe

	Last Day of Period	Due Date	Date Filed	Negligence
41	08/31/2010	09/20/2010		
42	09/30/2010	10/20/2010		
43	10/31/2010	11/22/2010		
Total (43)				



SOUTH CAROLINA DEPARTMENT OF REVENUE

Audit Services

FINAL

RENT WAY INC
5501 HEADQUARTERS DR, PLANO, TX 75024
RENT WAY INC

SID: [REDACTED]
FEIN/SSN: XX-XXX7782
File#: various
ACN: 01/21/4887

Period: 04/01/2007 thru 12/31/2009 (33 Mths)
Auditor: Jack L. Cain 0098
Auditor: Dawn Taylor 0300
Interest & Penalty Date: 05/30/2012 County/Municipality Code:

GAL Distribution Report

AS-54-D/I
All Taxes

G/L Code	Tax Code	Local Name	Tax	Normal Interest	Interest Billed/Paid	GAL Portion
1 34-2728	1007S	Beaufort Cnty TR	954.21	162.17	175.25	13.08
2 34-2728	1008S	Berkeley Cnty TR	1.04	0.00	0.00	0.00
3 34-2728	1010S	Charleston Cnty TR	1,317.19	214.79	214.79	0.00
4 34-2728	1012S	Chester Cnty CP	86.32	9.61	9.61	0.00
5 34-2728	1018S	Dorchester Cnty TR	1,459.16	234.88	234.88	0.00
6 34-2726	1021S	Florence Cnty CP	2,799.80	439.97	445.37	5.40
7 34-2726	1024S	Greenwood Cnty CP	1,086.68	201.93	201.93	0.00
8 34-2726	1025S	Hampton Cnty CP	1,356.96	207.52	207.52	0.00
9 34-2726	1026S	Horry Cnty CP	1,792.87	304.71	314.43	9.72
10 34-2726	1036S	Newberry Cnty CP	1,017.97	198.96	198.96	0.00
11 34-2726	1038S	Orangeburg Cnty CP	1,854.01	311.38	315.10	3.72
12 34-2726	1046S	York Cnty CP	225.78	52.78	52.78	0.00
13 34-2721	2062	Bennettsville	1,997.10	317.34	317.34	0.00
14 34-2721	2130	Charleston 10	1,402.62	234.81	234.81	0.00
15 34-2721	2139	Chester	937.68	162.83	162.83	0.00
16 34-2721	2160	Columbia 40	4,699.48	787.09	787.09	0.00
17 34-2721	2208	Dillon	447.99	105.09	105.09	0.00
18 34-2721	2230	Easley	393.62	84.84	84.84	0.00
19 34-2721	2286	Florence	1,710.62	272.26	264.48	(7.78)
20 34-2721	2330	Gaffney	329.12	33.47	33.47	0.00
21 34-2721	2342	Goose Creek	225.82	52.93	52.93	0.00
22 34-2721	2380	Hampton	1,356.96	207.52	207.52	0.00
23 34-2721	2400	Hemingway	1,430.59	236.08	241.85	5.77
24 34-2721	2470	Lake City	1,161.41	187.19	200.37	13.18
25 34-2721	2498	Laurens	1,252.59	203.87	203.87	0.00
26 34-2740	2615X	Myrtle Beach	0.65	0.00	0.00	0.00
27 34-2721	2653	N. Augusta 19	216.73	51.02	51.02	0.00
28 34-2721	2656	N. Charleston 10	1,231.75	194.53	194.53	0.00
29 34-2721	2686	Pageland	970.72	161.28	161.28	0.00
30 34-2721	2940	Walterboro	1,147.54	180.92	180.92	0.00
31 34-2721	2972	Winnsboro	4.29	0.00	0.00	0.00
32 34-2730	5101	Charleston Cnty SD	0.00	0.00	0.00	0.00
33 34-2730	5111	Cherokee Cnty SD	1,346.30	221.39	221.39	0.00
34 34-2730	5131	Chesterfield Cnty SD	970.72	161.28	161.28	0.00
35 34-2730	5170	Dillon Cnty SD	1.95	0.00	0.00	0.00
36 34-2730	5261	Horry Cnty SD	504.55	53.00	53.00	0.00
37 34-2730	5320	Lexington Cnty SD	1,423.68	236.26	242.58	6.32
38 14-4701	SALE6	Sales Tax	279,283.92	46,139.17	46,139.17	0.00
39 14-4702	USE6	Use Tax	(8,745.88)	(1,259.53)	(214.10)	1,045.43
Total (39)			309,654.51	51,363.34	52,458.18	1,094.84

SCDOR

Misty Johnson, Tax coordinator
RENT WAY INC
5501 HEADQUARTERS DR
PLANO, TX 75024

File Number: various
Tax Type: Sales Tax
Audit Control #: 01/21/4887

Audit periods: From 04/01/2007 To 12/31/2009

Explanation of Audit Adjustments and Assessments

It was found that during the audit period, the taxpayer did not correctly accrue use tax. They were over-accruing on certain invoices (ex. contractors, non taxable freight, and labor) and not accruing at all on other invoices (ex. supplies, etc.). It was also found that the taxpayer did not tax some rentals, delivery fees, reinstatement fees, prepaid minutes, optional liability waivers, and various other items; all of which should be included in gross proceeds. As all of these transactions were listed as allowable deductions on the sales tax returns; my objection to these items causes the deductions to be substantially overstated.

The negligence penalty was applied because the taxpayer failed to tax numerous items for such a long period of time.

FOR AN ADJUSTMENT TO USE TAX

A use tax is imposed on the storage, use, or other consumption in the State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of five percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

SC Code Section 12-36-1310

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to:

- Section 12-36-920(A) - accommodations for transients
- Section 12-36-2110 - items subject to a maximum sales and use tax
- Section 12-36-910(d)(1) - unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons.

SC Code Section 12-36-1110

Every person storing, using, or otherwise consuming in this State tangible personal property purchased at retail, is liable for the use tax, until the tax is paid to the state.

SC Code Section 12-36-1330

Schedule AS-36-3 lists all adjustments to use tax individually showing the vendor, the product and purchase price.

FOR AN ADJUSTMENT TO DEDUCTIONS

It is presumed that all gross proceeds are subject to the tax, until the contrary is established. The burden of proof that the sale of tangible personal property is not a sale at retail is on the seller.

SC Code Section 12-36-950

Schedule **AS-36-5** lists all adjustments to deductions individually.

Local Sales and Use Taxes

Counties may levy sales and use tax upon referendum approval. Such taxes are to be administered and collected by the SC Department of Revenue in the manner that sales and use taxes are administered and collected pursuant to Chapter 36 of Title 12. For more detailed information refer to SC Information Letter 05-1 of January 6, 2005 and Chapter 10 of Title 4.

Since a sale is not completed until delivery is made, items shipped from a local option County into a non-local option County for first receipt by the customer are not subject to the local option tax and deliveries made into a local option County are subject to the local option tax of that county.

INTEREST

Interest on taxes owed and refunds due is computed using the Internal Revenue Service interest rates <*> for underpayment compounded daily. Generally, interest is not paid during the first seventy-five days after filing a request for refund. SC Code Section 12-54-25

* Note reduction of interest rate on refunds, Section 72, Proviso 72.17 and Section 89, Proviso 89.142 of 2010 House Bill 4657, Part IB direct the Department to reduce the rate of interest paid on eligible refunds by a total of three percentage points from the above listed rates for refunds paid from July 1, 2010 through June 30, 2011.

NEGLIGENCE (ALL PERIODS)

If any part of an underpayment of tax or part of a claim for refund of tax is due to negligence or disregard of regulations, there must be added to the tax an amount equal to the sum of five percent of the underpayment and an amount equal to fifty percent of the interest payable under Section 12-54-25. SC Code Section 12-54-43(F)(1)

State of South Carolina
Department of Revenue
Office of General Counsel, Tax, and Regulatory Services
300A Outlet Pointe Blvd. (29210), P.O. Box 12265, Columbia, South Carolina 29211
Telephone (803) 898-5130 Telecopier (803) 896-0171

November 18, 2013

Misty Johnson
Tax Coordinator
5501 Headquarters Drive
Plano, TX 75024

RE: Department Determination - Rent A Center East, Inc.

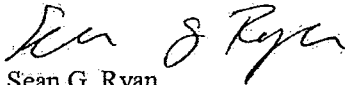
Dear Ms. Johnson:

Enclosed is the South Carolina Department of Revenue's Determination in the above-referenced matter. If you disagree with the Determination, you may request a contested case hearing before an Administrative Law Judge. If you choose to pursue such remedy, you must do so within thirty (30) days of the date of this letter. If you fail to respond within this time limitation, you will lose your right to appeal the Department Determination and your protest will be ended. Should you desire a contested case hearing, you must complete the enclosed request form and mail it, along with a \$500 filing fee, to the Administrative Law Court at the address stated on the form's instruction sheet.

The Administrative Law Court rules require that you also send me a copy of your request. My address is as follows: PO Box 12265, Columbia, SC 29211.

Sincerely,

OFFICE OF GENERAL COUNSEL, TAX, AND REGULATORY SERVICES


Sean G. Ryan
Managing Counsel for Litigation

SGR:lbc

Enclosures

DEPARTMENT DETERMINATION

Taxpayer:

Rent A Center East, Inc.
5501 Headquarters Drive
Plano, Texas 75024

Periods Involved:

Sales Tax – April 1, 2007 through October 31, 2010.

Matter in Dispute:

Are the proceeds from Optional Liability Waivers sold at Rent A Center East, Inc.'s (taxpayer) South Carolina stores included in the taxpayer's gross proceeds of sales and therefore subject to sales tax?

Amount in Dispute:

Tax:	\$ 521,694.93
Interest:	\$ 96,652.51 ¹
Total	\$ 618,347.44

Determination:

The proceeds from Optional Liability Waivers sold at the taxpayer's South Carolina stores are included in the taxpayer's gross proceeds of sales and therefore subject to sales tax.

Relevant Facts:

1. The taxpayer operates retail stores that rent and sell tangible personal property in several states, including South Carolina. Such property includes electronics, appliances, furniture, and accessories.
2. For an additional monthly fee, the taxpayer offers its customers the opportunity to purchase an Optional Liability Waiver Provision (Waiver) whereby the taxpayer agrees to waive the customer's liability if the rented property is damaged.
3. The Waiver explicitly states "[t]his Optional Liability Waiver Provision is an additional part of the Rental Agreement."

¹Interest calculated through November 30, 2013. Interest will continue to accrue until this matter is resolved.

4. The cost of a Waiver is determined by taking a percentage of the rental charge. That cost is then added to the rental charge and can be paid as one lump sum.
5. A customer cannot purchase a Waiver without renting tangible personal property from the taxpayer.
6. The taxpayer excluded the monthly fees collected for the Waivers from its gross proceeds of sales and thus no sales tax has been paid on these amounts.
7. The South Carolina Department of Revenue (Department) conducted an audit examination of the taxpayer's sales tax returns for the periods from April 1, 2007 through December 31, 2009. The audit concluded the proceeds from Waivers sold to South Carolina customers must be included in the gross proceeds of sales and therefore subject to sales tax. The Department issued the taxpayer a Notice of Proposed Assessment on April 30, 2012.²
8. Taxpayer protested the assessment by letter dated July 30, 2012.

Analysis:

Proceeds From Optional Liability Waivers Sold At The Taxpayer's South Carolina Stores Are Included In The Taxpayer's Gross Proceeds Of Sales And Therefore Subject To Sales Tax.

A. The Taxpayer's Waivers Are Subject to Sales Tax Pursuant to the South Carolina Code.

Under South Carolina law, "[a] sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person³ engaged or continuing within this State in the business of selling tangible personal property at retail." S.C. Code Ann. § 12-36-910(A) (2000). Tangible personal property is defined under the South Carolina Sales and Use Act as "personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also means services and intangibles

²The Notice of Proposed Assessment included several additional findings and tax, interest, and penalties associated with those findings. It is the Department's understanding that any dispute regarding those additional findings has been resolved and only the Waiver issue remains in dispute.

³For sales and use tax purposes, the term person "includes any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee, any group or combination acting as a unit, the State, any state agency, any instrumentality, authority, political subdivision, or municipality." S.C. Code Ann. § 12-36-30 (2000).

... the sale or use of which is subject to tax under this chapter . . .” S.C. Code Ann. § 12-36-60 (2000). “Gross proceeds of sales” is defined as:

... the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

* * *

(b) the proceeds from the sale of tangible personal property without any deduction for:

(i) the cost of goods sold;

(ii) the cost of materials, labor, or service;

* * *

(vii) any other expenses.

S.C. Code Ann. § 12-36-90 (Supp. 2007). The cost of any service language encompasses any services, including warranty or maintenance services sold with the tangible personal property. The “any other expenses” language encompasses any value derived from any expenses that are ancillary to the purchase of tangible personal property. Ultimately, it is presumed that all gross proceeds are subject to sales tax unless the seller can establish the contrary. S.C. Code Ann. § 12-36-950 (2000). Moreover, the burden of proof that the sale of tangible personal property is not a sale at retail remains on the seller, unless the seller receives a resale certificate from the purchaser indicating that the property is purchased for resale. Id.

Here, the taxpayer operates retail stores in South Carolina that rent and sell electronics, appliances, furniture, and accessories. Therefore the taxpayer is in the business of selling tangible personal property within this State. Moreover, as part of its business of selling tangible personal property, the taxpayer offers customers the option to purchase a Waiver whereby the taxpayer agrees to waive the customer’s liability if the rented property is damaged. The cost of a given Waiver is determined based upon a percentage of the rental cost for the rented property. The cost of a Waiver is included in the customer’s monthly bill and can be paid as one lump sum. The taxpayer does not sell Waivers without a corresponding rental of tangible personal property. Moreover, the taxpayer cannot price a Waiver without a corresponding rental, as the cost of that rental determines the cost of the Waiver. Simply stated, without the rental transaction, the taxpayer would not be able to sell Waivers or receive proceeds from selling Waivers. The taxpayer’s Waiver proceeds are entirely dependent upon the taxpayer’s renting tangible personal property; and the value proceeding or accruing from the rental transaction includes the proceeds from the Waivers. Accordingly, the taxpayer’s gross proceeds must include the proceeds of the rental transaction as well as the proceeds from the sale of the Waiver, and that total amount is subject to sales tax. The taxpayer, however, incorrectly excludes the proceeds from the Waivers from its gross proceeds for sales tax purposes.

In addition to being taxable because the Waiver proceeds fall within the definition of gross proceeds of sales, the taxability of such is further evidenced by § 12-36-910(B)(6). This section explicitly states that sales tax applies to the "sale or renewal of warranty, maintenance or similar service contracts for tangible property, whether or not such contracts are purchased in conjunction with the sale of tangible personal property." Section 12-36-910(B)(6);⁴ see also S. C. Rev. Rul. #06-9).

South Carolina law clearly defines a service contract as:

. . . a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances including, but not limited to, towing, rental, and emergency road service. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling.

S.C. Code Ann. § 38-78-20(12) (2000) (emphasis added).

Here, the Waiver is clearly a service contract for the tangible personal property rented from the taxpayer. This is evidenced by the fact the consumer pays a separately stated price for the Waiver, the Waiver is on a month-to-month basis, and the Waiver clearly indemnifies a customer from the cost of repairs or replacement if the rented property is damaged. Because the Waiver is a service contract, and because service contracts are explicitly subject to sales tax, the proceeds received by the taxpayer from the Waivers sold in its South Carolina stores are subject to sales tax.

⁴In 2011 the General Assembly deleted Subsection (B)(6), but that subsection was in effect during the audit period at issue. Prior to October 1, 2005, when the General Assembly enacted (B)(6), service contracts were only subject to sales tax if contemporaneously purchased with tangible personal property. The enactment of (B)(6) made service contracts taxable regardless of when purchased. For the years after 2011 when (B)(6) was deleted, service contracts are only subject to sales tax if contemporaneously purchased with the tangible personal property. The taxpayer's Waivers are contemporaneously purchased with tangible personal property therefore the changes in legislation do not impact the taxability of the Waivers for the years after the period at issue.

B. Authorities From South Carolina And Other States Support The Department's Position.

The Department's position in this matter is consistent with long standing case law and Department rulings. In Meyers Arnold v. South Carolina Tax Commission, 285 S.C. 303, 328 S.E.2d. 920 (1985), the South Carolina Court of Appeals addressed the definition of the gross proceeds of sales in regards to lay away fees paid in conjunction with lay away sales. Meyers Arnold asserted that in its lay away fees that it charged customers who purchased items on lay away were not part of the gross proceeds of sales and therefore not subject to sales tax. The Court reasoned that but for the lay away sales Meyers Arnold would not receive lay away fees, therefore the lay away fees were included in the gross proceeds of sales and subject to sales tax. The reasoning behind Meyers Arnold is consistent with the Department's position in this matter; but for the renting of tangible personal property, the taxpayer would not receive Waiver proceeds and those proceeds are included in the gross proceeds of sales and subject to sales tax.

In Commission Decision S-D-174 (1986), the Department addressed whether fees paid for damage waivers are subject to sales tax. The taxpayer in that matter, just like the taxpayer in this matter, was in the business of renting tangible personal property. That taxpayer charged a 5% fee for a property damage waiver for the property it rented. The Department determined that the "value accruing from the "sale" included the rental fee and the damage waiver fee. Because the gross proceeds of sales means the value accruing from the sale of tangible personal property, the damage waiver fee is included in the gross proceeds of sales. Citing Meyers Arnold, *supra*, the Department reasoned that but for the lease of tangible personal property the taxpayer would not receive the damage waiver fees, therefore those fees are part of the gross proceeds of sales and subject to sales tax.

In S.C. Rev. Rul. #93-1, the Department addressed whether collision damage waivers offered by an automobile rental company were subject to the sales tax. Just like the taxpayer here, the automobile rental company offered customers the opportunity to buy a waiver whereby the customer was released from liability for any damages occurring during the use of the car. Citing Meyers Arnold, *supra*, and Commission Decision S-D-174, the Department determined that the collision damage waivers were taxable. The Department based its determination upon the fact that but for the lease of the tangible personal property, the taxpayer would not have received the waiver fee. The damage waiver fee is part of the rental transaction and must be included in the gross proceeds of sale subject to tax.

In addition to being supported by South Carolina case law and Department decisions, the Department's position in this matter is further supported by decisions in other states. Rent-A-Center East, Inc., v. Lincoln Parish Sales & Use Tax Com'm, 46,054 (La. App. 2 Cir. 3/9/11), 60 So. 3d 95, 97 writ denied, 2011-0713 (La. 5/20/11), addressed an issue identical to the issue in the present issue. In that case, the Court of Appeals of Louisiana ruled that the proceeds from the taxpayer's liability damage waivers are subject to sales

tax. Consistent with the logic utilized by the South Carolina authorities cited above, in making its ruling the Louisiana court focused upon the fact the waivers do not exist without the renting of tangible personal property. The court points to the facts that a waiver cannot be purchased without a corresponding rental, nor could a waiver be purchased from a different renter. These facts demonstrate that the waiver is merely an incidental part of a rental transaction and therefore the revenue from those waivers is included in the taxpayer's gross proceeds of sales.

Rhode Island also addressed whether optional damage liability waivers are subject to sales tax in a Division of Taxation decision entitled In the Matter of: ***, Taxpayers. That taxpayer was in the business of renting tangible personal property, including televisions, appliances, and furniture. That taxpayer offered its customers the opportunity to purchase a damage waiver, the cost of which was 7.5% of the rental fee. The Rhode Island Division of Taxation found the damage waiver fees to be subject to sales tax. The Division based its decision on the fact there is no value to the damage waiver unless it is purchased in conjunction with renting an item. In fact, a damage waiver cannot be purchased without simultaneously renting an item. Moreover the purchase of a waiver is not truly a separate and distinct transaction because it is entirely dependent upon the rental transaction. The waiver's dependence upon the rental transaction is demonstrated by the fact that a waiver cannot be priced without the rental of an item because the waiver pricing is a percentage of the price of the rental. The foregoing logic is consistent with the South Carolina authorities; but for the rental transactions, waiver proceeds would not exist and such proceeds are therefore included in the gross proceeds of sale.

All of the foregoing authorities focus upon the fact that waiver proceeds would not exist if it were not for the rental transaction. Because the Waiver proceeds would not exist but for the rental transactions, those Waiver proceeds are part of the value accruing from the sale of tangible personal property. The value accruing from the sale of tangible personal property is the gross proceeds of sales and subject to sales tax. Accordingly, the taxpayer's Waiver proceeds are included in the gross proceeds of sales and subject to sales tax.

C. The Taxpayer's Arguments Are Not Persuasive

The taxpayer argues that Waiver proceeds are not included in the gross proceeds of sales because the Waiver is completed on a separate form and requires a separate signature. While the Waiver is executed on a different form, it is still part of the rental transaction. Gross proceeds of sales consist of the value proceeding or accruing from the sale, lease, or rental of tangible personal property. Section 12-36-90. As explained above, the value accruing from the taxpayer's rental transactions includes the proceeds from the sale of Waivers. Placing the Waivers on a separate form and requiring a separate signature does not remove the Wavier proceeds from the gross proceeds of sales. As all of the authorities cited above demonstrate, the question is not whether the taxpayer utilized separate forms, the question is whether the Waiver proceeds would have existed but for the rental transaction. Because the Waivers do not, and in fact cannot exist without the

rental transaction, the Waiver proceeds are included in the gross proceeds of sales and subject to sales tax.

The taxpayer also argues that its Waiver proceeds are not subject to sales tax because it is the sale of a service and therefore not taxable. The definition of gross proceeds of sales contradicts the taxpayer's assertion. Section 12-36-90 defines gross proceeds of sales as "the value proceeding or accruing from the sale of tangible personal property ... without any deduction for service cost." Therefore, while the Waivers may relate to a service, services are not deducted from the gross proceeds of sales. Furthermore, the cases cited herein contradict the taxpayer's assertion. In Meyers Arnold, the lay away fees were for the "service rendered in making lay away sales." Meyers Arnold, 285 S.C. at 307, yet the Court of Appeals held those fees subject to sales tax. In Commission Decision S-D-174, the waiver fees in dispute were for "the additional service of providing a lease of property free from liability for damage", yet those fees were found subject to sales tax. In S.C. Rev. Rul. #93-1 the damage waiver fee was "obviously charged for the additional service of providing a lease of property free from liability for damage" yet those fees were found subject to sales tax.

Furthermore, contrary to the taxpayer's assertions, statutory law explicitly subjects the Waiver proceeds to sales tax. The South Carolina Code states that sales tax applies to the gross proceeds from the "sale or renewal of warranty, maintenance or similar service contracts for tangible personal property." Section 12-36-910(B)(6). By statutory definition, a service contract includes a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance. Section 38-78-20(12). The Waiver is a contract, with a separately stated consideration, that lasts for a specific length of time, and provides for indemnification for the repair or replacement of rented property. The taxpayer's Waivers clearly satisfy the definition of a service contract and therefore are subject to sales tax pursuant to § 38-78-20(12).

Because the taxpayer's assertion that the Waiver is a service and not subject to tax is contradicted both by the South Carolina Code and South Carolina authorities, such assertion is clearly incorrect.

Conclusion:

For all of the foregoing reasons, the proceeds from Waivers sold at the taxpayer's South Carolina stores are included in the taxpayer's gross proceeds of sales and therefore subject to sales tax.

November 18, 2013

**South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM**

Last Name:		First:	Middle:	☐ Mr. ☐ Mrs.	☐ Miss ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address:			City:		State and Zip:	
Home Number:		Work Number:	Cell Number:		*E-Mail Address:	

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

Are you representing yourself? ☐ Yes ☐ No		If No, please complete the following:	
Are you represented by an Attorney? ☐ Yes ☐ No		Are you represented by a CPA? ☐ Yes ☐ No	
Name of Attorney:		Name of CPA:	
Mailing Address:		Mailing Address:	
City, State and Zip:		City, State and Zip:	
Work Number, Cell Number and E-mail Address:		Work Number, Cell Number and E-mail Address:	

CASE INFORMATION

Name of the Agency that issued the decision: (Example - Dept. of Revenue, Dept. of Insurance, DHEC)	
In order to have your case processed, you must attach the agency decision. Is it attached? ☐ Yes ☐ No	If no, please explain:
Date the decision was issued:	Date the decision was received:
Please provide a brief statement regarding why the hearing is being requested and the relief sought:	
Payment via ☐ Check ☐ Money Order ☐ Cash for \$ submitted today to the Administrative Law Court via (applicable filing fee pursuant to ALC Rule 71) is being ☐ U.S. Postal Service ☐ Hand-delivery	
X Your Signature or Signature of Attorney/CPA	Date

CERTIFICATE OF SERVICE (MUST BE COMPLETED)

Your Name:	Date:	City:	State:
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing <u>on all other parties</u> to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):			
Name and/or Agency	Address	City, State and Zip	
Name and/or Agency	Address	City, State and Zip	
X Your Signature or Signature of Attorney/CPA		Date	

Filing and Assignment of a Contested Case with the Administrative Law Court

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Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton St., Ste. 224
Columbia, SC 29201

South Carolina Department of Revenue
Office of General Counsel for Litigation
PO Box 12265
Columbia, SC 29211

State of South Carolina
Department of Revenue
Office of General Counsel, Tax, and Regulatory Services
300A Outlet Pointe Blvd. (29210), P.O. Box 12265, Columbia, South Carolina 29211
Telephone (803) 898-5130 Telecopier (803) 896-0171

November 18, 2013

Misty Johnson
Tax Coordinator
5501 Headquarters Drive
Plano, TX 75024

RE: Department Determination - Rent Way, Inc.

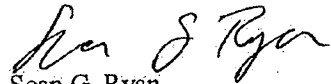
Dear Ms. Johnson:

Enclosed is the South Carolina Department of Revenue's Determination in the above-referenced matter. If you disagree with the Determination, you may request a contested case hearing before an Administrative Law Judge. If you choose to pursue such remedy, you must do so within thirty (30) days of the date of this letter. If you fail to respond within this time limitation, you will lose your right to appeal the Department Determination and your protest will be ended. Should you desire a contested case hearing, you must complete the enclosed request form and mail it, along with a \$500 filing fee, to the Administrative Law Court at the address stated on the form's instruction sheet.

The Administrative Law Court rules require that you also send me a copy of your request. My address is as follows: PO Box 12265, Columbia, SC 29211.

Sincerely,

OFFICE OF GENERAL COUNSEL, TAX, AND REGULATORY SERVICES



Sean G. Ryan
Managing Counsel for Litigation

SGR:lbc

Enclosures

DEPARTMENT DETERMINATION

Taxpayer:

Rent Way, Inc.
5501 Headquarters Drive
Plano, Texas 75024

Periods Involved:

Sales Tax – April 1, 2007 through December 31, 2009.

Matter in Dispute:

Are the proceeds from Optional Liability Waivers sold at Rent Way, Inc.'s (taxpayer) South Carolina stores included in the taxpayer's gross proceeds of sales and therefore subject to sales tax?

Amount in Dispute:

Tax:	\$ 192,158.64
Interest:	<u>\$ 41,116.23¹</u>
Total	\$ 233,274.87

Determination:

The proceeds from Optional Liability Waivers sold at the taxpayer's South Carolina stores are included in the taxpayer's gross proceeds of sales and therefore subject to sales tax.

Relevant Facts:

1. The taxpayer operates retail stores that rent and sell tangible personal property in several states, including South Carolina. Such property includes electronics, appliances, furniture, and accessories.
2. For an additional monthly fee, the taxpayer offers its customers the opportunity to purchase an Optional Liability Waiver Provision (Waiver) whereby the taxpayer agrees to waive the customer's liability if the rented property is damaged.
3. The Waiver explicitly states "[t]his Optional Liability Waiver Provision is an additional part of the Rental Agreement."

¹Interest calculated through November 30, 2013. Interest will continue to accrue until this matter is resolved.

4. The cost of a Waiver is determined by taking a percentage of the rental charge. That cost is then added to the rental charge and can be paid as one lump sum.
5. A customer cannot purchase a Waiver without renting tangible personal property from the taxpayer.
6. The taxpayer excluded the monthly fees collected for the Waivers from its gross proceeds of sales and thus no sales tax has been paid on these amounts.
7. The South Carolina Department of Revenue (Department) conducted an audit examination of the taxpayer's sales tax returns for the periods from April 1, 2007 through December 31, 2009. The audit concluded the proceeds from Waivers sold to South Carolina customers must be included in the gross proceeds of sales and therefore subject to sales tax. The Department issued the taxpayer a Notice of Proposed Assessment on April 30, 2012.²
8. Taxpayer protested the assessment by letter dated July 30, 2012.

Analysis:

Proceeds From Optional Liability Waivers Sold At The Taxpayer's South Carolina Stores Are Included In The Taxpayer's Gross Proceeds Of Sales And Therefore Subject To Sales Tax.

A. The Taxpayer's Waivers Are Subject to Sales Tax Pursuant to the South Carolina Code.

Under South Carolina law, "[a] sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person³ engaged or continuing within this State in the business of selling tangible personal property at retail." S.C. Code Ann. § 12-36-910(A) (2000). Tangible personal property is defined under the South Carolina Sales and Use Act as "personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also means services and intangibles

²The Notice of Proposed Assessment included several additional findings and tax, interest, and penalties associated with those findings. It is the Department's understanding that any dispute regarding those additional findings has been resolved and only the Waiver issue remains in dispute.

³For sales and use tax purposes, the term person "includes any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee, any group or combination acting as a unit, the State, any state agency, any instrumentality, authority, political subdivision, or municipality." S.C. Code Ann. § 12-36-30 (2000).

... the sale or use of which is subject to tax under this chapter . . .” S.C. Code Ann. § 12-36-60 (2000). “Gross proceeds of sales” is defined as:

... the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

* * *

(b) the proceeds from the sale of tangible personal property without any deduction

for:

(i) the cost of goods sold;

(ii) the cost of materials, labor, or service;

* * *

(vii) any other expenses.

S.C. Code Ann. § 12-36-90 (Supp. 2007). The cost of any service language encompasses any services, including warranty or maintenance services sold with the tangible personal property. The “any other expenses” language encompasses any value derived from any expenses that are ancillary to the purchase of tangible personal property. Ultimately, it is presumed that all gross proceeds are subject to sales tax unless the seller can establish the contrary. S.C. Code Ann. § 12-36-950 (2000). Moreover, the burden of proof that the sale of tangible personal property is not a sale at retail remains on the seller, unless the seller receives a resale certificate from the purchaser indicating that the property is purchased for resale. Id.

Here, the taxpayer operates retail stores in South Carolina that rent and sell electronics, appliances, furniture, and accessories. Therefore the taxpayer is in the business of selling tangible personal property within this State. Moreover, as part of its business of selling tangible personal property, the taxpayer offers customers the option to purchase a Waiver whereby the taxpayer agrees to waive the customer’s liability if the rented property is damaged. The cost of a given Waiver is determined based upon a percentage of the rental cost for the rented property. The cost of a Waiver is included in the customer’s monthly bill and can be paid as one lump sum. The taxpayer does not sell Waivers without a corresponding rental of tangible personal property. Moreover, the taxpayer cannot price a Waiver without a corresponding rental, as the cost of that rental determines the cost of the Waiver. Simply stated, without the rental transaction, the taxpayer would not be able to sell Waivers or receive proceeds from selling Waivers. The taxpayer’s Waiver proceeds are entirely dependent upon the taxpayer’s renting tangible personal property, and the value proceeding or accruing from the rental transaction includes the proceeds from the Waivers. Accordingly, the taxpayer’s gross proceeds must include the proceeds of the rental transaction as well as the proceeds from the sale of the Waiver, and that total amount is subject to sales tax. The taxpayer, however, incorrectly excludes the proceeds from the Waivers from its gross proceeds for sales tax purposes.

In addition to being taxable because the Waiver proceeds fall within the definition of gross proceeds of sales, the taxability of such is further evidenced by § 12-36-910(B)(6). This section explicitly states that sales tax applies to the "sale or renewal of warranty, maintenance or similar service contracts for tangible property, whether or not such contracts are purchased in conjunction with the sale of tangible personal property." Section 12-36-910(B)(6);⁴ see also S. C. Rev. Rul. #06-9).

South Carolina law clearly defines a service contract as:

... a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances including, but not limited to, towing, rental, and emergency road service. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling.

S.C. Code Ann. § 38-78-20(12) (2000) (emphasis added).

Here, the Waiver is clearly a service contract for the tangible personal property rented from the taxpayer. This is evidenced by the fact the consumer pays a separately stated price for the Waiver, the Waiver is on a month-to-month basis, and the Waiver clearly indemnifies a customer from the cost of repairs or replacement if the rented property is damaged. Because the Waiver is a service contract, and because service contracts are explicitly subject to sales tax, the proceeds received by the taxpayer from the Waivers sold in its South Carolina stores are subject to sales tax.

⁴In 2011 the General Assembly deleted Subsection (B)(6), but that subsection was in effect during the audit period at issue. Prior to October 1, 2005, when the General Assembly enacted (B)(6), service contracts were only subject to sales tax if contemporaneously purchased with tangible personal property. The enactment of (B)(6) made service contracts taxable regardless of when purchased. For the years after 2011 when (B)(6) was deleted, service contracts are only subject to sales tax if contemporaneously purchased with the tangible personal property. The taxpayer's Waivers are contemporaneously purchased with tangible personal property therefore the changes in legislation do not impact the taxability of the Waivers for the years after the period at issue.

B. Authorities From South Carolina And Other States Support The Department's Position.

The Department's position in this matter is consistent with long standing case law and Department rulings. In Meyers Arnold v. South Carolina Tax Commission, 285 S.C. 303, 328 S.E.2d. 920 (1985), the South Carolina Court of Appeals addressed the definition of the gross proceeds of sales in regards to lay away fees paid in conjunction with lay away sales. Meyers Arnold asserted that in its lay away fees that it charged customers who purchased items on lay away were not part of the gross proceeds of sales and therefore not subject to sales tax. The Court reasoned that but for the lay away sales Meyers Arnold would not receive lay away fees, therefore the lay away fees were included in the gross proceeds of sales and subject to sales tax. The reasoning behind Meyers Arnold is consistent with the Department's position in this matter; but for the renting of tangible personal property, the taxpayer would not receive Waiver proceeds and those proceeds are included in the gross proceeds of sales and subject to sales tax.

In Commission Decision S-D-174 (1986), the Department addressed whether fees paid for damage waivers are subject to sales tax. The taxpayer in that matter, just like the taxpayer in this matter, was in the business of renting tangible personal property. That taxpayer charged a 5% fee for a property damage waiver for the property it rented. The Department determined that the "value accruing from the "sale" included the rental fee and the damage waiver fee. Because the gross proceeds of sales means the value accruing from the sale of tangible personal property, the damage waiver fee is included in the gross proceeds of sales. Citing Meyers Arnold, *supra*, the Department reasoned that but for the lease of tangible personal property the taxpayer would not receive the damage waiver fees, therefore those fees are part of the gross proceeds of sales and subject to sales tax.

In S.C. Rev. Rul. #93-1, the Department addressed whether collision damage waivers offered by an automobile rental company were subject to the sales tax. Just like the taxpayer here, the automobile rental company offered customers the opportunity to buy a waiver whereby the customer was released from liability for any damages occurring during the use of the car. Citing Meyers Arnold, *supra*, and Commission Decision S-D-174, the Department determined that the collision damage waivers were taxable. The Department based its determination upon the fact that but for the lease of the tangible personal property, the taxpayer would not have received the waiver fee. The damage waiver fee is part of the rental transaction and must be included in the gross proceeds of sale subject to tax.

In addition to being supported by South Carolina case law and Department decisions, the Department's position in this matter is further supported by decisions in other states. Rent-A-Center East, Inc., v. Lincoln Parish Sales & Use Tax Com'm, 46,054 (La. App. 2 Cir. 3/9/11), 60 So. 3d 95, 97 writ denied, 2011-0713 (La. 5/20/11), addressed an issue identical to the issue in the present issue. In that case, the Court of Appeals of Louisiana ruled that the proceeds from the taxpayer's liability damage waivers are subject to sales

tax. Consistent with the logic utilized by the South Carolina authorities cited above, in making its ruling the Louisiana court focused upon the fact the waivers do not exist without the renting of tangible personal property. The court points to the facts that a waiver cannot be purchased without a corresponding rental, nor could a waiver be purchased from a different renter. These facts demonstrate that the waiver is merely an incidental part of a rental transaction and therefore the revenue from those waivers is included in the taxpayer's gross proceeds of sales.

Rhode Island also addressed whether optional damage liability waivers are subject to sales tax in a Division of Taxation decision entitled *In the Matter of: ***, Taxpayers*. That taxpayer was in the business of renting tangible personal property, including televisions, appliances, and furniture. That taxpayer offered its customers the opportunity to purchase a damage waiver, the cost of which was 7.5% of the rental fee. The Rhode Island Division of Taxation found the damage waiver fees to be subject to sales tax. The Division based its decision on the fact there is no value to the damage waiver unless it is purchased in conjunction with renting an item. In fact, a damage waiver cannot be purchased without simultaneously renting an item. Moreover the purchase of a waiver is not truly a separate and distinct transaction because it is entirely dependent upon the rental transaction. The waiver's dependence upon the rental transaction is demonstrated by the fact that a waiver cannot be priced without the rental of an item because the waiver pricing is a percentage of the price of the rental. The foregoing logic is consistent with the South Carolina authorities; but for the rental transactions, waiver proceeds would not exist and such proceeds are therefore included in the gross proceeds of sale.

All of the foregoing authorities focus upon the fact that waiver proceeds would not exist if it were not for the rental transaction. Because the Waiver proceeds would not exist but for the rental transactions, those Waiver proceeds are part of the value accruing from the sale of tangible personal property. The value accruing from the sale of tangible personal property is the gross proceeds of sales and subject to sales tax. Accordingly, the taxpayer's Waiver proceeds are included in the gross proceeds of sales and subject to sales tax.

C. The Taxpayer's Arguments Are Not Persuasive

The taxpayer argues that Waiver proceeds are not included in the gross proceeds of sales because the Waiver is completed on a separate form and requires a separate signature. While the Waiver is executed on a different form, it is still part of the rental transaction. Gross proceeds of sales consist of the value proceeding or accruing from the sale, lease, or rental of tangible personal property. Section 12-36-90. As explained above, the value accruing from the taxpayer's rental transactions includes the proceeds from the sale of Waivers. Placing the Waivers on a separate form and requiring a separate signature does not remove the Waiver proceeds from the gross proceeds of sales. As all of the authorities cited above demonstrate, the question is not whether the taxpayer utilized separate forms, the question is whether the Waiver proceeds would have existed but for the rental transaction. Because the Waivers do not, and in fact cannot exist without the

rental transaction, the Waiver proceeds are included in the gross proceeds of sales and subject to sales tax.

The taxpayer also argues that its Waiver proceeds are not subject to sales tax because it is the sale of a service and therefore not taxable. The definition of gross proceeds of sales contradicts the taxpayer's assertion. Section 12-36-90 defines gross proceeds of sales as "the value proceeding or accruing from the sale of tangible personal property ... without any deduction for service cost." Therefore, while the Waivers may relate to a service, services are not deducted from the gross proceeds of sales. Furthermore, the cases cited herein contradict the taxpayer's assertion. In Meyers Arnold, the lay away fees were for the "service rendered in making lay away sales." Meyers Arnold, 285 S.C. at 307, yet the Court of Appeals held those fees subject to sales tax. In Commission Decision S-D-174, the waiver fees in dispute were for "the additional service of providing a lease of property free from liability for damage", yet those fees were found subject to sales tax. In S.C. Rev. Rul. #93-1 the damage waiver fee was "obviously charged for the additional service of providing a lease of property free from liability for damage" yet those fees were found subject to sales tax.

Furthermore, contrary to the taxpayer's assertions, statutory law explicitly subjects the Waiver proceeds to sales tax. The South Carolina Code states that sales tax applies to the gross proceeds from the "sale or renewal of warranty, maintenance or similar service contracts for tangible personal property." Section 12-36-910(B)(6). By statutory definition, a service contract includes a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance. Section 38-78-20(12). The Waiver is a contract, with a separately stated consideration, that lasts for a specific length of time, and provides for indemnification for the repair or replacement of rented property. The taxpayer's Waivers clearly satisfy the definition of a service contract and therefore are subject to sales tax pursuant to § 38-78-20(12).

Because the taxpayer's assertion that the Waiver is a service and not subject to tax is contradicted both by the South Carolina Code and South Carolina authorities, such assertion is clearly incorrect.

Conclusion:

For all of the foregoing reasons, the proceeds from Waivers sold at the taxpayer's South Carolina stores are included in the taxpayer's gross proceeds of sales and therefore subject to sales tax.

November 18, 2013

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Are you representing yourself? ☐ Yes ☐ No				If No, please complete the following:		
Are you represented by an Attorney? ☐ Yes ☐ No				Are you represented by a CPA? ☐ Yes ☐ No		
Name of Attorney:				Name of CPA:		
Mailing Address:				Mailing Address:		
City, State and Zip:				City, State and Zip:		
Work Number, Cell Number and E-mail Address:				Work Number, Cell Number and E-mail Address:		
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Payment via ☐ Check ☐ Money Order ☐ Cash for \$				(applicable filing fee pursuant to ALC Rule 71) is being		
submitted today to the Administrative Law Court via				☐ U.S. Postal Service ☐ Hand-delivery		
<i>X</i> Your Signature or Signature of Attorney/CPA				Date		

CERTIFICATE OF SERVICE (MUST BE COMPLETED)			
Your Name:		Date:	City:
			State:
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