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.

FINAL REPLY BRIEF OF APPELLANTS

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Pursuant to Rule 242(g) of the South Carolina Appellate Court Rules, Appellants, Rent-A-Center East, Inc. ("RAC East") and Rent Way, Inc. ("Rent Way") (collectively "Rent-A-Center" or "Appellants") file this Reply Brief in response to the Initial Brief of Respondent South Carolina Department of Revenue's ("SCDOR" or "Respondent") in this matter. For the reasons stated in the Initial Brief of Rent-A-Center ("Rent-A-Center Brief") and herein, this Court should grant the relief requested in Rent-A-Center's Brief and hereinbelow and reverse the decision of the Administrative Law Court ("ALC").

ARGUMENT

I. RENT-A-CENTER DID NOT ABANDON ITS ARGUMENT THAT THE ALC ERRED IN FAILING TO APPLY THE APPROPRIATE RULES OF STATUTORY CONSTRUCTION TO THE TAX STATUTES AT ISSUE, AND THESE RULES SHOULD HAVE BEEN APPLIED.

SCDOR claims that Rent-A-Center has abandoned its arguments regarding statutory construction. SCDOR Brief at pp. 12-14. More specifically, SCDOR asserts that Rent-A-Center "made only conclusory, unsupported statements in [its] attempt to argue that the ALC erred in failing to apply the rules of statutory construction" (id. at p. 12) and "failed to cite any authority that supports their position." Id. at 13. This is simply not true. Rent-A-Center's Brief fully analyzes the failure of the ALC to (a) properly apply the plain meaning rule to the tax statutes at issue; and (b) construe these statutes in favor of the taxpayers and against the taxing authority and imposition of the tax. See Rent-A-Center Brief at pp. 9-14. Rent-A-Center cites a plethora of cases in support of its arguments and has not abandoned these arguments. Id.

Additionally, SCDOR appears to mistakenly believe that Rent-A-Center is asserting that all imposition statutes must be construed in favor of taxpayers even if there is no ambiguity

in the statutes. SCDOR Brief at p. 13. This is not the case as Rent-A-Center agrees that this rule need only be applied when the tax statute is ambiguous. See Rent-A-Center Brief at pp. 11-13. Moreover, SCDOR candidly agrees that if this Court finds the statute at issue ambiguous, then "it should resolve that ambiguity in favor of the taxpayer." SCDOR Brief at p. 13.

In this case, both parties believe that the imposition statute is not ambiguous and that their respective readings of the statute are correct. However, as SCDOR concedes, when the language in a statute can have more than one reasonable interpretation, then it is rendered ambiguous. See SCDOR Brief at p. 14 (citing Kennedy v. S.C. Retirement Systems, 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001)). SCDOR claims that its interpretation of the imposition statute is the only reasonable one, but Rent-A-Center's interpretation is actually more reasonable. See Rent-A-Center Brief at pp. 14-17; infra § II (for in depth discussion of Rent-A-Center's interpretation of the imposition statute).

More specifically, Rent-A-Center's reading of the imposition statute is that it imposes a tax on "persons" only when they sell tangible personal property and/or certain enumerated services, while SCDOR's position appears to be that the statute imposes a tax on all retailers of tangible personal property in general and not only when they sell tangible personal property or enumerated services. As was discussed in its Brief and in more detail below, Rent-A-Center's interpretation that sales tax is imposed on retailers when they sell tangible personal property and the services listed in the statute is reasonable in light of the heading of the chapter (which reads "Five percent tax on tangible personal property; laundry services, electricity, communication services, and manufacturer-consumed goods") and case law confirming that sales tax is imposed on retailers because they are engaging in

retail sales transactions for the sale of tangible personal property and that gross proceeds from services are generally not subject to sales tax. See Textile Restoration Services, Inc. v. S.C. Dept. of Rev., 2015 WL7443800, slip. op. at 3 (S.C. Admin. Law Ct. November 12, 2015)(explaining that sales tax is imposed on retailers because they are engaging in retail sales transactions for the sale of tangible personal property); Boggero v. S.C. Dept. of Rev., 414 S.C. 277, 777 S.E.2d 842 at n. 1 (Ct. App. 2015) (noting that "[g]enerally, the gross proceeds from services are not subject to sales and use tax.") citing S.C. Code Ann. Regs. § 117-308 (2012).

This interpretation also comports with how retailers of tangible personal property that also sell services are actually treated in South Carolina. No one would dispute that a veterinarian, as both a retailer and service provider, must pay sales tax on its sales of tangible personal property such as collars and leashes but not on its veterinary services or that a barber must pay sales tax on its sales of shampoo and brushes but not on the haircuts provided. Under SCDOR's interpretation that sales tax is imposed on all retailers of tangible personal property regardless of what is being sold, all of these services could be subject to tax under the imposition statute. Clearly these are examples of retailers in the business of selling tangible personal property, but no tax is imposed on them when they render non-taxable services.

Additionally, Rent-A-Center's interpretation is consistent with various regulations that specify that certain services provided in conjunction with the sale of tangible personal property are not taxable. For example, note the regulation providing that sales tax is not imposed on retailers providing installation services with the sale of tangible personal property. Such a regulation would, in fact, be invalid if the imposition statute actually

imposed sales tax on all that a retailer does as regulations cannot expand or limit the substance of a statute. See S.C. Code Ann. Regs.§ 117-313.3 (2002) (providing that charges for installation incident to the sale of tangible personal property are not subject to the sales or use tax when such charges are separately stated from the sales price of the property)[1]; Home Medical Systems, Inc. v. S.C. Dept. of Rev., 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009) (citing Goodman v. City of Columbia, 318 S.C. 488, 490, 458 S.E.2d, 531, 532 (1995) (stating that "[r]egulations authorized by the Legislature have the force of law. . . . Nonetheless, a regulation may not alter or add to a statute.").

Finally, at least one other taxpayer has asserted the exact same interpretation of the imposition statute, and an Administrative Law Court Judge found the assertion both reasonable and compelling and adopted it in its decision. See Alltel v. S.C. Dept. of Rev., 2015 WL 7681302, slip op. at pp. 17-20 (S.C. Admin. Law Ct. Nov. 13, 2015).[2]

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[1] There are many other regulations providing that certain service charges are not taxable even though sold in conjunction with the sale of tangible personal property. See S.C. Code Ann. Regs. 117-313.3 (installation charges); S.C. Reg. 117-306 (repair charges); S.C. Code Ann. Regs. 117-313.4 (alteration charges); S.C. Reg. 117-318.2 (interest charges on seller financing)). Such regulations would not be valid if the imposition statute actually imposed sales tax on all retailers of tangible personal property. See also S.C. Rev. Ruling # 14-7 (providing that optional charges for hurricane rental insurance sold in conjunction with sleeping accommodations are not subject to sales tax but mandatory charges are subject to sales tax). If SCDOR believes its current interpretation of the imposition statute is correct, it has had many years to challenge these regulations but has not done so.

[2] SCDOR states that "the ALC [in Alltel] misread the imposition statute," and SCDOR characterizes Alltel's interpretation of the statute as "absurd" and the decision as "incorrect." SCDOR Brief at pp. 18-20 and 27. However, interestingly, while SCDOR initially appealed this decision, it later settled and dismissed the appeal thus leaving this decision, which found the imposition statute ambiguous and construed it as Rent-A-Center argues it should be construed here, to stand. Rent-A-Center submits that while not binding on this court, Alltel is well-reasoned and supported by South Carolina law, and the same imposition analysis should be applied here.

In sum, Rent-A-Center's interpretation that the imposition statute imposes a sales tax on retailers only when they sell tangible personal property and certain listed services is clearly reasonable. Accordingly, if this Court finds that SCDOR's interpretation is also reasonable, then it should find that the imposition statue is ambiguous (i.e. capable of two reasonable interpretations) and that the ALC should have applied the rules of statutory construction and construed the statute in favor of the taxpayers and against imposition of the tax. See Rent-A-Center Brief at pp. 9-14.

II. SCDOR'S ARGUMENT THAT THE IMPOSITION STATUTE IMPOSES SALES TAX ON RETAILERS IN GENERAL AND IS NOT LIMITED TO WHEN THEY SELL TANGIBLE PERSONAL PROPERTY OR CERTAIN SERVICES IS NOT COMPELLING.

As Rent-A-Center asserted in its Brief, the Waivers are not taxable because no imposition statute imposes a tax on retailers when Waivers are sold. SCDOR claims that because the imposition statute imposes a tax on "every *person* in the business of selling tangible personal property at retail" then, in SCDOR's words, "the sales tax is imposed on their *business*, not what they sell." SCDOR Brief at pp. 18-19 (emphasis in original). Thus, SCDOR's position is that the imposition statute does not impose a tax on retailers entering into specific transactions but rather imposes a tax on a type of taxpayer, i.e. retailers in general.

This is contrary to the plain meaning of the imposition statute as well as South Carolina law and sales tax law generally. First, it is widely accepted that a sales tax is a transactional tax. The Hellerstein Treatise on State Taxation notes that two distinguished authorities have defined a sales tax as "any tax which includes within its scope all business sales of tangible personal property at either the retailing, wholesaling, or manufacturing stage with the exceptions noted in the taxing law." J. Hellerstein & W. Hellerstein, State Taxation, 3d ed. at

§12.01 (2000) (citing R. Haig & C. Shoup, The Sales Tax in the American States 3 (1934)). The Hellerstein Treatise then describes the retail sales tax as "a single-stage levy on consumer expenditures." Id. It also notes that state sales taxes are "collected from the purchaser by the seller and are collected on a *transaction-by-transaction basis*. Id. (emphasis added). Thus, an imposition statute for a transactional tax must identify the transaction subject to tax. It is not sufficient that it merely identify a class of taxpayers such as retailers.

Additionally, SCDOR's interpretation relies on the measure of tax statute in S.C. Code Ann. §12-36-90 (versus the imposition statute) to impose a tax on Waivers, which is not proper. As explained in Rent-A-Center's Brief, an imposition statute provides notice to taxpayers of what transactions will be subject to tax. See Rent-A-Center Brief at p. 26. And as Appellants' tax policy expert testified (which is also reflected in the tax cases cited by Appellants), 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." Id. (citing Tr., R. pp. 223:22- 224:5). 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." Id. (citing Tr., R. p. 229:12-15). SCDOR erroneously relies on the measure of tax statute to attempt to define what transactions are subject to tax, but the measure of tax statute (measuring the amount to be taxed) is never reached unless the imposition statute first imposes a tax. Thus, Waivers are not taxable unless the imposition statute imposes a tax when they are sold, and, as will be discussed below, the

imposition statute only imposes tax on retailers when they sell tangible personal property and certain enumerated services not at issue here.

The South Carolina imposition statute begins as follows:

SECTION 12-36-910. Five percent tax on tangible personal property; laundry services, electricity, communication services, and manufacturer-consumed goods.

Section A then provides states that "[a] sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail," and section B then provides that "[t]he sales tax imposed by this article also applies to the" sale of various enumerated services, including laundry services, electricity, and communications services. Id. As was explained by the ALC in another matter, a retailer is subject to sales tax under the imposition statute "because it is engaging in a retail sales transaction and because that sales transaction is for tangible personal property." Textile Restoration Services, Inc. v. S.C. Dept. of Rev., 2015 WL7443800, slip. op. at 3 (S.C. Admin. Law Ct. November 12, 2015).

It is clear from a full reading of the imposition statute that it imposes a tax on a retailer only upon the sale of tangible personal property and certain enumerated services.[3] Moreover, SCDOR's Tax Manual supports Rent-A-Center's interpretation of the imposition statute as it states that "[i]n addition to *applying to the sale or use of tangible personal property* (*e.g.*, furniture, clothing, computers, etc.), the sales and use taxes also apply to:

(1) certain communication services,
(2) laundry and dry cleaning services,

[3] SCDOR contends that headings cannot be used to expand or limit a statute. SCDOR Brief at p. 15, n. 8. Rent-A-Center does not seek to do either. The heading of the imposition statute is consistent with the text of the statute that follows, to wit, that the tax is imposed when tangible personal property or certain enumerated services are sold.

(3) electricity,
(4) the fair market value of tangible personal property manufactured within South Carolina or brought into South Carolina by its manufacturer for storage, use, or consumption in South Carolina by the manufacturer,
(5) transient construction property, and
(6) the furnishing of accommodations."

S.C. Department of Revenue Tax Manual (2015)[4] (footnotes omitted). SCDOR makes no mention of Waivers as being subject to sales tax in this Manual. Additionally, Rent-A-Center's interpretation is also consistent with (a) how retailers in South Carolina are actually treated, (b) the various regulations exempting certain services from sales tax when sold by retailers in conjunction with the sale of tangible personal property (which would be invalid under SCDOR's interpretation), and (c) the Alltel decision. See supra pp. 3-4. See also Rent-A-Center Brief at pp. 14-17.

To construe the imposition statute otherwise would be to ignore the specific statutory requirement under S.C. Code Ann. §12-36-60 that intangibles or services must otherwise be subject to sales tax under Chapter 36 of Title 12 in order to come within the definition of tangible personal property for purposes of §12-36-90 and §12-36-910. In other words, this statute clearly states that sales tax is only imposed on a retailer for a sale of an intangible or a service if the intangible or service is listed therein (i.e. communications, laundry services, electricity, etc.). See also S.C. Rev. Ruling #06-08 at p. 5 (2006)(stating that "the definition of tangible personal property, as defined in Code Section 12-36-60, includes services and *intangibles* 'the sale or use of which is *subject to tax under [Chapter 36],' such as*

[4] The South Carolina Sales and Use Tax Manual is published by the Policy Section of the Office of General Counsel of SCDOR and is available on SCDOR's website at www.dor.sc.gov.

'communications.'")(emphasis added). Again, Waivers are not among those intangibles or services listed in Chapter 36.

SCDOR's interpretation that the imposition statute applies to a class of taxpayers would also lead to the absurd result that the imposition statute does not impose a tax on any transactions (except presumably the services identified in section B). Stating who will be responsible for a tax (here, "every person engaged or continuing within this State in the business of selling tangible personal property at retail") and identifying which transactions will cause that person to be taxed are two completely different things. If SCDOR is correct, and the imposition statute only addresses who is responsible for paying sales tax and certain services that are subject to tax, then sales of tangible personal property would not actually be subject to sales tax in South Carolina under the imposition statute, which cannot be the intent of the Legislature. Florence Co. Democratic Party v. Florence Co. Repub. Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012)("[t]his Court will not construe a statute in a way which leads to an absurd result or renders it meaningless").

SCDOR also argues that Rent-A-Center is asking this Court to read out the language in §12-36-910 that imposes sales tax on retailers of tangible personal property. See SCDOR Brief at p. 15 (stating that "Taxpayer's interpretation requires the deletion of the words 'persons engaged in the business of'"). This is not accurate. The purpose of this language is to (a) identify who is responsible for paying sales tax (similar to the way that the use tax statutes identify the persons upon whom the use tax is imposed),[5] and (b) describe the circumstances when these persons have a tax imposed upon them, i.e. when they sell tangible personal

[5] See S.C. Code Ann. §§12-36-1350 and 1360 (providing that responsibility for payment of the use tax generally falls upon the purchaser).

property or render certain enumerated services. Rent-A-Center's interpretation of the imposition statute gives full effect to this statutory language.

III. SCDOR'S INTERPRETATION OF THE MEASURE OF TAX STATUTE AND ITS APPLICATION OF A "BUT FOR" TEST ARE INCONSISTENT WITH THE PLAIN MEANING OF THAT STATUTE AS WELL AS REVENUE RULING #06-08 AND S.C. REG. 117-313.3.

SCDOR argues that the language in S.C. Code Ann. §12-36-90, i.e. the measure of tax statute, is expansive and reaches services and intangibles sold in conjunction with sales of tangible personal property. SCDOR Brief at pp. 20-28. In support of this, SCDOR points to the statutory phrase "the value proceeding or accruing from the sale, lease or rental of tangible personal property" and then pulls definitions of "proceed" and "accrue" from the dictionary to argue that "gross proceeds" are any value that is a direct result of the sale of tangible personal property thereby satisfying the alleged "but for" test in Meyers Arnold. SCDOR Brief at pp. 16 and 21. SCDOR then argues that "the Waivers are a direct result of the rental of tangible personal property" and that "[b]ut for the rental of tangible personal property, the Taxpayers would not have received the fees." Id. at 21.

Of course, no "but for" test appears in the statute. Had the Legislature intended that to be the test, then it would have included that language in the statute. Nor did the ALC apply or adopt a "but for" test in its decision in this case. Moreover, that is not even the holding in the Meyers Arnold case, which is relied upon by SCDOR as the origin of this so called "test." As the ALC in the Alltel case observed:

> [The] holding in *Meyers Arnold* does not support the Department's argument. Instead, this holding reflects that the Court of Appeals was applying the definition of gross proceeds found in S.C. Code Ann. §12-36-30 (1976), which is "the value proceeding or accruing from the sale of tangible personal property . . . without any deduction for service cost." *Meyers Arnold*, *supra* (emphasis supplied). In other words, the Court of

> Appeals' holding in *Meyers Arnold* addresses an attempt by a taxpayer to exclude from gross proceeds a cost of service provided by the retailer in the sale of tangible personal property. Here, Alltel has not excluded any costs associated with the selling of its communications services from its revenues.

Alltel, 2015 WL 7681302, at p. 24.[6] Additionally, if the "but for" test was the law in South Carolina, then the Legislature could not have enacted the previously discussed regulation exempting installation of labor sold in conjunction with parts from sales tax as clearly there would be no installation labor needed "but for" the sale of the repair parts even though the labor is "incidental to" and "enhances the value of" the parts sold. See S.C. Reg. 117-313.3 (2002). The same reasoning applies to the other examples cited in footnote 1 above.

SCDOR's interpretation of the measure of tax statute also ignores and runs counter to one of its own revenue rulings interpreting "gross proceeds" of sale. S.C. Rev. Ruling #06-08 (2006). This revenue ruling looks at the dictionary definitions of "gross" and "proceeds" (as well as some other relevant terms) and concludes that gross proceeds are "the total amount of money derived, exclusive of deductions, from a commercial venture and accruing or proceeding from charges" for certain communication services. Id. at p. 5. While the primary

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[6] Additionally, Alltel concludes that the same result would have been reached in Meyers Arnold without using a "but for" test (which the Court of Appeals has not subsequently mentioned or applied and which does not appear to be used in any other jurisdictions) either as an improperly deducted service cost (see S.C. Code Ann. §12-36-90 and Alltel, 2015 WL 7681302, at p. 23) or under the more commonly accepted and used "true object" test. The latter test is used in mixed or bundled transactions where the transactions 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). Because the Waivers here are optional and their costs separately stated, this Court is not faced with a mixed or bundled transaction, and thus, the "true object" test is not applicable. See Tr. 153:4-154:2; see also Rent-A-Center Brief at pp. 21-26. Additionally, as was discussed in Rent-A-Center's Brief, this is not an improperly deducted service cost. See Rent-A-Center Brief at pp. 19-21.

topic of this ruling was sales tax on communication services, there is no logical reason why gross proceeds should be interpreted any differently in this context. Furthermore, the same revenue ruling defines a bundled transaction as "a transaction consisting of distinct and identifiable properties or services, which are sold for one nonitemized price but which are treated differently for [sales and use] tax purposes" and goes on to state that "the portion of the price attributable to any nontaxable property or service is subject to tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business for purposes other than sales taxes." Therefore, SCDOR's published tax treatment of bundled transactions is directly opposite to its interpretation of the imposition statute here.

SCDOR also argues that "[i]f the General Assembly intended for the measure of tax statute to be construed as narrowly as the Taxpayers here and the ALC in Alltel read the statute, they would have drafted the [measure of tax] statute to simply provide that gross proceeds of sales include proceeds from the sale of tangible personal property and certain enumerated services." SCDOR Brief at p. 27. It further claims that Rent-A-Center's interpretation is strictly focused on the price of an item. Neither of these claims is accurate. The purpose of the "value proceeding or accruing from" language is to capture different types of consideration that could be exchanged. For example, if the statute simply said gross proceeds from the sale of tangible personal property, then that might not reach an in-kind trade. If a vendor traded office furniture worth $500 to a marketing consultant in exchange for $500 worth of consulting services, that would not be covered by the "gross proceeds" language alone (i.e. total amount of money derived from the sale). However, there would certainly be "value proceeding or accruing from" that sale, and the measure of tax statute, which does not focus exclusively on the price of an item, seeks to capture that value.

In fact, Rent-A-Center would submit that it is SCDOR that seeks to read out this statutory language defining "gross proceeds of sales" as "the value proceeding or accruing from the sale, lease or rental of tangible personal property." S.C. Code Ann. §12-36-90. If value does not proceed or accrue from *the sale of tangible personal property*, then it is not gross proceeds. The sale of Waivers, which are intangibles, is clearly not value proceeding or accruing from the sale of tangible personal property but rather is value proceeding or accruing from the sale of the intangible Waivers. See Rent-A-Center Brief at §IV, pp. 29-33.

IV. THE AUTHORITIES CITED BY SCDOR ARE DISTINGUISHABLE AND DO NOT SUPPORT ITS POSITION.

SCDOR cites several authorities that it claims support its position, including Meyers Arnold v. S.C. Tax Comm'n, 285 S.C. 303, 328 S.E.2d 920 (Ct. App. 1985), Travelscape, LLC v. S.C. Dept. of Rev., 391 S.C. 89, 705 S.E.2d 28 (2011), Tronco's Catering , Inc. v. S.C. Dept. of Rev., 09-ALJ-17-0089-CC (Admin. Law Ct. April 12, 2010), Commission Decision S-D-174 (1986) and others. SCDOR Brief at pp. 22-28. As stated in prior briefing, these cases are distinguishable and inapplicable here. See Rent-A-Center Brief at pp. 17-20; Rent-A-Center Reply in Support of Motion for Reconsideration at pp. 9-11, R. p. 81-83. For example, some involve mandatory charges (Meyers Arnold, Travelscape and Comm'n Decision S-D-174, which does not mention whether the charge was mandatory or optional and thus does not even consider this important element) or inseparable components (Tronco's), and many involve improper attempts to deduct a service cost (Meyers Arnold, Travelscape and Tronco's). Rent-A-Center Brief at pp. 17-20; Rent-A-Center Reply in Supp. of Mot. for Reconsideration, R. pp. 81-83; Rent-A-Center's Proposed Order, R. pp. 810-815.

When a charge for a service or intangible is mandatory versus optional or is otherwise inseparable from the sale of the tangible personal property, then it is subject to sales tax as the sale of the service or intangible would proceed or accrue from the sale of the tangible personal property. Additionally, where the charge at issue is a service cost of the sale of the tangible personal property, then it is likewise subject to sales tax. See S.C. Code Ann. §12-36-90(b) (providing that the term "gross proceeds" includes the proceeds from the sale of tangible personal property *without any deduction for*: . . . (ii) the cost of materials, labor, *or service*. . . ." Id. (emphasis added). This rule precludes a retailer from deducting from the sum paid by the customer to purchase tangible personal property (i.e. the gross proceeds) any amounts representing a component of the cost incurred by the retailer in providing the tangible personal property for purchase. The Waiver at issue here is optional with a separately stated cost, is clearly separable from the rental of household items, is clearly not a cost of producing the item rented (i.e. an appliance), is not added to the purchase price of the item rented, and is not a cost necessary to accomplish the sales transaction involving the rented item. See Rent-A-Center Brief at pp. 17-20. Thus, the cases cited by SCDOR do not support the Waivers being subject to sales tax.

Finally, Rent-A-Center would note that decisions from other jurisdictions have also reached the conclusion that optional waivers were not subject to sales tax. See Rent-A-Center West, Inc. v. Utah State Tax Comm'n, No. 20140129, at p. 3 (Utah January 5, 2016) (addressing exact same Waivers at issue here and determining that they were not subject to sales tax because they were not "an amount paid or charged for leases or rentals of tangible personal property" as the Utah statute required and invalidating a long-standing Tax Commission regulation that "impermissibly broaden[ed] the language of the statute."); Letter

Ruling No. CL 2290, 2000 Mo. Tax Ltr. Rul. LEXIS 37 (Mo. Dep't Rev. May 18, 2000) (ruling that the sale of optional damage waiver protection for a separately stated price was not taxable as it was not the sale of tangible personal property, nor was it specifically listed as a taxable service under the relevant statutes.).

CONCLUSION

For the reasons set forth above and in Rent-A-Center's Brief, the Court should reverse the ALC's decision and find that the Waivers are not taxable under South Carolina law.

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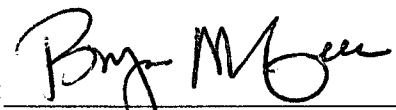
By: 

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The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

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