

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Deborah Brooks Durden, Administrative Law Judge

Case No. 17-ALJ-17-0002-CC
Appellate Case No. 2018-001250

Keith Purdy, d/b/a A Southern Bartender Respondent,

v.

South Carolina Department of Revenue,.....Appellant.

RECORD ON APPEAL

Keith Purdy
A Southern Bartender
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Pro Se Respondent

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South Carolina Department of Revenue

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith Purdy, d/b/a A Southern Bartender)

Docket No. 17-ALJ-17-0002-CC

Petitioner,)

vs.)

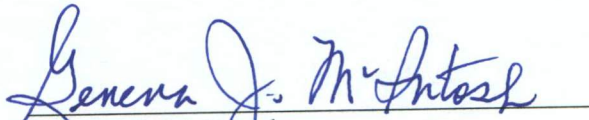
PROOF OF SERVICE

South Carolina Department of Revenue,)

Respondent.)

I, the undersigned employee of the South Carolina Department of Revenue, Office of General Counsel, do hereby certify that I have served the Final Brief of Appellant and Record on Appeal in connection with the above-captioned matter by causing a copy of the same to be deposited in the United States Mail on the below date, postage prepaid to the following parties at their address of record:

Keith Purdy
P. O. Box 20126
Charleston, SC 29413-0126


Geneva J. McIntosh
Legal Assistant, Office of General Counsel
South Carolina Department of Revenue

Columbia, South Carolina
January 31, 2019

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith Purdy, d/b/a A Southern Bartender,

Docket No. 17-ALJ-17-0002-CC

Petitioner,

vs.

ORDER

South Carolina Department of Revenue,

Respondent.

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed by Keith Purdy, d/b/a A Southern Bartender (Petitioner or Purdy). Petitioner contests the determination of the South Carolina Department of Revenue (Department or Respondent) that Petitioner is operating a beverage catering business that is subject to sales tax. The parties submitted a consent scheduling motion, proposing cross motions for summary judgment on this issue. The Court signed the consent scheduling order and the parties subsequently filed the motions, responses, and replies. After reviewing the arguments of the parties, I conclude that this matter is not appropriate for resolution by summary judgment, but rather should be resolved by final order after a hearing on the merits.

MATERIAL FACTS

Purdy began a bartending business in 1978. Operating under the name A Southern Bartender, Purdy provides bartending services for catered functions or other events in or around Charleston, South Carolina. Purdy bills for his services through package pricing. Frequently, these packages include purchasing retail alcohol for service at the event. Purdy pays sales tax when he purchases alcohol. Purdy's price structure is based on a per-person structure, ranging from \$6.00 to \$25.00, with other additional charges, such as gratuity. Purdy is not a licensed retailer of wine, beer, or liquor and has no physical retail location. Rather, he brings the desired supplies, which can include tables, linen, glassware, or alcohol, to the client's event location and sets up a bar and serves drinks, with or without additional bartenders. The Department has determined that the true object of Purdy's business is the sale of beverages and thus is subject to sales tax. Purdy contests this determination and avers that he is providing a service.

FILED

October 19, 2017

SC ADMIN. LAW COURT

DOR ROA 001

ISSUE PRESENTED

Whether the true object of Petitioner's business is a sale subject to sales and use tax under the South Carolina Code.

SUMMARY JUDGMENT STANDARD

Under ALC Rule 68, this Court may apply the South Carolina Rules of Civil Procedure in contested case proceedings where no Administrative Law Court rule applies and when practicable. In this case, the Court applies Rule 56(C), SCRPC, to determine whether summary judgment is proper in this case. Summary judgment is appropriate "when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law." Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138, 153-54, 758 S.E.2d 483, 492 (2014) (citations omitted); Rule 56(c), SCRPC. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citation omitted). Summary judgment should not be granted, even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusions or inferences to be drawn from those facts. Holmes, 408 S.C. at 154, 758 S.E.2d at 492.

DISCUSSION

In this matter, the parties largely agree as to the appropriate legal authority to apply in this case. However, the parties do not agree on the conclusions to be drawn once that authority has been applied to the facts. The test for determining whether Petitioner is subject to the sales tax turns on an analysis and finding of fact as to the true object, or intent, of Petitioner's customers in the transaction. Meyers Arnold, Inc. v. S.C. Tax Commission, 285 S.C. 303, 328 S.E.2d 920 (Ct. App. 1985); Tronco's Catering, Inc. v. S.C. Dept. of Revenue, 2010 WL 5781622, at *5. Having reviewed the facts and arguments as presented by the parties, I find there to be sufficient controversy to warrant denial of the cross motions for summary judgment. Specifically, there is a genuine issue of material fact as to the true object of the customers of Purdy's business that should be addressed at an evidentiary hearing on the merits.

In a recent Court of Appeals case addressing the issue of sale versus service for purposes of sales tax, the Court found the issue to be one of fact and applied the substantial evidence standard of review. See Boggero v. S.C. Dept. of Revenue, 414 S.C. 277, 284, 777 S.E.2d 842, 845 (Ct. App. 2015). Indeed, in a letter addressing facts very similar to the ones in this case, the Attorney General's office wrote that it could not "opine on whether the sales tax is applicable to a

specific transaction as that would require a factual inquiry which is beyond the scope" of an Attorney General opinion. Letter to the Honorable Sandy Senn, 2017 WL 1955654, at *4 (S.C.A.G. May 1, 2017).

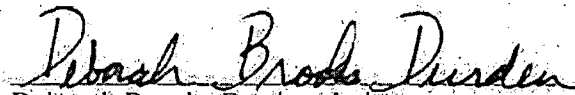
Given that the law in this area has been reasonably well-settled and the parties do not raise any dispute that can be settled merely as a matter of statutory interpretation, and given that the issue in this case is a disagreement over the inference to be drawn from the facts, I conclude that the motions of the parties should be denied.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the cross Motions for Summary Judgment of the parties are **DENIED**.

Consistent with the Consent Scheduling Order filed August 22, 2017, the parties shall, ~~within two weeks~~ of this Order, inform Court staff of dates in the following ninety days that they will not be available for a hearing.

AND IT IS SO ORDERED.


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

October 19, 2017
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith Purdy, d/b/a A Southern Bartender,

Docket No. 17-ALJ-17-0002-CC

Petitioner,

vs.

ORDER

South Carolina Department of Revenue,

Respondent.

APPEARANCES: For Petitioner: Bryan A. Raymond, Esquire
For Respondent: Lauren Acquaviva, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed by Keith Purdy, d/b/a A Southern Bartender (Petitioner). Petitioner challenges the South Carolina Department of Revenue's (Department) determination of December 7, 2016, that states that Petitioner is operating a beverage catering business subject to sales tax. An evidentiary hearing was held on January 25, 2018. Based on the Court's comprehensive review of the testimony and exhibits presented at the hearing, as well as the applicable law, the Court finds that Petitioner is a person in the business of selling tangible personal property at retail, and that the proceeds of Petitioner's beverage catering business were properly included in Petitioner's gross proceeds of sale.

ISSUE

Whether Petitioner is in the business of selling tangible personal property at retail, such that the sales from Petitioner's beverage catering service business should be included in Petitioner's gross proceeds of sales.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passing upon their credibility, and taking into consideration the burden of persuasion, I make the following Findings of Fact by preponderance of the evidence.

1. Notice of the time, date, place, and nature of the hearing was timely given to all parties.
2. Petitioner owns and operates a business in South Carolina named "A Southern Bartender."

FILED

April 26, 2018

SC ADMIN. LAW COURT
DOR ROA 004

3. As part of Petitioner's business, a variety of beverage and bartending packages are offered to his customers.

4. Except for the "Private's Party" package, each of the packages offered by Petitioner include specified beer, wine, liquor, and/or mixers, as well as one (1) bartender per ninety (90) people for three (3) hours. The "Private's Party" package includes mixers, set up, and bartenders, and the customer provides his or her own alcohol.

5. The package prices range from \$6.00 per person to \$25.00 per person based upon the quality of the products provided (e.g., no alcohol provided, beer and wine with non-alcoholic beverages, call brands of liquor, premium brands of liquor, super-premium brands of liquor). For an additional charge, customers may add additional bartenders or extend the time. Glassware is included in the "General's Ball" package. Customers who select any of Petitioner's other packages can rent glassware for an additional charge. Petitioner also adds an eighteen percent (18%) gratuity charge to the total price of each package.

6. On occasion, Petitioner provides solely bartending services. In such instances, Petitioner provides the bartenders, and the customer provides everything else.

7. When booking an event, a customer pays a deposit to Petitioner so that Petitioner can purchase the inventory for the event. The inventory consists of beer, wine, liquor, mixers, ice, cups, garnishes, and anything else the customer may want. Petitioner may also provide glassware if the guest count is under one-hundred (100).

8. After an event, Petitioner takes all remaining inventory to his storeroom for use at his next event. Alternatively, Petitioner will allow a customer to keep the excess inventory for an extra charge.

9. On April 27, 2016, the Department emailed Petitioner and advised that it would be conducting an audit examination of Petitioner's books and records for an audit period between April 1, 2013, and March 31, 2016 (the "Audit Period").

10. On Schedule C of his 2013 - 2015 Federal Individual Income Tax returns, Petitioner listed "cost of goods sold." The "cost of goods sold" figures represented all the inventory Petitioner purchased and provided to customers for their events.

11. Petitioner did not file any sales tax returns with the South Carolina Department of Revenue between April 1, 2013, and March 31, 2016. Also, during this Audit Period, Petitioner had neither an alcohol nor a retail license.

12. After reviewing Petitioner's records, the Department determined that Petitioner operated a catering business. This Court has held that catering businesses are retail businesses. Accordingly, the Department concluded that Petitioner should have remitted sales tax to the Department on the gross proceeds of sales from his business.

13. Petitioner was unable to produce accurate accounting records for his business. Therefore, the Department had to calculate Petitioner's total sales using the bank-deposit method. In doing so, the Department treated all deposits minus refunds and transfers as income from sales.

14. Once the Department determined Petitioner's total sales, it had to then decide what amount should be included in Petitioner's gross proceeds of sales. To calculate that amount, the Department subtracted proceeds from sales that did not include any tangible personal property. In other words, the Department excluded from Petitioner's gross proceeds of sales any sales that included only the provision of bartenders and no tangible personal property.

15. For 2014 and 2015, Petitioner did not have sufficient invoices available for review. Petitioner provided the Department with cash flow worksheets to aid the Department in determining what percentage of transactions included sales of tangible personal property. The worksheets listed amounts received for "catering" and amounts received for "consulting." Petitioner represented to the Department that the amounts for "consulting" involved bartender only services, identification verification only services, TIPS¹ training, and expert witness services. Based upon the worksheets provided by Petitioner and his representations, the Department concluded that the percentage of Petitioner's sales of tangible personal property (the amounts for "catering") amounted to the following: 97.74% in 2014, and 92.29% in 2015.

16. While Petitioner had no cash flow worksheets for 2016, he provided some invoices for the Department's review. As those were the only documents Petitioner could provide, the Department used those invoices to calculate an estimated percentage of sales of tangible personal property for January 1, 2016, through March 31, 2016. The Department arrived at a figure of 46.14% as the amount of Petitioner's 2016 sales that involved the sale of tangible personal property.

17. The Department used the following percentages to calculate Petitioner's gross proceeds of sales for the audit period: 97.74% in 2014; 92.29% in 2015; and 46.14% in 2016.

¹ TIPS is an acronym for Training for Intervention Procedures. Petitioner testified that TIPS is an international program with the purpose of teaching responsible service of alcohol. Petitioner is an instructor for the program.

18. After determining Petitioner's gross proceeds of sale, it calculated Petitioner's sales tax liability.²

19. On August 19, 2016, the Department provided Petitioner with the auditor's working papers and detailed notes on how the auditor arrived at Petitioner's gross proceeds of sales and his sales tax liability.

20. On or about September 2, 2016, Petitioner advised the Department by email that he disagreed with the Department's determination that he was retailer. The Department accepted this email as Petitioner's formal protest.

21. On September 7, 2016, the Department issued its Determination. On September 9, 2016, the Department mailed the audit package to Petitioner. The package contained Petitioner's proposed liability which totaled \$21,641.51. Of this amount, \$14,979.66 represented sales tax due; \$5,614.59 represented the amount due to penalties for failing to file; and \$1,047.26 represented interest due.³ The audit package also contained an "Explanation of Audit Assessments and Adjustments," as well as Petitioner's options for protesting the proposed assessment.

22. By letter dated September 28, 2016, Petitioner advised the Department that he wanted his file forwarded to its Office of General Counsel for Litigation.

23. On December 7, 2016, the Department issued its Determination stating that Petitioner was a retailer of personal tangible property and that the income derived from Petitioner's alcohol catering service was properly included in Petitioner's gross proceeds of sales.

24. On January 6, 2018, Petitioner timely requested a contested case hearing.

25. A contested case hearing was held on January 25, 2018, at which time both parties appeared with counsel. Prior to the hearing, the parties stipulated to a number of facts⁴ and the admission of certain exhibits necessary for the adjudication of the matter.

26. Petitioner testified on his own behalf. He stated that he believed the true object of his business to be the service and not the sale of alcohol, and that his clients retained his services because of his experience, professionalism, and responsibility. To that end, Petitioner is trained to verify identification cards; he monitors all events for which his services have been retained to ensure that there is no underage drinking and no over-service of alcohol; and, he makes certain

² In doing so, the Department subtracted the amount of sales tax that Petitioner initially paid when purchasing his inventory.

³ Penalties and interest continue to accrue.

⁴ The parties' stipulations are contained herein in Paragraphs 2 through 24.

event guests who have consumed alcohol get home safely. Petitioner stated that he provides these services irrespective of whether he purchases alcohol for his client for a particular event, or the client provides it.

28. When Petitioner contracts with a client and those services include the provision of alcohol, the client gives Petitioner a deposit. The deposit serves a two-fold purpose. First, Petitioner uses it to purchase the alcohol that will be needed for an event as he never purchases alcohol unless the client pays for it up front. Second, it serves as confirmation of the contract that Petitioner will appear at the event. Petitioner pays retail sales tax when he purchases the alcohol.

29. Petitioner does not charge by the drink. Except for when Petitioner provides bartending services only, Petitioner charges a per person rate based upon on the quality of the liquor. His per person package rate also includes bartending services, although a client may add bartenders or extend the time period for service at an additional cost. Petitioner testified that at the conclusion of an event for which he provides alcohol, he either takes the remaining inventory to his storeroom for use at a subsequent function, or allows the client to take it for an additional cost.

30. I find Petitioner to be a credible witness who has made a sincere effort to operate according to the law. He testified credibly that he structured his business in the manner he did and failed to pay sales tax on these transactions based upon previous advice and instructions he received from the Department of Revenue. While ignorance of the law is no excuse, the Court is convinced Petitioner has made sincere efforts to operate his business properly and to pay the taxes that he believed applied in his situation. Here, Petitioner had a reasonable interpretation of a complex taxation situation. Compliance with the differing laws governing the licensing of alcohol beverage sales and sales of tangible personal property made it difficult for Petitioner to operate his business without being at risk for violating one requirement or the other because the alcohol licensing scheme requires a location for a license to be granted. Petitioner sought advice from the Department and understood from that meeting that the Department's position was that no alcohol license was required because he was performing a service, not selling tangible personal property. Moreover, this is an evolving area of law subject to differing interpretations. Boggero, the case this court relied upon in concluding that a factual inquiry into the intent of the customer is required, was decided by the South Carolina Court of Appeals in September 2015. The Tronco case cited below is persuasive, but not binding authority.

31. The Department's only witness was an audit supervisor who supervised the audit at issue.⁵ The witness testified as to how the Department calculated Petitioner's gross proceeds of sales. For a portion of the audit period, the Department utilized Petitioner's cash flow worksheets to determine the events that were taxable. For another portion of the audit period, Petitioner did not have these worksheets available so the Department utilized invoices provided by Petitioner.⁶ On one invoice dated January 15, 2016, Petitioner contracted with a customer to provide only bartending services; this invoice was treated as non-taxable because no tangible personal property was listed on the invoice. On a second invoice dated February 5, 2015, Petitioner's customer contracted for tangible personal property including wine, table linens, coolers, non-alcoholic beverages, and bartending services; the wine and its cost was listed separately, as was the bartending charge. The Department treated everything in the second invoice as a taxable sale because the bartending service was provided in conjunction with the sale of tangible personal property. The third invoice dated May 23, 2016, reflected that Petitioner was providing tangible personal property including alcohol and non-alcoholic beverages, ice, cups, napkins, and table linens. Petitioner charged \$11.00 per person based on the customer's menu choice and in particular, the "Captain's Choice," which included a variety of alcohol, non-alcoholic beverages and bartending services. The Department treated this transaction as taxable because it involved the provision of tangible personal property and a service so the entire transaction was taxable pursuant to the definition of the gross proceeds of sales.

32. As discussed in detail below, the determination of whether a transaction is the sale of tangible personal property or a service turns on a factual finding of the true object of the customer in entering the transaction. Here, where Petitioner has provided packages that include alcoholic beverages, priced based upon the quality of the beverages, I find that the object, or intent, of the customer was to purchase the beverages for guests at an event. Petitioner testified that his clients provided him with a deposit for the purchase of alcohol prior to an event, and that he merely passed the alcohol through to the customer. However, Petitioner also testified that after an event for which he provides alcohol, he either takes the remaining inventory to his storeroom for use at a

⁵ No hearsay objections were made during this or any other testimony rendered at the hearing.

⁶ At the hearing, Petitioner's counsel made a point of eliciting testimony from the Department that it did not have copies of all of Petitioner's invoices. The Court notes that it is the taxpayer's burden to produce evidence to substantiate his claim. Tronco's Catering, Inc. v. S.C. Dept. of Revenue, 2010 WL 5781622 *5 (S.C. Admin. Law Judge Div. Apr. 2010), Cloyd v. Mabry, 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988).

subsequent function, or allows the client to take it, but for an additional cost. I find that where the package paid for by the customer is a lump sum for beverages and bartending services with the alcohol provided by the Petitioner in this manner, the objective of the customer was to purchase the catered beverages.

CONCLUSIONS OF LAW

Based upon the forgoing findings of fact, the Court concludes the following as a matter of law:

Jurisdiction and Burden of Proof

This Court has jurisdiction of this matter pursuant to Sections 12-60-460, 1-23-310 and 1-23-600 of the South Carolina Code. S.C. Code Ann. §§ 1-23-310 and 1-23-600 (Supp. 2017); and 12-60-460 (2014).

The burden of proof is on the party asserting the affirmative in an adjudicatory administrative proceeding. 2 Am. Jur. 2d Administrative Law § 342 (2018). Here, the taxpayer has requested a contested case hearing to challenge the Department's proposed assessment. Thus, the taxpayer asserts the affirmative and must carry the burden of proving the Department's proposed assessment is incorrect. *Id.* See Cloyd v. Mabry, 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988). In addition, Section 12-36-950 provides in part, "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." S.C. Code Ann. § 12-36-950 (2014).

Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body, are entitled to great weight. Marchant v. Hamilton, 279 S.C. 497, 500, 309 S.E.2d 781, 783 (1983). When, as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the Legislature, there is created a strong presumption that such interpretation or construction is correct. Ryder Truck Lines Inc. South Carolina Tax Commission, 248 S.C. 148, 149 S.E.2d 435 (1966); Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682 (1950).

Tangible Personal Property at Retail

South Carolina law provides 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.” S.C. Code Ann. § 12-36-910(A) (2014). Section 12-36-1110 imposes an additional one percent sales tax beginning on June 1, 2007, bringing the total sales tax to six percent of the gross proceeds of sale. S.C. Code Ann. § 12-36-1110 (2014). The South Carolina Sales and Use Act defines “tangible personal property” in part as “personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses.” S.C. Code Ann. § 12-36-60 (2014).

South Carolina courts have stated that the test to be applied in making such a determination is “true object test.” Meyers Arnold, Inc. v. S.C. Tax Commission, 285 S.C. 303, 328 S.E.2d 920 (Ct. App. 1985); Tronco’s Catering, Inc. v. S.C. Dept. of Revenue, 2010 WL 5781622 (S.C. Admin. Law Judge Div. Apr. 2010). Under the “true object test,” the case-by-case analysis involves a factual inquiry into whether the customer’s purpose for entering the transaction was to procure a good or a service. Boggero v. S.C. Dept. of Revenue, 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015).

Here, Petitioner was engaged in the business of selling tangible personal property at retail. While there were instances in which Petitioner provided bartending services,⁷ most of his business transactions during the audit period involved providing both alcohol and bartending services as a package. The fact that Petitioner “may provide only service or labor to customers on some occasions is irrelevant in this case because of the transactional nature of the sales tax; each sales transaction must be viewed in isolation.” Tronco’s Catering, Inc., 2010 WL 5781622 *5.

As an example, Petitioner’s menu of services included the offering of assorted packages to customers ranging from \$6.00 to \$25.00 per person depending upon the quality of the alcohol to be served. The packages not only included the service of the alcohol, but also, the provision of alcohol and non-alcoholic beverages, cups, ice, napkins, and other items. The bartending services remained the same irrespective of the package chosen. That fact demonstrates that in those transactions, the provision of service was merely incidental to the sale of tangible personal property.⁸

⁷ In those occasions on which bartending services were charged separately from the drinks, there is no sale of tangible personal property. Generally, the gross proceeds from services are not subject to sales and use tax. See S.C. Code Ann. Regs. §117-308 (2012) (“The receipts from services, when the services are the true object of the transaction, are not subject to the sales and use tax unless ... [certain inapplicable exceptions apply].”).

⁸ Similarly, in Boggero, the waste removal services remained the same irrespective of the type of portable toilets (including its more expensive “special event” toilets) used.

In other instances, Petitioner provided both bartending services and alcohol, and there was a separate line item on the invoice for bartending services. In those scenarios, the bartending services were separable from the provision of alcohol and/or other tangible goods, and thus, do not represent the retail sale of tangible personal property.

A sales tax of the gross proceeds of sales is imposed upon every person in the business of selling tangible personal property at retail. S.C. Code Ann. § 12-36-910 (2014). Section 12-36-90 (formerly Section 12-35-30) of the South Carolina Code defines "gross proceeds of sale as the value proceeding or accruing from the sale, lease, or rental of tangible personal property." S.C. Code Ann. § 12-36-90 (2014). The term includes "the proceeds from the sale of tangible personal property without any deduction for ... the cost of goods sold [or] the cost of materials, labor, or service ..." *Id.* See also *Meyers Arnold, Inc.; Tronco's Catering, Inc.* Section 12-36-90 has been deemed to be a "transactional tax." *Id.* Thus, except in those instances in which bartending services were invoiced separately from the beverages, Petitioner's catered beverage business constitutes the retail sale of tangible personal property. Because I find that the true object of those sales is the catering of beverages, Petitioner must remit sales tax on the entire value of the sale and cannot deduct the costs of goods sold or the costs of materials, labor, or services from his gross proceeds of sale.

Petitioner argues that if he is considered a retailer of tangible personal property which was subject to taxation by the Department, it would result in him being unfairly taxed a second time as he already paid sales tax on the alcohol and other items that he purchased (e.g., cups and non-alcoholic beverages). The Court rejects this argument. In calculating Petitioner's assessment, the Department gave Petitioner credit for the sales tax that he paid when he initially purchased the inventory. Thus, double taxation did not occur.

On the record and testimony presented at the hearing, it appears that the Department has counted all transactions that included any tangible personal property as wholly subject to the sales tax regardless of whether some bartending or consulting services were invoiced separately. For that reason, it is necessary to remand this matter to the Department to recalculate the sales tax due from Petitioner. Amounts Petitioner received for which he has presented invoices or other proof that customers were invoiced separately for bartending or consulting services must be deducted from his gross proceeds of sales. This is true even if those charges are part of a larger transaction in which tangible personal property was also sold.

In light of my finding that Petitioner has made a good faith effort to comply with the law and pay the taxes as he understood they applied to his situation, it is necessary to consider whether the penalties and interest sought by the Department are appropriate in this case. Section 12-54-25 provides for interest on unpaid taxes: "If any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety. For administrative convenience, the department may waive up to thirty days' interest." S.C. Code Ann. § 12-54-25(A). Section 12-54-42 provides for civil penalties for failure to pay taxes that must be shown on a return where the amount in question is not shown on the return, such as the sales tax here. It provides for graduated penalties for continued failure to pay after a demand for payment by the Department. However, Section 12-4-320(3) provides that the Department may "compromise any tax, interest, or penalty imposed by this title or other law." In a contested case such as this, the ALC becomes the final agency decision-maker and exercises the authority of the agency. See, Engaging & Guarding Laurens Cty.'s Env't (EAGLE) v. S.C. Dept. of Health & Envtl. Control, 407 S.C. 334, 345, 755 S.E.2d 444, 450 (2014).

S.C. Revenue Procedure 08-6 provides procedural guidance as to what circumstances the Department has determined justify a complete or partial waiver of penalties. While the Revenue Procedure is not promulgated as a regulation and is not binding on this Court, it provides thoughtful guidance for dealing with penalty waivers in a uniform manner. As an example of a circumstance justifying a complete waiver of penalties, Revenue Procedure 08-6 states, "The taxpayer may have reasonable cause for noncompliance where difficult and complex issues are involved when reasonable persons differ as to the appropriate tax treatment of the issue and there is no Department guidance with respect to the issue." S.C. Rev. Proc. 08-6(F) at 7. Because this is just such a complex issue where reasonable persons differ as to whether the tax treatment of the bartending packages provided by Petitioner to his customers were tangible personal property or a service, I conclude that it is appropriate to waive the penalties in this case. However, the justification for waiving penalties does not extend to the interest due on the unpaid taxes. I decline to waive the interest.

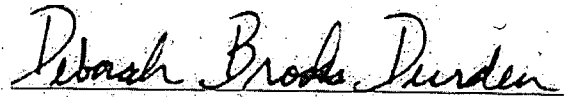
ORDER

THEREFORE, IT IS HEREBY ORDERED that in those instances during the audit period in which Petitioner provided bartending services as part of a package that included beverages, the proceeds from his beverage catering sales are subject to sales tax.

IT IS ALSO ORDERED that all penalties related to this matter are waived.

IT IS FURTHER ORDERED that this matter is **REMANDED** to the Department of Revenue to calculate the sales tax and interest. In doing so, the Department shall deduct from the gross proceeds of sales any payments made for bartending or other services that were not invoiced as part of a beverage package.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

April 26, 2018
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith Purdy, d/b/a A Southern Bartender,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

Docket No. 17-ALJ-17-0002-CC

**ORDER DENYING
RESPONDENT'S MOTION
FOR RECONSIDERATION**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the motion of counsel for Respondent, South Carolina Department of Revenue, seeking reconsideration of the Court's Order issued on April 26, 2018. The motion merely reiterates the arguments made at the hearing and in the prehearing motions for summary judgment, which were carefully considered and ruled upon by this Court. This motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Therefore,

IT IS HEREBY ORDERED that Respondent's Motion for Reconsideration is **DENIED**.
AND IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

June 4, 2018
Columbia, South Carolina

FILED

June 4, 2018

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith Purdy, d/b/a A Southern Bartender,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

Docket No. 17-ALJ-17-0002-CC

**MOTION FOR
SUMMARY JUDGMENT**

TO: BRYAN A. RAYMOND, ESQ., ATTORNEY FOR THE PETITIONER.

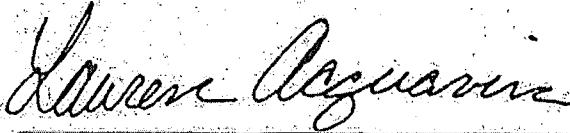
PLEASE TAKE NOTICE that pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRCP) and Rules 19 and 68 of the Rules of Procedure for the Administrative Law Court (SCALCR), the Respondent, South Carolina Department of Revenue (Department), by and through its undersigned attorneys, will not sooner than ten days from the date of service of this Motion, or as soon thereafter as counsel may be heard, move for an order for summary judgment in the above-referenced matter. The Court should enter judgment in favor of the Department and against Keith Purdy, d/b/a A Southern Bartender (Petitioner) because there is no genuine issue as to any material fact, the material facts demonstrate that (1) the Petitioner is a person in the business of selling tangible personal property at retail and (2) the proceeds from the Petitioner's beverage-catering business should be included in the Petitioner's gross proceeds of sales, and the Department is entitled to judgment as a matter of law.

Rule 56(c), SCRCP, provides that a trial court shall grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See Bovain v. Canal Ins., 383 S.C. 100, 105,

678 S.E.2d 422, 424 (2009). As explained more fully in the Memorandum of Law included herewith, the material facts related to (1) whether the Petitioner is a person in the business of selling tangible personal property at retail and (2) whether the proceeds from the Petitioner's beverage-catering business should be included in the Petitioner's gross proceeds of sales are not in dispute. Moreover, the Department is entitled to judgment as a matter of law on this issue and, therefore, summary judgment is appropriate.

WHEREFORE, the Department moves that the Court enter summary judgment in favor of the Department and for such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Columbia, South Carolina
September 8, 2017

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith Purdy, d/b/a A Southern Bartender,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

Docket No. 17-ALJ-17-0002-CC

**MEMORANDUM IN SUPPORT
OF RESPONDENT'S MOTION
FOR SUMMARY JUDGMENT**

Respondent, South Carolina Department of Revenue (Department), by and through the undersigned counsel, respectfully submits this Memorandum in Support of Respondent's Motion for Summary Judgment. For the reasons set forth below, the Administrative Law Court (ALC) should grant the Department's Motion because the material facts not in dispute demonstrate that Keith Purdy, d/b/a A Southern Bartender (Petitioner), is a person in the business of selling tangible personal property at retail. As such, the Petitioner is responsible for remitting sales tax on its gross proceeds of sales. Moreover, the material facts not in dispute demonstrate that the proceeds from the Petitioner's beverage-catering business should be included in the Petitioner's gross proceeds of sales. Accordingly, the Department is entitled to judgment as a matter of law.

STATEMENT OF THE CASE

This matter is before the ALC pursuant to the Petitioner's request for a contested case hearing under S.C. Code Ann. § 12-60-460 (2014). The two issues before the ALC are (1) whether the Petitioner is a person in the business of selling tangible personal property at retail and (2) whether the proceeds from the Petitioner's beverage catering should be included in the Petitioner's gross proceeds of sales. The Department now files this Motion for Summary Judgment because the material facts not in dispute demonstrate that the Petitioner sells tangible personal property as

part of its beverage-catering business and, thus, is a person in the business of selling tangible personal property at retail. The material facts not in dispute also demonstrate that the proceeds from the Petitioner's beverage-catering business proceed or accrue from the sale of tangible personal property and should be included in the Petitioner's gross proceeds of sales. Therefore, the Department is entitled to judgment as a matter of law.

MATERIAL FACTS NOT IN DISPUTE

The following material facts are not in dispute:

1. The Petitioner operates a beverage-catering business in South Carolina. As part of the Petitioner's beverage-catering business, the Petitioner offers a variety of catering packages to his customers. Each package contains specified beer, wine, liquor, and/or mixers, as well as one bartender per ninety (90) people for three hours.¹ The package prices range from \$6.00 per person to \$25.00 per person based on the quality of the product provided, not the bartending service. Customers can add extra bartenders and/or extra time to any package for an additional charge. Customers can also rent glassware for an additional charge.² The Petitioner also adds an 18% gratuity charge to the total package price. See Purdy Depo. pp. 7:12 – 10:7, 18:2 – 24; Resp't Ex. 1 – 5.
2. On rare occasions, the Petitioner provides solely bartending services – the Petitioner provides the bartenders and the customer provides everything else. See Purdy Depo. pp. 10:8 – 22, 19:7 – 20:15, 27:16 – 28:5; Resp't Ex. 6.

¹The "Private's Party" package includes mixers, set up, and bartenders; the customer provides his or her own alcohol. See Purdy Depo. p. 19:7 – 14; Resp't Ex. 1 – 3.

²Glassware is included in the \$25.00 per person package only.

3. When booking an event, the customer puts down a deposit so the Petitioner can go purchase the inventory for the event. See Purdy Depo. pp. 13:3 – 14:6. The inventory consists of “beer, wine, liquor, mixers, ice, cup[s], garnishes, service, whatever the client wants.” Purdy Depo. p. 16:14 – 16. The Petitioner may also provide glassware if the guest count is under 100 people. See Purdy Depo. p. 16:17 – 23. After the event, the Petitioner takes the leftover inventory back to his storeroom for use at his next event, or the Petitioner will allow the customer to keep the leftover inventory for an extra charge. See Purdy Depo. pp. 16:24 – 17:21.
4. The Petitioner listed “cost of goods sold” on Schedule C of his 2013 – 2015 Federal Individual Income Tax returns. The “cost of goods sold” figure represents all of the inventory the Petitioner purchased and resold³ to customers for their events. See Purdy Depo. pp. 10:23 – 12:11, 30:1 – 13; Resp’t Ex. 7 – 9.
5. The Petitioner did not file any sales tax returns between April 1, 2013 and March 31, 2016 (the “Audit Period”). During the Audit Period, the Petitioner did not have an alcohol license or a retail license.
6. On April 27, 2016, the Department emailed the Petitioner and informed him that it would be conducting an audit examination of the Petitioner’s books and records for the Audit Period.

³When asked about whether the Petitioner sold the goods to his customers, the Petitioner invoked his Fifth Amendment privilege against self-incrimination. Notably, the Petitioner did not deny that he sold the goods to his customers. Moreover, this Court may consider an adverse inference from the Petitioner’s invocation of his Fifth Amendment privilege. Griffith v. Griffith, 332 S.C. 630, 640 – 641, 506 S.E.2d 526, 531 – 532 (Ct. App. 1998) (relying on Baxter v. Palmigiano, 425 U.S. 308 (1976)). Specifically, the Court may infer that the Petitioner did sell the goods to his customers.

7. After reviewing the Petitioner's records, the Department determined that the Petitioner operated a catering business, which South Carolina Courts have determined are retail businesses. Accordingly, the Department determined that the Petitioner should have remitted sales tax to the Department on the gross proceeds of sales from his catering business.
8. The Petitioner did not keep sufficient records of his sales; therefore, the Department had to calculate the Petitioner's total sales using the bank-deposit method. In doing so, the Department treated all deposits minus refunds and transfers as income from sales.
9. Once the Department determined the amount of the Petitioner's total sales, the Department then had to determine what amount should be included in the Petitioner's gross proceeds of sales. To calculate that amount, the Department had to subtract proceeds from sales that did not include any tangible personal property. In other words, the Department excluded from the Petitioner's gross proceeds of sales any sales that included only the provision of bartenders and no tangible personal property. For 2014 and 2015, the Petitioner did not have sufficient invoices for the Department to review. The Petitioner provided the Department with cash flow worksheets to aid the Department in determining what percentage of transactions included sales of tangible personal property. The worksheets listed amounts received for "catering" and amounts received for "consulting." Per the Petitioner, the amounts received for "consulting" included bartender only services, ID checker only services, TIPS training, and expert witness services. In relying on the worksheets and the Petitioner's representations, the Department determined that the percentage of sales of tangible personal property (the amounts received for "catering")

amounted to the following: 97.74% in 2014 and 92.29% in 2015. The Petitioner did not have cash flow worksheets for 2016 but did have some invoices for the Department to review. As those were the only documents the Petitioner could provide to the Department, the Department used those invoices to calculate an estimated percentage of sales of tangible personal property for January 1, 2016 through March 31, 2016. In reviewing the invoices, the Department determined that 46.14% of the Petitioner's sales in 2016 were sales of tangible personal property. The Department did not include as sales of tangible personal property the following: invoices that included (1) only expert witness services, (2) only server training services, or (3) only bartending services (such as Resp't Ex. 6). The Department used all of the above-mentioned percentages to calculate the Petitioner's gross proceeds of sales for the audit period.

10. Once the Department determined the Petitioner's gross proceeds of sales, the Department calculated the Petitioner's sales tax liability. In doing so, the Department gave the Petitioner credit for sales tax paid by the Petitioner on liquor, beer, wine, and mixers.
11. On August 19, 2016, the Department sent the Petitioner the auditor's working papers and detailed notes on how the auditor calculated the Petitioner's gross proceeds of sales and the Petitioner's sales tax liability.
12. On or about September 2, 2016, the Petitioner informed the Department that he disagreed with the Department's determination that he was a retailer. The Department accepted this email as the Petitioner's formal protest letter.
13. On September 9, 2016, the Department mailed the Petitioner the audit package, which included a letter outlining the Petitioner's options for protesting the Proposed Assessment

and an Explanation of Audit Assessments and Adjustments. The documents in the audit package also outlined the Petitioner's proposed liability as follows: sales tax due in the amount of \$14,979.66; failure to file and failure to pay penalties due in the amount of \$5,614.59, and interest due in the amount of \$1,047.26.⁴

14. By letter dated September 28, 2016, the Petitioner informed the Department that he wanted his file forwarded to the Office of General Counsel for Litigation.

15. The Department issued its Determination in this matter on December 7, 2016.

16. The Petitioner timely requested a contested case hearing on January 6, 2017.

ARGUMENTS

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Young v. S.C. Dep't. of Disabilities & Special Needs, 374 S.C. 360, 649 S.E.2d 488 (2007); Henderson v. Allied Signal, Inc., 373 S.C. 179, 644 S.E.2d 724 (2007); Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 611 S.E.2d 922 (2005); Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 622 S.E.2d 733 (Ct. App. 2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any genuine issue as to any material fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party. Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 642 S.E.2d 751 (2007); Med. Univ. of S.C. v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004); Moore v. Weinberg, 373 S.C. 209, 216, 644 S.E.2d 740, 743 (Ct. App. 2007); Rife v. Hitachi Constr. Mach. Co., Ltd.,

⁴Penalties and interest will continue to accrue until this matter is resolved and the balance is paid in full.

363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Thus, because the material facts listed above are not in dispute, and those facts viewed in the light most favorable to the Petitioner establish that (1) the Petitioner is engaged in the business of selling tangible personal property at retail via his beverage-catering business and (2) the proceeds from the Petitioner's beverage-catering business are includable in the Petitioner's gross proceeds of sales, the Court should grant the Department's Motion for Summary Judgment.

I. **The Petitioner is a person in the business of selling tangible personal property at retail.**

The Petitioner operates a business where he sells liquor, beer, wine, mixers (the "Inventory") and bartending services to his customers. Under South Carolina law, "[a] sales tax, equal to [six]⁵ percent of the gross proceeds of sales, is imposed upon every person⁶ engaged or continuing within this State in the business of selling tangible personal property at retail." S.C. Code Ann. § 12-36-910(A) (2014). Tangible personal property, as defined under the South

⁵S.C. Code Ann. § 12-36-1110 (2014) imposes an additional one percent sales tax beginning on June 1, 2007.

⁶For 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 (2014).

Carolina Sales and Use Act, means "personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses." S.C. Code Ann. § 12-36-60 (2014). The Inventory can be seen, weighed, measured, felt, and touched. Accordingly, the Inventory constitutes tangible personal property. Furthermore, as will be explained in more detail below, the Petitioner sells the Inventory at retail to his customers. Therefore, the Petitioner is a person in the business of selling tangible personal property at retail.

The Petitioner operates a beverage-catering business in South Carolina. He offers various packages to his customers ranging in price from \$6.00 per person to \$25.00 per person. Each package includes some type of tangible personal property – the Inventory. The variation in price is based on the tangible personal property. Each package also includes one bartender per ninety (90) guests for a three-hour period. Customers may add additional bartenders and/or additional time to each package for an extra charge. The base charge, however, is for the sale of the Inventory along with the provision of bartending services. The fact the Petitioner sold tangible personal property as part of his alcohol catering business is supported by the Petitioner's Schedule C of his 2013 – 2015 Federal Individual Income Tax returns wherein he listed the Inventory on the "cost of goods sold" line of the returns. Additionally, the Petitioner invoked his Fifth Amendment privilege against self-incrimination when asked if he sold the Inventory to his customers. As such, this Court may infer that the Petitioner did sell the Inventory to his customers. See Griffith, 332 S.C. at 640 – 641, 506 S.E.2d at 531 – 532. Because the Petitioner sold the Inventory to his customers as part of his beverage-catering business, the Petitioner is a person in the business of selling tangible personal property at retail and is subject to South Carolina sales tax.

South Carolina case law further supports this conclusion. Specifically, the ALC has treated a catering business as a retailer. See Tronco's Catering, Inc. v. S.C. Dept. of Revenue, Docket No. 09-ALJ-17-0089-CC, 2010 WL 5781622 (S.C. Admin. Law Ct. Apr. 12, 2010); Hamby Catering, Inc. v. S.C. Dept. of Revenue, 08-ALJ-17-0041-CC (S.C. Admin. Law Ct. Jun. 12, 2009). In Tronco's Catering, the ALC determined that the taxpayer was a retailer "because it sells tangible personal property – catered meals." 2010 WL 5781622 *2. The ALC concluded that the sale of catered meals constituted the sale of tangible personal property. Here, the Petitioner sells catered beverages. No difference exists between catered meals and catered beverages. Thus, a person in the business of selling catered beverages, like the Petitioner, is in the business of selling tangible personal property at retail and is subject to sales tax.

II. The proceeds from the Petitioner's alcohol catering business should be included in his gross proceeds of sales.

Since the Petitioner is a retailer, he must remit sales tax to the State on his gross proceeds of sales, which in this case includes proceeds from the Petitioner's catered beverage sales. See § 12-36-910(A). "Gross proceeds of sales" is defined as:

[T]he 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.

S.C. Code Ann. § 12-36-90 (2014). Accordingly, retailers, like the Petitioner, must remit sales tax on the entire value of the sale and cannot deduct the cost of goods sold or the cost of materials, labor, or service from their gross proceeds of sales. See Tronco's Catering, 2010 WL 5781622 *3.

The Petitioner sells his customers packages that include liquor, beer, wine, and/or mixers. Occasionally, the Petitioner may include other tangible personal property, such as glassware, in the sale. The Petitioner also provides bartending services as part of the package. Pursuant to § 12-36-90, the Petitioner must remit sales tax on the entire value of the sale, which is the amount the Petitioner collects for the entire package. The Petitioner cannot deduct the cost of goods sold – the inventory. Additionally, the Petitioner cannot deduct the cost of materials, labor, or service – the set ups and bartending service. Accordingly, the Petitioner must include the total amount he receives from a customer who purchased a beverage-catering package in his gross proceeds of sales.

Moreover, sales tax is a transactional tax that must be determined on a transaction-by-transaction basis. See Tronco's Catering, 2010 WL 5781622 *5. In transactions that include the sale of tangible personal property and the provision of a service that is merely incidental to and enhances the value of the sale of the tangible personal property, the service cost cannot be deducted from the taxpayer's gross proceeds of sales. See Id. *4. The true test is one of the basic purpose of the buyer. Id. (quoting Clyde L. Ball, 9 Vanderbilt Law Review, What Is A Sale For Sales Tax Purposes, 231 (1956)). Here, the Petitioner's customers are interested in the product – the catered beverages. Here, just like in Tronco's Catering, when the Petitioner's customer contracts with the Petitioner for catered beverages, the customer's basic purpose is to obtain beverages for the customer's guests. Id. Thus, "although special skills and knowledge may go into the preparation, service, and presentation of the catered [beverages], it is nonetheless true that the buyer's main purpose is to purchase . . . beverages." Id. As such, the bartending service is merely incidental to the sale of the catered beverages and is includable in the Petitioner's gross proceeds of sales.

Finally, the fact that, on rare occasions, the Petitioner provides a service without the sale of catered beverages does not mean that the Petitioner can deduct the service cost from his gross proceeds of sales in transactions that include tangible personal property and a service. See e.g., Id. *5. In other words, the service cost must be included in the gross proceeds of sales in transactions that include both the sale of tangible personal property and the provision of an incidental service. See Id. *4. Accordingly, because the Petitioner's bartending service is merely incidental to the sale of the Inventory in the transactions at issue, the proceeds from the Petitioner's beverage-catering sales should be included in his gross proceeds of sales.

III. The Petitioner must remit sales tax on his proceeds from his beverage-catering sales.

As explained above, the Petitioner is a retailer. As such, the Petitioner must remit sales tax on his gross proceeds of sales from the Audit Period, which includes the total amount the Petitioner received from a customer who purchased a beverage-catering package during the Audit Period. In this case, the Petitioner failed to file sales tax returns so the Department had to estimate the Petitioner's sales tax liability based on the best information available – the Petitioner's bank statements, cash flow worksheets, and/or invoices depending on availability.⁷ See S.C. Code Ann. § 12-60-430(A) (2014) (the Department may estimate a taxpayer's tax liability if the taxpayer fails to file a return required by law). The Department used the Petitioner's bank statements to calculate the Petitioner's total sales during the Audit Period. Then, the Department determined the Petitioner's gross proceeds of sales by subtracting sales that did not include tangible personal property. For the 2014 and 2015 audit periods, the Department had to rely solely on the

⁷The Petitioner failed to maintain adequate records. See S.C. Code Ann. § 12-36-2540 (2014). As such, the Department had to rely on cash flow worksheets generated by the Petitioner as opposed to invoices that would have shown actual sales information.

Petitioner's cash flow worksheets. In doing so, the Department determined that the percentage of sales of tangible personal property totaled 97.74% in 2014 and 92.29% in 2015. For 2016, the Petitioner had a small amount of invoices and no cash flow worksheets. Based on the invoices, the Department determined that the percentage of sales of tangible personal property in 2016 totaled 46.14%. The Department then used those percentages to calculate the Petitioner's gross proceeds of sales for the Audit Period.

Once the Department determined the Petitioner's gross proceeds of sales and gave the Petitioner credit for sales tax paid, the Department determined that the Petitioner owed \$14,979.59 in sales tax for the Audit Period. Next, the Department added failure to file and failure to pay penalties pursuant to S.C. Code Ann. § 12-54-43(C) and (E) (2014), which totaled \$5,614.59 as of October 31, 2016.⁸ The Department added those penalties because, as explained above, the Petitioner failed to file sales tax returns for the Audit Period and failed to pay sales tax due for the Audit Period. Finally, pursuant to S.C. Code Ann. § 12-54-25 (2014) the Department added interest totaling \$1,047.26, calculated through October 31, 2016.⁹ Accordingly, because the Petitioner is a retailer, the Petitioner must pay sales tax on his gross proceeds of sales from the Audit Period totaling \$14,979.59 plus penalties and interest.

CONCLUSION

As the material facts not in dispute demonstrate, the Petitioner is a person in the business of selling tangible personal property – catered beverages – at retail. As such, the Petitioner must

⁸Penalties continue to accrue until the failure to file and/or pay continues. See § 12-54-43 (C) and (E).

⁹Interest also continues to accrue until the liability is paid in full. See § 12-54-25(A).

remit sales tax to the State on its gross proceeds of sales. The Petitioner's gross proceeds of sales include the entire amount the Petitioner receives from a customer who purchased a beverage-catering package. Such amount includes the value of the Inventory, the set ups, and the bartending service.

WHEREFORE, the Department asks that this Court enter an order finding that the Petitioner's proceeds from its beverage-catering sales are subject to sales tax, that the Petitioner must remit \$14,979.59 in sales tax plus penalties and interest to the Department, and that the Department's Motion for Summary Judgment is granted.

Respectfully submitted,



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Columbia, South Carolina
September 8, 2017

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1 STATE OF SOUTH CAROLINA 2 ADMINISTRATIVE LAW COURT 3 Docket No. 17-ALJ-17-0003-CC 4 Keith Purdy d/b/a 5 A Southern Bartender, 6 Petitioner, 7 vs. 8 South Carolina Department of 9 Revenue, 10 Respondent. 11 12 DEPOSITION OF 13 KEITH PURDY 14 15 Wednesday, July 26, 2017 16 10:20 a.m. - 11:13 a.m. 17 The deposition of KEITH PURDY was taken 18 on behalf of the Respondent at the law 19 offices of Cobb, Dill & Hammett, LLC, 300 20 West Coleman Boulevard, Suite 106, Mount 21 Pleasant, South Carolina, on the 26th day of 22 July, 2017 before Cassandra E. Vance, Court 23 Reporter and Notary Public in and for the 24 State of South Carolina, pursuant to Notice 25 of Deposition. 26 CASSANDRA VANCE REPORTING 27 VanceReporting@gmail.com	1 STIPULATIONS 2 It is stipulated and agreed that this 3 deposition is being taken pursuant to the 4 South Carolina Rules of Civil Procedure. 5 It is stipulated by and between counsel 6 and the witness that the reading and signing 7 of the following deposition be, and the same 8 are, hereby waived. 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
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1 APPEARANCES 2 On an Raymond, Esquire 3 Cobb, Dill & Hammett, LLC 4 300 West Coleman Boulevard, Suite 106 5 Mount Pleasant, South Carolina 29464 6 Attorney for the Petitioner 7 Lauren Acquaviva, Esquire 8 Marcus D. "Trey" Andley, III, Esquire 9 South Carolina Department of Revenue 10 300A Outlet Pointe Boulevard 11 Post Office Box 12265 12 Columbia, South Carolina 29210 13 Attorney for the Respondent 14 INDEX 15 PAGE 16 Direct Examination by Mr. Acquaviva 4 17 Cross-Examination by Mr. Raymond 32 18 Stipulations 1 19 Certificate 41 20 EXHIBITS 21 PAGE 22 Respondent's Exhibit No. 1 7 23 (Rate sheet 2016) 24 Respondent's Exhibit No. 2 7 25 (Rate sheet 2015) 26 Respondent's Exhibit No. 3 8 27 (Catering rates from website) 28 Respondent's Exhibit No. 4 8 29 (Contract did 2/4/16) 30 Respondent's Exhibit No. 5 9 31 (Invoice did 2/1/16) 32 Respondent's Exhibit No. 6 10 33 (Contract did 2/1/16) 34 Respondent's Exhibit No. 7 10 35 (2015 Form 1040) 36 Respondent's Exhibit No. 8 11 37 (2014 Schedule C) 38 Respondent's Exhibit No. 9 12 39 (2013 Schedule C) 40 Petitioner's Exhibit No. 1 41 41 (Unlicensed Social Functions) 42 Petitioner's Exhibit No. 2 41 43 (TIPS on Premise, participant manual)	1 KEITH PURDY, having been duly sworn, 2 deposes and testifies as follows: 3 DIRECT EXAMINATION 4 BY MS. ACQUAVIVA: 5 Q. Good morning, Mr. Purdy. My name is Lauren 6 Acquaviva and I'm here with a coworker, Trey, and 7 we will be -- I'll be taking your deposition. 8 I'm here on behalf of the South Carolina 9 Department of Revenue and we're here in the 10 matter of Keith Purdy doing business as A 11 Southern Bartender versus the South Carolina 12 Department of Revenue. 13 Can you please state and spell your name for 14 the court reporter? 15 A. Keith Purdy, K-E-I-T-H P-U-R-D-Y. 16 Q. Thank you. Now, Mr. Purdy, have you ever 17 had your deposition taken before? 18 A. Yes, ma'am. 19 Q. You have? About how many times? 20 A. A dozen. 21 Q. What types of matters have you had your 22 deposition taken in? 23 A. Liquor liability -- 24 Q. Okay. 25 A. -- as an expert witness.

Page 5 1 Q. Okay. So you're familiar with this process 2 and you know the court reporter has to record 3 everything, so you need to have verbal responses 4 for her. You understand that? 5 A. Yes, ma'am. 6 Q. Okay. Just some kind of housekeeping 7 matters. If I ask you a question and you don't 8 understand my question, please tell me that you 9 don't understand it and I'll do my best to 10 rephrase. 11 If I ask a question and you don't represent 12 that you misunderstood my question and you answer 13 it, I'm going to assume that you fully understood 14 my question; is that fair? 15 A. Yes, ma'am. 16 MS. ACQUAVIVA: Okay. I think before 17 we get any further, I will let your counsel 18 introduce himself and place some things on	Page 7 1 speak about? 2 A. The case at hand. 3 Q. Okay. The first thing that I'm going to do 4 is I'm going to show you some different 5 documents. We're not going to get into the 6 details of the documents. Just merely want you 7 to identify them and let me know if they're 8 accurate and if they're -- they relate to your 9 business. We're just kind of going to get that 10 out of the way and then we'll get into some 11 details. 12 (Respondent's Exhibit No. 1, as previously 13 marked, was presented for identification.) 14 So the first document I'm going to hand you 15 is Respondent's Exhibit 1. It's titled "A 16 Southern Bartender Rates for Bartending Services 17 2016." Do you recognize that document? 18 A. Yes, ma'am. 19 Q. Is -- what is that document? 20 A. This is my rate list. 21 Q. Okay. And is that an accurate copy of your 22 rate list? 23 A. Yes, ma'am. 24 (Respondent's Exhibit No. 2, as previously 25 marked, was presented for identification.)
Page 6 1 statements that could be coming up in this 2 deposition. However, I'm understanding that 3 he will not be doing that, will be answering 4 the questions. 5 So we'll reserve, obviously, any 6 objections that -- for trial and make any 7 that are proper for this deposition. 8 BY MS. ACQUAVIVA: 9 Q. Okay. Mr. Purdy, how did you prepare for 10 this deposition? 11 A. Well, I have got quite a bit of paperwork 12 between myself and the Department of Revenue. 13 Q. Okay. 14 A. This has only been going on for 14 months. 15 Q. Okay. Did you speak with anybody when you 16 were preparing for this deposition? 17 A. Besides my lawyers? Yes, ma'am, I have. 18 I've talked to several people about it. 19 Q. Okay. Who have you spoken with? 20 A. Friends. 21 Q. Friends, okay. 22 A. Colleagues? I've talked to some other 23 bartending services that are going through this 24 same thing. 25 Q. Okay. And what -- generally, what did you	Page 8 1 Q. Okay. I'm going to hand you Respondent's 2 Exhibit 2 which is also entitled "A Southern 3 Bartender" and its rates -- it says "Rates for 4 Bartending Services 2015." Do you recognize that 5 document? 6 A. Yes, ma'am. 7 Q. Is that your business' document? 8 A. Yes, ma'am. 9 Q. Okay. And is that an accurate copy of your 10 business' document? 11 A. Yes, ma'am. 12 (Respondent's Exhibit No. 3, as previously 13 marked, was presented for identification.) 14 Q. Okay. I'm going to hand you Respondent's 15 Exhibit 3, which is a printout from 16 www.ASouthernBartender.com/Catering. Do you 17 recognize this -- the contents in this printout? 18 A. (Perusing). Yes, ma'am. 19 Q. Okay. And as best as you can recall -- this 20 was printed out on April 5th, 2016. Does that 21 accurately represent what your website looked 22 like around that time? 23 A. Yes, ma'am. 24 (Respondent's Exhibit No. 4, as previously 25 marked, was presented for identification.)

Page 9 1 Q. Okay. Now I'm going to hand you 2 Respondent's Exhibit 4. This is a contract. It 3 looks like with the College of Charleston, dated 4 February 4th, 2016. Do you recognize this 5 document? 6 A. (Perusing). Yes, ma'am. 7 Q. Okay. Does that look like an example of one 8 of the contracts that you had provided to the 9 Department of Revenue during the audit? 10 A. Yes, ma'am. 11 Q. And is that -- is that document fairly 12 representative of what other similar 13 transactions, documents related to those 14 transactions, would look like? 15 A. Yes, ma'am. 16 (Respondent's Exhibit No. 5, as previously 17 marked, was presented for identification.)	Page 11 1 Exhibit 7. This is a copy -- it's not your 2 complete U.S. tax return, but it's the main 3 portion of your Individual Income Tax Return from 4 tax year 2015, as well as your profit or loss 5 from business, your Schedule C. I hand you that 6 document. Are you familiar with that document? 7 A. (Perusing). Yes, ma'am. 8 Q. Okay. 9 A. 2015. 10 Q. Is that an accurate copy of that portion of 11 your 2015 Individual Income U.S. Tax Return? 12 A. Yes, ma'am. 13 (Respondent's Exhibit No. 8, as previously 14 marked, was presented for identification.) 15 Q. Okay. I'm going to hand you Respondent's 16 Exhibit 9. This is from your 2014 U.S. 17 Individual Income Tax Return, except this is only
18 Q. Okay. I'm going to hand you Respondent's 19 Exhibit 5. This one is entitled "Invoice." It 20 says -- it looks like the client was Charitable 21 Society of Charleston dated February 1st, 2016. 22 Do you recognize that document? 23 A. (Perusing.) Yes, ma'am. 24 Q. Okay. And does Respondent's Exhibit 5 look 25 like one of the invoices that you submitted to	18 the Schedule C portion. Do you recognize that 19 document? 20 A. I can't read it. (Perusing.) It's hard to 21 read. 22 Q. Yeah, that's the only copy that the 23 Department has, so it must have been provided 24 that way. I couldn't read it very well myself. 25 A. Okay. I believe this is mine.
Page 10 1 the Department of Revenue during the audit? 2 A. Yes, ma'am. 3 Q. And is that fairly representative of the 4 invoices that you generally use in your business? 5 A. Similar, yeah. 6 Q. Similar, okay. 7 A. They're not all quite that detailed. 8 (Respondent's Exhibit No. 6, as previously 9 marked, was presented for identification.) 10 Q. Okay. I'm going to hand you Respondent's 11 Exhibit 6 and this one is entitled "contract." 12 It looks like the client was MUSC Student 13 Programs dated February 12th, 2016. Do you 14 recognize that document? 15 A. Yes, ma'am. 16 Q. Okay. And is that an accurate document of 17 something that you would have submitted to the 18 Department during the audit? 19 A. Yes, ma'am. 20 Q. And is that a fairly representative example 21 of a document you use in your business? 22 A. Yes, ma'am. 23 (Respondent's Exhibit No. 7, as previously 24 marked, was presented for identification.) 25 Q. Okay. I'm going to hand you Respondent's	Page 12 1 (Respondent's Exhibit No. 9, as previously 2 marked, was presented for identification.) 3 Q. Okay. And the last document I'm going to 4 hand you is Respondent's Exhibit 9. This is 5 the -- your 2013 Schedule C from your U.S. 6 Individual Income Tax Return. Does that document 7 look familiar? 8 A. (Perusing.) Okay. Yes, ma'am. 9 Q. Okay. Does that appear to be an accurate 10 copy of your 2013 Schedule C? 11 A. Yes, ma'am. 12 Q. Okay. Now, the main purpose of this 13 deposition is so that I can understand better how 14 your business works because I have no idea how 15 any business like yours works. I've never used 16 one before. So I'm hoping that if I could shore 17 up my understanding, then maybe we can figure 18 this out a little bit better. 19 So to do that, I'm just going to use myself 20 as a hypothetical potential client. So how would 21 I come across your business? How would I come to 22 find out about your business? 23 A. Internet, word-of-mouth. 24 Q. Okay. And what would I come to you for, 25 typically, or what do most of your customers look

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1 for? 2 A. Bartending service. 3 Q. Okay. So let's say I'm planning a 4 fundraiser and I'm going to invite guests and I 5 come to you and I say, "I would like to have a 6 bar at my event. Can you help me? How would 7 that process work? What would be the first step? 8 A. Well, I'd have to ask you some questions. 9 Q. Okay. What kind of questions would you ask 10 me? 11 A. How many people? 12 Q. Okay. 13 A. How long? 14 Q. Okay. 15 A. Where is it going to be? 16 Q. Okay. 17 A. What do you want? 18 Q. Okay.	1 would be at a private home or a public 2 building -- 3 Q. Okay. 4 A. -- but not a Convention Center. 5 Q. Okay. So let's say it's at my house in 6 Downtown Charleston. 7 A. Okay. 8 Q. My backyard. 9 A. Okay. You know, a good example is, I would 10 want to go by and do a site inspection, check it 11 out, see what I got to go through. 12 Q. Okay. 13 A. Basically if it's a place I haven't been 14 before. 15 Q. Okay. 16 A. I go back, check it out, see what I was 17 going to need to do. And then, you know, the day 18 of the event, I usually show up an hour or two up
19 A. What kind of, you know, services do you 20 like? 21 Q. Okay. And then let's say we have all of 22 that out. What would the next step be? 23 A. Under normal circumstances, I would say 24 that, you know, I would need a deposit -- 25 Q. Okay.	19 early to set up. 20 Q. Okay. And what does your set-up entail? 21 A. Depends on the contract. 22 Q. Okay. 23 A. You know, it's going to be a bar. 24 Q. Okay. 25 A. Whether it be beer, wine, liquor, mixers,
Page 14	Page 16
1 A. -- to confirm that date -- 2 Q. Okay. 3 A. -- which would allow me to go purchase the 4 inventory -- 5 Q. Okay. 6 A. -- and take it to your party. 7 Q. Okay. And then? 8 A. And then that makes this a legally binding 9 contract. 10 Q. Does anything else happen between when, you 11 know, we're setting it up initially and the date 12 of the event? 13 A. Not necessarily. 14 Q. Okay. So tell me the logistics. How 15 does -- how would the date of the event work from 16 your side? 17 A. I'm not sure I understand. 18 Q. Okay. So we booked a room at the Convention 19 Center for my event and you're going come and set 20 up before it starts. What does that look like? 21 What does your set-up look like? 22 A. Well, one, I doubt the Convention Center 23 would allow me in there. 24 Q. Okay. 25 A. I mean, they got their own staff. This	1 you know, service. 2 Q. Do you provide physical like bar structure 3 or is that something your client has to provide? 4 A. It depends. 5 Q. Okay. 6 A. Sometimes they have bars there. 7 Q. Okay. 8 A. Sometimes I bring my own. I got to have 9 something to work off of. 10 Q. Right. Of course. And so product-wise, 11 inventory, you just kind of stated it, but can 12 you just restate again typically what you -- what 13 you provide? 14 A. Well, I mean, I can do the beer, wine, 15 liquor, mixers, ice, cup, garnishes, service, 16 whatever the client wants. 17 Q. Can you provide glassware? 18 A. I have some glassware in my own storage. If 19 it's more than a hundred people, I don't. 20 Q. Okay. 21 A. They rent it. 22 Q. Okay. 23 A. Because I -- I don't have to rent it. 24 Q. Okay. After the event is over, what happens 25 with the leftover inventory?

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1 A: I pack it up and take it back to my 2 storeroom, whatever is left over. 3 Q: Okay. And what do you do with what's left 4 over after you bring it back to your storeroom? 5 A: I'll keep it and use it for the next party. 6 Q: Okay. Where do you typically purchase your 7 inventory from? 8 A: Retail outlets. 9 Q: Okay. 10 A: Total Wine, Sam's, Wal-Mart. 11 Q: Okay. 12 A: Bottles. Everything's retail. 13 Q: Okay. 14 A: I have -- do not have the ability to buy 15 wholesale. 16 Q: If your client wanted to keep all the 17 leftover inventory after the event, is that an 18 option? 19 A: If they wanted to. 20 Q: Okay. 21 A: I'd have to charge them more. 22 Q: Okay. What if your client wanted to have a 23 cash bar, is that an option? 24 A: No, ma'am. 25 Q: Okay.	1 guess, can you just kind of explain -- it looks 2 like the "Lieutenant's Affair" and up are very 3 similar, despite the levels of alcohol, but the 4 "Private Party" seems to be the most different 5 from the rest. Can you kind of explain that one 6 a little bit to me? 7 A: Yes, ma'am. The "Private's Party" is where 8 the client provides their own alcohol. 9 Q: Okay. 10 A: And I provide everything else, set-ups and 11 service. 12 Q: Okay. And you provide the mixers as well in 13 that? 14 A: Yeah, those are the set-ups. 15 Q: Okay. 16 A: Yes, ma'am. 17 Q: And what would happen if I came to you as a 18 potential client and I said, "I have everything I 19 need. All I need is physical bartenders to serve 20 my stuff." Is that something that you provide? 21 A: On occasions. 22 Q: Okay. 23 A: Not something I like doing. Temporary labor 24 is not the purpose of my company. 25 Q: Okay.
Page 18	Page 20
1 A: You'd have to have a permit for that. 2 Q: Okay. Now, I want to take you -- we'll go 3 back to Respondent's Exhibits 1 and 2 and 3 and 4 they all kind of show the same thing. So we 5 could just focus on Exhibit 1 and if there's 6 anything that you'd like to point out that 7 differs between the three during the course of 8 this questioning, you're welcome to. 9 Can you explain to me what the difference in 10 pricing in the rates reflect? 11 A: The quality of the product. 12 Q: Okay. So -- 13 A: I mean, you got cheap liquors, which would 14 be house brand, then you got expensive liquors, 15 like call brand, premium brands. 16 Q: Okay. 17 A: They cost more. 18 Q: The product costs more? 19 A: Yes, ma'am. 20 Q: Okay. Does it cost more to serve premium 21 brands versus house brands? 22 A: No. 23 Q: Okay. 24 A: I mean, the service is still the same. 25 Q: Okay. One of the things that I saw -- I	1 A: Although, I do do that periodically. It's 2 just -- it's my worst nightmare when a client 3 says, "Oh, I'll have everything you need." and I 4 show up and they never have everything I need. 5 I'm going -- you know, it makes me look bad when 6 they go, "Oh, you don't have tonic on the bar?" 7 You know, "What, no bourbon?" You know, and 8 going (indicating sound). So I really turn those 9 down. 10 Q: Okay. And that type of arrangement is not 11 reflected on the rates in Exhibit 1, correct? 12 A: Right. 13 Q: Okay. So that would just be something you 14 would work out with the customer if -- 15 A: On rare occasion. 16 Q: Okay. Tell me about -- part of the rate 17 sheet talks about "All events are subject to an 18 18 percent gratuity." Tell me -- tell me about 19 the gratuity. 20 A: Well, my opinion has always been: Gratuity 21 is earned, not asked for. 22 Q: Okay. 23 A: If I do a good job and somebody wants to 24 leave a gratuity on the check, then that's great. 25 Q: Okay.

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1 A. But I don't automatically include it. 2 Q. Okay. And who keeps the gratuity? 3 A. It goes in with my operating expenses. 4 Q. Okay. So the gratuity wouldn't be 5 distributed to whoever was bartending the event? 6 A. Not usually, no. 7 Q. Okay. How do you hire your bartending 8 staff? 9 A. Just friends. 10 Q. Okay. 11 A. Word-of-mouth. 12 Q. How -- what is that relationship like? Do 13 you have a contract with them? 14 A. No, ma'am. 15 Q. Okay. 16 A. I just -- you know, when I need a bartender, 17 I'll -- you know, like I've done things for Taste	1 some cards, said "Professional Bartending 2 Service," and that's how I got started. And I've 3 been basically doing it since I say '78. I've 4 taken some breaks and done some traveling. I 5 went down to the islands. 6 Q. Okay. 7 A. But it is, in essence, the oldest bartending 8 service in town. 9 Q. I can't even open a wine bottle, so I would 10 be a terrible bartender. 11 A. Well, a lot of them are screw-caps now. 12 Q. Thankfully. I struggle with that, so. 13 Okay. Let me take you to Exhibit 4 and 14 these are your -- the contracts and invoices. 15 And I'd just like to get -- we'll use -- I just 16 picked three from the ones you provided -- 17 A. Uh-huh (affirmatively responds).
18 of Charleston -- 19 Q. Uh-huh (affirmatively responds). 20 A. -- Oyster Festival through the Restaurant 21 Association, they show up. 22 Q. How are they paid? 23 A. I give them a check. 24 Q. What -- what kind of -- what is the 25 arrangement like?	18 Q. -- just so -- we don't need to go through 19 all of them. Just if I could understand these 20 ones, hopefully I could understand how the 21 business works. 22 A. Uh-huh (affirmative response). 23 Q. So looking at Exhibit 4, this is entitled 24 "contract." Explain to me the -- you know, how 25 this got worked up, how you came to the charges
Page 22	Page 24
1 A. They usually get 12 to 15 dollars an hour. 2 Q. Okay. So it's just an hourly rate. It's 3 not based off a percentage of -- 4 A. No. 5 Q. -- of the event's income or anything? 6 A. No, ma'am. 7 Q. Okay. Do you typically do a lot of the 8 bartending yourself? 9 A. Oh, yeah. 10 Q. Okay. 11 A. As much as I can. 12 Q. Okay. 13 A. That's how I make a living. 14 Q. How long have you been bartending? 15 A. Forever. Last century. I started my 16 catering service in 1978 when I was a student at 17 the College of Charleston. And I had worked at 18 Kiawah and The Mills House, and a lot of bars 19 downtown. 20 And I remember, a guy came up to me one 21 night -- one day at The Mills House and said, 22 "You know, Keith, I need a bartender for my 23 Christmas party. Would you be willing to work?" 24 I went, "Sure." 25 So I went and worked for him and printed up	1 for the customer. 2 A. Am I looking at the contract for the College 3 of Charleston? 4 Q. Yes, sir. 5 A. Okay. Nate Lyles knows me. Of course, 6 Glenn McConnell, who's president of the College 7 of Charleston, is a friend of mine. 8 Q. Uh-huh (affirmatively responds). 9 A. And they had asked me to do a reception in 10 Randolph Hall for 50 people. 11 Q. Okay. 12 A. And, you know, they told me what they wanted 13 and -- as far as brands goes, which is one of my 14 brands called "Major's Function." 15 Q. Uh-huh (affirmatively responds). 16 A. Call brands. So I came in and set it up in 17 Randolph Hall, served them for three hours -- 18 Q. Okay. 19 A. -- and packed up and left and went home. 20 Q. All right. Now, it see -- so you've got the 21 base charge, looks like \$450, and that was using 22 nine dollar per person for 50 people? 23 A. Yes, ma'am. 24 Q. Is that correct? And then you do have the 25 gratuity on here. Tell me about how that works.

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1 A. Well, I mean, if I can get the 18 percent 2 gratuity on a bill, I will, and most clients 3 don't mind. 4 Q. Okay. 5 A. You know, they're willing to pay that. And 6 it goes into my bank account. It's all part of 7 my salary. 8 Q. And if the client said to you, "Here's 9 \$450," what would happen? 10 A. What do you mean? I don't understand your 11 question. 12 Q. Let's say they said, "Oh, I'm not paying 13 this 18 percent gratuity." 14 A. They've never done that. 15 Q. What would happen if they had? 16 A. I can't answer that question. I don't know. 17 Q. Okay. Let's go take a look at Respondent's 18 Exhibit 5. This one is entitled "invoice." It 19 says the Charitable Society of Charleston. Tell 20 me a little bit about this event. And if you 21 don't remember the details of the event, that's 22 fine, but just the particulars of kind of how you 23 came up with the itemized charges on this 24 invoice. 25 A. Okay. What they do is they've hired me --	1 Q. Okay. 2 A. All I'm doing -- I'm just the delivery 3 service. And I have receipts for everything I 4 bought where I paid retail sales tax. 5 Q. Okay. 6 A. Everything I bought. 7 Q. Okay. 8 A. Now, granted, I may have rounded it off. 9 You know, ten bucks a bottle. It may have been 10 less. It may have been more. I don't -- I don't 11 really -- I don't nickel-and-dime people. 12 Q. Sure. Yeah, ten dollars is easier than 13 9.98. 14 A. Yeah. 15 Q. Yeah, totally understand. 16 Okay. And the last one, this is 17 Respondent's Exhibit 6. This is a contract. 18 looks like with MUSC. Tell me about, you know, 19 what -- what this contract was for. 20 A. Basically labor. They do a wine tasting at 21 Halsey Gallery, which is over on the College of 22 Charleston campus. They provide all the 23 inventory. They -- they -- they bring it in. I 24 bring them coolers and use two tables to serve, 25 but it's all their inventory. All I do is serve
Page 26	Page 28
1 and this is a -- of course, a nonprofit 2 corporation. They pulled the permit for this, 3 beer and wine. It's at the Visitor's Center. 4 It's a large event, probably 500 people. 5 You know, they hire me to come in and set 6 up, to man the beer wagon, and I picked up the 7 wine and sodas and do a soda bar. I always 8 insist on having a nonalcoholic bar anytime 9 there's a bar with alcohol. Period. That's one 10 of my rules. 11 So what I did -- and looking at the Chard, 12 Pinot Grigio, that was the price that I paid from 13 Total Wine. I didn't mark it up, because if I 14 was marking it up to make a profit, it would be 15 300 percent what the cost was. That's ten bucks 16 a bottle. 17 Q. Okay. 18 A. That's what it cost me. 19 Q. Okay. And same thing with everything else 20 on here? 21 A. Uh-huh (affirmatively responds). 22 Q. Is that kind of how it worked? 23 A. Uh-huh (affirmatively responds). 24 Q. You just passed on your cost? 25 A. Uh-huh (affirmative response).	1 it. 2 Q. Okay. So this would be one of those rare 3 arrangements that you were talking about earlier 4 where you're just providing bartenders? 5 A. Yes, ma'am. 6 Q. Okay. 7 A. And, of course, one reason why, you know, 8 some of my clients -- and you'll see and I've got 9 a copy of my client list. The reason why they 10 use me is because I carry a million dollars' 11 worth of insurance. 12 Chamber of Commerce, the City of Charleston, 13 the Visitor's Center. I've got the City of 14 Charleston listed as an additional insured for a 15 million dollars. And that's become the norm now. 16 You have to have insured bartenders if you're 17 going to go in a lot of these public places. 18 Q. Okay. 19 A. And clients want it. 20 Q. And what's the benefit of being insured? 21 A. So you don't get sued. 22 Q. Okay. 23 A. You know, like I say, I have been an expert 24 witness in lawsuits. It's more commercial, going 25 against bars and restaurants who have been sued

Page 29 1 for both sides, for the plaintiff and the 2 defendant. 3 And, you know, I'm an expert in this field. 4 And that's one of the things that they look for 5 when it comes to an expert witness is somebody 6 that knows what they're talking about. 7 So being insured is one thing, but being 8 knowledgeable and being a person that can help 9 defend them in case of a lawsuit is what's most 10 important. 11 Q. Okay. So the insurance protects your 12 company if you over-serve a customer or a guest, 13 really, of one of your clients and they go out 14 and get hurt? 15 A. Right. Which has never happened, by the 16 way. I would like to put that on the record. 17 I've been -- you know, I say I've been lucky. 18 I've been very responsible. I mean, I cut off a 19 guest one night, the guy that was the host. He 20 said, "I'm paying you." I said, "That's fine. 21 You won't pay me, that's okay, but I'm not 22 serving you any more alcohol." 23 Q. Good for you. 24 A. Oh, I know. You know, I'm very 25 conscientious about my business.	Page 31 1 inventory I've bought from Sam's, Wal-Mart, Total 2 Wine. I go -- I do a lot of business with Total 3 Wine. 4 Q. Okay. So this is all the inventory that you 5 purchased in 2011 for your -- the events that you 6 worked? 7 A. Yes, ma'am. 8 Q. Okay. And did you sell that -- these goods 9 to your clients? 10 A. No, ma'am. 11 Q. No? 12 A. Fifth Amendment. 13 Q. Okay. 14 MS. ACQUAVIVA: Can we go off the 15 record briefly? 16 (Off the record from 10:52 a.m. to 11:01 a.m.) 17 MS. ACQUAVIVA: We are back on the 18 record and I have no additional questions 19 for you. 20 THE WITNESS: Okay. 21 MS. ACQUAVIVA: Do you have any 22 questions? 23 MR. RAYMOND: I don't have any 24 questions of Mr. Purdy at this time. 25 THE WITNESS: Can I present some
Page 30 1 Q. Okay. The last -- see, it's very quick -- 2 last couple of questions, we're going to look at 3 the tax returns. And for ease, we'll just look 4 at Respondent's Exhibit 9. And it -- like I 5 said, if you want to point out something in one 6 of the other two as well, we can. 7 What I've noticed on in Respondent's 7, 8, 8 and 9 on the Schedule C, part one, line four, it 9 talks about "cost of goods sold" and all of these 10 tax returns, there is a dollar amount there. Can 11 you tell me what that dollar amount reflects? 12 What are the goods that are being reflected on 13 the tax return? 14 A. Okay. Point out again where you're talking 15 about. 16 Q. So we're on part one. 17 A. Okay. 18 Q. And then it's line four. It says "cost of 19 goods sold." 20 A. Okay. 21 Q. And on Exhibit 9, in particular, it says 22 22,000 and change. 23 A. Right. 24 Q. What is that amount coming from? 25 A. From all the receipts, from all the	Page 32 1 evidence? 2 MS. ACQUAVIVA: That would be up to 3 your attorney. 4 THE WITNESS: Unlicensed Social 5 Function. 6 MR. RAYMOND: Can we step out just for 7 one second? 8 MS. ACQUAVIVA: Yeah. 9 (Off the Record) 10 CROSS-EXAMINATION 11 BY MR. RAYMOND: 12 Q. Okay. Mr. Purdy, you said that you've been 13 working in this industry for about 40 years? 14 A. Yes, sir. 15 Q. Of that time, has the Department of Revenue 16 ever contacted you prior to this for any reason? 17 A. Yes, sir. I would like to put this on the 18 record. Back in 1988, '89, I was asked by the 19 City of Charleston to handle the concessions at 20 Gaillard Auditorium. I was a caterer. I'd been 21 in business. I was well-known. I was 22 well-liked. Mayor Riley, former Mayor Riley, had 23 asked me if I would handle concessions. 24 So to do so, I had to apply for a permanent 25 beer and wine license, which I did. You know,

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1 you notify -- back then it was ABC. They put a 2 sticker on the door, you run an ad in the 3 newspaper, and, you know, after 30 days, nobody 4 opposed it, then you get your license and I did 5 up until September 21st, 1989, which as everybody 6 remembers was Hurricane Hugo. That was the end 7 of my career there. 8 So I ended up doing concessions at the 9 Charleston Battery in the early nineties -- I 10 don't have the dates on this -- where I -- again, 11 I applied for a permanent permit and was issued 12 that and I did concessions for Charleston Battery 13 for a year or so. Now -- 14 Q. Mr. Purdy, can I -- can I interrupt? I'm 15 sorry. 16 A. Sure. 17 Q. These permits that you're speaking about, 18 are these Department of Revenue permits that 19 you -- 20 A. Yes, sir. 21 Q. Okay. 22 A. These are the permanent beer and wine. See, 23 there's two types of permits: Temporary -- 24 Q. Uh-huh (affirmative response). 25 A. -- ADU-900 and then permanent.	1 license. 2 Q. Okay. And, Mr. Purdy, what effect did your 3 loss of the retail sales tax license have on your 4 business? 5 A. None, because I was at -- at that point, I 6 became a caterer and I was not selling alcohol. 7 I'm just a delivery service. I'm just a service. 8 That's all I do. 9 Q. And so your contention is that you're not 10 selling alcohol. What regulations are there that 11 you know of that regulate your actual -- what you 12 do? 13 A. Well, the only thing that I'm familiar with 14 is that (indicating): Unlicensed Social 15 Functions. And this is what I have abided by 16 through my whole career is, I can't sell alcohol. 17 I just pick it up from the store, pay retail 18 sales tax on it, and take it to the client and 19 serve it. 20 This is rather vague, but there's nothing 21 that says I can do what I'm doing. There's 22 nothing that says I can't. 23 Now, in all honesty, I've had conversations 24 with several of my legislators that are friends 25 of mine, from Chip Limehouse to Jim Merrill to
Page 34	Page 36
1 Now, to be an permanent permit, you've got 2 to have a facility. They got to be able to knock 3 on your door and there's other regulations which 4 I -- you know, appeared -- I was aboveboard and 5 everything was okay with that. 6 Because, I mean, Galliard -- 7 Q. Uh-huh (affirmative response). 8 A. -- beautiful facility. So I did concessions 9 at Galliard and then I did them for Charleston 10 Battery over Stony Field. 11 Now, when that ended, I went to the 12 Department of Revenue personally and I had a 13 conversation with somebody in your office about 14 my business. 15 I said, "Look, I'm a catering service. I 16 don't have a permanent facility. I work out of a 17 storage unit, you know. Do I have to keep my 18 retail sales tax license active? Because I'm not 19 going to be reporting sales tax when I'm not 20 selling alcohol." 21 And they agreed with me and they said "no," 22 and they canceled my retail sales tax license. 23 the Department of Revenue did. And you can go -- 24 I was trying to look it up. I couldn't find it 25 this morning. But I did have a retail sales tax	1 Leon Stavrinakis. They're all clients, by the 2 way. I've done parties for them. 3 And I told them, I said, "Look, you know, I 4 would like to have some regulations for my 5 industry. I mean, you know, give me some 6 guidelines to go by here." 7 THE WITNESS: And, unfortunately -- and 8 I don't think I have to tell you this -- 9 that it's hard to get anything -- any bills 10 changed in our State House that concern 11 alcohol and gambling. Okay? 12 MS. ACQUAVIVA: Uh-huh (affirmative 13 response). 14 THE WITNESS: So, I mean, I've screamed 15 and hollered at the top of my lungs, "Let's 16 change this," and nothing's ever happened. 17 So now that I have received all this 18 audit from you, it kind of backs up what 19 I've been saying. I mean, look, I'd just 20 like some guidelines. Just tell me what I 21 can and can't do and that way I will know. 22 BY MR. RAYMOND: 23 Q. One more thing -- or a couple more things. 24 Do you know -- is it common in your industry for 25 bartenders to charge sales tax on the -- for open

Page 37 1 bar? Unlicensed social functions? 2 A: No, not to me. But I do know now, and I 3 have talked to other caterers that they're 4 trying to do that, which I disagree with. That's 5 double taxation -- 6 Q: Okay. 7 A: -- which is mentioned in our thing. 8 Q: Let's see. Think if there's anything else. 9 Okay. Mr. Purdy, I know that you were 10 recently diagnosed with a medical condition. Has 11 that harmed your business at all? 12 A: Oh, yes, sir. 13 Q: Okay. And could you explain a little bit 14 about what that was and what happened? 15 A: Yes. On October 17th in 2013, I was 16 actually doing a bar at Kiawah, standing out on 17 the front porch, Sandcastle. I'll never -- it's 18 a night I'll never forget. There's a full moon 19 coming up. And all of a sudden, the lights went 20 out, and I had a brain tumor. 21 And, fortunately, I was with some folks that 22 knew me and could tell something was wrong. They 23 ran me to the hospital and I had a brain tumor 24 and diagnosed cancerous. 25 It wasn't -- it wasn't brain cancer like	Page 39 1 with this TIPS training. 2 MR. RAYMOND: Well, let me -- let me 3 put that in a form of a question -- 4 THE WITNESS: Okay. 5 MR. RAYMOND: -- really quickly. 6 BY MR. RAYMOND: 7 Q: So, Mr. Purdy, you say that you've shut down 8 your catering service or your bartending service. 9 A: Uh-huh (affirmatively responds). 10 Q: What have you been doing for income since 11 then? 12 A: Doing TIPS training. 13 Q: And what is TIPS training? 14 A: TIPS is a liquor liability training program 15 that I've been doing for 20 years where I go out 16 and train staff to know what to look for if 17 they've had too much to drink and how to cut them 18 off. 19 I actually testified before a Judiciary 20 Subcommittee hearing in February. I'm on the 21 list of Senator Shealy, Senator Sandy Semu, to 22 come testify because there is a proposal to make 23 this mandatory. 24 Now, I agree, but I don't know if the 25 government's going to be able to regulate it like
Page 38 1 John McCain. What I had was melanoma. It had 2 metastasized and -- and I had the tumor from 3 melanoma. 4 So I've been through chemo, radiation. I've 5 actually had three brain surgeries. I mean, I 6 was in the hospital last summer in August 7 recovering from my last brain surgery when I got 8 a bill from Matthew Grude (phonetic) for this tax 9 issue. 10 And it's been affecting me. I mean, this is 11 a lot of stress what y'all putting me through. 12 And it's definitely not helping with my health. 13 I mean, if you want to see a copy of the 14 medical bills -- I mean, I've got a lot more 15 medical bills than I can afford to pay. But I'm 16 a survivor and I'm not giving up. 17 Now, what I have done, I've discontinued my 18 catering service. And I don't know if I -- one 19 thing I would like to continue -- 20 MR. RAYMOND: We will be entering these 21 exhibits. If y'all have any objections, 22 please let me know. 23 MS. ACQUAVIVA: (Shakes head 24 negatively.) 25 THE WITNESS: I'm sure you're familiar	Page 40 1 they should. But they did pass the law to 2 make -- you know, of course, you got to have a 3 million dollars' worth of insurance at every 4 establishment. 5 Q: So -- 6 A: So any -- and this is one of the things I've 7 been doing. 8 Q: Okay. So, Mr. Purdy, you would say that you 9 are an expert in the bartending service field, 10 then, right? 11 A: Yes, sir. 12 Q: Had you -- prior to receiving notice from 13 the Department of Revenue, did you ever have any 14 inclination that there was sales tax owed on the 15 products that you were providing during these 16 open bars? 17 A: No, sir. 18 Q: Had you ever heard of anyone else being 19 audited by the Department of Revenue prior to 20 this? 21 A: No, sir. 22 MR. RAYMOND: Okay. All right. I 23 think that's all the questions that I have 24 for Mr. Purdy. 25 THE WITNESS: Y'all kind of changed the

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rules in the fourth quarter here.

MR. RAYMOND: That's all I have. And we'll be entering this "Unlicensed Social Functions" -- I guess it's the actual law here -- as an exhibit. And I will actually go make a copy once we're out. That will be Defendant's Exhibit A -- or Petitioner's Exhibit A.

MS. ACQUAVIVA: Is that the only exhibit? Just so we could put them -- identify the document with what it will be numbered for the record.

MR. RAYMOND: Sure. I suppose we can put the TIPS practice manual in, as well, because he testified to that.

And for the record, there are other documents on the table, but I don't think that Mr. Purdy actually referenced them in his testimony. So I don't believe that there's any need to enter them into the record, so.

(Petitioner's Exhibits No. 1 and 2 were marked for identification purposes.)

(There being no further questions, the deposition concluded at 11:13 a.m.)

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CERTIFICATE OF REPORTER

I, Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the deposition of KEITH PURDY on the 26th day of July, 2017; that the witness was first duly sworn by me, and that the foregoing 41 pages constitute a true and correct transcription of the said deposition.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter sealed and delivered to Lauren Acquaviva, Esquire, South Carolina Department of Revenue, 100A Outlet Pointe Boulevard, Columbia, South Carolina, 29210. This sealed original transcript shall be retained by the above party, who shall be responsible for filing same with the Court prior to trial or any hearing which might result in a final order on any issue.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 1st day of August, 2017.

Cassandra E. Vance, Court Reporter
Notary Public for South Carolina
My commission expires: 2-26-2018

A Southern Bartender

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Website: www.ASouthernBartender.com



RATES FOR BARTENDING SERVICES - 2016

General's Ball ~ Super-Premium Brands of Liquor – Grey Goose vodka, Bombay Saffire,
\$24.00 pp Mt. Gay rum, Patron tequila, single barrel bourbon and single malt scotch.
Liqueurs: Amaretto, Bailey's, Cointreau, Drambuie, Ouzo, Kahlua, etc.
Fine wines and bottle beers. This bar plan includes glassware, all the set-ups
and service, as listed below, and the banquet tables w/ linen for the bar.

Colonel's Cocktails ~ Premium Brands – Grey Goose vodka, Bombay gin, Meyer's rum,
\$14.00 pp Makers Mark bourbon, Jack Daniels, Crown Royal, Chivas Regal.
Fine wines and bottle beers. Includes the set-ups and service, as listed below.

Major's Function ~ Call Brands of liquor – Absolute vodka, Tangueray gin, Bacardi rum,
\$12.00 pp Makers Mark bourbon, Jack Daniels, Seagram's VO, Dewars scotch.
Nice wines and domestic beers. Set-ups and service, as listed below.

Captain's Choice ~ House Brands of Liquor – Smirnoff vodka, Gordon's gin, Ron Rico rum,
\$11.00 pp Jim Beam bourbon, Seagram's 7 whisky, Scoresby scotch. This bar plan
includes nice wines and domestic beers, the set-ups & service, as listed below.

Lieutenant's Affair ~ Beer & Wine Bar with non-alcoholic sodas. (Coke, diet coke, sprite)
\$10.00 pp Beer – Budweiser, Bud Light, Miller Lite and Yuengling.
Wine – Chardonnay, Pinot Grigio, Merlot, Cabernet Sauvignon.

Private's Party ~ This bar plan includes all the Set-ups and Service, not including alcohol.
\$7.00 pp Mixers: coke, diet coke, sprite/7-up, tonic, club soda, ginger ale, sour mix,
orange juice, grapefruit juice, cranberry juice, Bloody Mary mix and water.
Ice, cups, napkins, lemon and lime garnishes. This also includes bartenders.

These Bar Plans include one bartender for every 90 people for a 3-hour reception. Arrangements can be made for additional time or an additional bartender. We require a \$500 deposit to confirm all contracts which is our minimum charge. There is a \$300 non-refundable fee for any event that is canceled. All events are subject to an 18% gratuity. Glassware rental is extra. Our company is fully insured with trained bartenders to serve your guests legally and professionally.

NOTICE: IT IS OUR POLICY THAT WE WILL NOT SERVE ANYONE UNDER
21 YEARS OF AGE OR SOMEONE WHO APPEARS TO BE INTOXICATED.

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Pudy v. Department of Revenue - 0001

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RATES FOR BARTENDING SERVICES - 2015

General's Ball ~ Super-Premium Brands of Liquor – Grey Goose vodka, Bombay Saffire, \$25.00 pp Mt. Gay rum, Patron tequila, single barrel bourbon and single malt scotch. Liqueurs: Amaretto, Bailey's, Cointreau, Drambuie, Ouzo, Kahlua, etc. Fine wines and bottle beers. This bar plan includes glassware, all the set-ups and service, as listed below, and the banquet tables w/ linen for the bar.

Colonel's Cocktails ~ Premium Brands - Absolute vodka, Bombay gin, Meyer's rum, \$14.00 pp Makers Mark bourbon, Jack Daniels, Crown Royal, Chivas Regal. Fine wines and bottle beers. Includes the set-ups and service, as listed below.

Major's Function ~ Call Brands of liquor – Skyy vodka, Tangueray gin, Bacardi rum, \$12.00 pp Jim Beam bourbon, Jack Daniels, Seagram's VO, Dewars scotch. Nice wines and domestic beers. Set-ups and service, as listed below.

Captain's Choice ~ House Brands of Liquor – Smirnoff vodka, Gordon's gin, Ron Rico rum, \$11.00 pp Jim Beam bourbon, Seagram's 7 whisky, Scoresby scotch. This bar plan includes nice wines and domestic beers, the set-ups & service, as listed below.

Lieutenant's Affair ~ Beer & Wine Bar with non-alcoholic sodas. (Coke, diet coke, sprite) \$10.00 pp Beer – Budweiser, Bud Light, Miller Lite and Yuengling. Wine – Chardonnay, Pinot Grigio, Merlot, Cabernet Sauvignon.

Private's Party ~ This bar plan includes all the Set-ups and Service, not including alcohol. \$6.00 pp Mixers: coke, diet coke, sprite/7-up, tonic, club soda, ginger ale, sour mix, orange juice, grapefruit juice, cranberry juice, Bloody Mary mix and water. Ice, cups, napkins, lemon and lime garnishes. This also includes bartenders.

These Bar Plans include one bartender for every 90 people for a 3-hour reception. Arrangements can be made for additional time or an additional bartender. We require a \$300 deposit to confirm all contracts, which is applied to the total charges. There is a \$300 non-refundable fee for any event that is canceled. All events are subject to an 18% gratuity. Glassware rental is extra. Our company is fully insured with trained bartenders to serve your guests legally and professionally.

NOTICE: IT IS OUR POLICY THAT WE WILL NOT SERVE ANYONE UNDER 21 YEARS OF AGE OR SOMEONE WHO APPEARS TO BE INTOXICATED.

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Home About Catering Server Training (T.I.P.S.) Gallery Contact

Catering & Catering Rates

The oldest bartending service in Charleston established in 1978. We specialize in "Southern Hospitality" from Mint Juleps to Mimosas. We are the best trained and most professional bar service in town. We are fully insured and our bartenders are TIPS trained for your protection.

We have several different bar plans to fit your budget. Check out our different rate packages below, or you can download our [Catering Rate sheet here](#).



Catering Rates

General's Ball - \$25.00 pp Super-Premium Brands of Liquor

- Grey Goose vodka
- Bombay Sapphire
- Mr. Grey rum
- Patron tequila
- Single barrel bourbon
- Single malt scotch

Liquors

- Amaretto
- Bailey's
- Cointreau
- Drambuie
- Orzo
- Kahlua, etc.

Fine wines and bottle beers

This bar plan includes glassware, all the service and service, as listed below, and the barquet table w/ chairs for the bar.

Colonel's Cocktails - \$14.00 pp Premium Brands

- Absolut vodka
- Bombay gin
- Meyer's rum
- Maker's Mark bourbon
- Jack Daniels
- Crown Royal
- Chivas Regal

Fine wines and bottle beers

includes the set-up and service, as listed below

Major's Function - \$12. Call Brands of liquor

- Skyy vodka
- Tanqueray gin
- Bacardi rum
- Jim Beam bourbon
- Jack Daniels
- Seagram's VO
- Dewar's scotch

Nice wines and domestic beer

Set-up and service, as listed below



Captain's Choice - \$11.00 pp House Brands of Liquor

- Smirnoff vodka
- Gordon's gin
- Ron Ricard rum
- Jim Beam bourbon
- Seagram's 7 whisky
- Scobey scotch

Nice wines and domestic beers

Set-up and service, as listed below

Lieutenant's Affair - \$10.00 pp Beer & Wine Bar with non-alcoholic sodas. (Coke, diet coke, sprite) Beer

- Budweiser
- Bud Light
- Miller Lite
- Yuengling

Wine

- Chardonnay
- Pinot Grigio
- Merlot
- Cabernet Sauvignon

Private Party - \$6.00 pp This bar plan includes all the Service, not including alcoholic Mixers

- coke
- diet coke
- sprite/7-up
- tonic
- club soda
- ginger ale
- sour mix
- orange juice
- grapefruit juice
- cranberry juice
- Bloody Mary mix and w.

Ice, cups, napkins, lemon and garnishes. This also includes

These Bar Plans include one bartender for every 90 people for a 3-hour reception. Arrangements can be made for additional bartender. We require a \$300 deposit to confirm all contracts, which is applied to the total charges. There is a \$

refundable fee for any event that is canceled. All events are subject to an 18% gratuity. Glassware rental is extra. Our company is insured with trained bartenders to serve your guests legally and professionally.

"We thought you and your staff did a great job with the bars at our daughter's wedding in McClellanville on May 10th. Very professional and very pleasant. We will be glad to recommend you."
Lucia S. Ned Jaycocks

"Keith Purdy did a great job for our wedding on September 20, 2008. His level of professionalism and enthusiasm were second to none. I am a wine wholesaler and I have been to several of Keith's continuous education seminars. He is an industry leader in service, professionalism and excellence. Of my 15 years in the food and beverage industry, I have never seen such a well run bartender operation. Two thumbs up!"
Kenny Gustafson, Southern Wine and Spirits

"SUPER THANKS for Saturday's entire event was simply won; certainly played a 'major' part 'next time'!!!"
Debra



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CONTRACT

College of Charleston
Office of Admissions
66 George Street
Charleston, S.C 29424

February 4, 2016

Contacts: Mr. Nate Lyles. (843) 953-4831.

Re: West Coast Fly-In Reception.
Date: Monday, February 15, 2016.

Location: Randolph Hall.

Time: 5:00 - 8:00 pm.

Guarantee: 50 people

Charges: \$9.00 per person.

Gratuities: 18%

Total:

\$ 450.00

81.00

\$ 531.00



Major's Function ~ Call Brands

Liquor: Absolute vodka, Tangueray gin, Bacardi, Capt. Morgan,
Makers Mark, Jack Daniels, Seagrams VO and Dewars scotch.

Beer: Mich Ultra, Bud Light, Miller Lite, Yuengling.

Wine: Chardonnay, Pinot Grigio, Merlot and Cabernet.

Mixers: Coke, diet coke, sprite, ginger ale, tonic, club soda,
Orange juice, grapefruit juice and cranberry juice.

THE COLLEGE OF CHARLESTON FOUNDATION
OPERATING FUND
66 GEORGE STREET
CHARLESTON, SC 29424

TD BANK, N.A.
67-219/539

62029

CHECK DATE 2/17/2016
CHECK NO. 62029

PAY

Five hundred thirty one and 00/100 Dollars

CHECK AMOUNT

\$** 531.00

TO THE
ORDER
OF

A SOUTHERN BARTENDER
ATTN: KEITH PURDY
PO BOX 20126
CHARLESTON, SC 29413-0126

THE COLLEGE OF CHARLESTON FOUNDATION
VOID AFTER 90 DAYS

AUTHORIZED SIGNATURE

062029

DOR ROA 046

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INVOICE

Charitable Society of Charleston
P. O. Box 21134
Charleston, SC 29413-1134

February 1, 2016

Contact: Ms. Christine Monti.
Re: Oyster roast.
Date: Saturday, January 30, 2016.
Time: 7 - 10:30 pm.
Location: Charleston Visitor Center Busbar.

Wine: 9 bottles of Chard and Pinot Grigio.	\$90.00
Cups: 6 packs of Red Solo (\$10 each)	60.00
1 Pack of 9 oz. wine.	10.00
Non-alcoholic soda bar:	20.00
Tables with black linen:	20.00
Bartender charges: 5 at \$125 per bartender.	625.00
Administrative Service Charge:	500.00
Subtotal:	1325.00
18 % Gratuity	238.50
Total Charges:	\$ 1,563.50

Thanks for using my services!

Sincerely,

Keith Purdy

Keith A. Purdy, Mixologist



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CONTRACT

M. U. S. C. ~ Student Programs
Harper Student Center
171 Ashley Ave.
Charleston, SC 29425-2201

February 12, 2016

Contact: Ms. Nadia Mariutto, Student Programs

Re: Catering for M.U.S.C. wine reception.

Date: Friday night, February 26, 2016.

Location: The Halsey Gallery, College of Charleston.

Times: 6:00 to 8:00 pm. (5 pm setup)

Service: 3 bartenders (4 hrs @ \$30/hour each)

\$ 360.00

Linen and coolers: coolers, two tables, black/white linen.

60.00

Total:

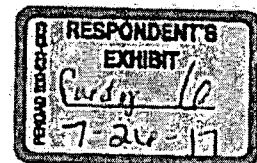
\$ 420.00

Thanks for using my services!

Sincerely,

Keith Purdy

Keith A. Purdy, Mixologist



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DOR ROA 048

COP

Form 1040 Department of the Treasury - Internal Revenue Service (99) 2015		OMB No. 1545-0047	Use Only Do not write or stamp in this space
For the year Jan. 1-Dec. 31, 2015, or other tax year beginning		2015, ending	20
Your first name and initial KEITH		Last name PURDY	See separate instructions. Your social security number [REDACTED]
If a joint return, spouse's first name and initial		Last name	Spouse's social security number
Home address (number and street) PO BOX 20126		Apartment	Make sure the SSN(s) above and on line 6c are correct. Presidential Election Campaign Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund. ☐ You ☐ Spouse
City, town or post office, state, and ZIP code. If you have a foreign address, also complete sections below (see instructions). CHARLESTON SC 29413		Foreign province/state/county	
Foreign country name			
Filing Status 1 ☒ Single 2 ☐ Married filing jointly (even if only one had income) 3 ☐ Married filing separately. Enter spouse's SSN above 4 ☐ Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. 5 ☐ Qualifying widow(er) with dependent child			
Exemptions 6a ☒ Yourself. If someone can claim you as a dependent, do not check box 6a b ☐ Spouse c Dependents: (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) Check if child under age 17, qualifying for child tax credit (see instructions) If more than four dependents, see instructions and check here ☐		Be sure checked on 6a and 6b: No. of children on 6c who: • lived with you • did not live with you due to divorce or separation (see instructions) Dependents on 6c not entered above Add numbers on lines above 1	
Income Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld. If you did not get a W-2, see instructions.		d Total number of exemptions claimed 7 Wages, salaries, tips, etc. Attach Form(s) W-2 8a Taxable interest. Attach Schedule B if required b Tax-exempt interest. Do not include on line 8a 8b 9a Ordinary dividends. Attach Schedule B if required b Qualified dividends 10 Taxable refunds, credits, or offsets of state and local income taxes 11 Alimony received 12 Business income or (loss). Attach Schedule C or C-EZ 13 Capital gain or (loss). Attach Schedule D if required. If not required, check here ☐ 14 Other gains or (losses). Attach Form 4797 15a IRA distributions 15b Taxable amount 16a Pensions and annuities 16b Taxable amount 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E 18 Farm income or (loss). Attach Schedule F 19 Unemployment compensation 20a Social security benefits 20b Taxable amount 21 Other income 22 Combine the amounts in the far right column for lines 7 through 21. This is your total income 220	
Adjusted Gross Income 23 Educator expenses 24 Certain business expenses of reservists, performing artists, and fee basis government officials. Attach Form 2106 or 2106-EZ 25 Health savings account deduction. Attach Form 8889 26 Moving expenses. Attach Form 3903 27 Deductible part of self-employment tax. Attach Schedule SE 28 Self-employed SEP, SIMPLE, and qualified plans 29 Self-employed health insurance deduction 30 Penalty on early withdrawal of savings 31a Alimony paid b Recipient's SSN 32 IRA deduction 33 Student loan interest deduction 34 Tuition and fees. Attach Form 8917 35 Domestic production activities deduction. Attach Form 8903 36 Add lines 23 through 35 37 Subtract line 36 from line 22. This is your adjusted gross income 220			

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions.

Form 1040 (2015)



DOR ROA 049

Tax and Credits		Amount from line 37 (adjusted gross income)		Page 2	
38				220	
39a Check ☐ You were born before January 2, 1951.		☐ Blind Total boxes			
If ☐ Spouse was born before January 2, 1951.		☐ Blind checked ▶ 39e			
b If your spouse files on a separate return or you were a dual-status alien, check here ▶ 39b ☐					
40 Itemized deductions (from Schedule A) or your standard deduction (see left margin)		40		6,300	
41 Subtract line 40 from line 38		41		(6,080)	
42 Exemptions: If line 39 is \$15,000 or less, multiply \$4,000 by the number on line 4d. Otherwise, see instructions		42		4,000	
43 Taxable income: Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-		43		0	
44 Tax (see instructions). Check if any from: a ☐ Form(s) 981- b ☐ Form 987 C ☐		44		0	
45 Alternative minimum tax (see instructions). Attach Form 6251		45			
46 Excess advance premium tax credit repayment. Attach Form 8982		46			
47 Add lines 44, 45, and 46		47			
48 Foreign tax credit. Attach Form 1118 if required		48			
49 Credit for child and dependent care expenses. Attach Form 2441		49			
50 Education credits from Form 8863, line 19		50			
51 Retirement savings contributions credit. Attach Form 8880		51			
52 Child tax credit. Attach Schedule 8812, if required		52			
53 Residential energy credit. Attach Form 5695		53			
54 Other credits from Form: a ☐ 3200 b ☐ 8601 c ☐		54			
55 Add lines 48 through 54. These are your total credits		55			
56 Subtract line 55 from line 47. If line 55 is more than line 47, enter -0-		56		0	
Other Taxes					
57 Self-employment tax. Attach Schedule SE		57			
58 Unreported social security and Medicare tax from Form: a ☐ 4137 b ☐ 8919		58			
59 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required		59			
60a Household employment taxes from Schedule H		60a			
b First-time homebuyer credit repayment. Attach Form 5405 if required		60b			
61 Health care: individual responsibility (see instructions). Full-year coverage ☐		61			
62 Taxes from: a ☐ Form 8959 b ☐ Form 8960 c ☐ (instructions show code(s))		62			
63 Add lines 56 through 62. This is your total tax		63		0	
Payments					
64 Federal income tax withheld from Forms W-2 and 1099		64			
65 2015 estimated tax payments and amount applied from 2014 return		65			
66a Earned income credit (EIC)		66a		17	
b Non-taxable combat pay election ... 88b ☐		88b			
67 Additional child tax credit. Attach Schedule 8812		67			
68 American opportunity credit from Form 8863, line 8		68			
69 Net premium tax credit. Attach Form 8962		69			
70 Amount paid with request for extension to file		70			
71 Excess social security and tier 1 RRTA tax withheld		71			
72 Credit for federal tax on fuels. Attach Form 4136		72			
73 Credits from Form: a ☐ 2439 b ☐ Reserved c ☐ 8685 d ☐		73			
74 Add lines 64, 65, 66a, and 67 through 73. These are your total payments		74		17	
Refund					
75 If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you overpaid		75		17	
76a Amount of line 76 you want refunded to you. If Form 8988 is attached, check here ☐		76a		17	
Direct deposit? See Instructions. ▶ d Account number		Type: ☐ Checking ☐ Savings			
77 Amount of line 75 you want applied to your 2016 estimated tax ▶ 77		77			
Amount You Owe					
78 Amount you owe. Subtract line 74 from line 63. For details on how to pay, see instructions ▶		78			
79 Estimated tax penalty (see instructions) ▶ 79		79			
Third Party Designee					
Do you want to allow another person to discuss this return with the IRS (see instructions)? ☒ Yes. Complete below. ☐ No					
Designee's name ▶ TRACY BRIGHT Phone no ▶ 843-795-9751 Personal identification number (PIN) ▶ 4 5 9 2 1 7					
Under penalty of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.					
Taxpayer's signature ▶ 83949 Date ▶ 04-15-2016 Preparer's signature ▶ PARTENDER Date ▶ 05-03-2016					
Spouse's signature, if a joint return, both must sign Date ▶ Identity Protection PIN (use only if you have one) ▶					
Preparer's signature ▶ TRACY BRIGHT Date ▶ 05-03-2016 Check ☐ if self-prepared ☐ PTD					
Print/Type preparer's name ▶ TRACY BRIGHT Firm's name ▶ PROFESSIONAL SERVICES GROUP LTD Firm's EIN ▶					
Firm's address ▶ 1250 WARPOO CREEK DR SUITE 1 CHARLESTON, SC 29412 Phone no ▶ 843-795-9751					
Paid By Department of Revenue Form 1041-EP Form 1041-EP					

SCHEDULE A
(Form 1040)

Itemized Deductions

OMB No. 1545-0047

2015

Attachment
Sequence No. 07

Department of the Treasury
Internal Revenue Service (IRS)

► Information about Schedule A and its separate instructions is at www.irs.gov/schedulea.
► Attach to Form 1040.

Name(s) shown on Form 1040

KEITH PURDY

Your social security number

Medical and Dental Expenses	Caution. Do not include expenses reimbursed or paid by others.		
	1 Medical and dental expenses (see instructions)	1	
	2 Enter amount from Form 1040, line 38 2	2	
	3 Multiply line 2 by 10% (.10). But if either you or your spouse was born before January 2, 1951, multiply line 2 by 7.5% (.075) instead	3	
	4 Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-	4	
Taxes You Paid	5 State and local (check only one box):		
	a ☐ Income taxes, or	5	344
	b ☒ General sales taxes	6	
	6 Real estate taxes (see instructions)	7	
	7 Personal property taxes	8	
	8 Other taxes. List type and amount: ►		
	9 Add lines 5 through 8	9	344
	Interest You Paid Note. Your mortgage interest deduction may be limited (see instructions).	10 Home mortgage interest and points reported to you on Form 1098	
11 Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying no., and address ►		11	
12 Points not reported to you on Form 1098. See instructions for special rules		12	
13 Mortgage insurance premiums (see instructions)		13	
14 Investment interest. Attach Form 4852 if required. (See instructions.)		14	
15 Add lines 10 through 14		15	
Gifts to Charity If you made a gift and got a benefit for it, see instructions.	16 Gifts by cash or check. If you made any gift of \$250 or more, see instructions		16
	17 Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500		17
	18 Carryover from prior year		18
	19 Add lines 16 through 18		19
Casualty and Theft Losses Job Expenses and Certain Miscellaneous Deductions	20 Casualty or theft loss(es). Attach Form 4684. (See instructions.)		20
	21 Unreimbursed employee expenses - job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instr.) ►		21
	22 Tax preparation fees		22
	23 Other expenses - investment, safe deposit box, etc. List type and amount: ►		23
	24 Add lines 21 through 23		24
	25 Enter amount from Form 1040, line 38 25		25
	26 Multiply line 25 by 2% (.02)		26
	27 Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-		27
Other Miscellaneous Deductions	28 Other - from list in instructions. List type and amount: ►		28
Total Itemized Deductions	29 Is Form 1040, line 38, over \$154,950?		
	☒ No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter the amount on Form 1040, line 40. ☐ Yes. Your deduction may be limited. See the Itemized Deductions Worksheet in the instructions to figure the amount to enter.		29
	30 If you elect to itemize deductions even though they are less than your standard deduction, check here: ☐		

For Paperwork Reduction Act Notice, see Form 1040 instructions.
GSA

Schedule A (Form 1040) 2015

SCHEDULE C
(Form 1040)

Profit or Loss From Business
(Sole Proprietorship)

OMB No. 1545-0047

2015

Department of the Treasury
Internal Revenue Service (99)

Information about Schedule C and its separate instructions is at www.irs.gov/schedulec.
Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1065.

Attachment
Sequence No. **09**

Name of proprietor

KEITH PURDY

Gov't security number (SSN)

A Principal business or profession, including product or service (see instructions)

BARTENDING

B Enter code from instructions

722300

C Business name. If no separate business name, leave blank.

A SOUTHERN BARTENDER

D Employer ID number (EIN) (see instructions)

E Business address (including suite or room no.) **PO BOX 20126**

City, town or post office, state, and ZIP code **CHARLESTON SC 29403**

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) **▶**

G Did you "materially participate" in the operation of this business during 2015? If "No," see instructions for limit on losses

☒ Yes ☐ No

H If you started or acquired this business during 2015, check here

I Did you make any payments in 2015 that would require you to file Form(s) 1099? (see instructions)

☐ Yes ☒ No

J If "Yes," did you or will you file required Form(s) 1099?

☐ Yes ☒ No

Part I Income

1 Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked ☐

1 44,143

2 Returns and allowances

2 0

3 Subtract line 2 from line 1

3 44,143

4 Cost of goods sold (from line 42)

4 27,165

5 Gross profit. Subtract line 4 from line 3

5 16,978

6 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)

6

7 Gross income. Add lines 5 and 6

7 16,978

Part II Expenses. Enter expenses for business use of your home only on line 30.

8 Advertising

8 365

9 Car and truck expenses (see instructions)

9 5,549

10 Commissions and fees

10

11 Contract labor (see instructions)

11

12 Depreciation

12

13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions)

13

14 Employee benefit programs (other than on line 19)

14

15 Insurance (other than health)

15 4,167

16 Interest:

a Mortgage (paid to banks, etc.)

16a

b Other

16b

17 Legal and professional services

17 650

28 Total expenses before expenses for business use of home. Add lines 8 through 27a

28 16,758

29 Tentative profit or (loss). Subtract line 28 from line 7

29 220

30 Expenses for business use of your home. Do not report these expenses elsewhere. Attach Form 8829 unless using the simplified method (see instructions).

Simplified method filers only: enter the total square footage of: (a) your home:

and (b) the part of your home used for business: **Use the Simplified**

Method Worksheet in the instructions to figure the amount to enter on line 30

31 Net profit or (loss). Subtract line 30 from line 29:

• If a profit, enter on both Form 1040, line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2.

(If you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3.

• If a loss, you must go to line 32.

32 If you have a loss, check the box that describes your investment in this activity (see instructions).

• If you checked 32a, enter the loss on both Form 1040, line 12, (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see the line 31 instructions). Estates and trusts, enter on Form 1041, line 3.

• If you checked 32b, you must attach Form 6198. Your loss may be limited.

32a ☐ All investment is at risk

32b ☐ Some investment is not at risk

For Paperwork Reduction Act Notice, see the separate instructions.

Schedule C (Form 1040) 2015

EE4 Purdy v. Department of Revenue - 0021

DOR ROA 052

Name(s)

KEITH PURDY

SSN

Part III Cost of Goods Sold (see instructions)

33	Method(s) used to value closing inventory: a ☒ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)	
34	Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation	☐ Yes ☒ No
35	Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35
36	Purchases less cost of items withdrawn for personal use	36 27,165
37	Cost of labor. Do not include any amounts paid to yourself	37
38	Materials and supplies	38
39	Other costs	39
40	Add lines 35 through 39	40 27,165
41	Inventory at end of year	41
42	Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on line 4	42 27,165

Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

43	When did you place your vehicle in service for business purposes? (month, day, year)	01-02-2015
44	Of the total number of miles you drove your vehicle during 2015, enter the number of miles you used your vehicle for:	
a	Business	9,650
b	Commuting (see instructions)	150
c	Other	
45	Was your vehicle available for personal use during off-duty hours?	☒ Yes ☐ No
46	Do you (or your spouse) have another vehicle available for personal use?	☒ Yes ☐ No
47 a	Do you have evidence to support your deduction?	☒ Yes ☐ No
b	If "Yes," is the evidence written?	☒ Yes ☐ No

Part V Other Expenses. List below business expenses not included on lines 8-26 or line 30.

BANK FEES	32
TELEPHONE	796
48 Total other expenses. Enter here and on line 27a	48 827

SCHEDULE C

(Form 1040)

Profit or Loss From Business

(Sole Proprietorship)

OMB No. 1545-0074

2014

Department of the Treasury
Internal Revenue Service (99)

Information about Schedule C and its separate instructions is at www.irs.gov/schedulec.
Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1065.

Attachment
Sequence No. 09

Name of proprietor:

KEITH, PURDY

Social security number (SSN)

A Principal business or profession including product or service (see instructions)

Bartending

B Enter code from instructions

722300

C Business name, if no separate business name, leave blank

A Southern Bartender

D Employer ID number

E Business address (including suite or room no.)

City, town or post office, state, and ZIP code

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify)

G Did you materially participate in the operation of this business during 2014? If "No," see instructions for limit on losses. ☒ Yes ☐ No

H If you started or acquired this business during 2014, check here:

I Did you make any payments in 2014 that would require you to file Form(s) 1099? (See instructions)

J If "Yes," did you or will you file required Form(s) 1099?

RESPONDENT'S

EXHIBIT

Purdy 8

7-20-11

Part I Income

1 Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the Statutory employee box on that form was checked.

2 Returns and allowances

3 Subtract line 2 from line 1

4 Cost of goods sold (from line 42)

5 Gross profit. Subtract line 4 from line 3

6 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)

7 Gross income. Add lines 5 and 6

Part II Expenses. Enter expenses for business use of your home only on line 30.

8 Advertising

9 Car and truck expenses (see instructions)

10 Commissions and fees

11 Contract labor (see instructions)

12 Depreciation

13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions)

14 Employee benefit programs (other than on line 19)

15 Insurance (other than health)

16 Interest:

a Mortgage (paid to lender, etc.)

b Other

17 Legal & professional services

18 Office expenses (see instructions)

19 Pension and profit-sharing plans

20 Rent or lease (see instructions):

a Vehicles, machinery, and equipment

b Other business property

21 Repairs and maintenance

22 Supplies (not included in Part III)

23 Taxes and licenses

24 Travel, meals, and entertainment:

a Travel

b Deductible meals and entertainment (see instructions)

25 Utilities

26 Wages (less employment credits)

27 a Other expenses (from line 48)

b Reserved for future use

28 Total expenses before expenses for business use of home. Add lines 8 through 27.

29 Tentative profit or (loss). Subtract line 28 from line 7.

30 Expenses for business use of your home. Do not report these expenses elsewhere. Attach Form 8829, unless using the simplified method (see instructions):

Simplified method filers only: enter the total square footage of: (a) your home: 1,200

and (b) the part of your home used for business: 250

Method Worksheet in the instructions to figure the amount to enter on line 30.

31 Net profit or (loss). Subtract line 30 from line 29.

• If a profit, enter on both Form 1040, line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see instructions.) Estates and trusts, enter on Form 1041, line 3.

• If a loss, you must go to line 32.

32 If you have a loss, check the box that describes your investment in this activity (see instructions):

• If you checked 32a, enter the loss on both Form 1040, line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see the line 31 instructions.) Estates and trusts, enter on Form 1041, line 3.

• If you checked 32b, you must attach Form 6198. Your loss may be limited.

32a ☐ All investment is at risk

32b ☐ Some investment is not at risk

BAA- For Paperwork Reduction Act Notice, see the separate instructions.

FD-2011a 10/30/14

Schedule C (Form 1040) 2014

Part III Cost of Goods Sold (see instructions)

33	Method(s) used to value closing inventory: ☒ Cost ☐ Lower of cost or market ☐ Other (attach explanation)	
34	Was there any change in determining quantities, costs, or valuations between opening and closing inventory?	☐ Yes ☒ No
35	Inventory at beginning of year. If different from last year's closing inventory, attach explanation.	35 235
36	Purchases (less cost of items withdrawn for personal use)	36 14,992
37	Cost of labor. Do not include any amounts paid to yourself.	37 15,853
38	Materials and supplies	38
39	Other costs	39
40	Add lines 35 through 39	40 31,080
41	Inventory at end of year	41
42	Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on line 4.	42 31,080

Part IV Information on Your Vehicle (complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.)

43	When did you place your vehicle in service for business purposes? (month, day, year)	1/20/14
44	Of the total number of miles you drove your vehicle during 2014, enter the number of miles you used your vehicle for:	
a	Business	10,100
b	Commuting (see instructions)	
c	Other	2,900
45	Was your vehicle available for personal use during off-duty hours?	☒ Yes ☐ No
46	Do you (or your spouse) have another vehicle available for personal use?	☐ Yes ☒ No
47	Do you have evidence to support your deduction?	☐ Yes ☒ No
a	If yes, is the evidence written?	☐ Yes ☒ No

Part V Other Expenses (list below business expenses not included on lines 8-26 or line 30)

Bank Charges	178	
Dues and Subscriptions	381	
Miscellaneous	706	
Telephone	774	
48	Total other expenses. Enter here and on line 27a	48 3,639

SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Business
(Sole Proprietorship)

► For information on Schedule C and its instructions, go to www.irs.gov/schedulec.
► Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1065.

OMB No. 1545-0074

2013

Attachment
Sequence No. 09

Name of proprietor Keith A Purdy		Social security number (SSN) [REDACTED]
A Principal business or profession, including product or service (see instructions) Catering Services		B Enter code from instructions 7 2 2 3 0 0
C Business name, if no separate business name, leave blank. A Southern Bartender		D Employer ID number (EIN), (see instr.) [REDACTED]
E Business address (including suite or room no.) ► 1043 C Provincial Circle City, town or post office, state, and ZIP code Mt. Pleasant SC 29464		
F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ►		
G Did you "materially participate" in the operation of this business during 2013? If "No," see instructions for limit on losses ☒ Yes ☐ No		
H If you started or acquired this business during 2013, check here ☐		
I Did you make any payments in 2013 that would require you to file Form(s) 1099? (see instructions) ☐ Yes ☐ No		
J If "Yes," did you or will you file required Forms 1099? ☐ Yes ☐ No		

Part I Income

1 Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked. ☐	1	85520
2 Returns and allowances	2	800
3 Subtract line 2 from line 1	3	85020
4 Cost of goods sold (from line 42)	4	22188
5 Gross profit. Subtract line 4 from line 3	5	62832
6 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6	
7 Gross income. Add lines 5 and 6	7	62832

Part II Expenses

Enter expenses for business use of your home only on line 30.

8 Advertising	8	2980	18 Office expense (see instructions)	18	1410
9 Car and truck expenses (see instructions)	9	6801	19 Pension and profit-sharing plans	19	
10 Commissions and fees	10		20 Rent or lease (see instructions):		
11 Contract labor (see instructions)	11	11450	a Vehicles, machinery, and equipment	20a	115
12 Depletion	12		b Other business property	20b	2100
13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13		21 Repairs and maintenance	21	37
14 Employee benefit programs (other than on line 19)	14		22 Supplies (not included in Part III)	22	
15 Insurance (other than health)	15	2587	23 Taxes and licenses	23	551
16 Interest:			24 Travel, meals, and entertainment:		
a Mortgage (paid to banks, etc.)	16a		a Travel	24a	
b Other	16b		b Deductible meals and entertainment (see instructions)	24b	
17 Legal and professional services	17	80	25 Utilities	25	1009
			26 Wages (less employment credits)	26	
			27a Other expenses (from line 48)	27a	1490
			b Reserved for future use	27b	

28 Total expenses before expenses for business use of home. Add lines 8 through 27a	28	30620
29 Tentative profit or (loss). Subtract line 28 from line 7	29	
30 Expenses for business use of your home. Do not report these expenses elsewhere. Attach Form 8829 unless using the simplified method (see instructions). Simplified method filers only: enter the total square footage of: (a) your home: _____ and (b) the part of your home used for business: _____. Use the Simplified Method Worksheet in the instructions to figure the amount to enter on line 30	30	
31 Net profit or (loss). Subtract line 30 from line 29. • If a profit, enter on both Form 1040, line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3. • If a loss, you must go to line 32.	31	32212
32 If you have a loss, check the box that describes your investment in this activity (see instructions). • If you checked 32a, enter the loss on both Form 1040, line 12, (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see the line 31 instructions). Estates and trusts, enter on Form 1041, line 3. • If you checked 32b, you must attach Form 6198. Your loss may be limited.		

32a ☒ All investment is at risk.
32b ☐ Some investment is not at risk.

For Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 11334P

Schedule C (Form 1040) 2013

DOR ROA 056

Part III Cost of Goods Sold (see instructions)

33	Method(s) used to value closing inventory: a ☒ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)		
34	Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation	☐ Yes ☒ No	
35	Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35	235
36	Purchases less cost of items withdrawn for personal use	36	
37	Cost of labor. Do not include any amounts paid to yourself	37	
38	Materials and supplies	38	22188
39	Other costs	39	
40	Add lines 35 through 39	40	22423
41	Inventory at end of year	41	235
42	Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on line 4	42	22188

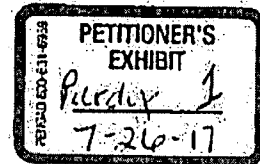
Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

43	When did you place your vehicle in service for business purposes? (month, day, year)	09 / 15 / 1995
44	Of the total number of miles you drove your vehicle during 2013, enter the number of miles you used your vehicle for:	
a	Business	10125
b	Commuting (see instructions)	
c	Other	
45	Was your vehicle available for personal use during off-duty hours?	☒ Yes ☐ No
46	Do you (or your spouse) have another vehicle available for personal use?	☒ Yes ☐ No
47a	Do you have evidence to support your deduction?	☐ Yes ☒ No
b	If "Yes," is the evidence written?	☐ Yes ☐ No

Part V Other Expenses. List below business expenses not included on lines 8-26 or line 30.

Bank Service Charges	1215
Dues & Subscriptions	275
48 Total other expenses. Enter here and on line 27a	1490

Unlicensed Social Functions



I. General.

a. The purpose of this pamphlet is to give the reader an overview of South Carolina laws regulating the possession and consumption of beer, wine, and liquor at unlicensed social functions. For purposes of this pamphlet, an unlicensed social function is an event of a noncommercial nature where admission is not charged, and beer, wine, or liquor is being consumed, but not sold, and the person having the function does not have a beer and wine permit or liquor license. A wedding reception where beer, wine, or liquor is being consumed is an example of an unlicensed social function. If you intend to charge admission to your function and include beer, wine or liquor in the price of admission, you must obtain a beer and wine permit or liquor license. You will also need to obtain an admissions tax license, and pay a tax of five percent of the price of the admission ticket.[2] If you intend to charge for items or services and include beer, wine, or liquor in the charge for the items or services, you must obtain a beer and wine permit or liquor license.[3] If you intend to charge for anything, be sure that you have first obtained a sales tax license from the South Carolina Department of Revenue. If you wish to sell beer, wine, or liquor you need to first obtain the appropriate beer and wine permit or liquor license.

II. Functions at locations that do not have a beer and wine permit or liquor license-

a. To legally possess or consume beer or wine -

- A. There are no restrictions as to the days or hours of the function;
- B. Persons possessing or consuming beer or wine must be at least twenty-one years of age (§ 20-7-8920);
- C. Persons may bring their own beer or wine, or the person giving the function may furnish beer or wine at no charge; the person giving the function may not charge an admission or otherwise condition the furnishing of beer wine or liquor for any form of consideration.
- D. Arriving and departing persons should be aware that it is unlawful for any person to have in his or her possession, except in the trunk or luggage compartment, beer or wine in an open container in a moving vehicle (§ 61-4-110);
- E. The function may be open to the general public; and,
- F. The beer or wine at the function must have been purchased from a licensed South Carolina retailer (§ 61-4-350).

b. To legally possess or consume liquor -

- A. There are no restrictions as to the days or hours of the function;
- B. Persons possessing or consuming liquor must be at least twenty-one years of age (§ 20-7-8925);
- C. Persons may bring their own liquor, or the person giving the function may furnish liquor at no charge. The liquor can be in a container of any size;
- D. The function must be held at one of the following locations (§ 61-6-4710):
 - 1. In a private residence, hotel room, or motel room;
 - 2. On property not engaged in business or commercial activity^[4], at private gatherings, receptions, or occasions of a single and isolated nature and not on a repetitive or continuous basis, with the express permission of the owner and any other person in possession of the property, and to which the general public is not invited^[5]; or,
 - 3. In separate and private areas of an establishment where specific individuals have leased these areas for a function not open to the general public.
- E. The liquor must have been lawfully acquired (§ 61-6-4010), and must have been purchased from a licensed South Carolina retailer (§ 61-6-2930); and,
- F. Arriving and departing persons should be aware that it is unlawful for any person to transport liquor in a motor vehicle if the cap or seal on the container has been opened or broken except in the luggage compartment or cargo area (§ 61-6-4020).
- G. **Warning.** The possession or consumption of liquor at functions that do not comply with the requirements listed above is illegal. Persons found in possession of liquor under those circumstances could be charged with a crime. Upon conviction, a person can be fined up to \$100 or imprisoned for not more than thirty days (§ 61-6-4710).

III. Functions at locations that have only a biennial beer and wine permit

a. To legally possess or consume beer or wine –

- A. Unless the requirements listed below are met, it is unlawful to consume or to possess beer or wine in an open container between the hours of twelve o'clock Saturday night and sunrise Monday morning at a place licensed to sell beer and wine (§ 61-4-140). It is also unlawful to deliver beer or wine to a person from a place of business between the hours of twelve o'clock Saturday night and sunrise Monday morning (§ 61-4-130). If there is an unlawful delivery, all beer and

holder can be cited for a violation. It is also possible that all beer and wine on the premises may be confiscated.

b. To legally possess or consume liquor –

- A. Possession or consumption of liquor must cease at 2:00 AM Sunday morning.
- B. It is unlawful for a person to store or have in possession liquor in his place of business other than a location licensed to sell liquor unless the requirements listed below are followed (§§ 61-6-4060 and 61-4-580(6)):
 - 1. A person can possess liquor on beer and wine premises only in separate and private areas of the establishment (§ 61-6-1620(B)).
 - 2. A specific individual must have leased the separate and private area for a function that is not open to the general public (§ 61-6-1620(B))(§).
 - 3. There must be a written lease between the owner of the premises and the host of the function. The lease must specify the terms, lessor and lessee, dates, times, and consideration. The lease must terminate by 2:00 AM Sunday morning (Regulation 7-403).
 - 4. The lease must be on the premises at the time the function is being held, and must be available for inspection by law enforcement officers; and,
 - 5. The lease must be bona fide, and cannot be a sham in an attempt for the biennial permit holder to allow his or her patrons to possess or consume liquor.
- C. The liquor must have been lawfully acquired (§ 61-6-4010), and must have been purchased from a licensed South Carolina retailer (§ 61-6-2930).
- D. Arriving and departing persons should be aware that it is unlawful for any person to transport liquor in a motor vehicle if the cap or seal on the container has been opened or broken except in the luggage compartment or cargo area (§ 61-6-4020) and,
- E. The function must end by 2:00 AM (Regulation 7-403).
- F. **Warning.** The possession or consumption of liquor at functions that do not comply with the requirements listed above is illegal. Persons found in possession of liquor under those circumstances could be charged with a crime. Upon conviction, a person can be fined up to \$100 or imprisoned for not more than thirty days (§ 61-6-4710).

IV. Functions at locations that have a biennial hotel, motel, or restaurant liquor by the drink license and a beer and wine permit –

- E. The beer or wine at the function must have been purchased from a licensed South Carolina retailer (§ 61-4-350); and,
 - F. Arriving and departing persons should be aware that it is unlawful for any person to have in his or her possession, except in the trunk or luggage compartment, beer or wine in an open container in a moving vehicle (§ 61-4-110).
 - G. **Warning.** If all the preceding requirements are not followed, it is a crime to possess or consume beer or wine during restricted hours on premises licensed to sell beer and wine. Violators can be arrested, and the biennial beer and wine permit holder can be cited for a violation. It is also possible that all beer and wine on the premises may be seized by law enforcement officers.
- b. To legally possess or consume liquor –
- A. Liquor cannot be on the premises between the hours of 2:00 AM and 10:00 AM (Regulation 7-403);
 - B. A person can possess liquor only in separate and private areas of the establishment only if the following requirements are met (§ 61-6-1620(B)):
 - 1. A specific individual must have leased the separate and private area for a function that is not open to the general public [S] (§ 61-6-1620(B));
 - 2. There must be a written lease between the owner of the premises and the host of the function. The lease must specify the terms, lessor and lessee, dates, times, and consideration, and must terminate by 2:00 AM (Regulation 7-403);
 - 3. The lease must be on the premises at the time the function is being held, and must be available for inspection by law enforcement officers (Regulation 7-403);
 - 4. The lease must be bona fide, and cannot be a sham.
 - 5. The liquor must have been lawfully acquired (§ 61-6-4010), and must have been purchased from a licensed South Carolina retailer (§ 61-6-2930).
 - 6. The person giving the function or sponsor or designated agent must purchase and deliver to the leased area all alcoholic beverages and must remain constantly in actual possession of the liquor until the function ends (Regulation 7-403);
 - 7. At the end of the function, the liquor must be removed from the licensed premises and taken to an area where it can be stored legally (Regulation 7-403);
 - C. Arriving and departing persons should be aware that it is unlawful for any person to transport liquor in a motor vehicle

[1] Retailers may accept draft beer or wine equipment replacement parts of nominal value, party wagons for temporary use, and point of sale advertising specialties. A retailer may also accept the cleaning of draft or wine lines, setting boxes, rotating stock, affixing price tags to beer or wine products, and building beer or wine displays.

[2] The five percent may be collected from each attendee. The price of admission must be on the ticket, and you must retain the ticket stub for three years.

[3] "The courts will refuse to countenance any trick or subterfuge intended to evade the law..."
See Pirates Cove v. ABC Commission, 258 S.C. 397, 189 S.E.2d 7 (1972).

[4] Selling items, selling tickets or charging admission are examples of business or commercial activity.

[5] Advertising the event on television, on radio, in the newspaper, with flyers, with billboards or with signs is evidence that the function is open to the general public. Admitting persons that have not been personally invited by the person giving the function is evidence that the function is open to the general public.

wine on the premises becomes contraband and must be seized by law enforcement officers.

B. In order legally to possess or to consume beer or wine between the hours of midnight Saturday night and 2:00 AM Sunday morning at a location that has a biennial beer and wine permit the following requirements must be met:

1. The function may not be open to the general public (§);
2. There must be a written lease between the owner of the premises and the host of the function. The lease must specify the terms, lessor and lessee, dates, times, and consideration. The lease must terminate by 2:00 AM Sunday morning (Regulation 7-403);
3. The lease must be on the premises at the time the function is being held, and must be available for inspection by law enforcement officers;
4. The lease must be bona fide, and cannot be a sham so that the biennial permit holder can remain open during restricted hours;
5. The biennial beer and wine permit holder and his or her agents may sell and deliver beer and wine during the hours that it may legally be sold. They cannot sell or deliver beer or wine between the hours of midnight Saturday night and sunrise Monday morning (§ 61-4-130);

C. The function must end by 2:00 AM Sunday morning. Even at a private function in a separate area that has been leased, it is illegal to consume beer or wine or to possess open containers of beer or wine between the hours of 2:00 AM Sunday morning and sunrise Monday morning on premises licensed to sell beer and wine (§ 61-4-140 and Regulation 7-403);

D. Persons possessing or consuming beer or wine must be at least twenty-one years of age (§ 20-7-8920);

E. Persons may bring their own beer or wine, or the person giving the function may furnish beer or wine at no charge;

F. Arriving and departing persons should be aware that it is unlawful for any person to have in his or her possession, except in the trunk or luggage compartment, beer or wine in an open container in a moving vehicle (§ 61-4-110); and,

G. The beer or wine at the function must have been purchased from a licensed South Carolina retailer (§ 61-4-350).

1. **Warning.** If all the above requirements are not followed, it is a crime to possess or consume beer or wine during restricted hours on premises licensed to sell beer and wine. Violators can be arrested, and the biennial beer and wine permit

a. To legally possess or consume beer or wine -

A. It is unlawful to consume or to possess beer or wine in an open container between the hours of twelve o'clock Saturday night and sunrise Monday morning at a place licensed to sell beer and wine, unless the requirements listed below are followed (§ 61-4-140). It is also unlawful to deliver beer or wine to a person from a place of business between the hours of twelve o'clock Saturday night and sunrise Monday morning (§ 61-4-130). If there is a delivery, all beer and wine on the premises becomes contraband and must be seized by law enforcement officers;

B. A person may possess and consume beer or wine between the hours of midnight Saturday night and 2:00 AM Sunday morning at a location that has a biennial beer and wine permit if the following requirements are met:

1. The function may not be open to the general public [5];

2. There must be a written lease between the owner of the premises and the person giving the function. The lease must specify the terms, lessor and lessee, dates, times, and consideration. The lease must terminate by 2:00 AM Sunday morning (Regulation 7-403);

3. The lease must be on the premises at the time the function is being held, and must be available for inspection by law enforcement officers;

4. The lease must be bona fide, and cannot be a sham so that the biennial permit holder can remain open during restricted hours;

5. The biennial beer and wine permit holder and his or her agents may sell and deliver beer and wine during the hours that they can lawfully sell beer and wine. They cannot sell or deliver beer or wine between the hours of midnight Saturday night and Sunrise Monday morning (§ 61-4-130);

6. The function must end by 2:00 AM Sunday morning. It is illegal to consume beer or wine or to possess open containers of beer or wine between the hours of 2:00 AM Sunday morning and sunrise Monday morning on premises licensed to sell beer and wine (§ 61-4-140 and Regulation 7-403).

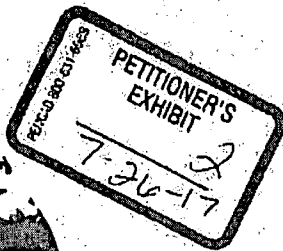
C. Persons possessing or consuming beer or wine must be at least twenty-one years of age (§ 20-7-8920);

D. Persons may bring their own beer or wine, or the person giving the function may furnish beer or wine at no charge;

if the cap or seal on the container has been opened or broken except in the luggage compartment or cargo area (§ 61-6-4020);

- D. Liquor may not be possessed or consumed between the hours of 2:00 AM and 10:00 AM (Regulation 7-403); and,
- E. The liquor by the drink license holder can sell and deliver liquor during those hours that his or her liquor by the drink license authorizes sales.

Warning - The possession or consumption of liquor at functions that do not comply with the requirements listed above is illegal. Persons found in possession of liquor under those circumstances could be charged with a crime. Upon conviction, a person can be fined up to \$100 or imprisoned for not more than thirty days (§ 61-6-4710).



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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith Purdy, d/b/a A Southern Bartender,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

Docket No. 17-ALJ-17-0002-CC

**RESPONDENT'S RESPONSE
IN OPPOSITION TO
PETITIONER'S MOTION FOR
SUMMARY JUDGMENT**

TO: BRYAN A. RAYMOND, ESQ., ATTORNEY FOR THE PETITIONER.

Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRPC) and Rules 19 and 68 of the Rules of Procedure for the Administrative Law Court (SCALCR), the undersigned, as attorneys for the Respondent, South Carolina Department of Revenue (the "Department"), file this Response in Opposition to Keith Purdy's, d/b/a A Southern Bartender, (the "Petitioner") Motion for Summary Judgment as follows, and contend that the Department remains entitled to judgment as a matter of law.

ARGUMENTS

In its Motion, the Petitioner misapplies the relevant South Carolina law to the undisputed material facts. Specifically, the Petitioner argues that it is not in the business of selling tangible personal property at retail pursuant to S.C. Code Ann. § 12-36-910(A) (2014) and states in support thereof that the purpose of hiring a bartender is not to obtain catered beverages but rather to "provide a capable person to adhere to the laws of the State of South Carolina regarding service of alcohol and to maintain the safety of the attendees of the event." Pet'r's Mot. Summ. J. 3. As such, the Petitioner argues that bartending services are not merely incidental to the sale of tangible personal property. The Petitioner further posits that the true object of his beverage-catering

business is to provide bartending services not liquor, beer, wine, and mixers (the "Inventory"). The uncontroverted facts, however, demonstrate that the true object of the Petitioner's beverage-catering business is to sell catered beverages. Thus, the Petitioner is in the business of selling tangible personal property at retail. Consequently, the Petitioner's beverage-catering business is subject to sales tax on the Petitioner's gross proceeds of sales. Therefore, the Court should deny the Petitioner's Motion for Summary Judgment and grant the Department's Motion for Summary Judgement.

A. The Petitioner is in the business of selling tangible personal property at retail.

In South Carolina, a sales tax is imposed upon every person in the business of selling tangible personal property at retail. See § 12-36-910(A). Catered beverages, like catered meals, constitute tangible personal property because they can be seen, weighed, measured, felt, and touched. See S.C. Code Ann. § 12-36-60 (2014); see also, Tronco's Catering, Inc. v. S.C. Dept. of Revenue, Docket No. 09-ALJ-17-0089-CC, 2010 WL 5781622 *5 (S.C. Admin. Law Ct. Apr. 12, 2010). The Petitioner sells catered beverages. Therefore, the Petitioner is in the business of selling tangible personal property at retail. Accordingly, the gross proceeds of the Petitioner's sales of catered beverages are subject to South Carolina sales tax.

B. The true object of the transactions at issue is for the customer to obtain catered beverages.

South Carolina courts use the true object test to determine the taxability of a hybrid transaction where the elements of a sale of tangible personal property and the provision of a service co-exist. See Boggero v. S.C. Dept. of Revenue, 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015); see also Tronco's Catering, 2010 WL 5781622 *3. The true object of a transaction is "one of the basic purpose of the buyer." Tronco's Catering, 2010 WL 5781622 *4 (quoting Clyde L. Ball, 9

Vanderbilt Law Review, What Is A Sale For Sales Tax Purposes, 231 (1956)). In Tronco's Catering, which is directly analogous to the present case, the Court found that the basic purpose of the buyer was to obtain catered meals. Id. Here, as will be discussed in more detail below, the basic purpose of the buyer is to obtain catered beverages. As such, the true object of the transactions at issue is to obtain tangible personal property.

The undisputed material facts demonstrate that the basic purpose of the buyer is to obtain catered beverages. The Petitioner's customers rarely ask him to provide bartending services in isolation. Rather, such services are almost always combined with the sale of Inventory. Notably, the price of the various packages offered for sale by the Petitioner is defined by the quality of the Inventory that the customer elects to purchase. The cost of the bartending service, on the other hand, is treated like an item of overhead and remains constant regardless of the package purchased by the customer. If, as the Petitioner asserts, customers are primarily interested in hiring bartenders and that the beverages are incidental to the service, one would expect more of Petitioner's customers to hire bartenders through the Petitioner and provide their own inventory. Accordingly, the facts establish that the true object of the transactions at issue is to obtain catered beverages.

Finally, there is no support for the Petitioner's attempt to introduce a new element to the true object test thereby allowing him to distinguish beverage catering from food catering. The Petitioner argues that because alcohol is a more dangerous product, proper bartending services are essential to the provision of catered beverages. This argument is unfounded for two reasons. First, in such a highly regulated area as is the sale of alcohol, one would expect proper bartending services to be a requirement at all events if proper service of alcoholic beverages was a true concern. Second, the argument does not achieve its purpose of distinguishing catering beverages

from catering food because food poisoning is a valid concern in the food catering business. The fact that proper catering services may be essential in the food catering business does not change the result that food catering is a sale of tangible personal property at retail and subject to sales tax. Similarly, the fact that proper bartending services may enhance the safety of an event does not change the result that beverage catering is a sale of tangible personal property at retail and subject to sales tax. As such, the Petitioner is in the business of selling catered beverages at retail and his gross proceeds of sales are subject to sales tax in South Carolina.

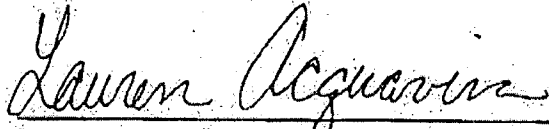
CONCLUSION

The Petitioner failed to present any facts to reasonably contradict that the true object of the transactions at issue is for the Petitioner's customers to obtain catered beverages. Nor do any of the uncontroverted facts cast doubt on the conclusion that the Petitioner is in the business of selling tangible personal property – catered beverages – at retail. Accordingly, the Petitioner's beverage-catering business is subject to sales tax, and all the proceeds from the Petitioner's beverage-catering sales are includable in the Petitioner's gross proceeds of sales.

WHEREFORE, the Department asks that this Court enter an order denying the Petitioner's Motion for Summary Judgment and granting the Department's Motion for Summary Judgment.

{Signature on Following Page}

Respectfully submitted,



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Columbia, South Carolina
September 29, 2017

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith Purdy, d/b/a A Southern Bartender,)

Docket No. 17-ALJ-17-0002-CC

Petitioner,)

**NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION
PURSUANT TO RULE 29(D), SCALCR
AND/OR TO ALTER OR AMEND
PURSUANT TO RULE 59(e), SCRCP**

South Carolina Department of Revenue,)

Respondent.)

Pursuant to Rule 29(D) of the South Carolina Administrative Law Court Rules (SCALCR) and Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP), the South Carolina Department of Revenue (the "Department") respectfully requests that this Court reconsider, alter, or amend its Order dated April 26, 2018 (the "Order"), a copy which is attached hereto as Exhibit A. Specifically, the Department asks that the Court amend the portion of the Order wherein the Court concluded that while Keith Purdy, d/b/a A Southern Bartender (the "Petitioner"), was engaged in the business of selling tangible personal property at retail, he could nonetheless deduct the cost of the bartending service from his gross proceeds of sales when such cost was separately stated on the invoice. The Department moves for an order reconsidering, altering, or amending this Court's Order because the Court erred in concluding that the Petitioner could deduct the cost of the bartending service from his gross proceeds of sales based on his chosen billing method.

The Petitioner, as a retailer, must remit sales tax to the State on his gross proceeds of sales. See S.C. Code Ann. § 12-36-910(A) (2014). Pursuant to the plain language of the definition of gross proceeds of sales, the Petitioner must include the value proceeding or accruing from his sale of tangible personal property *without any deduction* for the cost of labor or service. See S.C. Code

Ann. § 12-36-90 (2014). As such, the Court erred in concluding that the Petitioner could deduct the cost of the bartending service in instances when such cost was separately stated on the invoice. Therefore, for reasons that will be explained in more detail below, the Department respectfully requests that this Court reconsider, alter, or amend its Order.

ARGUMENTS

I. **The Court properly concluded that the Petitioner was engaged in the business of selling tangible personal property at retail.**

The Petitioner operates a beverage-catering business where he sells liquor, beer, wine, mixers, ice, cups, garnishes, napkins (collectively, the "Beverages")¹ to his customers. Under South Carolina law, "[a] sales tax, equal to [six]² 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." S.C. Code Ann. § 12-36-910(A) (2014). Tangible personal property means "personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses." S.C. Code Ann. § 12-36-60 (2014). The Beverages can be seen, weighed, measured, felt, and touched. Accordingly, the Beverages constitute tangible personal property. Furthermore, as will be explained in more detail below, the Petitioner sells the Beverages at retail to his customers. Therefore, the Petitioner is a person engaged in the business of selling tangible personal property at retail.

¹The Petitioner may also rent tables and linens to his customers. See Joint Ex. H (the paragraph above the signature on invoices dated February 5, 2015, and May 23, 2016, list other tangible personal property the Petitioner provides his customers).

²S.C. Code Ann. § 12-36-1110 (2014) imposes an additional one percent sales tax beginning on June 1, 2007.

The Petitioner operates a beverage-catering business in South Carolina. As part of the Petitioner's beverage-catering business, the Petitioner offers his customers a variety of Beverages.³ In order to determine whether the sale of catered beverages constitutes the sale of tangible personal property or the sale of a service, South Carolina courts use the true object test. See, e.g., Boggero v. S.C. Dept. of Revenue, 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015); Mevers Arnold v. S.C. Tax Comm'n, 285 S.C. 303, 328 S.E.2d. 920 (Ct. App. 1985); Tronco's Catering, Inc. v. S.C. Dept. of Revenue, Docket No. 09-ALJ-17-0089-CC, 2010 WL 5781622 (S.C. Admin. Law Ct. Apr. 12, 2010). "The true object test was developed in recognition of the fact that services are often a part of the sale of tangible personal property. Tronco's Catering, 2010 WL 5781622 *4. In order to determine "whether a contract is primarily for services or primarily for the sale of tangible personal property, [one must determine] the basic purpose of the buyer." Id. (emphasis added). In the type of transaction at issue here, the Petitioner's customers are primarily interested in the tangible personal property—the Beverages. Here, just like in Tronco's Catering, when the Petitioner's customer contracts with the Petitioner for the purchase of Beverages, the customer's basic purpose is to obtain prepared beverages for the customer's guests. Id. Thus, "although special skills and knowledge may go into the preparation, service, and presentation of the catered [beverages], it is nonetheless true that the buyer's main purpose is to purchase . . . beverages." Id. There is no difference between the Petitioner's sale of catered beverages and Tronco Catering's sale of catered meals. Just like the catering service at issue in Tronco's Catering, the bartending service provided by the Petitioner here became a part of and merely enhanced the sale of the

³In addition to being in the beverage-catering business, the Petitioner is engaged in the business of providing bartending services and consulting services. Only the Petitioner's beverage-catering business is at issue in this case.

Beverages. As such, the Court correctly held that the true object of the transaction at issue was the sale of Beverages, and that the Petitioner was engaged in the business of selling tangible personal property at retail.⁴ Order at 9.

II. The Court erred in concluding that the Petitioner could deduct the cost of the bartending service from his gross proceeds of sales when the Petitioner separately stated such cost on the invoice.

As stated above, the Court properly concluded that the Petitioner is a retailer. Order at 9. The Court also recognized that when the true object of the transaction was the purchase of Beverages, the Petitioner was required to remit sales tax on the entire value of the sale without any deductions for costs of services. *Id.* Unfortunately, the Court incorrectly ruled that when the Petitioner separately stated the cost of his bartending service on an invoice only the cost of the Beverages is subject to tax. The Court improperly treated the taxability of the transaction at issue—the sale of catered beverages—differently based on the Petitioner's choice of billing method. For the reasons stated below, the Department respectfully requests that this Court reconsider, alter, or amend its Order and conclude that the Petitioner must include the entire value of the sale of Beverages without any deduction for costs of services in his gross proceeds of sales regardless of the billing method used.

"Gross proceeds of sales" is defined as "the value proceeding or accruing from the sale, lease, or rental of tangible personal property. The term includes . . . the proceeds from the sale of

⁴The Court stated that "except in those instances in which bartending services were invoiced separately from the beverages, Petitioner's catered beverage business constitutes the retail sale of tangible personal property." Order at 9. Despite such statement, the Court does not appear to describe more than one type of transaction at issue in this case. As will be discussed in more detail herein, the Department submits that the evidence demonstrates only one type of transaction was before the Court—the sale of Catered Beverages—and, thus, the Court's attempt to treat one transaction differently based on how the Petitioner's billing method constitutes an error of law.

tangible personal property without any deduction for . . . the cost of materials, labor, or service.” § 12-36-90(1)(b)(ii) (emphasis added). A retailer’s billing method does not and cannot change the taxability of a transaction absent a statute or regulation specifically permitting such, as evidenced by the fact the law only allows for the deduction of labor or service charges based on the method of billing under certain limited and explicitly stated circumstances. Compare S.C. Code Ann. Reg. 117-313.1 (2012) (providing that “[n]o method of billing will serve to exempt from the measure of the tax the . . . labor or service cost”) with S.C. Code 117-313.3 (2012) (providing that “charges for installation incident to the sale of tangible personal property [are not subject to sales or use tax] when such charges are separately stated from the sales price of the property on billing to customers . . .”). No statute or regulation allowing for the deduction of labor or service charges based on the taxpayer’s billing method exists for circumstances like the one at issue here. Thus, because no statute or regulation exists that would allow the Petitioner to deduct his service charges from his gross proceeds of sales of Beverages when such service charges are separately stated on the invoice, the Petitioner cannot deduct such charges. Instead, regardless of the Petitioner’s billing method, the Petitioner must remit sales tax on the entire value of the sale, which is the total invoice price. See § 12-36-90.

Even though the law does not allow a beverage caterer like the Petitioner to deduct separately stated labor or service charges from its gross proceeds of sales, the Court ruled based on an invoice that the Petitioner could deduct separately stated service charges. The Petitioner chose to utilize two billing methods in his beverage-catering business: 1) an invoice listing a package price combining the cost of the Beverages and the bartending service and 2) an itemized invoice separately stating the actual cost of the beverages and the bartending service. Both

invoices result from the same type of transaction—the purchase of Beverages. Thus, the billing method does not change the nature of the transaction at issue.

Despite the invoices representing the same type of transaction, the Court ruled that when the Petitioner used itemized invoices he could deduct the cost of the bartending service. Notably, the Petitioner's itemized invoices are similar to Tronco's Catering's invoices. Tronco's Catering, 2010 WL 5781622 *2. Specifically, in Tronco's Catering the invoices included line items for a service charge, which was a "catchall line item charge for overhead costs incident to a catered meal," and a labor charge, which was a "flat fee line item charge for servers, butlers, and bartenders who provide services incident to catered meals." Id. (emphasis added). In Tronco's Catering, the billing method had no impact on the taxability of the transaction. 2010 WL 5781622. In fact, the ALC in Tronco's Catering explicitly ruled that "the taxpayer [was] not entitled to the deductions claimed for service, labor, [etc.]." 2010 WL 5781622 *10. Again, no difference exists between catered meals and catered beverages. As such, like Tronco's Catering, the Petitioner cannot deduct separately stated service charges from his gross proceeds of sales.

Moreover, an examination of the itemized invoice shows that the charge for the bartending service included charges for the sale or rental of tangible personal property. See Joint Ex. H (the invoice contains a catchall paragraph located above the signature line that lists other tangible personal property that the Petitioner sells or rents to his customers as part of the transaction at issue). The Department's understanding is that the Petitioner listed his actual cost of the beverages on the itemized invoices. Accordingly, the service charges listed on the itemized invoices must include charges for the sale or rental of the tangible personal property listed in the catchall paragraph. Section 12-36-90 clearly states that the cost of materials, labor, or service cannot be deducted from a taxpayer's gross proceeds of sales. Nonetheless, the Court's Order allows the

Petitioner to not only deduct the service charges from his gross proceeds of sales, but also allows the Petitioner to deduct the cost of certain materials. The Court ruled this deduction was allowed despite recognizing the service charge was "part of a larger transaction involving the sale of tangible personal property."⁵ Order at 9. Because the true object of this transaction was the sale of Beverages, sales tax was due on the entire value of the sale—the invoice price. None of the deductions authorized by the Court are permitted by § 12-36-90 or any other statute or regulation. Thus, the Court erred in ruling that the Petitioner could deduct separately stated service charges from his gross proceeds of sales of Beverages.

Finally, regardless of the Petitioner's chosen billing method, the true object of the transaction remained the same—the sale of Beverages.

In every instance where [Petitioner's] customer elect[ed] the option of having . . . bartenders at his event . . . the customer ha[d] already elected to have . . . [B]everages at the event. [At that point] [t]he services become a part of and enhance the value of the sale of catered [beverages]. The services would not have been sold if not for the sale of the catered [beverages].

Tronco's Catering, 2010 WL 5781622 *7 (analyzing the transaction in light of the Meyers Arnold "but for" test). A taxpayer cannot manipulate its gross proceeds of sales, and thus alter the sales tax base, by "demarcating discrete aspects of the sale." Tronco's Catering, 2010 WL 5781622 *3. Every time a customer chose to purchase Beverages in conjunction with the bartending service the result was same—the customer purchased catered beverages. Thus, whether the price of the transaction was broken down by line item or was listed as a lump sum, the true object of that transaction did not change—the customer still wanted Beverages. Accordingly, since the true object of the type of transaction at issue was the purchase of beverages, and the Petitioner is in the

⁵This is akin to allowing a restaurant to deduct the cost of its servers, bartenders, plates, and napkins and only remit tax on the cost of the food.

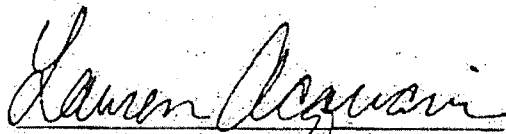
business of selling tangible personal property at retail, the Petitioner must remit sales tax on his gross proceeds of sales regardless of the billing method used. The Court's conclusion to the contrary constitutes an error of law. Therefore, the Department respectfully requests that the Court reconsider, alter, or amend its Order to reflect that the Petitioner cannot deduct separately stated service charges from his gross proceeds of sales.

Conclusion

Based on the foregoing, the Department respectfully requests that this Court reconsider, alter, or amend its Order and conclude that the Petitioner must include the entire value he receives for the sale of a beverage-catering package in his gross proceeds of sales regardless of his chosen billing method.

WHEREFORE, the Department respectfully requests that this Court reconsider, alter, or amend its Order.

Respectfully submitted,



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May 7, 2018
Columbia, South Carolina

EXHIBIT A

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith Purdy, d/b/a A Southern Bartender,

Docket No. 17-ALJ-17-0002-CC

Petitioner,

vs.

ORDER

South Carolina Department of Revenue,

Respondent.

APPEARANCES: For Petitioner: Bryan A. Raymond, Esquire
For Respondent: Lauren Acquaviva, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed by Keith Purdy, d/b/a A Southern Bartender (Petitioner). Petitioner challenges the South Carolina Department of Revenue's (Department) determination of December 7, 2016, that states that Petitioner is operating a beverage catering business subject to sales tax. An evidentiary hearing was held on January 25, 2018. Based on the Court's comprehensive review of the testimony and exhibits presented at the hearing, as well as the applicable law, the Court finds that Petitioner is a person in the business of selling tangible personal property at retail, and that the proceeds of Petitioner's beverage catering business were properly included in Petitioner's gross proceeds of sale.

ISSUE

Whether Petitioner is in the business of selling tangible personal property at retail, such that the sales from Petitioner's beverage catering service business should be included in Petitioner's gross proceeds of sales.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passing upon their credibility, and taking into consideration the burden of persuasion, I make the following Findings of Fact by preponderance of the evidence.

1. Notice of the time, date, place, and nature of the hearing was timely given to all parties.
2. Petitioner owns and operates a business in South Carolina named "A Southern Bartender."

FILED

April 26, 2018

SC ADMIN. LAW COURT
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3. As part of Petitioner's business, a variety of beverage and bartending packages are offered to his customers.

4. Except for the "Private's Party" package, each of the packages offered by Petitioner include specified beer, wine, liquor, and/or mixers, as well as one (1) bartender per ninety (90) people for three (3) hours. The "Private's Party" package includes mixers, set up, and bartenders, and the customer provides his or her own alcohol.

5. The package prices range from \$6.00 per person to \$25.00 per person based upon the quality of the products provided (e.g., no alcohol provided, beer and wine with non-alcoholic beverages, call brands of liquor, premium brands of liquor, super-premium brands of liquor). For an additional charge, customers may add additional bartenders or extend the time. Glassware is included in the "General's Ball" package. Customers who select any of Petitioner's other packages can rent glassware for an additional charge. Petitioner also adds an eighteen percent (18%) gratuity charge to the total price of each package.

6. On occasion, Petitioner provides solely bartending services. In such instances, Petitioner provides the bartenders, and the customer provides everything else.

7. When booking an event, a customer pays a deposit to Petitioner so that Petitioner can purchase the inventory for the event. The inventory consists of beer, wine, liquor, mixers, ice, cups, garnishes, and anything else the customer may want. Petitioner may also provide glassware if the guest count is under one-hundred (100).

8. After an event, Petitioner takes all remaining inventory to his storeroom for use at his next event. Alternatively, Petitioner will allow a customer to keep the excess inventory for an extra charge.

9. On April 27, 2016, the Department emailed Petitioner and advised that it would be conducting an audit examination of Petitioner's books and records for an audit period between April 1, 2013, and March 31, 2016 (the "Audit Period").

10. On Schedule C of his 2013 – 2015 Federal Individual Income Tax returns, Petitioner listed "cost of goods sold." The "cost of goods sold" figures represented all the inventory Petitioner purchased and provided to customers for their events.

11. Petitioner did not file any sales tax returns with the South Carolina Department of Revenue between April 1, 2013, and March 31, 2016. Also, during this Audit Period, Petitioner had neither an alcohol nor a retail license.

12. After reviewing Petitioner's records, the Department determined that Petitioner operated a catering business. This Court has held that catering businesses are retail businesses. Accordingly, the Department concluded that Petitioner should have remitted sales tax to the Department on the gross proceeds of sales from his business.

13. Petitioner was unable to produce accurate accounting records for his business. Therefore, the Department had to calculate Petitioner's total sales using the bank-deposit method. In doing so, the Department treated all deposits minus refunds and transfers as income from sales.

14. Once the Department determined Petitioner's total sales, it had to then decide what amount should be included in Petitioner's gross proceeds of sales. To calculate that amount, the Department subtracted proceeds from sales that did not include any tangible personal property. In other words, the Department excluded from Petitioner's gross proceeds of sales any sales that included only the provision of bartenders and no tangible personal property.

15. For 2014 and 2015, Petitioner did not have sufficient invoices available for review. Petitioner provided the Department with cash flow worksheets to aid the Department in determining what percentage of transactions included sales of tangible personal property. The worksheets listed amounts received for "catering" and amounts received for "consulting." Petitioner represented to the Department that the amounts for "consulting" involved bartender only services, identification verification only services, TIPS¹ training, and expert witness services. Based upon the worksheets provided by Petitioner and his representations, the Department concluded that the percentage of Petitioner's sales of tangible personal property (the amounts for "catering") amounted to the following: 97.74% in 2014, and 92.29% in 2015.

16. While Petitioner had no cash flow worksheets for 2016, he provided some invoices for the Department's review. As those were the only documents Petitioner could provide, the Department used those invoices to calculate an estimated percentage of sales of tangible personal property for January 1, 2016, through March 31, 2016. The Department arrived at a figure of 46.14% as the amount of Petitioner's 2016 sales that involved the sale of tangible personal property.

17. The Department used the following percentages to calculate Petitioner's gross proceeds of sales for the audit period: 97.74% in 2014; 92.29% in 2015; and 46.14% in 2016.

¹ TIPS is an acronym for Training for Intervention Procedures. Petitioner testified that TIPS is an international program with the purpose of teaching responsible service of alcohol. Petitioner is an instructor for the program.

18. After determining Petitioner's gross proceeds of sale, it calculated Petitioner's sales tax liability.²

19. On August 19, 2016, the Department provided Petitioner with the auditor's working papers and detailed notes on how the auditor arrived at Petitioner's gross proceeds of sales and his sales tax liability.

20. On or about September 2, 2016, Petitioner advised the Department by email that he disagreed with the Department's determination that he was retailer. The Department accepted this email as Petitioner's formal protest.

21. On September 7, 2016, the Department issued its Determination. On September 9, 2016, the Department mailed the audit package to Petitioner. The package contained Petitioner's proposed liability which totaled \$21,641.51. Of this amount, \$14,979.66 represented sales tax due, \$5,614.59 represented the amount due to penalties for failing to file; and \$1,047.26 represented interest due.³ The audit package also contained an "Explanation of Audit Assessments and Adjustments," as well as Petitioner's options for protesting the proposed assessment.

22. By letter dated September 28, 2016, Petitioner advised the Department that he wanted his file forwarded to its Office of General Counsel for Litigation.

23. On December 7, 2016, the Department issued its Determination stating that Petitioner was a retailer of personal tangible property and that the income derived from Petitioner's alcohol catering service was properly included in Petitioner's gross proceeds of sales.

24. On January 6, 2018, Petitioner timely requested a contested case hearing.

25. A contested case hearing was held on January 25, 2018, at which time both parties appeared with counsel. Prior to the hearing, the parties stipulated to a number of facts⁴ and the admission of certain exhibits necessary for the adjudication of the matter.

26. Petitioner testified on his own behalf. He stated that he believed the true object of his business to be the service and not the sale of alcohol, and that his clients retained his services because of his experience, professionalism, and responsibility. To that end, Petitioner is trained to verify identification cards; he monitors all events for which his services have been retained to ensure that there is no underage drinking and no over-service of alcohol; and, he makes certain

² In doing so, the Department subtracted the amount of sales tax that Petitioner initially paid when purchasing his inventory.

³ Penalties and interest continue to accrue.

⁴ The parties' stipulations are contained herein in Paragraphs 2 through 24.

event guests who have consumed alcohol get home safely. Petitioner stated that he provides these services irrespective of whether he purchases alcohol for his client for a particular event, or the client provides it.

28. When Petitioner contracts with a client and those services include the provision of alcohol, the client gives Petitioner a deposit. The deposit serves a two-fold purpose. First, Petitioner uses it to purchase the alcohol that will be needed for an event as he never purchases alcohol unless the client pays for it up front. Second, it serves as confirmation of the contract that Petitioner will appear at the event. Petitioner pays retail sales tax when he purchases the alcohol.

29. Petitioner does not charge by the drink. Except for when Petitioner provides bartending services only, Petitioner charges a per person rate based upon on the quality of the liquor. His per person package rate also includes bartending services, although a client may add bartenders or extend the time period for service at an additional cost. Petitioner testified that at the conclusion of an event for which he provides alcohol, he either takes the remaining inventory to his storeroom for use at a subsequent function, or allows the client to take it for an additional cost.

30. I find Petitioner to be a credible witness who has made a sincere effort to operate according to the law. He testified credibly that he structured his business in the manner he did and failed to pay sales tax on these transactions based upon previous advice and instructions he received from the Department of Revenue. While ignorance of the law is no excuse, the Court is convinced Petitioner has made sincere efforts to operate his business properly and to pay the taxes that he believed applied in his situation. Here, Petitioner had a reasonable interpretation of a complex taxation situation. Compliance with the differing laws governing the licensing of alcohol beverage sales and sales of tangible personal property made it difficult for Petitioner to operate his business without being at risk for violating one requirement or the other because the alcohol licensing scheme requires a location for a license to be granted. Petitioner sought advice from the Department and understood from that meeting that the Department's position was that no alcohol license was required because he was performing a service, not selling tangible personal property. Moreover, this is an evolving area of law subject to differing interpretations. Boggero, the case this court relied upon in concluding that a factual inquiry into the intent of the customer is required, was decided by the South Carolina Court of Appeals in September 2015; The Tronco case cited below is persuasive, but not binding authority.

31. The Department's only witness was an audit supervisor who supervised the audit at issue.⁵ The witness testified as to how the Department calculated Petitioner's gross proceeds of sales. For a portion of the audit period, the Department utilized Petitioner's cash flow worksheets to determine the events that were taxable. For another portion of the audit period, Petitioner did not have these worksheets available so the Department utilized invoices provided by Petitioner.⁶ On one invoice dated January 15, 2016, Petitioner contracted with a customer to provide only bartending services; this invoice was treated as non-taxable because no tangible personal property was listed on the invoice. On a second invoice dated February 5, 2015, Petitioner's customer contracted for tangible personal property including wine, table linens, coolers, non-alcoholic beverages, and bartending services; the wine and its cost was listed separately, as was the bartending charge. The Department treated everything in the second invoice as a taxable sale because the bartending service was provided in conjunction with the sale of tangible personal property. The third invoice dated May 23, 2016, reflected that Petitioner was providing tangible personal property including alcohol and non-alcoholic beverages, ice, cups, napkins, and table linens. Petitioner charged \$11.00 per person based on the customer's menu choice and in particular, the "Captain's Choice," which included a variety of alcohol, non-alcoholic beverages and bartending services. The Department treated this transaction as taxable because it involved the provision of tangible personal property and a service so the entire transaction was taxable pursuant to the definition of the gross proceeds of sales.

32. As discussed in detail below, the determination of whether a transaction is the sale of tangible personal property or a service turns on a factual finding of the true object of the customer in entering the transaction. Here, where Petitioner has provided packages that include alcoholic beverages, priced based upon the quality of the beverages, I find that the object, or intent, of the customer was to purchase the beverages for guests at an event. Petitioner testified that his clients provided him with a deposit for the purchase of alcohol prior to an event, and that he merely passed the alcohol through to the customer. However, Petitioner also testified that after an event for which he provides alcohol, he either takes the remaining inventory to his storeroom for use at a

⁵ No hearsay objections were made during this or any other testimony rendered at the hearing.

⁶ At the hearing, Petitioner's counsel made a point of eliciting testimony from the Department that it did not have copies of all of Petitioner's invoices. The Court notes that it is the taxpayer's burden to produce evidence to substantiate his claim. *Tronco's Catering, Inc. v. S.C. Dept. of Revenue*, 2010 WL 5781622, *5 (S.C. Admin. Law Judge Div. Apr. 2010), *Cloyd v. Mabry*, 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988).

subsequent function, or allows the client to take it, but for an additional cost. I find that where the package paid for by the customer is a lump sum for beverages and bartending services with the alcohol provided by the Petitioner in this manner, the objective of the customer was to purchase the catered beverages.

CONCLUSIONS OF LAW

Based upon the forgoing findings of fact, the Court concludes the following as a matter of law:

Jurisdiction and Burden of Proof

This Court has jurisdiction of this matter pursuant to Sections 12-60-460, 1-23-310 and 1-23-600 of the South Carolina Code. S.C. Code Ann. §§ 1-23-310 and 1-23-600 (Supp. 2017); and 12-60-460 (2014).

The burden of proof is on the party asserting the affirmative in an adjudicatory administrative proceeding. 2 Am. Jur. 2d Administrative Law § 342 (2018). Here, the taxpayer has requested a contested case hearing to challenge the Department's proposed assessment. Thus, the taxpayer asserts the affirmative and must carry the burden of proving the Department's proposed assessment is incorrect. *Id.* See Cloyd v. Mabry, 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988). In addition, Section 12-36-950 provides in part, "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." S.C. Code Ann. § 12-36-950 (2014).

Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body, are entitled to great weight. Marchant v. Hamilton, 279 S.C. 497, 500, 309 S.E.2d 781, 783 (1983). When, as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the Legislature, there is created a strong presumption that such interpretation or construction is correct. Ryder Truck Lines Inc. South Carolina Tax Commission, 248 S.C. 148, 149 S.E.2d 435 (1966); Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682 (1950).

Tangible Personal Property at Retail

South Carolina law provides 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.” S.C. Code Ann. § 12-36-910(A) (2014). Section 12-36-1110 imposes an additional one percent sales tax beginning on June 1, 2007, bringing the total sales tax to six percent of the gross proceeds of sale. S.C. Code Ann. § 12-36-1110 (2014). The South Carolina Sales and Use Act defines “tangible personal property” in part as “personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses.” S.C. Code Ann. § 12-36-60 (2014).

South Carolina courts have stated that the test to be applied in making such a determination is “true object test.” Meyers Arnold, Inc. v. S.C. Tax Commission, 285 S.C. 303, 328 S.E.2d 920 (Ct. App. 1985); Tronco’s Catering, Inc. v. S.C. Dept. of Revenue, 2010 WL 5781622 (S.C. Admin. Law Judge Div. Apr. 2010). Under the “true object test,” the case-by-case analysis involves a factual inquiry into whether the customer’s purpose for entering the transaction was to procure a good or a service. Boggero v. S.C. Dept. of Revenue, 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015).

Here, Petitioner was engaged in the business of selling tangible personal property at retail. While there were instances in which Petitioner provided bartending services,⁷ most of his business transactions during the audit period involved providing both alcohol and bartending services as a package. The fact that Petitioner “may provide only service or labor to customers on some occasions is irrelevant in this case because of the transactional nature of the sales tax; each sales transaction must be viewed in isolation.” Tronco’s Catering, Inc., 2010 WL 5781622 *5.

As an example, Petitioner’s menu of services included the offering of assorted packages to customers ranging from \$6.00 to \$25.00 per person depending upon the quality of the alcohol to be served. The packages not only included the service of the alcohol, but also, the provision of alcohol and non-alcoholic beverages, cups, ice, napkins, and other items. The bartending services remained the same irrespective of the package chosen. That fact demonstrates that in those transactions, the provision of service was merely incidental to the sale of tangible personal property.⁸

⁷ In those occasions on which bartending services were charged separately from the drinks, there is no sale of tangible personal property. Generally, the gross proceeds from services are not subject to sales and use tax. See S.C. Code Ann. Regs. § 117-308 (2012) (“The receipts from services, when the services are the true object of the transaction, are not subject to the sales and use tax unless ... [certain inapplicable exceptions apply].”).

⁸ Similarly, in Boggero, the waste removal services remained the same irrespective of the type of portable toilets (including its more expensive “special event” toilets) used.

In other instances, Petitioner provided both bartending services and alcohol, and there was a separate line item on the invoice for bartending services. In those scenarios, the bartending services were separable from the provision of alcohol and/or other tangible goods, and thus, do not represent the retail sale of tangible personal property.

A sales tax of the gross proceeds of sales is imposed upon every person in the business of selling tangible personal property at retail. S.C. Code Ann. § 12-36-910 (2014). Section 12-36-90 (formerly Section 12-35-30) of the South Carolina Code defines "gross proceeds of sale as the value proceeding or accruing from the sale, lease, or rental of tangible personal property." S.C. Code Ann. § 12-36-90 (2014). The term includes "the proceeds from the sale of tangible personal property without any deduction for ... the cost of goods sold [or] the cost of materials, labor, or service ..." *Id.* See also *Meyers Arnold, Inc.*; *Tronco's Catering, Inc.* Section 12-36-90 has been deemed to be a "transactional tax." *Id.* Thus, except in those instances in which bartending services were invoiced separately from the beverages, Petitioner's catered beverage business constitutes the retail sale of tangible personal property. Because I find that the true object of those sales is the catering of beverages, Petitioner must remit sales tax on the entire value of the sale and cannot deduct the costs of goods sold or the costs of materials, labor, or services from his gross proceeds of sale.

Petitioner argues that if he is considered a retailer of tangible personal property which was subject to taxation by the Department, it would result in him being unfairly taxed a second time as he already paid sales tax on the alcohol and other items that he purchased (e.g., cups and non-alcoholic beverages). The Court rejects this argument. In calculating Petitioner's assessment, the Department gave Petitioner credit for the sales tax that he paid when he initially purchased the inventory. Thus, double taxation did not occur.

On the record and testimony presented at the hearing, it appears that the Department has counted all transactions that included any tangible personal property as wholly subject to the sales tax regardless of whether some bartending or consulting services were invoiced separately. For that reason, it is necessary to remand this matter to the Department to recalculate the sales tax due from Petitioner. Amounts Petitioner received for which he has presented invoices or other proof that customers were invoiced separately for bartending or consulting services must be deducted from his gross proceeds of sales. This is true even if those charges are part of a larger transaction in which tangible personal property was also sold.

In light of my finding that Petitioner has made a good faith effort to comply with the law and pay the taxes as he understood they applied to his situation, it is necessary to consider whether the penalties and interest sought by the Department are appropriate in this case. Section 12-54-25 provides for interest on unpaid taxes: "If any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety. For administrative convenience, the department may waive up to thirty days' interest." S.C. Code Ann. § 12-54-25(A). Section 12-54-42 provides for civil penalties for failure to pay taxes that must be shown on a return where the amount in question is not shown on the return, such as the sales tax here. It provides for graduated penalties for continued failure to pay after a demand for payment by the Department. However, Section 12-4-320(3) provides that the Department may "compromise any tax, interest, or penalty imposed by this title or other law." In a contested case such as this, the ALC becomes the final agency decision-maker and exercises the authority of the agency. See, Engaging & Guarding Laurens Cty.'s Env't (EAGLE) v. S.C. Dept. of Health & Envtl. Control, 407 S.C. 334, 345, 755 S.E.2d 444, 450 (2014).

S.C. Revenue Procedure 08-6 provides procedural guidance as to what circumstances the Department has determined justify a complete or partial waiver of penalties. While the Revenue Procedure is not promulgated as a regulation and is not binding on this Court, it provides thoughtful guidance for dealing with penalty waivers in a uniform manner. As an example of a circumstance justifying a complete waiver of penalties, Revenue Procedure 08-6 states, "The taxpayer may have reasonable cause for noncompliance where difficult and complex issues are involved when reasonable persons differ as to the appropriate tax treatment of the issue and there is no Department guidance with respect to the issue." S.C. Rev. Proc. 08-6(F) at 7. Because this is just such a complex issue where reasonable persons differ as to whether the tax treatment of the bartending packages provided by Petitioner to his customers were tangible personal property or a service, I conclude that it is appropriate to waive the penalties in this case. However, the justification for waiving penalties does not extend to the interest due on the unpaid taxes. I decline to waive the interest.

ORDER

THEREFORE, IT IS HEREBY ORDERED that in those instances during the audit period in which Petitioner provided bartending services as part of a package that included beverages, the proceeds from his beverage catering sales are subject to sales tax.

IT IS ALSO ORDERED that all penalties related to this matter are waived.

IT IS FURTHER ORDERED that this matter is **REMANDED** to the Department of Revenue to calculate the sales tax and interest. In doing so, the Department shall deduct from the gross proceeds of sales any payments made for bartending or other services that were not invoiced as part of a beverage package.

AND IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Deborah Brooks Durden", written in dark ink.

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

April 26, 2018
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Keith Purdy, d/b/a A Southern Bartender,)

Petitioner,)

South Carolina Department of Revenue,)

Respondent.)

Docket No. 17-ALJ-17-0002-CC

**REPLY TO PETITIONER'S
MEMORANDUM IN OPPOSITION
TO RESPONDENT'S MOTION
FOR RECONSIDERATION**

Pursuant to Rule 29(D) of the South Carolina Administrative Law Court Rules (SCALCR) and Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP), the South Carolina Department of Revenue (the "Department") submits this Reply to Petitioner's Memorandum in Opposition to Respondent's Motion for Reconsideration. In the Department's Motion for Reconsideration, the Department moved for an order reconsidering, altering, or amending this Court's Order because the Court erred in concluding that the Petitioner could deduct the cost of the bartending service from his gross proceeds of sales of catered beverages based on his chosen billing method. The Petitioner argues in his Memorandum that the Court correctly found that when the Petitioner separated the cost of tangible personal property from the cost of the bartending service the Petitioner did not sell tangible personal property. The Petitioner then argues that he can deduct the cost of the bartending service from his gross proceeds of sales because he did not sell any tangible personal property in that type of transaction. As will be explained in more detail below, the true object of the Petitioner's sale of catered beverages, regardless of his chosen billing method, is the purchase of tangible personal property. As such, the Court erred in concluding that the Petitioner could deduct the cost of bartending services from his gross proceeds of sales.

Therefore, the Department respectfully requests that the Court reconsider, alter, or amend its Order and conclude that the Petitioner is liable for sales tax on his gross proceeds of sales without any deduction for service costs.

ARGUMENTS

I. Only one type of transaction is before the Court, and the true object of that transaction was the sale of tangible personal property.

The Petitioner operates a business with various components: beverage catering, bartending, and consulting. The only component at issue in this case is Petitioner's beverage-catering business wherein the Petitioner sells liquor, beer, wine, mixers, ice, cups, garnishes, napkins (collectively, the "Beverages")¹ in conjunction with a bartending service. This combination of the sale of Beverages and a bartending service resulted in the sale of catered beverages. The Petitioner's sale of catered beverages is the only transaction at issue in this case. Thus, the Court had to determine the true object of the Petitioner's sale of catered beverages.

In the type of transaction at issue here, the Petitioner's customers are interested in the catered beverages, that being, for example, a liquor drink measured and mixed over ice in a glass, a mixed drink of combined liquor and mixers, wine poured in a glass, or a cold beer opened and placed on a napkin. The Petitioner's customers are not interested in simply purchasing Beverages that they would have to mix and serve on their own. Similarly, the Petitioner's customers are not interested in purchasing just bartending services; if they were they had the option to purchase their own supplies and hire the Petitioner to provide only bartending services. While the Petitioner may utilize various billing methods, including charging for the Beverages and the bartending service

¹The Petitioner may also rent tables and linens to his customers. See Joint Ex. H (the paragraph above the signature on invoices dated February 5, 2015, and May 23, 2016, list other tangible personal property the Petitioner provides his customers).

separately, such does not alter the nature of the transaction. Said differently, whether the Petitioner charges a lump sum for the catered beverages or separates the cost of the catered beverages into the cost of the Beverages and the cost of the incidental bartending services, the customer still wants the catered beverages at the end of the day. As such, the true object of the transaction at issue is the purchase of catered beverages, which constitutes the sale of tangible personal property.

The Petitioner disputes the Department's assertion that only one type of transaction is before the Court. See Pet'r's Memorandum at 3 - 4. The Department acknowledges and recognizes that the Petitioner offers bartending and consulting services in addition to beverage catering. The Petitioner fails to grasp that the proposed assessment before the Court does not include any bartending only transactions. Thus, the Petitioner's bartending only transactions are not before the Court. Accordingly, the Department's argument is that only one type of transaction *is before the Court*—the Petitioner's sale of catered beverages. As the Petitioner's sale of catered beverages is the only transaction before the Court and each sales transaction must be viewed in isolation, the other types of transactions the Petitioner participated in are irrelevant. See Tronco's Catering, Inc. v. S.C. Dept. of Revenue, Docket No. 09-ALJ-17-0089-CC, 2010 WL 5781622 *5 (S.C. Admin. Law Ct. Apr. 12, 2010). Therefore, the sole issue in this case is whether the true object of the Petitioner's beverage catering business is the sale of tangible personal property. As explained more fully in the Department's Motion, the Court properly concluded that the true object of the Petitioner's beverage-catering business is the purchase of catered beverages, and the provision of bartending services was merely incidental to that sale. Order at 8 - 9.

II. The Court erred in concluding that the Petitioner could deduct the cost of the bartending service from his gross proceeds of sales when the Petitioner separately stated such cost on the invoice.

As explained above, only one type of transaction is before the Court—the Petitioner's sale of catered beverages. The Petitioner's sale of catered beverages constitutes a taxable sale of

tangible personal property. Pursuant to S.C. Code Ann. § 12-36-910(A) (2014), the Petitioner must remit sales tax on his gross proceeds of sales. "Gross proceeds of sales" is defined as "the value proceeding or accruing from the sale, lease, or rental of tangible personal property. The term includes . . . the proceeds from the sale of tangible personal property without any deduction for . . . the cost of materials, labor, or service." S.C. Code Ann. § 12-36-90(1)(b)(ii) (2014) (emphasis added). Stated differently, the cost of labor or services may not be deducted from a retailer's gross proceeds of sales. Accordingly, the Petitioner must remit sales tax on the value proceeding or accruing from his sales of catered beverages without any deduction for the cost of the bartending service. Such is true regardless of the Petitioner's chosen billing method. No statute creates an exception to § 12-36-90 that would allow beverage-caterers to deduct labor or service costs. Allowing all retailers to deduct the cost of labor or service based upon their chosen billing method would have a devastating impact on the State's revenue. Retailers would inevitably use creative or distortive billing practices to reduce the amount attributable to the tangible personal property and increase the amount attributed to the cost of the labor or service. The General Assembly clearly did not intend for a retailer's gross proceeds of sales to be subject to such manipulation. As such, the Court incorrectly ruled that the Petitioner could deduct the cost of his bartending service when he sells catered beverages using an itemized invoice.

The Petitioner asserts that the Court correctly ruled that the Petitioner could deduct the cost of his bartending services because gross proceeds from the sale of services are generally not subject to sales tax pursuant to S.C. Code Ann. Regs. 117-308 (2012). The Petitioner's beverage-catering business is a retail business, however, and his sale of catered beverages constitutes the sale of tangible personal property not a service. Therefore, Regulation 117-308 does not apply here. Instead, S.C. Code Ann. Regs. 117-309 pertaining to retailers would apply. Regulation 117-

309 addresses the application of the sales and use tax to a variety of retailers, including those like the Petitioner who sell tangible personal property in conjunction with services. Because the true object of a transaction involving the sale of tangible personal property in conjunction with a service is the purchase of the tangible personal property, the retailer must remit the sales tax on the entire gross proceeds of the sale. The retailer may not deduct the cost of the service, even if such cost is separately stated on the invoice. Similarly here, because the true object of the transaction at issue is the sale of tangible personal property—catered beverages—the Petitioner may not deduct the cost of the bartending service from his sale of catered beverages. Accordingly, the Court's ruling to the contrary is in error.

An examination of the subparts of Regulation 117-309 demonstrates that when tangible personal property is sold in conjunction with a service the retailer may not deduct the cost of the service from gross proceeds of sales. For example, an artist who sells a custom piece of artwork sells tangible personal property—art supplies—in conjunction with a service. See Regulation 117-309.4. The completed piece of artwork is a combination of the art supplies and the artist's service. The artist's service enhances the value of the art supplies by turning the supplies into a completed piece of artwork. The artist's customers do not want to purchase art supplies and a separate service, they want to purchase a completed piece of artwork. Accordingly, the true object of that sale is the purchase of a completed piece of artwork (the service combined with the tangible personal property). Id. Pursuant to Regulation 117-309.4, the artist must remit sales tax on the gross proceeds of the sale of the completed piece of artwork and cannot deduct the cost of the service even if such cost is separately stated. Id.

Like the artist in the above example, when the Petitioner sells catered beverages he sells Beverages in conjunction with a bartending service. In this transaction, the bartending services

enhance the value of the Beverages. Specifically, the bartending services turn the Beverages into a different product—catered beverages. As the Court correctly found, the true object of that transaction was the sale of catered beverages (the bartending service combined with the Beverages), which constitutes the sale of tangible personal property. The Petitioner's customers did not want Beverages and a separate service.² The Petitioner's customers wanted Beverages that were enhanced by the bartending service; they wanted catered beverages. The true object of the transaction remains catered beverages regardless of whether the Petitioner separately charged his customers for the Beverages and the bartending service. At the end of the day, the Petitioner's customer wants a catered beverage. Therefore, like the artist, the Petitioner cannot deduct the cost of the bartending service from his gross proceeds of sales.

In the Petitioner's Memorandum, the Petitioner compared himself to an undertaker and relied on Regulation 1.17-309.8 to support his argument that he could deduct the cost of the bartending service from his sale of catered beverages. An undertaker sells caskets and other tangible personal property to his customers. An undertaker also sells burial services. Sometimes the undertaker's customers want just a casket, sometimes they want just burial services, and sometimes they want a casket and burial services. When a customer wants a casket and burial services, the customer purchases two separate items: the casket and the burial service. The burial service does not enhance the casket. The burial service does not change the nature of the casket. Instead, the sale of the burial service is completely separate from the sale of the casket. Accordingly, only the sale of the casket is includable in the undertaker's gross proceeds of sales.

²If the Petitioner's customers truly wanted and purchased the Beverages separate from the service then they would have been able to keep the Beverages after their event. Instead, the Petitioner placed any remaining Beverages in *his* inventory.

as only the value of the casket constitutes value proceeding or accruing from the sale of tangible personal property. Such would be true even without Regulation 117-309.8.

Regulation 117-309.8 recognizes that sometimes undertakers charge a lump sum when they sell tangible personal property and a separate service. The regulation notes that if an undertaker charges a lump sum, the undertaker will have to include the entire amount in his gross proceeds of sales even though the sale of the service is not taxable. If the undertaker separates the two transactions on one invoice, the undertaker will only have to pay tax on the sale of tangible personal property. Such demonstrates that the billing method does not change the *nature* of the transaction. Whether the undertaker charges a lump sum or separately states the charges, the customer is still

purchasing a casket separate from the burial service. The billing method may, however, affect what the undertaker must include in his gross proceeds of sales. Specifically, when an undertaker charges a lump sum for the sale of a casket and burial services, one cannot determine the value that proceeds or accrues from just the sale of the casket. Since S.C. Code Ann. § 12-36-950 (2014) creates the presumption that "all gross proceeds are subject to the tax until the contrary is established," the entire amount on the invoice must be taxed. Nonetheless, the customer still purchased tangible personal property and a separate, ordinarily nontaxable service.

Unlike the undertaker's customers, the Petitioner's customers do not want tangible personal property and a separate service. The Petitioner's customers want catered beverages. Again, as the Court correctly found, the true object of the transaction at issue is the purchase of catered beverages. Thus, unlike the undertaker, the Petitioner must remit sales tax on the value proceeding or accruing from his sale of catered beverages without any deduction for the cost of the bartending service. Therefore, the Department respectfully requests that the Court reconsider,

alter, or amend its Order to reflect that the Petitioner cannot deduct separately stated service charges from his gross proceeds of sales.

III. The Court cannot waive interest.

S.C. Code Ann. § 12-54-25(A) (2014) provides that interest is due on unpaid taxes. Nevertheless, the Petitioner asks this Court to waive any interest that accrues after the date of the Order, and the Court appears to believe it has discretion to waive interest pursuant to S.C. Code Ann. § 12-4-320(3) (2014). See Pet'r's Memorandum at 7 and Order at 10, respectively. Section 12-4-320(3), which is found under the general permissive powers of the Department in Article 3 of Chapter 4, Title 12, provides that the Department may "**compromise any tax, interest, or penalty imposed by this title**" (emphasis added). While § 12-4-320(3) does not define the term "compromise," Black's Law Dictionary defines "compromise" as follows:

1. An agreement between two or more persons to settle matters in dispute between them. A debtor's partial payment coupled with the creditor's promise not to claim the rest of the amount due or claimed.

Compromise, BLACK'S LAW DICTIONARY (7th ed. 1999). Accordingly, § 12-4-320(3) "permits the Department to 'compromise' interest in order to settle cases under circumstances where there is a 'quid pro quo' between the parties." Anonymous Company v. S.C. Dep't of Rev., Docket No.: 03-ALJ-17-0435-CC, 2004 WL 3154667 *5 (S.C. Admin. Law Ct., 2004). Thus, interest may only be compromised as part of a settlement, not a contested case.

To the contrary, S.C. Code Ann. § 12-54-160 (2014) provides that "[u]nless otherwise specifically prohibited, the department may **waive, dismiss or reduce penalties** provided for in this chapter." (emphasis added). No similar statute exists regarding the waiver of interest. Thus, while penalties and interest may be compromised, only penalties may be waived. Reading § 12-4-320(3) in conjunction with § 12-54-160 further supports the interpretation that "outside of the settlement

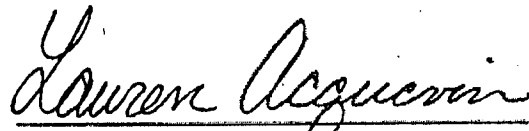
realm, only penalties may be waived when the underlying tax is found to be owed." Id. Here, the Court found that the underlying tax is owed. Therefore, the Court does not have any discretion to waive the interest that is due on the unpaid tax, nor does the Court have the authority to compromise the interest that is due. Accordingly, the Department respectfully requests that the Court reject the Petitioner's request to waive interest accruing after the date of the Order.

Conclusion

Based on the foregoing, the Department respectfully requests that this Court reconsider, alter, or amend its Order and conclude that the Petitioner must include the entire value he receives for the sale of catered beverages in his gross proceeds of sales regardless of his chosen billing method. The Department further requests that the Court deny the Petitioner's request to waive interest.

WHEREFORE, the Department respectfully requests that this Court reconsider, alter, or amend its Order.

Respectfully submitted,



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May 25, 2018
Columbia, South Carolina

OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
Docket No. 17-ALJ-17-0002-CC

Keith Purdy, d/b/a A Southern)
Bartender,)

Petitioner,)

v.)

South Carolina Department of)
Revenue,)

Respondent.)
-----)

ADMINISTRATIVE HEARING

Thursday, January 25, 2018
10:05 a.m. - 11:46 a.m.

The administrative hearing before the Honorable Deborah Brooks Durden was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 25th day of January, 2018 before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



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Also Present:

Keith Purdy
Dana Krajack, Esquire
Christine Buddin

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EXHIBITS

Joint Exhibit A	6
(Petitioner's of Rates for Bartending Services - 2015 and Petitioner's Rates for Bartending Services - 2016)	
Joint Exhibit/B	6
(Invoice from Petitioner to Greater Charleston Restaurant Association dated February 1, 2016)	
Joint Exhibit C	6
(Schedule C of Petitioner's 2013 through 2015 Federal Income Tax returns)	
Joint Exhibit D	6
(Petitioner's Cash Flow Worksheets for years 2014 and 2015)	
Joint Exhibit E	6
(Department's spreadsheet summarizing Petitioner's January 1, 2016 - March 31, 2016 invoices)	
Joint Exhibit F	6
(Petitioner's Protest Letter (email))	
Joint Exhibit G	6
(Department's Audit Package)	
Joint Exhibit H	6
(Three sample invoices dated January 15, 2016, February 5, 2015, and May 23, 2016, respectively)	

(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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CALL TO ORDER:

THE COURT: We are here this morning in the matter of Keith Purdy, doing business as A Southern Bartender, Petitioner versus the South Carolina Department of Revenue, Respondents. Docket number 17-ALJ-17-0002. And we have Mr. Raymond.

MR. RAYMOND: Yes, Your Honor.

THE COURT: How are you?

MR. RAYMOND: Very well. How are you?

THE COURT: And we have Ms. Acquaviva.

MS. ACQUAVIVA: Good Morning, Your Honor.

THE COURT: And we have Mr. Hess in the back looking for a 403, so I was going to ask the attorneys -- there's a new rule for 403s. They need four hours, and I know y'all have entered some stipulations, so I wanted to ask how many witnesses do each of you plan to put up and kinda give us a ball park idea of how long -- I would hate for Mr. Hess to sit here for two hours and not end up ---

MS. ACQUAVIVA: It's not going to go four hours.

MR. RAYMOND: No, no, it will not. We plan on putting up only Mr. Purdy and I believe that Respondent's only putting up one witness as



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1 well so.

2 THE COURT: All right. Good. All right, so, Mr.
3 Hess, you are welcome to stay, you're welcome
4 to go.

5 MR. HESS: (Exits court room.)

6 THE COURT: And there he goes. Okay. Do we have
7 any preliminary measures to take up before we
8 begin?

9 PRELIMINARY MATTERS:

10 MS. ACQUAVIVA: Yes, Your Honor. Just a couple. As
11 I had e-mailed to Your Honor earlier this week,
12 the parties have entered into stipulations of
13 fact. I do have ---

14 THE COURT: Thank you for that.

15 MS. ACQUAVIVA: --- I do have a copy here for the
16 Court if Your -- Your Honor would like. Based
17 on those stipulations I've also created a Joint
18 Exhibit notebook. At the last hour we did add
19 an additional Exhibit H which I have included
20 in this packet.

21 THE COURT: And that's also stipulated to the
22 admissibility ---

23 MR. RAYMOND: Yes.

24 THE COURT: --- of that Exhibit?

25 MR. RAYMOND: Without objection.



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1 THE COURT: All right.

2 MS. ACQUAVIVA: So, if Your Honor would like I could
3 hand you your copy and leave the Joint
4 Exhibits, which we would like to be offered as
5 Joint Exhibits A through H, on the witness
6 stand for the witnesses use.

7 THE COURT: That sounds wonderful. Thank you. I
8 love it when you're organized.

9 MS. ACQUAVIVA: I apologize. Yours does not have
10 tabs.

11 THE COURT: That's fine. Okay. So, we've got the
12 stipulations of fact and Joint Exhibits A
13 through H are admitted by stipulation. All
14 right.

15 (Joint Exhibits A through H are admitted by
16 stipulation into the record.)

17 MS. ACQUAVIVA: Additionally, Your Honor, the parties
18 have discussed, and obviously it's up to Your
19 Honor, waiving openings and closing in lieu of
20 submitting proposed orders because we have both
21 done Cross-Motions for Summary Judgment and
22 felt that the issues, generally, were already
23 in front of the Court and we wanted to be
24 efficient and as quick as possible today.

25 THE COURT: Well, I have already, obviously, in --



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1 in dealing with your Motions for Summary
2 Judgment, I am familiar with the legal issue in
3 front of me and I agree that unless something
4 -- you have something new to argue, that
5 opening and closings are not necessary. I
6 generally don't really make very good use of
7 proposed orders. You're welcome to submit them
8 if you like, but I usually write my own orders,
9 so you -- you don't need to enter into that
10 exercise unless you really want to.

11 **MS. ACQUAVIVA:** Okay.

12 **THE COURT:** But you can -- you can let me know at
13 the end of the hearing if you think there's
14 something else that you'd like to -- to put
15 into a proposed order for me to consider. As
16 I stated in my Order on the Summary Judgment
17 Motion, I think I have a fairly narrow issue of
18 fact to decide here. And as I understand it
19 from the -- how did you pronounce the name of
20 the case?

21 **MS. ACQUAVIVA:** Baggero.

22 **THE COURT:** Baggero, Baggero case, that the issue
23 before me really to decide -- y'all stipulated
24 to just about everything else, the only issue
25 for me to decide is what was the intent of Mr.



1 Purdy's clients. And so, you know, we're here
2 to take evidence on that issue. And I think I
3 can write an order once we've -- once we've
4 done that. All right?

5 **MS. ACQUAVIVA:** Sounds good.

6 **THE COURT:** Okay. All right then. Mr. Raymond is
7 the Petitioner today, so would you like to
8 proceed then?

9 **MR. RAYMOND:** Yes, Your Honor. May it please the
10 Court, we would call Mr. Keith Purdy to the
11 stand.

12 **THE COURT:** Mr. Purdy, if you'll step right up here
13 and the court reporter will swear you in before
14 you're seated. Thank you.

15 **MR. PURDY:** (Witness complies.)

16 **COURT REPORTER:** Mr. Purdy, will you raise your
17 right hand, please?

18 **MR. PURDY:** (Witness complies.)

19 **COURT REPORTER:** Do you solemnly swear the following
20 testimony to be the truth, the whole truth and
21 nothing but the truth so help you God?

22 **MR. PURDY:** I do.

23 **THE COURT:** You can have a seat.

24 **MR. PURDY:** (Witness complies.)

25 **THE COURT:** And if you would begin by spelling your



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1 full name for the court reporter.

2 MR. PURDY: My name is Keith Alan Purdy, K-E-I-T-H,
3 A-L-A-N, P-U-R-D-Y.

4 THE COURT: Thank you.

5 MR. PURDY - DIRECT EXAMINATION BY MR. RAYMOND:

6 Q: Mr. Purdy, what is your occupation?

7 A: I am a business owner in Charleston, South
8 Carolina.

9 Q: And what kind of business do you own?

10 A: I have a bartending service.

11 Q: All right. And do you do any other jobs within
12 the bartending industry?

13 A: Yes, sir. I am a consultant. I've been called
14 in on as expert witness for cases, Dram Shop.
15 I do training. I come in and help bars set up.

16 Q: Okay. And -- and what kind of training do you
17 do?

18 A: I do a class called TIPS. T-I-P-S which stands
19 for the Training for Intervention Procedures,
20 which is a national -- international program
21 that teaches responsible service of alcohol.

22 Q: Okay. So, you're fairly knowledgeable about
23 the legalities surrounding the service of
24 alcohol?

25 A: Yes, sir.



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1 Q: And -- and do you know whether or not South
2 Carolina has any laws that regulate the service
3 of alcohol?

4 A: No, sir.

5 Q: Okay. Do you -- are you aware that if -- if a
6 bartender serves or anyone serves alcohol to
7 the -- a minor they can be criminally liable.

8 A: That's true.

9 Q: Is this part of the training that you undertake
10 with the TIPS training?

11 A: Yes, sir.

12 Q: Okay. All right. How do you make sure that
13 people are trained to know not to serve alcohol
14 to minors?

15 A: I -- through my TIPS training class we cover
16 IDs, you know, fake IDs, real IDs, what to go
17 through to approve them to make sure they're
18 valid. I have a book that I give every account
19 about ID guides. You know, it's important that
20 you check to make sure that an ID is a valid
21 ID.

22 Q: Sure. And -- and in your business as a
23 Southern Bartender, do you take any steps to
24 make sure that no minors are served?

25 A: Absolutely.



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1 Q: And -- and what are those steps?

2 A: Usually, like I did an event Friday night, the
3 medical university had checked ID at the door.
4 So, the people came up to the bar had a
5 bracelet whether they were over or under 21.

6 Q: Okay. And are you aware of any other
7 activities a bartender or anyone would be found
8 to be criminally liable for if they were found
9 to be in violation while they were serving
10 alcohol?

11 A: The main violation would be underage. I
12 haven't seen a bartender found liable for over-
13 serving somebody, but that could be a criminal
14 case.

15 Q: Okay. Okay. Is this over-service, is that
16 when someone is overly intoxicated?

17 A: Yes, sir.

18 Q: And then the bartender serves them more
19 alcohol?

20 A: It's part of state law 61-4580.

21 Q: Okay.

22 A: Which states it's illegal to serve somebody
23 underage or somebody intoxicated.

24 Q: All right. I -- I think you are pretty
25 knowledgeable about the laws if you can state



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1 statute off the top of your head. So is this
2 also not serving people who are overly
3 intoxicated, is that also part of the TIPS
4 trainings that -- that you do?

5 A: Yes, sir.

6 Q: Okay. And you take steps as -- in your
7 business to make sure no one that is overly ---

8 A: Absolutely.

9 Q: --- intoxicated gets served? All right. Do
10 you think it's important that every bartender
11 receives training?

12 A: I do.

13 Q: Do you know of any -- any laws requiring
14 training of bartenders?

15 A: Not in this state but it is being debated. The
16 Senate Bill 115 proposing it. I actually
17 testified before Senate Judiciary Committee on
18 it last year and it's still in Committee.

19 Q: Okay. And -- and why do you think it's
20 important to have all bartenders be trained?

21 A: Well, South Carolina's got one of the highest
22 percentage of fatal DUIs in the country. You
23 know, we were rated, I think, number six. I
24 know out of a thousand accidents on the highway
25 a third of them were caused by alcohol. Now,



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1 I also have the statistic and it's dated that
2 they did a survey of everybody arrested in
3 Charleston County for DUI and asked them where
4 did you come from and 48 percent had been in a
5 licensed establishment.

6 Q: Okay. And -- and, so you think that training
7 of bartenders would ameliorate some of these
8 issues?

9 A: No question.

10 Q: Okay. All right. So, when you have A Southern
11 Bartender that -- do you -- do you keep in mind
12 the fact that all of these laws are in place
13 or, you know, you have these duties to -- to
14 protect the

15 A: Yes, sir.

16 Q: Okay. All right.

17 A: I think that's one reason why a lot of my
18 clients hire me.

19 Q: Do you make this known to your clients that you
20 will be undertaking these?

21 A: Absolutely.

22 Q: So, going to the actual procedure of your
23 business, when you have an event, do you charge
24 your clients a -- a flat rate for services, or
25 is it a varying price or, ...



1 A: It depends on which service I'm providing.
2 Friday night, Saturday night I had two events
3 and it was just labor. So I just charged the
4 price for the -- for the bartending service.

5 Q: And when you say just labor, does that mean --
6 what does that mean?

7 A: That just means I show up, they provide all of
8 the alcohol. Like, Friday night was a beer
9 wagon for the Medical University. They had an
10 oyster roast and I had 16 bartenders working.

11 Q: Okay. You're aware that the cause -- or the
12 Department of Revenue has assessed your taxes
13 based off of the fact that you -- you have
14 purchased alcohol and then provided that
15 alcohol to the clients, correct?

16 A: Yes, sir.

17 Q: And that is in -- you're not being assessed for
18 the services that you provide, just the
19 services when the alcohol has already been
20 provided?

21 A: Right.

22 Q: All right. Is there any difference in the
23 service that you provide when the clients
24 provide the alcohol versus when the -- they ask
25 you to purchase the alcohol?



1 A: No, sir.

2 Q: All right. Do you ever buy alcohol for a --
3 for an event prior to a client actually paying
4 you for that alcohol?

5 A: No, sir.

6 Q: All right. But you -- you've used leftover
7 alcohol at events before, right?

8 A: Yes, sir.

9 Q: All right. And this is alcohol that's been
10 left over from -- from other parties?

11 A: From previous parties.

12 Q: Okay. Do you keep a store room?

13 A: Yes, sir.

14 Q: And -- and approximately how much or how full
15 is that store room at any given moment?

16 A: It's not full. I mean, I have inventory. I
17 mean, I carry things like coolers, I've got
18 some glassware. You know, things that I use
19 for my business.

20 Q: Okay. So if you provide the same service for
21 a client that provides you alcohol as one that
22 where you go and purchase the alcohol on behalf
23 of the client, why would a client hire you to
24 serve this alcohol?

25 A: There is a lot of consternation and



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1 responsibility with serving alcohol. I have
2 clients down in Charleston that they won't use
3 somebody that's not licensed and insured
4 because of the liability issue.

5 Q: And -- and what are those liability issues?

6 A: Well, if -- it gets back that 61-4580, it can
7 be a criminal offense for serving somebody
8 under age. But there's also civil cases that
9 have gone against bars and restaurants that
10 have over-served somebody. And those cases
11 that come back, it's very expensive. And I've
12 actually seen it put businesses -- put them out
13 of business. And that's why they have to have
14 really a trained bartender.

15 Q: So the purpose of you being there is -- is not
16 to serve the alcohol but what would you say the
17 purpose is?

18 A: To monitor and ensure that everybody gets home
19 safely.

20 Q: All right. All right. Just a few more things.
21 Do you -- are you able to buy when -- when a
22 customer gives you money to purchase their
23 alcohol, are you able to buy that wholesale?

24 A: No, sir.

25 Q: All right. Are you exempt from paying retail



1 sales taxes on that?

2 A: Yes, because I don't pay sales tax. I don't
3 sell alcohol.

4 Q: I -- I'm sorry. I -- when you purchase that
5 alcohol do you have to pay the retail sales
6 tax?

7 A: Yes. When I buy it.

8 Q: Okay. So do you pay income tax?

9 A: Yes, sir.

10 Q: Do you pay taxes on the business?

11 A: I do the taxes on my retail products and I pay
12 my business license and the fees, insurance,
13 and I pay my income tax.

14 Q: Okay. So you've been in the business -- in the
15 bartending business for how long?

16 A: Forty years.

17 Q: All right. In your 40 years have you ever held
18 any other jobs in the bartending industry than
19 just being A Southern Bartender?

20 A: Oh, yes, sir. I've been head bartender, I've
21 been a bar manager, I've been a beverage
22 director, a maitre d, restaurant manager.
23 I've served in just about all places in the
24 front of the restaurant.

25 Q: Okay. And when you served in those -- those



1 restaurants or -- or what have you, have you
2 ever had the ability to go and obtain a license
3 to sell alcohol?

4 A: Yes, sir.

5 Q: All right. And could you tell me about when
6 that was and your experience?

7 A: In 1988, 1989, it was while I was an instructor
8 in mixology at Johnson & Wales, I was handling
9 the concessions at Gaillard Municipal

10 Auditorium, which was downtown Charleston, and
11 they had ask me to provide the concessions for
12 this municipal building, which I had to go
13 apply for a license to get a beer -- permanent
14 beer and wine license. You know, all the
15 steps. You've got to run an ad in the
16 newspaper, put a sign on the door. You know,
17 they do background checks. I was approved. So
18 I was actually a licensed beer and wine
19 retailer at a city facility in Charleston.

20 Q: Okay. And when you were -- when you were
21 selling this alcohol at the Gaillard Center
22 were you charging for every transaction?

23 A: No, sir.

24 Q: Okay. What made you stop doing it?

25 A: A little storm called Hurricane Hugo.



1 Q: Okay. All right. When you started A Southern
2 Bartender did you seek out advice as to whether
3 or not you needed pay sales taxes?

4 A: Well, when I had the concessions at Gaillard,
5 '88, '89, after that I went to handle the
6 concessions for the Charleston Battery. They
7 contracted me to do concessions for their
8 soccer games and I did that two years, I
9 believe. And then at the end of that I of

10 course did not have a physical location for
11 people -- for them to deliver my product. So
12 I came to Columbia and had a meeting personally
13 with somebody from the Department of Revenue
14 and asked them, do I need to keep my retail
15 sales tax license if I'm not selling alcohol?
16 I can't buy wholesale and of course the big
17 thing is you've got to have a physical building
18 for them to come, you know, see it. And -- and
19 somebody from the Department of Revenue told me
20 no. And they actually cancelled my retail
21 sales tax license. But that was in the early
22 '90s and I've subscribed to that theory ever
23 since.

24 Q: Right, so -- so you were surprised when you've
25 been told that you were required to pay sales



1 taxes on -- on your business?

2 A: Yes.

3 Q: All right.

4 A: Very much so.

5 Q: Now, you'd mentioned that you needed a physical
6 location to -- to obtain a license to -- to
7 sell alcohol ---

8 A: Correct.

9 Q: --- is that right? Could you -- could you, as
10 A Southern Bartender, obtain a license to sell
11 alcohol as you currently are constituted?

12 A: No, sir.

13 Q: And why not?

14 A: Well, I don't have a permanent location. I
15 mean, you've got to have bathrooms and kitchens
16 and, you know, a facility to set up for
17 commercial use. And I run my business out of
18 my -- my house and I would not qualify for a
19 permanent beer and wine license.

20 Q: All right. And -- and you don't serve alcohol
21 out of your house?

22 A: No, sir.

23 Q: Okay. Where do you serve alcohol? Where --
24 where do you give these bartending services?

25 A: I am an off premise caterer.



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1 Q: All right. And what types of functions do you?

2 A: You know, I just did the Medical University
3 oyster roast Friday night, and I did a party
4 Saturday night down at the University of South
5 Carolina School of Art. You know, I've done
6 many wedding receptions, graduation parties. I
7 mean, any -- anything that alcohol is being
8 served.

9 Q: Okay. Does it make sense that you have a
10 person who serves alcohol that has been given
11 to them is treated differently from someone who
12 is given money to go purchase that alcohol and
13 then serve it?

14 A: My service is the same.

15 Q: Okay. And you're hired for what reason?

16 A: I'm hired to serve the alcohol. I'm a
17 professional in the service of alcohol. I
18 mean, I got people that probably only use me
19 because they know how professional I am. And
20 I just show up and serve it. If they've got
21 their own inventory that fine.

22 Q: All right. Just a few more questions regarding
23 the finances of -- of your operation. Do you
24 have a -- do you keep track of every
25 transaction that takes place when you're



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1 serving alcohol?

2 A: No, sir.

3 Q: And why not?

4 A: Well, I just keep track of my total inventory
5 at the end of a party. And some of the
6 inventory goes back to the client and if
7 there's anything left over from the party, I
8 take back to my storeroom. I mean, it's all
9 paid for with retail sales tax. But I don't
10 keep track of every drink I serve, every beer
11 I serve, you know, glass of wine.

12 Q: Do you -- do you charge for every drink that
13 you serve?

14 A: No, sir.

15 Q: So take me through really quickly what -- what
16 is an event like for you as a -- as a
17 bartender? How do the customers come and
18 approach you in this?

19 A: Okay. Let's say that I've got somebody's that
20 called me about doing a wedding reception. And
21 I would negotiate with them what they want to
22 be served: beer, wine, liquor, you know, the
23 mixers, ice, cups, garnishes. I have different
24 bar plans. I think part of my rate list is
25 some of your information that you have. And



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1 that -- the rates are based on the quality of
2 the liquor, whether you've got bottled beer,
3 canned beer, whatever. And once we agree on a
4 bar plan then I get a deposit from them that
5 allows me to go to the store and buy the
6 alcohol and bring it to their event.

7 Q: Okay.

8 A: Now my service charge is in addition.

9 Q: All right. And they don't necessarily need to
10 give you that deposit, they can go provide the
11 alcohol themselves, right?

12 A: That's correct.

13 Q: All right. I think that's -- that's all I
14 have.

15 MR. RAYMOND: No further questions, Your Honor.

16 THE COURT: Ms. Acquaviva?

17 MS. ACQUAVIVA: Thank you, Your Honor.

18 MR. PURDY - CROSS-EXAMINATION BY MS ACQUAVIVA:

19 Q: Morning, Mr. Purdy.

20 A: Good morning.

21 Q: Some of the questions may be a little bit of a
22 repeat of what you just went over through
23 direct, but I just to make sure I'm connecting
24 all the dots, okay?

25 A: Okay.



1 Q: So you -- you do consider yourself you said an
2 off premise caterer?

3 A: That's correct.

4 Q: Okay. Back when you were at the Gaillard
5 Center and the Charleston Battery you said you
6 -- you did concessions as well?

7 A: Yes. That was selling the beer, wine, soda.

8 Q: Did that include food at all?

9 A: Yeah, it did. You know, I mean maybe hotdogs,
10 popcorn.

11 Q: Were there laws regulating the service of the
12 food at the concessions?

13 A: Yeah, they would come, DHEC. They had to come
14 approve it.

15 Q: Okay. So would you say it's important that
16 food is also served safely?

17 A: Of course.

18 Q: Okay.

19 A: Yes.

20 Q: And part of your current business -- so the
21 bartending catering business, you provide
22 things like beer, wine, liquor, mixers,
23 garnishes, ice, cups and -- and other types of
24 products, correct, to your ---

25 A: Yes, ma'am.



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1 Q: --- your customers? You also provide
2 bartenders to serve those products, correct?

3 A: That's correct.

4 Q: Okay. And you purchase the inventory that you
5 ultimately serve to your customer and that
6 customer's guests, right?

7 A: Not always. But when I do, I mean if I do
8 provide it, I go pick it up from the store, pay
9 retail sales tax.

10 Q: And when you do provide the inventory, all the
11 inventory you purchase, you listed that number
12 as the cost of goods sold on your tax return,
13 correct?

14 A: Yes, ma'am.

15 Q: Okay. And that number reflects the goods that
16 you -- the product that you sold to your
17 customers, correct?

18 A: I don't sell alcohol. I serve it.

19 Q: So is it your testimony that the inventory that
20 you listed as cost of goods sold on your tax
21 return is not the goods that you sell to your
22 customers?

23 A: I don't have a license to sell alcohol. It's
24 inventory that I took to a party and served.

25 Q: Do you remember taking a deposition in this



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1 matter, Mr. Purdy?

2 A: Yes, ma'am.

3 Q: Yes. And that deposition was taken at your
4 attorney's office?

5 A: Yes, ma'am.

6 Q: And I was there?

7 A: Yes, ma'am.

8 Q: You were there?

9 A: Yes, ma'am.

10 Q: Your attorney was there?

11 A: Yes, ma'am.

12 Q: And there was a court reporter there?

13 A: Yes, ma'am.

14 Q: And you were under oath at that time?

15 A: Yes, ma'am.

16 Q: And you stated that you were going to tell the
17 truth in your deposition, correct?

18 A: Yes, I did.

19 **MS. ACQUAVIVA:** Okay. At this time, Your Honor, I
20 would like to ask the court reporter to unseal
21 Mr. Purdy's deposition.

22 **COURT REPORTER:** (Complies to request.)

23 **MS. ACQUAVIVA:** Thank you. May I approach the
24 witness, Your Honor?

25 **THE COURT:** Certainly.



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1 Q: Mr. Purdy, I'm going to hand you a copy of your
2 deposition. Have you seen that before? A copy
3 of that?

4 A: I'm not sure if I have or not. I don't think
5 so. I mean, no, ma'am, I haven't.

6 Q: You -- you did not take a look at your
7 deposition ---

8 A: Well, I'm not sure if I got this exact ---

9 Q: --- transcript?

10 A: --- copy. I mean, I know everything that was
11 said. And I may have got it but I don't
12 remember, so ...

13 Q: Okay. Well, I would like you to turn to page
14 31 of your deposition. Let me know when you're
15 there.

16 A: Okay.

17 Q: Okay. And we're going to look at lines 8
18 through 12, and I'm going to read what the
19 transcript and you tell me if I read it
20 correctly, okay? I asked if you sold those
21 goods to your clients, is that correct?

22 A: Uh-huh (affirmative response).

23 Q: And you said no, correct?

24 A: That's right.

25 Q: And I asked again, no, as in are you sure,



1 correct?

2 A: Right.

3 Q: And you invoked your Fifth Amendment privilege,
4 is that correct?

5 A: That's right.

6 Q: But you're not invoking your Fifth Amendment
7 privilege here today, are you?

8 A: I've been ask to be speaking honestly.

9 Q: Okay.

10 A: And I am.

11 Q: Thank you. And I want to get back to your menu
12 of -- under Exhibit A -- you can take a look in
13 that notebook.

14 A: Okay.

15 Q: These are your rates for bartending services
16 for 2015 and the second page is 2016, correct?

17 A: That's correct.

18 Q: And these rates are based on the quality of the
19 product, correct?

20 A: That's correct.

21 Q: Okay. And is that because, for example,
22 premium brands would cost more than house
23 brands?

24 A: That is correct.

25 Q: Okay. But the service that you provide is the



1 same regardless of the product being served,
2 right?

3 A: That's correct.

4 Q: It's true that sometimes you provide just a
5 bartending service, right?

6 A: Yes, ma'am.

7 Q: And that is the exception not the rule to your
8 business, would you say?

9 A: Can you rephrase that?

10 Q: Would you agree that it's rare that you provide
11 just the bartending service without also
12 providing the product?

13 A: Not necessarily. I mean, mainly it's been a
14 lot of labor.

15 **THE COURT:** I'm sorry I didn't hear that last part.
16 Can you ---

17 A: I said that it's been -- mainly it's been a lot
18 of labor, more the bartending service. Of
19 course, there's always bartending service at
20 every event I do. I don't always bring in
21 inventory. Like Friday night I showed up and
22 they had a beer wagon. Saturday night they had
23 their own inventory. I just showed up to
24 serve.

25 Q: Is -- are you - is your testimony that it's



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1 more frequent that you provide just the service
2 now or is that testimony also applied to the
3 tax periods at issue before the Court?

4 A: Well, I don't know, that's hard to say. I --
5 can you rephrase -- rephrase it?

6 Q: Sure.

7 A: I'm trying -- I'm trying to say, because see,
8 now you go on back three or four years?

9 Q: I understand.

10 A: You understand. I have been -- been through
11 cancer since 2013.

12 Q: And that's -- that's where we need to go back
13 to, unfortunately. So the audit here is about
14 2013 to 2016?

15 A: Correct.

16 Q: During that time period would you say that it
17 was rare that you provided just the bartending
18 service?

19 A: No.

20 Q: No? I'd like you to turn to page 19 in your
21 deposition. And again we're going to go
22 through and you tell me if I'm reading the
23 deposition transcript correctly. We're going
24 to start by line 17 and I asked you, what would
25 happen if I came to you as a potential client



1 and I said I have everything I need, all I need
2 is physical bartenders to serve my stuff. Is
3 that something that you provide? Did I ask
4 that question correctly?

5 A: Uh-huh (affirmative response).

6 Q: Yes. And on line 21 your response was, on
7 occasions, correct?

8 A: Uh-huh (affirmative response).

9 Q: On line 23 you stated, not something I like

10 doing. Temporary labor is not the purpose of
11 my company. Did I read that correctly?

12 A: Correct.

13 Q: Okay. And then if we turn to page 20 in lines
14 1 through 14 we're discussing more about you
15 providing just the service and why you only do
16 it periodically. And I asked you on page -- on
17 line 13 of page 20, so that would be something
18 you would work out with the customer? And on
19 line 15 you said, on rare occasions, correct?

20 A: (Nods head.)

21 Q: Okay. So is it safe to say then that you,
22 during the audit period, rarely provided just
23 the bartending services?

24 A: I do. But I can't remember exactly how much.
25 I mean, what percentage that is.



1 Q: Okay. But your testimony would still be that
2 temporary labor is not the purpose of your
3 business, correct?

4 A: That's correct. Because you see there are
5 other temporary labor companies.

6 Q: Okay. Let's take a look at Joint Exhibit H.
7 Let me know when you're there.

8 A: I'm there.

9 Q: Okay. The first invoice is dated January 15,
10 2016, correct?

11 A: Okay.

12 Q: And is it accurate to say that this invoice
13 represents just the provision of a bartending
14 service?

15 A: Correct.

16 Q: Yes? Okay. And now I would like you to flip
17 to the last invoice there, that would be the
18 third invoice where it says, contract dated May
19 23rd, 2016. Do you see that one?

20 A: Yes, ma'am.

21 Q: And this one here is for the captain's choice
22 house brands package, correct?

23 A: Yes, ma'am.

24 Q: Is it safe to say that this contract or
25 document represents tangible personal



1 properties of alcohol, mixers, etcetera, and a
2 bartending service?

3 A: That's correct.

4 Q: Okay. When your customers are wanting what's
5 represented in that last invoice, let's say
6 it's the captain's choice package, when you're
7 initially meeting with the customer they tell
8 you what brands they want, correct?

9 A: Yes, ma'am.

10 Q: And then -- go ahead.

11 A: Yeah.

12 Q: Okay. And then you help them go through your
13 menu and determine the best package for them,
14 correct?

15 A: Correct.

16 Q: Okay. So it matters to your customers what
17 types of product is being served at their
18 event, doesn't it?

19 A: Yes, ma'am.

20 Q: It does. I have no further questions, Your
21 Honor.

22 **MR. PURDY - REDIRECT EXAMINATION BY MR. RAYMOND:**

23 Q: Just a moment ago, I -- I wanted to clear
24 something up, you -- you'd said something
25 about purchasing the inventory. Earlier you



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1 testified that you don't use your own money to
2 purchase the inventory. Could you explain that
3 a little bit?

4 A: Right. What I do in -- and I always get a
5 deposit from the client up front which provides
6 two purposes, one to allow me to go pick up the
7 inventory and take it to their party and then
8 also the confirmation of our agreement that I'm
9 going to be there. I -- I, you know, I don't

10 want to show up and they say, oh, we decided to
11 change our mind. So I get a -- a -- a deposit
12 that confirms my contract.

13 Q: Okay. Could you flip back to Exhibit A,
14 please?

15 A: (Witness complies.)

16 Q: And, down at the bottom after the -- the rates
17 for bartending services and all of the
18 different choices that the -- that clients have
19 here, there's a paragraph there that states --
20 what -- what does that paragraph state?

21 A: Talking about the one that starts with this bar
22 plan?

23 Q: Yes.

24 A: This bar plan includes one bartender for every
25 90 people for a three hour reception.



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1 Arrangements can be made for additional time or
2 additional bartender. It will require a \$300
3 deposit to confirm all contracts which is
4 applied to the total charges. And there's a
5 \$300 non-refundable fee for any event that's
6 cancelled. And all events are subject to 18
7 percent gratuity. Glassware rental is extra.
8 Our company is fully insured and trained to
9 serve our guests legally and professionally.

10 Q: All right. And then what does the -- there's
11 a box after that -- what -- what does that say?

12 A: That's my policy that we will not serve anyone
13 under 21 years of age or someone who appears to
14 be intoxicated.

15 Q: And this is on the next page, too, on the 2016
16 -- that -- that paragraph there?

17 A: Uh-huh (affirmative response).

18 Q: So it's safe to say that it's important to you
19 that your client understands that your company
20 is fully insured with bartender's insurance?

21 MS. ACQUAVIVA: Objection. Leading.

22 MR. RAYMOND: I can -- I can rephrase it, Your
23 Honor.

24 THE COURT: That would be good.

25 Q: What is the purpose of -- of those two



1 paragraphs?

2 A: Well, to outline what is, you know the
3 guidelines for my service of alcohol. And --
4 and then also to -- the notice I put on
5 everything is that, you know, we will not serve
6 people under age or people intoxicated.

7 Q: Why do you think that's important?

8 A: So they'll know that I'm not going to
9 intentionally violate the law. I want them to
10 know that I was going to be the standard bearer
11 for their good service.

12 MR. RAYMOND: Your Honor, I think that's all I have.

13 MS. ACQUAVIVA: That's all I have.

14 THE COURT: All right. You can step down. Thank
15 you. Is that all?

16 MR. RAYMOND: The Petitioner rests.

17 THE COURT: All right. Would y'all like to take a
18 break or are you ready to press on?

19 MS. ACQUAVIVA: I am ready to proceed if everyone
20 else is ready.

21 MR. RAYMOND: No objection.

22 THE COURT: All right.

23 MS. ACQUAVIVA: The Department would call Christy
24 Buddin.

25 COURT REPORTER: Ms. Buddin, will you raise your



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1 right hand, please?

2 MS. BUDDIN: (Witness complies.)

3 COURT REPORTER: Do you solemnly swear the following
4 testimony to be the truth, the whole truth and
5 nothing but the truth so help you God?

6 MS. BUDDIN: I do.

7 MS. BUDDIN - DIRECT EXAMINATION BY MS ACQUAVIVA:

8 Q: Can you please state and spell your name for
9 the court reporter?

10 A: Yes, it's Christy, C-H-R-I-S-T-Y. My last name
11 is Buddin, B-U-D-D-I-N.

12 Q: Thank you. You can stay seated. Ms. Buddin,
13 where are you currently employed?

14 A: I'm an audit supervisor in the Charleston
15 District of the Department of Revenue.

16 Q: How long have you been in that position with
17 the Department of Revenue?

18 A: I've been an audit supervisor since August of
19 2012. I've been with the Department of Revenue
20 11 years, since November of 2006.

21 Q: And during your 11 years with the Department
22 what types of audits have you been involved
23 with?

24 A: Sales and use, manufacturing, individual income
25 tax, corporate tax.



1 Q: What was your involvement with this particular
2 audit that we're here about today?

3 A: I was the audit supervisor over Matthew Group,
4 who was the auditor on this case at the time.

5 Q: While supervising Mr. Group over the audit how
6 did you all determine whether the transactions
7 at issue were taxable sales of tangible
8 personal property or non-taxable sales of the
9 service?

10 A: Mr. Group had a variety of invoices and we
11 viewed the taxpayer as a caterer of tangible
12 personal property. No different than a caterer
13 of food, it just so happens it was beverage
14 which included alcohol -- non-alcoholic
15 beverages as well as anything used to fulfill
16 the contract with this client.

17 Q: Why does the Department view a caterer as
18 selling tangible personal property as it goes
19 to providing a service?

20 A: Any time tangible personal property is offered
21 as part of a catering service, the tangible
22 personal property, as well as the labor
23 involved with the fulfilling the catering
24 contract, it's considered part of the gross
25 proceeds of the sale and it would be taxable.



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1 Q: Why is that?

2 A: It's a -- the definition of gross proceeds of
3 the sale. It's the -- it's the sale of
4 tangible personal property and you're not
5 allowed to deduct anything except installation
6 labor. And in this instance it's not
7 installation labor.

8 Q: Okay. If you could turn to Joint Exhibit H for
9 me we can walk the Court through examples of

10 some of these invoices that you looked at.
11 This first invoice is dated January 15, 2016.
12 Taking a look at this invoice, what was the
13 customer purchasing here?

14 A: In this particular invoice the -- the taxpayer
15 was providing a bartending service only.

16 Q: And how do you know that from looking at the
17 invoice?

18 A: There is no per person fee, there is no
19 beverage added to the invoice. It's strictly
20 a service as well as an administrative fee.

21 Q: Okay. And can you read the -- the first
22 sentence in that paragraph on the bottom for
23 the Court?

24 A: I have agreed to provide a licensed, trained
25 and insured bartender for this event.



1 Q: And from reviewing this invoice did the
2 Department treat this type of transaction as
3 taxable or non-taxable?

4 A: Non-taxable because there is no tangible
5 personal property listed on the invoice. It's
6 service only.

7 Q: Okay. When you look at the next invoice dated
8 February 5th, 2015, take a look over this
9 invoice and can you explain from the Department
10 perception what the customer was purchasing
11 here on February 5th, 2015?

12 A: The -- the customer was purchasing, or the
13 taxpayer was providing, tangible personal
14 property; wine, table linens, coolers, non-
15 alcoholic beverages as well as a bartending
16 service.

17 Q: And when we look at the -- the pricing part of
18 this invoice, how do you know that they were
19 charging -- that the taxpayer was charging for
20 a bartending service?

21 A: There's a specific line called bartending
22 charges.

23 Q: Okay. And what does that line say?

24 A: Six at \$125 per bartender for a total of \$750.

25 Q: And -- and how do you know that the Petitioner



1 was also providing tangible personal property?

2 A: Below that line he has listed the wine that is
3 being provided with the cost associated with
4 it.

5 Q: And as far as -- how did the Department treat
6 this type of transaction? As taxable or non-
7 taxable?

8 A: Taxable because it's in conjunction with
9 tangible personal property.

10 Q: And did the Department include the entire
11 amount in those proceeds of the sales?

12 A: That is correct.

13 Q: Why did the Department include the entire
14 amount?

15 A: You cannot deduct any labor associated with
16 tangible personal property.

17 Q: And if I take you to the last sample, it's
18 dated May 23rd, 2016, still on the Joint
19 Exhibit H. This is a contract. What was this
20 contract for?

21 A: The taxpayer was providing tangible personal
22 property of beverages, alcoholic, non-
23 alcoholic, as well as ice, cups, napkins, table
24 linens for a wedding reception and he priced it
25 at a per person charge based on his menu



1 choice.

2 Q: And if you were to flip to Exhibit A and look
3 at the 2016 menu, where did -- specifically
4 where did the price per person come from on
5 that 2016 menu under Joint Exhibit A?

6 A: He has listed with his menu -- it's called
7 captain's choice where he provides a variety of
8 alcohol and charges \$11.00 per person. And it
9 includes not just alcohol but wine and beer as
10 well, so it's -- it's a variety of alcohol.

11 Q: How did the Department treat this transaction,
12 as taxable or non-taxable?

13 A: As taxable.

14 Q: And why did the Department treat it as taxable?

15 A: It involved providing tangible personal
16 property as well as a service, so the entire
17 transaction was taxable for gross proceeds.
18 It's the definition of gross proceeds of sale.

19 Q: I have no further questions.

20 **MS. BUDDIN - CROSS-EXAMINATION BY MR. RAYMOND:**

21 Q: Thank you for being here. Did you have access
22 to every invoice from this audit period for Mr.
23 Purdy?

24 A: Again, I was the -- the auditor in charge and
25 so in reviewing the file it appeared that the



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1 taxpayer did not provide every invoice. So he
2 provided the auditor with a sample of invoices
3 that showed various contracts.

4 Q: And from those samples of invoices you made the
5 determination of how -- which types of events
6 were non-taxable versus taxable events were
7 taxable, correct?

8 A: That's correct.

9 Q: All right. And do you recall approximately how
10 many -- or what percentage of the events were
11 taxable?

12 A: No, I don't know the specifics.

13 Q: Is that typical if you don't have enough
14 records to just determine that -- or, I guess
15 do you know how you went about determining
16 whether or not they were taxable versus non-
17 taxable?

18 A: Again, I wasn't the auditor on the case so I
19 can't say specifically, but you -- you know,
20 the taxpayer is supposed to be providing all
21 records for the audit and then if it's not the
22 Department has to -- to come up with a best
23 determination of deciding how much of his
24 business is taxable versus non-taxable.

25 Q: Okay:



1 A: I don't believe he based it off of the invoices
2 because, again, they were not all provided by
3 the taxpayer.

4 Q: Okay. Do you believe he based it off of the
5 gross proceeds and bank accounts?

6 A: No, I believe he based it off of the cash flow
7 sheets that were provided by the taxpayer.

8 Q: Oh, okay. Gotcha. So you stated that if
9 tangible personal property is sold, per the

10 Department of Revenue's regulations, the
11 entirety of the gross proceeds from the service
12 is -- is taxed as sales tax, is that right?

13 A: Yes. We based it similar to the Tronco's
14 Catering case, which basically said tangible
15 personal property that's involved for a
16 catering contract and any labor associated with
17 it is part of the billing, that contract to the
18 client, and so it's -- it's gross proceeds of
19 sale.

20 Q: Okay.

21 A: There's -- there's no deduction for labor in
22 that case.

23 Q: Gotcha. So are you aware that the retail sales
24 tax that was paid on the alcohol provided by
25 Mr. Purdy was deducted from the Department's



1 determination and is classified ---

2 A: I am aware of that. The reason that that
3 occurred is because at the time of the audit
4 Mr. Purdy did not have a retail license,
5 therefore, he had no way of not paying sales
6 tax on those. So the Department gave him
7 credit for that.

8 Q: And are you aware that he was not able to
9 procure a retail license?

10 A: I'm not -- again, I wasn't sure of the
11 specifics of the audit. I mean, it's, you
12 know, in our mind it was a caterer of beverages
13 similar to a caterer of food.

14 Q: Okay. So Mr. Purdy would have been responsible
15 for collecting the sales tax on the gross
16 proceeds of the entire sale, correct, for not
17 -- for taxable or not?

18 A: If he provided tangible personal property, yes.

19 Q: All right. Would that have included
20 collecting the sales tax for the alcohol that
21 was provided?

22 A: If -- if he had a retail license, yes.

23 Q: But in this case he would not be required to
24 actually charge sales tax on the alcohol that
25 he had already paid for?



1 A: No, that -- that -- that's not correct. You
2 know, if he -- the tax law says if he's selling
3 or providing tangible personal property it's a
4 taxable transaction.

5 Q: I -- I understand that.

6 A: Uh-huh (affirmative response).

7 Q: But if the gross proceeds of sale are -- are
8 what his tax liability is based off of for a
9 taxable transaction, correct?

10 A: Yes.

11 Q: And the part of the gross proceeds of those
12 sales, the alcohol or inventory that he had
13 provided would be part of that -- those
14 proceeds of that sale?

15 A: That's correct.

16 Q: So they would be subject to the -- to sales
17 tax?

18 A: That's correct, which is why we held those
19 items as taxable.

20 Q: Okay. So the Department of Revenue would then
21 be collecting sales tax when Mr. Purdy
22 purchased the alcohol from the vendor of the
23 alcohol and then also -- is that correct?

24 A: Say it again. I'm sorry, what now?

25 Q: So the Department of Revenue would be



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1 collecting sales tax from the liquor store or
2 the grocery store or where he purchased the
3 alcohol?

4 A: Again, in this situation, yes. Because he had
5 no retail license which is why we gave him
6 credit for all taxes that he paid.

7 Q: Right. Again, though, what you just stated was
8 the gross proceeds of sales would include the
9 alcohol sales of all provided to the customer
10 of Mr. Purdy, correct?

11 A: Yes. Based on his per -- price per person.
12 Not the cost of what he provided the taxpayer.

13 Q: So the tax -- so the question I'm trying to ask
14 here is, would the customer of Mr. Purdy be
15 required to pay sales taxes on the alcohol
16 provided by Mr. Purdy?

17 A: It was based on whatever he was invoiced by Mr.
18 Purdy, whether it was alcohol, non-alcohol,
19 cups, linens, it's -- it's -- he charged a
20 price per person ---

21 Q: Right.

22 A: --- which is -- that's -- which we're saying
23 that's taxable.

24 Q: And that includes the alcohol?

25 A: Yes, because it's listed on the package.



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1 You're right.

2 Q: Okay. So the Department of Revenue would then
3 be collecting taxes from Mr. Purdy -- or from
4 the customers of Mr. Purdy and from Mr. Purdy
5 when he purchased the alcohol from the vendor
6 of the alcohol?

7 A: Yes, he would. I guess that's what you're
8 trying to say.

9 Q: All right. Thank you.

10 MS. ACQUAVIVA: The Department has no additional
11 witnesses. We rest our case.

12 CLARIFICATION:

13 THE COURT: All right. I have a question based on -
14 - I'm trying to understand on this -- this
15 issue of giving Mr. Purdy credit for the taxes
16 that he paid. Is that something that would
17 happen ongoing or is that something that the
18 Department did to try to just ameliorate the
19 hardship in this case, or?

20 MS. ACQUAVIVA: My understanding is if Mr. Purdy had
21 properly had a retail license he would have
22 been able to purchase his -- his products at
23 wholesale and then he sells it at retail ---

24 THE COURT: Right.

25 MS. ACQUAVIVA: --- to his customers.



1 THE COURT: But he can't do that under the laws of
2 the state given the type of business that he
3 has. He can't have a retail license, correct?

4 MS. ACQUAVIVA: Yes, he can have a retail license.

5 THE COURT: Okay. How would that work?

6 MS. ACQUAVIVA: Any seller of tangible personal
7 property can obtain a retail license.

8 THE COURT: He can -- he could obtain a beer, wine
9 and liquor license?

10 MS. ACQUAVIVA: Yes.

11 THE COURT: So I'm talking about liquor now. I --
12 setting aside the liquor and the other -- the
13 set-ups and things from him.

14 MS. ACQUAVIVA: Sure. With alcohol -- so let's look
15 at a restaurant. A restaurant would need an
16 alcohol license and a retail license. They're
17 two separate things.

18 THE COURT: Okay. I -- I may have been using sort
19 of shorthand. I meant a retail liquor license?

20 MS. ACQUAVIVA: Correct. No, he cannot obtain a
21 retail liquor license because we license
22 locations, we license premises and Mr. Purdy
23 does not have a premise.

24 THE COURT: Right.

25 MS. ACQUAVIVA: This does bring me to an issue that



1 I wanted to bring up at some point, but I will
2 wait until you're done answering your
3 questions.

4 THE COURT: Well, if -- if it's related go ahead and
5 -- now then.

6 MS. ACQUAVIVA: As I had impeached Mr. Purdy with
7 his deposition transcript, at his deposition
8 when asked if the inventory listed on his
9 Schedule C represented what he sold to his
10 customers, he invoked his Fifth Amendment
11 privilege. Today, he waived his Fifth
12 Amendment privilege and gave an answer. There
13 is case law, specifically federal case, one
14 case is *United States v. Certain Real Property*
15 *and Premises Known as 4003-4005 Fifth Avenue,*
16 *Brooklyn, New York,* and the 2nd Circuit in that
17 case said -- addressed the situation in where
18 a person sought to waive their Fifth Amendment
19 privilege at the 11th hour and said that one
20 could not use the privilege to hinder discovery
21 and then waive it on the eve of trial or during
22 trial. That is essentially what Mr. Purdy has
23 done here today. He invoked his Fifth
24 Amendment privilege at his deposition and today
25 he waived it. Pursuant to case law he cannot



1 do that. So I would ask that the Court rely on
2 his deposition testimony wherein he invoked the
3 Fifth Amendment privilege which this Court --
4 because it's a civil matter, may draw a
5 negative inference from his invocation of
6 invoking his Fifth Amendment rights.

7 **MR. RAYMOND:** Your Honor, I -- I would just rebut
8 that by stating that Mr. Purdy actually did
9 answer the question that she's stating that he
10 invoked the Fifth Amendment privilege in his
11 deposition and here today. I'm not certain
12 that that constitutes a valid assertion of --
13 of the Fifth Amendment.

14 **THE COURT:** Okay. I think it's a little far off
15 field. I should have let you defer when you
16 said it leads to. Okay. So let's go back to
17 -- I will consider that when I'm looking at --
18 at the evidence. It does look to me like he
19 answered the question in his deposition. His
20 answer was consistent with what he said today.
21 So I'm having a little bit of trouble -- but I
22 will look at it closely and I'll consider that
23 issue when I'm -- when I'm doing my Order. So
24

25 **MS. ACQUAVIVA:** If I may, Your Honor, as to me I'm



1 not understanding where your confusion with the
2 situation is coming from. The Department is
3 asserting that Mr. Purdy unlawfully sold
4 alcohol without a license hence it being
5 subject to sales tax. He -- what he was doing
6 required a retail license and technically
7 required an alcohol license, which under the
8 laws of South Carolina you cannot obtain said
9 alcohol license. He just chose to violate

10 those laws. This is no different than federal
11 cases that held income derived from the illegal
12 sale of drugs as taxable income. Illegal
13 activity is taxable and there are federal cases
14 out there on that and I am happy to provide you
15 with those if you would like. So the fact that
16 he, Mr. Purdy, operated a business without a
17 license should not be determinative in this
18 matter. Without an alcohol license -- because
19 he should not have been selling alcohol or
20 providing alcohol as -- as he would
21 characterize it. All of his transactions
22 should have looked like the first invoice under
23 Exhibit H, which is the mere provision of a
24 service.

25 MR. RAYMOND: And I -- I believe, Your Honor, that



1 it's -- it's our position -- we've made it
2 fairly clear that Mr. Purdy in -- in all of his
3 transactions had actually received the money
4 from the clients to purchase the alcohol. He
5 was not providing this alcohol by selling it,
6 he was simply taking the money from the clients
7 to purchase the alcohol and then providing it
8 them for them. It was different from the
9 federal drug cases because alcohol in and of

10 itself is not an illegal substance that no one
11 can purchase. It's just whether or not -- the
12 question is whether or not Mr. Purdy was
13 actually selling this alcohol and it is our
14 position that he was not.

15 **THE COURT:** Okay. I understand that position. I
16 believe you stipulated to the fact though that
17 at the end of the day Mr. Purdy keeps the
18 alcohol unless the client pays an additional
19 fee to take it.

20 **MR. RAYMOND:** I am not aware of the additional fee
21 provision, but Mr. Purdy does keep the alcohol,
22 yes.

23 **THE COURT:** Let me find this, you know, to make sure
24 I'm not missing anything.

25 **MS. ACQUAVIVA:** It's number seven on page two, Your



1 Honor.

2 **THE COURT:** After the event Petitioner takes the
3 left over inventory back to his store room for
4 use at his next event, or the Petitioner will
5 allow the customer to keep the left over
6 inventory for an extra charge.

7 **MR. RAYMOND:** What number?

8 **MS. ACQUAVIVA:** Seven.

9 **MR. RAYMOND:** Sure.

10 **THE COURT:** Okay. So that's the stipulation of
11 fact. Okay. All right. So I know that we
12 said at the beginning that we would -- y'all
13 wanted to waive closing arguments, but I think
14 maybe based on the discussion that we're having
15 here, this is a -- this is fast approaching
16 closing arguments. So why don't we go in a
17 little more orderly fashion and why don't we
18 first take a five minute break and we'll allow
19 you to collect your -- a ten minute break --
20 and allow you to collect your thoughts because
21 you weren't planning on doing closings. So
22 let's take a ten minute break and then we'll
23 have some brief closing arguments with anything
24 that you want to argue to me, especially in
25 light of the -- the -- my questions and the



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1 conversation that we just had. Okay? So a ten
2 minute break.

3 MS. ACQUAVIVA: Thank you, Your Honor.

4 MR. RAYMOND: Thank you, Your Honor.

5 (Off the Record from 11:09 a.m. - 11:32 a.m.)

6 THE COURT: All right. So we're ready to do some
7 closing arguments then?

8 CLOSING ARGUMENT - MR. RAYMOND:

9 MR. RAYMOND: Your Honor, may it please the Court.

10 Thank you for your time today. This case is --
11 is straight forward from the Petitioner's
12 perspective. Mr. Purdy believes he doesn't
13 sell alcohol. There is no indication that he
14 charges at the time of transaction. He takes
15 one flat fee at the beginning of the any --from
16 his clients and then from that he provides
17 bartending services. Now, this law is a little
18 convoluted and a little confusing and the
19 reason is is because the legislature has not
20 seen fit to determine exactly where bartenders
21 fall within the tax code. They have, however,
22 determined where they fall within the criminal
23 code. And the criminal code states that people
24 serving alcohol are held to a high standard.
25 They have to make sure that minors are not



1 being provided with alcohol, they have to
2 provide -- they have to make sure that people
3 who are overly intoxicated are not being
4 served. And further, on the civil side, they
5 can be held liable crimatically if they do fail
6 to adhere to these laws. So the question today
7 is not whether or not the bartender services is
8 an important part of our -- of the society and
9 something that needs to be distinguished from
10 the sale of alcohol. The question here is
11 whether or not the sale or the provision of
12 alcohol in Mr. Purdy's case is the sale of --
13 the sale of tangible personal property. The
14 test for that is whether or not his service is
15 merely incidental and inseparable from the
16 provision of the article. It's been stated
17 clearly that Mr. Purdy does not always purchase
18 the alcohol. His service can be available
19 whether or not he is actually providing the
20 alcohol or the client is providing the alcohol
21 for him to serve. Therefore, it's -- it's
22 inseparable -- or it is separable from the
23 actual provision of the -- the alcohol.
24 Further, even if Mr. Purdy wanted to sell
25 alcohol, he would be unable to obtain a retail



1 sales license in this state to do so.
2 Therefore, not allowing him to -- enter into
3 the benefit, such as a food caterer where they
4 would be able to buy wholesale and then collect
5 sales tax from their clients. With that in
6 mind -- the final purpose of the bartender is
7 to adhere to the laws and make sure that
8 everyone is in a -- maintains a safe and
9 orderly atmosphere. It's not to -- in Mr.
10 Purdy's case -- to provide alcohol to the
11 customers and -- and -- that's it. Thank you.

12 **THE COURT:** Ms. Acquaviva?

13 **CLOSING ARGUMENT - MS. ACQUAVIVA:**

14 **MS. ACQUAVIVA:** Thank you, Your Honor. May it
15 please the Court. As Mr. Raymond said, the
16 main issue before the Court today is what is
17 the true object of the transactions at issue.
18 It's important to keep in mind that not all of
19 the transactions that Mr. Purdy or the
20 Petitioner was involved with are issue before
21 the Court today. For example, we are not
22 looking at Mr. Purdy's server training because
23 the Department recognizes that to be a pure
24 service. We are not looking at the
25 Petitioner's expert consulting and expert



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1 testimony because that is a provision of a pure
2 service. Additionally, as stated, page three
3 of the stipulation, paragraph 14, during the
4 audit the Petitioner explained to the
5 Department that the amounts received for
6 consulting on his cash flow sheets included the
7 bartender only services, but we are not looking
8 at those transactions today. The only type of
9 transaction we're looking at today are the ones
10 that involved the provision of tangible
11 personal property. The Department submits that
12 the invoices in Joint Exhibit H demonstrate the
13 true object of Petitioner's customers. What
14 did the customers want when they engaged the
15 Petitioner for his services? The customer
16 involved with the January 15, 2016 transaction
17 only wanted bartenders to come and serve drinks
18 at their event. That is not different than if
19 they had wanted -- that customer had wanted a
20 caterer to come and serve the customer's own
21 food at an event. That is not a taxable
22 transaction. And if that's all the
23 Petitioner's customers ever wanted all of the
24 Petitioner's invoices would look like the
25 January 15, 2016 invoice but they don't. If we



1 look at the February 5th, 2015, and the May
2 23rd, 2106 invoice both of those reflect that
3 the customer wanted tangible personal property
4 in addition to a service. Moreover,
5 specifically looking at the May 23rd, 2016
6 invoice, there is no way to distinguish between
7 the cost of the service and the cost of the
8 tangible personal property provided. So
9 contrary to what Mr. Raymond has stated in his

10 closing, in this example the service and the
11 provision of the tangible personal property is
12 inseparable. There is -- there would be no way
13 for the Department to know how much was
14 attributable to paying bartenders to actually
15 serve for their labor and how much was the --
16 for the sale of the product. The fact that the
17 Petitioner testified that he maintains and
18 keeps the inventory is further evidence that he
19 purchases product and then resells it. If he
20 was truly acting as a pass-through the customer
21 would get to keep all the inventory the
22 Petitioner purchased without having to pay an
23 extra fee. Moreover, you couldn't look at any
24 invoice and see whether the Petitioner was
25 merely passing a cost onto a customer. The

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1 Petitioner is selling a package just like a
2 caterer sells a food package which sometimes
3 include beverages. The Petitioner himself even
4 concedes that he is in a catering business.
5 There has been no evidence presented today to
6 show that there is a distinction between
7 catering food and catering beverages. The
8 Petitioner wants this Court to think that there
9 is more involved, there is more safety, there
10 is higher level -- more precautions that need
11 to be taken with serving alcohol. But he also
12 agreed on cross-examination that DHEC
13 permitting is required to serve food or to
14 cater food, that there are safety precautions
15 that need to be taken. For example, I would
16 submit to this Court that caterers need to make
17 sure that the guests don't get food poisoning
18 because the food's not kept at the proper
19 temperatures. The Petitioner also represents
20 that he can't be selling alcohol because he's
21 not licensed to sell alcohol and because he
22 doesn't have a retail license. The Petitioner
23 testified that when he told the Department of
24 Revenue, I don't sell alcohol, do I need a
25 retail license, the Department said no. That



1 would be a correct response. If the Petitioner
2 had said I cater beverages, the Department may
3 have given him a different answer. But that's
4 not the question he asked the Department. So
5 I would submit to this Court ...

6 **THE COURT:** Do we have the evidence here as to
7 exactly the question he asked the Department?
8 I don't remember any testimony on that point.

9 **MS. ACQUAVIVA:** Just -- I just wrote down what Mr.
10 Purdy testified to. That he told DOR he wasn't
11 selling alcohol, did he need a retail license
12 and DOR said no, you don't need a retail
13 license. So you may have to look back at the
14 transcript for that but, that's -- that is how
15 I heard him -- his testimony. Additionally,
16 the Petitioner's business is essentially no
17 different than a food caterer operating without
18 a DHEC permit and a retail license. That does
19 not absolve the business of its tax liability.
20 You can't fail to obtain the necessary permits
21 and say that you're not a retailer and not
22 subject to tax. You can't sell something that
23 you're not legally allowed to sell and say I
24 can't pay the tax on that or I shouldn't be
25 liable for the tax on that because I'm not



1 allowed to sell it. So essentially if we look
2 at the facts in this case and we compare it to
3 the facts that the Court of Appeals looked at
4 in *Baggero*, -- I'll direct the Court to -- it's
5 page 287 of the Opinion but that's the South
6 Carolina cite. The Court stated the invoice
7 indicates Baggero charged a hundred dollars for
8 each standard special event toilet and a
9 hundred and fifty dollars for one handicapped
10 accessible unit. They also charged \$150 for
11 the special event VIP unit. The Court then
12 said these invoices are evidence the customer
13 was paying for something other than, as Baggero
14 claims, the removal of human waste. Similarly
15 here the menu and the Petitioner's testimony
16 demonstrate that the difference in pricing is
17 based on the quality of the product. Just like
18 in *Baggero* that is evidence that the customer
19 was not just paying for someone to serve them
20 drinks -- serve their guests drinks -- the
21 customer was paying for catered beverages.
22 They wanted the beverages at the end of the
23 day. And therefore the Department would submit
24 to this Court that the Petitioner was selling
25 tangible personal property at retail as far as



1 the transactions at issue before this Court go,
2 and that he is subject to sales tax. And we
3 ask this Court respectfully to uphold the
4 Department's determination. Thank you.

5 **THE COURT:** Anything further from the Petitioner?

6 **MR. RAYMOND:** No, Your Honor.

7 **THE COURT:** All right. All right. Let's revisit
8 our discussion from the beginning of the day
9 concerning proposed orders. In light of the

10 way the hearing has gone would you like to
11 submit proposed orders or would you like to
12 draft an order?

13 **MR. RAYMOND:** Honestly, it's -- it's up to the
14 Judge's preference. I mean, we can submit
15 proposed orders, but ...

16 **MS. ACQUAVIVA:** I mean, to an extent I don't think
17 that the legal issue has changed from our
18 Motions, but we can submit Word versions of the
19 Motion if that would assist the Court, but I
20 don't know if we need to ...

21 **THE COURT:** I've already got my order on the -- the
22 Summary ---

23 **MS. ACQUAVIVA:** That's -- that's true..

24 **THE COURT:** --- Motion that I'll probably use as a
25 jumping off place to begin the order, so unless



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1 you think you might have something new to
2 argue, I don't really see any need to ask you
3 for proposed orders.

4 **MR. RAYMOND:** The only -- the only thing is, did you
5 mention the *Baggero* case in your Motion for
6 Summary Judgement? I don't recall seeing that.

7 **MS. ACQUAVIVA:** I may have.

8 **THE COURT:** Yes. I -- my ruling on the Summary
9 Judgment Motion was based primarily on the
10 *Baggero* case.

11 **MR. RAYMOND:** Your ruling was, yes, Your Honor.

12 **THE COURT:** Whether y'all -- whether y'all addressed
13 it or not, I can't remember.

14 **MR. RAYMOND:** Sure.

15 **MS. ACQUAVIVA:** I don't -- I know for a fact I did
16 not compare the facts of *Baggero* to the facts
17 of this case like I did in my closing. And if
18 you would like to respond to that via a
19 proposed order I -- I have no problem with
20 that.

21 **MR. RAYMOND:** I don't see a need to if Your Honor
22 has already put -- put the facts to the --
23 this case in particular -- have applied the
24 facts to this case to the ruling in *Baggero*, I
25 don't see a need to argue that point, so ...



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1 THE COURT: All right. All right then. That
2 concludes our hearing.

3 MS. ACQUAVIVA: Thank you, Your Honor.

4 MR. RAYMOND: Thank you, Your Honor.

5 (There being nothing further, the administrative
6 hearing concluded at 11:46 a.m.)
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EXHIBIT A

A Southern Bartender

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General's Ball ~ Super-Premium Brands of Liquor – Grey Goose vodka, Bombay Saffire, \$25.00 pp Mt. Gay rum, Patron tequila, single barrel bourbon and single malt scotch. Liqueurs: Amaretto, Bailey's, Cointreau, Drambuie, Ouzo, Kahlua, etc. Fine wines and bottle beers. This bar plan includes glassware, all the set-ups and service, as listed below, and the banquet tables w/ linen for the bar.

Colonel's Cocktails ~ Premium Brands - Absolute vodka, Bombay gin, Meyer's rum, \$14.00 pp Makers Mark bourbon, Jack Daniels, Crown Royal, Chivas Regal. Fine wines and bottle beers. Includes the set-ups and service, as listed below.

Major's Function ~ Call Brands of liquor – Skyy vodka, Tangueray gin, Bacardi rum, \$12.00 pp Jim Beam bourbon, Jack Daniels, Seagram's VO, Dewars scotch. Nice wines and domestic beers. Set-ups and service, as listed below.

Captain's Choice ~ House Brands of Liquor – Smirnoff vodka, Gordon's gin, Ron Rico rum, \$11.00 pp Jim Beam bourbon, Seagram's 7-whisky, Scoresby scotch. This bar plan includes nice wines and domestic beers, the set-ups & service, as listed below.

Lieutenant's Affair ~ Beer & Wine Bar with non-alcoholic sodas. (Coke, diet coke, sprite) \$10.00 pp Beer – Budweiser, Bud Light, Miller Lite and Yuengling. Wine – Chardonnay, Pinot Grigio, Merlot, Cabernet Sauvignon.

Private's Party ~ This bar plan includes all the Set-ups and Service, not including alcohol. \$6.00 pp Mixers: coke, diet coke, sprite/7-up, tonic, club soda, ginger ale, sour mix, orange juice, grapefruit juice, cranberry juice, Bloody Mary mix and water. Ice, cups, napkins, lemon and lime garnishes. This also includes bartenders.

These Bar Plans include one bartender for every 90 people for a 3-hour reception. Arrangements can be made for additional time or an additional bartender. We require a \$300 deposit to confirm all contracts, which is applied to the total charges. There is a \$300 non-refundable fee for any event that is canceled. All events are subject to an 18% gratuity. Glassware rental is extra. Our company is fully insured with trained bartenders to serve your guests legally and professionally.

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Website: www.ASouthernBartender.com

RATES FOR BARTENDING SERVICES - 2016

General's Ball ~ Super-Premium Brands of Liquor ~ Grey Goose vodka, Bombay Saffire, Mt. Gay rum, Patron tequila, single barrel bourbon and single malt scotch. Liqueurs: Amaretto, Bailey's, Cointreau, Drambuie, Ouzo, Kahlua, etc. Fine wines and bottle beers. This bar plan includes glassware, all the set-ups and service, as listed below, and the banquet tables w/ linen for the bar.
\$24.00 pp

Colonel's Cocktails ~ Premium Brands ~ Grey Goose vodka, Bombay gin, Meyer's rum, Makers Mark bourbon, Jack Daniels, Crown Royal, Chivas Regal. Fine wines and bottle beers. Includes the set-ups and service, as listed below.
\$14.00 pp

Major's Function ~ Call Brands of liquor ~ Absolute vodka, Tangueray gin, Bacardi rum, Makers Mark bourbon, Jack Daniels, Seagram's VO, Dewars scotch. Nice wines and domestic beers. Set-ups and service, as listed below.
\$12.00 pp

Captain's Choice ~ House Brands of Liquor ~ Smirnoff vodka, Gordon's gin, Ron Rico rum, Jim Beam bourbon, Seagram's 7 whisky, Scoresby scotch. This bar plan includes nice wines and domestic beers, the set-ups & service, as listed below.
\$11.00 pp

Lieutenant's Affair ~ Beer & Wine Bar with non-alcoholic sodas. (Coke, diet coke, sprite)
\$10.00 pp Beer ~ Budweiser, Bud Light, Miller Lite and Yuengling.
Wine ~ Chardonnay, Pinot Grigio, Merlot, Cabernet Sauvignon.

Private's Party ~ This bar plan includes all the Set-ups and Service, not including alcohol.
\$7.00 pp Mixers: coke, diet coke, sprite/7-up, tonic, club soda, ginger ale, sour mix, orange juice, grapefruit juice, cranberry juice, Bloody Mary mix and water. Ice, cups, napkins, lemon and lime garnishes. This also includes bartenders.

These Bar Plans include one bartender for every 90 people for a 3-hour reception. Arrangements can be made for additional time or an additional bartender. We require a \$500 deposit to confirm all contracts which is our minimum charge. There is a \$300 non-refundable fee for any event that is canceled. All events are subject to an 18% gratuity. Glassware rental is extra. Our company is fully insured with trained bartenders to serve your guests legally and professionally.

NOTICE: IT IS OUR POLICY THAT WE WILL NOT SERVE ANYONE UNDER 21 YEARS OF AGE OR SOMEONE WHO APPEARS TO BE INTOXICATED.

"We are the oldest bartending service in Charleston, started in 1978."

Pudy v. Department of Revenue - 0001

EXHIBIT B

A Southern Bartender

Post Office Box 20126 * Charleston, South Carolina 29413 * (843) 345-6300

Catering ~ Consulting ~ Server Training

INVOICE

Greater Charleston Restaurant Association.
423 King Street.
Charleston, SC 29403

February 1, 2016

Contact: Mr. Al Simmons, President.

Re: Bartenders for Oyster Festival.

Date: Sunday, January 31, 2016.

Location: Boone Hall Plantation, Mt. Pleasant, SC

Services: 24 bartenders (\$15.00 per hour for 8 hrs). \$ 2,880.00
(Hours from 9:00 am until 5 pm)

Supervisor: (Including VIP tent setup) 500.00

Total: \$ 3,380.00

I have agreed to provide the bartenders for three beer wagons, a Bloody Mary tent, wine tent and three bartenders for the VIP tent. I have also included some coolers for the wine tents. I had two cases of plastic cups left over from the Taste of Charleston which I brought in.

Thanks for using my services!

Sincerely,

Keith Purdy

Keith A. Purdy, Mixologist

Website address: www.ASouthernBartender.com

"The oldest bartending service in Charleston, started in 1978."

EXHIBIT C

SCHEDULE C
(Form 1040)

Profit or Loss From Business

(Sole Proprietorship)

OMB No. 1545-0047

2015

Department of the Treasury
Internal Revenue Service (IRS)

► Information about Schedule C and its separate instructions is at www.irs.gov/schedulec.
► Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1085.

Attachment
Sequence No. 09

Name of proprietor

KEITH PURDY

Social security number (SSN)

A Principal business or profession, including product or service (see instructions)

BARTENDING

B Enter code from instructions

722300

C Business name, if no separate business name, leave blank.

A SOUTHERN BARTENDER

D Employer ID number (EIN), (see instructions)

E Business address (including suite or room no.) **PO BOX 20126**

City, town or post office, state, and ZIP code **CHARLESTON SC 29403**

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) **►**

G Did you "materially participate" in the operation of this business during 2015? If "No," see instructions for limit on losses **Yes ☒ No ☐**

H If you started or acquired this business during 2015, check here

I Did you make any payments in 2015 that would require you to file Form(s) 1099? (see instructions) **Yes ☐ No ☒**

J If "Yes," did you or will you file required Forms 1099? **Yes ☐ No ☒**

Part I Income

1	Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked.	1	44,143
2	Returns and allowances	2	0
3	Subtract line 2 from line 1	3	44,143
4	Cost of goods sold (from line 42)	4	27,165
5	Gross profit. Subtract line 4 from line 3	5	16,978
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6	
7	Gross income. Add lines 5 and 6	7	16,978

Part II Expenses. Enter expenses for business use of your home only on line 30.

8	Advertising	8	365	18	Office expense (see instructions)	18	2,995
9	Car and truck expenses (see instructions)	9	5,549	19	Pension and profit-sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see instructions):	20a	
11	Contract labor (see instructions)	11		a	Vehicles, machinery, and equipment	20b	1,925
12	Depreciation	12		b	Other business property	21	
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13		21	Repairs and maintenance	22	
14	Employee benefit programs (other than on line 19)	14		22	Supplies (not included in Part III)	23	
15	Insurance (other than health)	15	4,167	23	Taxes and licenses	24	
16	Interest:	16a		24	Travel, meals, and entertainment:	24a	
a	Mortgage (paid to banks, etc.)	16b		a	Travel	24b	
b	Other	17	650	b	Deductible meals and entertainment (see instructions)	25	280
17	Legal and professional services	17		25	Utilities	26	
18	Office expense (see instructions)	18		26	Wages (less employment credits)	27a	827
19	Pension and profit-sharing plans	19		b	Reserved for future use	27b	
20	Rent or lease (see instructions):	20a		27	Other expenses (from line 48)	28	16,758
21	Repairs and maintenance	21		28		29	220
22	Supplies (not included in Part III)	22		29		30	
23	Taxes and licenses	23		30		31	220
24	Travel, meals, and entertainment:	24a		31		32a	
a	Travel	24b		32a	All investment is at risk.	32b	
b	Deductible meals and entertainment (see instructions)	25	280	32b	Some investment is not at risk.		
25	Utilities	26					
26	Wages (less employment credits)	27a	827				
27	Other expenses (from line 48)	27b					
28		28	16,758				
29		29	220				
30		30					
31		31	220				

For Paperwork Reduction Act Notice, see the separate instructions.

Schedule C (Form 1040) 2015

EBA

Purdy v. Department of Revenue - 0021

Name(s)

Page **2****KEITH PURDY**

SSN

Part IV Cost of Goods Sold (see instructions)

33	Method(s) used to value closing inventory: a ☒ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)	
34	Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation	☐ Yes ☒ No
35	Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35
36	Purchases less cost of items withdrawn for personal use	36 27,165
37	Cost of labor. Do not include any amounts paid to yourself	37
38	Materials and supplies	38
39	Other costs	39
40	Add lines 35 through 39	40 27,165
41	Inventory at end of year	41
42	Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on line 4	42 27,165

Part V Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

43	When did you place your vehicle in service for business purposes? (month, day, year)	01-02-2015
44	Of the total number of miles you drove your vehicle during 2015, enter the number of miles you used your vehicle for:	
	a Business 9,650 b Commuting (see instructions) 450 c Other	
45	Was your vehicle available for personal use during off-duty hours?	☒ Yes ☐ No
46	Do you (or your spouse) have another vehicle available for personal use?	☒ Yes ☐ No
47 a	Do you have evidence to support your deduction?	☒ Yes ☐ No
	b If "Yes," is the evidence written?	☒ Yes ☐ No

Part VI Other Expenses. List below business expenses not included on lines 8-26 or line 30.

BANK FEES	31
TELEPHONE	796
48 Total other expenses. Enter here and on line 27a	48 827

SCHEDULE C

Profit or Loss from Business
(Sole Proprietorship)

014

Department of the Treasury
Internal Revenue Service (99)

Information about Schedule C and its separate instructions is at www.irs.gov/schedulec.
Attach to Form 1040, 1040NR, or 1041 if partner in a partnership generally; attach to Form 1065 if partner in a partnership.

OMB No. 1545-0047

KEVIN P. PORTY

Section 501(c)(3) or other not-for-profit organization? ☐
If "yes," enter the name of the organization: _____
EIN: _____
Date of incorporation or organization: _____
Date of termination: _____

1. Business name _____
2. Principal business activity _____
3. Business address _____
4. Business phone number _____
5. Business email address _____
6. Business website _____
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Part II Income

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BAAs for Paperwork Reduction Act Notice: see the separate instruction.

[illegible]

SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Business
(Sole Proprietorship)

For information on Schedule C and its instructions, go to www.irs.gov/schedulec.
Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1065.

OMB No. 1545-0074

2013

Attachment
Sequence No. 09

Name of proprietor

Keith A Purdy

Social security number (SSN)

A Principal business or profession, including product or service (see instructions)

Catering Services

B. Enter code from instructions

7 2 2 3 0 0

C Business name, if no separate business name, leave blank

A Southern Bartender

D. Employer ID number (EIN), (see instr.)

E Business address (including suite or room no.) 1043 C Provincial Circle

City, town or post office, state, and ZIP code Mt. Pleasant SC 29484

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify)

G Did you "materially participate" in the operation of this business during 2013? If "No," see instructions for limit on losses. ☒ Yes ☐ No

H If you started or acquired this business during 2013, check here

I Did you make any payments in 2013 that would require you to file Form(s) 1099? (see instructions) ☐ Yes ☐ No

J If "Yes," did you or will you file required Forms 1099? ☐ Yes ☐ No

Part I Income

1	Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked.	1	
2	Returns and allowances	2	85520
3	Subtract line 2 from line 1	3	500
4	Cost of goods sold (from line 42)	4	86020
5	Gross profit. Subtract line 4 from line 3	5	22188
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6	62832
7	Gross income. Add lines 5 and 6	7	62832

Part II Expenses

Enter expenses for business use of your home only on line 30.

8	Advertising	8	2880	18	Office expense (see instructions)	18	1410
9	Car and truck expenses (see instructions)	9	6801	19	Pension and profit-sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see instructions):	20a	115
11	Contract labor (see instructions)	11	11460	a	Vehicles, machinery, and equipment	20b	2100
12	Depreciation	12		b	Other business property	21	37
13	Depreciation and section 179 expense deduction (not included in Part II) (see instructions)	13		21	Repairs and maintenance	22	
14	Employee benefit programs (other than on line 19)	14		22	Supplies (not included in Part II)	23	551
15	Insurance (other than health)	15	2587	23	Taxes and licenses	24	
16	Interest:	16a		a	Travel, meals, and entertainment:	24a	
a	Mortgage (paid to banks, etc.)	16b		b	Travel	24b	
b	Other	17	80	c	Deductible meals and entertainment (see instructions)	25	1009
17	Legal and professional services	17		25	Utilities	26	
28	Total expenses before expenses for business use of home. Add lines 8 through 27a	28		26	Wages (less employment credits)	27a	1490
29	Tentative profit or (loss). Subtract line 28 from line 7	29		27a	Other expenses (from line 48)	27b	
30	Expenses for business use of your home. Do not report these expenses elsewhere. Attach Form 8829 unless using the simplified method (see instructions). Simplified method filers only: enter the total square footage of: (a) your home: _____ and (b) the part of your home used for business: _____. Use the Simplified Method Worksheet in the instructions to figure the amount to enter on line 30.	30		b	Reserved for future use	31	32212
31	Net profit or (loss). Subtract line 30 from line 29. • If a profit, enter on both Form 1040, line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3. • If a loss, you must go to line 32.	31					

32 If you have a loss, check the box that describes your investment in this activity (see instructions).
• If you checked 32a, enter the loss on both Form 1040, line 12, (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see the line 31 instructions). Estates and trusts, enter on Form 1041, line 3.
• If you checked 32b, you must attach Form 6198. Your loss may be limited.

32a ☒ All investment is at risk.
32b ☐ Some investment is not at risk.

For Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 11334P

Schedule C (Form 1040) 2013

Part III Cost of Goods Sold (see instructions)

Page 2

33	Method(s) used to value closing inventory: a ☒ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)		
34	Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation	☐ Yes ☒ No	
35	Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35	235
36	Purchases less cost of items withdrawn for personal use	36	
37	Cost of labor. Do not include any amounts paid to yourself	37	
38	Materials and supplies	38	22188
39	Other costs	39	
40	Add lines 35 through 39	40	22423
41	Inventory at end of year	41	235
42	Cost of goods sold. Subtract line 41 from line 40. Enter the result here and on line 4.	42	22188

Part IV Information on Your Vehicle. Complete this part only if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month, day, year) 09 / 15 / 1995

44 Of the total number of miles you drove your vehicle during 2013, enter the number of miles you used your vehicle for:

a Business 10125 b Commuting (see instructions) _____ c Other _____

45 Was your vehicle available for personal use during off-duty hours? ☒ Yes ☐ No

46 Do you (or your spouse) have another vehicle available for personal use? ☒ Yes ☐ No

47a Do you have evidence to support your deduction? ☐ Yes ☒ No

b If "Yes," is the evidence written? ☐ Yes ☒ No

Part V Other Expenses. List below business expenses not included on lines 8-26 or line 30.

Bank Service Charges	1215
Dues & Subscriptions	275
48 Total other expenses. Enter here and on line 27a	48 1490

EXHIBIT D

Cash Flow Jan to Dec 2014 - 2014

1/1/2014 through 12/31/2014

7/8/2016

Page 1

Category	1/1/2014- 12/31/2014
INFLOWS	
Catering	80,484.43
Consulting	1,865.00
Salary	24,000.00
TOTAL INFLOWS	58,349.43
OUTFLOWS	
Ads	1,211.72
Auto	2,500.00
Service	784.62
TOTAL Auto	3,284.62
Bank	1,629.00
Dues and Subscriptions	381.38
Gifts Given	700.00
Insurance	3,165.08
Insurance, Bus	884.04
Legal-Prof Fees	1,000.00
Licenses and Permits	706.26
Medical	1,487.95
Office	2,129.93
Refund	200.00
Rent	2,100.00
Subcontractor	16,052.50
Supplies, Bus	14,926.57
Tax, Business	30.00
Utilities	817.16
TOTAL OUTFLOWS	50,706.21
OVERALL TOTAL	7,643.22

7/5/2016

Cash Flow 2015 - 2015 1/1/2015 through 12/31/2015

Page 1

Category	1/1/2015- 12/31/2015
INFLOWS	
Catering Service	19,027.36
Consulting Income (Business)	4,225.00
Net Salary	-28,000.00
Other Income (Business)	1,107.36
Sales (Business)	44,783.56
TOTAL INFLOWS	43,143.28
OUTFLOWS	
Advertising (Business)	385.20
Auto & Transport	
Auto Insurance	684.35
TOTAL Auto & Transport	684.35
Bank Fees	42.00
Bills & Utilities	
Utilities	279.92
TOTAL Bills & Utilities	279.92
Car & Truck (Business)	9,222.76
Fees & Charges	
Bank Fee	3.00
TOTAL Fees & Charges	3.00
Insurance (Business)	4,167.48
Meals & Entertainment (Business)	28.49
Medical	476.00
Misc. Expense (Business)	0.00
Office Expenses (Business)	3,223.96
Postage and Delivery (Business)	6.00
Prof and Legal Fees	348.52
Rent, Business	1,925.00
Saving Account	1,800.00
Subcontractors	11,250.00
Supplies (Business)	15,915.16
Taxes (Business)	388.33
Utilities (Business)	796.15
TOTAL OUTFLOWS	50,920.32
OVERALL TOTAL	-7,777.04

EXHIBIT E

date	customer	description	taxable sale \$	description 2	service sale \$	gratuinity
3/31/2016	MUSC Storm Eye Institute	Wine, Sodas		500		
3/15/2016	TIPS CLASS	residence inn		9 students	\$755	
3/14/2016	TIPS CLASS			3 students(\$50 each)	175	
3/12/2016	Mary Cathering Colvin	Mixers	600			108
2/26/2016	musc Student programs	linen and coolers	60	bartenders	360	
2/22/2016	Paul Ferri	beer, wine, liquor, mixers	500			
2/16/2016	College of Charleston	beer, wine, liquor, mixers	675			
2/15/2016	College of Charleston	beer, wine, liquor, mixers	450			81
2/6/2016	College of Charleston			td Checker	120	
2/2/2016	Brown Law Firm(Not used in % of taxable sales deposit calculation)			Consultation		
1/31/2016	Grater Charleston Restaurant Association			bartenders only(24)	3380	
1/30/2016	Charitable Society of Charleston	Wine, Cups, sodas, linens	1325			238.5
1/22/2016	MUSC Storm Eye Institute	Cocktail party, bar service	180			
1/22/2016	MUSC Storm Eye Institute	Cocktail party, bar service	180			

Invoice totals for 2016	\$16,437.50
Less consulting invoice for Brown Law Firm(not included in deposits)	\$6,750.00
Sales invoice total used in calculation	\$9,687.50
Total sales deemed taxable	\$4,470.00
% of sales deemed taxable	46.14%

deposits	non taxable portion of dep	Measure calculation	annual measure	credit for taxes paid	sales less credit for taxes paid	% of Deposits
Jan-16 \$	3,674.00	\$	1,978.82	\$1,695.18	\$27.88	\$1,167.30 0.4614
Feb-16 \$	7,458.50	\$	4,017.15	\$3,441.35	\$27.88	\$2,913.47 0.4614
Mar-16 \$	3,114.00	\$	1,677.20	\$1,436.80	\$27.88	\$908.92 0.4614
				6573.3351		

EXHIBIT F

Matthew Group

From: Matthew Group
Sent: Friday, September 09, 2016 8:38 AM
To: 'asouthernbartender@gmail.com'
Subject: SCDOR response

Mr. Purdy,

I will be putting your audit assessment in the mail today. I wanted to let you know that we accept your previous email as a written formal protest to the audit assessment. I have enclosed the AS-13 Options for Protest of Proposed Assessment in your package.

Your records are available to pick up Monday thru Friday 8:30 am - 5:00 pm. Please let me know when you would like to pick them up so that I can have them ready if I am not in the office that day.

Thank you,

Matthew Group
Auditor
South Carolina Dept. of Revenue
2 South Park Circle
Suite 100
Charleston, SC 29407
P(843)953-8374
F(843)556-1780
Matthew.Group@dor.sc.gov

NOTE:

The information in this message and/or attachments may be proprietary and/or confidential, and protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by replying to this message and deleting it from your computer.

Please visit our website at WWW.DOR.SC.GOV for free options for filing/paying taxes electronically or call 1-800-476-0311 for more information or email electronicservices@sctax.org.

-----Original Message-----

From: Keith Purdy [mailto:asouthernbartender@gmail.com]
Sent: Friday, September 02, 2016 8:20 PM
To: Matthew Group; Robert Berman
Subject: Fwd: Sales Tax Audit Reply. September 2, 2016.

Mr. Group,

I left a word that is important to my point.

----- Forwarded message -----

From: Keith Purdy <asouthernbartender@gmail.com>

Date: Fri, Sep 2, 2016 at 3:01 PM

Subject: Re: Sales Tax Audit Reply, September 2, 2016.

To: Matthew Group <Matthew.Group@dor.sc.gov>, Robert Berman <robert@psgltd.org>

Mathew Group

SC DOR

Re A Southern Bartender

Mr. Group;

I appreciate your providing me the word document and accompanying spreadsheet to review. I am still not clear on what you are regarding as a taxable sale. The service my company is providing is labor. The product I am using is either provided by the client or is taxed from the provider with no additional mark up. The only fee that A Southern Bartender charges is for labor. A Southern Bartender is insured for these labor services as well.

A Southern Bartender is not currently assigned a sales tax license. If I am required to secure a license and submit a 0.00 return on a monthly basis please explain why? If a portion of the income I receive as labor is taxable please provide me with documentation that labor is taxable.

If the SCDOR has determined that this labor income is taxable, what are you proposing to tax A Southern Bartender? I do not see a proposed tax. If the SCDOR is proposing a tax for labor sales generated over the preceding 36 months what is the proposed assessment for failure to file, penalty, interest and potential charges for not being licensed?

As I said in a letter to Mr. Reames and Attorney General Alan Wilson. If the Department of Revenue is assuming that my company owes a sales tax on the sale of alcohol as you indicated in our first meeting (May 3, 2016) Then you are indicating that I am violating state law by doing so without a license and this is a criminal offense. I have contacted a lawyer and will take my case to the courts if needed.

I await your replay and would like my financial records and receipts back as soon as possible.

Sincerely,

Keith A. Purdy, Mixologist

A Southern Bartender

Charleston, SC

(843) 345-6300 <tel:%28843%29%20345-6300>

EXHIBIT G

1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Proposed Assessment

AS-6
(Rev. 06/29/16)
6376

File Number: 101954182
Letter ID: L0002076410
Date Issued: September 29, 2016

KEITH PURDY
A SOUTHERN BARTENDER
PO BOX 20126
CHARLESTON SC 29413-0126

Taxpayer:

A Sales & Use Audit of your South Carolina Sales and Use Tax return(s) from 04/01/2013 to 03/31/2016 has been conducted. Enclosed you will find an explanation of our **Proposed Assessment**. Below is a summary of our findings if paid by 10/31/2016:

Tax:	\$14,979.66
Penalty:	\$5,614.59
Interest:	\$1,047.26
Total:	\$21,641.51

Failure to respond to this notice by 12/28/2016 will result in the accrual of additional penalties and/or interest, and further collection action will be taken. Please refer to the reverse side for instructions on how to proceed. Should you have any questions, please do not hesitate to contact this office.

MATTHEW GROUP, Field Audit

Email: Matthew.Group@dor.sc.gov, Phone: +1 (843) 953-8374, Fax: +1 (843) 556-1780
2 South Park Circle, Suite 100, Charleston, SC 29407

This demand for payment is not applicable if you are currently in bankruptcy proceedings under Title 11 of the U.S. Code. Any monies due will be sought in accordance with the provisions of Title 11.

----- cut along dotted line -----

1350



SC DEPARTMENT OF REVENUE
Audit Payment

C-370
(Rev. 08/31/15)
6370

Pay online for free at MyDORWAY.dor.sc.gov.

Vouchers and payments may also be mailed to:

South Carolina Department of Revenue
P O Box 125
Columbia, SC 29214-0030

Media	153143563
File Number	101954182
Amount Due	\$21,641.51
Balance Remitted	

63701015 01 [REDACTED] 00 00 00000000 00002164151

DOR ROA 186

If you agree with the changes detailed on this notice and any enclosed explanations, the balance should be remitted to this office within 30 days from the issue date of this letter to avoid additional penalties and interest, if applicable. To pay by check, please mail your payment and the voucher from the front page as addressed on the voucher to ensure proper processing.

If you agree with the Department's determination, but are unable to make full payment at this time, please complete the enclosed Waiver of Restriction on Assessment (SC870) and return it to this office as soon as possible. Upon receipt of this document, a final assessment will be issued.

You may agree with portions of the proposed assessment and disagree with others. The portion of the assessment with which you agree may be paid to avoid additional interest and penalty, and the remainder can be appealed.

If you disagree with part or all of the proposed assessment, you may make an appeal by sending a written protest within 90 days from the date of this proposed assessment.

Protest forms (C-245) are available online at www.dor.sc.gov, by calling (803) 898-5320 or you may visit any South Carolina Department of Revenue office. You may choose to send a letter rather than using the Form C-245. The letter must contain the following information:

1. Taxpayer's name (individual, corporation, etc.)
2. Taxpayer's identification number (Social Security, Federal Employer Identification, License, etc.)
3. Period for which the tax is proposed
4. Type of tax in dispute (individual income, sales, etc.)
5. All of the reasons you disagree with the proposed assessment

If you have any questions, please call the telephone number shown on the front of this proposed assessment.

TAXPAYER'S BILL OF RIGHTS

- You have the right to apply for assistance from the Taxpayer Rights' Advocate within the Department of Revenue. The advocate or his designee is responsible for facilitating resolution of taxpayer complaints and problems.
- You have the right to request and receive forms, instructions and other written materials in plain, easy-to-understand language.
- You have the right to prompt, courteous service from us in all your dealings with the Department of Revenue.
- You have the right to request and receive written information guides, which explain in simple and nontechnical language, appeal procedures and your remedies as a taxpayer.
- You have the right to receive notices which contain descriptions of the basis for and identification of amounts of any tax, interest and penalties due.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Sales Working Paper

Sales Audit Period Summary

File Number	Period	Tax	Penalty	Interest	Total
101954182	04/30/2013	\$585.48	\$266.39	\$66.91	\$918.78
101954182	05/31/2013	\$444.73	\$200.13	\$49.57	\$694.43
101954182	06/30/2013	\$339.08	\$150.89	\$36.88	\$526.85
101954182	07/31/2013	\$164.22	\$72.26	\$17.39	\$253.87
101954182	08/31/2013	\$272.59	\$118.58	\$28.10	\$419.27
101954182	09/30/2013	\$687.16	\$295.48	\$68.99	\$1,051.63
101954182	10/31/2013	\$808.35	\$343.55	\$78.86	\$1,230.76
101954182	11/30/2013	-\$33.07	\$0.00	\$0.00	-\$33.07
101954182	12/31/2013	\$748.87	\$310.78	\$68.97	\$1,128.62
101954182	01/31/2014	\$251.86	\$103.26	\$22.49	\$377.61
101954182	02/28/2014	\$459.32	\$186.02	\$39.86	\$685.20
101954182	03/31/2014	\$249.95	\$99.98	\$21.01	\$370.94
101954182	04/30/2014	\$562.08	\$222.02	\$45.73	\$829.83
101954182	05/31/2014	\$882.30	\$344.09	\$69.35	\$1,295.74
101954182	06/30/2014	\$109.47	\$42.15	\$8.32	\$159.94
101954182	07/31/2014	\$99.57	\$37.83	\$7.29	\$144.69
101954182	08/31/2014	\$255.51	\$95.82	\$18.02	\$369.35
101954182	09/30/2014	\$408.05	\$150.98	\$27.68	\$586.71
101954182	10/31/2014	\$1,351.99	\$493.48	\$88.05	\$1,933.52
101954182	11/30/2014	\$1,133.07	\$407.91	\$70.89	\$1,611.87
101954182	12/31/2014	\$197.03	\$69.95	\$11.78	\$278.76
101954182	01/31/2015	\$589.92	\$206.47	\$33.69	\$830.08
101954182	02/28/2015	\$670.76	\$231.41	\$36.67	\$938.84
101954182	03/31/2015	-\$32.79	\$0.00	\$0.00	-\$32.79
101954182	04/30/2015	-\$29.60	\$0.00	\$0.00	-\$29.60
101954182	05/31/2015	\$45.22	\$14.92	\$2.12	\$62.26
101954182	06/30/2015	\$413.20	\$134.29	\$18.24	\$565.73
101954182	07/31/2015	\$397.43	\$127.18	\$16.49	\$541.10
101954182	08/31/2015	\$404.83	\$127.52	\$15.74	\$548.09
101954182	09/30/2015	\$292.96	\$90.82	\$10.63	\$394.41
101954182	10/31/2015	\$849.77	\$259.18	\$28.59	\$1,137.54
101954182	11/30/2015	\$453.17	\$135.95	\$14.11	\$603.23
101954182	12/31/2015	\$523.06	\$154.30	\$14.90	\$692.26
101954182	01/31/2016	\$99.22	\$28.78	\$2.57	\$130.57
101954182	02/29/2016	\$247.64	\$70.58	\$5.81	\$324.03
101954182	03/31/2016	\$77.26	\$21.64	\$1.56	\$100.46
		\$14,979.66	\$5,614.59	\$1,047.26	\$21,641.51

This is the final proposed assessment.

1350

Issued:
09/06/16

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Sales Working Paper

AS-14
(Rev. 06/29/16)
6384

Sales Audit Penalty Summary

File Number	Period	Late File Penalty	Late Pay Penalty	Substantial Understatement	Total
101954182	04/30/2013	\$146.37	\$120.02	\$0.00	\$266.39
101954182	05/31/2013	\$111.18	\$88.95	\$0.00	\$200.13
101954182	06/30/2013	\$84.77	\$66.12	\$0.00	\$150.89
101954182	07/31/2013	\$41.06	\$31.20	\$0.00	\$72.26
101954182	08/31/2013	\$68.15	\$50.43	\$0.00	\$118.58
101954182	09/30/2013	\$171.79	\$123.69	\$0.00	\$295.48
101954182	10/31/2013	\$202.09	\$141.46	\$0.00	\$343.55
101954182	11/30/2013	\$0.00	\$0.00	\$0.00	\$0.00
101954182	12/31/2013	\$187.22	\$123.56	\$0.00	\$310.78
101954182	01/31/2014	\$62.96	\$40.30	\$0.00	\$103.26
101954182	02/28/2014	\$114.83	\$71.19	\$0.00	\$186.02
101954182	03/31/2014	\$62.49	\$37.49	\$0.00	\$99.98
101954182	04/30/2014	\$140.52	\$81.50	\$0.00	\$222.02
101954182	05/31/2014	\$220.57	\$123.52	\$0.00	\$344.09
101954182	06/30/2014	\$27.37	\$14.78	\$0.00	\$42.15
101954182	07/31/2014	\$24.89	\$12.94	\$0.00	\$37.83
101954182	08/31/2014	\$63.88	\$31.94	\$0.00	\$95.82
101954182	09/30/2014	\$102.01	\$48.97	\$0.00	\$150.98
101954182	10/31/2014	\$338.00	\$155.48	\$0.00	\$493.48
101954182	11/30/2014	\$283.27	\$124.64	\$0.00	\$407.91
101954182	12/31/2014	\$49.26	\$20.69	\$0.00	\$69.95
101954182	01/31/2015	\$147.48	\$58.99	\$0.00	\$206.47
101954182	02/28/2015	\$167.69	\$63.72	\$0.00	\$231.41
101954182	03/31/2015	\$0.00	\$0.00	\$0.00	\$0.00
101954182	04/30/2015	\$0.00	\$0.00	\$0.00	\$0.00
101954182	05/31/2015	\$11.30	\$3.62	\$0.00	\$14.92
101954182	06/30/2015	\$103.30	\$30.99	\$0.00	\$134.29
101954182	07/31/2015	\$99.36	\$27.82	\$0.00	\$127.18
101954182	08/31/2015	\$101.21	\$26.31	\$0.00	\$127.52
101954182	09/30/2015	\$73.24	\$17.58	\$0.00	\$90.82
101954182	10/31/2015	\$212.44	\$46.74	\$0.00	\$259.18
101954182	11/30/2015	\$113.29	\$22.66	\$0.00	\$135.95
101954182	12/31/2015	\$130.76	\$23.54	\$0.00	\$154.30
101954182	01/31/2016	\$24.81	\$3.97	\$0.00	\$28.78
101954182	02/29/2016	\$61.91	\$8.67	\$0.00	\$70.58
101954182	03/31/2016	\$19.32	\$2.32	\$0.00	\$21.64
		\$3,768.79	\$1,845.80	\$0.00	\$5,614.59

This is the final proposed assessment.

1350

Issued:
09/06/16

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Sales Working Paper

AS-14
(Rev. 06/29/16)
6384

Sales Adjustments Summary

File Number	Period	Gross Reported	Sales Audited	Use Audited	Deductions Reported	Deductions Audited
101954182	04/30/2013	\$0.00	\$6,888.07	\$0.00	\$0.00	\$0.00
101954182	05/31/2013	\$0.00	\$5,232.14	\$0.00	\$0.00	\$0.00
101954182	06/30/2013	\$0.00	\$3,989.24	\$0.00	\$0.00	\$0.00
101954182	07/31/2013	\$0.00	\$1,932.00	\$0.00	\$0.00	\$0.00
101954182	08/31/2013	\$0.00	\$3,206.99	\$0.00	\$0.00	\$0.00
101954182	09/30/2013	\$0.00	\$8,084.39	\$0.00	\$0.00	\$0.00
101954182	10/31/2013	\$0.00	\$9,510.05	\$0.00	\$0.00	\$0.00
101954182	11/30/2013	\$0.00	-\$389.00	\$0.00	\$0.00	\$0.00
101954182	12/31/2013	\$0.00	\$8,810.39	\$0.00	\$0.00	\$0.00
101954182	01/31/2014	\$0.00	\$2,963.02	\$0.00	\$0.00	\$0.00
101954182	02/28/2014	\$0.00	\$5,403.59	\$0.00	\$0.00	\$0.00
101954182	03/31/2014	\$0.00	\$2,940.54	\$0.00	\$0.00	\$0.00
101954182	04/30/2014	\$0.00	-\$6,612.63	\$0.00	\$0.00	\$0.00
101954182	05/31/2014	\$0.00	\$10,379.92	\$0.00	\$0.00	\$0.00
101954182	06/30/2014	\$0.00	\$1,287.75	\$0.00	\$0.00	\$0.00
101954182	07/31/2014	\$0.00	\$1,171.44	\$0.00	\$0.00	\$0.00
101954182	08/31/2014	\$0.00	\$3,006.02	\$0.00	\$0.00	\$0.00
101954182	09/30/2014	\$0.00	\$4,800.53	\$0.00	\$0.00	\$0.00
101954182	10/31/2014	\$0.00	\$15,905.75	\$0.00	\$0.00	\$0.00
101954182	11/30/2014	\$0.00	\$13,330.30	\$0.00	\$0.00	\$0.00
101954182	12/31/2014	\$0.00	\$2,317.93	\$0.00	\$0.00	\$0.00
101954182	01/31/2015	\$0.00	\$6,940.40	\$0.00	\$0.00	\$0.00
101954182	02/28/2015	\$0.00	\$7,891.30	\$0.00	\$0.00	\$0.00
101954182	03/31/2015	\$0.00	-\$385.61	\$0.00	\$0.00	\$0.00
101954182	04/30/2015	\$0.00	-\$348.41	\$0.00	\$0.00	\$0.00
101954182	05/31/2015	\$0.00	\$532.04	\$0.00	\$0.00	\$0.00
101954182	06/30/2015	\$0.00	\$4,861.09	\$0.00	\$0.00	\$0.00
101954182	07/31/2015	\$0.00	\$4,675.51	\$0.00	\$0.00	\$0.00
101954182	08/31/2015	\$0.00	\$4,762.61	\$0.00	\$0.00	\$0.00
101954182	09/30/2015	\$0.00	\$3,446.56	\$0.00	\$0.00	\$0.00
101954182	10/31/2015	\$0.00	\$9,997.30	\$0.00	\$0.00	\$0.00
101954182	11/30/2015	\$0.00	\$5,331.49	\$0.00	\$0.00	\$0.00
101954182	12/31/2015	\$0.00	\$6,153.50	\$0.00	\$0.00	\$0.00
101954182	01/31/2016	\$0.00	\$1,167.30	\$0.00	\$0.00	\$0.00
101954182	02/29/2016	\$0.00	\$2,913.47	\$0.00	\$0.00	\$0.00
101954182	03/31/2016	\$0.00	\$908.92	\$0.00	\$0.00	\$0.00
		\$0.00	\$176,231.14	\$0.00	\$0.00	\$0.00

This is the final proposed assessment.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Sales Working Paper

Sales Net Adjustments Summary

File Number	Period	Taxable Reported	Taxable Audited	Understatement
101954182	04/30/2013	\$0.00	\$6,888.07	\$6,888.07
101954182	05/31/2013	\$0.00	\$5,232.14	\$5,232.14
101954182	06/30/2013	\$0.00	\$3,989.24	\$3,989.24
101954182	07/31/2013	\$0.00	\$1,932.00	\$1,932.00
101954182	08/31/2013	\$0.00	\$3,206.99	\$3,206.99
101954182	09/30/2013	\$0.00	\$8,084.39	\$8,084.39
101954182	10/31/2013	\$0.00	\$9,510.05	\$9,510.05
101954182	11/30/2013	\$0.00	-\$389.00	-\$389.00
101954182	12/31/2013	\$0.00	\$8,810.39	\$8,810.39
101954182	01/31/2014	\$0.00	\$2,963.02	\$2,963.02
101954182	02/28/2014	\$0.00	\$5,403.59	\$5,403.59
101954182	03/31/2014	\$0.00	\$2,940.54	\$2,940.54
101954182	04/30/2014	\$0.00	\$6,612.63	\$6,612.63
101954182	05/31/2014	\$0.00	\$10,379.92	\$10,379.92
101954182	06/30/2014	\$0.00	\$1,287.75	\$1,287.75
101954182	07/31/2014	\$0.00	\$1,171.44	\$1,171.44
101954182	08/31/2014	\$0.00	\$3,006.02	\$3,006.02
101954182	09/30/2014	\$0.00	\$4,800.53	\$4,800.53
101954182	10/31/2014	\$0.00	\$15,905.75	\$15,905.75
101954182	11/30/2014	\$0.00	\$13,330.30	\$13,330.30
101954182	12/31/2014	\$0.00	\$2,317.93	\$2,317.93
101954182	01/31/2015	\$0.00	\$6,940.40	\$6,940.40
101954182	02/28/2015	\$0.00	\$7,891.30	\$7,891.30
101954182	03/31/2015	\$0.00	-\$385.61	-\$385.61
101954182	04/30/2015	\$0.00	-\$348.41	-\$348.41
101954182	05/31/2015	\$0.00	\$532.04	\$532.04
101954182	06/30/2015	\$0.00	\$4,861.09	\$4,861.09
101954182	07/31/2015	\$0.00	\$4,675.51	\$4,675.51
101954182	08/31/2015	\$0.00	\$4,762.61	\$4,762.61
101954182	09/30/2015	\$0.00	\$3,446.56	\$3,446.56
101954182	10/31/2015	\$0.00	\$9,997.30	\$9,997.30
101954182	11/30/2015	\$0.00	\$5,331.49	\$5,331.49
101954182	12/31/2015	\$0.00	\$6,153.50	\$6,153.50
101954182	01/31/2016	\$0.00	\$1,167.30	\$1,167.30
101954182	02/29/2016	\$0.00	\$2,913.47	\$2,913.47
101954182	03/31/2016	\$0.00	\$908.92	\$908.92
		\$0.00	\$176,231.14	\$176,231.14

This is the final proposed assessment.



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

Explanation of Audit Assessments and Adjustments

AS-21
(Rev. 08/24/16)
6391

File Number: 101954182
Letter ID: L0001785457
Date Issued: September 08, 2016

KEITH PURDY
A SOUTHERN BARTENDER
PO BOX 20126
CHARLESTON SC 29413-0126

The audit assessment was calculated using bank deposits as taxable sales less any refunds and transfers. Taxpayer provided cash flow sheets showing catering income, sales, consulting income, and other income. Catering income and sales are subject to sales tax. For 2013 catering income and sales were 93.67% of total income. For 2014 catering income and sales were 97.74% of income. For 2015 catering income and sales were 92.29% of income. For 2016 the taxpayer cash flow sheet did not provide a breakdown between catering and consulting income. Therefore, actual invoices for 2016 were used to compute the percentage used at 46.14%.

These percentages were applied to monthly deposits to derive sales subject to sales tax. Taxpayer was given credit for sales taxes paid on purchases such as liquor, beer, wine, and mixers he provided to his customers. The total of sales tax paid by the taxpayer was \$3,704.38.

Income from service only contracts as well as consulting fees and tips training classes were not held as taxable.

Income from contracts where tangible personal property was provided was held subject to tax as part of gross proceeds of sale. In reference to Tronco's Catering, Inc vs. South Carolina Department of Revenue the courts found that service and labor charges are incidental to the sale of tangible personal property are considered "gross proceeds" pursuant to S.C. Code 12-36-90:

SECTION 12-36-90. "Gross proceeds of sales".

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

(1) The term includes:

- (a) the proceeds from the sale of property sold on consignment by the taxpayer;
- (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;
 - (v) transportation costs;
 - (vi) manufacturers or importers excise taxes imposed by the United States; or
 - (vii) any other expenses;

FOR AN ADJUSTMENT TO SALES TAX

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.

SC Code Section 12-36-910

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:



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**Explanation of Audit Assessments and
Adjustments**

AS-21
(Rev. 08/24/16)
6391

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KEITH PURDY
A SOUTHERN BARTENDER
PO BOX 20126
CHARLESTON, SC 29413-0126

- 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

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

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 1B 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.

FAILURE TO FILE

In the case of failure to file a return on or before the date prescribed by law (determined with regard to any extension) there must be added to the amount required to be shown as tax on the return, a penalty of five percent if the failure is not for more than one month, with an additional five percent for each additional month or fraction of the month not exceeding twenty five percent in the aggregate.

SC Code Section 12-54-43(C)(1)

MATTHEW GROUP, Field Audit

Email: Matthew.Group@dor.sc.gov, Phone: +1 (843) 953-8374, Fax: +1 (843) 556-1780
2 South Park Circle, Suite 100, Charleston, SC 29407

EXHIBIT H

Post Office Box 20126 * Charleston, South Carolina 29413 * (843) 345-6300
Catering ~ Consulting ~ Server Training

INVOICE

M. U. S. C.
Storm Eye Institute
167 Ashley Ave. MSC 676
Charleston, SC 29425-2201

January 15, 2016

Contact: Ms. Ashton Findley.

Re: Cocktail party.
Date: Friday, January 22, 2016.
Location: Storm Eye Institute 8th floor Lobby.
Times: 4:00 pm – 7:00 pm.
Guarantee: 50 people.
Bar Service: \$ 150.00
Administrative fee: 30.00
Total due: \$ 180.00

I have agreed to provide a licensed, trained and insured bartender for this event. My company is insured for \$1 million in liquor liability insurance coverage, \$2 million aggregate, While I or one of my staff are working your event. You are covered by my insurance policy. I appreciate your business and look forward to working with you in the future.

Sincerely,

Keith Purdy

Keith A. Purdy, Mixologist

Website: www.ASouthernBartender.com

"The oldest bartending service in Charleston started in 1978."

A Southern Bartender

Post Office Box 20126 * Charleston, South Carolina 29413 * (843) 345-6300
Catering ~ Consulting ~ Server Training

INVOICE

Charitable Society of Charleston
P. O. Box 21134
Charleston, SC 29413-1134

February 5, 2015

Re: Oyster roast.

Date: Saturday, January 31, 2014.

Time: 7 - 10:00 pm.

Location: Charleston Visitor Center Busbarn.

Bartender charges: 6 at \$125 per bartender. 750.00

Wine: 24 bottles - Cabernet Sauvignon (1.5 liter)

6 bottles - Chardonnay (1.5 liter) \$ 278.63

24 bottles Merlot (1.5 liter) 207.54

12 Bottles - Pinot Grigio (1.5 liter) 108.00

6 bottles - Chardonnay (1.5 liter) 50.88

Administrative Service Charge: 500.00

18 % Gratuity 341.00

Total Charges \$ 2,236.16

This price includes the tables with black linens for the bar and registration tables, coolers to ice down the white wine, sodas and coffee makers for this event. This does not include the two cases of wine that was donated by a wine company.

Thanks for using my services!

Sincerely,

Keith Purdy

Keith A. Purdy, Mixologist

www.ASouthernBartender.com

"The oldest bartending service in Charleston, started in 1978."

A Southern Bartender

Post Office Box 20126 * Charleston, South Carolina 29413 * (843) 345-6300

Catering ~ Consulting ~ Server Training

CONTRACT

Ms. Allyson Harrell
6 Paula Dr.
Charleston, SC 29407

May 23, 2016

Re: Wedding Reception.

Date: Saturday, May 28, 2016.

Time: 6:30 – 9:30 pm

Location: Stono Ferry Polo Field.

Guarantee: 150 people.

Rate: \$11.00 per person.

\$ 1650.00

Gratuity 18%

297.00

Sub Total:

1947.00

Deposit received:

500.00

Balance due:

\$ 1447.00

Captain's Choice ~ House Brands

Liquor: Svedka vodka, Tangueray gin, Bacardi rum,
Jim Beam Bourbon, Seagrams VO, Dewars scotch.

Beer: Bud, Bud Light, Miller Lite, Mich Ultra, Yuengling.

Wine: Chardonnay, Pinot Grigio, Merlot, Cabernet

Mixers: Coke, diet coke, sprite, ginger ale, tonic, club soda,
Orange, grapefruit and cranberry juice, sour.

This will include all the ice, cups, garnishes, napkins, a banquet table with white linen for the bar, two trained professional bartenders and a supervisor to serve your guests. A deposit of \$500 will confirm this contract with the balance due that night. Give me a call if you have any questions.

Sincerely,

Keith Purdy

Keith A. Purdy, Mixologist

Website: www.ASouthernBartender.com

"The oldest bartending service in Charleston, started in 1978."

DEPARTMENT DETERMINATION

Taxpayer:

Keith Purdy
d/b/a A Southern Bartender
P.O. Box 20126
Charleston, SC 29413

Periods Involved:

Sales Tax – April 1, 2013 through March 31, 2016

Matters in Dispute:

1. Is Keith Purdy, d/b/a A Southern Bartender (Taxpayer), a person in the business of selling tangible personal property at retail and, thus, subject to sales tax pursuant to S.C. Code Ann. § 12-36-910(A) (2014)?
2. Did the South Carolina Department of Revenue (Department) properly include all the proceeds from the Taxpayer's alcohol catering in the Taxpayer's gross proceeds of sales?

Amount in Dispute:

Tax:	\$ 14,979.66
Penalty:	\$ 5,840.74
Interest:	\$ 1,210.61
Total	\$ 22,031.01 ¹

Determinations:

1. The Taxpayer is a person in the business of selling tangible personal property at retail and, thus, subject to sales tax.
2. The Department properly included all the proceeds from the Taxpayer's alcohol catering in the Taxpayer's gross proceeds of sales.

Relevant Facts:

1. The Taxpayer operates, among other businesses,² an alcohol catering business in South Carolina. As part of its alcohol catering business, the Taxpayer offers a variety of

¹This total may change as interest and penalties are calculated through January 6, 2017, and will continue to accrue until this matter is resolved.

²The Taxpayer also conducts server training and provides expert witness testimony. These are clearly services and, thus, are not relevant to the issue in this matter.

catering packages to its customers. Each package contains specified beer, wine, liquor, and/or mixers, as well as, one bartender per ninety (90) people for three hours. The package prices range from \$6.00 per person to \$25.00 per person based on the products provided. Customers can add extra bartenders and/or extra time to any package for an additional charge. Customers can also rent glassware for an additional charge.³ The Taxpayer also adds an 18% gratuity charge to the total package price. Additionally, the Taxpayer offers bartending services where the Taxpayer provides the bartenders and the customer provides the alcohol.⁴

2. The Taxpayer does not have an alcohol license or retail license. Additionally, the Taxpayer did not file any sales tax returns during the audit period.
3. On April 27, 2016, the Department emailed the Taxpayer and informed him that it would be conducting an audit examination of the Taxpayer's books and records for the periods from April 1, 2013 through March 31, 2016.
4. After reviewing the Taxpayer's records, the Department determined that the Taxpayer operated a catering business, which South Carolina Courts have determined are retail businesses. Accordingly, the Department determined that the Taxpayer should have collected and remitted sales tax to the Department on the gross proceeds of sales from its catering business.
5. The Taxpayer did not keep sufficient records of its sales; therefore, the Department had to calculate the Taxpayer's total sales using the bank-deposit method. In doing so, the Department treated all deposits minus refunds and transfers as income from sales.
6. Once the Department determined the amount of the Taxpayer's total sales, the Department then had to determine what amount should be included in the Taxpayer's gross proceeds of sales. To calculate that amount, the Department had to subtract proceeds from sales that did not include any tangible personal property. In other words, any sales that included only the provision of bartenders and no tangible personal property were excluded from the Taxpayer's gross proceeds of sales.⁵ For 2014 and 2015, the

³Glassware is included in the \$25.00 per person package only.

⁴The Department understood that the Taxpayer occasionally provides just a service and no tangible personal property. However, should the Department learn that the Taxpayer's "service only" package actually includes the sale or rental of tangible personal property, such as mixers or glassware, the Department would likely change its position regarding the taxability of such packages.

⁵The Department made this determination based on the information provided by the Taxpayer. Should the Department learn that some or all of the "service only" sales actually included sales or rentals of tangible personal property, such as mixers or glassware, the proceeds

Taxpayer did not have sufficient invoices for the Department to review. The Taxpayer provided the Department with cash flow worksheets to aid the Department in determining what percentage of transactions included sales of tangible personal property. The worksheets listed amounts received for "catering" and amounts received for "consulting." Per the Taxpayer, the amounts received for "consulting" included bartender only services, ID checker only services, TIPS training, and expert witness services. In relying on the worksheets and the Taxpayer's representations, the Department determined the percentage of sales of tangible personal property (the amounts received for "catering") amounted to the following: 97.74% in 2014 and 92.29% in 2015. The Taxpayer did not have cash flow worksheets for 2016 but did have some invoices for the Department to review. As those were the only documents the Taxpayer could provide to the Department, the Department used those invoices to calculate an estimated percentage of sales of tangible personal property for January 1, 2016 through March 31, 2016. In reviewing the invoices, the Department determined that 46.14% of the Taxpayer's sales in 2016 were sales of tangible personal property. Invoices that included only expert witness services, server training services, or bartending only services without the provision of tangible personal property were not counted as sales of tangible personal property. The Department used all of the above-mentioned percentages to calculate the Taxpayer's gross proceeds of sales for the audit period.

7. Once the Department determined the Taxpayer's gross proceeds of sales, the Department calculated the Taxpayer's sales tax liability. In doing so, the Department gave the Taxpayer credit for sales taxes paid by the Taxpayer on liquor, beer, wine, and mixers.
8. On August 19, 2016, the Department sent the Taxpayer the auditor's working papers and detailed notes on how the auditor calculated the Taxpayer's gross proceeds of sales and the Taxpayer's sales tax liability.
9. On or about September 2, 2016, the Taxpayer informed the Department that he disagreed with the Department's determination that he was a retailer. The Department accepted this email as the Taxpayer's formal protest letter.
10. On September 9, 2016, the Department mailed the Taxpayer the audit package,⁶ which included a letter outlining the Taxpayer's options for protesting the Proposed Assessment and an Explanation of Audit Assessments and Adjustments. The documents in the audit package also outlined the Taxpayer's proposed liability as follows: sales tax due in the

from such sales should be included in the Taxpayer's gross proceeds of sales. See infra, § II for a complete discussion of what is includable in a taxpayer's gross proceeds of sales.

⁶The audit package also typically includes the Proposed Assessment. The auditor discovered that he left the Proposed Assessment out of the package and resent the Taxpayer a complete audit package with the Proposed Assessment included on October 4, 2016.

amount of \$14,979.66; failure to file and failure to pay penalties due in the amount of \$5,614.59, and interest due in the amount of \$1,047.26.

11. By letter dated September 28, 2016, the Taxpayer informed the Department that he wanted his file forwarded to the Office of General Counsel for Litigation.

Analysis:

I. The Taxpayer is a person in the business of selling tangible personal property at retail and, thus, subject to sales tax.

Under South Carolina law, "[a] sales tax, equal to [six]⁷ percent of the gross proceeds of sales, is imposed upon every person⁸ engaged or continuing within this State in the business of selling tangible personal property at retail." Section 12-36-910(A). 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." S.C. Code Ann. § 12-36-60 (2014). Thus, the first issue in this case is whether the Taxpayer is a person in the business of selling tangible personal property.

The Taxpayer in this case operates a business where he sells liquor, beer, wine, and mixers to his customers along with bartending services. The Taxpayer does this by offering packages to his customers. Each package comes with specified alcohol and mixers and one bartender per 90 people for a three-hour period. The package prices vary based on what alcohol and mixers are included in the package. Because package prices increase based on the products the Taxpayer provides, the price increase clearly relates to the sale of products. Thus, the Taxpayer sells liquor, beer, wine, and mixers, all of which are tangible personal property as defined by § 12-36-60, to his customers. The Taxpayer's retail sale is accompanied by the provision of bartenders to mix and serve drinks for the customer. Accordingly, because the Taxpayer is a person in the business of selling tangible personal property at retail, the Taxpayer is subject to sales tax.

South Carolina case law also supports this conclusion. Specifically, the South Carolina Court, Administrative Law Court (ALC), treated a catering business as a retailer. See Tronco's Catering, Inc. v. S.C. Dept. of Revenue, Docket No. 09-ALJ-17-0089-CC, 2010 WL 5781622 (S.C. Admin. Law Ct. Apr. 12, 2010). In Tronco's Catering, the ALC determined that the taxpayer was a retailer "because it sells tangible personal property – catered meals." 2010 WL 5781622 *2. Accordingly, the sale of catered meals constitutes the sale of tangible personal property. The Taxpayer here sells catered alcohol. No difference exists between catered meals

⁷S.C. Code Ann. § 12-36-1110 (2014) imposes an additional one percent sales and use tax.

⁸For 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).

and catered alcohol. Thus, a person in the business of selling catered alcohol, like the Taxpayer, is in the business of selling tangible personal property at retail and is subject to sales tax.

II. The Department properly included all the proceeds from the Taxpayer's alcohol catering in the Taxpayer's gross proceeds of sales.

All retailers must collect and remit sales tax on their gross proceeds of sales. See § 12-36-910(A). "Gross proceeds of sales" is defined as:

[T]he 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.

S.C. Code Ann. § 12-36-90 (2014).

Accordingly, the Taxpayer must remit sales tax on the entire value of the sale and cannot deduct costs of goods sold or the cost of materials, labor, or service from his gross proceeds of sales. See *Tronco's Catering*, 2010 WL 5781622 *3. Here, the Taxpayer sells his customers packages that include liquor, beer, wine, and/or mixers. Occasionally, other tangible personal property, such as glassware, may be included in the sale. Because the Taxpayer must remit sales tax on the entire value of the sale, the Taxpayer must remit sales tax on the amount the Taxpayer collects for the entire package.

Moreover, the Taxpayer cannot deduct the cost of the goods sold, in this case the liquor, beer, wine, and/or mixers, from his gross proceeds of sales. Additionally, the Taxpayer cannot deduct the cost of materials, labor, and service, which include set-ups and bartending services, from his gross proceeds of sales. The fact that the Taxpayer sometimes provides a service without the sale of catered alcohol does not mean that the service cost may be excluded from the Taxpayer's gross proceeds of sales. See e.g., *Id.* at 3. Sales tax is a transactional tax that must be determined on a transaction by transaction basis. *Id.* In the transactions at issue, which include the sale of tangible personal property and the provision of a service, the service is merely incidental to and enhances the value of the sale of the tangible personal property. See e.g., *Id.* Thus, the service cost must be included in the gross proceeds of sales when the transaction includes both the sale of tangible personal property and the provision of a service which is merely incidental to the sale of the tangible personal property. See *Id.* (quoting Clyde L. Ball, 9 *Vanderbilt Law Review*, What Is A Sale For Sales Tax Purposes, 231 (1956)). Accordingly, because the Taxpayer's bartending service is merely incidental to the sale of liquor, beer, wine,

and mixers in the transactions at issue, the Department properly included all the proceeds from the Taxpayer's alcohol catering sales in his gross proceeds of sales.

III. The Taxpayer's arguments are not persuasive.

The Taxpayer makes several arguments in support of his position that his business is not subject to sales tax. First, the Taxpayer argues that he is in the business of providing a service, not selling tangible personal property. However, as explained above, the facts establish that the Taxpayer sells alcohol to his customers, and the service he provides is merely incidental to the sale of the alcohol. Accordingly, because the facts demonstrate that the Taxpayer is in the business of selling tangible personal property, the Taxpayer's first argument fails.

Next, the Taxpayer argues that he cannot be in the business of selling alcohol because he cannot obtain an alcohol license. The Taxpayer is correct that his business cannot obtain an alcohol license because the Department only licenses premises. See e.g., S.C. Code Ann. § 61-2-90(2) (2009). As an alcohol caterer, the Taxpayer does not have an exact location where his business is proposed to be operated. Accordingly, the Taxpayer's business does not qualify for licensure. However, the fact that the Taxpayer does not have an alcohol license does not change the fact that he is selling alcohol. It just means that the Taxpayer is selling alcohol without a license. Thus, the Taxpayer's argument that he cannot be selling alcohol because he is not licensed to do so also fails.

Finally, the Taxpayer argues that assessing sales tax on top of the income tax he already pays amounts to double taxation. Double taxation is defined as "[t]he imposition of two taxes on the same property during the same period and for the same taxing purpose." Black's Law Dictionary, 705 (3d. Pocket Ed. 2006). A sales tax and an income tax do not constitute the same taxing purpose. Thus, no double taxation exists here. However, even if double taxation did exist, such double taxation would be permissible as the General Assembly expressly sanctioned such when the General Assembly chose to tax the income of individuals and the gross proceeds of sales of every person engaged in the business of selling tangible personal property. See e.g., Greystone Catering Co., Inc. v. S.C. Dept. of Revenue, 326 S.C. 551, 555 – 556, 486 S.E.2d 7, 9 (Ct. App. 1997). The Taxpayer also argues that assessing sales tax on top of the sales tax he already paid on the alcohol and mixers amounts to double taxation. However, the Department gave the Taxpayer credit for the sales tax he paid on the alcohol and mixers. Thus, double taxation did not occur.

Conclusion:

For all of the foregoing reasons, the Taxpayer is a person in the business of selling tangible personal property at retail, and the Department properly included all the proceeds from the Taxpayer's alcohol catering in the Taxpayer's gross proceeds of sales.

December 7, 2016

South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

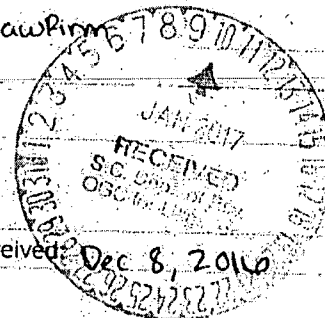
Last Name:	First:	Middle:	☐ Mr. ☐ Miss ☐ Mrs. ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: P.O. Box 20126		City: Charleston	State and Zip: SC 29413-0126	
Home Number: (843) 345-6300	Work Number:	Cell Number:	E-Mail Address: asathern bartender@gmail.com	
*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission				

REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No	
Are you represented by an Attorney? ☒ Yes ☐ No	
Attorney Mailing Address: 300 West Coleman Blvd Suite 1016	Name of Attorney: Bryan Raymond
Attorney Work Number and Cell Number: (843) 327-5777	City, State and Zip: Mt. Pleasant, SC 29464
	Attorney E-Mail Address: braymon@cdnlawfirm.com

CASE INFORMATION

Name of Agency that Issued the Decision: (Example - Dept. of Revenue, Dept. of Insurance, DHEC) Dept. of Revenue	
In order to have your case processed, you must attach the agency decision. Is it attached? ☒ Yes ☐ No	
Date the decision was issued: December 17, 2016	Date the decision was received: Dec 8, 2016
Please provide a brief statement regarding why the hearing is being requested and the relief sought: WE BELIEVE THE Agency's DETERMINATION OF THE LAW AND FINDINGS OF FACT WERE INCORRECT.	



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
	JANUARY 6, 2017
X Your Signature or Signature of Attorney	Date:

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: Kathryn Love	Date: 01/06/2017	City: Mt. Pleasant	State: SC
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties 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):			
South Carolina Department of Revenue	PO Box 12265	Columbia, SC	29211
Name and/or Agency Name	Address	City, State and Zip	
Clerk's Office South Carolina Administrative Law Court	1250 St., Ste 224	Columbia, SC	29201
Name and/or Agency Name	Address	City, State and Zip	
		January 6, 2017	Date
X Your Signature or Signature of Attorney			

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Deborah Brooks Durden, Administrative Law Judge

Case No. 17-ALJ-17-0002-CC
Appellate Case No. 2018-001250

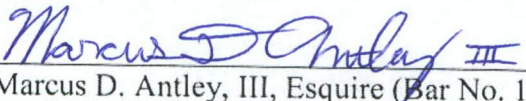
Keith Purdy, d/b/a A Southern Bartender Respondent,

v.

South Carolina Department of Revenue, ... Appellant.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, the undersigned certifies that this Record of Appeal contains all material proposed to be included by the above-referenced parties and not any other material.


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