

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 13-ALJ-17-0218-CC
Tracking No. 2014-000214

RECEIVED

JUL 09 2014

SC Court of Appeals

Eugenia Boggero, d/b/a Boggero's Portable Toilets, Appellant

v.

South Carolina Department of Revenue, Respondent.

RECORD ON APPEAL

Roy R. Hemphill, SC Bar # 15142
Hannah K. Metts, SC Bar # 72818
McDonald Patrick Poston Hemphill & Roper, LLC
P.O. Box 1547
Greenwood, SC 29648
(864) 229-2511
Attorneys for Appellant

Burnet R. Maybank, III, SC Bar # 3699
Nexsen Pruet, LLC
P.O. Drawer 2426
Columbia, SC 29202
(803) 540-2048
Attorneys for Appellant

Milton G. Kimpson, SC Bar # 7917
Carol I. McMahan, SC Bar # 7487
Anne Marie Thompson, SC Bar # 76121
P.O. Box 12265
(803) 898-5576
Columbia, South Carolina 29211
Attorneys for Respondent

Harry T. Cooper, Jr.
1301 Columbia College Drive
Columbia, SC 29203
(803) 786-3582
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 13-ALJ-17-0218-CC
Tracking No. 2014-000214

Eugenia Boggero, d/b/a Boggero's Portable Toilets, Appellant

v.

South Carolina Department of Revenue, Respondent.

RECORD ON APPEAL

Roy R. Hemphill, SC Bar # 15142
Hannah K. Metts, SC Bar # 72818
McDonald Patrick Poston Hemphill & Roper, LLC
P.O. Box 1547
Greenwood, SC 29648
(864) 229-2511
Attorneys for Appellant

Burnet R. Maybank, III, SC Bar # 3699
Nexsen Pruet, LLC
P.O. Drawer 2426
Columbia, SC 29202
(803) 540-2048
Attorneys for Appellant

Milton G. Kimpson, SC Bar # 7917
Carol I. McMahan, SC Bar # 7487
Anne Marie Thompson, SC Bar # 76121
P.O. Box 12265
(803) 898-5576
Columbia, South Carolina 29211
Attorneys for Respondent

Harry T. Cooper, Jr.
1301 Columbia College Drive
Columbia, SC 29203
(803) 786-3582
Attorneys for Respondent

INDEX

Final Order and Decision of Administrative Law Court dated January 6, 2014	4-19
Order of Administrative Law Court Granting Motion to Amend Caption dated September 9, 2013.....	20
Transcript of Proceedings	21-204
Opening Arguments of Appellant.....	25-27
Opening Arguments of Respondent.....	27
Testimony of Eugenia Boggero	31-113
Direct Examination	31-70
Cross Examination.....	70-104
Re-Examination	104-112
Re-Cross-Examination.....	112-113
Testimony of John Wesley Butler.....	119-157
Direct Examination	119-134
Cross Examination.....	134-149
Re-Examination	149-152
Re-Cross-Examination.....	152-156
Re- Examination	156-157
Testimony of James L. McCutchen	157-194
Direct Examination	157-174
Cross Examination.....	174-191
Re-Examination	191-194
Closing Arguments of Appellant	194-198, 202
Closing Arguments of Respondent	198-202
Appellant's Exhibit 1	205
Appellant's Exhibit 5	205-207
Appellant's Exhibit 5-A.....	208-209
Appellant's Exhibit 6	210

Appellant's Exhibit 7	211
Appellant's Exhibit 8	212
Appellant's Exhibit 9	213
Appellant's Exhibit 10	214
Appellant's Exhibit 11	215
Appellant's Exhibit 12	216
Appellant's Exhibit 13	217
Appellant's Exhibit 14	218
Appellant's Exhibit 15	219
Appellant's Exhibit 16	220
Appellant's Exhibit 17	221
Appellant's Exhibit 18	222
Respondent's Exhibit 1	223-227
Respondent's Exhibit 2	228-230
Respondent's Exhibit 3	231-233
Respondent's Exhibit 4	To be filed by Respondent by way of an alternative medium
Respondent's Exhibit 5	234
Respondent's Exhibit 6	235
Respondent's Exhibit 7	236-276
Respondent's Exhibit 8	277-278
Respondent's Exhibit 9	279-282
Respondent's Exhibit 10	283-288
Appellant's Email dated 12/13/2013 with the following attachments:.....	289-290

Appellant’s Proposed Order submitted to Administrative Law Court.....	291-304
GA Dep’t of Revenue Informational Bulletin SUT 2009-09-25 (2009).....	305-306
Mass. Department of Revenue Directive 00-3: Sales Tax Treatment of Rentals of Toilets (2000).....	307-310
WA Dep’t of Rev., Tax Facts, 6 (June 2006)	311-318
Respondent’s Email dated 12/13/2013 with the following attachments:.....	319
Respondent’s Proposed Order submitted to Administrative Law Court	320-337
<u>LZM, Inc. v. Va. Dept. of Taxation</u> , 606 S.E. 2d 797 (Va. 2005)	338-349
<u>Brooner and Thomas Construction Co., Inc. v. Dir. of Rev.</u> , RS-81-0068 (MO 1982)	350-355
<u>In the Matter of Waste Management of New York, Inc. v. Tax Appeals Tribunal of the State of New York</u> , 185 A.D. 2d 479 (N.Y. 1992)	356-358
<u>Weiss v. Best Enterprises, Inc.</u> , 917 S.W. 2d 543 (AR 1996)	359-369
<u>In the Matter of: The Proposed Assessment of Sales and Use Tax for the Period May 1, 2000 through March 31, 2003, by the Secretary of Revenue of North Carolina v. Taxpayer</u> (N.C. 2004)	370-377
Certificate of Counsel	378

Eugenia Boggero, d/b/a Boggero's
Portable Toilets,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent.

For Respondent: Ann Marie Thompson, Esquire, and Carol I. McMahan, Esquire,
South Carolina Department of Revenue of Columbia, South Carolina

This contested case came to be heard on Thursday, September 12, 2013 at the ALC in Columbia, South Carolina before the Honorable John D. McLeod, Administrative Law Judge. All parties appeared at the hearing. The Petitioner argued that the true object of the transactions in question was for a service, the disposal of human waste, and was therefore not subject to the State sales and use tax. The Department conversely argued that the true object of the transactions in question was for the use of tangible personal property, portable restrooms, therefore subject to the State sales and use tax.

SC ADMIN. LAW COURT

After listening to the testimony, weighing all of the evidence entered at the hearing, and taking into consideration all of the arguments presented at trial, I find that the Department's Determination in this matter must be sustained as fully explained below.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented and entered into evidence at the hearing and closely passed upon their credibility, taking into consideration the burden of persuasion by the parties, I make the following findings of fact by a preponderance of evidence:

1. Petitioner owns and operates Boggero's Portable Toilets in Greenwood, South Carolina as a sole proprietor. It is a family business, started and developed by her father. The Petitioner acquired the business from her father in 2005. The Petitioner has never applied for a retail sales tax license; collected sales or use tax from her customers, or remitted sales or use tax to the Department.

2. The Petitioner provides portable toilet installation, sinks, pick-up, and subsequent waste removal for temporary use. The Petitioner also provides holding tanks, trash containers, delivery, and servicing. In providing these portable toilets she also provides soap, toilet paper, towels, and other toiletries as her customers may request.

3. The Department calculated the Petitioner's gross proceeds (the taxable base for the imposition of the State sales and use tax) from the rental of portable toilets to be \$128,901.15 for the audit period. This figure was derived from total gross proceeds (\$429,670.49) minus gross proceeds from trash collection services (\$59,660.47)¹ minus out of state sales, multiplied by 30%.²

4. When a customer contacts the Petitioner and requests delivery of a portable unit, the Petitioner calculates the number of units that she believes the customer

¹ Trash removal in this case is not subject to sales tax. See, SCPLR 88-20 and 04-2.

² The South Carolina General Assembly enacted S. C. Code Ann. § 12-36-2120(62) (Supp. 2012), effective July 1, 2003, SB 274, 2003. This exemption excludes 70% of the gross proceeds from the rental of portable toilets from sales tax. Prior to the enactment of this exemption, 100% of the rental or lease of portable toilets and servicing attached to such rental were included in "gross proceeds" and subject to the sales tax. See S-D-115 (1977).

may need based on the number of individuals using the unit(s), her experience, and other guidelines.³

5. The Petitioner testified that she and the customer sign what she has entitled a "Service Agreement" (Agreement). This Agreement reflects the following terms, among others:

1. The customer requests delivery and use of portable toilet(s) and or dumpsters from Boggero's Portable Toilets.

2. The customer will be responsible for the following service payments:

of Portable Toilets _____ Cleaned # of Times per
Week _____
Price _____.

* * * *

4. From the date of this agreement, portable toilets and or dumpsters will be delivered for use by the customer upon request without the signing of another agreement. It is intended that this agreement will cover ongoing and future portable toilets and/or dumpsters deliver and use.

* * * *

6. The Customer understands that service fees for the use of portable toilets and or dumpsters may increase in the future, and the undersigned will be responsible for the increased payment without the signing of another agreement

* * * *

8. The equipment is the property of Boggero's Portable Toilet, and is provided to the customer for his exclusive use on the job site listed on delivery ticket or future delivery tickets.

9. The duration of the service period is determined from date of shipment on our part as indicated on this service agreement until date of pick up order.

³ During the audit period the Petitioner operated and maintained a website at www.boggerotoilet.com, for Boggero's Portable Toilets. This website provides a number of rental options for portable restrooms, including: VIP Units, Special Event Units, Wedding Units, Handicap Units, and Hand Washing Units (as noted specifically on taxpayer invoices submitted into evidence Bates Nos. 2 through 4449).

10. Carefully check equipment upon unloading a destination. All claims for shortages and damaged equipment must be noted on the delivery ticket.
11. The Customer agrees to be present when equipment is returned so that any shortages or damage or equipment will be noted on return report and acknowledged. It is expressly understood and agreed that the Customer shall pay for any parts which are lost or damaged beyond normal wear and tear.
12. Proper placing of the equipment on job location is the sole responsibility of customer with the assistance of Boggero's Portable Toilets. Access to toilets &.or dumpsters for servicing will be the Customers responsibility.
13. The Customer agrees to hold harmless Boggero's Portable Toilets for any and all damages to property and persons not caused by the negligence of Boggero's Portable Toilets while this equipment is being used under this service agreement or future delivery tickets.

6. The Department conducted a sales tax audit of the Petitioner for the audit period. After a review of the information provided by the Petitioner for the relevant periods, the auditor issued a Proposed Notice of Assessment imposing sales tax, penalties, and interest on the taxpayer's gross proceeds from the taxpayer's portable toilet business (tax: \$8,891.96; interest: \$602.27;⁴ penalty: \$3,191.36).

7. In response to the Petitioner's timely protest of the Proposed Assessment, the Department issued its Department Determination sustaining the imposition of the sales tax, penalties, and interest. Such is the basis of this contested case.

8. Department Auditor, Wes Butler, conducted the sales tax audit. He also prepared summaries of the invoices provided as follows:

1. Gross Sales Per Month From Invoices⁵

⁴ Interest continues to accrue until the tax is paid or determined to be in error.

⁵ This summary indicates the calculation for determining the amount subject to the State sales and use tax by deducting from the total gross receipts, the total gross receipts for out of state sales, total gross receipts for trash collection services, and multiplying the tax base by 30% to account for the 70% exemption found in § 12-36-2120 (62).

2. Nontaxable Trash Sales⁶
3. Specific Invoice Analysis⁷

9. James McCutchen, Esquire, Revenue Law Advisor for the Department, co-authored the Department's 2012-2013 Sales and Use Tax Manual. This manual includes a summary of the South Carolina Sales and Use Tax Law (available in Chapter 36 of Title 12 of the South Carolina Code), South Carolina Regulations, Department Advisory Opinions, and practical examples for tax practitioners and taxpayers. Mr. McCutchen testified that it is the Department's longstanding administrative policy that charges for the rental of portable restrooms are subject to the State sales and use tax. He testified about a 1977 South Carolina Tax Commission Decision, Opinion No. S-D-115, in which the Commission found that charges for the rental of portable restrooms are subject to the State sales and use tax, notwithstanding the fact that such charges were also for the servicing of those portable restrooms. He testified that the Department has issued two Advisory Opinions (S.C. Rev. Rul. #09-5 and S.C. Rev. Proc. #1-5) in which the Department provided guidance to taxpayers and tax practitioners regarding the imposition of sales and use tax on charges for the use of portable restrooms. He further testified that these documents are available in hard copy upon request and also available at the Department's website. Although this website was not provided in the testimony, this Court notes that the Department's website is www.sctax.org.

ISSUES RAISED

1. Are the Petitioner's gross proceeds from the rental and servicing of portable toilets subject to sales tax?
2. If such gross proceeds are subject to the sales tax is the Petitioner liable for the failure to file and failure to pay penalties in addition to the sales tax?

⁶ See Fn. 1.

⁷ The Summary of "Specific Invoice Analysis" listed all invoices showing "new-delivery" specific unit(s) listed and, the charges for same. These charges comprised approximately 28% of the taxpayer's total gross proceeds for all periods at issue (after removing the charges for trash removal and out of state sales).

CONCLUSIONS OF LAW

Based upon the Findings of Fact as set forth above, I conclude the following as a matter of law:

A. Jurisdiction And The Burden Of Proof

1. This matter is properly before the Court pursuant to S.C. Code Ann. § 12-60-40 et. seq. (Supp. 2012), "General Appeal Procedures." A taxpayer may appeal a Department Determination by requesting a contested case hearing before the ALC, S.C. Code Ann. § 12-60-460 (Supp. 2012).

2. The burden of proof is on the party asserting the affirmative in an adjudicatory administrative proceeding. 2 Am. Jur. 2d Administrative Law, § 354 (2004). In the current matter, it is the Petitioner who has requested a contested case hearing to challenge the Department's imposition of sales tax, interest, and penalties on the gross proceeds from the taxpayer's business. Thus, the Petitioner asserts the affirmative and must prove that the Department's Determination is incorrect. Pursuant to S.C. Code Ann. § 12-36-950 (2000) the General Assembly statutorily provided that the Petitioner here bears the burden of proof. This statute provides:

**Presumption as to gross proceeds; burden of proof;
resale certificate.**

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.

3. Here, the Petitioner has not carried that burden. South Carolina statutory law, case law, and the Department's longstanding administrative practice apply the "true object" test to determine "sales" including the mixture of sales of tangible personal property and services subject to the sales tax. I have determined that the true object of the transactions at issue is for the rental or lease of the tangible personal property – the portable toilets and other personal property provided. The General Assembly has provided for the imposition of a sales tax on the gross proceeds from such transactions by imposing the sales tax on 100% of gross proceeds. As to this particular business, the General Assembly enacted an exemption which excludes 70% of the gross proceeds from

the sales tax base. This results in the imposition of the sales tax on only 30% of the gross proceeds derived from the rental and servicing of the portable toilets, S.C. Code Ann. § 12-36-2120 (62) (Supp. 2009).

B. South Carolina Statutory Law Imposes a Sales Tax on the Gross Proceeds at Issue.

1. The Court's sole responsibility is to determine and give effect to the General Assembly's intent. As to the meaning and application of a statutory provision, recognizing and giving full effect to the General Assembly's intent is the Court's ultimate goal. Sonoco v. South Carolina Dep't of Revenue, 378 S.C. 285, 662 S.E.2d 599 (2008). A Court cannot apply nor construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope. Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993).

2. The Department and the Petitioner disagree over whether the "true object" of the transactions in question is for the rental or lease of tangible personal property or the performance of services. For several reasons I find that the true object is for the rental or lease of tangible personal property.

3. S.C. Code Ann. § 12-36-910 (Supp. 2009) provides for the imposition of a "sales tax on the gross proceeds of sales, . . . upon every person engaged or continuing within this State in the business of selling tangible personal property at retail." S.C. Code Ann. § 12-36-60 (2000) provides for the definition of "tangible personal property" as "personal property which may be seen, weighed, measured, felt, touched or which is in any other manner perceptible to the senses."

4. Based upon the facts of this case, as further discussed below, I have determined that portable restrooms are tangible personal property. Further, S.C. Code Ann. § 12-36-70 (1)(c) (2000) provides that a "retailer" or "seller" includes a person operating or "renting, leasing, or otherwise furnishing tangible personal property for a consideration."

5. In this case the transactions in question include the rental or lease of tangible personal property and the provision of a service. Boggero provides portable toilets for use by its customers as well as other amenities but also services these units and

removes and disposes of waste. In such a case, South Carolina applies the "true object" test to determine whether or not the specific transaction(s) are "service" or a sale/rental of tangible personal property, see 27 S.C. Code Ann. Regs. 117-308.⁸

6. Here, the Petitioner is making a sale of both tangible personal property and service. S.C. Code Ann. § 12-36-100 (2000) defines "sale" as:

"Sale and purchase" mean any transfer, exchange, or barter conditional or otherwise, of tangible personal property for a consideration including:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

7. Also here, the rental of the portable toilet and servicing are included in the sales tax base, "gross proceeds of sale." S.C. Code Ann. § 12-36-90 (Supp. 2012) provides:

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:

⁸ **Regulation 117-308. Professional, Personal, and Other Services.**

The receipts from services, when the services are the true object of the transaction, are not subject to the sales and use tax, unless the sales and use tax is specifically imposed by statute on such services (i.e. accommodation services, communication services). The following subsections of this regulation will discuss various types of services. It should also be noted that several businesses, in addition to selling nontaxable services, also sell tangible personal property and should be licensed to report the tax.

This list is not all-inclusive as to services offered in South Carolina, as to services offered by a particular profession, or as to sales made by a particular profession.

* * * *

(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;

* * * *

(v) transportation costs;

* * * *

(vi) any other expenses.

(Emphasis added).

The Court of Appeals, in interpreting the definition of "gross proceeds of sales" with respect to lay away fees paid in conjunction with lay away sales, held:

Section 12-35-30 [now Section 12-36-90] defines gross proceeds of sales as "the value proceeding or accruing from the sale of tangible personal property ... without any deduction for service costs." But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds of sales and subject to the sales tax.

Meyers Arnold v. South Carolina Tax Commission,⁹ 285 S.C. 303, 328 S.E.2d. 920 (1985).

⁹ The Tax Commissioners, in Decision S-D-174, held a property damage waiver fee charged by a person engaged in the business of renting tangible personal property was subject to the sales tax. The Commission, in citing Meyers Arnold v. South Carolina Tax Commission, *supra*, stated:

Just as in Meyers Arnold, *supra*, the service fee here is taxable. But for the lease of the tangible personal property, the taxpayer would not have received the fee. The fee is obviously charged for the additional service of providing a lease of property free from liability for damage. In the absence of such service, the lessee, under the taxpayer's lease agreements, would be "liable for any loss, theft, damage or destruction of leased property." We find and conclude the fee for the property damage waiver is part of gross proceeds of sale subject to tax.

8. I further find the Petitioner's "gross proceeds" from the sale, rental/lease of portable toilets is subject to the sales tax based on the application of the "true object" test.

9. The "true object" test is best described in 9 Vanderbilt Law Review 231 (1956). It states:

The true test then is one of basic purpose of the buyer. When the product of the service is not of value to anyone other than the purchaser, either because of the confidential character of the product, or because it is prepared to fit the purchaser's special need - a contract or will prepared by a lawyer, or the accident investigation report prepared for an insurance company - this fact is evidence tending to show that the service is the real purpose of the contract. When the purpose of a contract is to produce an article which is the true object of the agreement, the final transfer of the product should be a sale, regardless of the fact that special skills and knowledge go into its production. Under this analysis, printing work, done on special order, and of significant value only to the particular customer, is still a sale. The purchaser is interested in the product of the services of the printer, not in the services per se. Similarly, it would seem that contracts for custom-produced articles, be they intrinsically valuable or not, should be classified as sales when the product of the contract is transferred.

The Vanderbilt Law Review article, in quoting Snite v Department of Revenue, 398 Ill. 41, 74 N.E.2d. 877 (1947), also establishes the following general rule:

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays...[is measured by the total cost of article and services]. If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is engaged in the

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

(Emphasis added.)

10. This test has been applied by the South Carolina Supreme Court. Fraternal Order of Police v. South Carolina Dept. of Revenue, 352 S.C. 420, 574 S.E.2d 717 (2002) (“According to the ‘true object test’ sales which are merely incidental to the transaction and not its true object are not exempt from the retail sales tax. See Journal of Multistate Taxation, Vol. 5, No. 6, pp. 244-253 (Jan./Feb. 1996.”). In that case, the Court found that if the refund issue had been preserved, applying the “true object” test, as between the retailer of the cards and the operation, the sale of the bingo cards were merely incidental to the transaction, the wager. Contrarily here, the customer pays for the “unit,” the four walls, floor, roof, facilities and other amenities provided for their use through the Petitioner’s business. The customer purchases the privacy of the unit. Without this unit there would be no need for service. Thus the service is merely incidental to the transaction – the lease or use of the unit.

11. The Petitioner’s argument that her entitled “Service Agreement” is devoid of the term “rental” and as such the imposition of the sales tax in this case must fail is unavailing. The characterization of the transaction through mere nomenclature cannot be controlling as to whether there is a retail sale of tangible personal property. Rather, the application of the “true object” test leads this Court to one conclusion – the customer pays the Petitioner for the use and possession of the portable toilet unit – for privacy, the four walls, the floor, and the facilities. The use is temporary as referenced in the Agreement – the customer calls to have the unit(s) picked up. Notably, at the time of discovery in this case, all units for the periods at issue had been picked up. Rather, as noted in Regulation 117-308¹⁰ and S.C. Rev. Rul. #09-5 the “true object” test is determinative.

12. The Department has consistently applied the “true object test” in this manner and I find no cogent reasons to depart from such application. Where an

¹⁰ See Fn. 8.

administrative agency has consistently applied a statute in a particular manner, we cannot overturn the agency's construction absent a cogent reason. Gilstrap v. South Carolina Budget & Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992). Greystone Catering, Inc. v. S.C. Dep't of Revenue, 326 S.C. 551, 486 S.E.2d 7 (Ct. App. 1997). Historically, as early as 1977 the South Carolina Tax Commission imposed the sales tax on 100% of the "gross proceeds" from the use of portable toilets. Tax Commission Decision S-D-115 specifically imposed the sales tax as follows "[w]e are satisfied that the charging of placing a portable toilet is a rental charge that is taxable under the provisions of the Sales and Use Tax Act." This position has been consistently applied by the Department, see S.C. Rev. Proc. #01-5, until the General Assembly enacted § 12-36-2120 (62) to exempt 70% of the gross proceeds from the rental of portable toilets in 2003 from the imposition of the sales tax.

13. This Court also finds persuasive and adopts the view of the Virginia Supreme Court as provided in LMZ Inc. v. Virginia Dept. of Taxation, 606 S.E.2d 797 (January 14, 2005) where a similar issue regarding sales tax on portable toilet service and rental was addressed. The court found:

The true object test is the means by which the Department determines the dominant purpose of a mixed sales and service transaction in order to determine whether the transaction is subject to sales tax as a sale of tangible personal property or whether it is a sale of services and therefore exempt from tax. The true object test was adopted by this Court in WTAR, 217 Va. at 883, 234 S.E.2d at 249, in which we acknowledged the endorsement of the test by a preponderance of authorities.

* * * *

As we also noted in WTAR, the taxpayer's "manner of computing the invoice" is not determinative of either the true object of the transaction or whether the service provided is truly separate and distinct from the property leased. 217 Va. at 884, 234 S.E.2d at 249. Otherwise, a taxpayer could create its own tax exemption merely by altering the printing of its invoices.^[11]

¹¹ Other jurisdictions have similarly found but based on the application of a different test; see, In the Matter of Waste Mgt. of NY v. T0061 Tribunal of the State of NY et. al, 185 A.2d 479, 585 NYS2d 883 (NY Sup. Ct, 7/16/1992), similar business receipts subject to

14. Petitioner argues that its provision of portable toilets is akin to a business that provides containers for the removal of trash and their removal. The Petitioner further argues that the Department does not impose a sales tax on that business, and accordingly, should not impose such a tax on the removal of "human waste." However, such is not the case. A similar argument was raised in the case of Ed Robinson v. S.C. Tax Comm., 356 S.C. 120, 588 S.E.2d 97 (2003). In that case, Mr. Robinson argued that imposing sales tax on his laundry gross proceeds was unconstitutional because other service businesses are not taxed.

The Court stated:

The State's rational basis for treating dry cleaners differently from other trades in the service industry is to promote the legitimate governmental interests of fostering economic development in a particular segment of the economy. The Legislature achieves this goal by exempting dry cleaners from paying sales taxes on expensive machinery necessary to start the business in exchange for allowing the payment of sales taxes based on later-earned receipts.

Here, the General Assembly has taxed only a portion of the "gross proceeds"

sales tax; Weiss v. Best Enterprises Inc., 917 SW2d 543 (3/18/96) ("The transactions [lease/rental of portable toilets] were the type of mixed transactions that are fully taxable"); Broomer and Thomas Constr. Co. Inc. v. Dir. Revenue, RS-81-0068 (8/26/1982); Administrative finding that use tax was due on the rental and servicing of portable toilets (taxpayer located in Missouri); In the Matter of Proposed Assessment of Sales and Use Tax for the Period May 1, 2000 through March 31, 2003 by Sec. of Rev. of NC. v. Taxpayer, 2003-41 (2/25/2004) finding:

While the Taxpayer's activity does include the service, or "cleaning" by emptying of waste from the toilet holding tanks, waste removal is not the essence of the transactions in question. The toilet units are more than receptacles. They are enclosures designed for the comfort and privacy of the user. What the customer contracts for is the facility itself and not mere waste removal. The removal of the waste, like the provision of chemicals and toilet paper, is simply routine maintenance necessary to render the toilets usable.

generated from the rental of the portable toilets, a mere 30% (§ 12-36-2120 (62)) - a percentage borne out by the Petitioner's records in this case. That is, the Petitioner's invoices show that the toilets, sinks, etc., rented by the taxpayer comprise approximately 28% to 30% of the gross proceeds reflected on all invoices provided for the periods at issue, January 1, 2009 through December 31, 2011.

15. Moreover, in this case the South Carolina General Assembly has specifically spoken to the taxability of the portable toilet business at issue. Section 12-36-2120(62) provides a SPECIFIC exemption for gross proceeds derived from the rental or lease of portable toilets. This provision states:

12-36-2120. Exemptions from sales tax.

Exempted from the taxes imposed by this chapter are the gross proceeds of sales, or sales price of:

(62) seventy percent of the gross proceeds of the rental or lease of portable toilets.

(Emphasis added).

This statutory change in 2003 (see footnote #2) underscores the intent of the legislature and the Petitioner cannot escape that intent by adroit draftsmanship.

16. Here, as required by the General Assembly, first, the auditor calculated the total gross proceeds from the rental of the portable toilets to include all servicing charges (§ 12-36-90 (1)(b)(i) and (ii)). The auditor then reduced this amount by 70% to recognize the statutory exemption granted by the Legislature.¹² It is interesting to note that here, based on the Petitioner's invoices for the periods at issue, the provision of the units for the customers use, rental, comprises approximately 28% of the Petitioner's total gross proceeds almost the exact amount statutorily subject to tax after giving effect to the exemption. Here too, the Department has consistently applied the exemption at § 12-36-2120(62). As S.C. Rev. Rul. #09-5 provides:

Based on the above, businesses temporarily providing portable toilets to others for a fee are renting tangible

¹² S.C. Rev. Rul. #09-5 provides that first the total rental to include servicing costs are calculated to which the 70% exemption is applied to arrive at the sales tax base for the imposition of the sales tax.

personal property since such constitutes the transfer of tangible personal property for a consideration. See Code Section 12-36-60. In addition, the "true object" of the transaction is the portable toilet and not the servicing of the toilet (regular and routine removal and disposal of the waste and the replacement of chemicals and toilet paper). Such servicing is incidental to the rental of the portable toilets.

Other states have reviewed this issue. North Carolina (Sales and Use Tax Bulletin 34-17) and Virginia (Ruling of the Tax Commissioner 91-275) both consider the business of providing portable toilets for a limited period of time for a fee a rental of tangible personal property subject to the sales and use tax.

C. The Failure to File and Failure to Pay Penalty.

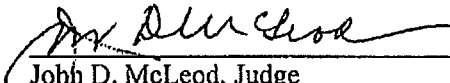
I find that the Department's imposition of the Failure to File and pay penalties is appropriate in this case. The Petitioner has never filed sales tax returns nor collected and remitted sales tax as required by law as thoroughly discussed above. Accordingly, pursuant to S.C. Code Ann. § 12-54-43(B)(C), and (D) (Supp. 2012), such penalties must be imposed.

ORDER

Based on the above Findings of Fact and Conclusions of Law, in this case, the Court must impose the sales tax, penalties, and interest as provided in the Department's Determination, on the taxpayer's gross proceeds from her portable toilet business and ORDER the taxpayer to remit the same to the Department within thirty days of receipt of this Court's ORDER.

IT IS SO ORDERED.

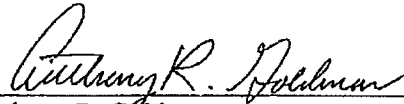
January 6, 2014
Columbia, S.C.


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

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

January 6, 2014
Columbia, S.C.



Anthony R. Goldman
Judicial Law Clerk

Boggero's Portable Toilets and
Eugenia Boggero,

Petitioners,

vs.

South Carolina Department of
Revenue,

Respondent.

ORDER GRANTING MOTION TO
AMEND CAPTION


John D. McLeod, Judge
S.C. Administrative Law Court

Anthony R. Goldman
Judicial Law Clerk

20

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 13-ALJ-17-0218-CC

Boggero's Portable Toilets,)

Petitioner,)

v.)

South Carolina Department of)
Revenue,)

Respondent.)
-----)

COPY

ADMINISTRATIVE HEARING

Thursday, September 12, 2013
10:05 a.m. - 2:58 p.m.

The hearing before the Honorable John D. McLeod, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 12th day of September, 2013 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

Roy R. Hemphill, Esquire

MCDONALD, PATRICK, POSTON, HEMPHILL AND ROPER, L.L.C.
Post Office Box 1547
Greenwood, South Carolina 29648
Attorney for Gena Boggero

Hannah K. Metts, Esquire

MCDONALD, PATRICK, POSTON, HEMPHILL AND ROPER, L.L.C.
Post Office Box 1547
Greenwood, South Carolina 29648
Co-Counselor for Gena Boggero

Ann Marie Thompson, Esquire

SOUTH CAROLINA DEPARTMENT OF REVENUE
300-A Outlet Pointe Boulevard
Columbia, South Carolina 29211
Attorney for Respondent

Carol I. McMahon, Esquire

SOUTH CAROLINA DEPARTMENT OF REVENUE
300-A Outlet Pointe Boulevard
Columbia, South Carolina 29211
Attorney for Respondent

Also Present:

Gena Boggero, Protestant
John Wesley Butler, Field auditor
SCDOR
James L. McCutchen, Revenue Law Advisor II
SCDOR
Aaron M. Scheuer, Esquire
SCDOR
Alexander Chapel, Esquire
SCDOR

INDEX

OPENING STATEMENTS:

MR. HEMPHILL.	5
MS. THOMPSON.	7

MS. BOGGERO:

MR. HEMPHILL	EXAMINATION	11
MS. McMAHON	CROSS-EXAMINATION	50
MR. HEMPHILL	RE-EXAMINATION	84
MS. McMAHON	RE-CROSS-EXAMINATION	92



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

MR. BUTLER:

MS. THOMPSON	EXAMINATION	99
MR. HEMPHILL	CROSS-EXAMINATION	114
MS. THOMPSON	RE-EXAMINATION	129
MR. HEMPHILL	RE-CROSS-EXAMINATION	132
MS. THOMPSON	RE-EXAMINATION	136

MR. MCUTHEN:

MS. THOMPSON	EXAMINATION	137
MR. HEMPHILL	CROSS-EXAMINATION	154
MS. THOMPSON	RE-EXAMINATION	171

CLOSING STATEMENTS:

MR. HEMPHILL.	174
MS. THOMPSON.	178

Certificate	184

EXHIBITS

All Exhibits were marked prior to the deposition and introduced as follows:

Petitioner's Exhibit Number One (DHEC dual license)	13
Petitioner's Exhibit Number Two (PSAI certification)	16
Petitioner's Exhibit Number Five (Blank service agreement for a new customer)	24
Petitioner's Exhibit Number Five-A (Completed service agreement for a new customer)	24
Petitioner's Exhibit Number Three (PSAI continuing education certificate)	27
Petitioner's Exhibit Number Four (Papers required to dump at Greenwood Metro District)	27
Petitioner's Exhibit Number Six through Eighteen (Boggero's Portable Toilets invoices)	36
Respondent's Exhibit Number Two (Copy of Boggero's website)	52



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

Respondent's Exhibit Number Four	59
(Binders of invoices numbered 2 through 4449)	
Respondent's Exhibit Number Seven-A	82
(Invoices from Boggero's for 2009, Bates Number 30 through Bates Number 1316)	
Respondent's Exhibit Number One	103
(Proposed notice of adjustment)	
Respondent's Exhibit Number Three	105
(Department determination)	
Respondent's Exhibit Number Five	108
(Schedule based off of the sales invoices)	
Respondent's Exhibit Number Six	109
(Schedule of all the trash pickup sales)	
Respondent's Exhibit Number Seven	110
(Document of total sales that includes date, invoice number, Bates numbers and vendor)	
Respondent's Exhibit Number Eleven	112
(Penalty details, schedules and a billing explanation)	
Respondent's Exhibit Number Eight	138
(Tax policy manual)	
Respondent's Exhibit Number Nine	144
(South Carolina Private Letter Ruling 04-2 and revenue advisory bulletin dtd 2001)	
Respondent's Exhibit Number Ten	144
(Revenue advisory bulletin dtd 2010)	

STIPULATIONS

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



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 (Petitioner's Exhibit Numbers One through Eighteen
2 and Respondent's Exhibit Numbers One through
3 Ten were marked prior to the deposition.)

4 THE COURT: My name is John McLeod. My law clerk is
5 Anthony Goldman and our Court Reporter is Mr.
6 Sean Cary. Good to have you here sir. This is
7 Docket 13-ALJ-17-0218-CC, Boggero's Portable
8 Toilets versus South Carolina Department of
9 Revenue. Have you noted the appearances?

10 COURT REPORTER: Yes, sir.

11 THE COURT: Welcome to all of you today. Do you
12 wish to make opening statements? Ms. Thompson,
13 there is a mic behind it.

14 MR. HEMPHILL: Briefly, Your Honor.

15 THE COURT: Very well. Proceed, please sir.

16 MR. HEMPHILL: May it please the court?

17 THE COURT: Yes, sir.

18 MR. HEMPHILL: Your Honor, my name is Roy Hemphill,
19 and I practice law in Greenwood. Seated to my
20 right is my client, Gena Boggero. She does
21 business as Boggero's Portable Toilet Service.
22 Also seated behind me is Hannah Metts, who is
23 my partner in Greenwood. From time to time,
24 she may chime in if I'm not quite up to speed
25 on the law in the matter. Your Honor, we're



1 here because my client went through an audit,
2 I think, a year and a half ago when the
3 Department of Revenue came in and audited her
4 gross sales figures associated with her work.
5 Her work since 2005 or '06. Now her family
6 business is known as Boggero's, just generally
7 Boggero's, started by her family a number of
8 years ago -- decades ago in fact. But she has
9 operated a portable toilet business since 2005
10 -- since 2005. And she -- it is our position
11 that when the facts are heard in this case,
12 that the department is, for lack of a better
13 term, trying to put a square peg in a round
14 hole. It doesn't meet the definition of a
15 tangible piece of personal property being
16 either sold or rented, that being these
17 portable toilets. These portable toilets are
18 incidental to a very unique, very specialized
19 service that she provides, and that is the
20 hauling off in a safe manner, human waste. For
21 that reason, she provides a service and what
22 she does as a business providing this service,
23 and her gross sales are not subject to the
24 sales tax statute. That is our position in
25 this case and that is what we look to prove as



1 we go through this day.

2 **THE COURT:** Thank you. Ms. Thompson.

3 **MS. THOMPSON:** Good morning, Your Honor. May it
4 please the court? To my left is Carol McMahon.
5 She is going to be ---

6 **THE COURT:** Ms. McMahon.

7 **MS. THOMPSON:** --- standing with me as well. Also
8 from the department, we have James McCutchen,
9 Wes Butler and Aaron Scheuer ---

10 **THE COURT:** Good to have you here.

11 **MS. THOMPSON:** --- is watching. Your Honor,
12 everything Mr. Hemphill said is correct as far
13 as the factual background of the audit, and
14 what Ms. Boggero's asserting today. However,
15 the petitioner in this case does have the
16 burden since they are the taxpayer to show that
17 the tax is, in fact, not liable in this case.
18 However, we believe that that's not true. Our
19 position is that as our case and reply will
20 show that South Carolina Statutory law, case
21 law, the department's law stated in
22 administrative procedures, will show that
23 indeed 30 percent of the gross proceeds derived
24 from Ms. Boggero's business is, in fact,
25 subject to sales tax use in this case.



1 THE COURT: All right. Thank you. Anything briefly
2 in a reply to that?

3 MR. HEMPHILL: No, Your Honor.

4 THE COURT: Thank you. But it seems to me, and
5 correct if I'm wrong, but this boils down to a
6 matter of law or statutory construction. Am I
7 in error?

8 MS. THOMPSON: No, sir.

9 MR. HEMPHILL: Your Honor, we certainly feel like
10 the facts, that as coming from the witnesses,
11 do play an important role.

12 THE COURT: Well, I understand what you mean. In
13 other words, whether there was a rental or
14 whether she simply provides a service. But the
15 statute -- I've not examined the statute
16 because I wanted to come in with an open mind.
17 But I look forward to hearing you expound on
18 that.

19 MR. HEMPHILL: Thank you, Your Honor.

20 MS. THOMPSON: Thank you, Your Honor. Your Honor,
21 at this time Mr. Hemphill and I have actually
22 stipulated to the exhibits in this case.

23 THE COURT: Are they already marked?

24 MS. THOMPSON: They are marked, both sides.

25 MR. HEMPHILL: We have no objection of them coming



1 into evidence just -- first part of the case.

2 **THE COURT:** All right. Do you want to hand them up
3 or are you going to need them as you go through
4 them?

5 **MS. THOMPSON:** I might need mine as I go through if
6 you don't mind unless, Your Honor, needs a
7 copy.

8 **THE COURT:** Well, let's just announce for the court
9 reporter to take which exhibits for petitioner
10 and respondent have been admitted without
11 objection, and we won't have to go through all
12 that later. But you will lead off Mr.
13 Hemphill.

14 **MR. HEMPHILL:** Thank you, Your Honor. Petitioner
15 proposes to introduce Petitioner's Exhibits
16 One through Eighteen as -- and introduce them
17 as evidence in the case.

18 **THE COURT:** And there is no objection from ---

19 **MS. THOMPSON:** No, sir, Your Honor.

20 **THE COURT:** So noted. Admitted without objection
21 One through Eighteen for the Petitioner. Now,
22 Ms. Thompson.

23 **MS. THOMPSON:** Your Honor, the Respondents have
24 marked Exhibits Number One through Nine in this
25 case. All department documentations, summaries



1 of invoices and many invoices that we have back
2 here that Mr. Hemphill's looked through.

3 **THE COURT:** All right. Any objection, Mr. Hemphill?

4 **MR. HEMPHILL:** No, Your Honor.

5 **THE COURT:** Thank you. So Respondents Exhibit's One
6 through Nine ---

7 **COURT REPORTER:** Ten.

8 **THE COURT:** Nine she said. The court reporter says
9 ten.

10 **MS. THOMPSON:** That was my fault. Nine was supposed
11 to be a grouping, but it's fine. We can keep
12 it as the court reporter has it, with ten.

13 **THE COURT:** All right. One through Ten admitted
14 without objection. Proceed Mr. Hemphill.

15 **MR. HEMPHILL:** May it please the court? Your Honor,
16 Petitioner would call Gena Boggero to the
17 stand.

18 **THE COURT:** Be sworn please ma'am. He'll swear you
19 in.

20 **COURT REPORTER:** Ms. Boggero, do you solemnly swear
21 that the testimony you are about to give will
22 be the truth, the whole truth and nothing but
23 the truth, so help you God?

24 **MS. BOGGERO:** I do.

25 **GENA BOGGERO,** having been duly sworn, deposes and



1 testifies as follows:

2 **MS. BOGGERO - EXAMINATION BY MR. HEMPHILL:**

3 **MR. HEMPHILL:** Your Honor, what is your practice
4 with regards to counsel either standing or ---

5 **THE COURT:** Just as you please.

6 **MR. HEMPHILL:** Thank you, Your Honor.

7 Q: Can you state your full name for the record
8 please?

9 A: Eugenia Leah Boggero.

10 Q: Okay. What are you known as? What's your
11 first name?

12 A: Gena.

13 Q: Want you to make sure Gena that you speak up.
14 I know that this is an unusual setting for you
15 but please speak up so that the court reporter
16 can capture your name as well as make sure that
17 His Honor can hear you as well, okay?

18 A: Okay.

19 Q: Now, Gena, can you tell the Judge a little
20 about your family business, briefly.

21 A: Yes, my grandfather and great-grandfather
22 established the business in 1938. My father
23 was born in '42, and he actually started the
24 portable restroom business in '68. And I was
25 born in 1977 and I started taking it over from



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 him in 2005.

2 Q: Okay. Now, did Boggero's, in general, also
3 handle other things other than portable
4 toilets?

5 A: Yes. When we first started, my grandfather and
6 great-grandfather, it was actually scrap metal
7 septic tanks, installation, cleaning, repair,
8 pretty much that type of situation.

9 Q: Now, you know, if I call it a porta potty
10 business, does that offend you?

11 A: No. No, sir.

12 Q: Now, if -- when did the portable toilet or
13 port-o-potty business sort of get separated
14 from the rest of the business?

15 A: My father started it in 1968; however, when I
16 graduated from college, I came in and started
17 managing things a little bit more on that side.
18 And in 2005, I purchased it from him.

19 Q: Okay. Since 2005, it's largely been your
20 business, is that correct?

21 A: Yes, sir.

22 Q: All right. Now, can anybody get into that
23 business?

24 A: No, sir.

25 Q: Okay. Are there certain regulatory authorities



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 or regulatory requirements that occur?

2 A: There are.

3 Q: Okay. And what governing body dictates that?

4 A: Department of Health and Environmental Control.

5 Q: Okay. Let me hand you what has been marked and
6 admitted into evidence as -- let me get you to
7 tell the court what that is.

8 (Petitioner's Exhibit Number One was introduced into
9 the record at this time.)

10 A: This is a DHEC license that allows us to
11 basically haul waste with a license that DHEC
12 actually gives to us.

13 THE COURT: Why is it called a dual license?

14 A: Basically it allows for the removal of septic
15 tanks, portable toilets, holding tanks,
16 different forms of waste.

17 THE COURT: Thank you.

18 Q: Now, those things that you just clicked off:
19 septic tank, portable toilet and holding tanks.
20 What are those?

21 A: A septic tank is something that is attached to
22 a house. It's underground. It has a drain
23 line. You need to have the waste removed
24 periodically. A holding tank is actually if a
25 trailer comes in on a large construction site,



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 and they have running water and toilet in the
2 trailer, they will attach a holding tank that
3 serves as a mini-septic tank. And then a
4 portable restroom is actually just a restroom
5 with a small holding tank.

6 Q: Is it fair to say that those three things are
7 vessels or receptacles for human waste?

8 A: Yes.

9 Q: Okay. Now looking at that license, it sets
10 forth that, you know, you're supposed to meet
11 the requirements of DHEC and set forth -- sets
12 forth some regulations there. Are you familiar
13 with those regulations?

14 A: Somewhat, yes.

15 Q: Okay. Do those regulations set forth certain
16 requirements for how you are to maintain your
17 tanker trucks?

18 A: Absolutely. We have to have them inspected.

19 Q: Do you have tanker trucks?

20 A: Yes, sir.

21 Q: And how many?

22 A: We currently have two that are on the road.

23 Q: All right. Does that set forth certain
24 requirements with regards to the equipment
25 associated with your business?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: Yes.

2 Q: What is a sample of equipment that you have in
3 your business?

4 A: Well, we -- on our trucks, we have to have a
5 holding tank for the waste, a holding tank for
6 fresh water. We have to have a pump that will
7 operate both the removal of the waste, another
8 pump that will operate the removal of the water
9 from the fresh tank back into the holding tank.

10 Q: Hoses, valves and gauges?

11 A: Yes, sir.

12 Q: And how about in terms of your practices:
13 separation of fresh water from human waste,
14 spills, things of that nature. Are those
15 dictated by DHEC as a regulatory authority?

16 A: Absolutely.

17 Q: And how about -- are you supposed to keep
18 records about your activities?

19 A: We are not required by law. However, we do.

20 Q: Okay. Does DHEC require you to keep records of
21 your activities?

22 A: They don't require us. However, if we do have
23 a spill that is larger, you know, than a
24 certain amount, we are required by law to
25 contact DHEC.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: To report it?

2 A: Yes, sir.

3 Q: Okay. Are you subject to being audited by

4 DHEC, your records?

5 A: I'm sure. If there was a spill, they want to

6 know everything.

7 Q: Have you ever been audited by DHEC?

8 A: No, sir.

9 Q: Has your license with DHEC ever been suspended?

10 A: No, sir.

11 Q: Has it ever been revoked?

12 A: No, sir.

13 Q: Have you ever been cited by DHEC for anything?

14 A: No, sir.

15 Q: All right. Now, is there a particular trade

16 group that you or your company is a part of?

17 A: Yes, sir.

18 Q: What is that called?

19 A: The PSAI organization, which is Portable

20 Sanitation Association International.

21 Q: Okay. Let me hand you what has been marked as

22 Petitioner Exhibit Two. See if you can

23 identify that identify that document?

24 (Exhibit Number Two was introduced into the record at

25 this time.)



- 1 A: Yes, sir.
- 2 Q: All right. And what is that?
- 3 A: This is my certification of where I went
4 through the training to be PSAI certified.
- 5 Q: Okay. And again, PSA (sic), that acronym
6 stands for what?
- 7 A: Portable Sanitation Association International.
- 8 Q: Okay. Is that a trade organization
9 specifically dedicated to portable toilets?
- 10 A: Yes, sir.
- 11 Q: It really doesn't include septic tank haulers
12 does it?
- 13 A: No, sir, not -- huh-uh.
- 14 Q: Okay. Now is -- are you required to be a
15 member of that trade group by DHEC?
- 16 A: No, sir.
- 17 Q: Is being a member of this trade group and being
18 certified by this trade group, is that in
19 addition to DHEC requirements?
- 20 A: Yes, sir.
- 21 Q: How long have you been a part of that trade
22 group?
- 23 A: Since I started the business -- or I took over
24 the business from my daddy.
- 25 Q: Okay. What all is involved in being PSAI



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 certified?

2 A: You have to actually go through training. It's
3 very long.

4 Q: Right.

5 A: You have to know all the ins and outs of
6 everything that there is to know as far as the
7 portable restroom business.

8 Q: Okay. Are there various standards associated
9 with that?

10 A: Yes, sir.

11 Q: Are they contained in a notebook?

12 A: Yes, sir.

13 Q: Okay. Are you familiar with this notebook?

14 A: Yes, sir.

15 Q: All right. If I ask you something about the
16 PSAI standards and you need to refresh your
17 recollection, just let me know and I will hand
18 you the notebook, okay?

19 A: Okay.

20 Q: All right. Now, certification standards, you
21 know, to be PSAI certified, what are the
22 various standards associated with that?

23 A: I don't understand.

24 Q: Okay. Let me ask it another way. How does --
25 in order to be PSAI certified, you have to



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 have certain minimum things that you do in your
2 business, correct?

3 A: Yes, sir.

4 Q: Okay. What are the various ratios of putting
5 a portable toilet on a site for a consumer,
6 things of that nature?

7 A: Through the PSAI organization when you become
8 a member, you are actually are allowed
9 stickers to place inside your units which say
10 this is above and beyond. They do have certain
11 regulations: one to ten ratio as far as if
12 there are ten employees on a job site on a
13 forty hour work leave, the minimum requirement
14 is one unit per ten employees.

15 Q: Okay. Now, you talk about employees, you talk
16 about job sites, just cover with the court, you
17 know, who is it that are your customers? Just
18 generally describe that.

19 A: Construction workers.

20 Q: Okay. But do you also provide portable toilets
21 for special events?

22 A: Yes, sir.

23 Q: Okay. Do you also provide portable toilets for
24 other occasions?

25 A: Yes, sir.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Can you tell the court about that.

2 A: Weddings, family reunions, barbeque festivals,
3 just anything where the public is not allowed
4 a restroom is where we come in.

5 Q: Okay. Now about what percent of your business
6 is entailed with construction sites?

7 A: Eighty percent would be correct in saying for
8 a construction site. Twenty percent is special
9 events because most of your special events are
10 during your summer months when people are
11 outdoors.

12 Q: Are there occasions where you -- your company,
13 provides a service to people who have permanent
14 toilets that are their own?

15 A: Absolutely.

16 Q: Can you tell the court about that?

17 A: We actually have several hunt clubs, things
18 like that, where they have purchased a unit,
19 and we just go and service it. We don't
20 provide anything other than just to remove the
21 waste. We also have mud bogs and things like
22 that where they have permanent units that they
23 just call us, and we go in and service them.

24 Q: All right. So 80 percent of your business,
25 roughly, is putting a portable toilet, one or



- 1 more portable toilets, according to that ratio,
2 on a construction site, correct?
- 3 A: Yes, sir.
- 4 Q: Is a portable toilet required by a building
5 code ---
- 6 A: Yes.
- 7 Q: --- or ordinance?
- 8 A: Yes, sir. Greenwood actually requires you to
9 have a portable restroom on a construction
10 site.
- 11 Q: Okay. Do you do business outside of Greenwood
12 County?
- 13 A: Yes, sir. We do.
- 14 Q: Any county -- counties that surround Greenwood
15 basically?
- 16 A: Just the very close areas: Newberry, Saluda,
17 Edgefield, McCormick, Abbeville.
- 18 Q: Okay. Generally speaking, does the PSAI
19 standards require that the portable toilet be
20 serviced at a minimum threshold?
- 21 A: Yes, sir. The requirements on the PSAI are one
22 service every week per unit.
- 23 Q: Okay. What if you know that it does not need
24 servicing because there's -- let's say less
25 than ten employees on a construction site, and



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 you know if you take a trip out there it's not
2 going to be full or it's not going to have much
3 in it, what do you do?

4 A: We still service them.

5 Q: Okay. How do you say -- at any given time, how
6 many portable toilets do you have out in the
7 field so to speak?

8 A: Right now we have roughly around 100 to 120
9 units.

10 Q: Okay. Do you set these units up on routes?

11 A: Yes, sir.

12 Q: And these routes -- do you always -- is it your
13 practice to always service a portable toilet
14 every week?

15 A: Yes, sir. Absolutely.

16 Q: Is that done via this route system you're
17 telling me about?

18 A: Yes, sir.

19 Q: Okay. Now, it may be basic to you but we here
20 in this courtroom don't know much about
21 servicing a portable toilet. Can you tell us
22 about it?

23 A: Sure. You basically pull up to a job site and
24 you turn the pump on. You remove the wand and
25 insert it into the holding tank for the



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 restroom. You pull it out, and then the
2 suction pulls all the waste out. You turn the
3 wand off -- shut the pump off, replace the
4 wand. Then you take a five gallon bucket, you
5 fill it with water and you add your deodorizer
6 and you place it back into the unit. And then
7 you sanitize the entire unit down with soap and
8 water.

9 Q: And is that according to PSAI standards?

10 A: Yes, sir.

11 Q: Okay. Now, someone -- a contractor comes to
12 you or calls you up and they are new to your
13 business, you're not familiar with them, you
14 don't have a file on them and they need a
15 portable toilet. What is the paperwork that
16 you generate to transact with that person.

17 A: For new customers, if they've never done
18 business with Boggero's, we actually have two
19 separate things that they sign. One is a
20 service agreement, and it basically lets them
21 know our returns and our policies. We have
22 them sign that and they then return that to us.
23 And when we go to deliver the unit, we actually
24 have them sign another statement saying that we
25 delivered it. It was at this site. This is



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 who delivered it. This is, you know, how many
2 times they will have it serviced, so on and so
3 forth.

4 Q: Let me show you something that has been marked
5 as Exhibit Five.

6 (Petitioner's Exhibit Number Five was introduced into
7 the record at this time.)

8 Q: Can you tell us what that is?

9 A: This is our service agreement for a new
10 customer.

11 Q: Okay. Now that form is blank, correct?

12 A: Yes, sir.

13 Q: Let me show you something that has been marked
14 and entered into evidence as Exhibit 5-A.

15 (Exhibit Number Five-A was introduced into the record
16 at this time.)

17 Q: Can you identify that?

18 A: Yes, sir.

19 Q: Okay. That is a form that has been filled out,
20 correct?

21 A: Yes, sir.

22 Q: And signed by you and a particular contractor,
23 correct?

24 A: That's correct.

25 Q: Okay. So Exhibit Five is a blank form and



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Exhibit Five-A is one that is signed and dated,
2 correct?

3 A: Yes, sir.

4 Q: Okay. Now Five-A is dated when? If you will
5 look on the second page.

6 A: November the 16th, 2012.

7 Q: Okay. Now the audit period that we are here
8 for today was attached here as '09, '10 and
9 '11, correct?

10 A: Yes, sir.

11 Q: Explain to the court why you don't have any
12 signed service agreements from that period?

13 A: Well, when we pick up the unit, we actually do
14 keep these on file until they pay for
15 everything in full. If they don't owe us any
16 money and the job is done, there is no need for
17 us to keep this because we honored our part
18 and they honored their part.

19 Q: Okay. So, did you -- would you for that time,
20 '09, '10, and '11, did you dispose of all of
21 your service agreements?

22 A: Yes, sir.

23 Q: Okay. I'm going to ask you. The forms that
24 are represented in Five and Five-A, are those
25 the exact same forms that customers that paid



1 your money in exchange for a service, signed
2 2009, 2010, 2011?

3 A: Yes, sir.

4 Q: Okay. And the reason why you don't have any
5 signed copies is because they were disposed
6 after the transaction was complete?

7 A: Yes, sir. We actually have a computer program
8 that when they go and deliver a unit, they
9 bring the sheet back in showing that it was
10 delivered and it was signed. We put it into
11 our computer program. After it's picked up it
12 also goes into a computer program, and any
13 notes about, you know, things that may have
14 happened on the job site so on and so forth are
15 put in the computer as well. So, we've got all
16 our information in our computer program. We
17 just -- there's just no sense in us keeping
18 this.

19 Q: Okay. So it goes paperless after that point.
20 Is that correct?

21 A: Correct.

22 Q: My question for you is does Five and Five-A
23 represent the same agreement that was in place
24 for customers in '09, '10, and '11?

25 A: Absolutely.



1 Q: Okay. Before I get in terms of that, I do need
2 to get you to get us oriented to your Exhibit
3 Three.

4 (Exhibit Number Three was introduced into the record
5 at this time.)

6 Q: What is that?

7 A: That is where we went to another class through
8 the Pumper Cleaner Expo and took a class in
9 proper portable restroom maintenance on your
10 service truck.

11 Q: So, is that PSAI continuing education?

12 A: Yes, sir.

13 Q: All right. Now, Exhibit Four, can you get the
14 court oriented to that.

15 (Exhibit Number Four was introduced into the record
16 at this time.)

17 A: These are our papers that we are required to
18 fill out by Greenwood Metro District.

19 Q: What is Greenwood Metro District?

20 A: It is the place where we empty our waste, and
21 they process it and handle it.

22 Q: Okay. Can just anybody show up there to dump
23 stuff into their public treatment work system?

24 A: No, sir. Absolutely not.

25 Q: What do you have to have to be able to do that?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: We have to have a license through DHEC. We
2 have to have the proper equipment. You have to
3 have -- they have certain guidelines that you
4 have to follow when you get there. It is a
5 very thorough process that they use.

6 Q: And that's a blank form, but was that form in
7 place and required of you and your company
8 before you could dump human waste into their
9 system in '09, '10, and '11?

10 A: Yes, sir. The layout is different, but it is
11 -- it is the same.

12 Q: And the caption of that document is what?

13 A: Greenwood Metro District. GD Hauled Waste
14 Manifest.

15 Q: Hauled Waste Manifest, correct?

16 A: Yes, sir.

17 Q: And you have to have a DHEC license to fill
18 that out and to engage in that activity?

19 A: Absolutely.

20 Q: Okay. Now, let's go back to that service
21 agreement form.

22 **THE COURT:** Let me ask a question before we go
23 forward. You don't have the paper, but you
24 still have all this information on the
25 computer?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: Absolutely.

2 THE COURT: Thank you.

3 Q: Looking at Exhibit Five and Five-A, these are
4 service agreements, correct?

5 A: Yes, sir.

6 Q: All right. Just taking Exhibit Five, walk us
7 through the service agreement. First of all,
8 you caption this document how? What do you
9 call it?

10 A: Service agreement.

11 Q: Did you author this agreement back in 2005?

12 A: Yes, sir.

13 Q: All right. Why don't you call it a rental
14 unit?

15 A: Because we do not, never have, rented anything.

16 Q: Okay. You don't, you know, rent a portable
17 toilet per day?

18 A: No, sir.

19 Q: Per week?

20 A: No, sir.

21 Q: Per month?

22 A: No, sir.

23 Q: Okay. As you go through this document, it's in
24 paragraph two, it says, "the customer will be
25 responsible for the following:" what kind of



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 payments?

2 A: Service.

3 Q: It goes on to say that it sets forth the number
4 of portable toilets, and that is a fill in the
5 blank, correct?

6 A: Yes, sir.

7 Q: And then it says cleaned number of times per
8 week, correct?

9 A: Yes, sir.

10 Q: And can a customer request that it be cleaned
11 more than once per week according to PS -- PASI
12 (sic) standards?

13 A: Yes, sir.

14 Q: PSAI standards?

15 A: Absolutely.

16 Q: So, if they ask that it be cleaned more than
17 once per week, is there an extra charge for
18 that?

19 A: We just charge an extra service.

20 Q: Okay. Generally speaking, what is your service
21 charge that you charge a customer, say, on a
22 construction job?

23 A: \$20 per service.

24 Q: In Greenwood County.

25 A: In Greenwood.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Outside of Greenwood County?

2 A: \$22 per service.

3 Q: And that's \$22 per service?

4 A: Yes, sir.

5 Q: And that's according to your standards, once
6 per week?

7 A: Correct.

8 Q: If they want it cleaned more often because they
9 think that it needs cleaned, will you do that?

10 A: Yes, sir.

11 Q: Will you charge them for that extra service?

12 A: Yes, sir.

13 Q: All right. Let's move onto paragraph three.

14 It says, something will be invoiced every four
15 weeks -- that is 28 day billing cycle. What is
16 it that will be invoiced every four weeks?

17 A: The services.

18 Q: Did it say, just the use of or rental?

19 A: No, sir. Services.

20 Q: Okay. Paragraph four. Please read that to us.

21 A: "From the date of this agreement, portable
22 toilets and/or dumpsters will be delivered for
23 use by the customer upon request without the
24 signing of another agreement. It is intended
25 that this agreement will cover ongoing and



1 future portable toilets and/or dumpsters
2 delivered in use."

3 Q: Okay. By putting that language in there, did
4 you mean to limit your customer to any time
5 period that they could use this toilet?

6 A: No, sir.

7 Q: Okay. Paragraph six. Actually, what is
8 paragraph five. Take a minute to read that.
9 Does that talk about late payments?

10 A: Yes, sir.

11 Q: Okay. Basically it says if you're late-- if
12 your -- if your late, what will happen?

13 A: We will charge a one percent -- one point five
14 percent.

15 Q: But what will be terminated?

16 A: The service.

17 Q: Okay. Paragraph six, if you could read that?

18 A: "The customer understands that service fees for
19 the use of portable toilets and/or dumpsters
20 may increase in the future and the undersigned
21 will be responsible for the increased payments
22 without the signing of another agreement.
23 Thirty day notice will be given the undersigned
24 prior to rate increase via U.S. Postal
25 Service."



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: All right. So, is it fair to say you are
2 putting the customer on notice that in the
3 future your charges will increase?

4 A: Yes, sir.

5 Q: And no new agreement is necessary?

6 A: No, sir.

7 Q: All right. And what do you call these fees?

8 A: Service fees.

9 Q: Service fees. You don't call it rental charge,
10 do you?

11 A: No, sir.

12 Q: Lets skip over the second page, that being
13 paragraph nine. If you will read that.

14 A: "The duration of the service period is
15 determined from date of shipment on our part as
16 indicated on this service agreement until date
17 of pickup order."

18 Q: Okay. Now, it does not say you will pick this
19 up at the end of the month, correct?

20 A: Correct.

21 Q: It does not say that you will pick it up at the
22 end of six months, correct?

23 A: Correct.

24 Q: Would agree with me that that's an open ended
25 ---



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

- 1 A: Yes, sir.
- 2 Q: --- time frame?
- 3 A: Yes, sir.
- 4 Q: All right. And they're just supposed to let
- 5 you know when they need it picked up, correct?
- 6 A: Correct.
- 7 Q: All right. So you have employed this service
- 8 agreement, that's 2005, for your business all
- 9 the way through the audit period and until --
- 10 and you continue to use this form, correct?
- 11 A: Yes, sir.
- 12 Q: All right. Now, you formed a website?
- 13 A: Uh-huh (affirmative response).
- 14 Q: Okay. And when did you form that website?
- 15 A: Oh, a long time ago. I don't know the exact
- 16 date.
- 17 Q: Okay. Did you form it or did you have somebody
- 18 else do it?
- 19 A: My daddy came in and was wanting us to get on
- 20 the wagon, get on the wagon, everybody was on
- 21 the internet, and I didn't have time. So, I
- 22 actually called a lady by the name of Suzanne
- 23 that works for Greenwood.Net, which is our
- 24 internet provider, and that's what she does on
- 25 her days off. And I had done some research and



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 pulled like four or five different sites that
2 I saw and said I like this from this site, I
3 like this from that site; just make it happen,
4 and she did.

5 Q: Okay. Now, on your internet -- excuse me, on
6 your website, it speaks in terms of you renting
7 these things, correct?

8 A: Right.

9 Q: How do you explain that when you compare it
10 with your service agreement.

11 A: I didn't know the wording was going to be
12 something that I was going to be facing in
13 court. I just wanted to get something out
14 there to show the public what we had to offer.
15 And, you know, as far as our family and the
16 services that we provided and so on and so
17 forth.

18 Q: Okay. Now, the document that you present to a
19 prospective customer is a service agreement,
20 correct?

21 A: Yes, sir.

22 Q: They don't sign anything on the web page do
23 they?

24 A: No, sir.

25 Q: All right. Now, after you provide the ser- --



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 while you're providing the service, do you bill
2 on a particular cycle?

3 A: Yes, sir. We bill on a 28-day billing cycle,
4 which is 4 weeks, which for 95 percent of our
5 customers is for services.

6 Q: Okay. Let me hand you Petitioner's Exhibits 6
7 through 18. See if you can identify that.

8 (Exhibits Number Six through Eighteen were introduced
9 into the record at this time.)

10 A: These are our invoices.

11 Q: Now literally during this period, 2009 through
12 2011, there are thousands of these, correct?

13 A: Yes, sir.

14 Q: All right. Because you send one to the
15 customer every 28 days, correct?

16 A: Yes, sir.

17 Q: In fact, they're contained in a stack of
18 notebooks back here on the bench, correct?

19 A: Yes, sir.

20 Q: All right. That -- those have been generated
21 as a part of the discovery in this case,
22 correct?

23 A: Yes, sir.

24 Q: All right. That is just a representative
25 sample of that?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: Yes, sir.

2 Q: All right. Now, what are -- if you could take
3 us through that, that invoice that you sent
4 out.

5 A: Uh-huh.

6 Q: Just take number six there. If you could sort
7 of orient the court to, you know, who you did
8 something for.

9 A: Okay. The company name is Eighteen Mill
10 Construction Company. The job site was 114
11 Shadow Wood Lane in Greenwood. And the service
12 period was from January the 19th, 2009 to
13 February the 15th of 2009, which is 28 days.
14 And they have one restroom and it was serviced
15 once a week on a 4-week billing cycle, which is
16 28 days, and the total comes to \$80. However,
17 they are a very preferred customer of ours so
18 we do give a discount, which is ten percent.
19 So, that's where the \$8 comes off, which is
20 \$72.

21 Q: Okay. But the charge you send the customer is
22 called what?

23 A: Servicing.

24 Q: What exactly was it called, and I mean ---

25 A: Restroom we service.



- 1 Q: Does it see restroom weekly rental?
- 2 A: No, sir.
- 3 Q: Does it say monthly rental?
- 4 A: No, sir.
- 5 Q: Is the word rental anywhere on this invoice?
- 6 A: No, sir.
- 7 Q: Exhibit Seven, is that another example of a
- 8 construction invoice ---
- 9 A: Yes, sir.
- 10 Q: --- that indicates for -- is another \$80
- 11 charge, correct?
- 12 A: That's correct.
- 13 Q: And is that representative -- since it is a
- 14 construction invoice. is that representative of
- 15 about 80 percent of your company business?
- 16 A: Absolutely.
- 17 Q: Now, Exhibit Seven. Is that another
- 18 construction invoice?
- 19 A: Yes, sir.
- 20 Q: Same with Nine?
- 21 A: Yes, sir.
- 22 Q: Hope I didn't skip one in there -- seven,
- 23 eight, nine. How about ten. Tell us about
- 24 Exhibit Ten.
- 25 A: Okay. Number Ten is for a Presbyterian



1 College. They have several intermural fields,
2 softball fields, football fields, things like
3 that. And we provide the restroom servicing
4 for these events.

5 Q: Okay. Are those portable toilets at
6 Presbyterian College your portable toilets?

7 A: They're ours.

8 Q: Okay. And how long have they been at PC?

9 A: I could not tell you the year, but they have
10 been there forever.

11 Q: Okay.

12 A: For a very long time.

13 Q: How many -- how many do you have at PC?

14 A: I want to say we currently have five, which the
15 number has not changed.

16 Q: All right. This invoice shows only one.

17 A: Right.

18 Q: Do you invoice each one of them separately?

19 A: Yes, sir. Uh-huh.

20 Q: Because they are different locations around PC?

21 A: Correct. They want to be able to differentiate
22 between this unit, that unit, so on and so
23 forth.

24 Q: So, for ever how many years those five portable
25 toilets have been at PC, have you provided



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 weekly service?
- 2 A: Yes, sir.
- 3 Q: And have you generated invoices for that?
- 4 A: Yes, sir.
- 5 Q: And have they been paid promptly?
- 6 A: Yes, sir.
- 7 Q: How about Exhibit Eleven, is that a
- 8 construction site example?
- 9 A: Yes, sir.
- 10 Q: How about Exhibit Twelve?
- 11 A: That is also a construction site.
- 12 Q: I notice instead of being \$80, Exhibit Twelve
- 13 is \$88. Can you explain that?
- 14 A: Yes, sir. This is located in Calhoun Falls,
- 15 which is about a 45 minute ride.
- 16 Q: Is that Abbeville County?
- 17 A: Yes, sir.
- 18 Q: Not Greenwood County?
- 19 A: That's correct.
- 20 Q: How about Exhibit Thirteen?
- 21 A: This is a Hunter Construction site as well.
- 22 Q: Okay. Now, I notice on Exhibit Thirteen, you
- 23 have another line item charge. Can you explain
- 24 that?
- 25 A: Yes, sir.



- 1 Q: First of all, tell us who you billed it to?
- 2 A: Okay. It was for Treyhill Corporation.
- 3 Q: Is that a construction company?
- 4 A: Yes, sir.
- 5 Q: Where was the job site?
- 6 A: At Erskine College.
- 7 Q: All right. And you have the first entry as
- 8 January 19, 2009 through February 5, 2009,
- 9 correct?
- 10 A: That's correct.
- 11 Q: And how much was that?
- 12 A: It was originally \$80, but we only serviced it
- 13 three times instead of four. So, therefore,
- 14 the deduction comes in for us not servicing it
- 15 four times.
- 16 Q: Okay. And that's where it says price per -- it
- 17 says \$80 ---
- 18 A: Yes, sir.
- 19 Q: --- and extension and then you have -- you
- 20 charged them \$60.
- 21 A: Uh-huh (affirmative response).
- 22 Q: Why did you charge him less?
- 23 A: Because we only serviced it three times.
- 24 Q: All right. Now, you have an extra service in
- 25 there tossed in for the date January 28, 2009?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 A: Uh-huh (affirmative response).
- 2 Q: Why is that?
- 3 A: Lot's of times you will have accidents, I
- 4 guess, is the form for the perfect way to say
- 5 it. People vandalize sometimes, you know,
- 6 construction workers get sick and they can't
- 7 make it to the restroom. So, we do have to go
- 8 out there and service it again.
- 9 Q: So, in that instance you got a call that needed
- 10 servicing, correct?
- 11 A: Yes, sir.
- 12 Q: And you made a trip to Due West.
- 13 A: Uh-huh (affirmative response).
- 14 Q: Your truck made a trip to Due West ---
- 15 A: Uh-huh (affirmative response).
- 16 Q: --- to haul waste?
- 17 A: Yes, sir.
- 18 Q: Clean up?
- 19 A: Yes, sir.
- 20 Q: And you charged for that, correct?
- 21 A: That's correct.
- 22 Q: That was not included in a monthly charge,
- 23 correct?
- 24 A: Correct.
- 25 Q: Exhibit Fourteen. Orient us to that.



1 A: This is for Stand Church. They own their own
2 restroom, and they just call us once in a blue
3 moon to service it when they have like church
4 picnics and things like that. They call us,
5 and we go and clean it.

6 **THE COURT:** How much was that?

7 A: It was \$35.

8 Q: Okay. The date on that?

9 A: It was the 10th of July, 2009.

10 Q: Okay. I noticed the one before was \$25. This
11 was \$35. Do you know why it was a different
12 charge.

13 A: When they set up for a very long period of time
14 -- Stand Church only does like maybe four or
15 five events a year. So when they sit up for
16 about two or three months, they build a lot of
17 waste, and it's more than the average ten
18 gallons that you would remove from a standard
19 restroom. You're looking at about 20 to 25
20 gallons.

21 Q: Okay. So you charged a higher rate for a
22 higher level of service, correct?

23 A: Yes, sir.

24 **THE COURT:** Does it have anything to do with the
25 fact that they own their own unit?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: No, sir.

2 **THE COURT:** Thank you.

3 Q: Now, Exhibit Fifteen. Can you get us oriented
4 to that? Was that to an individual?

5 A: Yes, sir. They were building their own house.

6 Q: Okay. So they're acting, say, as a general
7 contractor?

8 A: Right.

9 Q: And is that an extra service charge on March
10 17th, 2010?

11 A: Yes, sir. Well, it's just for one service,
12 that's all they get.

13 Q: Okay. Who owned that unit, do you know?

14 A: We actually owned it, but it was a very old
15 unit and we do try to help people out as much
16 as we can, and they wanted to just have one out
17 on their farm. So, we told them instead of us
18 having to pay to dispose of it at the land
19 field, as long as the tank is in good
20 condition, you know, that it's not going to
21 affect anything, so they actually came and
22 picked one up. And we let them have it to keep
23 down on the farm, and they just call us
24 whenever they want it serviced.

25 Q: Okay. Is that relationship over or continuing;



1 that business relationship with this particular
2 client or customer?

3 A: Whenever they call us. It's still ongoing, but
4 it's whenever they call.

5 Q: Okay. How about Exhibit Sixteen?

6 **THE COURT:** All right. Let me ask a question here.
7 Hypothetical situation where that unit is on
8 the farm, say, and they keep it for a year and
9 only call you three times, for these three
10 charges. Is that it and that's for the
11 service?

12 A: Yes, sir. That's all.

13 **THE COURT:** Okay. Regardless of the length of time
14 it stays there.

15 A: Well, for the church, for example. We've done
16 it several times. We know it's way over used.
17 So we do have to pay a little bit more to
18 dispose of it because it's more waste. But in
19 this situation, it was just the husband and the
20 wife using it. They called us once a month,
21 and it wasn't that much waste that we had to
22 remove. Because we actually dispose -- when we
23 go to dispose our waste, they meter our trucks
24 so they know exactly how much waste we put in.
25 So, if we get more waste say from a holding



1 tank, which is about 300 gallons, we have to
2 charge more.

3 **THE COURT:** Yes, ma'am, but what I'm interested in
4 is knowing that when you have a long-term
5 placement of a unit with very few calls, that
6 you don't charge them for the extra time so to
7 speak, the months.

8 A: No, sir. We have several hunt clubs, Christian
9 brothers, I can name probably 15 that they --
10 when deer season starts, September the first,
11 they will call us and say we want you to start
12 services. I'll tour it.

13 **THE COURT:** But it stays out there all year?

14 A: Yes, sir.

15 **THE COURT:** Thank you. I understand.

16 Q: All right. Exhibit Sixteen. Can you explain
17 that?

18 A: Yes, this is our -- one of our mud bog people,
19 and they actually own their own units.

20 Q: Okay.

21 A: We don't have -- they actually came to our
22 place of business one time, explained their
23 situation -- and we have some old tanks in the
24 back that we were going to have to pay to
25 dispose of. So, they asked if they could have



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 them. We gave them to them. And they actually
2 took and built antique wooden outhouses around
3 the tanks. And when they go to have a mud bog,
4 they just call us up; and we charge them the
5 same as we would if it was our toilet.

6 Q: Okay. So, that explains the circumstances
7 around Exhibit Sixteen?

8 A: Yes, sir.

9 Q: And Exhibit Seventeen.

10 A: This is the same customer, for the mud bog.

11 Q: Okay. All right. And Exhibit Eighteen?

12 A: Okay. This is another lady who has purchased
13 her own unit and we just go out there when she
14 calls. It's the same charge as if it was our
15 unit. There's no difference.

16 Q: Okay.

17 A: Because we are not charging for the use of our
18 restroom. We are simply charging for the
19 removal of the waste.

20 Q: All right. Now, a couple of these last ones
21 that we looked at, there is nothing on here
22 that indicates who owns the unit, correct?

23 A: Yes, sir.

24 Q: You just have independent knowledge of that?

25 A: Right.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: All right. Let's go back to 80 percent of your
2 business, the construction type work.

3 A: Uh-huh (affirmative response).

4 A: Where you are delivering a unit and every four
5 weeks you're billing either \$80 or \$88 with a
6 discount, without a discount?

7 A: Correct.

8 Q: What are you charging for?

9 A: We only charge for the service. That's all
10 we've ever charged for, is for the service. If
11 they call -- let's just say a construction
12 company calls and says we are shutting down our
13 crew for three weeks during the holidays.
14 Please stop service December 15; start back
15 January the 3rd. We don't bill them for those
16 weeks because we didn't service them.

17 Q: Okay. How do you view these portable services
18 in relation to what you do for a living?
19 Excuse me, how do you view these portable
20 toilets in relation to what you do for a
21 living?

22 A: They simply hold -- they simply hold the waste.
23 We provide for them to use, but they are not
24 going to use it unless we're there. It doesn't
25 matter if somebody calls us for the five gallon



1 bucket and says, we pushed our curtain around
2 it, how much do you charge? Greenwood, \$20;
3 outside of Greenwood, \$22.

4 Q: So do you view these things as a vessel or a
5 receptacle for collecting human waste?

6 A: Yes, sir. Absolutely.

7 Q: Do you service the human waste?

8 A: Yes, sir.

9 Q: Are you licensed to do that?

10 A: Yes, sir.

11 Q: Are you certified by your trade group to do
12 that?

13 A: Yes, sir.

14 Q: When you put one there, is there any definite
15 term that it's going to be there? Are you
16 going to come pick it up unless they come pay
17 you your money?

18 A: If they call us, we'll pick up.

19 Q: According to your service agreement, is it for
20 a month? Does it have a term on it?

21 A: No, sir.

22 Q: Is it for six months?

23 A: No, sir.

24 Q: It's indefinite isn't it?

25 A: Yes, sir.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: And you'll keep servicing it as long as it's in
2 that location, is that right?

3 A: Yes, sir.

4 Q: Now, what about -- you know, it's got to have
5 supplies in it and things of that nature. Do
6 you provide that?

7 A: Yes, sir.

8 Q: And is that sort of secondary to what you do?
9 I mean, does it need supplies?

10 A: Well, if we don't provide the deodorizer, it
11 gets pretty bad.

12 Q: Okay.

13 A: And they -- we leave toilet paper.

14 Q: Is that for the customer's personal comfort?

15 A: Yes, sir.

16 Q: Or perhaps a necessity?

17 A: Yes, sir. There you go.

18 Q: So, what's the true object of your business?

19 A: We remove waste.

20 Q: Is that a rent or is that a service?

21 A: That is a service.

22 Q: Okay. Thank you, Ms. Boggero. Please answer
23 any questions the opposing counsel has.

24 THE COURT: Ms. McMahon.

25 MS. BOGGERO - CROSS-EXAMINATION BY MS. McMAHON:



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 MS. McMAHON: How are you doing today Ms. Boggero?

2 A: I'm good, thank, you.

3 Q: It's good to see you again.

4 A: Thank you. You too.

5 Q: Do you need some water before we get started.
6 It's been kind of a lengthy -- do you want some
7 water?

8 A: I do -- I don't know if there is any in here.

9 MR. HEMPHILL: I'll get you some.

10 THE WITNESS: Okay.

11 Q: Ms. Boggero, you just testified that your
12 portalets (ph) aren't out there for any length
13 of time; but you also said that your ser- --
14 you don't have any service agreements because
15 those -- all that work is done from 2009 to
16 December 2011. So isn't it safe to say that
17 all the portalets (ph) or portable toilets or
18 any other amenities that you provided during
19 that time frame that those jobs are done?

20 A: That's correct.

21 Q: And the provision of the portable toilets for
22 that period; all that's been done ---

23 A: Yes.

24 Q: --- and it's all been paid for?

25 A: Yes, ma'am.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: I'll show you what has been entered as
2 Petitioner's Number Two. You discussed this
3 already with counsel. Now, this -- is this --
4 is this -- if you just take a look at it.

5 (Respondent's Exhibit Number Two was introduced into
6 the record at this time.)

7 THE COURT: Identify it please. What exhibit is it?

8 MS. McMAHON: It's Petitioner's -- Respondent's
9 Number Two.

10 Q: Yes, ma'am. Does that accurately depict your
11 website?

12 A: Yes, ma'am.

13 Q: Boggero's Portable Toilets?

14 A: Boggero's.

15 Q: Boggero's, sorry.

16 A: We get it all day.

17 Q: Yeah, Boggero's. I'll get it right. And is
18 this the website that was up and running
19 January of 2009 through December of 2011?

20 A: I would think so.

21 Q: Now, you indicated that you had contracted this
22 out for development of this website?

23 A: Yes, sir.

24 Q: And have you paid for that?

25 A: Yes, ma'am.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: Okay. And have you requested that any changes
2 be made to the website?

3 A: No, ma'am.

4 Q: On the website, it talks about septic tanks.
5 Now, are you in the septic tank business as
6 well or is that your sister's.

7 A: My father -- it was all together and my father
8 recently passed away. And I had already
9 purchased the portable restroom business from
10 him. And he left it to -- the septic tank
11 division to my two sisters.

12 Q: So, you basically do portable toilets, holding
13 tanks and waste removal.

14 A: Yes, ma'am.

15 Q: With your portable toilets, do you provide
16 other facilities like sinks, soap, toilet
17 papers, towels?

18 A: (Nods head affirmatively.)

19 Q: Do you use chemicals in the business of
20 disposing of your -- the human waste --
21 chemicals? Do you purchase chemicals to treat
22 the waste with?

23 A: Yes, ma'am, yes ma'am.

24 Q: And are you required to do that?

25 A: Yes, ma'am.



1 Q: In your website on the first page, again
2 Respondent's Number Two, you talk about
3 providing an adequate number of restroom
4 trailers and portable toilets. In your
5 business, in order to generate a fee, isn't it
6 a fair statement that in order to get the
7 waste, you provide the portable toilets or the
8 restroom trailers.

9 A: Well, if they have their own units that works
10 even better for us because we don't have to ---

11 Q: Yes, ma'am, but in order to get to the waste,
12 you either have to have -- your client has to
13 have the portable toilet or the restroom
14 trailer, or you have to provide that tangible
15 personal property to them?

16 A: Yes, ma'am.

17 Q: Now on the next two pages of Respondents Number
18 Two, is it a fair statement that what we see
19 here are the various units that you offer?

20 A: Yes, ma'am.

21 Q: So tell us about some of the units that --
22 would you like to hold this or you just one to
23 ---

24 A: I know them by heart.

25 Q: All right.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: Eighty to eighty five percent of our units are
2 construction units. They are very standard
3 units. It's just a holding tank and a urinal
4 with a toilet paper holder. Some of our
5 special events for barbeque festivals,
6 weddings, things like that; we do have three
7 different models. We have a standard special
8 event which is -- they're just a little bit
9 bigger than a construction unit, but it is very
10 standard. It just has the holding tank and a
11 toilet paper holder. We do have VIP units.

12 **THE COURT:** What?

13 A: A VIP ---

14 **THE COURT:** VIP.

15 A: --- unit. It actually has a flushing mechanism
16 in it. It works off of recirculatory type
17 device; and they also have sinks in them as
18 well that work off of a foot pump. And then we
19 have our handicap unit, which is very large for
20 wheelchair accessibility where they can turn
21 around in it. And it's just very standard but
22 they're much bigger.

23 Q: Do you have high-rise units as well?

24 A: Yes, ma'am.

25 Q: Now, what type units are those?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: They are basically a standard construction
2 unit. The only difference is we actually have
3 a device that clamps onto the sides of it. So
4 a crane can pick it up and lift it up several
5 stories and place them, so the construction
6 workers don't have to come down on multi-level
7 buildings.

8 Q: And holding tank. Is that something that is
9 separate and distinct from the actual portable
10 toilet?

11 A: Yes, ma'am.

12 Q: Okay. Is that attached to the portable toilet
13 or -- could you just tell me about that?

14 A: Sure, sure. It's basically just -- it looks
15 like a big box. And it's got a hole on the top
16 of one side and a hole on the top on the other
17 side, and we just slide the unit underneath a
18 trailer. And they put the exit pipe into one
19 hole and then when we come to service it, we
20 use the other hole to access the waste.

21 Q: Okay. You also provide a special sink unit.

22 A: Yes, ma'am.

23 Q: Now, is the sink unit inside the portable
24 toilet or is it actually a separate unit?

25 A: The VIP units actually have a sink inside them;



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 but we do have free standing sink units as
2 well.

3 Q: Okay. Now, here on the third page of
4 Respondent's Number Two, it states with our
5 expert advice you can order the precise number
6 of toilets to match the size and style of your
7 event in effort of comfort and convenience of
8 attendees but not more than what makes it for
9 the number of attendees and budget. We can
10 help you calculate how many restrooms you need
11 or simply call one of our helpful specialist to
12 determine the ideal number of portable toilets
13 for your next occasion. Is that a fair
14 statement of what you all provide?

15 A: Yes. Now through the PSAI, they actually have
16 -- they've done several studies on these. They
17 know the volume at certain events, how many
18 people are there, how many hours a holding tank
19 can hold waste. And esp- -- even, like, with
20 alcohol, their -- they actually suggest a 13
21 percent volume increase. So, you know, they
22 just call us and tell us: this is what we have,
23 this is how many people, this is how many
24 hours. And we use our PSAI chart to tell them
25 how many units we would recommend them having



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 in service.

2 Q: So you recommend that to a customer, but does
3 the customer ultimately have the final decision
4 about how many portalets (ph) they get from
5 you?

6 A: They do and they don't. We take great pride --
7 I'm a fourth generation and my father raised
8 me, you earn someone's money. You don't take
9 it. That's why we never charge rent. We earn
10 their money by servicing and giving the best
11 service. So if someone calls and says I'm
12 having a 1,000 people, I only want two toilets;
13 well, you might want to call someone else
14 because we just -- it's our reputation. We
15 can't do that. If they say, well, we only have
16 a budget of \$1,000 and we need to get 20 units,
17 and it's going to be, you know, fourteen hu- --
18 we'll try to work with you on it.

19 Q: Now, I think you earlier -- please correct me
20 if I'm wrong. Didn't you say that under the
21 standards of the association that you belong
22 to, that you are required to service once a
23 week?

24 A: Yes, ma'am.

25 Q: Okay. Now, the porta- -- portable toilet that



1 you talked about, I think it was the last
2 invoice ---

3 A: Uh-huh.

4 Q: --- to the people who were building a house?

5 A: Uh-huh (affirmative response).

6 Q: You just -- didn't you just tell them to call
7 you when they needed it serviced?

8 A: Yes, ma'am.

9 Q: So, you didn't go out there and service it once
10 a week; is that correct?

11 A: Yes, ma'am. That's correct.

12 Q: All right. Ms. Boggero, I'm going to show you
13 what's entered in the books over here but,
14 unfortunately, I've pulled it. It's a -- I
15 think it's Respondent's Number Four, the
16 invoices from your business.

17 A: Okay.

18 **(Respondent's Exhibit Number Four was introduced into**
19 **the record at this time.)**

20 Q: And this is a stamp that the department has put
21 on here just to identify the number of
22 documents that you so happily, I'm sure,
23 provided us; over 4,000 documents. But again,
24 we appreciate that. Anyway, I'm showing you
25 this invoice Bates mark 86, job site 667, 18



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 January, 2009; and there is a note down in the
2 corner and the note talks about -- well, just
3 read the note and then I'll ask the questions.

4 A: "Spoke with Stacy. You requested holding tank
5 to be picked up, but I told him we would leave
6 it there without charging because we have no
7 immediate use for it and to call us when he was
8 ready to use it." And then several months
9 later Ben states, "they have been servicing
10 holding tank now for about three weeks."

11 Q: I guess my question to you is, if you're not
12 charging for the personal property as you say
13 you're not, and certainly no offense, but
14 that's why we're today. You're saying you're
15 not, and we're saying you are.

16 A: Right.

17 Q: So going into that question, if you're not
18 charging for the property, then why are you
19 telling your customer that you are leaving it
20 there without charging them?

21 A: Because we're not servicing it. A lot of these
22 contractors, they deal with other companies and
23 their used to other companies charging one
24 monthly fee whether they service it or not. We
25 don't do that. So we'd always have to explain



1 to the customers, look, if y'all are shutting
2 down crews for three weeks, we can leave it out
3 there. We won't charge you because we aren't
4 coming to service it.

5 Q: Yes, ma'am. Even though you say we have no
6 immediate use for it, it being the property
7 that you've taken out there.

8 A: Yes, ma'am. If we have another job site that
9 calls and says we need a holding tank right
10 now, and they're not using it ---

11 Q: Yes, ma'am.

12 A: --- we would call them and say, we need it.

13 Q: Yes, ma'am.

14 MS. McMAHON: I beg the court's indulgence. I just
15 want to put them in order here.

16 Q: Yes, ma'am, looking at Petitioner's Exhibit
17 Number One, you indicated that this was your
18 license from DHEC. And I don't mean any harm
19 by it, but it shows Barry Boggero. Based on
20 your testimony, I understand that is your
21 deceased father?

22 A: Yes, ma'am.

23 Q: But you acquired this business, you said, in
24 2005?

25 A: Yes, ma'am.



1 Q: So, where's your license, I guess, is my
2 question?

3 A: We work as a -- with that license, it umbrellas
4 all of our trucks. We have two and my sister
5 -- my father's side has one. So there's three
6 trucks.

7 Q: Yes, ma'am. But if you purchased the business
8 in 2005 -- my question again, you purchased it
9 in 2005, then where is your license?

10 A: That's it's right there.

11 Q: But this is your father's license?

12 A: Right.

13 Q: And the business was yours, you indicated.

14 A: Right. We're still operating out of the same
15 building and DHEC is well aware of that. And
16 when we called and told them I had purchased
17 the business. They said are you changing
18 anything about your business? No. So they let
19 us operate under the same license.

20 Q: This -- I think the question was asked before,
21 but I'll ask it again. These -- the Portable
22 Sanitation Association International, that's
23 not a license -- they don't provide any license
24 required by DHEC, is that correct?

25 A: That's correct.



- 1 Q: Or by any South Carolina regulatory authority,
2 is that correct?
- 3 A: That's correct.
- 4 Q: Do you also, in the course of your business,
5 provide trash pickup in containers and invoice
6 your customers for that service?
- 7 A: We do not provide. We sub it out with another
8 small family-owned business in Greenville.
- 9 Q: Yes, ma'am. But do you invoice it to the
10 customer and the customer pay you and then you
11 pay whoever?
- 12 A: Yes, ma'am.
- 13 Q: So, is it a fair statement that a good many of
14 your invoices would reflect trash containers
15 and trash pickup?
- 16 A: Yes, ma'am.
- 17 Q: Looking now at Petitioner's Exhibit Five-A,
18 number one -- and this is a service agreement.
19 Doesn't number one state that the customer
20 requests delivery and use of portable toilets
21 and/or dumpsters from Boggero's portable
22 toilets? Is that correct?
- 23 A: The customer requests delivery and use of
24 portable -- I can't remember. I'm sorry.
25 That's a lot ---

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 Q: I'll lend you mine, but prob- -- by then you'd
2 probably have a headache.
- 3 A: Portable toilets and/or dumpsters from
4 Boggero's Portable Toilets.
- 5 Q: Okay. And the next, Number Two. Isn't it true
6 that Number Two, the customer requests a
7 certain number of portable toilets? Is that
8 correct? There's a line in there ---
- 9 A: Yes, ma'am. They wanted three.
- 10 Q: In this particular invoice?
- 11 A: Yes, ma'am. Service one- ---
- 12 Q: Or service agreement?
- 13 A: Yes ma'am, service once a week.
- 14 Q: Okay. And Number Four, doesn't it again refer
15 to portable toilet and dumpster delivery?
16 Number Four?
- 17 A: "From the date of this agreement, portable
18 toilets and/or dumpsters will be delivered for
19 use by the customer upon request without the
20 signing of another agreement. It is intended
21 that this agreement will cover ongoing and
22 future portable toilets and/or dumpsters
23 delivery in use."
- 24 Q: And Number Six, is it a fair statement that
25 this again refers to the use of portable



1 toilet? "The customer understands that service
2 fees for the use of portable toilet and/or
3 dumpster." Is that the exact language in that
4 agreement?

5 A: Understands that service fees ---

6 Q: For the use of the portable toilets and/or
7 dumpsters?

8 A: Yes, ma'am.

9 Q: Does it state that?

10 A: Uh-huh (affirmative response).

11 Q: Okay. Now, Number Eight, it states -- and I'm
12 asking you, is it a fair statement, what I'm
13 saying, that this is -- what I'm saying is an
14 accurate statement of what this agreement
15 states. The equipment is the property of
16 Boggero's portable toilets and is provided to
17 the customer for his exclusive use on the
18 jobsite listed on the delivery ticket or future
19 delivery tickets?

20 A: Yes, ma'am.

21 Q: The last one?

22 A: Uh-huh (affirmative response).

23 Q: And Number Ten, again, refers to equipment.
24 By saying, carefully check the equipment upon
25 unloading at destination, all claims for



1 shortage and damaged equipment must be noted
2 on the delivery ticket. Is that accurate as
3 well?

4 A: Which one?

5 Q: This one.

6 A: Yes, ma'am.

7 Q: When a unit is damaged at the jobsite or
8 special event or farm or whatever, is the
9 customer required to actually pay for that
10 damage?

11 A: It really depends on the situation.

12 Q: Okay. Yes, ma'am. Well, for example, I
13 noted on one invoice ---

14 MS. McMAHON: Can I set these here?

15 THE COURT: Yes, ma'am.

16 MS. McMAHON: I beg the court's indulgence.

17 Q: I'll have to ask you about that later, I
18 don't know where ...

19 MS. McMAHON: I'm sorry, Judge. I just beg the
20 court's indulgence.

21 THE COURT: Take your time.

22 MS. McMAHON: All right.

23 THE COURT: Don't want you to feel under pressure.

24 MS. McMAHON: Thank you, sir.

25 Q: Ms. Boggero, I'm sure you are familiar with



1 these invoices that I hold in my hand, this
2 stack. And basically these are invoices for
3 2009. And I just want to ask you about
4 these. These are all invoices that you
5 provided to us, and they are included in
6 Respondent's Number Four, all the binders.

7 A: Uh-huh.

8 Q: Now, I'll show you where it's been Bates
9 stamped with Number 6 and ---

10 **THE COURT:** Before we go forward with this, is this
11 part of an exhibit that's been agreed to be
12 admitted.

13 **MS. McMAHON:** Well, Your Honor, these -- all of
14 these invoices have been admitted as
15 Respondent's Number Four, in all those
16 binders. And I've just pulled these out for
17 ease of ---

18 **THE COURT:** Well, let's make sure that they are
19 correctly and clearly denominated on the
20 record as to the number and what exhibit it's
21 from.

22 **MS. McMAHON:** All right, sir.

23 **THE COURT:** Respondent's Four, is that right?

24 **MS. McMAHON:** Yes, Your Honor. Respondent's Four
25 is Boggero's invoices Number 2 through 4,149,



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 I believe.

2 **THE COURT:** Okay. As long as you give the one that
3 you are handling and showing to the witness,
4 I am satisfied.

5 **MS. McMAHON:** All right, sir. Thank you so much.

6 Q: Yes, Ms. Boggero, let me just make sure about
7 that last one.

8 A: That was right, it's 44 ---

9 Q: 4149?

10 A: 4449.

11 **MS. McMAHON:** Oh, 4449. So it's documents --
12 Respondent's Number Four, it's documents
13 number -- Bates number 2 through 4449. Ms.
14 Boggero, getting back to this invoice that
15 I've got here. It's Bates Number 6. It's
16 got a date of 8 January, 2009. And in your
17 invoice here -- I think it's better if I
18 stand over here. I don't want to block
19 counsel's view. But in the middle area where
20 it says unit and service type, it's got
21 special event, standard unit; and then it's
22 got \$100 as the charge. What is a special
23 event standard unit? Is that an actual
24 portable unit, portable toilet that was taken
25 out to a special event on this date?



1 A: Yes, ma'am.

2 Q: Okay.

3 **THE COURT:** Well, let's explain that a little
4 further. You're leaving the hanging here.
5 What was the \$100 for?

6 Q: The invoice states special event, standard
7 unit. And you indicated that that unit was
8 taken out to that special event; is that
9 correct?

10 A: Yes, ma'am.

11 Q: And that \$100 was for the unit -- for that
12 standard unit; is that correct?

13 A: Yes, ma'am. That would be for like a weekend
14 event, like a picnic for a family. They
15 wanted it delivered on a Friday and picked up
16 the following Monday. That is about 15
17 percent of our income. That is just a
18 summertime event.

19 **THE COURT:** I know, but what was the charge for?

20 A: For us to deliver it on a Friday. We have to
21 have a ---

22 **THE COURT:** So that was part of a service charge?

23 A: Yes, sir. Yes, sir. Delivery and pickup.

24 **THE COURT:** That was what I was asking. Thank you.

25 Q: Ms. Boggero, going back to this invoice



1 though. The invoice says special event,
2 standard unit. Does it say anything about
3 delivery or pickup or service ---

4 A: No, ma'am.

5 Q: --- on this invoice. Now looking at Bates
6 Number 14, 18 January, 2009, what does this
7 invoice say as the unit or service type?

8 A: That is a restroom weekly servicing. That
9 would be for a construction site that's left
10 there for a long period of time or until they
11 call us to pick it up.

12 Q: Excuse me, at this point in time, this job is
13 done. Is that correct? Because you said you
14 didn't have any service agreements for this
15 period because all of those were -- those
16 jobs were complete.

17 A: On the invoice, it will show you that that is
18 to be picked up, delivered or service.

19 Q: Yes, ma'am. But what I'm trying to get at
20 is, you indicated earlier that your service
21 agreements -- you don't have them because
22 everything has been done. You've been paid
23 and so you no longer keep them. And so my
24 question to you was, that means from what
25 you're saying about the service agreement,



1 this invoice, this job, whatever port-o-potty
2 was provided, it's over and done with at this
3 point and time; is that correct? Because you
4 no longer have to service it.

5 **THE COURT:** Wait a minute. You say at this point
6 in time, are you talking about the date of
7 the invoice or are you talking about today?

8 **MS. McMAHON:** Today, Your Honor.

9 **THE COURT:** All right.

10 **A:** Do I have a service agreement?

11 **Q:** Well, no, ma'am. You testified earlier that
12 you don't have any of the service agreements
13 for the periods at issue because those jobs
14 are complete and you've been paid ---

15 **A:** Uh-huh (affirmative response).

16 **Q:** --- and the port-o-potties are no longer
17 there. You're on to other business.

18 **A:** Yes, ma'am.

19 **Q:** So, my question is, this invoice, 18 January,
20 2009 restroom weekly service, this service
21 agreement that gave rise to this invoice,
22 that's been completed; is that correct?

23 **A:** Yes, ma'am.

24 **Q:** Not in this invoice, the service agreement
25 has been completed because you no longer have



1 it.

2 A: Right.

3 Q: Is that correct?

4 A: Yes, ma'am.

5 Q: Now, going back to this invoice, this invoice
6 also says new delivery; is that correct?

7 A: Yes, ma'am.

8 Q: Now, what does that mean when you put new
9 delivery on a -- on invoice.

10 A: That just lets the customer know that this
11 will be the first service deal, and it will
12 have the delivery date on it showing when it
13 was delivered.

14 Q: Okay. All right.

15 A: And we don't charge for delivery or anything
16 like that.

17 Q: Okay. Now where is the delivery date on
18 here?

19 A: If you'll see where it says from ---

20 Q: Yes, ma'am.

21 A: --- 7th of January to 18th January? We
22 normally bill on a 4-week billing cycle, but
23 since this was a new delivery, we know that
24 it was delivered the 7th of January.

25 Q: Okay. All right. So you delivered the



1 property on the 7th of January and then
2 you're billing for service?

3 A: That's correct, yes, ma'am.

4 **THE COURT:** I have a question. Going back to the
5 one where there was a \$100 bill.

6 **MS. McMAHON:** Judge, do you need to see these?

7 **THE COURT:** No, I -- they're the ones you've been
8 talking about. You just said that you don't
9 charge for delivery, but the \$100 was for
10 delivery. So explain that to me.

11 A: A construction site could be there four weeks
12 or 40 weeks, we don't know. A special event,
13 they want it specifically delivered on a
14 Friday, and they want it specifically picked
15 up the following Monday.

16 **THE COURT:** So, you're telling me that you do
17 charge for special event delivery; is that
18 right?

19 A: Yes, sir. Just for the special events.

20 Q: Again, on -- it's Respondent's Number -- from
21 the documents in Respondents Number 4, Bates
22 Number 29, dated 18 January, again, 2009. On
23 here, you again note restroom weekly service,
24 new delivery. Is that follow suit with what
25 you previously said about new delivery?



1 A: Yes, ma'am.

2 Q: This invoice is showing there was a new
3 delivery, delivery of a portable toilet?

4 A: Yes, ma'am.

5 Q: And then servicing?

6 A: Yes, ma'am.

7 **THE COURT:** Let me look at those as you proceed
8 through them.

9 **MS. McMAHON:** Do you want a minute Judge or can I
10 can continue?

11 **THE COURT:** No, you can go right ahead.

12 Q: Okay. I'm looking at invoice -- from the
13 front, it's number Four, Bates Number 30,
14 again, 18 January, 2009, and I note here,
15 again, restroom weekly service, recent pickup.
16 And then it's got free pickup. You want to
17 explain that?

18 A: Yes, ma'am. The unit was picked up. We
19 don't charge a pickup fee on our construction
20 units, 99 percent of the time. Now, you do
21 have that occasion to where a contractor
22 calls and says, I am so sorry, it is Friday
23 afternoon at 4:30 and my homeowner is wanting
24 to move in this weekend and they do not want
25 a toilet in their yard. Once in a blue moon



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 we may do something like that, but if they
2 call and say, which is 99.9 percent of the
3 time, we can pick it up when we go on our
4 regular stop on our routes, then we of course
5 give free pickup.

6 Q: Okay. But based on this invoice, you all
7 went out there and picked up a portable, or
8 one or more -- let's see. One -- quantity on
9 the invoice, first line, under where it says
10 quantity priced tax, with a question; the
11 quantity -- is that the number of units that
12 you're providing?

13 A: Yes, ma'am.

14 Q: So when any invoice says restroom weekly
15 service, new delivery pro rated, that means
16 the actual port-o-potty went out there for a
17 number of -- the number that are listed on
18 the invoice; is that correct? They were
19 delivered out there by y'all?

20 A: If it has new delivery, yes, ma'am.

21 Q: Okay. Now, I'm looking at Respondent's
22 Number Four, documents from that package Bates
23 Number 82, and I show delivery charge,
24 restroom weekly service and then delivery
25 charge. Would you tell us about that?



1 A: Lot's of times we do have contractors that
2 call and say I've got seven guys on my job
3 site. I was supposed to call two days ago
4 and get a toilet, and I completely forgot.
5 Can you all stop what you all are doing and
6 bring us one? That's where that would come
7 in.

8 Q: So there's an extra charge for taking the
9 port-o-potty or portable toilet out there?

10 A: If they can't wait until our normal service
11 route ---

12 Q: Uh-huh.

13 A: --- which ninety percent of them do.

14 Q: Okay. I request the court's indulgence. We
15 just have a lot of documents here, Your
16 Honor.

17 **THE COURT:** I completely understand. Do not feel
18 that you are under any pressure.

19 Q: Now, I'm looking again at Respondent's Number
20 Four, Bates Number 215 of those documents.

21 **MS. McMAHON:** Excuse me, Your Honor. Counselor,
22 would you like me to show you these before I
23 show them to your witness?

24 **MR. HEMPHILL:** No. If you would just give the
25 witness an opportunity if she needs it.



1 MS. McMAHON: Thank you.

2 Q: Okay. Ms. Boggero, again I'm looking at
3 Respondent's Four, Bates Number 215 and again
4 we have special events, standard unit \$100;
5 and then right below that it says one-time
6 charge. What is that?

7 A: That would be a situation where -- 15 percent
8 of our business does get a special event, but
9 once they are a little bit bigger, delivered
10 on a Friday and picked up on Monday.

11 Q: On Respondent's Four, Bates Number 328, again
12 this is 12 April, 2009, got three entries.
13 You have restroom weekly service, it says a
14 new delivery. Then you've got handicap unit
15 with weekly service, new delivery, and then
16 there are charges over to the side. Is it
17 safe to say that in this case, based on the
18 quantity, that two regular units were taken
19 out ---

20 A: Uh-huh (affirmative response).

21 Q: --- to there -- to this particular location,
22 two port-o-potties? On the first entry, then
23 on the second one, let's see, one handicap
24 unit was taken out there?

25 A: Yes, ma'am.



1 Q: Okay.

2 MS. McMAHON: I'm sorry, Your Honor. Did you want
3 to see that?

4 THE COURT: I'll see it.

5 MS. McMAHON: I'm sorry, very sorry. I'll try to
6 remember to give that to you next time.

7 Q: I show you Respondent's Number Four, Bates
8 Number 431. Again showing eight special
9 events, standard units; is that correct?

10 A: Yes, ma'am.

11 Q: And so what that entry means is that eight
12 special event portable toilets were taken out
13 there; is that correct?

14 A: Yes, ma'am.

15 Q: Okay.

16 MS. McMAHON: Here --

17 THE COURT: Put it in the stack that's going to
18 eventually accommodate.

19 MS. McMAHON: All right sir.

20 Q: Okay. Again Respondent's Four, Bates Number
21 432, special event hand wash unit, two. Does
22 that indicate that on this particular day, 17
23 April, 2009, that two special event hand wash
24 unit ---

25 A: Yes, ma'am.



1 Q: --- facilities were taken out to this
2 particular customer for use?

3 A: Yes, ma'am.

4 Q: So, is it a fair statement then, without
5 going through each and every one of these
6 lengthy -- that each time one of your
7 invoices reflects at the actual unit -- for
8 example, special event, VIP wedding, sink --
9 I mean hand wash. Each time the invoice
10 reflects that, that's showing the actual unit
11 going out there -- out to the location; is
12 that correct?

13 A: Yes, ma'am. That would be for the weekend
14 events.

15 Q: And each time it has restroom weekly service,
16 each time your invoices reflect that, and
17 then in parens underneath, recent pickup or
18 recent delivery, that means that those units
19 that are reflected on the invoice were either
20 picked up or delivered at those actual units?

21 A: Yes, ma'am. That's correct. And you're
22 actually going to see that on your
23 construction list.

24 **MS. McMAHON:** Your Honor, I think I would like to
25 get these pre-marked since they're -- as a



1 separate exhibit.

2 **MR. HEMPHILL:** No objection.

3 **THE COURT:** Now they're already part of Exhibit 4,
4 aren't they?

5 **MS. McMAHON:** Yes, Your Honor, but these are --
6 these documents give rise -- are the
7 documents that gave rise to what's been
8 entered as Respondent's Number Seven -- Seven.
9 Respondent's Number Seven. It's already been
10 entered. It's a summary that will come in --
11 be talked about later on. And so ---

12 **THE COURT:** You want to make those 4-A then?

13 **MS. McMAHON:** Can we make them 7-A, Your Honor?
14 But they go with the summary sheet that is
15 Respondents.

16 **THE COURT:** All right. As long as they are clearly
17 denominated. Are they in sequence,
18 chronologically?

19 **MS. McMAHON:** They are not in sequence now. I
20 pulled them out, but they are identified on
21 the summary sheet. So, it's readily
22 ascertainable on the summary sheet where the
23 information came -- which documents they came
24 from.

25 **THE COURT:** Yes, but to enter them, to have them



1 separately marked, I want the beginning Bates
2 number and the ending Bates number.

3 **MS. McMAHON:** All' right sir. I will take a minute
4 to get it straight.

5 **THE COURT:** Take a minute and do that please.

6 **MS. McMAHON:** I beg the court's indulgence.

7 **THE COURT:** Excuse me, were you speaking to me?

8 **MS. McMAHON:** Yes, I beg the court's indulgence.

9 **THE COURT:** Yes, take your time. I tell you. It's
10 about 11:40. We've been at it almost two
11 hours. Let's take about a five minute break
12 -- ten minute break to give you a chance to
13 get those things I asked you.

14 **MS. McMAHON:** Thank Your Honor, thank you very much
15 for that.

16 **THE COURT:** All right. We are in recess for about
17 ten minutes.

18 (A break was taken from 11:42 a.m. until 11:55
19 a.m.)

20 **THE COURT:** What did we do?

21 **MS. McMAHON:** Your Honor, at this time I would like
22 to go ahead and put in as -- I know it's not
23 our -- it's still their case in chief, but
24 since we've already put in the other
25 exhibits, I'm a little out of order. So, we



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 are offering this as Respondent's Exhibit 7-A.
2 This is the invoices from Boggero's for 2009,
3 Bates Number 30 through Bates Number 1316.
4 But they are not consecutively numbered
5 because they -- these were pulled.

6 (Respondent's Exhibit Number Seven-A was introduced
7 into the record at this time.)

8 THE COURT: And this is a portion of your original
9 Exhibit Four, is that right?

10 MS. McMAHON: Yes, Your Honor. This -- these
11 invoices are pulled from Respondent's Number
12 Four that's already been entered, which are
13 the invoices Boggero's provided the Department
14 of Revenue during discovery for the periods
15 1/1/2009 through December 31st, 2011.

16 THE COURT: All right. But there are skips in
17 there ---

18 MR. McMAHON: Yes, Your Honor.

19 THE COURT: --- in other words they are not
20 consecutive.

21 MS. McMAHON: They are not consecutive.

22 THE COURT: Well, I don't want to go through and
23 denominate each one, and we will admit them.
24 I assume you agree with ---

25 MR. PHILLIPS: That's without objection.



1 **THE COURT:** Without objection. But any further
2 reference to any individual one will be by
3 the Bates number.

4 **MS. McMAHON:** Thank you, Your Honor. Thank you.

5 **Q:** Ms. Boggero, have you ever had -- has
6 Boggero's, since 2005, ever had a South
7 Carolina Retail Sales Tax license?

8 **A:** No, ma'am.

9 **Q:** Okay. And since 2005, has Boggero's ever
10 filed South Carolina Sales Tax returns for
11 Boggero's Portable Toilets?

12 **A:** No, ma'am. We were unaware of it.

13 **Q:** Yes, ma'am. And one further question in that
14 line, have you, on behalf of Boggero's, ever
15 paid any sales tax on the gross proceeds from
16 the business for the period of January 1,
17 2009 through December 31st, 2011?

18 **A:** We aren't selling anything, so no.

19 **Q:** Thank you. Now, with regard to the business
20 itself, you own that individually, Boggero's?

21 **A:** Yes, ma'am.

22 **Q:** And you report the gross proceeds from the
23 business on your Schedule C of your
24 individual income tax return?

25 **A:** Yes, ma'am.



1 Q: All right. I'm going to show you what's been
2 Bates stamped 758 from Respondent's Number
3 Four, which are, again, the invoices. Yes,
4 ma'am. This invoice in the center, where it,
5 basically I guess that's the description as
6 we've been going along here today, states
7 damaged unit. And then over in the cost
8 column, it's got 753.60; is that correct?

9 A: Yes, ma'am.

10 Q: Now, is that a charge where the customer, for
11 whatever reason, damaged the unit and then
12 had to pay y'all that amount?

13 A: Yes, ma'am. I think that specific incident
14 they actually dropped a crane on it.

15 Q: That would certainly damage it then, wouldn't
16 it?

17 A: There was not much left.

18 MS. McMAHON: Your Honor. I thank you Ms. Boggero,
19 and I have no further questions of this
20 witness.

21 THE COURT: Thank you. Redirect Mr. Hemphill.

22 MS. Boggero - RE-EXAMINATION BY MR. HEMPHILL:

23 MR. HEMPHILL: Briefly, I will redirect, Your
24 Honor. May it please the court.

25 Q: Gena, some references were made to trash



1 pickups. You do not own any trash
2 containers; is that correct?

3 A: That's correct.

4 Q: Okay. But if a customer wants a trash
5 container, you subcontract, you get the vessel
6 container from somebody else in the business?

7 A: Yes, sir.

8 Q: And you provide it?

9 A: We call the company and they handle it.

10 Q: Okay. But since you are there servicing
11 portable toilet, you also have it on your
12 route to service the trash container; correct?

13 A: No.

14 Q: Okay. Tell me how that works?

15 A: The way that works is they actually will call
16 when their dumpster is full, and we in turn
17 will call the company that we subcontract
18 with, and they will go and take it to the
19 landfill to dispose and bring it back to the
20 job.

21 Q: Okay. So, if you have trash container
22 charges on any of these invoices, what does
23 that mean?

24 A: That means that we called another company,
25 and they sent us the bill for the work that



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 was done, and we in turn put it on our bill
2 because they don't want to have to go through
3 the process of doing seven W-9's and all that
4 stuff. They just as soon have one bill.

5 Q: Okay. So the tangible, personal property
6 called a trash container is not yours;
7 correct?

8 A: That's correct.

9 Q: Now, this portable toilet, in most instances,
10 belongs to your company; correct?

11 A: That's correct.

12 Q: There are occasions where someone owns their
13 own portable toilet and you service it,
14 correct?

15 A: Yes, sir.

16 Q: There was reference to the D'Alessandro
17 jobsite where the person was acting his own
18 general contractor, things of that nature;
19 correct?

20 A: Yes, sir.

21 Q: And you don't do a weekly call on that,
22 correct?

23 A: That's correct.

24 Q: Did you tell me it's still out there or it
25 was there for a long period of time?



- 1 A: I don't know what happened to it. I told
2 them they could have it, so.
- 3 Q: Okay. But they call periodically for you to
4 service that, correct?
- 5 A: Yes, sir.
- 6 Q: But that's no longer a construction site
7 where there are numerous employees there,
8 correct.
- 9 A: That's correct. They would only go out there
10 on a weekend.
- 11 Q: They being the husband and the wife?
- 12 A: The husband and wife, yes, sir.
- 13 Q: Okay. There have been references to you
14 charging customers for a damaged unit.
15 What's the most important part of a portable
16 toilet?
- 17 A: The holding tank.
- 18 Q: Why is that?
- 19 A: Because that's where the waste is contained.
- 20 Q: Okay. Do you expect normal wear and tear on
21 these as used by customers?
- 22 A: Certainly.
- 23 Q: But when there's a damaged holding tank, are
24 you allowed to use it anymore?
- 25 A: We cannot. We have to pay to dispose of it.



1 Q: Okay. So this incidence of where you charged
2 someone for the complete destruction of the
3 holding tank and the entire unit because a
4 crane dropped on it, that is set forth in the
5 service agreement, isn't it?

6 A: Yes, sir.

7 Q: As to whose responsible for that.

8 A: Yes, sir. And we actually have had several
9 job sites where, unfortunately, teenagers on
10 summer break, they'll shoot holes and things
11 like that. We don't charge for that. We
12 understand they can't help it, but a crane
13 completely ---

14 Q: Okay. You can't -- you have to become -- get
15 reimbursed for damages to the holding tank,
16 correct?

17 A: Yes, sir.

18 Q: And is that what you service, the holding
19 tank?

20 A: Yes, sir.

21 Q: What's the rest of the portable toilet for?

22 A: To shield them from other people seeing them.

23 Q: Privacy?

24 A: Yes, sir.

25 Q: Okay. With regards to the special events



1 portable toilets, you charge something
2 different than you do for the weekly service
3 charge for a construction portable toilets;
4 correct?

5 A: Yes, sir.

6 Q: Why is that?

7 A: With your construction units, you basically
8 have a set route. You pull up; it takes you
9 five minutes to service it, and you're on to
10 your next job. With a special event, there
11 is much more travel time. You know, things
12 like that, the set-up involved. You know,
13 you have to load the unit. You have to drive
14 40-50 miles, drop the unit off and then do
15 the same thing two days later. So, that's
16 where that comes in.

17 Q: And two days later, in most special events,
18 do you typically realize that more than ten
19 people have used it that weekend?

20 A: Oh, you can tell how many people have used
21 it.

22 Q: Okay. Hundreds if not thousands?

23 A: Yes.

24 Q: Okay. And so there is more waste?

25 A: Absolutely.



1 Q: Does that require you to service it and then
2 incur greater service charges at the disposal
3 plants?

4 A: Lots of times, yes.

5 Q: Is that why that's a higher charge?

6 A: It does have a lot to do with it, yes, sir.

7 **THE COURT:** All right. Let me interject this
8 question right here. Is the servicing
9 included in the \$100 that you charge as a
10 delivery fee for special events?

11 A: No, sir. That's just a weekend. Deliver on
12 a Friday, pick up on a Monday.

13 **THE COURT:** It does not include the servicing?

14 A: No, sir. Generally they don't need them
15 serviced because it's just there ---

16 **THE COURT:** Well, you just said that many more
17 people use it on a special event.

18 A: I'm saying between the delivery and the
19 pickup, they generally don't call for you to
20 come and service on -- during the weekend.

21 **THE COURT:** Well, I see what you're saying.

22 A: Yes, sir.

23 **THE COURT:** You have to service it at the end of
24 the pickup.

25 A: Yes, sir. Yes, sir.



1 THE COURT: Thank you.

2 Q: Which is usually about a two-day event?

3 A: Yes, sir. That's correct.

4 Q: Now, the hand washing units. You have
5 certain units that you unload or deliver to
6 customers when they need hand washing,
7 correct?

8 A: That's correct.

9 Q: Now, the water -- the soapy water that is
10 used in a hand washing unit, does it go out -
11 - does it filter out on the ground?

12 A: No.

13 Q: Where does it go?

14 A: We actually -- it's a separate compartment
15 that you lift the lid up, and you use a
16 separate wand, but you empty it into the
17 truck and when you return, take that to the
18 disposal plant.

19 Q: Is that called gray water?

20 A: Yes, sir.

21 Q: And does gray water have to be treated?

22 A: Yes, sir.

23 Q: At the disposal plant?

24 A: Absolutely.

25 Q: So you have a separate variable charge for



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 servicing a hand washing unit?

2 A: Yes, sir.

3 Q: Okay.

4 MR. HEMPHILL: Those are the questions I have.

5 Thank you, Your Honor.

6 THE COURT: Anything further.

7 MS. McMAHON: Your Honor, if I could just clarify
8 something on that trash.

9 MS. Boggero - RE-CROSS-EXAMINATION BY MS. McMAHON:

10 Q: Ms. Boggero, I just wanted to go over one of
11 these invoices dealing with trash so that
12 everybody understands what we're talking
13 about.

14 THE COURT: And those invoices are from
15 Respondent's Four, is that right?

16 MS. McMAHON: Yes, Your Honor. When I present
17 them, I will certainly say that, sir.

18 Q: I want to show you what's already been
19 entered -- an invoice that's been entered in
20 Respondent's Number Four, Bates Number 1327,
21 and this invoice in the description, middle
22 column, talks trash pickup, trash disposal,
23 trash container. When you were talking
24 earlier about providing or invoicing this, is
25 this your invoice?



1 A: This is, yes, ma'am.

2 Q: Yes, ma'am. Bates Number 1327, Respondent's
3 Number Four. And is it a fair statement that
4 this is what this type of service and
5 provision of trash containers is what you
6 were talking about earlier?

7 A: Yes, ma'am.

8 Q: And you bill the customer and then the
9 customer pays you, is that correct?

10 A: Yes, ma'am.

11 Q: And then and you pay the person that you hire
12 to provide the trash containers and pickups,
13 is that correct?

14 A: Yes, sir.

15 Q: Okay. Now, on the hand- -- going back to the
16 handicap, the \$100. You indicated that was
17 delivery and pickup?

18 A: Yes, ma'am.

19 Q: But that was for that particular portable
20 toilet unit, is that correct?

21 A: Correct. Yes, ma'am.

22 MS. McMAHON: Nothing further, Your Honor. Thank
23 you.

24 THE COURT: Mr. Hemphill?

25 MR. HEMPHILL: No, Your Honor.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 **THE COURT:** Thank you ma'am. You may step down.
2 We've reached the noon hour. Do you want to
3 continue or do you want to break for lunch?
4 It's immaterial to me.

5 **MS. THOMPSON:** Your Honor -- are you finished with
6 your case?

7 **MR. HEMPHILL:** I am. Your Honor, that's the
8 Petitioner's Case in Chief.

9 **THE COURT:** How long will yours take?

10 **MS. THOMPSON:** Your Honor, we actually were going
11 to ask you, if appropriate, we're ready to go
12 forward with our reply. Our case in reply,
13 however, if appropriate, we would like to
14 make a motion for a judgment as a matter of
15 law.

16 **THE COURT:** Well, I'll certainly hear your motion,
17 but what do you want to do? Do you want to
18 continue? I mean, is everybody hungry or you
19 think you can last til 1:00? We'll certainly
20 break by then.

21 **MS. THOMPSON:** Can we do the motion and then maybe
22 break for lunch, based on ---

23 **MR. HEMPHILL:** That's fine.

24 **THE COURT:** Yes, I'll hear your motion.

25 **MS. THOMPSON:** Okay. Your Honor, as you stated



1 actually at the beginning of this case, we
2 believe that this actually just a statutory
3 interpretation issue. Ms. Boggero does have
4 the burden of proof as the taxpayer in this
5 case to show that she is not subject to sales
6 and use tax, and we don't believe she has met
7 that burden at this time. Yes, she has
8 stated that, you know, factually the majority
9 of her business is service and -- but there
10 were, in different parts of her testimony,
11 different dates where she said, 90 percent of
12 the time, well, 80 percent of the time, and
13 we agree with her on that and the department
14 recognizes that. But we believe that's why
15 the General Assembly did carve out the
16 exemption in 12-36-2130 specifically for port-
17 o-potties exemption Number 62, which exempts
18 people who rent port-o-potties 70 percent of
19 the sales tax and only charges 30 percent of
20 the gross proceeds of the personal property.
21 We've argued, like we stated in our cross,
22 that there is hand washing, there is toilet
23 paper, there is the privacy of the actual
24 toilet. They are paying for that as well as
25 the servicing of the holding tanks. So while



1 we're really not disputing what Ms. Boggero
2 stated, we believe that she has not met her
3 burden to show that everything that she does
4 is actually service. And I believe that goes
5 strictly into the exemption carved out in
6 Number 62 of the sales and use tax.

7 **THE COURT:** Mr. Hemphill.

8 **MR. HEMPHILL:** May it please the court, Your Honor.

9 My client's testimony and exhibits that are
10 before the court are replete with references
11 of service agreement being in place; that
12 being the essence of transaction between my
13 client and each of her respective customers.
14 Also, Your Honor, the invoices references --
15 reference that it's for a service throughout
16 the period in question. Your Honor, this
17 notion that because the legislature has spoken
18 in the form of an exemption, then they have
19 somehow made my client's activities, you know,
20 to one-size fits all -- my client has very
21 articulated -- has very well articulated the
22 nature of her business. And whether it's 80
23 percent or whether it's one percent, she
24 certainly is entitled to move beyond summary
25 judgment -- excuse me direct verdict because



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 -- and I appreciate counselor's candor that
2 the department is in agreement with her
3 testimony. But specifically looking to
4 Exemption 62 under that statute, it says that
5 70 percent of gross proceeds of the rental or
6 lease of portable toilets. Seventy percent
7 of gross income of the rental or lease of the
8 toilets is exempt. My client has taken the
9 stand and testified that she doesn't rent
10 anything. She doesn't lease any tangible
11 personal property. She services it. We
12 don't -- we think that just to reference the
13 statute as a one-size fits all is not proper
14 with regards to my client. So, we would
15 strenuously object to the direct verdict very
16 much.

17 **THE COURT:** Briefly in reply.

18 **MS. THOMPSON:** Briefly in reply, Your Honor. We
19 understand that she does have what she has
20 titled as service agreement and what she has
21 titled in her invoices as service. However,
22 her testimony up there -- we do believe that
23 she did not -- just because she calls it a
24 service, doesn't mean it's necessarily just a
25 service. She has shown that she, we believe,



1 at some point is not only servicing those
2 tanks, but she's providing that privacy and
3 she's allowing them to use that unit and all
4 the amenities therewith with the different
5 units.

6 **THE COURT:** I deny your motion. I think I need to
7 hear some more on this.

8 **MS. McMAHON:** Thank you, Your Honor.

9 **THE COURT:** Thank you.

10 **MR. PHILLIPS:** Thank you, Your Honor.

11 **THE COURT:** And we will be in recess until -- is
12 one hour long enough for you?

13 **MR. HEMPHILL:** Yes, Your Honor.

14 **THE COURT:** Be back at 1:00 o'clock. Thank you.
15 We in recess until 1:00 o'clock.

16 **(A break was taken from 12:14 p.m. until 1:16 p.m.)**

17 **THE COURT:** Before we commence, I have a request.
18 It is a little irregular. But I have a
19 meeting this afternoon with a carpenter who
20 is to fix a leak into my old law office among
21 other things. And he was to call me. And I,
22 of course, have a prohibition on cell phones,
23 but I'm going to have to break my own rule
24 this time and if he calls me during the
25 ongoing of this trial, I trust that you will



1 indulge me and allow me to step out and take
2 the call. Sorry about that, but it is a
3 unique situation. All right. The Petitioner
4 has rested his case. Ms. McMahon or Ms.
5 Thompson?

6 **MS. THOMPSON:** Yes, sir, Your Honor. We're ready
7 to go. Are you ready for us to call it?

8 **THE COURT:** Yes, ma'am.

9 **MS. THOMPSON:** Okay. May it please the court, Your
10 Honor. The State and department calls Wes
11 Butler.

12 **THE COURT:** Ms. McMahon. Forgive me, I ---

13 **MS. MCMAHON:** That's all right judge. Thanks for
14 remembering me. It's been awhile since I've
15 been here.

16 **COURT REPORTER:** Please raise your right hand. Do
17 you solemnly swear that the testimony you are about
18 to give will be the truth, the whole truth and
19 nothing but the truth, so help you God?

20 **MR. BUTLER:** I do.

21 **COURT REPORTER:** Thank you.

22 **JOHN WESLEY BUTLER,** having been duly sworn, deposes
23 and testifies as follows:

24 **MR. BUTLER - EXAMINATION BY MS. THOMPSON:**

25 **Q:** Could you state your full name for the



- 1 record?
- 2 A: John Wesley Butler.
- 3 Q: Where are you employed?
- 4 A: I'm employed with the South Carolina
5 Department of Revenue.
- 6 Q: How long have you been here?
- 7 A: Just over three years.
- 8 Q: Okay. What is a brief summary of your
9 educational background?
- 10 A: I have a Bachelors of Science in accounting
11 from the University of South Carolina.
- 12 Q: What is the title of your current position?
- 13 A: I'm a field auditor.
- 14 Q: And as a field auditor, what does your job
15 entail?
- 16 A: So as a field auditor I do audits mostly of
17 various businesses, and that's for audits such
18 as things like sales tax, maybe other
19 miscellaneous taxes, like emissions tax,
20 liquor by the drink tax; but basically
21 verifying that businesses have been reporting
22 sales tax correctly. Applying tax code to
23 specific audits is kind of my job and doing
24 some individual income tax as well.
- 25 Q: Okay. Did you conduct the sales tax audit of



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Boggero's portable toilets?

2 A: I did.

3 Q: When did you do that?

4 A: So, I mailed a letter to the Boggero's, to
5 their Greenwood location, around February of
6 2012. I met with Ms. Boggero and her father
7 March of 2012.

8 Q: Okay. What type of business is Boggero's to
9 your knowledge?

10 A: So the Boggero's -- and just from going out
11 there and meeting with Ms. Boggero and
12 discussing it with her, Boggero's provide
13 portable toilets for their customers. They
14 usually provide the service of cleaning the
15 portable toilets, of taking the waste out of
16 the portable toilets and that type of a
17 thing.

18 Q: When you began this -- after you met with Ms.
19 Boggero -- after you met with her, what did
20 you do after that?

21 A: So we met, initially as myself and another
22 auditor with the Department of Revenue. We
23 discussed the business. Ms. Boggero provided
24 some records for the business. She provided
25 a Schedule C, which is an income tax sole



1 proprietorship, how she files her individual
2 income taxes, which reflects the economy
3 expenses for her business for the year. So
4 she provided her income returns for the
5 audited period, which was from beginning of
6 2009 to the end of 2011. She also provided
7 income reports for the revenue that she's
8 bringing in through that audit period. She
9 also provided the bank statements for the
10 business which reflected deposit and expenses
11 and that type of thing.

12 Q: Did you review all that information?

13 A: I did.

14 Q: Okay. What did you do after reviewing that
15 information?

16 A: So after reviewing that information and
17 discussing things with Ms. Boggero, the --
18 basically the determination was made that --
19 and she didn't have a open retail license for
20 the business. And the determination was made
21 based on just the tax code that is out there
22 and just hearing about the business that --
23 that 30 percent of her sales were subject to
24 the sales tax. So basically what I did was
25 schedule the income reports that the data



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 that was available to me, and I scheduled it
2 for the three years, divided up, pretty much,
3 each year by 12, scheduled out current audit
4 and -- of 30 percent of those amounts that's
5 taxable.

6 Q: Where did you get that 30 percent from?

7 A: The 30 percent is based off of an exemption
8 that the General Assembly passed, I believe
9 it's -- and I'm probably not saying it right,
10 but 12-36-2120 subsection 62. That's how I
11 determined using an exemption for portable
12 toilet businesses and basically exempts 70
13 percent of their rental and service of the
14 portable toilet.

15 Q: Throughout this entire audit procedure that
16 you just testified to, is this your normal
17 procedure when you go out into the field?

18 A: It is.

19 Q: So after you reviewed that information, you
20 said you scheduled it out. Let me show
21 what's been marked as Respondent's Exhibit
22 Number One.

23 **(Respondent's Exhibit Number One was introduced**
24 **into the record at this time.)**

25 Q: Do you know what that is?



- 1 A: So, this document is a proposed notice of
2 adjustment that, basically at the end of the
3 audit, is issued once the tax amount is
4 arrived at and given to the taxpayer.
- 5 Q: Okay. Did you prepare that?
- 6 A: I did.
- 7 Q: And then you sent it to Ms. Boggero?
- 8 A: I did.
- 9 Q: And there's actually one sheet on the back
10 here I believe may not have been sent to Ms.
11 Boggero. Can you just give us a quick ---
- 12 A: Right.
- 13 Q: Tell us what that is.
- 14 A: So -- and she received a schedule like this
15 within the proposed assessment I sent to her.
16 But basically this is just highlighting the
17 gross sales of the revenue from the income
18 reports that she brought in for -- for each
19 year and then the 30 percent of that gross
20 sales amount which was the amount that was
21 held taxable for the assessment.
- 22 Q: All right. Was it to your knowledge at the
23 time -- did Ms. Boggero have a retail sales
24 tax license?
- 25 A: She did not.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: I'm going to show you what's been marked as
2 Respondent's Exhibit Number Two.

3 (Respondent's Exhibit Number Two was introduced
4 into the record at this time.)

5 Q: Have you seen this before?

6 A: I have.

7 Q: What is that?

8 A: So this is just various screenshots from the
9 Boggero's website.

10 Q: Okay. When did you first see that?

11 A: I saw this during the -- as I was conducting
12 the audit.

13 Q: And did you rely on that in any way in
14 determining the outcome of your audit.

15 A: In some ways. So this basically reflects
16 that they are renting portable toilets. That
17 they have various units that they are
18 providing to their customers for their
19 customers to use. And so it's something
20 where the customer is using and is interested
21 in the product of the -- the tangible
22 personal product of the portable toilet.

23 Q: So after the proposed business assessment goes
24 out, what is the process after that?

25 A: So there is a 90-day appeal period for the



1. taxpayer, and within that 90 days the
2 taxpayer can either pay the proposed
3 assessment in full or they also have a right
4 to appeal the findings.

5 Q: In this case, do you know what Ms. Boggero
6 did?

7 A: Ms. Boggero appealed within the 90 days.

8 Q: I'll show you this and this is Respondent's
9 Exhibit Number Three.

10 (Respondent's Exhibit Number Three was introduced
11 into the record at this time.)

12 A: So this is a department termination, basically
13 it's something the litigation department comes
14 up with during the appeals process.

15 Q: So it's after the customer appeals for tax --
16 -

17 A: After the taxpayer appeals.

18 Q: Okay. All right. Actually I am going to
19 show you real quick too -- well, let me back
20 up. You stated earlier that your first
21 audit, Ms. Boggero had provided you
22 information that you based your audit on.

23 A: Uh-huh (affirmative response).

24 Q: Was any other information given to you after
25 that period?



- 1 A: So, Ms. Boggero provided to the litigation
2 department sales invoices for the course of
3 the audit period. So sales invoices from
4 January 2009 to December 2011.
- 5 Q: What exactly was provided to you at the
6 initial audit.
- 7 A: In initial audit, I received her IT -- it
8 showed her individual income return, which are
9 her bank statements for the business and the
10 income report. So basically, the money that
11 she received for her sales.
- 12 Q: Okay. So after she provided the individual
13 invoices to the litigation department, were
14 you able to review those?
- 15 A: I was.
- 16 Q: And did you -- did that change anything for
17 you for your initial audit?
- 18 A: I mean, it reflected, basically, what I
19 believed that she was doing for the business.
- 20 Q: Okay. All right. So I'm actually going to
21 ask you real quick. Exhibit Number Four
22 that's already been stipulated to you, are
23 you familiar with the responders?
- 24 A: Yes.
- 25 Q: Did you know what's in them?



1 A: Sales invoices for the audit period.

2 Q: Have you gone through each one?

3 A: I have.

4 Q: Every single one them?

5 A: Multiple times.

6 Q: Okay. I'm going to show you Respondent's
7 Exhibit Number Five.

8 (Respondent's Exhibit Number Five was introduced
9 into the record at this time.)

10 Q: Can you tell us what that is and explain to
11 us briefly?

12 A: So, this is just a schedule that I made based
13 off of the sales invoices. It is a --
14 basically highlights for each month the total
15 sales, and I just totaled up the invoices for
16 each month throughout the total sales. It's
17 been discussed about the trash pickup that
18 Ms. Boggero provided, and I highlighted those
19 sales in there too. And so there's a column
20 for that and then it has -- so I deducted
21 that out of the total sales to arrive at,
22 basically, all the sales that would be in
23 correlation with portable toilet sales,
24 services, anything like that. And then came
25 up to the -- and then took that figure, times



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 it by 30 percent.

2 Q: Okay. So you stated this, but just for just
3 clarification, did you say you did take out
4 the trash containers out of the gross
5 proceeds?

6 A: I did.

7 Q: So that was not even included in the tax?

8 A: That was not included.

9 Q: Okay. I show you Respondent's Exhibit Number
10 Six.

11 **(Respondent's Exhibit Number Six was introduced**
12 **into the record at this time.)**

13 Q: Did you prepare that?

14 A: I did.

15 Q: Could you tell us about it?

16 A: So this is basically a schedule of all the
17 trash pickup sales that Ms. Boggero made for
18 the audit period. It highlights the date.
19 It was the invoice number, the Bates number,
20 the vendor name, description, which is trash
21 pickup, and then the sales amount. There is
22 also a couple of sales that were made to out-
23 of-state -- to a out-of-state vendor within
24 this and so I put that in there as well.

25 Q: You put that in there to include in the tax



1 information or to exclude it?

2 A: So, this is entirely -- these are all what we
3 would consider nontaxable sales.

4 Q: Okay. I'm going to show your Respondent's
5 Exhibit Number Seven.

6 (Respondent's Exhibit Number Seven was introduced
7 into the record at this time.)

8 A: Okay.

9 Q: Did you prepare this as well?

10 A: I did.

11 Q: And what is that?

12 A: So, this was something that I generated just
13 in going through the sales invoices. Again,
14 it has date, invoice number, Bates numbers,
15 vendor or who her customer was. I put
16 vendor, that's supposed to be customer name.
17 And then the sales amount. And so what these
18 sales represent were sales as reflected on
19 her invoice for things such as standard
20 units, the VIP units, hand wash stations, the
21 handicap units, and then also was to
22 highlight any invoices that specifically
23 stated something about a new delivery or
24 pickup of the portable toilet.

25 Q: Now at the bottom it seems you totaled the



1 numbers on that chart, is that correct?

2 A: I did for each month and then for the total
3 amount as well.

4 Q: What do you think of those numbers -- those
5 totals mean to you?

6 A: So basically this -- so I had a monthly total
7 and at the end of it I totaled it out just to
8 get an idea of how much in sales that would
9 be. And roughly -- I mean roughly it was
10 close -- it was probably about 28 percent of
11 what her gross overall sales were ---

12 Q: Okay.

13 A: --- for the pickups, the deliveries, the
14 standard units, VIP, all that.

15 Q: Okay. So in your normal course of business
16 as the auditor, is Ms. Boggero's portable
17 toilet rental a use or a service?

18 **THE COURT:** Excuse me. I need you to separate your
19 words a little better for me.

20 **MS. THOMPSON:** I apologize, Your Honor. I'll
21 actually just go into this.

22 **THE COURT:** I did not -- you going to repeat what
23 you said?

24 **MS. THOMPSON:** Shortly.

25 Q: I'm going to show you this as well. This is



1 not an exhibit. We can make it an exhibit if
2 necessary. Can you tell us what that is?

3 A: So these are just penalty details, schedules
4 and a billing explanation for -- and this was
5 all provided to Ms. Boggero when I sent her
6 the proposed notice of adjustment. But the
7 penalty detail is basically just to highlight
8 the penalties that were applied for the
9 proposed adjustment and for this particular
10 audit because Ms. Boggero did not have a
11 retail license, wasn't collecting sales tax or
12 paying sales tax to the State of South
13 Carolina. And because our position is that
14 that tax is actually due, failure to file and
15 failure to pay penalties were also assessed.

16 Q: I'm actually going to go ahead and read this
17 into evidence, Your Honor.

18 THE COURT: It's not already in?

19 MS. THOMPSON: It's not. No, sir.

20 MR. HEMPHILL: No objection.

21 MS. THOMPSON: This will be Respondent's Exhibit
22 11.

23 THE COURT: Respondent's Eleven admitted without
24 objection.

25 (Respondent's Exhibit Number Eleven was introduced



1 into the record at this time.)

2 Q: We have no further questions for you at this
3 time, Mr. Butler, but please answer anything
4 the opposing counsel has.

5 **THE COURT:** Before cross-examination, I have one.
6 Did you assess the tax based on the entire
7 amount paid on the invoices?

8 **THE WITNESS:** I did not. So the assessment was
9 based on the records that I had provided to
10 me at the -- in the original audit. So my
11 assessment was based off of monies that Ms.
12 Boggero had actually received for the audit,
13 just because that was the documentation that
14 I had to go from.

15 **THE COURT:** All right. But let me ask the question
16 another way and from this, neither side
17 should assume that I've reached any sort of
18 decision tentative or otherwise. But did you
19 allocate the tax between the service and the
20 rental, assuming there was a rental.

21 **THE WITNESS:** So I applied it based on the tax --
22 the exemption that is out there for portable
23 toilet companies, which would tax everything
24 the services and the rental at 30 percent of
25 the entire charge.



1 THE COURT: I see. So you assumed that the tax was
2 due on the service and the rental?

3 THE WITNESS: Correct.

4 THE COURT: Under the statute that grants the
5 exemption and that's where you derive that?

6 THE WITNESS: Uh-huh (affirmative response).

7 THE COURT: All right. I understand. I'm going to
8 mull that over. I may have further questions
9 later. I may want to recall you if I do.

10 THE WITNESS: Yes, sir.

11 THE COURT: Mr. Hemphill.

12 MR. BUTLER - CROSS-EXAMINATION BY MR. HEMPHILL:

13 Q: May it please the court. Mr. Butler, you
14 have been in this position for three years,
15 but at the time of this audit, you had been
16 in your position how long?

17 A: A year and a half.

18 Q: Okay.

19 A: Maybe a little over a year and a half.

20 Q: All right. And had you ever performed an
21 audit on a business of this nature?

22 A: I had not.

23 Q: Okay. So, you know, whether it be summers
24 during college or in high school, you never
25 worked in a portable toilet business?



- 1 A: I did not. No, sir.
- 2 Q: Okay. So did you have any background in the
3 nature of this business?
- 4 A: Other than the statutes and regulations that
5 were out there for portable toilet companies,
6 no, sir.
- 7 Q: Okay. But in terms of boots on the ground,
8 nuts and bolts ---
- 9 A: No, sir.
- 10 Q: --- no familiarity; is that correct?
- 11 A: Yes, sir.
- 12 Q: Okay. Now when you met with Ms. Boggero and
13 her father -- you heard her testify today in
14 great depth. Would you agree she testified
15 in great depth about the nature of her
16 business?
- 17 A: Yes, sir.
- 18 Q: Did you have an interview with her in such
19 depth?
- 20 A: I wouldn't say to the amount of questions
21 that were -- have been going in, in this
22 particular case; but we did sit down and talk
23 with Ms. Boggero and discuss the case. And I
24 can -- we did.
- 25 Q: Okay. But if I understand correctly, the



1 documents that you used to arrive at your
2 calculations were a Schedule C off of her tax
3 returns and certain income reports; is that
4 correct?

5 A: Yes, sir.

6 Q: And you did not ask for any type of
7 agreements that memorialize her transaction
8 with any individual customer did you?

9 A: I cannot -- I can't give an honest statement
10 on that. I did -- she did provide me with a
11 -- the copy of the service agreement that she
12 would give to her customers. But I can't
13 honestly say -- it's been about a year and a
14 half, so I can't really say honestly now.

15 Q: Okay. So she did give you a copy of the
16 document that memorialized any individual
17 transaction with her customers. Is that what
18 I hear you saying?

19 A: Uh-huh (affirmative response). The service
20 agreement contract.

21 Q: Okay. And here I will hand you what has been
22 marked as Petitioner's Five, and did it look
23 like that?

24 A: Yes, sir.

25 Q: Okay. And you heard me review that with her



1 earlier. Please take as much time you need
2 to review the document. Is that -- did she
3 hand you a signed one or a sample?

4 A: I believe that she provided me a sample that
5 one of her customers had put outside. I
6 believe it was, as I remember -- maybe she
7 provided me a blank copy as well as one from
8 one of her customers.

9 Q: So whether it was a blank one or whether it
10 was a signed one -- Five-A is a signed one.

11 A: Okay.

12 Q: Either way, do you feel like the terms of the
13 agreement that you reviewed in your interview
14 with her and her father, are the same as
15 depicted there?

16 A: Yes, sir.

17 Q: Okay. Sir, do you see anywhere on there --
18 take your time and read the document. Do you
19 see anywhere on there that she is engaging in
20 a rental agreement with her customers?

21 A: So in reading this, I would probable look to
22 number six on this document, which talks
23 about the use of a portable toilet. And I
24 would also probably look at number eight,
25 which is the equipment as the property of



1 Boggero's Portable Toilet that is provided to
2 the customer for his exclusive use, something
3 that the customer -- it's something the
4 customer is using, not Boggero's.

5 Q: Okay. But sir, my question is, on this
6 document anywhere is the term rent or lease
7 used?

8 A: It is not.

9 Q: Okay. But in paragraph six and eight, you
10 were reading into those paragraphs a term
11 that does not exist; is that true?

12 A: Could you say ---

13 Q: You cite two paragraphs, six and eight. Are
14 you reading in the term rent or lease where
15 it does not exist?

16 **MS. THOMPSON:** I object to the form, reading into.

17 **THE COURT:** Overruled. Cross-examination.

18 A: So I think the term rent is not there. I
19 think that in saying the customer is using
20 the portable toilet, that the -- the customer
21 is getting some type of tangible personal
22 property; in this case the portable toilet,
23 and they are using that portable toilet. I
24 mean -- so, I think that you can have a
25 service agreement, and I can state this



- 1 anyway that I want to but ultimately you kind
2 of have to look at what's the customer's
3 ultimate interest.
- 4 Q: Well, let's talk about that. Customer's
5 ultimate interest is to be rid of human
6 waste. Would you agree with that?
- 7 A: They're trying to get rid of human waste.
- 8 Q: Right. So there has to be a vessel
9 receptacle to get rid of human waste,
10 correct?
- 11 A: Uh-huh (affirmative response).
- 12 Q: Is that a yes?
- 13 A: Yes, sir.
- 14 Q: So if that's the case, if they provide a
15 portable toilet in order to collect it, such
16 that it can be hauled away, the true object,
17 would you agree with me, of the contract
18 between her and her client is to haul off the
19 waste?
- 20 A: I would not say that's the case.
- 21 Q: Why not?
- 22 A: I would say the customer is interested in a
23 portable toilet and using the portable toilet.
24 They're interested in the privacy of the
25 portable toilet. She has various special



1 units that she's using, VIP units, for her --
2 for the summer months, for those couple of
3 days that she'll provide those. Those
4 customers -- you can't just put anything out
5 there for the customer. They desire privacy,
6 they desire specific things within the
7 portable toilet.

8 Q: But those are amenities that are incidental
9 to the true purpose of the contract. Would
10 you agree? I mean whether it's a VIP suite
11 or just the bare-bones portable toilet, it
12 has one thing in common, a holding tank;
13 correct?

14 A: It does have -- yes, sir.

15 Q: And they -- they're not qualified to take it
16 to the disposal station in general, the
17 customers, are they?

18 A: They are not.

19 Q: Only Ms. Boggero is and her company, correct?

20 A: Uh-huh (affirmative response). Yes, sir.

21 Q: So isn't it true, the true purpose of this
22 agreement is to provide a mechanism whereby
23 the human waste is received and hauled off?

24 A: She is -- she is providing a mechanism for
25 the -- for ---



- 1 Q: Right. And the amenities you are referring
2 to, those are just incidental to that;
3 correct?
- 4 A: I do not believe so. No, sir.
- 5 Q: I mean whether it's a bare-bones model or
6 whether it's a VIP or whether it's a
7 handicap, those are just incidental to the
8 holding tank, which is a receptacle; isn't
9 that true?
- 10 A: Well, I guess that I would think of it this
11 way. She couldn't just put a holding tank
12 out there with nothing around it. She could
13 not just set a holding tank for somebody to
14 use the restroom in.
- 15 Q: She could -- well, that just -- that provides
16 privacy; correct?
- 17 A: It does.
- 18 Q: Privacy is incidental to that, correct? Let
19 me put it another way. If she didn't go out
20 there and service it in a timely manner,
21 would that be objectionable to the client?
- 22 A: I think that it would be.
- 23 Q: It would be so noxious that you couldn't
24 enter the door; isn't that true?
- 25 A: Yes, sir.



1 Q: So which is more important, servicing the
2 receptacle or the amenities that you are
3 referring to?

4 A: Well, I don't know if I can necessarily speak
5 into all of that, but I think that is --
6 maybe a lot of why the statutes are out there
7 for the 70 percent and the 30 percent for the
8 portable toilets because it is a type of
9 business where a tangible personal property is
10 being provided; but it is also a type of
11 business where servicing is being provided.
12 So, I think in a lot of ways that's maybe why
13 the original exemption was passed by the
14 General Assembly.

15 Q: But despite the legislative intent and what
16 was in the minds of the legislature and all
17 that, I'm asking you for a common sense
18 answer. Do you have it or do you defer to my
19 client?

20 A: So, can you ask me the question again?

21 Q: Yes, sir. You don't -- would you defer to my
22 client about the nature of her business since
23 she has worked in it for all these years, and
24 you never?

25 A: I would say that we are of varied opinions as



1 far as what -- I would say we are of varied
2 opinions.

3 Q: But you would agree with me she has more
4 experience of this than you?

5 A: She does have more experience on it.

6 Q: All right. Now you were shown -- let me ask
7 you this. Have you ever audited a rental car
8 business?

9 A: No, sir.

10 Q: Let's just think hypothetically. If you were
11 to audit a rental car business, would you
12 think that rental cars -- assuming there is
13 no exemption for that too. Would you think
14 that rental cars are renting on a per day
15 basis?

16 A: I would say that they most likely are.

17 Q: Do you think that it might well be a per week
18 or per month basis as well? That that's an
19 option for the customer?

20 A: It could be.

21 Q: Okay. So would you agree with me that that
22 item of tangible personal property, assuming
23 there is no exemption, would be a rental
24 subject to the tax?

25 A: Yes, sir.



1 Q: And did you see any kind of definite term,
2 whether it be per day or per week or per
3 month, in any of the documents that you
4 reviewed, that might client was renting
5 portable toilets?

6 A: Nothing with the term, rental.

7 Q: Now I'm not talking about the term, rent.
8 I'm talking about that had a definite term,
9 whether it be a day, a week or a month.

10 A: So with the invoices that she provided in the
11 aff- in the appeals process, the invoices
12 would highlight the four-week period, like
13 what Ms. Boggero was talking about earlier.
14 And some of those invoices would highlight a
15 new delivery of a portable toilet or a pickup
16 of a portable toilet.

17 Q: All right. But when you go pick up a car --
18 have you rented a car before?

19 A: I've not. No, sir.

20 Q: Will you help -- you would understand that
21 you would be able to rent a car for a day, a
22 week or perhaps longer?

23 A: Uh-huh (affirmative response).

24 Q: And you would get any length, any number of
25 mileage that you could drive with that car



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 for that per day or per week amount; is that
2 correct?

3 A: Yes, sir.

4 Q: Okay. In the service agreement -- now, if
5 you went and rented a car, it would tell you
6 when you're supposed to turn it back in;
7 correct?

8 A: Yes, sir.

9 Q: So that would be a definite term on the
10 rental arrangement. Would you agree with me?

11 A: Uh-huh (affirmative response). Yes, sir.

12 Q: But you don't see that in this service
13 agreement anywhere. It says -- there is
14 nothing in here that says thou shalt return
15 the tangible personal property of a portable
16 toilet in a day, a week or a month, is it?

17 A: No, sir.

18 Q: So it lacks that, doesn't it?

19 A: It does.

20 Q: Okay. It's an open ended contract, isn't it?

21 A: It is.

22 Q: And it entitles my client, until she gets a
23 call to come pick it up, to service it
24 weekly, correct?

25 A: Yes, sir.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: Okay. And that's that's -- that's what's in
2 those invoices, isn't it? It's weekly --
3 80,85 percent of them are weekly servicing.
4 In fact, if I take a minute and look, they
5 say weekly service charge ---

6 A: (Nods head affirmatively.)

7 Q: --- \$20 or \$22 a month, which are
8 construction type jobs typically. That's what
9 that is. That's a billing cycle. That's not
10 a term on contract; would you agree?

11 A: Yes, sir.

12 Q: Okay. Now, this exercise that you went
13 through with -- in compiling these exhibits -
14 - excuse me, Exhibit Seven, there is delivery
15 charges, there's portable pickup charges,
16 there's hand wash unit charges, things of
17 that nature. Those are not rental charges
18 are they?

19 A: They are charges for a -- except for the
20 standard units, the VIP units. That's for
21 the delivery or the pickup of those standard
22 units, the VIP units, what have you. The
23 delivery of -- the delivery charge is for --
24 you're seeing a tangible personal product go
25 out to the customer. For pickup you're



1 seeing a tangible personal property come back
2 to the owner of the equipment, which would be
3 Boggero's in this case.

4 Q: Right. But, have you ever rented an
5 apartment?

6 A: Yes, sir.

7 Q: The landlord who rented you that apartment,
8 rented you for a month or six months or a
9 year, however how -- for an definite term,
10 correct?

11 A: Yes, sir.

12 Q: And you got to use as much as you wanted to
13 during that term?

14 A: Yes, sir.

15 Q: Correct? You paid them a flat rate for that;
16 isn't that true?

17 A: Yes, sir.

18 Q: These aren't flat rates are they in Exhibit
19 Seven? These are where her company is taking
20 a particular action and expending resources
21 and looking to get paid for it; isn't that
22 true?

23 A: Yes, sir.

24 Q: Okay. That's a service isn't it?

25 A: Well, I think that they could -- that she can



1 charge. You can call it a service, but she
2 is providing a tangible personal product to
3 her customers.

4 Q: Incidental to the true object of what she is
5 doing, that is hauling off waste; isn't that
6 true?

7 MS. THOMPSON: Your Honor, I believe that's been
8 asked and answered. I would object.

9 THE COURT: I'm sorry.

10 MS. THOMPSON: I object. I believe that's been
11 asked and answered.

12 MR. HEMPHILL: But he's on cross-examination, Your
13 Honor.

14 THE COURT: Well, I'm going to let him continue. I
15 don't remember it precisely. But just out of
16 caution, you may ask the question.

17 Q: Now you have a -- do you have any particular
18 handbooks that you use when you are in the
19 field?

20 A: Not in the field. No, sir.

21 Q: How about when you get back in the office
22 before you assess my client?

23 A: So we have tax code and various different
24 websites that we can use for regulations and
25 different documents.



1 Q: Okay. Did you resource the South Carolina
2 Sales and Use Tax Manual at all to determine
3 what my client's actions were before you
4 assessed her?

5 A: Maybe not that particular book, but I did
6 look at the various tax codes and
7 regulations.

8 Q: Okay. Is this a resource that you use in
9 your --

10 A: I don't have that particular book, but I do
11 have -- the resources that are in that book,
12 I do have available.

13 Q: Okay. May I have the court's indulgence?
14 Those are the questions I have, thank you.

15 MS. THOMPSON: I have one quick follow-up, Your
16 Honor, in reply.

17 THE COURT: All right.

18 MR. BUTLER - RE-EXAMINATION BY MS. THOMPSON:

19 Q: Mr. Butler you stated that clearly you are
20 not an expert in the portable toilet
21 industry; is that correct?

22 A: Yes, ma'am.

23 Q: Okay. During your audit, however, did you
24 research -- did you do any research regarding
25 Ms. Boggero's business?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: And so I did, looking into just how -- just
2 on her website looking at how other companies
3 treated the same type of -- the same type
4 charges. And so looking into that type of
5 thing.

6 Q: When you state other companies, what type of
7 other companies?

8 A: This would be various other portable toilet
9 companies within the State of South Carolina.

10 Q: I have no further questions.

11 **THE COURT:** I have one before you leave. And you
12 just brushed by it. In your experience, are
13 there any analogous situations in terms of
14 whether or not there has been a rental or a
15 lease plus a service being performed in which
16 the department either was successful in
17 collecting a tax or refused to collect a tax
18 because there was no rental?

19 A: You mean like the -- just so I can clarify.
20 Meaning like that that they are servicing
21 another company's portable toilet that another
22 customer owns?

23 **THE COURT:** I'm not limiting it to portable
24 toilets. I'm just talking about an analogous
25 situation where there is an issue as to



1 whether or not it was a rental?

2 A: I don't necessarily know offhand.

3 **THE COURT:** That's fine.

4 A: I'm not sure about it. I don't necessarily
5 understand your question fully but ---

6 **THE COURT:** Well, let me make sure you understand
7 it before I let you go.

8 **THE WITNESS:** Okay.

9 **THE COURT:** What I want to know is, in your
10 experience have there been any situations
11 analogies to this in the sense that there was
12 an issue as to whether or not there was a
13 rental or no rental, and in such case was a
14 tax collected or was there a refusal to
15 collect a tax?

16 A: This -- I don't' think I have the knowledge
17 of this.

18 **THE COURT:** You have not. All right. One further
19 question. This may not be precisely
20 analogous, but supposed someone has a pond
21 that they want drained ---

22 **THE WITNESS:** Uh-huh.

23 **THE COURT:** --- and they employ a man with a pump
24 to come and pump that pond dry. He takes his
25 pump, and he puts it out there, and he sets



1 it on the dam, cranks it up, throws the
2 syphon in and walks off and leaves it until
3 the pond is dry. Now, is he providing a
4 service or has that individual rented that
5 pump?

6 **THE WITNESS:** I would say in that case he is
7 providing a service. Because I would say
8 that you have to look at the nature of what
9 that particular customer is interested in.
10 That customer is interested in the pond being
11 drained.

12 **THE COURT:** I see. That's the only close analogy
13 that I can think of. As I said, it is not
14 precise. I need some guidance on this thorny
15 issue. Does my question raise any further
16 questions from you folks on either side of
17 the aisle?

18 **MS. THOMPSON:** No, sir.

19 **MR. HEMPHILL:** Your Honor, I would like to ask
20 about the hypothetical.

21 **MR. BUTLER - RE-CROSS-EXAMINATION BY MR. HEMPHILL:**

22 Q: If you had -- if a customer needed to get
23 bats out of their attic and the bat removal
24 expert was hired to do the job, and he
25 brought a cage and put it in your attic -- in



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 fact, left it there for months. Is he
2 providing a service or is he providing you
3 with a tangible personal property that he's
4 renting to you?

5 A: So I would say that with -- I think with both
6 of these examples, I think it's a service,
7 and I think it's similar to when -- well,
8 maybe not exactly so because Ms. Boggero is
9 only doing trash pickup. She is not
10 providing a trash container, I could be -- I
11 believe that's what she said. But if -- say
12 you're providing a trash container. That
13 trash container is merely used by that
14 business to pick up the trash, and they're
15 providing a service, they're not renting that
16 trash container, which is why on those
17 schedules earlier that I did, those trash --
18 those were deducted out. But I would say
19 that's a service.

20 Q: That removal guy?

21 A: Uh-huh (affirmative response).

22 Q: Okay. A trash container company provides a
23 receptacle to receive construction debris,
24 demolition debris or just -- at a
25 construction site. Would you agree with me



1 that that is a service they provide?

2 A: It is. Yes, sir.

3 Q: What's the difference between the trash
4 container and the portable toilet?

5 A: I can give probably my opinion. I don't
6 think that I have the necessarily knowledge
7 base as far as what the general counsel would
8 rule on that. So I don't think that I
9 necessarily have the answer.

10 Q: But you're the one out there in the field
11 making these calls?

12 A: I do.

13 Q: Okay. And you have resources available to
14 you?

15 A: Uh-huh. Yes, sir.

16 Q: What's the -- is there any difference?

17 A: Based on what the general counsel has ruled,
18 it would say that 30 percent of the portable
19 taxable -- portable toilet sales are taxable.
20 A dumpster being used, it is subject to a use
21 tax on that container out front for that
22 business. They pay the sales tax on the ---

23 Q: But that exemption you are referring to
24 hinges on a rental; isn't that true? There
25 being a rental relationship between the



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

- 1 provider and the customer?
- 2 A: It's ---
- 3 Q: Show it to me. It says rental or lease.
- 4 Have you read it?
- 5 A: I've read it.
- 6 Q: Okay. It says rental or lease, correct?
- 7 A: Uh-huh (affirmative response).
- 8 Q: Is that a yes?
- 9 A: Yes, sir.
- 10 Q: Okay. In anywhere have you seen the term
- 11 rent in the documents that my client has with
- 12 her current customers?
- 13 A: I have not seen it.
- 14 Q: Do you see a lump-sum payment just for the
- 15 exclusive use of the portable toilet whether
- 16 it be per day, per week or per month?
- 17 A: The only ones that I would say is probably
- 18 would be the standard VIP units that is
- 19 something that's she doing it for the day or
- 20 for a couple of days.
- 21 Q: Okay. Everything else that you reviewed?
- 22 A: Is based on the weekly ...
- 23 Q: What?
- 24 A: The weekly -- when she's billing weekly.
- 25 Q: What she's doing every week.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 A: She is billing for the service that she is
2 providing.

3 Q: Thank you.

4 THE COURT: Anything further?

5 MS. THOMPSON: Your Honor, if I could just ask one
6 quick question?

7 THE COURT: Yes, ma'am. Just based on the re-
8 cross, yes.

9 MS. THOMPSON: This is actually based on your
10 hypothetical but ---

11 THE COURT: Very well, that's fine.

12 MS. THOMPSON: If I may ask that?

13 THE COURT: Yes, ma'am. Yes, ma'am.

14 MR. BUTLER - RE-EXAMINATION BY MS. THOMPSON:

15 Q: Okay. In the judge's hypothetical -- are you
16 familiar with what I'm talking about? The
17 hypothetical that he gave you about the lake?

18 A: Yes.

19 Q: Okay.

20 A: Yes, ma'am.

21 Q: In that situation, who do you view as using
22 the pump?

23 A: I would say that the pump is being used by
24 the business individual who is draining that
25 particular pond. He is using that -- that



1 enables him to be able to drain the pond.

2 Q: Okay. So in our case at issue here, who in
3 your opinion uses the port-o-potties?

4 A: The customers of Boggero's Portable Toilets.

5 Q: How is -- is that different to you?

6 A: I would say that it is different. In one
7 sense that the customer is using it and the
8 other sense the owner of the pump is using it
9 because it's the best method for him to get
10 the water out of the pond quicker.

11 MS. THOMPSON: That's all, Your Honor.

12 THE COURT: Thank you. You may step down. Thank
13 you, sir.

14 THE WITNESS: Yes, sir.

15 MS. THOMPSON: Respondent's call James McCutchen.

16 COURT REPORTER: Mr. McCutchen, do you solemnly
17 swear that the testimony you are about to
18 give will be the truth, the whole truth and
19 nothing but the truth, so help you God?

20 MR. McCUTCHEN: I do.

21 JAMES McCUTCHEN, having been duly sworn, deposes
22 and testifies as follows:

23 MR. McCUTCHEN - EXAMINATION BY MS. THOMPSON:

24 Q: Can you state your full name for the record?

25 A: James McCutchen.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: Where are you employed, Mr. McCutchen?

2 A: The South Carolina Department of Revenue.

3 Q: I am going to go ahead and show you this
4 before I ask you these next questions, since
5 we've already stipulated Respondent Exhibit
6 Number 8, I believe.

7 (Respondent's Exhibit Number Eight was introduced
8 into the record at this time.)

9 Q: Does that look familiar to you?

10 A: Yes.

11 Q: What is that?

12 A: This is my curriculum vitae.

13 Q: Okay. While we're going over these
14 questions. How long have you been at the
15 department?

16 A: Just over two years.

17 Q: Okay. What briefly is your educational
18 background?

19 A: I graduated from the College of Charleston in
20 2006 with a Bachelor of Arts degree in
21 English composition and a minor in Criminal
22 Justice. In 2011, I graduated from the
23 Charleston School of Law, Cum Laude with a
24 legal degree, and currently I am a graduate
25 tax student at Georgetown University Law



1 Center, a part time student. I have
2 completed a graduate certificate at Georgetown
3 University, in state and local taxation, and
4 I just have five classes left before I have
5 completed the LLM program in taxation.

6 Q: And your current position with the department?

7 A: Currently my position is Revenue Law Advisor
8 II, which is in the Office of General
9 Counsel, Tax and Regulatory Services Division;
10 and I work in the policy section of that
11 division.

12 Q: Can you briefly describe for us what the
13 policy section does?

14 A: Sure, depending on what day it is, we have a
15 thousand different duties. But in a normal
16 week, I would say 25 percent of my job is
17 responding to private letter ruling requests
18 and advisory opinion requests, as well as
19 drafting informal advice opinions and formal
20 advice opinions, which are then submitted to
21 our policy review counsel for review. And
22 upon their approval it goes to the director
23 for his or her approval, depending upon who
24 the director is at the time. Twenty-five
25 percent of my job is also drafting certain



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 publications that are available to the public
2 via our website. And I guess I should back
3 up and say that all of our advisory opinions
4 are available in my book that I draft every
5 year as well as our website. You can also
6 find those opinions on West law. And I also
7 am involved with assisting audit on particular
8 audits; and that can range from going out and
9 visiting a jobsite or just responding to
10 legal questions or attending audit conference.
11 And then the other 25 percent of my job would
12 be training department employees, which
13 include auditors and individuals that work
14 with forms on tax law updates.

15 Q: You keep stating that, you know, you answer
16 questions for the public and any auditors in
17 the field. Do you have any specialization?

18 A: In addition to courses that I have taken?

19 Q: Any specialization in your job -- subject
20 specialization.

21 A: Oh, right. We have six individuals in our
22 policy section that draft policy rulings. Of
23 those six individuals, four are attorneys and
24 two are accountants and one person is an
25 accountant intern. And I am the only one of



1 the six currently that addresses sales in
2 these tax questions.

3 Q: While we're on that, does this look familiar
4 to you?

5 A: Yes, that's my book.

6 Q: You, in fact, wrote this book?

7 A: I'm a co-author of the book with my
8 supervisor, yes.

9 Q: Okay. So it's very safe you are pretty
10 familiar with this?

11 A: Yeah. The book was in existence when I began
12 working in the policy section. Prior to
13 working the policy section, I worked as an
14 attorney in the litigation division. But I
15 am responsible for updating the book every
16 year and performing edits.

17 Q: So when you answer questions for the field
18 auditors, are most of those questions answered
19 in this book?

20 A: A lot of the questions are answered in the
21 book. Sometimes they are not. We obviously
22 can't address every single potential
23 transaction. But that book is available to
24 the general public as well as our office
25 employees. It's posted on our website.



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Q: Can you tell us what the sales tax position
2 is under South Carolina law?

3 A: Sure. Code Section 12-36-910 imposes a sales
4 tax in South Carolina. The sales tax is
5 based on gross proceeds of sales. There's a
6 lot of terms that are defined; but it is
7 based on gross proceeds of sales by an
8 individual or a company that is making sales
9 of tangible personal property at retail. And
10 then the term gross proceeds of sales and the
11 term sale are defined in the code as well.

12 Q: Well, we'll go ahead and discuss that. Just
13 tell us what your knowledge of what the
14 definition of gross proceeds sales first.

15 A: Sure. Code Section 12-36-90 defines the term
16 gross proceeds of sales or similar terms, and
17 it's the amount preceding or accruing from
18 the sale of tangible personal property without
19 any deduction for the cost of goods sold. In
20 this particular case, services performed. And
21 there is even one provision in the definition
22 of gross proceeds that says, or any other
23 expense such as advertising expenses or any
24 other expense.

25 Q: Okay. We're going to go a little bit



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 further. Can you define tangible personal
2 property under the law?

3 A: Sure. Code Section 12-36- -- sorry. 12-36-
4 60 defines the term tangible personal property
5 and, you know, the term basically is anything
6 that you can touch, feel or anything that is
7 perceptible to the senses. And it also
8 includes some enumerated services such as dry
9 cleaning services or communications.

10 Q: Okay. How about -- what is the definition of
11 sales tax?

12 A: This is the last one, last definition. Code
13 Section 12-36-100 defines the term sale. It
14 is a transfer or exchange of tangible
15 personal property and it includes four
16 different sub-items. One of those sub-items
17 is a lease or rental or other form of
18 agreement. So, it includes leases, rentals
19 or other forms of agreement to use tangible
20 personal property.

21 Q: Has the department issued any guidance
22 specifically as to sales tax imposed on the
23 lease/rental of portable toilets?

24 A: Yes. We currently have two rulings --
25 advisory opinions. One was issued in 2001,



1 which is a revenue advisory bulletin, and one
2 was issued in 2009.

3 Q: And these are the ones that got mixed up with
4 the Exhibits, Your Honor. So, it's the
5 second part of Respondent's Exhibit Number
6 Nine and Respondent's Exhibit Number Ten.

7 **(Respondent's Exhibit Numbers Nine and Ten was**
8 **introduced into the record at this time.)**

9 Q: Are those the rulings that you are referring
10 to?

11 A: Right. This one is the 2001 advisory
12 opinion. And this one is the 2000 ---

13 **THE COURT:** All right. Well, this one, this one
14 doesn't ---

15 **THE WITNESS:** I'm sorry. The one in my left hand
16 is ---

17 **THE COURT:** That's still -- the record doesn't show
18 -- is it Bates stamped or is there some other
19 -- identify it by date.

20 **THE WITNESS:** Sure. Okay. This one is effective
21 June 25, 2001, and that is South Carolina
22 Revenue Advisory Bulletin 01-5. And the
23 other one is effective May 19, 2009, and it
24 is South Carolina Revenue Ruling 09-5.
25 Excuse me, Your Honor.



1 **THE COURT:** All right. So when you refer to them,
2 refer to them by the Revenue Ruling on them?

3 **THE WITNESS:** Yes, sir.

4 **Q:** Are you familiar with both those documents?

5 **A:** I am.

6 **Q:** Okay. What are the difference in those two
7 documents, if any?

8 **A:** Both documents essentially use the exact same
9 language and go through the code sections
10 that I just listed for you, and they evaluate
11 the ---

12 **MR. HEMPHILL:** Your Honor, at this time I need to
13 object. Thus far the question has gone along
14 the lines of assisting to try our fact and
15 getting oriented to perhaps the law associated
16 with this. Now this witness is being asked
17 to interpret these -- this isn't law. This
18 is some documents, and I think that's perhaps
19 left to the court. I have no objection if
20 the client -- if the witness wants to present
21 the documents, but to give opinions and to
22 distinguish things of that nature, he has not
23 been qualified as an expert witness.

24 **THE COURT:** I can certainly consider these revenue
25 rulings independent of what he may say. I'm



1 going to overrule the objection. I think I
2 need to hear what his take on them is.

3 Q: You can go forward.

4 A: Okay. Well basically both documents, 01-5
5 and 09-5, go through the code sections as I
6 just explained them to you: the imposition of
7 the sales tax, the definition of gross
8 proceeds, the definition of sale, and the
9 definition of tangible personal property. And
10 they both relate to the rental or charges for
11 the use of portable restrooms. And both
12 documents issued by the department, and they
13 are officially approved by the director at
14 the time, determine that the gross proceeds
15 of sales for the rental or use of portable
16 toilets is subjected to the sales and use
17 tax. The only difference in the two
18 documents is in 2003, the General Assembly
19 enacted Exemption 12-36-21-20, subsection 62,
20 exempting 70 percent of the gross proceeds
21 for the rental of portable restrooms. So,
22 the '09 document includes that exemption, you
23 know, the code section without exemption,
24 whereas the '01 document does not.

25 Q: What is the department's opinion as -- or not



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 opinion, but with their longstanding -- the
2 way they apply the policy -- what do they
3 need to determine rental?

4 A: The department -- well, in terms of rentals,
5 we go with the definition of sale, which is
6 Code Section 12-36-100 to determine whether or
7 not a sale has occurred. And the definition
8 of sale includes the lease, rental or other
9 form of agreement. So the department will
10 look at the agreements but also looks at what
11 exactly is the customer receiving. And with
12 portable toilets, it is the department's
13 official position that the customer is
14 receiving the use of the portable restroom.

15 Q: You talked about how there was the 70 percent
16 exemption that was in that ruling, correct?

17 A: Yes, ma'am.

18 Q: Okay. Prior to, I believe, you stated they
19 just enacted that. I don't remember the year
20 you told me. I apologize. Prior to that,
21 how were portable potties treated tax wise?

22 A: Sure. The exemption was enacted and became
23 effective July 1st in 2003. Prior to that
24 date, the department has always consistently
25 applied the law as provided that the rental



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 or lease or use of portable restrooms is
2 subject to 100 percent -- the tax is subject
3 to 100 percent of the gross proceeds of
4 sales. In 1977, there was a case before tax
5 commission in which the department won,
6 relating to the portable -- a port- -- a
7 taxpayer that was leasing portable restrooms.
8 And in that case the department determined
9 that the rental or lease -- charges for the
10 rental or lease of portable restrooms was
11 subject to the sales tax.

12 Q: Do you happen to know that case off the top
13 of your head?

14 A: Yeah, it was in 1977 and it was a case -- I
15 don't know if it was an anonymous taxpayer
16 versus the South Carolina Tax Commission, but
17 it just goes to show that the department has
18 consistently applied the law in a uniform
19 manner until 2003 when the exemption was
20 enacted, and in which case the department
21 continued to apply the law but did provide
22 for the exemption.

23 Q: I'm going to change gears just a little bit
24 right here. It's been mentioned several
25 times throughout the testimony and things



- 1 heard here today. Has the department issued
2 any guidance on collection of waste or the
3 use of trash containers?
- 4 A: Yes, the department has.
- 5 Q: Okay. And do you have ---
- 6 A: Sure.
- 7 Q: --- Respondent's Exhibit Number Nine ---
- 8 A: I do.
- 9 Q: --- still in front of you?
- 10 A: And this is South Carolina Private Letter
11 Ruling 04-2.
- 12 Q: And what is that in reference -- I'm sorry.
13 What is that in regards to?
- 14 A: Okay. It's titled, Construction Debris
15 Disposal Service.
- 16 Q: Okay. And can you differentiate just for the
17 court's knowledge between Private Letter
18 Ruling and a Revenue Ruling?
- 19 A: Sure. Private letter ruling is the
20 department's official response and official
21 position with respect to a taxpayer that has
22 requested an official opinion. It's only
23 effective and only applies to that specific
24 taxpayer. While it could be used as, you
25 know, sort of like an advisory opinion for



1 similarly situated taxpayers, it only applies
2 to that specific taxpayer.

3 Q: Okay. And in that instant of that private
4 letter ruling, what was issue that arose out
5 of?

6 A: Sure. Basically this was a construction site
7 that was renting a dumpster or some sort of
8 container to haul off construction waste, and
9 there were charges for delivery, rental of
10 the dumpster, dumping of the dumpster,
11 discovery of the dumpster and the fuel
12 surcharge. In that case -- because the
13 department evaluates each transaction on a
14 transaction by transaction basis and employs
15 the true object test to determine what is the
16 true object of the transaction for purposes
17 of the buyer. And in this case, the
18 department determined that the true object of
19 the transaction was for the removal of waste.
20 Therefore, the true object was not for the
21 sale of tangible personal property pursuant to
22 South Carolina Law.

23 Q: Okay. So why don't the department rule
24 portable toilets one way and waste management
25 another way? What is the difference?



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 A: The department has to evaluate every
2 transaction on a transaction by transaction
3 basis. Just because this private letter
4 ruling has been issued in 2004 doesn't mean
5 that every dumpster that's being provided to
6 a construction site, in addition to providing
7 a service of removing the waste, will not be
8 subject to the sales tax. You know we have
9 to look at the dumpster to see what all is
10 being provided on each basis to determine
11 what the true object of the transaction is.
12 But in general, just you know, waste removal
13 versus the rental agreement to use a portal
14 potty, in general, it's the department's
15 official position that the customer is paying
16 for the port-a-potty. Their paying to have
17 the port-o-potty. Their paying to have the
18 four walls, the ceiling ---

19 **THE COURT:** Excuse me. Ms. Boggero, don't
20 gesticulate, don't shake your head or nod
21 your head, please ma'am.

22 **MS. THOMPSON:** I'm sorry.

23 Q: Sorry. It's the party's official position
24 that the customer is paying for the use of
25 the portable restroom. Without the restroom,



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 there would be no place to hold the waste.
2 There would be no way for the customer to use
3 the restroom. They need the commode, they
4 need the sink to wash their hands. Certainly
5 some customers could use the port-o-potty, or,
6 your know, the portable restroom, for another
7 reason besides using the restroom; changing
8 clothes. You know there are other reasons
9 that an individual may want to use a portable
10 restroom. But it really boils down to the
11 true object for the customer is to use a
12 restroom, to have a place to go to the
13 restroom.

14 Q: Now you stated, you know, when the department
15 reviews invoices, etcetera, things like that
16 for audits, if someone said they're providing
17 a service, does the department look
18 automatically at it as a service?

19 A: No. In fact, I have yet to see a contract
20 that was not titled service agreement in my
21 two years at the department. The department
22 is going to look at substance over form.
23 Their going to evaluate what is the taxpayer
24 receiving, what is the taxpayer contracting
25 for. Just because something is simply titled



1 a service agreement does not mean that it is,
2 in fact, a service agreement. And as
3 previously stated, based on the definition of
4 gross proceeds of sales, there is no
5 deduction for service costs. When you go to
6 the store to buy your television, certainly a
7 component for -- a component of that is the
8 service of, you know, labor to put all of
9 those pieces together, but there is no
10 deduction for that. There is no deduction
11 for service costs, for advertising costs, for
12 any expense. So, the true object is the
13 rental or use of a port-o-potty. There will
14 be no deduction for these other items based
15 upon South Carolina Law.

16 Q: Are you familiar with the Department of
17 Regulation 117310 which references the freight
18 and delivery charges?

19 A: Yes, I am.

20 Q: Can you briefly go over what you know about
21 that regulation?

22 A: Okay. I don't have this one memorized, but
23 it is summarized in my book. And basically,
24 delivery fees are includeable in gross
25 proceeds of sales as well if the individual



CREEL COURT REPORTING, INC.

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 or business making the sale is also providing
2 the delivery of the item. And that is
3 explained in my regulation.

4 Q: Okay. Now do you recall, to your knowledge,
5 just off the top of your head of this
6 regulation, what type of deliveries, if any,
7 do they expound upon?

8 A: Well, there are different ways for an item to
9 be delivered. There again, please excuse me
10 if I've use the incorrect terminology, but
11 there's FOB destination or FOB origination.
12 If a seller is using a common carrier to have
13 an item delivered, and it's FOB destination,
14 then the sale is deemed to occur when the
15 item is delivered, versus FOB origination,
16 where the sale is deemed to occur where the
17 retailer's located.

18 Q: Okay. I have no further questions at this
19 time, Your Honor. If you can please answer
20 opposing counsel's questions.

21 THE COURT: Mr. Hemphill.

22 MR. HEMPHILL: If it pleases the court.

23 MR. McCUTCHEN - CROSS-EXAMINATION BY MR. HEMPHILL:

24 Q: Mr. McCutchen, when we look at these private
25 letter rulings that you have gone through



1 from 2001, 2004, 2009 -- is that correct?

2 A: Yes, sir.

3 Q: Am I right in saying that two of those, '01
4 and '09, that were portable toilets, correct?

5 A: Correct.

6 Q: And '04 dealt with trash containers.

7 A: Yes, sir.

8 Q: Okay. And if we need to look at the
9 document, that's fine. But am I right in
10 saying that someone signed each of these?

11 A: Yes, sir.

12 Q: Who would that have been?

13 A: It would have been the director, but I
14 believe in all three instances we had a
15 different director. But it will have been
16 the director.

17 Q: Okay. Is it, you know -- if I'm looking for
18 guidance from the department, and I look at a
19 document that has been signed by the
20 director, am I right in assuming that the
21 director is the author?

22 A: The author would be -- well, right now it's
23 me. But different individuals at the
24 department could have drafted the document,
25 but the document will have then been reviewed



1 by the policy review counsel, which includes
2 litigation, policy, audit -- you know,
3 generally, employees that are in senior
4 management level positions, and then the
5 document is reviewed by the director. If the
6 director has, you know, a problem with the
7 document or does not agree with it -- what
8 the document says, there will be a redraft
9 process. But once the document is signed by
10 the director, it is the Department of
11 Revenue's official position with respect to
12 that issue.

13 Q: We can assume that if the director signed off
14 on it, then the head of the agency has
15 endorsed the contents of the document?

16 A: Correct.

17 Q: Okay. And you say on each of these three,
18 you have three different directors that signed
19 off on these private letter rulings, correct?

20 A: Well, one of the three was a Private Letter
21 Ruling. One of the three was a revenue
22 advisory bulletin and one of the three was a
23 Revenue Ruling. And I know they're
24 technicalities, but each one of those --
25 there is a difference between those three



1 different types of documents.

2 Q: Okay. But suffice it to say that whatever
3 the caption on it is, they are an internal
4 document to the department that perhaps others
5 can outside of the department can look to for
6 guidance. Is that a fair statement?

7 A: That's fair.

8 Q: Okay.

9 A: And some of these documents, while we always
10 keep them on our website, we do have a
11 citator, because the department, you know, due
12 to a law change ---

13 Q: Right.

14 A: --- one document may end up being superseded
15 by a new document. In which case we have a
16 citator where the taxpayer can go type in,
17 you know, revenue 08-09-5 and see if there
18 has been another document that supersedes
19 that.

20 Q: Right. But you are a graduate Charleston
21 School of Law, correct?

22 A: I am.

23 Q: And this does not served as precedent --
24 legal precedent does it?

25 A: No, it does not.



1 Q: Okay. And one of the reasons why you look at
2 the facts as presented into these private
3 letter rulings or advisory bulletins, there is
4 a cursory set of facts. For instance, I am
5 looking at the one that says, Revenue Ruling
6 09-5, under the facts section of that one.
7 It says, "from time to time contractors,
8 businesses and events need additional restroom
9 facilities," and again on Revenue Advisory
10 Bulletin 01-5, the facts part there say,
11 "from time to time, contractors, businesses
12 and events need additional restrooms." They
13 read the same under facts, don't they?

14 A: Yes, sir.

15 Q: Okay. And the reason why is somebody has
16 just asked for -- in -- on all three of them
17 they say from time to time, contractors will
18 need construction debris hauled off. The
19 point of my question is, these revenue --
20 these internal documents are generated based
21 upon just a general question being asked,
22 isn't that true?

23 A: Private letter rulings address questions from
24 specific taxpayers but all of the documents
25 are basing publications to the general public



1 based on South Carolina Law.

2 Q: Right.

3 A: If that's your question.

4 Q: Well, my question is this. There is no
5 vetting of the facts that go into this; isn't
6 that true?

7 A: Well, revenue rulings sometimes can have
8 multiple different sets of facts.

9 Q: Well, you're not telling me that there has
10 been a proceeding where there has been
11 witnesses subject to direct and cross-
12 examination and evidence being presented and
13 things of that nature before this document is
14 generated are you?

15 A: We do have an external circulation period in
16 which case we post the document on our
17 website, and we will have a hearing at our
18 office before the document is published. And
19 during that hearing, members of the public
20 are allowed and encouraged to come in and
21 express any concern they may have about the
22 document, but ---

23 Q: Anybody under oath?.

24 A: --- there is no legal proceeding.

25 Q: Okay.



- 1 A: Okay.
- 2 Q: Okay. That's my question. There is no legal
3 proceeding that generates the decision here,
4 correct?
- 5 A: Correct.
- 6 Q: Okay. What this is, is a legal proceeding
7 where my client has challenged this; isn't
8 that true?
- 9 A: Yes, sir.
- 10 Q: Okay. Now 1977, you said that there was some
11 court case but we don't have the name of it.
12 Do you ---
- 13 A: I believe it was anonymous taxpayer versus
14 South Carolina Tax Commission. It was a 1977
15 South Carolina Tax Commission decision,
16 meaning it was decided upon by the tax
17 commission at the time, but we no longer have
18 the tax commission.
- 19 Q: Right.
- 20 A: Now we utilize these proceedings.
- 21 Q: Without having it handy, do we know whether,
22 you know, an appellate court has examined the
23 record where witnesses were placed under
24 evidence and decided this issue with regards
25 to portable toilets?



1 A: Specific to portable ---

2 Q: Correct.

3 A: --- restrooms, no.

4 Q: So, all we have is internal documents; isn't
5 that true?

6 A: Well, we have South Carolina law which
7 explains the imposition of the tax sale,
8 gross proceeds, definition of tangible
9 personal property.

10 Q: Right. And those statutes, in essence,
11 equate definition of sale with a rental,
12 correct?

13 A: Or other form of agreement.

14 Q: Or other form of agreement.

15 A: Basically any agreement. In one of the four
16 enumerated prongs is also the license to use
17 or consume, but basically if you are
18 contracting to provide the use of tangible
19 personal property, that is sufficient for a
20 lease, rental or other form of agreement?

21 Q: Is there any kind of requirement that the
22 arrangement be tantamount to a rental, as
23 that term is defined in the law?

24 A: Or other form of agreement.

25 Q: So just any form of agreement ---



1 A: Any form of agreement ---

2 Q: --- as long as there is a pers- as long as
3 there's a piece of personal property involved,
4 subject to the tax?

5 A: If there is an agreement to use tangible
6 personal property pursuant to South Carolina
7 law, and there are charges to use that
8 tangible personal property, then that
9 transaction -- if the true object is -- for
10 the customer is for the use of that tangible
11 personal property, that transaction would be
12 subject to the South Carolina sales tax
13 unless there is an exemption or exclusion.
14 Because there are several -- over 80
15 exemptions.

16 Q: Why aren't trash containers so taxed?

17 A: Because the general use of that particular
18 item, which is a dumpster, is incidental to
19 the waste management, waste removal service
20 being provided by the business.

21 Q: So says a particular director?

22 A: And that document has not -- to my knowledge
23 has not been superseded. So, that is the
24 department's official position.

25 Q: Okay. Is there any appreciable difference



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 between a trash collector being a receptacle
2 for waste that needs to be hauled off and a
3 port-o-potty being a receptacle for waste to
4 be hauled off?

5 A: Yes.

6 Q: Tell me.

7 A: Okay. You have four walls, you have a
8 ceiling, sometimes you have a fan, sometimes
9 you have a sink; there are pipes involved.
10 It's much more than simply an item that is
11 being used to store and then have waste
12 removed. There is chemicals. There is
13 toilet paper. Sometimes there are mirrors.
14 It's being used much more. And the true
15 object of that particular transaction, dealing
16 with port-o-potties, for the purposes of the
17 buyer would be for the use of this unit --
18 this portable restroom unit.

19 Q: Can it also be not be viewed -- can it also
20 be viewed that the amenities that you
21 referred to are incidental to the true
22 object, and that is to collect the waste such
23 that it can be hauled off?

24 A: No. I mean it's our opinion that it's not.

25 Q: That's the department's opinion, correct?



1 A: Consistently since 1951, yes, that's been the
2 department's opinion.

3 Q: Who dates it to 1951?

4 A: That was when the sales and use tax was
5 enacted.

6 Q: Okay. The portable potties, there was no
7 official opinion on that until 2001.

8 A: Well, we have the court case of 1977. And
9 then we have ---

10 Q: You don't have the cite on that. Do you know
11 the cite? Okay, counsel -- your counsel has
12 provided me with a tax commission decision.
13 Date was issue of -- was in January 1st of
14 1986.

15 A: This particular document was -- there -- I
16 guess to explain the inconsistency, this
17 document is on Westlaw, they have it there
18 twice. Once it's dated in 1977; once it's
19 dated in 1986. I'm going through the
20 department's filing cabinet and the correct
21 date is 1977, but it is exactly -- it's the
22 exact same document -- exact same case. Just
23 Westlaw accidently dated the document wrong.

24 Q: Okay. So and ---

25 A: But the facts in the law and the decision



1 itself are the same.

2 Q: Okay. And it said that under the
3 circumstances in this case we are satisfied
4 that the charge, placing of a portable
5 toilet, is a rental charge that is taxable
6 under the provisions of the sales and use tax
7 act.

8 A: Yeah, I believe I can show you -- I believe
9 that's what I had.

10 Q: So, what was determined by the department in
11 this instance was a particular line of charge
12 somewhere that the placing of a portable
13 toilet is a rental charge?

14 A: A transaction is either taxable -- 100
15 percent taxable or 100 percent not taxable.
16 When you purchase a legal tax book, clearly
17 there's the service of research and drafting
18 involved with that particular legal tax book.
19 But the book itself is either going to be 100
20 percent taxable or 100 percent not taxable.
21 Now in this case -- this is, I believe, the
22 only situation where it will only be taxable
23 30 percent and that is because there is a
24 partial exemption. But if they say that
25 charge is for the rental of the portable



1 toilets, that also encompasses all of the
2 service charges.

3 Q: You need to look at this?

4 A: I don't have a copy of that, but if you'd
5 like to provide it to me ... Under the
6 circumstances in this case, we are satisfied
7 that the charge, placing of a portable
8 toilet, is a rental charge that is taxable
9 under the provisions of the sales tax act.

10 Q: Okay. Do we know whether what was being
11 determined there was some line of charge in
12 some -- some invoicing of placing a portable
13 toilet?

14 A: Well, just reading the facts, it says, "The
15 operation is conducted through the placing of
16 a portable toilet unit in accord with the
17 customer's request and the furnishing of
18 necessary servicing of the toilet, which
19 consists of regular and routine removal and
20 disposal of the waste." So it also includes
21 the charges for servicing the unit and the
22 disposal of the waste of that unit.

23 Q: We don't have the benefit of looking at the
24 documents that control the transaction with
25 the individual customer, do we?



1 A: We just have the case ---

2 Q: Okay.

3 A: --- that's all we have.

4 Q: In this case, we actually do have the
5 documents that control the transaction between
6 my client and her customers, don't we?

7 A: I believe we do. I did not conduct audit,
8 but I believe we did.

9 Q: Right. But you have been here throughout
10 this hearing?

11 A: I have.

12 Q: You certainly prepared for this hearing,
13 correct?

14 A: That is correct.

15 Q: Okay. Did you review the service agreement?

16 A: I have.

17 Q: And were rentals not used anywhere in it?

18 A: In -- actually, in line six it does say use
19 of portable toilet.

20 Q: But the word rental is not there, correct?

21 A: That's correct. But the definition of sale
22 includes any form of agreement, not just a
23 rental, any form of agreement.

24 Q: Well, a trash dumpster was used. Why isn't
25 it taxed?



1 A: Because the true object of that particular
2 transaction is for the removal of waste, not
3 for the lease or use of a dumpster.

4 Q: You keep referring to this term true object.
5 Isn't it true that that terminology comes --
6 is a common denominator that runs through all
7 three private letter -- all three either
8 revenue rulings or private letter rulings that
9 are set forth, that you've already discussed?

10 A: As well as case law and South Carolina
11 regulations, yes.

12 Q: But the true object test is not set forth in
13 case law anywhere is it?

14 A: It's been applied by the South Carolina
15 Supreme Court.

16 Q: What case?

17 A: Fraternal Order of Police v. South Carolina
18 Department of Revenue. I believe it was in -
19 - I believe 1988. I have a copy of this case
20 back in my documents. And basically that
21 case dealt with bingo cards. It had nothing
22 to do with the facts here but the South
23 Carolina Supreme Court -- I believe this
24 opinion was drafted by Chief Justice Toal,
25 utilized the true object test in evaluating



1 whether or not that particular transaction was
2 subject to the sales tax.

3 Q: Even if the true object test has been cited
4 or otherwise endorsed by the appellate courts
5 of this state, it's actually not only in the
6 private letter rulings, but it's also in the
7 book that you author.

8 A: And in South Carolina Regulation 117-308.

9 Q: Okay. But I guess my question would be more
10 specific, I wasn't clear. This true object
11 test is in this book that you have co-
12 authored, correct?

13 A: Yes.

14 Q: Okay. And it actually comes from a
15 Vanderbilt law review article in 1956, isn't
16 that true?

17 A: Yes, sir.

18 Q: Okay. So, this document is out there for
19 auditors and people within your department to
20 use as a resource, this manual; isn't that
21 true?

22 A: It's also on the website for the general
23 public as well.

24 Q: Okay. And it calls for a judgment call,
25 doesn't it?



1 A: You have to analyze a transaction, on a
2 transaction by transaction basis, to determine
3 what the true object of the transaction is
4 for the purpose of the buyer. I suppose
5 there is some sort of subjectivity involved
6 in determining whether or not the transaction
7 is subject a tax, but that's just the nature
8 of having a true object test.

9 Q: So, you have to determine it on a case by
10 case basis; isn't that true?

11 A: That's true.

12 Q: Okay. And you indicate that the department
13 put substance over form; isn't that true?

14 A: That's true.

15 Q: Okay. But don't you have to place weight on
16 the documents that are generated to
17 memorialize a transaction between the customer
18 and the provider?

19 A: It certainly will play a role, in addition to
20 maybe our own resource, but it certainly
21 would play a role in determining whether or
22 not a transaction is subject to sales tax.

23 Q: Right. Now my client has testified that she
24 didn't place any particular term and the
25 service agreement doesn't indicate that there



1 is any particular length of time that the
2 personal property is going to be given to the
3 customer for his or her use; isn't that true?

4 A: I have not reviewed every document. That's
5 really not what I do. I more answer legal
6 questions when they arise, but I have viewed
7 some of the invoices and I do see a date
8 range on those invoices. So I guess, yes.

9 Q: Okay. Those are the questions I have for you
10 Mr. McCutchen.

11 **THE COURT:** Redirect.

12 **MR. MCCUTCHEN - RE-EXAMINATION BY MS. THOMPSON:**

13 Q: Yes, thank you, Your Honor. Just a few
14 questions for you Mr. McCutchen. The
15 opposing counsel asked in the revenue rulings
16 what those are based on. Now you testified
17 earlier that you had actually authored a
18 revenue ruling in order to co-author one; is
19 that correct?

20 A: I've authored several revenue rulings,
21 advisory opinions.

22 Q: Okay. And in coming to those revenue rulings
23 that you have drafted or any other rulings
24 that have been drafted, what sort of
25 precedential value, if any, is looked at and



1 what is relied upon to come to the conclusion
2 there in those revenue rulings.

3 A: Well, a private letter ruling is to a
4 specific taxpayer. So we evaluate all the
5 facts given to us by that taxpayer and we
6 also, or I also, will conduct my own research
7 into that particular company to evaluate their
8 websites and request copies of all their
9 contracts and, you know, talk and have
10 conferences with their employees to determine
11 what is going on. And then revenue rulings
12 typically are -- though maybe the law changed
13 or we've received a hundred questions in one
14 year on one particular -- you know, one
15 particular type of transaction. So we
16 decide, okay, you know if 100 different
17 people have questions about this, then maybe
18 we should issue a revenue ruling to explain
19 the department's position.

20 Q: Okay. I guess my question is, when coming to
21 the department's position, what is actually
22 looked at and researched? Because you are
23 stating the revenue ruling is for everyone as
24 opposed to a private letter ruling?

25 A: South Carolina Law. South Carolina Code



1 Regulations. You know, we evaluate the facts
2 and we evaluate -- you know, basically
3 evaluate them all and determine whether or
4 not a transaction is subject to tax.

5 Q: When you saw law, are you including case law
6 or just statutory law?

7 A: Case law, statutory law, common law. We
8 evaluate, you know -- for example, if there
9 is new supreme court case, court of appeals
10 case or administrative law case, that might
11 change our current interpretation of a
12 statute, we would issue a revenue ruling to
13 clarify our position.

14 Q: Are you -- and this goes back to one of Judge
15 McLeod's questions. Are you aware of any
16 case law that's precedential, that has been
17 actually arrived at by the court that is
18 analogous -- the facts are analogous somewhat
19 to the case at hand for today?

20 A: There is a dry cleaning case that I can think
21 about, I believe it was back in '09, that
22 dealt with an equal protection argument with
23 dry cleaners.

24 Q: Do you remember the bases of the facts of
25 that case?



1 A: Well, I think about that case was more about
2 how do you define a class, and it said that
3 you can define a class based on one
4 particular type of service and industry or
5 one particular type of business. For
6 example, you could define one class as
7 dumpster businesses and one class of portable
8 toilet businesses.

9 Q: Are you aware of any other South Carolina
10 cases that may be somewhat analogous to this
11 case?

12 A: I mean there's tons of sales tax cases that
13 evaluate transactions. I can't think of
14 them. I'm sure there are plenty of others.

15 Q: Thank you. I believe that's all I have for
16 now.

17 **THE COURT:** Thank you. You may step down.

18 **MS. THOMPSON:** That's the Respondent's case, Your
19 Honor. We rest at this time.

20 **THE COURT:** And reply?

21 **MR. HEMPHILL:** No, Your Honor.

22 **THE COURT:** No case in reply. Very well, I will
23 hear closing arguments.

24 **MR. HEMPHILL:** May it please the court, Your Honor,
25 I appreciate the court's in listening to the



1 issues in this case as they have been
2 presented factually. There are a number of
3 legal issues perhaps that are involved. I
4 suspect it can be boiled down to this true
5 object test. My client -- you know when I
6 hear about these private letter rulings and
7 the fact that they set forth departmental
8 policy -- and I can appreciate that in terms
9 of giving guidance to their auditors in the
10 field, giving guidance to, you know, others
11 in the community who perhaps ask for whether
12 the sales tax applies to them. I feel like
13 there is something to be said for my client
14 who can't appreciate the distinction between a
15 trash dumpster and portable toilets. And I
16 think her inability to appreciate that
17 difference is at the heart of this case,
18 because there is no appreciable difference.
19 Your Honor, the department has issued two
20 rulings that have been cited by this last
21 witness that says one is subject to the tax
22 and one isn't. So when you get down to the
23 meat of this case, I think evident just as
24 this last witness indicated, each case has to
25 be determined on a case by case basis. I



1 don't necessarily fault the auditor when he
2 goes out in the field, because it was a close
3 call. By the time my client comes here as
4 the only fact witness -- true fact witness
5 that gives any kind of basis and nature of
6 her business -- in detail regarding the
7 nature of her business. I would suggest to
8 the court that the facts in this case --
9 again the last witness said on a case by case
10 basis. The facts in this case are that the
11 true object of her business is to haul off
12 waste, just like the trash dumpster. The
13 fact that her particular receptacle or vessel
14 for the waste also has certain amenities to
15 allow privacy and cleanliness, that's
16 incidental to the true object. My client is
17 not in the business of renting. In my mind
18 and listening to witness, it seemed abundantly
19 clear that my client is not in the business
20 of renting units. Now that might point out
21 the fact that she isn't the best business
22 person in the world. Maybe she would
23 maximize profits if she was like her
24 competitors in the field and other parts of
25 the state perhaps, that rent. In other



1 words, a person comes along and how long do
2 you want it and get it for 30 days, and
3 here's the charge. We will be out there to
4 service it according to the industry
5 standards, one day -- you know, one day a
6 week, fill it up and that sort of thing. But
7 when we look through these service agreements
8 and we look through these invoices, my client
9 is not renting anything for a definite period
10 of time. The exemption -- the statutes and
11 the exemptions, you know, say that -- the
12 exemption in particular says that 70 percent
13 exemption will inure to the benefit of people
14 in this business for the rental or lease of
15 portable toilets. What she does, and I don't
16 mean to disparage her business abilities
17 because their family has been in business for
18 decades. And maybe they are in business
19 because they -- they've struck for that long
20 because they've structured their business the
21 way they have, not a rental but a service.
22 And that is, when you need us to come empty
23 your portable toilet, we will be out there.
24 But otherwise, it's going to be once a week.
25 No where is rental used. No where is lease



1 used. My client's -- the nature of my
2 client's business, it's true object, is to
3 haul waste; and that's based upon a service.
4 That is the true object of her business. And
5 we would ask the court to issue its ruling
6 distinguishing it from these private letter
7 rulings in that regard, because my client has
8 come here and testified that she has been the
9 only client -- the Respondent's have not put
10 up any witnesses to rebut that her business
11 is structured or her charges are issued in
12 any other way. And so, for that reason, we
13 would ask, you know, that the assessment and
14 penalties be stricken in this particular case.
15 Thank you, Your Honor.

16 **THE COURT:** Thanks.

17 **MS. THOMPSON:** May it please the court, Your Honor.
18 As to the earlier the burden of proof is on
19 Ms. Boggero in this case, the taxpayer that
20 is actually contesting the tax in this case.
21 And again, we don't believe that she met that
22 burden. We've gone over multiple code
23 sections in this case that I saw Your Honor
24 write down, and I know that you are very well
25 aware of, but I would like to briefly go over



1 them. The sales tax in South Carolina is on
2 all sales and use of tangible personal
3 property, which can be seen, weighed,
4 measured -- that kind of thing. We heard
5 multiple testimony here that Ms. Boggero is
6 not just providing a receptacle for waste,
7 there is much more that goes on into it. She
8 testified to the different units. There was
9 a unit that -- I believe a special event
10 unit, that on the weekends was more money
11 than the one that was servicing otherwise.
12 And I believe she said at one point in time,
13 that one was a little bit bigger. We would
14 argue that one also has more amenities, and
15 that's why it's more expensive to be, what
16 she calls, serviced. We're not doubting that
17 she is not servicing these things, as I
18 stated earlier, but we do believe that there
19 is tangible personal property involved in
20 these. It's a multi-use, multi-purpose --
21 their serviced and used in this case. And
22 again, that's what we believe that the
23 General Assembly had in mind when they carved
24 out Exemption 62, and they put 30 percent as
25 the gross proceeds of the sales and exempted

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 the other 70 percent. We believe they saw
2 that that 70 percent was serviced, but that
3 there was 30 percent of privacy; there was
4 the hand washing. There were different uses
5 for the port-o-potty other than just
6 collecting the waste. And also, as far as
7 the difference between a trash receptacle and
8 the port-o-potty itself, our auditor actually
9 testified that we actually didn't even look
10 at the trash use in that case. We are very
11 consistent in knowing that the trash
12 receptacle, things like that, are not taxed.
13 We didn't tax Ms. Boggero for that. We took
14 that out, and then we took 30 percent out of
15 what was left over. Like I stated, and it's
16 been stated in testimony several times,
17 garbage waste of a dumpster does not provide
18 anything but the receptacle. The port-o-potty
19 is just that much more with the walls and the
20 fan and the different amenities that come
21 with it. And yes, Your Honor, we look at
22 this on a case-by-case basis, and we do enact
23 the true object test. And in this case, the
24 true object is, we believe and it was also
25 stated in Ms. Boggero's website, the true

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 object is the comfort of the customer at the
2 time; pending on what type event it was. You
3 know, she stated weddings, construction,
4 they're different units for different things.
5 And as Mr. McCutchen testified, we look
6 mainly at what the customer is paying for.
7 Again that goes back to the privacy again.
8 I'm not going to continue repeating, but it
9 does go back to it's not just a receptacle
10 for the waste. It is everything else that
11 encompasses it that the customer is paying
12 for. And Your Honor, for these reasons that
13 were stated through our case and reply, we
14 believe that the General Assembly -- it was
15 their intent and purpose in carving out that
16 exemption specifically for port-o-potties.
17 That they understood the nature of the 70/30
18 of the service, plus the gross proceeds that
19 are tangible personal property. And I
20 believe that came out with Ms. Boggero's
21 testimony as well, that she kept saying, you
22 now, 80 percent of the time it's this, 70
23 percent, 90 percent of the time. So, there
24 is a percentage rate and we believe the
25 General Assembly truly did understand what Ms.

**CREEL COURT REPORTING, INC.**

1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

1 Boggero is here arguing today, but it was
2 there intent that there is actually 30
3 percent that should still be subject to sales
4 tax. And we ask that you uphold the
5 department's determination.

6 **THE COURT:** Thank you. Briefly in reply, Mr.
7 Hemphill.

8 **MR. HEMPHILL:** Your Honor, I would just reiterate
9 that, you know, what my client said about
10 what her father taught her, and that is you
11 have to earn people's business. It's not
12 just going to come to you. And that's been
13 memorialized at how they have structured their
14 relationship with their customer. It is set
15 forth in the service agreement and it is set
16 forth in how they bill the customer. You
17 have to do some kind of action to go out
18 there and take care of the customer. And
19 that is something that the customer can't do
20 for themselves. The customer has to have
21 some receptacle for waste and they can't haul
22 it off. And my client provides that service
23 that she's testified to. That's it.

24 **THE COURT:** Thank you.

25 **MS. THOMPSON:** Your Honor, if I may. We also



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 prepared a brief for the courts and for the
2 def- -- if you would like this at this time.

3 **THE COURT:** Thank you. I was about to address
4 that.

5 **MS. THOMPSON:** Oh, I'm sorry.

6 **THE COURT:** Hold your fire just a minute. Well,
7 first of all, I'm going to take the matter
8 under advisement and I'd like briefs to be
9 submitted in the form of proposed orders, 60
10 days. Any other housekeeping before we
11 adjourn?

12 **MS. THOMPSON:** No, sir.

13 **MR. HEMPHILL:** No, sir.

14 **THE COURT:** Thank you. Yes, my law clerk asked
15 that they be submitted electronically. All
16 right, we will be adjourned and go off the
17 record.

18 (There being no further questions, the hearing
19 concluded at 2:58 p.m.)

20 (The original exhibits were retained by the Court.)
21
22
23
24
25



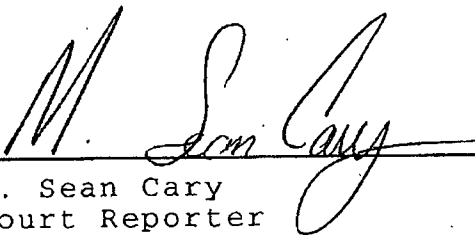
CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

CERTIFICATE

This is to certify that the within hearing consisting of one hundred eighty-three (183) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

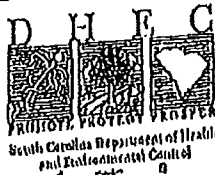
I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on October 8, 2013.



M. Sean Cary
Court Reporter

Notary Public for South Carolina
My Commission Expires: January 29, 2023



Dual License

Harry Boggero () Owner () Manager () Corp. President
of BOGGERO'S SERVICES
located at PO Box 783, Greenwood, SC 29648

Is hereby issued a dual license to CONSTRUCT AND CLEAN INDIVIDUAL ONSITE SEWAGE
TREATMENT AND DISPOSAL SYSTEMS AND SELF-CONTAINED TOILETS in accordance with State
Laws and Regulations 61-56 and 61-56.1 of the South Carolina Department of Health and Environmental Control.

License No: _____ Issued this 1st day of March, 20 11
Expires the 31st day of March, 20 12

Leonard A. Hordley C. Earl Hunter
COMMISSIONER

DHEC 1770 (06/2000)

THIS LICENSE IS NOT TRANSFERABLE

PETITIONER'S
EXHIBIT

1



Boggero's Portable Toilet

P.O. Box 783

Greenwood, SC 29648

P: 864-223-7023 F: 864-223-8113

E: boggero@greenwood.net

SERVICE AGREEMENT

1. The Customer requests delivery and use of portable toilet(s) and/or dumpsters from Boggero's Portable Toilet.

2. The Customer will be responsible for the following service payments:

of Portable Toilets _____ Cleaned # of Times per Week _____
Price _____

of Dumpsters _____ Size of Dumpster _____
Price Per Month _____ Price Per Haul _____
Price Per Haul to Landfill _____

3. Services will be invoiced every 4 weeks (28 days), and the Customer will make payments within 15 days of being invoiced.

4. From the date of this agreement, portable toilets and/or dumpsters will be delivered for use by the Customer upon request without the signing of another agreement. It is intended that this agreement will cover ongoing and future portable toilets and/or dumpsters delivery and use.

5. Effective January 1, 2012 we will institute a late fee on accounts over 30 days past due of 1.5% monthly. Services will be terminated on accounts that are more than 60 days in arrears until account is brought current including any late fees.

6. The Customer understands that service fees for the use of portable toilets and/or dumpsters may increase in the future, and the undersigned will be responsible for the increased payment without the signing of another agreement. Thirty (30) Day notice will be given the undersigned prior to rate increase via US Postal Service.

7. Should the undersigned ever be more than thirty (30) days late with payments after being invoiced, the Customer will be responsible to Boggero's Portable Toilet for the cost of collections, but not limited to late fees, attorney fees and costs.

8. The equipment is the property of Boggero's Portable Toilet, and is provided to the customer for his exclusive use on the job site listed on delivery ticket or future delivery tickets.

Continued on Page 2.....

PETITIONER'S
EXHIBIT

5

9. The duration of the service period is determined from date of shipment on our part as indicated on this service agreement until date of pick up order.

10. Carefully check equipment upon unloading at destination. All claims for shortages and damaged equipment must be noted on the delivery ticket.

11. The Customer agrees to be present when equipment is returned so that any shortages or damage of equipment will be noted on return report and acknowledged. It is expressly understood and agreed that the Customer shall pay for any parts which are lost or damaged beyond normal wear and tear.

12. Proper placing of the equipment on job location is the sole responsibility of Customer with the assistance of Boggero's Portable Toilets. Access to toilets &/or dumpsters for servicing will be the Customer's responsibility.

13. The Customer agrees to hold harmless Boggero's Portable Toilets for any and all damages to property and persons not caused by the negligence of Boggero's Portable Toilets while this equipment is being used under this service agreement or future delivery tickets.

The Customer is responsible for notifying Boggero's Portable Toilets (by phone or fax) when equipment is ready for pickup.

Date _____

Corporation / LLC

Date _____

Individually

Print Name

Mohawic



Boggero's Portable Toilet
P.O. Box 703
Greenwood, SC 29640
Ph 864-223-7023 Fx 864-223-0115
E: boggero@greenwood.net

SERVICE AGREEMENT

1. The Customer requests delivery and use of portable toilet(s) and/or dumpsters from Boggero's Portable Toilet.

2. The Customer will be responsible for the following service payment(s):

of Portable Toilets 3 Cleaned # of Times per Week 1
Price \$300 (1) hand wash station serviced 1x/week

of Dumpsters _____ Size of Dumpster _____
Price Per Month _____ Price Per Haul _____
Price Per Haul to Landfill _____

3. Services will be invoiced every 4 weeks (20 days), and the Customer will make payments within 15 days of being invoiced.

4. From the date of this agreement, portable toilets and/or dumpsters will be delivered for use by the Customer upon request without the signing of another agreement. It is intended that this agreement will cover ongoing and future portable toilets and/or dumpsters delivery and use.

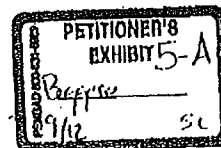
5. Effective January 1, 2012 we will institute a late fee on accounts over 30 days past due of 1.5% monthly. Services will be terminated on accounts that are more than 60 days in arrears until account is brought current including any late fees.

6. The Customer understands that service fees for the use of portable toilets and/or dumpsters may increase in the future, and the undersigned will be responsible for the increased payment without the signing of another agreement. Thirty (30) Day notice will be given the undersigned prior to rate increase via US Postal Service.

7. Should the undersigned ever be more than thirty (30) days late with payments after being invoiced, the Customer will be responsible to Boggero's Portable Toilet for the cost of collections, but not limited to late fees, attorney fees and costs.

8. The equipment is the property of Boggero's Portable Toilet, and is provided to the customer for his exclusive use on the job site listed on delivery ticket or future delivery tickets.

Continued on Page 2.....



9. The duration of the service period is determined from date of shipment on our part as indicated on this service agreement until date of pick up order.

10. Carefully check equipment upon unloading at destination. All claims for shortages and damaged equipment must be noted on the delivery ticket.

11. The Customer agrees to be present when equipment is returned so that any shortages or damage of equipment will be noted on return report and acknowledged. It is expressly understood and agreed that the Customer shall pay for any parts which are lost or damaged beyond normal wear and tear.

12. Proper placing of the equipment on job location is the sole responsibility of Customer with the assistance of Boggero's Portable Toilets. Access to toilets w/ or dumpsters for servicing will be the Customer's responsibility.

13. The Customer agrees to hold harmless Boggero's Portable Toilets for any and all damages to property and persons not caused by the negligence of Boggero's Portable Toilets while this equipment is being used under this service agreement or future delivery tickets.

The Customer is responsible for notifying Boggero's Portable Toilets by phone or fax when equipment is ready for pickup.

Date 11-16-12

SCOT CLAREY
Corporation / LLC

Date _____

Individually

Print Name

SCOT CLAREY



Boggero's
P.O. Box 788
Greenwood, SC 29648
(864) 223-7023

Invoice

Number: 4789

Date: 16-Feb-2000

P.O. Number:

JOB 017H 027

BILL TO 114

A.P. Noel Construction Co.

Last Payment Date
10-Dec-2000

Job Number:

Accounting ID:

From =>	To	Duration	Unit/Service Type	Quantity	Price/Per	Tax?	Extension
10-Jan-2000 =>	16-Feb-2000	20	RESTROOM WEEKLY SERVICE	1	\$80.00	☐	\$80.00
			Per 20-day billing cycle, in arrears	1	(\$0.00)	☐	(\$0.00)
16-Feb-2000 =>	16-Feb-2000	1	Preferred Customer Discount				

Subtotal Non-Taxed: \$72.00

Current Invoice Total: \$72.00

Please Pay: \$72.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information:

Credit Card Number

Date Expires

Your business (or apartment)

Signature

Amount to Pay
or leave blank
to pay in full

Late Charge Message Goes Here.

PETITIONER'S
EXHIBIT

60



Boggero's
P.O. Box 783
Greenwood, SC 29648
(864) 223-7023

Invoice

Number: 0436

Date: 02-Aug-2009

P.O. Number:

BILL TO	208
Alpha Construction	

JOB SITE	002
Good Shepherd Church	

Job Number:

Accounting ID:

Last Payment Date

31-Jul-2009

From =>	To	Duration	Unit/Service Type	Quantity	Price/Per	Tax?	Extension
00-Jul-2009 =>	02-Aug-2009	28	RESTROOM WEEKLY SERVICE Per 28-day billing cycle, in arrears	1	\$80.00	☐	\$80.00

Subtotal NonTaxes: \$80.00

Current Invoice Total: \$80.00

Please Pay: \$80.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information:

Credit Card Number

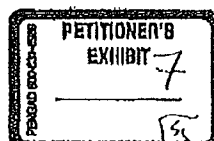
Date Expires

Signature

Amount to Pay
or leave blank
to pay in full

Your business is appreciated!

Let a Charge Message Goes Here.





Boggero's
P.O. Box 783
Greenwood, SC 29648
(864) 223-7023

Invoice

Number: 8203
Date: 11-Apr-2010
P.O. Number:

BILL TO 404

Toin Jenkins

JOB SITE 1007

Last Payment Date
17-Mar-2010

Job Number:

Accounting ID:

From =>	To	Duration	Unit/Service Type	Quantity	Price/Per	Tax?	Extension
16-Mar-2010 =>	11-Apr-2010	28	RESTROOM WEEKLY SERVICE Per 28-day billing cycle, in arrears	1	\$80.00	☐	\$80.00

Subtotal NonTaxed: \$00.00
Current Invoice Total: \$00.00
Please Pay: \$00.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information:

Credit Card Number

Date Expires

Signature

Amount to Pay
or leave blank
to pay in full

Your business is appreciated!

Let Our Message Open Here.





Boggero's
P.O. Box 783
Greenwood, SC 29648
(864) 223-7023

Invoice

Number: 6896
Date: 20-Aug-2010
P.O. Number:

BILL TO	183
Mitchum Construction	

JOB SITE	1006

Last Payment Date
02-Jul-2010

Job Number:

Accounting ID:

From =>	To	Duration	Unit/Service Type	Quantity	Price/Per	Tax?	Extension
02-Aug-2010 =>	20-Aug-2010	20	RESTROOM WEEKLY SERVICE Per 28-day billing cycle, in arrears	1	\$80.00	☐	\$80.00

Subtotal NonTaxes: \$80.00
Current Invoice Total: \$80.00
Please Pay: \$80.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information:

Credit Card Number

Date Expires

Your business is appreciated!

Let's Charge Message Goes Here.

Signature

Amount to Pay
or leave blank
to pay in full





Boggero's
P.O. Box 783
Greenwood, SC 29648
(864) 223-7023

Invoice

Number: 7781

Date: 10-Apr-2011

P.O. Number:

BILL TO	8
Presbyterian College	

JOB SITE	203
Martin Ball Field	

Job Number: 97701

Accounting ID:

Last Payment Date

18-Mar-2011

From => To	Duration	Unit/Service Type	Quantity	Price/Per	Tax?	Extension
14-Mar-2011 => 10-Apr-2011	28	RESTROOM WEEKLY SERVICE Per 28-day billing cycle, in arrears	1	\$80.00	☐	\$80.00

Subtotal NonTaxed: \$80.00

Current Invoice Total: \$80.00

Please Pay: \$80.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information:

Credit Card Number

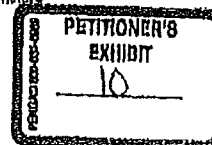
Date Expires

Your business is appreciated!

Late Charge Message Goes Here.

Signature

Amount to Pay
or leave blank
to pay in full





Boggero's
P.O. Box 788
Greenwood, SC 29648
(864) 223-7023

Invoice

Number: 0048
Date: 20-Nov-2011

P.O. Number:

BILL TO 644

All American Waste

JOB SITE 1000

Last Payment Date

22-Sep-2011

Job Number:

Accounting ID:

From => To	Duration	Unit/Service Type	Quantity	Price/Per	Tax?	Extension
24-Oct-2011 => 20-Nov-2011	28	RESTROOM WEEKLY SERVICE Per 28-day billing cycle, in arrears	1	\$80.00	☐	\$80.00

Subtotal NonTaxed: \$80.00

Current Invoice Total: \$80.00

Please Pay: \$80.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information:

Credit Card Number

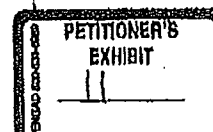
Date Expires

Signature

Amount to Pay
or leave blank
to pay in full

Your business is appreciated!

Late Charge Message Goes Here.





Boggero's
P.O. Box 783
Greenwood, SC 29648
(864) 223-7028

BILL TO 642
Stephen Construction

Invoice

Number: 7177
Date: 24-Oct-2010
P.O. Number:

JOB SITE 1100

Last Payment Date
10-Oct-2010

Job Number:		Accounting ID:				Quantity	Price/Per	Tax?	Extension
From =>	To	Duration	Unit/Service Type						
21-Sep-2010 =>	24-Oct-2010	28	BEST ROOM WEEKLY SERVICE			1	\$68.00	☐	\$68.00
			Per 28-day billing cycle, in arrears			1	(\$6.00)	☐	(\$6.00)
27-Sep-2010 =>	24-Oct-2010	28	CUSTOMER DISCOUNT			1	(\$0.00)	☐	(\$0.00)
			Per 28-day billing cycle, in arrears						
24-Oct-2010 =>	24-Oct-2010	1	Preferred Customer Discount						

Subtotal NonTaxed: \$72.00
Current Invoice Total: \$72.00
Please Pay: \$72.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information

Credit Card Number

Card Expires

Signature

Amount to P
or less to be
to pay in full

Your business is appreciated!

Let's Charge Message Goes Here.





Boggero's
P.O. Box 783
Greenwood, SC 29648
(864) 223-7023

Invoice

Number: 4881

Date: 16-Feb-2000

P.O. Number:

BILL TO 438
Trehel Corp.

JOB SITE 071
Moffett Hall/Erskine College

Last Payment Date

Job Number:	Accounting ID:							
From =>	To	Duration	Unit/Service Type	Quantity	Price/Per	Tax?	Extension	
10-Jan-2000 =>	05-Feb-2000	3	RESTROOM WEEKLY SERVICE (Recent pickup pro-rated to pickup date.)	1	\$80.00	☐	\$80.00	
10-Jan-2000 =>	05-Feb-2000	3	RESTROOM WEEKLY SERVICE (Recent pickup pro-rated to pickup date.)	1	\$80.00	☐	\$80.00	
20-Jan-2000 =>	28-Jan-2000	1	EXTRA SERVICE One-time charge	2	\$25.00	☐	\$50.00	

Subtotal NonTaxed: \$170.00

Current Invoice Total: \$170.00

Please Pay: \$170.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information

Your business is appreciated!

Info Charge Message Goes Here.

Credit Card Number

Date Expires

Signature

Amount to Pay
or leave blank
to pay in full





Boggero's
P.O. Box 788
Greenwood, SC 29648
(864) 223-7023

Invoice

Number: 5621
Date: 05-Aug-2000
P.O. Number:

BILL TO	210
Spann Church	

JOB SITE	304
Spann Church	

Job Number:

Accounting ID:

Last Payment Date
10-Apr-2000

From =>	To	Duration	Unit/Service Type	Quantity	Price/Per	Tax?	Extension
10-Jul-2000 =>	10-Jul-2000	1	EXTRA SERVICE One-time charge	1	\$35.00	☐	\$35.00

Subtotal NonTaxes: \$35.00
Current Invoice Total: \$35.00
Please Pay: \$35.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information:

Your business is appreciated!

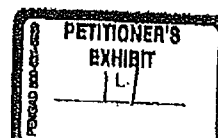
Late Charge Message Goes Here.

Credit Card Number

Date Expires

Signature

Amount to Pay
or leave blank
to pay in full





Boggero's
P.O. Box 783
Greenwood, SC 29648
(864) 223-7023

Invoice

Number: 0284

Date: 23-Mar-2010

P.O. Number:

BILL TO	516
Ashley D'Alessandro	

JOB SITE	1000

Last Payment Date
17-Feb-2010

Job Number:

Accounting ID:

From =>	To	Duration	Unit/Service Type	Quantity	Price/Per	Tax?	Extension
17-Mar-2010 =>	17-Mar-2010	1	EXTRA SERVICE One-time charge	1	\$20.00	☐	\$20.00

Subtotal NonTaxes: \$20.00

Current Invoice Total: \$20.00

Please Pay: \$20.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information

Your business is appreciated!

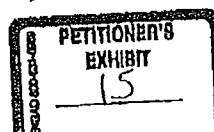
Late Charge Message Goes Here.

Credit Card Number

Date Expires

Signature

Amount to Pay
or leave blank
to pay in full





Boggero's
P.O. Box 783
Greenwood, SC 29648
(864) 228-7023

Invoice

Number: 8983

Date: 10-Sep-2010

P.O. Number:

BILL TO 146
David Sutton

JOB SITE 07

Last Payment Date
30-Aug-2010

Job Number:

Accounting ID:

From =>	To	Duration	Unit/Service Type	Quantity	Price/Per	Tax?	Extension
10-Sep-2010 =>	10-Sep-2010	1	EXTRA SERVICE One-time charge	6	\$20.00	☐	\$120.00
10-Sep-2010 =>	10-Sep-2010	1	SPECIAL CUSTOMER DISCOUNT One-time charge	1	(\$50.00)	☐	(\$50.00)

Subtotal NonTnxed: \$70.00
Current Invoice Total: \$70.00
Please Pay: \$70.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information:

Credit Card Number

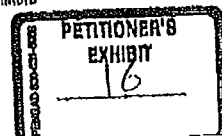
Date Expires

Your business is appreciated!

Late Charge Message Goes Here.

Signature

Amount to Pay
or leave blank
to pay in full





Boggero's
P.O. Box 788
Greenwood, SC 29648
(864) 223-7023

Invoice

Number: 7021

Date: 12-Apr-2011

P.O. Number:

BILL TO 148

David Sulton

JOB SITE 07

Job Number:

Accounting ID:

Last Payment Date

12-Jan-2011

From ->	To	Duration	Unit/Service Type	Quantity	Price/Per	Tax?	Extension
31-Mar-2011 =>	31-Mar-2011	1	EXTRA SERVICE One-time charge	6	\$20.00	☐	\$120.00

Subtotal NonTaxed: \$120.00

Current Invoice Total: \$120.00

Please Pay: \$120.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information:

Credit Card Number

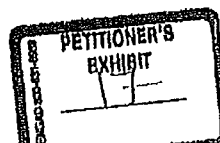
Date Expires

Your business is appreciated!

Leto Ohergo Messaga Gosa Hero.

Signature

Amount to Pay
or leave blank
to pay in full





Boggero's
P.O. Box 783
Greenwood, SC 29648
(864) 223-7023

Invoice

Number: 8612
Date: 27-Sep-2011
P.O. Number:

BILL TO 826
Fullon Hill

JOB SITE 1328

Job Number:

Accounting ID:

Last Payment Date

02-Sep-2011

From =>	To	Duration	Unit/Service Type	Quantity	Price/Per	Tax?	Extension
21-Sep-2011 =>	21-Sep-2011	1	EXTRA SERVICE Special Event rate	1	\$22.00	☐	\$22.00

Subtotal NonTaxed: \$22.00

Current Invoice Total: \$22.00

Please Pay: \$22.00

Payment Terms: Net 30

If you would like to pay using your credit card,
please fill in the following information:

Your business is appreciated!

Let's Charge Message Goes Here.

Credit Card Number:

Date Expires:

Signature:

Amount to Pay
or leave blank
to pay in full



South Carolina Department of Revenue

Audit Services
300-B Outlet Pointe Blvd.
Columbia, SC 29210

Website Address: <http://www.sctax.org>

April 12, 2012

Boggero's Portable Toilets
Boggero's Portable Toilets
PO Box 783
Greenwood, SC 29648

Type Tax: Sales Tax
Period: 01/01/2009 to 12/31/2011
File #: 02414683-8
Audit #: 01/21/4776
Response Date: July 12, 2012

Dear Ms. Eugenia Boggero:

The Department's audit of the above referenced tax return(s) has been completed. Enclosed is the audit report which explains our **Proposed Assessment**.

If you agree with the changes detailed in the enclosed report, the balance on Form AS-64 should be remitted to this office within 30 days from the date of this letter. Otherwise, additional interest, and penalties, if applicable, will accrue. Please include a copy of the AS-64 Distribution, or, Processing Report with your check to insure proper processing.

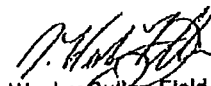
If you agree with the Department's adjustments, but are unable to make full payment at this time, please complete the enclosed Waiver of Restriction on Assessment (SC 870) and return it to this office as soon as possible. Upon receipt of this document, a final assessment will be issued.

If you disagree with any of the adjustments of tax, interest, or penalties that have been proposed by the Department, a written protest must be submitted to this office by the response date. Enclosed is an information guide (CID-8) which explains the information that must be included in your protest. The protest may be submitted on the enclosed form or by letter.

If you do not respond to this letter by the response date, you will have waived your right to appeal the proposed assessment and the Department will issue the final assessment and begin collection action.

Should you have any questions, please do not hesitate to contact this office.

Sincerely,
Columbia District Audit Services



Wesley Butler, Field Auditor
Email: ButlerW@sctax.org, (803) 898-6407, FAX (803) 898-0020
300-B Outlet Pointe Blvd.
Columbia, SC 29210





SOUTH CAROLINA DEPARTMENT OF REVENUE
Audit Services

Boggero's Portable Toilets
PO Box 783, Greenwood, SC 29848
Boggero's Portable Toilets
PO Box 783, Greenwood, SC 29848

SID: 234164E
FEIN/SSN: XX-XXXX
File #: 02414583-0
ACN: 01/21/4775

Period: 01/01/2009 thru 12/31/2011 (36 Mths)
Auditor: Wesley Butler 1086
Auditor: Logan Mitchell 1118
Interest & Penalty Date: 05/12/2012 County/Municipality Code:

Billing Summary

AS-54-GT
Sales Tax

Audit: Sales Tax
Adjustment Schedules: Adjustments to Sales, Retail License

Tax Type	Tax	Interest	Penalty	Total	
1 Greenwood Only CP 24	1,203.12	86.11	452.79	1,801.02	1
2 Retail License Tax	50.00	6.44	22.28	78.89	2
3 Sales Tax	7,578.84	510.72	2,716.32	10,805.88	3
Total (3)	8,801.96	602.27	3,191.38	12,805.69	



SOUTH CAROLINA DEPARTMENT OF REVENUE

Audit Services

Boggero's Portable Toilets
PO Box 783, Greenwood, SC 29840
Boggero's Portable Toilets
PO Box 783, Greenwood, SC 29840

SID: 2341548
FEDUSSH: XX-XXXX
File#: 02414883-0
ACN: 01/21/4775

Period: 01/01/2009 thru 12/31/2011 (30 Mths)

Auditor: Wesley Butler 1000

Auditor: Logan Mitchell 1110

Interest & Penalty Date: 05/12/2012 County/Municipality Code:

Billing Report for Greenwood Cnty CP 24 [24CP]

AS-54
Sales Tax

Audit: Sales Tax
Adjustment Schedules: Adjustments to Sales, Retail License

Period	Measure	Tax Due	Interest	Penalty	Total	
1 01/31/2009	3,850.44	38.50	4.98	17.14	60.62	1
2 02/28/2009	3,850.44	38.50	4.80	16.95	60.25	2
3 03/31/2009	3,850.44	38.50	4.84	16.76	59.80	3
4 04/30/2009	3,850.44	38.50	4.40	16.58	59.55	4
5 05/31/2009	3,850.44	38.50	4.34	16.37	59.21	5
6 06/30/2009	3,850.44	38.50	4.22	16.10	58.80	6
7 07/31/2009	3,850.44	38.50	4.08	15.80	58.50	7
8 08/31/2009	3,850.44	38.50	3.93	15.74	58.22	8
9 09/30/2009	3,850.44	38.50	3.79	15.60	57.89	9
10 10/31/2009	3,850.44	38.50	3.82	15.41	57.53	10
11 11/30/2009	3,850.44	38.50	3.48	15.21	57.10	11
12 12/31/2009	3,850.44	38.50	3.38	15.02	56.80	12
13 01/31/2010	3,224.88	32.25	2.88	12.41	47.34	13
14 02/28/2010	3,224.88	32.25	2.50	12.25	47.00	14
15 03/31/2010	3,224.88	32.25	2.47	12.09	46.81	15
16 04/30/2010	3,224.88	32.25	2.37	11.93	46.55	16
17 05/31/2010	3,224.88	32.25	2.24	11.77	46.28	17
18 06/30/2010	3,224.88	32.25	2.13	11.61	46.00	18
19 07/31/2010	3,224.88	32.25	2.02	11.45	45.72	19
20 08/31/2010	3,224.88	32.25	1.90	11.29	45.44	20
21 09/30/2010	3,224.88	32.25	1.79	11.12	45.16	21
22 10/31/2010	3,224.88	32.25	1.68	10.98	44.87	22
23 11/30/2010	3,224.88	32.25	1.58	10.80	44.61	23
24 12/31/2010	3,224.88	32.25	1.47	10.64	44.38	24
25 01/31/2011	3,450.91	34.51	1.47	11.22	47.20	25
26 02/28/2011	3,450.91	34.51	1.39	11.05	46.95	26
27 03/31/2011	3,450.91	34.51	1.28	10.87	46.60	27
28 04/30/2011	3,450.91	34.51	1.16	10.70	46.37	28
29 05/31/2011	3,450.91	34.51	1.03	10.53	46.07	29
30 06/30/2011	3,450.91	34.51	0.91	10.36	45.78	30
31 07/31/2011	3,450.91	34.51	0.79	10.18	45.48	31
32 08/31/2011	3,450.91	34.51	0.68	10.01	45.20	32
33 09/30/2011	3,450.91	34.51	0.50	9.84	44.93	33
34 10/31/2011	3,450.91	34.51	0.49	9.67	44.67	34
35 11/30/2011	3,450.91	34.51	0.41	9.49	44.41	35
36 12/31/2011	3,450.91	34.51	0.32	7.69	42.42	36
Total (36)	120,314.89	1,283.12	85.11	462.79	1,001.02	



SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
Audit Services

Boggero's Portable Toilets
PO Box 703, Greenwood, SC 29840
Boggero's Portable Toilets
PO Box 703, Greenwood, SC 29840

SID: 2341540
FEWASH: XX-XXXX
File#: 02414583-8
ACN: 01/21/4775

Period: 01/01/2009 thru 12/31/2011 (36 Mths)
Auditor: Wesley Butler 1086
Auditor: Logan Mitchell 1110
Interest & Penalty Date: 05/12/2012 County/Municipality Code:

Penalty Detail for Greenwood Cnty CP 24 [24CP]

AS-54-PEN
Salos Tax

Period	Failure To File > Oct00	Failure To Pay	Total	
1 01/31/2009	8.63	7.51	17.14	1
2 02/20/2009	8.63	7.32	16.95	2
3 03/31/2009	8.63	7.12	16.75	3
4 04/30/2009	8.63	6.93	16.56	4
5 05/31/2009	8.63	6.74	16.37	5
6 06/30/2009	8.63	6.55	16.18	6
7 07/31/2009	8.63	6.36	15.99	7
8 08/31/2009	8.63	6.16	15.79	8
9 09/30/2009	8.63	5.97	15.60	9
10 10/31/2009	8.63	5.78	15.41	10
11 11/30/2009	8.63	5.60	15.21	11
12 12/31/2009	8.63	5.39	15.02	12
13 01/31/2010	8.08	4.35	12.41	13
14 02/20/2010	8.00	4.19	12.25	14
15 03/31/2010	8.08	4.03	12.09	15
16 04/30/2010	8.08	3.87	11.93	16
17 05/31/2010	8.08	3.71	11.77	17
18 06/30/2010	8.08	3.55	11.61	18
19 07/31/2010	8.08	3.39	11.45	19
20 08/31/2010	8.08	3.23	11.29	20
21 09/30/2010	8.08	3.08	11.12	21
22 10/31/2010	8.00	2.90	10.90	22
23 11/30/2010	8.00	2.74	10.80	23
24 12/31/2010	8.08	2.58	10.64	24
25 01/31/2011	8.63	2.59	11.22	25
26 02/28/2011	8.63	2.42	11.05	26
27 03/31/2011	8.63	2.24	10.87	27
28 04/30/2011	8.63	2.07	10.70	28
29 05/31/2011	8.63	1.90	10.53	29
30 06/30/2011	8.63	1.73	10.36	30
31 07/31/2011	8.63	1.55	10.18	31
32 08/31/2011	8.63	1.38	10.01	32
33 09/30/2011	8.63	1.21	9.84	33
34 10/31/2011	8.63	1.04	9.67	34
35 11/30/2011	8.63	0.88	9.40	35
36 12/31/2011	8.00	0.80	7.50	36
Total (36)	314.11	130.88	462.79	

Penalty Detail

Tax/Amtor 4.4.0.607 - 03/30/2012

04/05/2012 Page 3 of 10

Boggero's Services

A family name you can trust!

Serving you since 1949



Home

Construction
Units

Special
Events

Service
Areas

Coupons

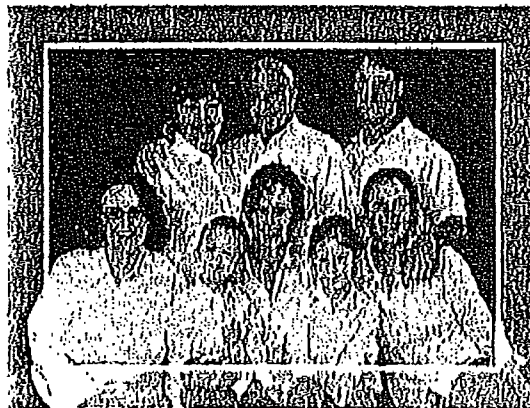
Unit
Calculator

Request
Form

Testimonials

Septic Tank
Cleaning

Contact Us



Boggero's has been in the septic tank business since 1949. We specialize in cleaning, installation, sewer and drainage repair, tentlift (rejuvenation), and grease traps.

In 1989 we became the first portable toilet rental business in the area, offering:

Our customers have come to appreciate the dedication to portable toilets and customer service that we give. All of our employees work with a close attention to detail while working directly with our clients to ensure that you are getting an adequate number of restroom trailers and/or portable toilets for your event.

Serving the Greenwood, Laurens, Edgefield, Abbeville, McCormick, Saluda, and surrounding areas in South Carolina (SC)
(803) 923-7673 • 16076 Main Street • Greenwood, SC • 29646



Boggero's Services

A family name you can trust!

Serving you since 1949



Home

Construction Units

Special Events

Service Areas

Coupons

Unit Calculator

Request Form

Testimonials

Septic Tank Cleaning

Contact Us

Our trained staff adhere to a strict service schedule, and will keep your rental units clean and functioning at 100%.

Our fleet of service vehicles allow us to deliver that 100% guarantee with ease and efficiency.

When considering your restroom rental needs, please take into consideration our second-to-none service (24 hours-a-day, 7-days-a-week emergency service available) and our attention to detail and you'll agree that the most time-efficient and cost productive rental for you will be from Boggero's Service!

With several years of experience in the delivery, setup, and service of portable toilets, the professionals at Boggero's will provide each of our customers only the best in portable toilets at a very competitive price!

We provide accurate estimates that cover everything! All estimates include delivery, setup, cleaning and removal of our portable toilet units. No hidden charges! Along with our service, we also provide repairs and preventative maintenance and an endless supply of toilet paper for your portable toilet.

Delivered directly to your construction job site and serviced by our dedicated local teams, our standard portable toilet is ideal for residential or commercial construction projects. When you rent from us you can expect accurate and dependable delivery, and prompt, professional service. Because of our outstanding customer service, we are a preferred supplier of portable toilets to the construction trade.

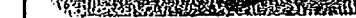


When determining the number of restrooms for your commercial or construction site, ANSI standards call for one portable toilet per 10 workers for a 40-hour work week. Simply call us and we'll take care of the rest.

Highrise Units

For tough to reach job sites such as the top level of buildings, the Iron Unit construction restroom is a durable solution. Equipped with lifting hooks wrapped in a steel sling, the Iron Unit can be easily lifted via crane to a variety of high-rise locations.

Holding Tanks



Typically used in concert with office trailers on commercial construction sites, Dragg Portable Toilets has both fresh water and sewer holding tanks that can also be used at special events.

Serving the Greenwood, Laurens, Edgefield, Abbeville, McCormick, Saluda, and surrounding areas in South Carolina (SC)
(864) 223-7073 • 1502 E. Main Street • Greenwood, SC • 29616

Boggero's Services

A family name you can trust!

Serving you since 1949

Home

Construction
Units

Special
Events

Service
Areas

Coupons

Unit
Calculator

Request
Form

Testimonials

Septic Tank
Cleaning

Contact Us



With our expert advice, you can order the precise number of toilets to match the size and style of your event enough for the comfort and convenience of attendees, but not more than what makes sense for your number of attendees and budget. We can help you to calculate how many restrooms you need, or you can simply call one of our helpful event specialists to determine the ideal number of portable toilets for your next occasion.

Special Event Units

Featuring a roomy interior, our Special Event Portable Restrooms are the most popular portable toilet rental for special events. Whether you're entertaining 100 or 100,000 people, our convenient and clean portable toilets (used only for events) help complete any outdoor function. With the right portable sanitation in place, event organizers can focus on the countless other details that will impress their guests. Optional features may include a freshwater sink operated by a sanitary, hands-free pump.

VIP Units

Our VIP units are ideal for upscale events and perfect for weddings. With more features than our Special Event units, our VIP unit offers an added level of comfort and convenience for guests including sanitary hands-free flushing via a foot pump and a hidden waste tank.

Our flushing portable toilets feature a closed holding-tank system and can also be equipped with a sink to give you a complete restroom experience. Ask your representative to see if our "Wedding White" flushing toilets are available in your area!

Handicap Units

Boggero's Services offers a Wheelchair/Handicap Accessible Restroom, as well as a larger ADA Compliant Wheelchair Restroom in some areas. In many situations, the wheelchair/handicap accessible restrooms will meet the needs of your guests; however, we can supply ADA-compliant units if required or preferred so wheelchairs have enough space to turn around within the unit.

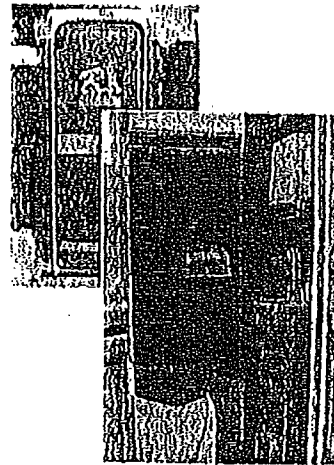


Great for families too!
For family-oriented events, the Wheelchair/Handicap Accessible portable toilets are an excellent option because their spacious interior accommodates parents who accompany children to the restroom.

Ideal for community gatherings such as fairs, festivals and parades, these units get rave review from parents and caregivers who appreciate the extra room for tending to toddlers, changing diapers, or simply keeping their kids within sight.

Sink Units

Perfect for the bbq, wedding, or any event where food is served. Greatly reduces the traffic in and out of your residence while providing a sanitary place for hand washing!



Being the Owner of (1) Unit, (2) Units, (3) Units, (4) Units, (5) Units, and (6) Units in North Carolina (NC)
(844) 333-1033 • 1161 B Main Street • Greensboro, NC • 27408

DEPARTMENT DETERMINATION

Taxpayer:

Boggero's Portable Toilets
Attn: Eugenia Boggero
PO Box 783
Greenwood, SC 29648

Period Involved:

Sales Tax - 1/1/2009 through 12/31/2011

Matter in Dispute:

Is Boggero's Portable Toilets (taxpayer/business) gross proceeds from the rental of portable toilets subject to sales tax?

Tax	\$ 8,841.96
License Fee	50.00
Interest*	893.27
Penalties	3,735.39
Total:	\$13,520.62

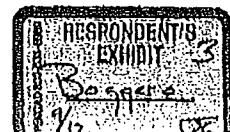
*Interest has been calculated through May 15, 2013 and will continue until this matter is resolved.

Determination:

Thirty percent of the gross proceeds from the rental of portable toilets is subject to the sales tax as computed by the auditor, S.C. Code Ann. § 12-36-2120(62) (Supp. 2012).

Relevant Facts:

1. Eugenia Boggero owns and operates Boggero's Portable Toilets.
2. The business provides portable toilet temporary installation, pick-up, and subsequent waste removal.
3. The taxpayer was audited by the South Carolina Department of Revenue (Department) for the period 1/1/2009 through 12/31/2011 for sales tax purposes.
4. After review of the taxpayer's books and records for the relevant period the auditor issued a Proposed Notice of Adjustment (Notice) imposing sales tax, penalties, and interest on the taxpayer's rental and servicing of portable toilets.



5. The taxpayer timely protested the Notice.

Analysis:

S.C. Code Ann. § 12-36-910 (Supp. 2009) provides for the imposition of a sales tax on the gross receipts of tangible personal property sold at retail. The rental of portable toilets at issue is included in the definition of "tangible personal property."¹

To that end, S.C. Code Ann. § 12-36-90 (Supp. 2012) provides:

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:

(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[.]

As to the meaning and application of a statutory provision, recognizing and giving full effect to the General Assembly's intent is the court's ultimate goal. Sonoco v. South Carolina Dep't of Revenue, 378 S.C. 285, 662 S.E.2d 599 (2008). A court cannot apply nor construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope. Berkelville v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993).

Relevant to the case at bar, the General Assembly has provided a limited tax exemption to those renting portable toilets. Specifically, § 12-36-2120(62) provides:

12-36-2120. Exemptions from sales tax.

Exempted from the taxes imposed by this chapter are the gross proceeds of sales, or sales price of:

(62) seventy percent of the gross proceeds of the rental or lease of portable toilets.²

¹See S.C. Code Ann. § 12-36-60 (2000) ("'[t]angible personal property' [includes] 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. § 12-36-70(1)(c) (2000) (a "retailer" or "seller" includes a person operating a "renting, leasing, or otherwise furnishing tangible personal property for a consideration;").

²This exemption was effective July 1, 2003, SB 274, 2003. For a recent application of this provision, see S.C. Rev. Rul. #09-5 (May 19, 2009). Prior to the enactment of this limited exception, all proceeds from the rental/leasing of portable

As required by the General Assembly, first, the auditor calculated the total gross proceeds from the rental of the portable toilets to include all servicing charges (§ 12-36-90(1)(b)(i) and (ii)). The auditor then reduced this amount by seventy percent to recognize the statutory exemption granted by the Legislature. As such, the actions of the auditor were correct and appropriate.¹

_____, 2013
(CM:le)

toilets and servicing attached to such rental were included in "gross proceeds" and subject to the sales tax. See S.C. Tax Commission Decision S-D-115, 1977 ("We are satisfied that the charging of placing a portable toilet is a rental charge that is taxable under the provisions of the Sales and Use Tax Act.").

¹*Id.*, S.C. Rev. Rul. #09-5 provides that first the total rental to include servicing costs are calculated to which the seventy percent exemption is applied to arrive at the sales tax base.

DATE	DESCRIPTION	TOTAL SALES	NONTAXABLE TRASH	TOTAL PORTABLE	TAXABLE PORTABLE
			PICK-UP	TOILET SALES	TOILET SALES
1/31/2009	MONTHLY SALES PER SALES INVOICES	12,020.24	1,565.23	10,455.01	3,136.50
2/28/2009	MONTHLY SALES PER SALES INVOICES	13,624.11	3,353.10	10,271.01	3,081.30
3/31/2009	MONTHLY SALES PER SALES INVOICES	13,942.43	4,144.42	9,798.01	2,939.40
4/30/2009	MONTHLY SALES PER SALES INVOICES	14,018.09	2,542.08	11,476.01	3,442.80
5/31/2009	MONTHLY SALES PER SALES INVOICES	14,791.07	1,568.06	13,223.01	3,966.90
6/30/2009	MONTHLY SALES PER SALES INVOICES	13,837.67	2,070.66	11,767.01	3,530.10
7/31/2009	MONTHLY SALES PER SALES INVOICES	14,907.87	2,086.36	12,821.51	3,846.45
8/31/2009	MONTHLY SALES PER SALES INVOICES	19,912.91	722.89	19,190.02	5,757.01
9/30/2009	MONTHLY SALES PER SALES INVOICES	13,843.40	2,608.39	11,235.01	3,370.50
10/31/2009	MONTHLY SALES PER SALES INVOICES	11,550.51	0	11,550.51	3,465.15
11/30/2009	MONTHLY SALES PER SALES INVOICES	11,840.21	1,944.20	9,896.01	2,968.80
12/31/2009	MONTHLY SALES PER SALES INVOICES	8,395.51	733	7,662.51	2,298.75
1/31/2010	MONTHLY SALES PER SALES INVOICES	10,723.83	1,718.82	9,005.01	2,701.50
2/28/2010	MONTHLY SALES PER SALES INVOICES	10,957.67	1,663.66	9,294.01	2,788.20
3/31/2010	MONTHLY SALES PER SALES INVOICES	12,415.41	2,035.40	10,380.01	3,114.00
4/30/2010	MONTHLY SALES PER SALES INVOICES	14,754.31	3,609.80	11,144.51	3,343.35
5/31/2010	MONTHLY SALES PER SALES INVOICES	19,482.64	4,884.83	14,597.81	4,379.34
6/30/2010	MONTHLY SALES PER SALES INVOICES	15,600.90	1,935.39	13,665.51	4,099.65
7/31/2010	MONTHLY SALES PER SALES INVOICES	16,374.11	1,755.10	14,619.01	4,385.70
8/31/2010	MONTHLY SALES PER SALES INVOICES	26,650.52	2,997.50	23,653.02	7,095.91
9/30/2010	MONTHLY SALES PER SALES INVOICES	15,054.06	1,866.25	13,187.81	3,956.34
10/31/2010	MONTHLY SALES PER SALES INVOICES	11,858.21	733	11,125.21	3,337.56
11/30/2010	MONTHLY SALES PER SALES INVOICES	11,267.71	1,599.00	9,668.71	2,900.61
12/31/2010	MONTHLY SALES PER SALES INVOICES	9,332.01	444	8,888.01	2,666.40
1/31/2011	MONTHLY SALES PER SALES INVOICES	10,941.41	2,212.60	8,728.81	2,618.64
2/28/2011	MONTHLY SALES PER SALES INVOICES	8,700.51	755.5	7,945.01	2,383.50
3/31/2011	MONTHLY SALES PER SALES INVOICES	9,875.21	464.8	9,410.41	2,823.12
4/30/2011	MONTHLY SALES PER SALES INVOICES	11,390.51	1,217.10	10,173.41	3,052.02
5/31/2011	MONTHLY SALES PER SALES INVOICES	14,203.41	660	13,543.41	4,063.02
6/30/2011	MONTHLY SALES PER SALES INVOICES	13,943.51	1,354.00	12,589.51	3,776.85
7/31/2011	MONTHLY SALES PER SALES INVOICES	21,431.62	665	20,766.62	6,229.99
8/31/2011	MONTHLY SALES PER SALES INVOICES	12,515.41	1,449.60	11,065.81	3,319.74
9/30/2011	MONTHLY SALES PER SALES INVOICES	13,571.61	1,317.80	12,253.81	3,676.14
10/31/2011	MONTHLY SALES PER SALES INVOICES	12,064.81	0	12,064.81	3,619.44
11/30/2011	MONTHLY SALES PER SALES INVOICES	11,888.81	150	11,738.81	3,521.64
12/31/2011	MONTHLY SALES PER SALES INVOICES	11,554.97	739.16	10,815.81	3,244.74
		489,237.19	59,566.70	429,670.49	128,901.15



DATE	INVOICE #	BATES #	VENDOR	DESCRIPTION	SALES AMOUNT
1/21/2009	4783	102	WHARTON SMITH	TRASH CONTAINER & DISPOSAL	414.66
1/21/2009	4784	103	SYS CONSTRUCTION	TRASH CONTAINER & DISPOSAL	1,150.57
2/15/2009	4812	131	C & S CONSTRUCTION	TRASH CONTAINER & DISPOSAL	75
2/15/2009	4825	144	CUSTOM STEEL FABRICATORS	TRASH CONTAINER & DISPOSAL	208.04
2/15/2009	4847	166	MARION BUILDERS	TRASH CONTAINER & DISPOSAL	75
2/15/2009	4873	192	SYS CONSTRUCTION	TRASH CONTAINER & DISPOSAL	1,646.50
2/15/2009	4889	209	WHARTON SMITH	TRASH CONTAINER & DISPOSAL	742.8
2/15/2009	4890	211	TROY WILKIE	TRASH CONTAINER & DISPOSAL	381.2
2/15/2009	4891	212	CHAD WILSON	TRASH CONTAINER & DISPOSAL	224.56
3/15/2009	4915	236	C & S CONSTRUCTION	TRASH CONTAINER & DISPOSAL	312.32
3/15/2009	4930	251	CUSTOM STEEL FABRICATORS	TRASH CONTAINER & DISPOSAL	844.8
3/15/2009	4951	272	MARION BUILDERS	TRASH CONTAINER & DISPOSAL	362.6
3/15/2009	4978	299	SYS CONSTRUCTION	TRASH CONTAINER & DISPOSAL	1,560.08
3/15/2009	4991	313	WHARTON SMITH	TRASH CONTAINER & DISPOSAL	685.64
3/15/2009	4993	316	CHAD WILSON	TRASH CONTAINER & DISPOSAL	378.98
4/12/2009	5035	358	CUSTOM STEEL FABRICATORS	TRASH CONTAINER & DISPOSAL	535.98
4/12/2009	5081	405	SYS CONSTRUCTION	TRASH CONTAINER & DISPOSAL	1,465.00
4/12/2009	5096	421	WHARTON SMITH	TRASH CONTAINER & DISPOSAL	268.42
4/12/2009	5099	424	CHAD WILSON	TRASH CONTAINER & DISPOSAL	272.68
5/10/2009	5215	540	PEARCE TAYLOR	TRASH CONTAINER & DISPOSAL	60
5/10/2009	5216	542	SYS CONSTRUCTION	TRASH CONTAINER & DISPOSAL	1,012.24
5/10/2009	5217	543	WHARTON SMITH	TRASH CONTAINER & DISPOSAL	495.82
6/7/2009	5307	633	SYS CONSTRUCTION	TRASH CONTAINER & DISPOSAL	650.86
6/7/2009	5309	636	PEARCE TAYLOR	TRASH CONTAINER & DISPOSAL	75
6/7/2009	5319	646	WHARTON SMITH	TRASH CONTAINER & DISPOSAL	342.46
6/9/2009	5324	651	PENNYWORTH HOMES	TRASH CONTAINER & DISPOSAL	1,002.34
7/5/2009	5401	728	SYS CONSTRUCTION	TRASH CONTAINER & DISPOSAL	660
7/5/2009	5404	732	PEARCE TAYLOR	TRASH CONTAINER & DISPOSAL	284.4
7/5/2009	5415	743	WHARTON SMITH	TRASH CONTAINER & DISPOSAL	743.6
7/5/2009	5416	745	CHAD WILSON	TRASH CONTAINER & DISPOSAL	398.36
8/30/2009	5563	893	JAY DAVIS CONSTRUCTION	TRASH CONTAINER & DISPOSAL	299.89
8/30/2009	5599	930	PEARCE TAYLOR	TRASH CONTAINER & DISPOSAL	75
8/30/2009	5611	942	WHARTON SMITH	TRASH CONTAINER & DISPOSAL	345



DATE	INVOICE #	BATES #	VENDOR	DESCRIPTION	SALES AMOUNT
1/8/2009	4687		6 KATHLEEN SCHMIDT	SPECIAL EVENT STANDARD UNIT	100
1/18/2009	4695		14 ALPINE CONSTRUCTION	NEW DELIVERY	44
1/18/2009	4710		29 BUZHARDT'S TRASH	NEW DELIVERY	72
1/18/2009	4711		30 GUS BYRD	PORTABLE PICKUP	40
1/18/2009	4717		36 CAROLINA SYSTEM BUILT HOMES	PORTABLE PICKUP	88
1/18/2009	4720		39 CHRISTIAN BROTHERS HUNT CLUB	PORTABLE PICKUP	60
1/18/2009	4723		42 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	40
1/18/2009	4739		58 RONNIE LANNING	PORTABLE PICKUP	88
1/18/2009	4748		67 MITCHUM CONSTRUCTION	NEW DELIVERY	44
1/18/2009	4753		72 PENNYWORTH HOMES	NEW DELIVERY	44
1/18/2009	4759		78 ROSS CARPENTRY	NEW DELIVERY	22
1/18/2009	4763		82 SELECT HOMES INC.	NEW DELIVERY	55
					697
2/2/2009	4788		107 LEE MUPH	SPECIAL EVENT VIP UNIT	150
2/15/2009	4791		110 A.T.C. DEVELOPMENT	PORTABLE PICKUP	40
2/15/2009	4796		115 ALPINE CONSTRUCTION	NEW DELIVERY	80
2/15/2009	4797		116 AMERICA'S HOME PLACE	NEW DELIVERY	60
2/15/2009	4798		117 B & J CONTRACTORS	PORTABLE PICKUP	72
2/15/2009	4804		123 BRYAN SUMMEY ROOFING	PORTABLE PICKUP	22
2/15/2009	4817		136 CANNON & ASSOCIATES	NEW DELIVERY	20
2/15/2009	4822		141 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	115
2/15/2009	4823		142 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	90
2/15/2009	4824		143 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	20
2/15/2009	4830		149 GREENWOOD HABITAT FOR HUMANITY	NEW DELIVERY	72
2/15/2009	4835		154 DENNIS HOLDEN	PORTABLE PICKUP	80
2/15/2009	4836		155 J.P. JONES CONSTRUCTION	NEW DELIVERY	60
2/15/2009	4845		164 C+J	PORTABLE PICKUP	54
2/15/2009	4846		165 C+J	PORTABLE PICKUP	54
2/15/2009	4855		174 PEAK BUILDERS	PORTABLE PICKUP	52
2/15/2009	4857		176 PENNYWORTH HOMES	NEW DELIVERY	44
2/15/2009	4864		183 ROSS CARPENTRY	NEW DELIVERY	66
2/15/2009	4869		188 SELECT HOMES INC.	NEW DELIVERY	80



2/15/2009	4870	189 SHELLS CONSTRUCTION	PORTABLE PICKUP	66
2/15/2009	4872	191 ADAMS SUMTER	PORTABLE PICKUP	60
2/15/2009	4875	195 RACO INC.	NEW DELIVERY	44
2/15/2009	4878	198 TOM BRIGMAN CONSTRUCTION	PORTABLE PICKUP	66
2/15/2009	4879	199 TOM BRIGMAN CONSTRUCTION	NEW DELIVERY	20
2/15/2009	4880	200 TOP QUALITY CONSTRUCTION	PORTABLE PICKUP	22
2/15/2009	4881	201 TREHEL CORP.	PORTABLE PICKUP	170
2/15/2009	4886	206 W.R. NEWMAN GENERAL CONTRACTORS	NEW DELIVERY	22
2/15/2009	4892	213 CHAD WILSON	NEW DELIVERY	80
2/15/2009	4893	214 GARY GUNDERSON	PORTABLE PICKUP	60
2/27/2009	4894	215 CMC INC.	SPECIAL EVENT STANDARD UNIT	100
				<u>1941</u>
3/15/2009	4900	221 ALPINE CONSTRUCTION	PORTABLE PICKUP	80
3/15/2009	4902	223 AMERICA'S HOME PLACE	NEW DELIVERY	80
3/15/2009	4909	230 BUZHARDT'S TRASH	PORTABLE PICKUP	18
3/15/2009	4914	235 BUZHARDT'S TRASH	NEW DELIVERY	36
3/15/2009	4921	242 CANNON & ASSOCIATES	NEW DELIVERY	60
3/15/2009	4922	243 CCS BUILDERS INC.	PORTABLE PICKUP	20
3/15/2009	4926	247 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	80
3/15/2009	4927	248 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	95
3/15/2009	4928	249 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	60
3/15/2009	4929	250 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	40
3/15/2009	4931	252 D.R. TERRY CONSTRUCTION	PORTABLE PICKUP	40
3/15/2009	4940	261 J & W OF NORTH CAROLINA	NEW DELIVERY	40
3/15/2009	4941	262 J.P. JONES CONSTRUCTION	PORTABLE PICKUP	40
3/15/2009	4942	263 JAMES B. JONES CONSTRUCTION	PORTABLE PICKUP	120
3/15/2009	4943	264 JAMES B. JONES CONSTRUCTION	NEW DELIVERY	80
3/15/2009	4945	266 JOHN COBB BUILDERS	NEW DELIVERY	20
3/15/2009	4954	275 C.T. MCDADE	NEW DELIVERY	20
3/15/2009	4968	289 ROSS CARPENTRY	PORTABLE PICKUP	66
3/15/2009	4972	293 SELECT HOMES INC.	PORTABLE PICKUP	40
3/15/2009	4975	296 SELECT HOMES INC.	NEW DELIVERY	20
3/15/2009	4976	297 SHELLS CONSTRUCTION	NEW DELIVERY	22

3/15/2009	4983	305 TRIPLE H BUILDERS	NEW DELIVERY	88
3/17/2009	4996	319 ENOREE RANGER DISTRICT	HANDICAP SPECIAL EVENT	100
3/17/2009	4997	320 CMC INC.	PORTABLE PICKUP	90
				<u>1355</u>
4/3/2009	5001	324 SALUDA HIGH SCHOOL	SPECIAL EVENT STANDARD UNIT	150
4/12/2009	5003	326 A.P. NEAL CONSTRUCTION CO.	PORTABLE PICKUP	72
4/12/2009	5005	328 A.T.C. DEVELOPMENT	NEW DELIVERY	60
4/12/2009	5015	338 BURTON CENTER	NEW DELIVERY	80
4/12/2009	5024	347 CANNON & ASSOCIATES	PORTABLE PICKUP	60
4/12/2009	5029	352 CHRISTIAN BROTHERS HUNT CLUB	NEW DELIVERY	60
4/12/2009	5032	355 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	60
4/12/2009	5034	357 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	55
4/12/2009	5035	358 CUSTOM STEEL FABRICATORS	PORTABLE PICKUP	20
4/12/2009	5038	361 FIELDSTONE PROPERTIES	NEW DELIVERY	80
4/12/2009	5048	372 JOHN COBB BUILDERS	NEW DELIVERY	60
4/12/2009	5051	375 JUSTUS BUILDERS LLC	NEW DELIVERY	72
4/12/2009	5053	377 ROBERT LARKIN	NEW DELIVERY	20
4/12/2009	5055	379 LUV HOMES	PORTABLE PICKUP	44
4/12/2009	5060	384 MITCHUM CONSTRUCTION	PORTABLE PICKUP	44
4/12/2009	5066	390 PIEDMONT TECHNICAL COLLEGE	NEW DELIVERY	60
4/12/2009	5074	398 SALUDA COUNTY RECREATION	NEW DELIVERY	240
4/12/2009	5076	400 DIANE SCHUMAN	NEW DELIVERY	20
4/12/2009	5083	408 PEARCE TAYLOR	NEW DELIVERY	80
4/12/2009	5085	410 TOM BRIGMAN CONSTRUCTION	PORTABLE PICKUP	20
4/12/2009	5086	411 TOM BRIGMAN CONSTRUCTION	NEW DELIVERY	60
4/12/2009	5094	419 WAFFLE HOUSE INC.	NEW DELIVERY	66
4/12/2009	5096	421 WHARTON SMITH	PORTABLE PICKUP	15
4/12/2009	5097	422 VERNON BURTON	NEW DELIVERY	20
4/12/2009	5101	426 YODER BUILDERS	NEW DELIVERY	22
4/20/2009	5106	431 BIG RED HUNT CLUB	SPECIAL EVENT STANDARD UNIT	520
4/21/2009	5107	432 SALUDA COUNTY EXTENSION	HANDWASH UNIT	200
4/27/2009	5109	434 MARCH OF DIMES	SPECIAL EVENT STANDARD UNIT	90
4/27/2009	5111	436 RAUCH WISE	SPECIAL EVENT STANDARD UNIT	<u>100</u>

9/27/2009	5675	1005 JAY DAVIS CONSTRUCTION	TRASH CONTAINER & DISPOSAL	243.16
9/27/2009	5710	1040 PEARCE TAYLOR	TRASH CONTAINER & DISPOSAL	557
9/27/2009	5721	1051 WHARTON SMITH	TRASH CONTAINER & DISPOSAL	577.4
9/28/2009	5527	958 WASTE AWAY PORTABLES	OUT OF STATE SALE	1,130.83
11/22/2009	5874	1205 MADISON HOME BUILDERS	TRASH CONTAINER & DISPOSAL	318
11/22/2009	5897	1228 PEARCE TAYLOR	TRASH CONTAINER & DISPOSAL	272.4
11/22/2009	5909	1240 WHARTON SMITH	TRASH CONTAINER & DISPOSAL	1,353.80
12/20/2009	5986	1318 WHARTON SMITH	TRASH CONTAINER & DISPOSAL	733
1/4/2010	5994	1327 DORIS SANDERS	TRASH CONTAINER & DISPOSAL	406
1/17/2010	6044	1377 JOHN PHILLIPS	TRASH CONTAINER & DISPOSAL	201
1/17/2010	6053	1386 DORIS SANDERS	TRASH CONTAINER & DISPOSAL	75
1/17/2010	6072	1405 WHARTON SMITH	TRASH CONTAINER & DISPOSAL	1,036.82
2/5/2010	6077	1411 MADISON HOME BUILDERS	TRASH CONTAINER & DISPOSAL	198.5
2/5/2010	6078	1412 DORIS SANDERS	TRASH CONTAINER & DISPOSAL	75
2/5/2010	6079	1413 BEN EDWARDS	TRASH CONTAINER & DISPOSAL	392.36
2/14/2010	6157	1491 WHARTON SMITH	TRASH CONTAINER & DISPOSAL	997.8
3/14/2010	6186	1521 DAY CONSTRUCTION	TRASH CONTAINER & DISPOSAL	215.6
3/14/2010	6224	1559 DORIS SANDERS	TRASH CONTAINER & DISPOSAL	435
3/14/2010	6244	1579 WHARTON SMITH	TRASH CONTAINER & DISPOSAL	1,384.80
4/11/2010	6290	1626 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
4/11/2010	6304	1640 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	279.2
4/11/2010	6305	1641 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	75
4/11/2010	6326	1662 TEXAS ALLIANCE GROUP	TRASH CONTAINER & DISPOSAL	902.4
4/11/2010	6341	1677 WHARTON SMITH	TRASH CONTAINER & DISPOSAL	2,278.20
5/9/2010	6366	1703 ATRIUM BUILDERS INC.	TRASH CONTAINER & DISPOSAL	982.82
5/9/2010	6402	1739 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
5/9/2010	6416	1753 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	75
5/9/2010	6417	1754 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	587.72
5/9/2010	6442	1779 TEXAS ALLIANCE GROUP	TRASH CONTAINER & DISPOSAL	432.7
5/9/2010	6454	1791 WHARTON SMITH	TRASH CONTAINER & DISPOSAL	1,223.00
5/19/2010	6470	1808 ATRIUM BUILDERS INC.	TRASH CONTAINER & DISPOSAL	982.82
5/27/2010	6476	1814 WASTE AWAY PORTABLES	OUT OF STATE SALE	525.77
6/6/2010	6521	1859 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
6/6/2010	6522	1860 JAY DAVIS CONSTRUCTION	TRASH CONTAINER & DISPOSAL	273.19

6/6/2010	6527	1865 MADISON HOME BUILDERS	TRASH CONTAINER & DISPOSAL	393.8
6/6/2010	6532	1870 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	273
6/6/2010	6533	1871 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	388
6/6/2010	6569	1907 WHARTON SMITH	TRASH CONTAINER & DISPOSAL	532.4
7/4/2010	6639	1978 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
7/4/2010	6647	1986 MADISON HOME BUILDERS	TRASH CONTAINER & DISPOSAL	75
7/4/2010	6648	1987 MADISON HOME BUILDERS	TRASH CONTAINER & DISPOSAL	323.9
7/4/2010	6652	1991 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	75
7/4/2010	6653	1992 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	343.2
7/4/2010	6691	2030 W.E. BAKER & SON	TRASH CONTAINER & DISPOSAL	343.2
7/4/2010	6694	2033 WHARTON SMITH	TRASH CONTAINER & DISPOSAL	519.8
8/1/2010	6751	2091 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	133.4
8/1/2010	6760	2100 MADISON HOME BUILDERS	TRASH CONTAINER & DISPOSAL	342.9
8/1/2010	6761	2101 MADISON HOME BUILDERS	TRASH CONTAINER & DISPOSAL	75
8/1/2010	6765	2105 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	245
8/1/2010	6766	2106 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	75
8/1/2010	6803	2143 UTILITY SERVICES CO.	TRASH CONTAINER & DISPOSAL	217
8/1/2010	6806	2146 W.E. BAKER & SON	TRASH CONTAINER & DISPOSAL	480
8/1/2010	6809	2149 WHARTON SMITH	TRASH CONTAINER & DISPOSAL	1,429.20
9/3/2010	6938	2280 WASTE AWAY PORTABLES	OUT OF STATE SALE	900
9/6/2010	6939	2281 MADISON HOME BUILDERS	TRASH CONTAINER & DISPOSAL	266.85
9/6/2010	6940	2282 W.E. BAKER & SON	TRASH CONTAINER & DISPOSAL	75
9/6/2010	6941	2283 WHARTON SMITH	TRASH CONTAINER & DISPOSAL	289.8
9/6/2010	6942	2284 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
9/6/2010	6943	2285 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	75
9/29/2010	7068	2409 UTILITY SERVICES CO.	TRASH CONTAINER & DISPOSAL	184.6
10/24/2010	7133	2473 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
10/24/2010	7153	2493 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	203
10/24/2010	7154	2494 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	265
10/24/2010	7160	2500 NORTHSTAR SALES & MARKETING	TRASH CONTAINER & DISPOSAL	40
10/24/2010	7161	2501 NORTHSTAR SALES & MARKETING	TRASH CONTAINER & DISPOSAL	75
10/24/2010	7186	2526 W.E. BAKER & SON	TRASH CONTAINER & DISPOSAL	75
11/21/2010	7264	2601 NORTHSTAR SALES & MARKETING	TRASH CONTAINER & DISPOSAL	319
11/21/2010	7240	2605 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75

11/21/2010	7285	2626 TOWN OF WARE SHOALS	TRASH CONTAINER & DISPOSAL	225.8
11/21/2010	7290	2631 W.E. BAKER & SON	TRASH CONTAINER & DISPOSAL	449.2
11/23/2010	7295	2636 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	265
11/28/2010	7294	2635 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	265
12/19/2010	7405	2746 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
12/19/2010	7406	2747 W.E. BAKER & SON	TRASH CONTAINER & DISPOSAL	294
12/19/2010	7407	2748 NORTHSTAR SALES & MARKETING	TRASH CONTAINER & DISPOSAL	75
1/2/2011	7500	3080 DAY CONSTRUCTION	TRASH CONTAINER & DISPOSAL	80
1/2/2011	7501	3081 DAY CONSTRUCTION	TRASH CONTAINER & DISPOSAL	284
1/2/2011	7502	3082 CUSTOM STEEL FABRICATORS	TRASH CONTAINER & DISPOSAL	660.2
1/2/2011	7503	3083 NORTHSTAR SALES & MARKETING	TRASH CONTAINER & DISPOSAL	298.4
1/2/2011	7504	3084 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	327.4
1/19/2011	7505	3085 WARE SHOALS MANOR	TRASH CONTAINER & DISPOSAL	297.6
1/24/2011	7511	3091 MITCHUM CONSTRUCTION	TRASH CONTAINER & DISPOSAL	265
2/14/2011	7604	3184 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
2/14/2011	7605	3185 NORTHSTAR SALES & MARKETING	TRASH CONTAINER & DISPOSAL	190.5
2/14/2011	7606	3186 CUSTOM STEEL FABRICATORS	TRASH CONTAINER & DISPOSAL	75
2/14/2011	7607	3187 DAY CONSTRUCTION	TRASH CONTAINER & DISPOSAL	75
2/14/2011	7608	3188 NORTHSTAR SALES & MARKETING	TRASH CONTAINER & DISPOSAL	265
2/14/2011	7609	3189 LOG DOGS	TRASH CONTAINER & DISPOSAL	75
3/15/2011	7708	3288 DAY CONSTRUCTION	TRASH CONTAINER & DISPOSAL	314.8
3/15/2011	7709	3289 CUSTOM STEEL FABRICATORS	TRASH CONTAINER & DISPOSAL	75
3/15/2011	7710	3290 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
4/10/2011	7819	3399 DAY CONSTRUCTION	TRASH CONTAINER & DISPOSAL	338.2
4/10/2011	7833	3412 SLOAN CONSTRUCTION	TRASH CONTAINER & DISPOSAL	272
4/12/2011	7817	3397 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
4/12/2011	7818	3398 CUSTOM STEEL FABRICATORS	TRASH CONTAINER & DISPOSAL	196.9
4/13/2011	7825	3404 LOG DOGS	TRASH CONTAINER & DISPOSAL	335
5/9/2011	7948	3528 GREENFIELD CONSTRUCTION	TRASH CONTAINER & DISPOSAL	60
5/9/2011	7949	3529 LOG DOGS	TRASH CONTAINER & DISPOSAL	350
5/25/2011	7958	3538 INCREDIBLE EVENTS BY 62 SPORTS	TRASH CONTAINER & DISPOSAL	250
6/1/2011	8285	3865 W.E. BAKER & SON	TRASH CONTAINER & DISPOSAL	374
6/1/2011	8288	3868 SLOAN CONSTRUCTION	TRASH CONTAINER & DISPOSAL	75
6/6/2011	8066	3646 GREENFIELD CONSTRUCTION	TRASH CONTAINER & DISPOSAL	365

6/6/2011	8067	3647 LOG DOGS	TRASH CONTAINER & DISPOSAL	365
6/30/2011	8077	3657 GREENWOOD CHAMBER OF COMMERCE	TRASH CONTAINER & DISPOSAL	175
7/1/2011	8286	3866 W.E. BAKER & SON	TRASH CONTAINER & DISPOSAL	75
7/1/2011	8289	3869 SLOAN CONSTRUCTION	TRASH CONTAINER & DISPOSAL	75
7/3/2011	8111	3691 GREENFIELD CONSTRUCTION	TRASH CONTAINER & DISPOSAL	365
7/11/2011	8177	3757 BRIAN ROSS	TRASH CONTAINER & DISPOSAL	150
8/1/2011	8282	3862 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	352.6
8/1/2011	8283	3863 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
8/1/2011	8284	3864 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
8/1/2011	8287	3867 W.E. BAKER & SON	TRASH CONTAINER & DISPOSAL	75
8/1/2011	8290	3870 SLOAN CONSTRUCTION	TRASH CONTAINER & DISPOSAL	497
8/1/2011	8291	3871 LOG DOGS	TRASH CONTAINER & DISPOSAL	375
9/9/2011	8395	3975 LOG DOGS	TRASH CONTAINER & DISPOSAL	375
9/9/2011	8396	3976 GREENFIELD CONSTRUCTION	TRASH CONTAINER & DISPOSAL	365
9/9/2011	8397	3977 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
9/9/2011	8398	3978 W.E. BAKER & SON	TRASH CONTAINER & DISPOSAL	352.8
9/30/2011	8628	4204 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
9/30/2011	8629	4205 W.E. BAKER & SON	TRASH CONTAINER & DISPOSAL	75
11/23/2011	8749	4324 HARTMAN AND WALSH PAINTING SERVICES	TRASH CONTAINER & DISPOSAL	75
11/23/2011	8750	4325 JASON ARNOLD	TRASH CONTAINER & DISPOSAL	75
12/18/2011	8789	4364 CISSON CONSTRUCTION CO.	TRASH CONTAINER & DISPOSAL	739.16
			2009 Nontaxable	23338.39
			2010 Nontaxable	25242.75
			2011 Nontaxable	10985.56
			Total Nontaxable	<u>59566.7</u>

				2450
5/11/2009	5112	437 JOANNA FESTIVAL	SPECIAL EVENT STANDARD UNIT	250
5/11/2009	5113	438 JOANNA FESTIVAL	SPECIAL EVENT STANDARD UNIT	100
5/10/2009	5123	448 BERRY'S BAIT AND TACKLE	NEW DELIVERY	60
5/10/2009	5131	456 C & S CONSTRUCTION	PORTABLE PICKUP	60
5/10/2009	5137	462 CANNON ROOFING	NEW DELIVERY	66
5/10/2009	5138	463 CENTRAL PACKAGING	NEW DELIVERY	36
5/10/2009	5143	468 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	80
5/10/2009	5144	469 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	60
5/10/2009	5145	470 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	40
5/10/2009	5146	471 CRYSTAL BAY HOMEOWNERS ASSC.	NEW DELIVERY	66
5/10/2009	5147	472 CSX TRANSPORTATION	PORTABLE PICKUP	130
5/10/2009	5166	491 LAZER CONSTRUCTION	NEW DELIVERY	88
5/10/2009	5176	501 PREMIER BUILDING SOLUTIONS	PORTABLE PICKUP	60
5/10/2009	5184	509 SALUDA SCDOT	PORTABLE PICKUP	44
5/10/2009	5185	510 SALUDA HIGH SCHOOL	NEW DELIVERY	44
5/10/2009	5187	512 SELECT HOMES INC.	PORTABLE PICKUP	20
5/10/2009	5189	514 SELECT HOMES INC.	NEW DELIVERY	60
5/10/2009	5190	515 SELECT HOMES INC.	NEW DELIVERY	20
5/10/2009	5193	518 ED SULLIVAN	NEW DELIVERY	60
5/10/2009	5198	523 TOM BRIGMAN CONSTRUCTION	PORTABLE PICKUP	20
5/10/2009	5199	524 TOM BRIGMAN CONSTRUCTION	NEW DELIVERY	80
5/10/2009	5202	527 UNIREAL INC.	PORTABLE PICKUP	40
5/10/2009	5206	531 W.E. BAKER & SON	PORTABLE PICKUP	80
5/10/2009	5212	537 CHAD WILSON	PORTABLE PICKUP	36
5/10/2009	5214	539 YOS ELECTRIC	NEW DELIVERY	88
5/13/2009	5218	544 STORM SERVICES LLC	HANDWASH UNIT	208
5/14/2009	5219	545 ENOREE RANGER DISTRICT	HANDICAP SPECIAL EVENT	200
5/14/2009	5220	546 RELAY FOR LIFE	SPECIAL EVENT STANDARD UNIT	580
5/14/2009	5221	547 GREENWOOD UNITED MINISTRIES	SPECIAL EVENT STANDARD UNIT	255
5/15/2009	5222	548 H & H AUCTION	SPECIAL EVENT STANDARD UNIT	125
5/26/2009	5223	549 DAVID SUTTON	SPECIAL EVENT STANDARD UNIT	1,000.00
				<u>4,056.00</u>

6/1/2009	5224	550 BO HARTER	SPECIAL EVENT STANDARD UNIT	75
6/1/2009	5225	551 DEWAYNE GASKIN	SPECIAL EVENT STANDARD UNIT	100
6/5/2009	5226	552 LOREN HELMUTH	SPECIAL EVENT STANDARD UNIT	75
6/5/2009	5227	553 EDDIE NEW	SPECIAL EVENT STANDARD UNIT	100
6/5/2009	5228	554 EPISCOPAL CHURCH OF THE RESSURECTION	SPECIAL EVENT VIP UNIT	135
6/7/2009	5229	555 A.P. NEAL CONSTRUCTION CO.	PORTABLE PICKUP	54
6/7/2009	5230	556 A.P. NEAL CONSTRUCTION CO.	NEW DELIVERY	40
6/7/2009	5232	558 A.T.C. DEVELOPMENT	PORTABLE PICKUP	80
6/7/2009	5235	561 AMERICA'S HOME PLACE	NEW DELIVERY	54
6/7/2009	5242	568 BURTON CENTER	PORTABLE PICKUP	120
6/7/2009	5248	574 CANNON & ASSOCIATES	PORTABLE PICKUP	54
6/7/2009	5250	576 CANNON & ASSOCIATES	PORTABLE PICKUP	72
6/7/2009	5253	579 CENTRAL PACKAGING	NEW DELIVERY	54
6/7/2009	5260	586 WILLIE CUNNINGHAM	NEW DELIVERY	60
6/7/2009	5263	589 FIELDSTONE PROPERTIES	NEW DELIVERY	20
6/7/2009	5271	597 JAY DAVIS CONSTRUCTION	NEW DELIVERY	72
6/7/2009	5278	604 KNEECE'S CAR CARE	PORTABLE PICKUP	44
6/7/2009	5280	606 LAZER CONSTRUCTION	PORTABLE PICKUP	44
6/7/2009	5282	608 C.T. MCDADE	PORTABLE PICKUP	80
6/7/2009	5287	613 PENNYWORTH HOMES	PORTABLE PICKUP	44
6/7/2009	5295	621 ROSS CARPENTRY	PORTABLE PICKUP	44
6/7/2009	5296	622 S & A BUILDERS	NEW DELIVERY	80
6/7/2009	5298	624 SALUDA HIGH SCHOOL	PORTABLE PICKUP	88
6/7/2009	5303	629 SELECT HOMES INC.	NEW DELIVERY	60
6/7/2009	5317	644 WAFFLE HOUSE INC.	PORTABLE PICKUP	123
6/7/2009	5320	647 TROY WILKIE	PORTABLE PICKUP	18
6/7/2009	5322	649 YOS ELECTRIC	PORTABLE PICKUP	44
6/15/2009	5326	653 ABBEVILLE BLUEGRASS FESTIVAL	SPECIAL EVENT STANDARD UNIT	290
6/30/2009	5329	656 JOHN DE LA HOWE	SPECIAL EVENT STANDARD UNIT	180
				<u>2304</u>
7/5/2009	5338	665 BERRY'S BAIT AND TACKLE	PORTABLE PICKUP	40
7/5/2009	5339	666 TOMMY BLACKMAN	PORTABLE PICKUP	60

7/5/2009	5344	671 CANNON & ASSOCIATES	PORTABLE PICKUP	36
7/5/2009	5345	672 CANNON & ASSOCIATES	PORTABLE PICKUP	20
7/5/2009	5347	674 CANNON ROOFING	PORTABLE PICKUP	22
7/5/2009	5352	679 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	80
7/5/2009	5356	683 KYLE EDEN	PORTABLE PICKUP	88
7/5/2009	5359	686 FIELDSTONE PROPERTIES	NEW DELIVERY	80
7/5/2009	5366	693 JAMES B. JONES CONSTRUCTION	PORTABLE PICKUP	72
7/5/2009	5375	702 LLOYD ROOFING	NEW DELIVERY	40
7/5/2009	5389	716 SALUDA COUNTY RECREATION	PORTABLE PICKUP	120
7/5/2009	5390	717 SALUDA SCDOT	NEW DELIVERY	66
7/5/2009	5391	718 SATTERFIELD CONSTRUCTION CO.	NEW DELIVERY	20
7/5/2009	5393	720 SELECT HOMES INC.	PORTABLE PICKUP	40
7/5/2009	5397	724 SELECT HOMES INC.	NEW DELIVERY	80
7/5/2009	5402	730 T & C CONSTRUCTION	PORTABLE PICKUP	60
7/5/2009	5406	734 DAVID TODD	NEW DELIVERY	66
7/5/2009	5410	738 UNIREAL INC.	NEW DELIVERY	22
7/5/2009	5418	747 BRAD HAGEN BUILDERS	NEW DELIVERY	18
7/8/2009	5422	751 VALERIE TAYLOR	SPECIAL EVENT STANDARD UNIT	115
7/8/2009	5424	753 RON MOORE	SPECIAL EVENT STANDARD UNIT	90
7/8/2009	5425	754 GREENWOOD COUNTY	SPECIAL EVENT STANDARD UNIT	90
7/8/2009	5426	755 MONTGOMERY CENTER	SPECIAL EVENT VIP UNIT	75
7/9/2009	5429	758 WHARTON SMITH	DAMAGED UNIT	753.5
7/10/2009	5430	759 GREENWOOD CHAMBER OF COMMERCE	SPECIAL EVENT STANDARD UNIT	1,425.00
7/14/2009	5431	760 UPTOWN GREENWOOD DEVELOPMENT	SPECIAL EVENT STANDARD, HANDW	1,400.00
				<u>4,978.50</u>
8/2/2009	5434	764 MOISES ALMAZON	NEW DELIVERY	115
8/2/2009	5437	767 AMERICA'S HOME PLACE	NEW DELIVERY	54
8/2/2009	5439	769 B & J CONTRACTORS	NEW DELIVERY	18
8/2/2009	5440	770 BRANDON BAGWELL	NEW DELIVERY	22
8/2/2009	5445	775 BUZHARDT'S TRASH	NEW DELIVERY	108
8/2/2009	5446	776 BUZHARDT'S TRASH	NEW DELIVERY	40
8/2/2009	5455	785 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	65
8/2/2009	5458	788 EDGEFIELD SCDOT	PORTABLE PICKUP	160

8/2/2009	5470	801 JOHN COBB BUILDERS	PORTABLE PICKUP	60
8/2/2009	5476	807 C + J	NEW DELIVERY	54
8/2/2009	5489	820 S & A BUILDERS	PORTABLE PICKUP	60
8/2/2009	5494	825 SEARS DRYWALL	NEW DELIVERY	80
8/2/2009	5499	830 SHELLS CONSTRUCTION	NEW DELIVERY	44
8/2/2009	5500	831 SOUTHERN CONCEPTS	PORTABLE PICKUP	80
8/2/2009	5507	838 TOP QUALITY CONSTRUCTION	NEW DELIVERY	88
8/2/2009	5513	844 W.R. NEWMAN GENERAL CONTRACTORS	PORTABLE PICKUP	44
8/2/2009	5514	845 TITUS WAGLER	PORTABLE PICKUP	88
8/2/2009	5517	848 YODER BUILDERS	NEW DELIVERY	66
8/5/2009	5520	851 BARBARA TURNBURKE	SPECIAL EVENT VIP UNIT	190
8/5/2009	5522	853 WARNER'S PUMP SERVICE	SPECIAL EVENT STANDARD UNIT	81
8/5/2009	5523	854 BOLD SPRINGS BAPTIST CHURCH	SPECIAL EVENT STANDARD UNIT	90
8/21/2009	5525	856 ROCKY CREEK CHRISTIAN RETREAT	SPECIAL EVENT STANDARD UNIT	90
8/30/2009	5526	857 A.P. NEAL CONSTRUCTION CO.	PORTABLE PICKUP	40
8/30/2009	5528	859 ALPINE CONSTRUCTION	PORTABLE PICKUP	20
8/30/2009	5530	861 ATRIUM BUILDERS INC.	NEW DELIVERY	66
8/30/2009	5535	866 BRYAN SUMMEY ROOFING	NEW DELIVERY	44
8/30/2009	5537	868 BUZHARDT'S TRASH	PORTABLE PICKUP	72
8/30/2009	5539	870 BUZHARDT'S TRASH	PORTABLE PICKUP	18
8/30/2009	5540	871 BUZHARDT'S TRASH	PORTABLE PICKUP	60
8/30/2009	5543	874 CANNON & ASSOCIATES	NEW DELIVERY	40
8/30/2009	5547	877 ANNE CLARKSON	NEW DELIVERY	88
8/30/2009	5550	880 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	55
8/30/2009	5553	883 CUSTOMIZED HOMES	NEW DELIVERY	80
8/30/2009	5562	892 JAMES B. JONES CONSTRUCTION	NEW DELIVERY	80
8/30/2009	5564	894 TOM JENKINS	NEW DELIVERY	60
8/30/2009	5566	897 JOHN COBB BUILDERS	PORTABLE PICKUP	80
8/30/2009	5568	899 JUSTUS BUILDERS LLC	PORTABLE PICKUP	36
8/30/2009	5573	904 LLOYD ROOFING	NEW DELIVERY	80
8/30/2009	5576	907 MENDEL HAWKINS BUILDERS	PORTABLE PICKUP	20
8/30/2009	5587	918 SALUDA COUNTY RECREATION	PORTABLE PICKUP	20
8/30/2009	5589	920 SATTERFIELD CONSTRUCTION CO.	PORTABLE PICKUP	60
8/30/2009	5592	923 SELECT HOMES INC.	PORTABLE PICKUP	20

8/30/2009	5596	927 SHELLS CONSTRUCTION	NEW DELIVERY	88
8/30/2009	5597	928 ED SULLIVAN	PORTABLE PICKUP	54
8/30/2009	5600	931 THE BANKS GROUP	NEW DELIVERY	44
8/30/2009	5603	934 TOM BRIGMAN CONSTRUCTION	PORTABLE PICKUP	22
8/30/2009	5605	936 TRIPLE H BUILDERS	PORTABLE PICKUP	66
8/30/2009	5607	938 UNIREAL INC.	PORTABLE PICKUP	44
8/30/2009	5608	939 UNIREAL INC.	NEW DELIVERY	20
8/30/2009	5614	945 BRAD HAGEN BUILDERS	PORTABLE PICKUP	72
				3146
9/2/2009	5617	948 WOODFIELDS BAPTIST CHURCH	SPECIAL EVENT STANDARD UNIT	135
9/3/2009	5618	949 GREENWOOD COUNTY	SPECIAL EVENT STANDARD UNIT	90
9/8/2009	5619	950 VALKENBURG AUCTION	SPECIAL EVENT STANDARD UNIT	100
9/8/2009	5620	951 DAVID REARDON	SPECIAL EVENT STANDARD UNIT	150
9/8/2009	5621	952 LAKELANDS BAPTIST ASSOCIATION	SPECIAL EVENT STANDARD UNIT	135
9/10/2009	5624	955 MATTHEW TROTTER	SPECIAL EVENT STANDARD UNIT	180
9/15/2009	5625	956 JOHN KIMBALL	SPECIAL EVENT STANDARD UNIT	100
9/15/2009	5626	957 THE MEDICINE DROPPER	SPECIAL EVENT VIP UNIT	150
9/28/2009	5628	959 BUZHARDT'S TRASH	SPECIAL EVENT STANDARD UNIT	90
9/28/2009	5629	960 LITTLE RIVER FESTIVAL	SPECIAL EVENT STANDARD & HANI	450
9/28/2009	5631	962 J.H. THOMPSON	SPECIAL EVENT STANDARD UNIT	75
9/27/2009	5634	965 AMERICA'S HOME PLACE	NEW DELIVERY	72
9/27/2009	5636	967 B & J CONTRACTORS	PORTABLE PICKUP	18
9/27/2009	5638	969 B & J CONTRACTORS	NEW DELIVERY	18
9/27/2009	5640	971 BENJAMIN'S DESIGN BUILD	PORTABLE PICKUP	60
9/27/2009	5641	972 BONBART HOLDINGS	NEW DELIVERY	80
9/27/2009	5643	974 BURTON CENTER	NEW DELIVERY	160
9/27/2009	5644	975 VERNON BURTON	PORTABLE PICKUP	40
9/27/2009	5647	978 CANNON & ASSOCIATES	PORTABLE PICKUP	20
9/27/2009	5654	985 CMC INC.	NEW DELIVERY	80
9/27/2009	5655	986 COCKRELL CONSTRUCTION	PORTABLE PICKUP	22
9/27/2009	5657	987 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	45
9/27/2009	5658	988 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	65
9/27/2009	5660	990 CONCRETE SPECIALTY CONTRACTORS	NEW DELIVERY	44

9/27/2009	5664	994 CWM CONTRACTING	NEW DELIVERY	44
9/27/2009	5665	995 FIELDSTONE PROPERTIES	PORTABLE PICKUP	40
9/27/2009	5668	998 GREENWOOD COUNTY	NEW DELIVERY	80
9/27/2009	5676	1006 JAY DAVIS CONSTRUCTION	NEW DELIVERY	60
9/27/2009	5679	1009 JUSTUS BUILDERS LLC	PORTABLE PICKUP	36
9/27/2009	5681	1011 JUSTUS BUILDERS LLC	NEW DELIVERY	36
9/27/2009	5683	1013 ROBERT LARKIN	PORTABLE PICKUP	40
9/27/2009	5685	1015 LLOYD ROOFING	PORTABLE PICKUP	80
9/27/2009	5686	1016 C+J	PORTABLE PICKUP	18
9/27/2009	5687	1017 MADISON HOME BUILDERS	NEW DELIVERY	40
9/27/2009	5698	1028 PRESBYTERIAN COLLEGE	NEW DELIVERY	100
9/27/2009	5700	1030 SALUDA HIGH SCHOOL	NEW DELIVERY	240
9/27/2009	5701	1031 SALUDA SCDOT	PORTABLE PICKUP	88
9/27/2009	5704	1034 SELECT HOMES INC.	PORTABLE PICKUP	20
9/27/2009	5705	1035 SELECT HOMES INC.	PORTABLE PICKUP	20
9/27/2009	5715	1045 TOWN & COUNTRY	NEW DELIVERY	60
9/27/2009	5716	1046 TOWN & COUNTRY	NEW DELIVERY	60
9/27/2009	5721	1051 WHARTON SMITH	NEW DELIVERY	30
9/27/2009	5724	1055 BRAD HAGEN BUILDERS	NEW DELIVERY	36
				<u>3507</u>
10/5/2009	5726	1057 MARTHA TYSON	SPECIAL EVENT VIP UNIT	150
10/20/2009	5727	1058 FIRST BAPTIST CHURCH	SPECIAL EVENT STANDARD UNIT	112.5
10/20/2009	5728	1059 CRYSTAL BARBER	SPECIAL EVENT VIP UNIT	125
10/20/2009	5729	1060 IGLESIA CHRISTIAN MISSION	SPECIAL EVENT STANDARD UNIT	180
10/20/2009	5731	1062 GREENWOOD CHAMBER OF COMMERCE	SPECIAL EVENT STANDARD UNIT	1,050.00
10/20/2009	5732	1063 HOLY TABERNACLE CHURCH	SPECIAL EVENT STANDARD UNIT	100
10/25/2009	5733	1064 A.P. NEAL CONSTRUCTION CO.	NEW DELIVERY	54
10/25/2009	5734	1065 A.P. NEAL CONSTRUCTION CO.	NEW DELIVERY	54
10/25/2009	5736	1067 ALPINE CONSTRUCTION	NEW DELIVERY	20
10/25/2009	5737	1068 ALPINE CONSTRUCTION	NEW DELIVERY	20
10/25/2009	5745	1076 BURTON CENTER	PORTABLE PICKUP	80
10/25/2009	5746	1077 BUZHARDT'S TRASH	PORTABLE PICKUP	54
10/25/2009	5747	1078 CANNON & ASSOCIATES	NEW DELIVERY	20

10/25/2009	5754	1085 CMC INC.	PORTABLE PICKUP	120
10/25/2009	5756	1087 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	105
10/25/2009	5760	1091 CWM CONTRACTING	PORTABLE PICKUP	44
10/25/2009	5761	1092 FIELDSTONE PROPERTIES	PORTABLE PICKUP	80
10/25/2009	5770	1101 DENNIS HOLDEN	NEW DELIVERY	80
10/25/2009	5776	1107 JOHN COBB BUILDERS	NEW DELIVERY	80
10/25/2009	5780	1111 LLOYD ROOFING	PORTABLE PICKUP	40
10/25/2009	5795	1126 SALUDA SCDOT	NEW DELIVERY	66
10/25/2009	5798	1129 SHAMROCK ENVIRONMENTAL	PORTABLE PICKUP	70
10/25/2009	5806	1137 TOM BRIGMAN CONSTRUCTION	NEW DELIVERY	60
10/30/2009	5818	1149 CATHY SWINDELL	SPECIAL EVENT STANDARD UNIT	100
10/30/2009	5819	1150 LANDER UNIVERSITY	SPECIAL EVENT VIP & HANDICAP UN	400
10/30/2009	5820	1151 LANDER UNIVERSITY	SPECIAL EVENT VIP & HANDICAP UN	400
				<u>3664.5</u>
11/3/2009	5823	1154 JILL LEWIS	SPECIAL EVENT VIP UNIT	150
11/3/2009	5824	1155 UPTOWN GREENWOOD DEVELOPMENT	SPECIAL EVENT VIP & HANDICAP UN	200
11/11/2009	5825	1156 DAVID SUTTON	SPECIAL EVENT STANDARD UNIT	370
11/22/2009	5831	1162 A.T.C. DEVELOPMENT	PORTABLE PICKUP	20
11/22/2009	5832	1163 ALPINE CONSTRUCTION	PORTABLE PICKUP	60
11/22/2009	5839	1170 BRYAN SUMMEY ROOFING	PORTABLE PICKUP	66
11/22/2009	5840	1171 BUZHARDT'S TRASH	PORTABLE PICKUP	18
11/22/2009	5842	1173 CANNON & ASSOCIATES	PORTABLE PICKUP	80
11/22/2009	5848	1179 KATHY COFFMAN	PORTABLE PICKUP	22
11/22/2009	5849	1180 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	45
11/22/2009	5850	1181 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	20
11/22/2009	5851	1182 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	90
11/22/2009	5853	1184 CRYSTAL BAY HOMEOWNERS ASSC.	PORTABLE PICKUP	44
11/22/2009	5854	1185 CUSTOMIZED HOMES	PORTABLE PICKUP	80
11/22/2009	5858	1189 GREENWOOD HABITAT FOR HUMANITY	PORTABLE PICKUP	18
11/22/2009	5859	1190 GREENWOOD HABITAT FOR HUMANITY	NEW DELIVERY	54
11/22/2009	5866	1197 JAY DAVIS CONSTRUCTION	PORTABLE PICKUP	18
11/22/2009	5867	1198 JAY DAVIS CONSTRUCTION	PORTABLE PICKUP	36
11/22/2009	5870	1201 JOHN COBB BUILDERS	PORTABLE PICKUP	60

11/22/2009	5873	1204 LANDER UNIVERSITY	PORTABLE PICKUP	80
11/22/2009	5875	1206 MCCARTHY IMPROVEMENT COMPANY	NEW DELIVERY	645
11/22/2009	5881	1212 PENNYWORTH HOMES	NEW DELIVERY	66
11/22/2009	5888	1219 PRESBYTERIAN COLLEGE	SPECIAL EVENT VIP UNIT	230
11/22/2009	5890	1221 SALUDA HIGH SCHOOL	PORTABLE PICKUP	80
11/22/2009	5895	1226 SHELLS CONSTRUCTION	PORTABLE PICKUP	66
11/22/2009	5902	1233 TOP QUALITY CONSTRUCTION	PORTABLE PICKUP	66
11/22/2009	5909	1240 WHARTON SMITH	NEW DELIVERY	60
11/22/2009	5910	1242 YODER BUILDERS	PORTABLE PICKUP	88
				<u>2832</u>
12/3/2009	5913	1245 BRIARPATCH	SPECIAL EVENT VIP UNIT	150
12/20/2009	5916	1248 A.P. NEAL CONSTRUCTION CO.	NEW DELIVERY	36
12/20/2009	5917	1249 ALPINE CONSTRUCTION	PORTABLE PICKUP	80
12/20/2009	5930	1262 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	45
12/20/2009	5931	1263 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	90
12/20/2009	5932	1264 CONCRETE SPECIALTY CONTRACTORS	PORTABLE PICKUP	44
12/20/2009	5933	1265 DAVENPORT TREE FARM	NEW DELIVERY & PORTABLE PICKUP	80
12/20/2009	5948	1280 KNEECE'S CAR CARE	NEW DELIVERY	88
12/20/2009	5949	1281 MADISON HOME BUILDERS	PORTABLE PICKUP	40
12/20/2009	5950	1282 MATTHEWS CHRISTMAS TREE FARM	NEW DELIVERY	88
12/20/2009	5951	1283 MCCARTHY IMPROVEMENT COMPANY	NEW DELIVERY	30
12/20/2009	5953	1285 MOLLY'S HOT DOGS	NEW DELIVERY	32.5
12/20/2009	5956	1288 NEWCASTLE CONSTRUCTION	NEW DELIVERY	80
12/20/2009	5958	1290 PEAK BUILDERS	NEW DELIVERY	60
12/20/2009	5981	1313 TRI STAR SOLUTIONS	NEW DELIVERY	40
12/20/2009	5984	1316 VENTURE CONSTRUCTION	NEW DELIVERY	36
				<u>1019.5</u>
1/4/2010	5989	1322 TOP TECH	SPECIAL EVENT STANDARD UNIT	180
1/4/2010	5990	1323 VALKENBURG AUCTION	SPECIAL EVENT STANDARD UNIT	100
1/4/2010	5991	1324 DOUGLAS AND CO.	SPECIAL EVENT HANDWASH UNIT	130
1/4/2010	5992	1325 ROBERT HAZE	SPECIAL EVENT STANDARD & HAND	150
1/4/2010	5993	1326 LAURENS COUNTY EMS	SPECIAL EVENT STANDARD UNIT	125

1/5/2010	5996	1329 VALKENBURG AUCTION	SPECIAL EVENT STANDARD UNIT	100
1/17/2010	6000	1333 PHILLIP ANDERSON	NEW DELIVERY	40
1/17/2010	6004	1337 BRANDON BAGWELL	PORTABLE PICKUP	20
1/17/2010	6013	1346 COCKRELL CONSTRUCTION	NEW DELIVERY	80
1/17/2010	6014	1347 EAGLE CONSTRUCTION	NEW DELIVERY	60
1/17/2010	6025	1358 DENNIS HOLDEN	PORTABLE PICKUP	40
1/17/2010	6027	1360 GREENWOOD JOCKEY LOT	PORTABLE PICKUP	80
1/17/2010	6031	1364 MATTHEWS CHRISTMAS TREE FARM	PORTABLE PICKUP	22
1/17/2010	6034	1367 MITCHUM CONSTRUCTION	NEW DELIVERY	40
1/17/2010	6035	1368 MITCHUM CONSTRUCTION	NEW DELIVERY	20
1/17/2010	6042	1375 PENNYWORTH HOMES	PORTABLE PICKUP	88
1/17/2010	6052	1385 SALUDA SCDOT	PORTABLE PICKUP	66
1/17/2010	6055	1388 SELECT HOMES INC.	NEW DELIVERY	20
1/17/2010	6067	1400 UTILITY SERVICES CO.	NEW DELIVERY	40
1/17/2010	6070	1403 W.G. SMITH CONSTRUCTION CO.	NEW DELIVERY	20
1/17/2010	6071	1404 WATERTIGHT SYSTEMS	NEW DELIVERY	20
				1441
2/1/2010	6075	1409 ALL AMERICAN WASTE	SPECIAL EVENT STANDARD UNIT	75
2/1/2010	6076	1410 BOLD SPRINGS BAPTIST CHURCH	SPECIAL EVENT STANDARD UNIT	90
2/14/2010	6083	1417 AMERICA'S HOME PLACE	NEW DELIVERY	36
2/14/2010	6089	1423 BUZHARDT'S TRASH	NEW DELIVERY	80
2/14/2010	6097	1431 CORBURN CONSTRUCTION	NEW DELIVERY	72
2/14/2010	6098	1432 EAGLE CONSTRUCTION	NEW DELIVERY	100
2/14/2010	6099	1433 TUXEDO HOMES	NEW DELIVERY	80
2/14/2010	6100	1434 FERQUERON CONSTRUCTION	PORTABLE PICKUP	80
2/14/2010	6105	1439 GREENWOOD HABITAT FOR HUMANITY	NEW DELIVERY	72
2/14/2010	6111	1445 JAY DAVIS CONSTRUCTION	NEW DELIVERY	20
2/14/2010	6116	1450 LEE ELECTRICAL CONSTRUCTION	NEW DELIVERY	60
2/14/2010	6140	1474 TEXAS ALLIANCE GROUP	NEW DELIVERY	36
2/14/2010	6141	1475 THE BANKS GROUP	PORTABLE PICKUP	66
2/14/2010	6144	1478 TOM BRIGMAN CONSTRUCTION	NEW DELIVERY	20
2/14/2010	6147	1481 TOWN & COUNTRY	NEW DELIVERY	36
2/14/2010	6151	1485 UTILITY SERVICES CO.	PORTABLE PICKUP	60

2/14/2010	6152	1486 UTILITY SERVICES CO.	NEW DELIVERY	20
2/14/2010	6157	1491 WHARTON SMITH	PORTABLE PICKUP	120
				<u>1123</u>
3/14/2010	6166	1501 ATRIUM BUILDERS INC.	PORTABLE PICKUP	22
3/14/2010	6167	1502 ATRIUM BUILDERS INC.	NEW DELIVERY	44
3/14/2010	6168	1503 AZTEC BUILDERS	NEW DELIVERY	20
3/14/2010	6169	1504 B & J CONTRACTORS	PORTABLE PICKUP	18
3/14/2010	6171	1506 BONBART HOLDINGS	PORTABLE PICKUP	20
3/14/2010	6173	1508 C+J	NEW DELIVERY	72
3/14/2010	6174	1509 C+J	NEW DELIVERY	72
3/14/2010	6175	1510 CANNON & ASSOCIATES	PORTABLE PICKUP	80
3/14/2010	6177	1512 CANNON & ASSOCIATES	NEW DELIVERY	40
3/14/2010	6178	1513 CAP ROMAIN CONT.	NEW DELIVERY	160
3/14/2010	6184	1519 CONCEPT PACKAGING GROUP	NEW DELIVERY	80
3/14/2010	6189	1524 TUXEDO HOMES	PORTABLE PICKUP	80
3/14/2010	6204	1539 KNEECE'S CAR CARE	PORTABLE PICKUP	44
3/14/2010	6205	1540 LAURENS COUNTY FIRE DEPT.	NEW DELIVERY	40
3/14/2010	6213	1548 NEWCASTLE CONSTRUCTION	PORTABLE PICKUP	60
3/14/2010	6244	1579 WHARTON SMITH	PORTABLE PICKUP	15
3/14/2010	6246	1582 BRAD HAGEN BUILDERS	PORTABLE PICKUP	18
3/14/2010	6248	1584 EAGLE CONSTRUCTION	NEW DELIVERY	144
3/15/2010	6250	1586 SELECT HOMES INC.	PORTABLE PICKUP	342
3/18/2010	6251	1587 SUSAN WATKINS	SPECIAL EVENT STANDARD UNIT	100
3/18/2010	6252	1588 GREENWOOD COUNTY	SPECIAL EVENT HANDWASH UNIT	165
3/23/2010	6253	1589 VALKENBURG AUCTION	SPECIAL EVENT STANDARD UNIT	100
				<u>1736</u>
4/11/2010	6258	1594 AMERICA'S HOME PLACE	NEW DELIVERY	54
4/11/2010	6263	1599 BURTON CENTER	NEW DELIVERY	38
4/11/2010	6276	1612 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	60
4/11/2010	6279	1615 CRYSTAL BAY HOMEOWNERS ASSC.	NEW DELIVERY	20
4/11/2010	6291	1627 HOOVER BUILDING SYSTEMS	NEW DELIVERY	54
4/11/2010	6292	1628 JAY DAVIS CONSTRUCTION	NEW DELIVERY	48

4/11/2010	6298	1634 LLOYD ROOFING	NEW DELIVERY	54
4/11/2010	6299	1635 MADISON HOME BUILDERS	NEW DELIVERY	60
4/11/2010	6300	1636 MAST CONSTRUCTION	NEW DELIVERY	40
4/11/2010	6301	1637 MCCARTHY IMPROVEMENT COMPANY	NEW DELIVERY	45
4/11/2010	6303	1639 MILLER THE DRILLER	NEW DELIVERY	60
4/11/2010	6312	1648 PENTREATH CO.	NEW DELIVERY	80
4/11/2010	6320	1656 SALUDA COUNTY RECREATION	NEW DELIVERY	130
4/11/2010	6321	1657 SALUDA SCDOT	NEW DELIVERY	88
4/11/2010	6327	1663 DAVID TODD	PORTABLE PICKUP	66
4/11/2010	6330	1666 TOWN & COUNTRY	NEW DELIVERY	60
4/11/2010	6334	1670 UNIREAL INC.	PORTABLE PICKUP	80
4/11/2010	6335	1671 UTILITY SERVICES CO.	PORTABLE PICKUP	40
4/11/2010	6336	1672 VENTURE CONSTRUCTION	PORTABLE PICKUP	54
4/11/2010	6339	1675 W.G. SMITH CONSTRUCTION CO.	NEW DELIVERY	20
4/11/2010	6342	1679 YODER BUILDERS	PORTABLE PICKUP	22
4/15/2010	6343	1680 SALUDA HIGH SCHOOL	SPECIAL EVENT STANDARD UNIT	375
4/15/2010	6345	1682 UPPER SAVANNAH SHOOTERS ASSOC.	SPECIAL EVENT STANDARD UNIT	150
4/15/2010	6346	1683 GREENWOOD CITY	SPECIAL EVENT STANDARD UNIT	190
4/19/2010	6349	1686 FAITH HOME	SPECIAL EVENT STANDARD UNIT	350
4/19/2010	6350	1687 BJ & DAVID GREENE	TOILET PURCHASE	75
4/19/2010	6351	1688 HOREB BAPTIST CHURCH	SPECIAL EVENT STANDARD UNIT	112.5
				<u>2425.5</u>
5/3/2010	6356	1693 RAUCH WISE	SPECIAL EVENT STANDARD UNIT	100
5/3/2010	6357	1694 GREENWOOD UNITED MINISTRIES	SPECIAL EVENT STANDARD UNIT	200
5/9/2010	6359	1696 A.P. NEAL CONSTRUCTION CO.	PORTABLE PICKUP	18
5/9/2010	6361	1698 A.P. NEAL CONSTRUCTION CO.	NEW DELIVERY	72
5/9/2010	6364	1701 AMERICA'S HOME PLACE	NEW DELIVERY	18
5/9/2010	6367	1704 AZTEC BUILDERS	PORTABLE PICKUP	40
5/9/2010	6369	1706 BARLOW PROPERTIES	NEW DELIVERY	108
5/9/2010	6370	1707 BERRY'S BAIT AND TACKLE	NEW DELIVERY	60
5/9/2010	6372	1709 BUZHARDT'S TRASH	PORTABLE PICKUP	60
5/9/2010	6373	1710 BUZHARDT'S TRASH	NEW DELIVERY	54
5/9/2010	6375	1712 C + J	PORTABLE PICKUP	54

5/9/2010	6376	1713 C+J	NEW DELIVERY	54
5/9/2010	6377	1714 C+J	NEW DELIVERY	18
5/9/2010	6386	1723 COCKRELL CONSTRUCTION	PORTABLE PICKUP	20
5/9/2010	6387	1724 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	20
5/9/2010	6390	1727 CORE CONTRACTORS	NEW DELIVERY	22
5/9/2010	6394	1731 EAGLE CONSTRUCTION	NEW DELIVERY	20
5/9/2010	6395	1732 FIELDSTONE PROPERTIES	PORTABLE PICKUP	20
5/9/2010	6403	1740 HOOVER BUILDING SYSTEMS	PORTABLE PICKUP	54
5/9/2010	6409	1746 LLOYD ROOFING	PORTABLE PICKUP	36
5/9/2010	6411	1748 MADISON HOME BUILDERS	NEW DELIVERY	60
5/9/2010	6415	1752 MILLER THE DRILLER	PORTABLE PICKUP	40
5/9/2010	6422	1759 PAYNE, MCGINN AND CUMMINS	NEW DELIVERY	40
5/9/2010	6436	1773 SELECT HOMES INC.	NEW DELIVERY	80
5/9/2010	6437	1774 SELECT HOMES INC.	NEW DELIVERY	20
5/9/2010	6438	1775 SHELLS CONSTRUCTION	PORTABLE PICKUP	44
5/9/2010	6440	1777 STEPHEN CONSTRUCTION	NEW DELIVERY	19.8
5/9/2010	6442	1779 TEXAS ALLIANCE GROUP	PORTABLE PICKUP	20
5/9/2010	6447	1784 TOWN & COUNTRY	PORTABLE PICKUP	54
5/9/2010	6448	1785 TROTTER BUILDERS	NEW DELIVERY	88
5/9/2010	6453	1790 WATERTIGHT SYSTEMS	PORTABLE PICKUP	60
5/11/2010	6455	1793 WORLD NET AUCTIONS	SPECIAL EVENT VIP UNIT	150
5/11/2010	6458	1796 MARCH OF DIMES	SPECIAL EVENT STANDARD UNIT	90
5/11/2010	6459	1797 JOANNA FESTIVAL	SPECIAL EVENT STANDARD & HAND	350
5/11/2010	6460	1798 ENOREE RANGER DISTRICT	HANDICAP SPECIAL EVENT	200
5/11/2010	6461	1799 MENTAL HEALTH SERVICES	SPECIAL EVENT STANDARD UNIT	100
5/11/2010	6462	1800 COREY MILLER	SPECIAL EVENT STANDARD UNIT	75
5/14/2010	6463	1801 BLUE RIDGE COUNCIL	SPECIAL EVENT STANDARD & HAND	175
5/14/2010	6464	1802 NINETY SIX HISTORIC DEVELOPMENT	SPECIAL EVENT STANDARD UNIT	75
5/14/2010	6465	1803 MARIA ROSALEZ	SPECIAL EVENT STANDARD UNIT	75
5/14/2010	6466	1804 TOWN OF SILVERSTREET	SPECIAL EVENT STANDARD UNIT	225
5/14/2010	6466	1806 LINDSEY SHEALY	SPECIAL EVENT VIP UNIT	250
5/21/2010	6471	1809 U.S. ARMY CORPS OF ENGINEERS	SPECIAL EVENT HANDWASH UNIT	200
5/21/2010	6472	1810 RELAY FOR LIFE	SPECIAL EVENT STANDARD UNIT	580
5/26/2010	6475	1813 NATIONAL GUARD ARMORY	SPECIAL EVENT STANDARD UNIT	400

5/27/2010	6477	1815 GREENWOOD EMERGENCY PREPAREDNESS	SPECIAL EVENT STANDARD UNIT	300
5/27/2010	6479	1817 BO HARTER	SPECIAL EVENT STANDARD UNIT	75
5/27/2010	6480	1818 LAKELANDS AUCTION SERVICES	SPECIAL EVENT STANDARD UNIT	130
5/28/2010	6481	1819 TOMMY AMICK	SPECIAL EVENT STANDARD UNIT	500
				<u>5523.8</u>
6/3/2010	6482	1820 U.S. ARMY	SPECIAL EVENT STANDARD UNIT	275
6/6/2010	6490	1828 BENJAMIN'S DESIGN BUILD	NEW DELIVERY	54
6/6/2010	6491	1829 BERRY'S BAIT AND TACKLE	PORTABLE PICKUP	80
6/6/2010	6492	1830 BURTON CENTER	PORTABLE PICKUP	108
6/6/2010	6494	1832 BUZHARDT'S TRASH	NEW DELIVERY	54
6/6/2010	6498	1836 C + J	NEW DELIVERY	54
6/6/2010	6499	1837 CANNON & ASSOCIATES	PORTABLE PICKUP	40
6/6/2010	6502	1840 CAPE ROMAIN CONT.	PORTABLE PICKUP	216
6/6/2010	6507	1845 BILL COCKRELL	NEW DELIVERY	40
6/6/2010	6511	1849 WILLIE CUNNINGHAM	NEW DELIVERY	20
6/6/2010	6512	1850 EAGLE CONSTRUCTION	PORTABLE PICKUP	36
6/6/2010	6522	1860 JAY DAVIS CONSTRUCTION	PORTABLE PICKUP	66
6/6/2010	6551	1890 SELECT HOMES INC.	PORTABLE PICKUP	60
6/6/2010	6563	1901 UTILITY SERVICES CO.	NEW DELIVERY	60
6/6/2010	6564	1902 UTILITY SERVICES CO.	NEW DELIVERY	20
6/6/2010	6565	1903 PHILLIP VAUGHN	NEW DELIVERY	20
6/6/2010	6570	1908 JAMES WICKHAM	NEW DELIVERY	88
6/11/2010	6573	1911 GWEN LYLES	SPECIAL EVENT VIP UNIT	150
6/11/2010	6574	1912 CENTER STAGE COMMUNITY DAY CARE	SPECIAL EVENT STANDARD UNIT	125
6/11/2010	6576	1914 HOREB BAPTIST CHURCH	SPECIAL EVENT STANDARD UNIT	198
6/16/2010	6577	1915 BETSY BROOKS	SPECIAL EVENT VIP UNIT	150
6/16/2010	6578	1916 DENISE GRAHAM	SPECIAL EVENT HANDWASH UNIT	125
6/16/2010	6579	1917 MAGGIE GORDON	SPECIAL EVENT STANDARD UNIT	90
6/28/2010	6582	1920 LAKELANDS AUCTION SERVICES	SPECIAL EVENT STANDARD UNIT	130
6/28/2010	6584	1922 JOSHUA DRAFTS	SPECIAL EVENT STANDARD UNIT	225
6/28/2010	6585	1923 J.H. THOMPSON	SPECIAL EVENT VIP UNIT	100
6/28/2010	6586	1924 MRS. PRICE	SPECIAL EVENT STANDARD UNIT	125
6/28/2010	6587	1925 ED DOOLITTLE	TOILET PURCHASE	125

6/28/2010	6589	1927 FAITH HOME	SPECIAL EVENT STANDARD UNIT	150
6/28/2010	6590	1928 WILLIAM YOUNG	SPECIAL EVENT HANDWASH UNIT	130
6/28/2010	6591	1929 MONTGOMERY CENTER	SPECIAL EVENT VIP UNIT	75
6/28/2010	6592	1930 TISH VAUGHN	SPECIAL EVENT STANDARD UNIT	100
6/28/2010	6593	1931 JOHN DE LA HOWE	SPECIAL EVENT STANDARD UNIT	180
6/28/2010	6594	1932 CAROLINA AUCTION TEAM	SPECIAL EVENT STANDARD UNIT	100
6/28/2010	6595	1933 GREENWOOD EMERGENCY PREPAREDNESS	SPECIAL EVENT STANDARD UNIT	750
6/28/2010	6596	1934 GREENWOOD EMERGENCY PREPAREDNESS	SPECIAL EVENT STANDARD UNIT	125
6/28/2010	6597	1935 GREENWOOD COUNTY	SPECIAL EVENT STANDARD UNIT	150
				4594

7/4/2010	6608	1946 BUZHARDT'S TRASH	NEW DELIVERY	72
7/4/2010	6609	1947 BUZHARDT'S TRASH	NEW DELIVERY	36
7/4/2010	6614	1952 C + J	NEW DELIVERY	54
7/4/2010	6615	1953 C + J	NEW DELIVERY	72
7/4/2010	6619	1957 CANNON & ASSOCIATES	NEW DELIVERY	60
7/4/2010	6622	1960 CHINA CONSTRUCTION	PORTABLE PICKUP	81
7/4/2010	6626	1964 CORE CONTRACTORS	NEW DELIVERY	288
7/4/2010	6629	1967 DS UTILITIES	NEW DELIVERY	22
7/4/2010	6630	1968 EAGLE CONSTRUCTION	PORTABLE PICKUP	108
7/4/2010	6640	1979 JAMES B. JONES CONSTRUCTION	NEW DELIVERY	54
7/4/2010	6641	1980 JAMES B. JONES CONSTRUCTION	NEW DELIVERY	54
7/4/2010	6645	1984 JUSTUS BUILDERS LLC	NEW DELIVERY	54
7/4/2010	6647	1986 MADISON HOME BUILDERS	PORTABLE PICKUP	40
7/4/2010	6654	1993 MITCHUM CONSTRUCTION	NEW DELIVERY	60
7/4/2010	6669	2008 SALUDA COUNTY RECREATION	PORTABLE PICKUP	65
7/4/2010	6670	2009 SALUDA SCDOT	PORTABLE PICKUP	44
7/4/2010	6671	2010 SALUDA SCDOT	NEW DELIVERY	66
7/4/2010	6672	2011 SATTERFIELD CONSTRUCTION CO.	NEW DELIVERY	20
7/4/2010	6675	2014 SELECT HOMES INC.	NEW DELIVERY	20
7/4/2010	6678	2017 DAVID TODD	NEW DELIVERY	20
7/4/2010	6683	2022 TOWN OF WARE SHOALS	NEW DELIVERY	70
7/4/2010	6684	2023 TROTTER BUILDERS	PORTABLE PICKUP	22
7/4/2010	6686	2025 TUXEDO HOMES	NEW DELIVERY	60

7/4/2010	6697	2036 BRAD HAGEN BUILDERS	NEW DELIVERY	54
7/9/2010	6698	2037 SALLIE WILSON	SPECIAL EVENT STANDARD UNIT	125
7/9/2010	6699	2038 VALERIE MOSS	SPECIAL EVENT STANDARD UNIT	100
7/9/2010	6700	2039 JUNE PERKERSON	SPECIAL EVENT VIP UNIT	200
7/9/2010	6701	2040 ARTHUR PARKS	SPECIAL EVENT STANDARD UNIT	100
7/9/2010	6702	2041 GREENWOOD CHAMBER OF COMMERCE	HANDWASH, HANDICAP, VIP, STAIR	1,500.00
7/12/2010	6703	2042 NATIONAL GUARD ARMORY	SPECIAL EVENT STANDARD UNIT	100
7/13/2010	5706	2045 NINETY SIX CHAMBER OF COMMERCE	STANDARD AND HANDICAP UNITS	600
7/13/2010	6707	2046 UPTOWN GREENWOOD DEVELOPMENT	HANDWASH, HANDICAP, VIP, STAIR	1,745.00
				<u>5,966.00</u>

8/1/2010	6710	2050 AMERICA'S HOME PLACE	NEW DELIVERY	18
8/1/2010	6722	2062 C + J	PORTABLE PICKUP	54
8/1/2010	6729	2069 CANNON ROOFING	NEW DELIVERY	60
8/1/2010	6730	2070 CARRION BUILDERS	NEW DELIVERY	44
8/1/2010	6733	2073 CHINA CONSTRUCTION	PORTABLE PICKUP	189
8/1/2010	6736	2076 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	20
8/1/2010	6742	2082 EAGLE CONSTRUCTION	NEW DELIVERY	72
8/1/2010	6744	2084 EMMIE & CHAD EVANS	NEW DELIVERY	72
8/1/2010	6752	2092 KEN HYMAN	NEW DELIVERY	80
8/1/2010	6758	2098 JUSTUS BUILDERS LLC	NEW DELIVERY	72
8/1/2010	6759	2099 LAURENS COUNTY FIRE DEPT.	PORTABLE PICKUP	20
8/1/2010	6771	2111 NORTHSTAR SALES & MARKETING	NEW DELIVERY	44
8/1/2010	6782	2122 RACO INC.	PORTABLE PICKUP	22
8/1/2010	6783	2123 RACO INC.	NEW DELIVERY	80
8/1/2010	6787	2127 SELECT HOMES INC.	PORTABLE PICKUP	80
8/1/2010	6789	2129 SELECT HOMES INC.	NEW DELIVERY	72
8/1/2010	6795	2135 TOM BRIGMAN CONSTRUCTION	NEW DELIVERY	80
8/1/2010	6796	2136 TOWN & COUNTRY	PORTABLE PICKUP	68
8/1/2010	6798	2138 TOWN & COUNTRY	NEW DELIVERY	60
8/1/2010	6802	2142 UTILITY SERVICES CO.	PORTABLE PICKUP	20
8/1/2010	6803	2143 UTILITY SERVICES CO.	PORTABLE PICKUP	40
8/1/2010	6807	2147 W.G. SMITH CONSTRUCTION CO.	PORTABLE PICKUP	20
8/9/2010	6812	2153 LATOYA ANDERSON	SPECIAL EVENT STANDARD UNIT	100

11/20/2011	8734	4310 SATTERFIELD CONSTRUCTION CO.	PORTABLE PICKUP	40
11/20/2011	8738	4313 THE RIDGE	NEW DELIVERY	80
11/20/2011	8742	4317 TOM BRIGMAN CONSTRUCTION	NEW DELIVERY	40
11/20/2011	8743	4318 TOWN & COUNTRY	NEW DELIVERY	60
11/20/2011	8747	4322 WATEREE CONSTRUCTION CO. INC.	NEW DELIVERY	22
11/20/2011	8874	4448 NORTHSTAR SALES & MARKETING	NEW DELIVERY	22
				3633
12/2/2011	8758	4333 EMERALD HIGH SCHOOL	SPECIAL EVENT STANDARD UNIT	490
12/2/2011	8759	4334 TOWN OF CALHOUN FALLS	SPECIAL EVENT STANDARD UNIT	250
12/2/2011	8760	4335 RAY FARMER	SPECIAL EVENT STANDARD UNIT	100
12/14/2011	8761	4336 OAKBROOK MEMORIAL PARK	HANDICAP SPECIAL EVENT	150
12/14/2011	8762	4337 UPTOWN GREENWOOD DEVELOPMENT	SPECIAL EVENT STANDARD UNIT	150
12/15/2011	8764	4339 LANDER EQUESTRIAN CENTER	VIP, HANDICAP UNITS	485
12/15/2011	8765	4340 UPTOWN GREENWOOD DEVELOPMENT	SPECIAL EVENT STANDARD UNIT	150
12/15/2011	8767	4342 TEAM ROOFING	PORTABLE PICKUP	90
12/18/2011	8771	4346 AMERICA'S HOME PLACE	PORTABLE PICKUP	54
12/18/2011	8778	4353 BUZHARDT'S TRASH	PORTABLE PICKUP	36
12/18/2011	8782	4357 C & M CONTRACTING LLC	NEW DELIVERY	60
12/18/2011	8785	4360 CANNON ROOFING	NEW DELIVERY	40
12/18/2011	8792	4367 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	85
12/18/2011	8797	4372 DE ANGELIS DIAMOND HEALTH CARE GROUP	NEW DELIVERY	20
12/18/2011	8799	4373 EAGLE CONSTRUCTION	PORTABLE PICKUP	60
12/18/2011	8810	4385 JOHN HILL	PORTABLE PICKUP	54
12/18/2011	8817	4392 JUSTUS BUILDERS LLC	PORTABLE PICKUP	36
12/18/2011	8818	4393 JUSTUS BUILDERS LLC	NEW DELIVERY	72
12/18/2011	8819	4394 LANGLEY BUILDERS	NEW DELIVERY	60
12/18/2011	8821	4396 LLOYD ROOFING	NEW DELIVERY	20
12/18/2011	8827	4402 MATTHEWS CHRISTMAS TREE FARM	NEW DELIVERY	60
12/18/2011	8831	4406 MEREDIAN HOMES	PORTABLE PICKUP	22
12/18/2011	8837	4412 NORTHSTAR SALES & MARKETING	PORTABLE PICKUP	66
12/18/2011	8849	4424 SALUDA COUNTY RECREATION	PORTABLE PICKUP	50
12/18/2011	8853	4427 SPEEDWAY EXPRESS LUBE	NEW DELIVERY	72
12/18/2011	8854	4428 SUPER EXTERMINATOR	PORTABLE PICKUP	44

12/18/2011 8859 4433 TOWN & COUNTRY
12/18/2011 8862 4436 WASTE AWAY PORTABLES

PORTABLE PICKUP
PORTABLE PICKUP

40
72
2888

2009 Sales 31,950.5
2010 Sales 41,903.60
2011 Sales 41,975.70
Total Sales 115,829.8

8/9/2010	6813	2154 DORIS HOLLAND	SPECIAL EVENT STANDARD UNIT	150
8/9/2010	6814	2155 BETTY JOHNSON	SPECIAL EVENT VIP UNIT	150
8/9/2010	6815	2156 GOODE FAMILY REUNION	SPECIAL EVENT VIP UNIT	150
8/9/2010	6816	2157 GLORIA DANIELS	SPECIAL EVENT STANDARD UNIT	100
8/9/2010	6817	2158 BO HARTER	SPECIAL EVENT STANDARD UNIT	100
8/9/2010	6818	2159 TOWN OF WARE SHOALS	HANDICAP & STANDARD UNITS	175
8/9/2010	6819	2160 LAURENS COUNTY EMS	SPECIAL EVENT STANDARD UNIT	100
8/9/2010	6820	2161 ROCKY CREEK CHRISTIAN RETREAT	SPECIAL EVENT STANDARD UNIT	90
8/9/2010	6821	2162 JIMMY STROUD	SPECIAL EVENT STANDARD UNIT	100
8/18/2010	6823	2164 ED DOOLITTLE	STANDARD AND HANDICAP UNITS	500
8/18/2010	6824	2165 BOLD SPRINGS BAPTIST CHURCH	SPECIAL EVENT STANDARD UNIT	90
8/18/2010	6825	2166 DEWAYNE GASKIN	SPECIAL EVENT STANDARD UNIT	100
8/27/2010	6829	2170 STANLEY HILL	SPECIAL EVENT STANDARD UNIT	100
8/27/2010	6830	2171 MARIAN JAY	SPECIAL EVENT VIP UNIT	250
8/27/2010	6831	2172 DANA MCCRAVY	SPECIAL EVENT VIP UNIT	250
8/27/2010	6832	2173 GLADYS GILCHRIST	SPECIAL EVENT VIP UNIT	150
8/27/2010	6833	2174 GREENWOOD COUNTY	SPECIAL EVENT STANDARD UNIT	150
8/27/2010	6834	2175 CANNON & ASSOCIATES	STANDARD AND HANDICAP UNITS	600
8/29/2010	6837	2179 A.P. NEAL CONSTRUCTION CO.	NEW DELIVERY	54
8/29/2010	6842	2184 BARLOW PROPERTIES	PORTABLE PICKUP	204
8/29/2010	6848	2190 BUZHARDT'S TRASH	NEW DELIVERY	60
8/29/2010	6851	2193 C + J	PORTABLE PICKUP	36
8/29/2010	6857	2199 CANNON ROOFING	PORTABLE PICKUP	60
8/29/2010	6858	2200 CANNON ROOFING	NEW DELIVERY	36
8/29/2010	6863	2205 BILL COCKRELL	PORTABLE PICKUP	60
8/29/2010	6864	2206 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	115
8/29/2010	6865	2207 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	20
8/29/2010	6872	2214 EAGLE CONSTRUCTION	PORTABLE PICKUP	44
8/29/2010	6873	2215 EAGLE CONSTRUCTION	NEW DELIVERY	80
8/29/2010	6881	2223 HENDRICK CONSTRUCTION	NEW DELIVERY	44
8/29/2010	6884	2226 JAMES B. JONES CONSTRUCTION	PORTABLE PICKUP	36
8/29/2010	6889	2231 LANDER UNIVERSITY	NEW DELIVERY	20
8/29/2010	6890	2232 LEE CONSTRUCTION OF THE CAROLINAS	NEW DELIVERY	22
8/29/2010	6891	2233 LEXINGTON CUSTOM BUILDERS	NEW DELIVERY	66

8/29/2010	6894	2236 MCCARTHY IMPROVEMENT COMPANY	PORTABLE PICKUP	45
8/29/2010	6897	2239 MITCHUM CONSTRUCTION	PORTABLE PICKUP	80
8/29/2010	6901	2243 H.G. NORDYKE	NEW DELIVERY	66
8/29/2010	6913	2255 SALUDA COUNTY RECREATION	NEW DELIVERY	25
8/29/2010	6921	2263 DAVID TODO	NEW DELIVERY	36
8/29/2010	6922	2264 DAVID SUTTON	NEW DELIVERY	18
8/29/2010	6929	2271 TUXEDO HOMES	PORTABLE PICKUP	40
8/29/2010	6933	2275 WHARTON SMITH	PORTABLE PICKUP	240
8/29/2010	6935	2277 BRAD HAGEN BUILDERS	PORTABLE PICKUP	72
				<u>6271</u>
9/10/2010	6945	2287 SHARON SPRINGS	SPECIAL EVENT VIP UNIT	100
9/10/2010	6946	2288 J.H. THOMPSON	SPECIAL VIP UNIT	100
9/10/2010	6947	2289 DAISY CALLIHAN	SPECIAL VIP UNIT	150
9/10/2010	6948	2290 RENEE SANDERS	SPECIAL EVENT STANDARD UNIT	90
9/10/2010	6950	2292 ROBERT BELL	SPECIAL EVENT STANDARD UNIT	125
9/10/2010	6951	2293 MCCORMICK NATIONAL NIGHT OUT	SPECIAL EVENT STANDARD UNIT	100
9/10/2010	6954	2296 GREENWOOD CHAMBER OF COMMERCE	SPECIAL EVENT STANDARD UNIT	1,050.00
9/10/2010	6955	2297 LAKELANDS AUCTION SERVICES	SPECIAL EVENT STANDARD UNIT	130
9/10/2010	6956	2298 JOSHUA DRAFTS	SPECIAL EVENT STANDARD UNIT	225
9/13/2010	6957	2299 GREENWOOD CITY	SPECIAL EVENT STANDARD UNIT	80
9/21/2010	6959	2301 BUZHARDT'S TRASH	SPECIAL EVENT STANDARD UNIT	90
9/21/2010	6960	2302 CEDAR CREEK ON THE RIDGE	SPECIAL EVENT STANDARD UNIT	202.5
9/21/2010	6961	2303 LITTLE RIVER FESTIVAL	HANDWASH & STANDARD UNITS	450
9/21/2010	6962	2304 BUSH RIVER FARMS	SPECIAL EVENT STANDARD UNIT	225
9/22/2010	6963	2305 TOWN OF NINETY SIX	SPECIAL EVENT STANDARD UNIT	330
9/22/2010	6965	2307 BB&T	TOILET PURCHASE	400
9/26/2010	6968	2310 A.P. NEAL CONSTRUCTION CO.	NEW DELIVERY	38
9/26/2010	6969	2311 AMERICA'S HOME PLACE	PORTABLE PICKUP	18
9/26/2010	6974	2316 BURTON CENTER	NEW DELIVERY	80
9/26/2010	6976	2318 BUZHARDT'S TRASH	PORTABLE PICKUP	18
9/26/2010	6979	2321 BUZHARDT'S TRASH	PORTABLE PICKUP	60
9/26/2010	6980	2322 C + J	PORTABLE PICKUP	18
9/26/2010	6984	2326 CANNON & ASSOCIATES	PORTABLE PICKUP	20

9/26/2010	6987	2329 CANNON ROOFING	PORTABLE PICKUP	40.5
9/26/2010	6992	2334 CHRISTIAN BROTHERS HUNT CLUB	NEW DELIVERY	80
9/26/2010	6997	2339 WILLIE CUNNINGHAM	PORTABLE PICKUP	80
9/26/2010	6999	2341 DERRICK HOMES	NEW DELIVERY	66
9/26/2010	7004	2346 JEFF FULLER	PORTABLE PICKUP	80
9/26/2010	7011	2353 HENDRICK CONSTRUCTION	NEW DELIVERY	36
9/26/2010	7012	2354 JAMES B. JONES CONSTRUCTION	NEW DELIVERY	80
9/26/2010	7018	2360 LAWRENCE CONSTRUCTION SERVICES	NEW DELIVERY	40
9/26/2010	7019	2361 LEE CONSTRUCTION OF THE CAROLINAS	PORTABLE PICKUP	132
9/26/2010	7020	2362 LEE CONSTRUCTION OF THE CAROLINAS	NEW DELIVERY	36
9/26/2010	7022	2364 LLOYD ROOFING	NEW DELIVERY	36
9/26/2010	7023	2365 LOG DOGS	NEW DELIVERY	20.9
9/26/2010	7024	2366 LOG DOGS	NEW DELIVERY	20.9
9/26/2010	7026	2368 MCCARTHY IMPROVEMENT COMPANY	PORTABLE PICKUP	45
9/26/2010	7033	2375 NORTHSTAR SALES & MARKETING	NEW DELIVERY	40
9/26/2010	7034	2376 NORTHSTAR SALES & MARKETING	NEW DELIVERY	40
9/26/2010	7036	2378 PAYNE, MCGINN AND CUMMINS	PORTABLE PICKUP	80
9/26/2010	7045	2386 RILEY FARMS	NEW DELIVERY	18
9/26/2010	7047	2388 SALUDA HIGH SCHOOL	NEW DELIVERY	288
9/26/2010	7049	2390 SATTERFIELD CONSTRUCTION CO.	NEW DELIVERY	80
9/26/2010	7053	2394 DAVID TODD	PORTABLE PICKUP	18
9/26/2010	7056	2397 TOM BRIGMAN CONSTRUCTION	PORTABLE PICKUP	20
9/26/2010	7057	2398 TOM BRIGMAN CONSTRUCTION	NEW DELIVERY	80
9/26/2010	7061	2402 UTILITY SERVICES CO.	PORTABLE PICKUP	85
9/26/2010	7067	2408 JAMES WICKHAM	PORTABLE PICKUP	22
				<u>5663.8</u>
10/4/2010	7069	2410 JAMES FREEMAN	SPECIAL EVENT STANDARD UNIT	90
10/4/2010	7070	2411 HARLEY FUNERAL HOME	SPECIAL VIP UNIT	100
10/4/2010	7071	2412 HELENA PARKS	SPECIAL EVENT STANDARD UNIT	100
10/4/2010	7072	2413 OPEN ARMS CHURCH	SPECIAL EVENT STANDARD UNIT	125
10/4/2010	7073	2414 BEYOND THE WALLS	SPECIAL VIP UNIT	200
10/18/2010	7078	2418 EMERALD HIGH SCHOOL	SPECIAL EVENT STANDARD UNIT	250
10/18/2010	7079	2419 HILTON DODGEN AUCTION COMPANY	SPECIAL EVENT STANDARD UNIT	140

10/19/2010	7080	2420 FRONT LINE MINISTRIES	SPECIAL EVENT STANDARD UNIT	100
10/19/2010	7081	2421 PRESTON MCALLISTER	SPECIAL EVENT STANDARD UNIT	90
10/19/2010	7082	2422 LIGHT OF LIFE COMMUNITY CHURCH	SPECIAL EVENT STANDARD UNIT	150
10/19/2010	7083	2423 CALHOUN FALLS CHAMBER OF COMMERCE	SPECIAL EVENT STANDARD UNIT	200
10/19/2010	7087	2427 LANDER UNIVERSITY	HANDICAP & STANDARD UNITS	200
10/19/2010	7088	2428 LANDER UNIVERSITY	HANDICAP SPECIAL EVENT	150
10/19/2010	7090	2430 FALLON HILL	SPECIAL EVENT STANDARD UNIT	200
10/19/2010	7091	2431 CATHY SWINDELL	HANDWASH UNIT	100
10/25/2010	7092	2432 TRINITY PRESBYTERIAN	SPECIAL EVENT STANDARD UNIT	198
10/24/2010	7096	2436 AMERICA'S HOME PLACE	NEW DELIVERY	60
10/24/2010	7100	2440 BANKS BUILDERS	NEW DELIVERY	54
10/24/2010	7103	2442 BUZHARDT'S TRASH	PORTABLE PICKUP	18
10/24/2010	7102	2443 JIM BURNS	NEW DELIVERY	40
10/24/2010	7106	2446 BUZHARDT'S TRASH	NEW DELIVERY	18
10/24/2010	7107	2447 BUZHARDT'S TRASH	NEW DELIVERY	18
10/24/2010	7108	2448 C + J	PORTABLE PICKUP	36
10/24/2010	7110	2450 C + J	NEW DELIVERY	60
10/24/2010	7112	2452 CANNON & ASSOCIATES	NEW DELIVERY	54
10/24/2010	7120	2460 CUSTOM STEEL FABRICATORS	NEW DELIVERY	60
10/24/2010	7121	2461 DS UTILITIES	PORTABLE PICKUP	66
10/24/2010	7122	2462 DAY CONSTRUCTION	NEW DELIVERY	54
10/24/2010	7135	2475 DENNIS HOLDEN	NEW DELIVERY	60
10/24/2010	7138	2478 JUSTUS BUILDERS LLC	PORTABLE PICKUP	36
10/24/2010	7143	2483 LEE CONSTRUCTION OF THE CAROLINAS	PORTABLE PICKUP	108
10/24/2010	7144	2484 LEE CONSTRUCTION OF THE CAROLINAS	NEW DELIVERY	80
10/24/2010	7145	2485 LEXINGTON CUSTOM BUILDERS	PORTABLE PICKUP	66
10/24/2010	7147	2487 LLOYD ROOFING	PORTABLE PICKUP	40
10/24/2010	7169	2509 RACO INC.	PORTABLE PICKUP	20
10/24/2010	7171	2511 SC DEPT OF CORRECTIONS	NEW DELIVERY	103
10/24/2010	7182	2522 TRINITY PRESBYTERIAN	NEW DELIVERY	72
10/28/2010	7190	2530 BOY SCOUTS OF AMERICA	SPECIAL EVENT STANDARD UNIT	150
10/28/2010	7192	2532 MARTHA TYSON	SPECIAL VIP UNIT	160
				<u>3826</u>

11/10/2010	7194	2534 GEORGE LYNN AUCTION CO.	SPECIAL EVENT STANDARD UNIT	135
11/10/2010	7197	2537 FIRST BAPTIST CHURCH	SPECIAL EVENT STANDARD UNIT	121.5
11/15/2010	7198	2538 GREENWOOD EQUESTRIAN TEAM	SPECIAL EVENT STANDARD UNIT	200
11/21/2010	7201	2541 ALPINE CONSTRUCTION	NEW DELIVERY	40
11/21/2010	7204	2544 PHILLIP ANDERSON	NEW DELIVERY	40
11/21/2010	7212	2552 BUZHARDT'S TRASH	NEW DELIVERY	105
11/21/2010	7213	2553 BUZHARDT'S TRASH	PORTABLE PICKUP	90
11/21/2010	7214	2554 BUZHARDT'S TRASH	NEW DELIVERY	20
11/21/2010	7221	2561 ROSE CHASE	NEW DELIVERY	60
11/21/2010	7223	2563 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	40
11/21/2010	7229	2569 DERRICK HOMES	PORTABLE PICKUP	44
11/21/2010	7243	2580 LP JONES CONSTRUCTION	NEW DELIVERY	54
11/21/2010	7251	2588 LEE CONSTRUCTION OF THE CAROLINAS	NEW DELIVERY	36
11/21/2010	7253	2590 SELF MEMORIAL HOSPITAL	NEW DELIVERY	18
11/21/2010	7260	2597 MITCHUM CONSTRUCTION	NEW DELIVERY	40
11/21/2010	7239	2604 HAPPY COW CREAMERY	NEW DELIVERY	36
11/21/2010	7268	2609 CODY POLYAK	NEW DELIVERY	60
11/21/2010	7277	2618 SALUDA HIGH SCHOOL	PORTABLE PICKUP	72
11/21/2010	7279	2620 SATTERFIELD CONSTRUCTION CO.	PORTABLE PICKUP	40
11/21/2010	7285	2626 TOWN OF WARE SHOALS	PORTABLE PICKUP	35
11/29/2010	7296	2637 PHIL BRYSON	SPECIAL EVENT STANDARD UNIT	100
11/29/2010	7297	2638 GREENWOOD ROTARY CLUB	HANDWASH UNIT	75
11/29/2010	7298	2639 ANGIE CULBERTSON	SPECIAL EVENT STANDARD UNIT	100
11/29/2010	7299	2640 LAKELANDS CYCLES	SPECIAL EVENT STANDARD UNIT	150
11/29/2010	7300	2641 MIKE SATTERFIELD	HANDICAP SPECIAL EVENT	150
11/29/2010	7301	2642 HILTON DODGEN AUCTION COMPANY	SPECIAL EVENT STANDARD UNIT	115
				<u>1976.5</u>
12/17/2010	7304	2645 TOWN OF CALHOUN FALLS	SPECIAL EVENT STANDARD UNIT	250
12/17/2010	7305	2646 UPTOWN GREENWOOD DEVELOPMENT	SPECIAL EVENT STANDARD UNIT	150
12/19/2010	7322	2663 C+J	NEW DELIVERY	18
12/19/2010	7324	2665 CANNON & ASSOCIATES	PORTABLE PICKUP	54
12/19/2010	7329	2670 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	40
12/19/2010	7331	2672 CORE CONTRACTORS	PORTABLE PICKUP	72

12/19/2010	7332	2673 CRYSTAL BAY HOMEOWNERS ASSC.	PORTABLE PICKUP	60
12/19/2010	7334	2675 DAVENPORT TREE FARM	NEW DELIVERY	60
12/19/2010	7336	2677 DAY CONSTRUCTION	NEW DELIVERY	36
12/19/2010	7346	2687 GREENWOOD SERTOMA	HANDICAP UNIT	25
12/19/2010	7357	2698 LEE CONSTRUCTION OF THE CAROLINAS	PORTABLE PICKUP	72
12/19/2010	7362	2703 KRISTIE LONG	NEW DELIVERY	20
12/19/2010	7363	2704 MADISON HOME BUILDERS	NEW DELIVERY	20
12/19/2010	7365	2706 MATTHEWS CHRISTMAS TREE FARM	NEW DELIVERY	60
12/19/2010	7376	2717 PENTREATH CO.	NEW DELIVERY	36
12/19/2010	7385	2726 SALUDA COUNTY RECREATION	PORTABLE PICKUP	100
12/19/2010	7386	2727 SALUDA SCDOT	NEW DELIVERY	40
12/19/2010	7394	2735 TWO STATE CONSTRUCTION	NEW DELIVERY	36
12/19/2010	7395	2736 UTILITY SERVICES CO.	NEW DELIVERY	60
12/19/2010	7398	2739 W.H. BASS	NEW DELIVERY	36
12/19/2010	7399	2740 W.G. SMITH CONSTRUCTION CO.	PORTABLE PICKUP	40
12/19/2010	7400	2741 WATERMARK LLC	NEW DELIVERY	72
				<u>1357</u>
1/16/2011	7411	2991 AMERICA'S HOME PLACE	NEW DELIVERY	72
1/16/2011	7412	2992 AMERICA'S HOME PLACE	NEW DELIVERY	36
1/16/2011	7413	2993 PHILLIP ANDERSON	PORTABLE PICKUP	60
1/16/2011	7419	2999 BUZHARDT'S TRASH	PORTABLE PICKUP	18
1/16/2011	7449	3029 DENNIS HOLDEN	PORTABLE PICKUP	60
1/16/2011	7472	3052 NORTHSTAR SALES & MARKETING	PORTABLE PICKUP	20
1/16/2011	7488	3068 TOWN & COUNTRY	PORTABLE PICKUP	60
1/16/2011	7489	3069 TOWN & COUNTRY	NEW DELIVERY	20
1/19/2011	7508	3088 NINETY SIX CHAMBER OF COMMERCE	HANDICAP SPECIAL EVENT	150
1/19/2011	7509	3089 BLUE RIDGE COUNCIL	STANDARD, HANDWASH UNITS	150
				<u>646</u>
2/13/2011	7514	3094 A.P. NEAL CONSTRUCTION CO.	PORTABLE PICKUP	38
2/13/2011	7515	3095 ALL AMERICAN WASTE	PORTABLE PICKUP	90
2/13/2011	7527	3107 BUZHARDT'S TRASH	PORTABLE PICKUP	36
2/13/2011	7530	3110 C+J	NEW DELIVERY	54

2/13/2011	7533	3113 CANNON & ASSOCIATES	NEW DELIVERY	40
2/13/2011	7534	3114 CANNON & ASSOCIATES	NEW DELIVERY	40
2/13/2011	7556	3136 JUSTUS BUILDERS LLC	NEW DELIVERY	72
2/13/2011	7562	3142 LOG DOGS	NEW DELIVERY	60
2/13/2011	7565	3145 MADISON HOME BUILDERS	NEW DELIVERY	60
2/13/2011	7572	3152 NORTHSTAR SALES & MARKETING	PORTABLE PICKUP	40
2/13/2011	7573	3153 NORTHSTAR SALES & MARKETING	PORTABLE PICKUP	40
2/13/2011	7575	3155 PARK'S PORTABLE TOILETS	NEW DELIVERY	60
2/13/2011	7586	3166 STACY SHELL	PORTABLE PICKUP	25
2/13/2011	7588	3168 ED SULLIVAN	NEW DELIVERY	60
2/13/2011	7591	3171 TOWN & COUNTRY	PORTABLE PICKUP	40
2/13/2011	7592	3172 TOWN & COUNTRY	NEW DELIVERY	54
2/13/2011	7593	3173 TOWN & COUNTRY	NEW DELIVERY	54
2/13/2011	7597	3177 UTILITY SERVICES CO.	PORTABLE PICKUP	20
2/13/2011	7601	3181 WATERMARK LLC	PORTABLE PICKUP	54
2/13/2011	7602	3182 WHARTON SMITH	PORTABLE PICKUP	40
2/23/2011	7612	3192 U.S. ARMY	STANDARD, HANDWASH UNITS	330
2/13/2011	7715	3295 EAGLE CONSTRUCTION	NEW DELIVERY	60
				<u>1367</u>
3/9/2011	7613	3193 LAURENS COUNTY EMS	VIP UNIT	200
3/13/2011	7614	3194 A.P. NEAL CONSTRUCTION CO.	PORTABLE PICKUP	54
3/13/2011	7615	3195 ALL AMERICAN WASTE	NEW DELIVERY	80
3/13/2011	7617	3197 AMERICA'S HOME PLACE	PORTABLE PICKUP	54
3/13/2011	7619	3199 AMERICA'S HOME PLACE	NEW DELIVERY	54
3/13/2011	7620	3200 AMERICA'S HOME PLACE	NEW DELIVERY	36
3/13/2011	7622	3202 B & J CONTRACTORS	PORTABLE PICKUP	54
3/13/2011	7630	3210 C + J	NEW DELIVERY	80
3/13/2011	7635	3215 CANNON & ASSOCIATES	NEW DELIVERY	40
3/13/2011	7636	3216 CANNON & ASSOCIATES	NEW DELIVERY	40
3/13/2011	7637	3217 CAPITAL CITY BUILDERS	NEW DELIVERY	66
3/13/2011	7642	3222 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	18
3/13/2011	7644	3224 CUSTOM STEEL FABRICATORS	PORTABLE PICKUP	80
3/13/2011	7646	3226 DAY CONSTRUCTION	PORTABLE PICKUP	54

3/13/2011	7649	3229 FOUNTAIN INN WAREHOUSE	NEW DELIVERY	80
3/13/2011	7663	3243 LLOYD ROOFING	PORTABLE PICKUP	18
3/13/2011	7664	3245 LLOYD ROOFING	NEW DELIVERY	60
3/13/2011	7665	3246 LLOYD ROOFING	NEW DELIVERY	72
3/13/2011	7666	3247 LOG DOES	PORTABLE PICKUP	83.6
3/13/2011	7674	3255 MITCHUM CONSTRUCTION	NEW DELIVERY	40
3/13/2011	7688	3268 RED CLAY DEVELOPMENT	NEW DELIVERY	60
3/13/2011	7692	3272 SATTERFIELD CONSTRUCTION CO.	NEW DELIVERY	40
3/13/2011	7693	3273 STEPHEN CONSTRUCTION	PORTABLE PICKUP	59.4
3/13/2011	7697	3277 TOWN & COUNTRY	PORTABLE PICKUP	72
3/13/2011	7704	3284 W.H. BASS	NEW DELIVERY	36
3/13/2011	7705	3285 WASTE AWAY PORTABLES	NEW DELIVERY	18
3/15/2011	7707	3287 EAGLE CONSTRUCTION	PORTABLE PICKUP	260
3/16/2011	7711	3291 SALUDA HIGH SCHOOL	STANDARD AND HANDICAP UNITS	375
3/16/2011	7712	3292 LISA BLEDSOE	SPECIAL EVENT STANDARD UNIT	390
				<u>2574</u>
4/4/2011	7714	3294 COVIDIAN	VIP UNIT	300
4/10/2011	7722	3302 AMERICA'S HOME PLACE	NEW DELIVERY	40
4/10/2011	7725	3305 BURTON CENTER	NEW DELIVERY	40
4/10/2011	7730	3310 C+J	PORTABLE PICKUP	18
4/10/2011	7733	3313 CALDWELL TANKS	NEW DELIVERY	82
4/10/2011	7734	3314 CANNON & ASSOCIATES	NEW DELIVERY	54
4/10/2011	7739	3319 CANNON ROOFING	NEW DELIVERY	20
4/10/2011	7744	3324 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	36
4/10/2011	7747	3327 CRYSTAL BAY HOMEOWNERS ASSC.	NEW DELIVERY	22
4/10/2011	7760	3340 HEAVENER CONSTRUCTION	NEW DELIVERY	22
4/10/2011	7761	3341 HENDRICK CONSTRUCTION	NEW DELIVERY	18
4/10/2011	7762	3342 JAMES B. JONES CONSTRUCTION	NEW DELIVERY	54
4/10/2011	7763	3343 TOM JENKINS	PORTABLE PICKUP	20
4/10/2011	7764	3344 JUSTUS BUILDERS LLC	PORTABLE PICKUP	54
4/10/2011	7767	3347 JUSTUS BUILDERS LLC	NEW DELIVERY	54
4/10/2011	7768	3348 LANGLEY BUILDERS	NEW DELIVERY	60
4/10/2011	7771	3351 LLOYD ROOFING	PORTABLE PICKUP	36

4/10/2011	7775	3355 MADISON HOME BUILDERS	PORTABLE PICKUP	20
4/10/2011	7780	3360 MEREDIAN HOMES	NEW DELIVERY	66
4/10/2011	7783	3363 MULLETT CONSTRUCTION	PORTABLE PICKUP	80
4/10/2011	7787	3367 PAYNE, MCGINN AND CUMMINS	NEW DELIVERY	20
4/10/2011	7796	3376 QUENTON ORR	NEW DELIVERY	22
4/10/2011	7799	3379 SALUDA COUNTY RECREATION	NEW DELIVERY	75
4/10/2011	7802	3382 SATTERFIELD CONSTRUCTION CO.	NEW DELIVERY	80
4/10/2011	7804	3384 THE PHEONIX CORPORATION OF GREENWOOD	PORTABLE PICKUP	36
4/10/2011	7807	3387 TRANQUIL METHODIST CHURCH	NEW DELIVERY	54
4/10/2011	7816	3396 ZTERS	NEW DELIVERY	60
4/12/2011	7820	3400 DAY CONSTRUCTION	SPECIAL EVENT STANDARD UNIT	80
4/12/2011	7824	3404 MARTIN & MARTIN AUCTIONEERS	SPECIAL EVENT STANDARD UNIT	140
4/18/2011	7827	3407 CAMBRIDGE APARTMENTS	SPECIAL EVENT STANDARD UNIT	100
4/18/2011	7828	3408 JOANNA FESTIVAL	SPECIAL EVENT VIP & HANDICAP UN	250
4/19/2011	7829	3409 BLUE RIDGE COUNCIL	SPECIAL EVENT STANDARD UNIT	180
4/25/2011	7830	3410 MARCH OF DIMES	SPECIAL EVENT STANDARD UNIT	90
4/25/2011	7831	3411 SALUDA COUNTY RECREATION	SPECIAL EVENT STANDARD UNIT	180
4/27/2011	7832	3412 HEIAZ SHRINE TEMPLE	SPECIAL EVENT STANDARD UNIT	260
				<u>2723</u>
5/3/2011	7835	3415 SCHUWANDA WILLIAMS	SPECIAL EVENT VIP UNIT	150
5/3/2011	7836	3416 HICKORY HILL FARMS	SPECIAL EVENT VIP UNIT	135
5/3/2011	7837	3417 GREENWOOD CITY	SPECIAL EVENT STANDARD UNIT	200
5/3/2011	7838	3418 GREENWOOD CITY	SPECIAL EVENT VIP & HANDICAP UN	250
5/3/2011	7839	3419 GREENWOOD UNITED MINISTRIES	SPECIAL EVENT STANDARD UNIT	200
5/3/2011	7840	3420 GREENWOOD CITY	SPECIAL EVENT STANDARD UNIT	75
5/3/2011	7841	3421 RAY FARMER	SPECIAL EVENT STANDARD UNIT	150
5/8/2011	7844	3424 AMERICA'S HOME PLACE	PORTABLE PICKUP	36
5/8/2011	7846	3426 PHILLIP ANDERSON	PORTABLE PICKUP	40
5/8/2011	7848	3428 BERRY'S BAIT AND TACKLE	NEW DELIVERY	80
5/8/2011	7849	3429 BRAD HAGEN BUILDERS	PORTABLE PICKUP	54
5/8/2011	7851	3431 BUZHARDT'S TRASH	PORTABLE PICKUP	18
5/8/2011	7854	3434 BUZHARDT'S TRASH	NEW DELIVERY	54
5/8/2011	7858	3438 C + J	NEW DELIVERY	54

5/8/2011	7865	3445 CANNON ROOFING	PORTABLE PICKUP	40
5/8/2011	7870	3450 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	36
5/8/2011	7874	3454 DEN-MAR CORPORATION	NEW DELIVERY	80
5/8/2011	7875	3455 DISCOUNT WASTE SYSTEMS	NEW DELIVERY	60
5/8/2011	7879	3459 FOUNTAIN INN WAREHOUSE	PORTABLE PICKUP	80
5/8/2011	7881	3461 GREENFIELD CONSTRUCTION	NEW DELIVERY	80
5/8/2011	7886	3466 HAPPY COW CREAMERY	NEW DELIVERY	72
5/8/2011	7890	3470 JEFECO COMPANY	NEW DELIVERY	80
5/8/2011	7891	3471 JUSTUS BUILDERS LLC	PORTABLE PICKUP	54
5/8/2011	7894	3474 JUSTUS BUILDERS LLC	NEW DELIVERY	18
5/8/2011	7901	3481 MADISON HOME BUILDERS	PORTABLE PICKUP	20
5/8/2011	7904	3484 KIRK MCMIMM	NEW DELIVERY	20
5/8/2011	7910	3490 NORTHSTAR SALES & MARKETING	NEW DELIVERY	44
5/8/2011	7924	3504 SALUDA COUNTY RECREATION	NEW DELIVERY	200
5/8/2011	7926	3506 SALUDA SCDOT	PORTABLE PICKUP	20
5/8/2011	7927	3507 SALUDA SCDOT	NEW DELIVERY	20
5/8/2011	7928	3508 SATTERFIELD CONSTRUCTION CO.	PORTABLE PICKUP	20
5/8/2011	7930	3510 SLOAN CONSTRUCTION	NEW DELIVERY	35
5/8/2011	7931	3511 ED SULLIVAN	PORTABLE PICKUP	20
5/8/2011	7934	3514 TOWN & COUNTRY	PORTABLE PICKUP	36
5/8/2011	7938	3518 TUXEDO HOMES	NEW DELIVERY	60
5/8/2011	7940	3520 PHILLIP VAUGHN	PORTABLE PICKUP	20
5/8/2011	7943	3523 WASTE AWAY PORTABLES	PORTABLE PICKUP	72
5/8/2011	7944	3524 WHARTON SMITH	NEW DELIVERY	20
5/8/2011	7946	3526 LARRY WILSON	NEW DELIVERY	44
5/8/2011	7947	3527 ZTERS	NEW DELIVERY	60
5/9/2011	7950	3530 RAUCH WISE	SPECIAL EVENT VIP UNIT	150
5/10/2011	7951	3531 SALUDA TRACTOR PULL	STANDARD AND HANDICAP UNITS	1,300.00
5/15/2011	7955	3535 NINETY SIX HISTORIC DEVELOPMENT	SPECIAL EVENT STANDARD UNIT	75
5/16/2011	7956	3536 ENOREE RANGER DISTRICT	HANDICAP & HANDWASH UNITS	200
5/16/2011	7957	3537 RELAY FOR LIFE	STANDARD AND HANDICAP UNITS	580
5/25/2011	7959	3539 DANA MCCRAVY	SPECIAL EVENT VIP UNIT	250
5/25/2011	7960	3560 JENNIFER DOWD	SPECIAL EVENT VIP UNIT	250
5/26/2011	7961	3561 BO HARTER	SPECIAL EVENT STANDARD UNIT	75

5/16/2011	7962	3562 GREENWOOD RENTAL AGENCY	SPECIAL EVENT STANDARD UNIT	175
5/26/2011	7963	3563 BILLIE MILLER	SPECIAL EVENT STANDARD UNIT	125
				<u>5987</u>
6/5/2011	8751	2862 LOG DOGS	NEW DELIVERY	20
6/3/2011	7964	3544 RAY FARMER	SPECIAL EVENT STANDARD UNIT	150
6/3/2011	7967	3547 LISA BLEDSOE	SPECIAL EVENT STANDARD UNIT	440
6/5/2011	7969	3549 ALPINE CONSTRUCTION	PORTABLE PICKUP	60
6/5/2011	7971	3551 JASON ARNOLD	NEW DELIVERY	60
6/5/2011	7972	3552 BENJAMIN'S DESIGN BUILD	PORTABLE PICKUP	18
6/5/2011	7973	3553 BERRY'S BAIT AND TACKLE	PORTABLE PICKUP	60
6/5/2011	7974	3554 BRAD HAGEN BUILDERS	NEW DELIVERY	40
6/5/2011	7976	3556 BUZHARDT'S TRASH	PORTABLE PICKUP	54
6/5/2011	7983	3563 C+J	NEW DELIVERY	54
6/5/2011	7996	3576 WILLIE CUNNINGHAM	NEW DELIVERY	20
6/5/2011	7997	3577 DEN-MAR CORPORATION	PORTABLE PICKUP	20
6/5/2011	8019	3599 LLOYD ROOFING	PORTABLE PICKUP	80
6/5/2011	8020	3600 LLOYD ROOFING	NEW DELIVERY	40
6/5/2011	8021	3601 LOG DOGS	PORTABLE PICKUP	62.7
6/5/2011	8029	3609 MOLLY'S HOT DOGS	PORTABLE PICKUP	16.25
6/5/2011	8030	3610 MOLLY'S HOT DOGS	NEW DELIVERY	48.75
6/5/2011	8034	3614 NORTHSTAR SALES & MARKETING	NEW DELIVERY	44
6/5/2011	8037	3617 PENTREATH CO.	PORTABLE PICKUP	54
6/5/2011	8044	3624 RED CLAY DEVELOPMENT	PORTABLE PICKUP	60
6/5/2011	8046	3626 RILEY FARMS	PORTABLE PICKUP	18
6/5/2011	8058	3638 TWO STATE CONSTRUCTION	PORTABLE PICKUP	72
6/5/2011	8059	3639 UNIVERSITY OF ILLINOIS	NEW DELIVERY	132
6/5/2011	8064	3644 LARRY WILSON	PORTABLE PICKUP	66
6/21/2011	8069	3649 SUNNY 103.5	SPECIAL EVENT STANDARD UNIT	225
6/21/2011	8070	3650 RAY FARMER	SPECIAL EVENT STANDARD UNIT	150
6/21/2011	8072	3652 JOHNNY KING AUCTIONEERS	SPECIAL EVENT STANDARD UNIT	225
6/21/2011	8074	3654 OAKBROOK MEMORIAL PARK	HANDICAP SPECIAL EVENT	150
6/21/2011	8075	3655 BLUE RIDGE COUNCIL	SPECIAL EVENT STANDARD UNIT	200
6/30/2011	8077	3657 GREENWOOD CHAMBER OF COMMERCE	STANDARD AND HANDICAP UNITS	<u>1,775.00</u>

				4,414.70
7/3/2011	8079	3659 AMERICA'S HOME PLACE	PORTABLE PICKUP	50
7/3/2011	8080	3660 AMERICA'S HOME PLACE	NEW DELIVERY	60
7/3/2011	8082	3662 BRAD HAGEN BUILDERS	PORTABLE PICKUP	20
7/3/2011	8085	3665 BUZHARDT'S TRASH	NEW DELIVERY	72
7/3/2011	8086	3666 BUZHARDT'S TRASH	NEW DELIVERY	68
7/3/2011	8091	3671 CALDWELL TANKS	PORTABLE PICKUP	66
7/3/2011	8097	3677 CANNON ROOFING	NEW DELIVERY	22
7/3/2011	8105	3685 DEN-MAR CORPORATION	NEW DELIVERY	66
7/3/2011	8124	3704 JUSTUS BUILDERS LLC	NEW DELIVERY	36
7/3/2011	8141	3721 PARK'S PORTABLE TOILETS	NEW DELIVERY	18
7/3/2011	8143	3723 PENTREATH CO.	PORTABLE PICKUP	18
7/3/2011	8153	3733 SATTERFIELD CONSTRUCTION CO.	PORTABLE PICKUP	20
7/3/2011	8154	3734 SATTERFIELD CONSTRUCTION CO.	NEW DELIVERY	60
7/3/2011	8156	3736 SPEEDWAY EXPRESS LUBE	NEW DELIVERY	54
7/3/2011	8159	3739 TOWN OF WARE SHOALS	NEW DELIVERY	40
7/3/2011	8160	3740 TRANQUIL METHODIST CHURCH	PORTABLE PICKUP	54
7/3/2011	8169	3749 REGGIE WHARTON	PORTABLE PICKUP	10
7/11/2011	8172	3752 MONTGOMERY CENTER	SPECIAL EVENT VIP UNIT	75
7/11/2011	8173	3753 LAURENS COUNTY EMS	SPECIAL EVENT STANDARD UNIT	100
7/11/2011	8175	3755 JOHN DE LA HOWE	SPECIAL EVENT STANDARD UNIT	180
7/11/2011	8176	3756 GREENWOOD SHRINE CLUB	SPECIAL EVENT STANDARD UNIT	240
7/14/2011	8178	3758 UPTOWN GREENWOOD DEVELOPMENT	SPECIAL EVENT STANDARD UNIT	1,400.00
7/14/2011	8179	3759 TOWN OF NEWBERRY	SPECIAL EVENT VIP UNIT	150
7/18/2011	8180	3760 ROCKY CREEK CHRISTIAN RETREAT	SPECIAL EVENT STANDARD UNIT	90
7/18/2011	8181	3761 TOWN OF WARE SHOALS	SPECIAL EVENT STANDARD UNIT	175
7/20/2011	8182	3762 PARK SEED CO.	STANDARD AND HANDICAP UNITS	275
7/20/2011	8183	3763 JUSTUS BUILDERS LLC	STANDARD AND HANDICAP UNITS	300
7/31/2011	8187	3767 ADVANCED WASTE SYSTEMS	NEW DELIVERY	66
7/31/2011	8190	3770 AMERICA'S HOME PLACE	NEW DELIVERY	36
7/31/2011	8193	3773 BUZHARDT'S TRASH	PORTABLE PICKUP	54
7/31/2011	8198	3778 C + J	PORTABLE PICKUP	36
7/31/2011	8201	3781 CANNON & ASSOCIATES	PORTABLE PICKUP	18

7/31/2011	8204	3784 CANNON & ASSOCIATES	PORTABLE PICKUP	20
7/31/2011	8205	3785 CANNON ROOFING	PORTABLE PICKUP	44
7/31/2011	8214	3794 DISCOUNT WASTE SYSTEMS	PORTABLE PICKUP	60
7/31/2011	8226	3806 KES & LUCINDA HOLMES	NEW DELIVERY	88
7/31/2011	8227	3807 HOREB BAPTIST CHURCH	PORTABLE PICKUP	60
7/31/2011	8229	3809 JAY DAVIS CONSTRUCTION	NEW DELIVERY	66
7/31/2011	8237	3817 LLOYD ROOFING	PORTABLE PICKUP	40
7/31/2011	8240	3820 LOG DOES	NEW DELIVERY	60
7/31/2011	8241	3821 LOG DOES	NEW DELIVERY	60
7/31/2011	8249	3829 NORTHSTAR SALES & MARKETING	PORTABLE PICKUP	22
7/31/2011	8251	3831 NORTHSTAR SALES & MARKETING	NEW DELIVERY	22
7/31/2011	8253	3833 PARK'S PORTABLE TOILETS	NEW DELIVERY	54
7/31/2011	8262	3842 SALUDA COUNTY RECREATION	PORTABLE PICKUP	100
7/31/2011	8269	3849 TOM BRIGMAN CONSTRUCTION	NEW DELIVERY	22
7/31/2011	8270	3850 TOWN OF WARE SHOALS	PORTABLE PICKUP	40
7/31/2011	8271	3851 TRINITY PRESBYTERIAN	PORTABLE PICKUP	108
7/31/2011	8274	3854 UNITED CONTRACTORS	NEW DELIVERY	80
7/31/2011	8276	3856 UTILITY SERVICES CO.	NEW DELIVERY	60
7/31/2011	8278	3858 W.H. BASS	PORTABLE PICKUP	36
7/31/2011	8280	3860 WHARTON SMITH	PORTABLE PICKUP	20
7/31/2011	8623	4200 MADISON HOME BUILDERS	NEW DELIVERY	60
				<u>5061</u>
8/15/2011	8293	3873 MCCORMICK NATIONAL NIGHT OUT	SPECIAL EVENT STANDARD UNIT	100
8/15/2011	8294	3874 TRANQUIL METHODIST CHURCH	SPECIAL EVENT STANDARD UNIT	50
8/17/2011	8295	3875 SALUDA TRACTOR PULL	STANDARD AND HANDICAP UNITS	1,300.00
8/30/2011	8296	3876 CARL ROSS	STANDARD AND HANDWASH UNITS	600
8/28/2011	8298	3878 ADVANCED WASTE SYSTEMS	PORTABLE PICKUP	66
8/28/2011	8302	3882 AMERICA'S HOME PLACE	NEW DELIVERY	72
8/28/2011	8304	3884 BENJAMIN'S DESIGN BUILD	NEW DELIVERY	72
8/28/2011	8305	3885 BUZHARDT'S TRASH	PORTABLE PICKUP	195
8/28/2011	8311	3891 CANNON & ASSOCIATES	PORTABLE PICKUP	20
8/28/2011	8313	3893 CANNON & ASSOCIATES	NEW DELIVERY	100
8/28/2011	8317	3897 ROSE CHASE	PORTABLE PICKUP	60

8/28/2011	8321	3901 D S UTILITIES	NEW DELIVERY	20
8/28/2011	8327	3907 GREENFIELD CONSTRUCTION	PORTABLE PICKUP	60
8/28/2011	8332	3912 HEAVENER CONSTRUCTION	PORTABLE PICKUP	88
8/28/2011	8342	3922 JUSTUS BUILDERS LLC	NEW DELIVERY	36
8/28/2011	8349	3929 KRISTIE LONG	PORTABLE PICKUP	40
8/28/2011	8350	3930 MAYS CONSTRUCTION	NEW DELIVERY	66
8/28/2011	8359	3939 NORTHSTAR SALES & MARKETING	NEW DELIVERY	20
8/28/2011	8360	3940 NORTHSTAR SALES & MARKETING	NEW DELIVERY	40
8/28/2011	8361	3941 DEWEY OUTZ	PORTABLE PICKUP	20
8/28/2011	8363	3943 PAYNE, MCGINN AND CUMMINS	PORTABLE PICKUP	60
8/28/2011	8364	3944 PEAK BUILDERS	NEW DELIVERY	40
8/28/2011	8371	3951 MELANIE PRICE	NEW DELIVERY	88
8/28/2011	8373	3953 SC DEPT OF CORRECTIONS	NEW DELIVERY	108
8/28/2011	8375	3955 SALUDA SCDOT	PORTABLE PICKUP	40
8/28/2011	8376	3956 SATTERFIELD CONSTRUCTION CO.	PORTABLE PICKUP	80
8/28/2011	8377	3957 SATTERFIELD CONSTRUCTION CO.	NEW DELIVERY	60
8/28/2011	8382	3962 TOWN OF WARE SHOALS	NEW DELIVERY	135
				3636
9/9/2011	8392	3972 GREENWOOD COUNTY	SPECIAL EVENT STANDARD UNIT	225
9/9/2011	8393	3973 CANNON & ASSOCIATES	STANDARD AND HANDICAP UNITS	600
9/9/2011	8394	3974 LISA BLEDSOE	SPECIAL EVENT STANDARD UNIT	440
9/9/2011	8399	3979 ALLEN BOLTON	SPECIAL EVENT VIP UNIT	300
9/14/2011	8400	3980 GREG HAWKINS AUCTIONS	SPECIAL EVENT STANDARD UNIT	150
9/14/2011	8401	3981 LITTLE RIVER FESTIVAL	STANDARD AND HANDWASH UNITS	450
9/14/2011	8402	3982 LANDER UNIVERSITY	STANDARD AND HANDICAP UNITS	750
9/25/2011	8405	3984 AMERICA'S HOME PLACE	PORTABLE PICKUP	40
9/25/2011	8408	3987 AMERICA'S HOME PLACE	NEW DELIVERY	72
9/25/2011	8409	3988 AMERICA'S HOME PLACE	NEW DELIVERY	72
9/25/2011	8410	3989 AMERICA'S HOME PLACE	NEW DELIVERY	18
9/25/2011	8413	3992 BRAD HAGEN BUILDERS	NEW DELIVERY	40
9/25/2011	8414	3993 BREWER RECREATION CENTER	NEW DELIVERY	20
9/25/2011	8415	3994 BURTON CENTER	NEW DELIVERY	120
9/25/2011	8416	3995 BUZHARDT'S TRASH	PORTABLE PICKUP	136

9/25/2011	8418	3997 C+J	NEW DELIVERY	36
9/25/2011	8419	3998 C+J	PORTABLE PICKUP	36
9/25/2011	8421	4000 CANNON & ASSOCIATES	PORTABLE PICKUP	60
9/25/2011	8426	4005 CHRISTIAN BROTHERS HUNT CLUB	NEW DELIVERY	60
9/25/2011	8427	4006 CLARKSON INDUSTRIAL	NEW DELIVERY	20
9/25/2011	8428	4007 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	80
9/25/2011	8429	4008 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	40
9/25/2011	8432	4011 WILLIE CUNNINGHAM	PORTABLE PICKUP	80
9/25/2011	8446	4025 JAMES B. JONES CONSTRUCTION	NEW DELIVERY	18
9/25/2011	8449	4028 JUSTUS BUILDERS LLC	PORTABLE PICKUP	18
9/25/2011	8451	4030 JUSTUS BUILDERS LLC	PORTABLE PICKUP	18
9/25/2011	8454	4033 JUSTUS BUILDERS LLC	NEW DELIVERY	18
9/25/2011	8455	4034 LANGLEY BUILDERS	PORTABLE PICKUP	60
9/25/2011	8457	4036 JILL LEWIS	NEW DELIVERY	60
9/25/2011	8458	4037 LLOYD ROOFING	NEW DELIVERY	20
9/25/2011	8459	4038 LOG DOGS	PORTABLE PICKUP	60
9/25/2011	8461	4040 LOG DOGS	PORTABLE PICKUP	60
9/25/2011	8466	4045 METHANE POWER	NEW DELIVERY	20
9/25/2011	8468	4047 MOLLY'S HOT DOGS	PORTABLE PICKUP	9
9/25/2011	8469	4048 MOLLY'S HOT DOGS	NEW DELIVERY	75
9/25/2011	8472	4051 NORTHSTAR SALES & MARKETING	PORTABLE PICKUP	66
9/25/2011	8478	4057 PREFERRED TANK AND TOWER	NEW DELIVERY	60
9/25/2011	8485	4064 C & C METAL RECYCLING	NEW DELIVERY	60
9/25/2011	8489	4058 SALUDA HIGH SCHOOL	NEW DELIVERY	144
9/25/2011	8490	4069 SALUDA SCDOT	NEW DELIVERY	44
9/25/2011	8491	4070 SATTERFIELD CONSTRUCTION CO.	PORTABLE PICKUP	40
9/25/2011	8492	4071 SATTERFIELD CONSTRUCTION CO.	NEW DELIVERY	80
9/25/2011	8494	4073 SPEEDWAY EXPRESS LUBE	PORTABLE PICKUP	36
9/25/2011	8495	4074 SUPER EXTERMINATOR	NEW DELIVERY	22
9/25/2011	8497	4076 TOM BRIGMAN CONSTRUCTION	NEW DELIVERY	40
9/25/2011	8498	4077 TOM BRIGMAN CONSTRUCTION	NEW DELIVERY	22
9/25/2011	8503	4082 UNIVERSITY OF ILLINOIS	PORTABLE PICKUP	132
9/25/2011	8504	4083 UTILITY SERVICES CO.	PORTABLE PICKUP	60
9/27/2011	8511	4090 RAY FARMER	SPECIAL EVENT STANDARD UNIT	100

				5187
10/29/2011	8513	4092 JILL LEWIS	SPECIAL EVENT VIP UNIT	200
10/3/2011	8515	4094 CATHY SWINDELL	SPECIAL EVENT STANDARD UNIT	100
10/3/2011	8516	4095 EMERALD HIGH SCHOOL	SPECIAL EVENT STANDARD UNIT	250
10/3/2011	8517	4096 CANNON & ASSOCIATES	VIP UNIT	225
10/4/2011	8518	4097 GREENWOOD CHAMBER OF COMMERCE	STANDARD AND HANDICAP UNITS	1,050.00
10/5/2011	8519	4098 MARTIN & MARTIN AUCTIONEERS	SPECIAL EVENT STANDARD UNIT	210
10/7/2011	8520	4099 HOOVER BUILDING SYSTEMS	SPECIAL EVENT STANDARD UNIT	75
10/7/2011	8521	4100 EMERALD HIGH SCHOOL	SPECIAL EVENT STANDARD UNIT	250
10/7/2011	8523	4102 ELIZABETH BUSH	VIP UNIT	175
10/23/2011	8534	4113 BUZHARDT'S TRASH	NEW DELIVERY	18
10/23/2011	8538	4117 C & M CONTRACTING LLC	NEW DELIVERY	54
10/23/2011	8541	4120 CAPITAL CITY BUILDERS	PORTABLE PICKUP	66
10/23/2011	8545	4124 CLARKSON INDUSTRIAL	PORTABLE PICKUP	40
10/23/2011	8547	4126 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	20
10/23/2011	8548	4127 COMMISSION OF PUBLIC WORKS	NEW DELIVERY	20
10/23/2011	8549	4128 COMPLETE CONTRACTOR SERVICES	NEW DELIVERY	60
10/23/2011	8559	4138 GREENWOOD HABITAT FOR HUMANITY	NEW DELIVERY	72
10/23/2011	8564	4143 JOHN HILL	NEW DELIVERY	54
10/23/2011	8574	4153 JUSTUS BUILDERS LLC	NEW DELIVERY	36
10/23/2011	8579	4158 MADISON HOME BUILDERS	NEW DELIVERY	20
10/23/2011	8580	4159 MASON BUILDERS	NEW DELIVERY	40
10/23/2011	8584	4163 MEREDIAN HOMES	PORTABLE PICKUP	88
10/23/2011	8593	4172 PARK'S PORTABLE TOILETS	PORTABLE PICKUP	36
10/23/2011	8595	4174 PREFERRED TANK AND TOWER	PORTABLE PICKUP	40
10/23/2011	8613	4192 TOWN OF WARE SHOALS	PORTABLE PICKUP	160
10/23/2011	8616	4195 UNITED CONTRACTORS	PORTABLE PICKUP	160
10/23/2011	8619	4198 ZTERS	PORTABLE PICKUP	20
10/23/2011	8627	4203 MADISON HOME BUILDERS	PORTABLE PICKUP	80
10/28/2011	8630	4206 BOY SCOUTS OF AMERICA	SPECIAL EVENT STANDARD UNIT	240
				<u>3859</u>
11/7/2011	8631	4207 IGLESIA CHRISTIAN MISSION	SPECIAL EVENT STANDARD UNIT	180

11/7/2011	8632	4208 COMPASS ROSE EVENTS	STANDARD AND HANDICAP UNITS	400
11/7/2011	8633	4209 HICKORY HILL FARMS	VIP UNIT	175
11/7/2011	8634	4210 PRAISE UNLIMITED WEDDINGS	VIP UNIT	200
11/7/2011	8637	4213 JOHNNY KING AUCTIONEERS	SPECIAL EVENT STANDARD UNIT	150
11/7/2011	8638	4214 UPTOWN GREENWOOD DEVELOPMENT	SPECIAL EVENT STANDARD UNIT	390
11/7/2011	8639	4215 TOWN OF WARE SHOALS	SPECIAL EVENT STANDARD UNIT	100
11/10/2011	8641	4217 MARTIN & MARTIN AUCTIONEERS	SPECIAL EVENT STANDARD UNIT	225
11/16/2011	8642	4218 GREENWOOD ROTARY CLUB	HANDWASH UNIT	75
11/17/2011	8643	4219 HILTON DODGEN AUCTION COMPANY	HANDICAP SPECIAL EVENT	175
11/20/2011	8645	4221 A.P. NEAL CONSTRUCTION CO.	NEW DELIVERY	72
11/20/2011	8647	4223 ALPINE CONSTRUCTION	NEW DELIVERY	88
11/20/2011	8650	4226 AMERICA'S HOME PLACE	PORTABLE PICKUP	72
11/20/2011	8652	4228 AMERICA'S HOME PLACE	NEW DELIVERY	36
11/20/2011	8654	4230 BANNER ENTERPRISES	NEW DELIVERY	40
11/20/2011	8655	4231 BENJAMIN'S DESIGN BUILD	PORTABLE PICKUP	72
11/20/2011	8657	4233 JIM BURNS	NEW DELIVERY	80
11/20/2011	8662	4238 C & M CONTRACTING LLC	PORTABLE PICKUP	18
11/20/2011	8665	4241 CANNON ROOFING	PORTABLE PICKUP	60
11/20/2011	8669	4245 CISSON CONSTRUCTION CO.	NEW DELIVERY	20
11/20/2011	8670	4246 CLIFTON CONSTRUCTION	NEW DELIVERY	40
11/20/2011	8672	4248 COMMISSION OF PUBLIC WORKS	PORTABLE PICKUP	40
11/20/2011	8673	4249 COMPLETE CONTRACTOR SERVICES	PORTABLE PICKUP	80
11/20/2011	8675	4251 CRYSTAL BAY HOMEOWNERS ASSC.	PORTABLE PICKUP	44
11/20/2011	8677	4253 DAY CONSTRUCTION	NEW DELIVERY	40
11/20/2011	8678	4254 DE ANGELIS DIAMOND HEALTH CARE GROUP	NEW DELIVERY	40
11/20/2011	8679	4255 DEROSSETT DEVELOPMENT	NEW DELIVERY	72
11/20/2011	8684	4260 GIST INC.	NEW DELIVERY	72
11/20/2011	8693	4269 KES & LUCINDA HOLMES	PORTABLE PICKUP	22
11/20/2011	8694	4270 HOOVER BUILDING SYSTEMS	NEW DELIVERY	20
11/20/2011	8695	4271 JAMES B. JONES CONSTRUCTION	PORTABLE PICKUP	27
11/20/2011	8699	4275 JUSTUS BUILDERS LLC	PORTABLE PICKUP	72
11/20/2011	8705	4281 LLOYD ROOFING	PORTABLE PICKUP	40
11/20/2011	8712	4288 MCCULLOUGH RESIDENTIAL	NEW DELIVERY	66
11/20/2011	8733	4309 SALUDA SCDOT	PORTABLE PICKUP	66

CURRICULUM VITAE

James L. McCutchen
Post Office Box 12265
Columbia, S.C. 29211
mccutej@scitax.org
803-898-5123

BAR ADMISSION

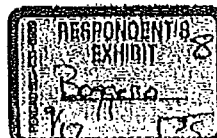
- South Carolina State Bar (Admitted November 2011)

EXPERIENCE

SOUTH CAROLINA DEPARTMENT OF REVENUE, Columbia, S.C. Office of General Counsel, Tax and Regulatory Services Division <i>Revenue Law Advisor II</i>	June 2012- Present
SOUTH CAROLINA DEPARTMENT OF REVENUE, Columbia, S.C. Office of General Counsel, Tax and Regulatory Services Division <i>Attorney</i>	August 2011- June 2012
NINTH CIRCUIT SOLICITOR, Charleston, S.C. <i>Law Clerk</i>	August 2010- May 2011
KAHN LAW FIRM, Charleston, S.C. <i>Law Clerk</i>	August 2009- August 2010
WOOD & WARDER LAW FIRM, Charleston, S.C. <i>Paralegal</i>	August 2007- August 2008
NINTH CIRCUIT PUBLIC DEFENDER, Charleston, S.C. <i>Undergraduate Intern</i>	August 2005- May 2006

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER, Washington, D.C. <i>Master of Laws (LL.M.), Taxation</i> <i>Graduate Certificate, State and Local Taxation</i> G.P.A.: 3.2 Honors: <i>Recipient, State and Local Tax Scholarship; Call Award, Constitutional Limitations on Taxation.</i>	May 2014 <i>Expected</i>
CHARLESTON SCHOOL OF LAW, Charleston, S.C. <i>Juris Doctor (J.D.)</i> G.P.A.: 3.372 Class Rank: 31 out of 196 Honors: <i>Cum Laude; Associate Justice of Business Affairs, Moot Court Board; Member, Charleston Law Review; Captain, Advanced Mock Trial Team; Call Awards:</i>	May 2011



Page 1 of 2

Federal Income Taxation, Health Care Law, Legal Research and Writing; *Dean's List*: Fall 2008, Spring 2009, Spring 2010, Fall 2010.
Activities: *Member*, Tax Law Society; *President*, Student Trial Lawyers Association (2010-2011); *Treasurer*, Student Trial Lawyers Association (2009-2010); *Member*, Honor Council; *Member*, Faculty Recruitment Committee.

COLLEGE OF CHARLESTON, Charleston, S.C.

May 2006

Bachelor of Arts (B.A.), English

Minor, Criminal Justice

Honors: *Recipient*, Life Scholarship; *Captain*, Advanced Mock Trial Team; Named *All-Regional Best Attorney*, American Mock Trial Association (A.M.T.A.) Southeastern Regional Tournament; Named *All-American Best Attorney*, A.M.T.A. National Tournament.

Activities: *Member*, Charleston 40; *Study Abroad*, Florence/ Rome, Italy (English Department).

PROFESSIONAL MEMBERSHIPS

- *Member*, Charleston School of Law Alumni Board of Directors

State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC PRIVATE LETTER RULING #04-2

PLR

SUBJECT: Construction Debris Disposal Service
(Sales and Use Tax)

REFERENCES: S. C. Code Ann. Section 12-36-910 (2000)
S. C. Code Ann. Section 12-36-1310 (2000)
S. C. Code Ann. Section 12-36-60 (2000)
S. C. Code Ann. Section 12-36-100 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (2000)
SC Revenue Procedure #03-1

SCOPE: A Private Letter Ruling is a written statement issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. A Private Letter Ruling is an advisory opinion; it does not have the force and effect of law, and is not binding on the person who requested it or the public. It is, however, the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Question:

Are the charges by ABC, Inc. (as described in the facts) for delivering a garbage container to a construction site and disposing of construction waste placed in the container subject to the sales and use tax?

Conclusion:

No, charges by ABC, Inc. (as described in the facts) for delivering a garbage container to a construction site and disposing of construction waste placed in the container are not subject to the sales and use tax.

Facts:

From time to time, contractors will need construction debris hauled away to area landfills.



ABC, Inc. delivers containers (dumpsters) at construction sites and, when filled, disposes the waste. A container holds up to five tons of construction waste and is provided by ABC, Inc. to every customer. ABC, Inc. does not dispose of construction debris for persons who own their own container.

Each customer is charged the following

Delivery	\$ 50.00
Rent	\$ 2.50 per day
Dump	\$100.00
Disposal	\$ 28.00
Fuel Surcharge	\$ 4.88 per dump

Discussion:

Code Section 12-36-910 imposes "a sales tax, equal to five percent of gross proceeds of sales, upon every person engaged ... within this State in the business of selling tangible personal property at retail."

Code Section 12-36-1310 imposes a "use tax ... on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of five percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State."

The term "tangible personal property" is defined in Code Section 12-36-60, in part, to mean:

personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses."

The term "sale" is defined in Code Section 12-36-100 to mean:

any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

From time to time it is necessary to determine if the transaction is a sale or rental of tangible personal property or the furnishing of a service. The so-called "true object" test is generally used to delineate sales of services from sales of tangible personal property.

The "true object" test is best described in 9 Vanderbilt Law Review 231 (1956), wherein it is stated:

The true test then is one of basic purpose of the buyer. When the product of the service is not of value to anyone other than the purchaser, either because of the confidential character of the product, or because it is prepared to fit the purchaser's special need - a contract or will prepared by a lawyer, or the accident investigation report prepared for an insurance company - this fact is evidence tending to show that the service is the real purpose of the contract. When the purpose of a contract is to produce an article which is the true object of the agreement, the final transfer of the product should be a sale, regardless of the fact that special skills and knowledge go into its production. Under this analysis, printing work, done on special order, and of significant value only to the particular customer, is still a sale. The purchaser is interested in the product of the services of the printer, not in the services per se. Similarly, it would seem that contracts for custom-produced articles, be they intrinsically valuable or not, should be classified as sales when the product of the contract is transferred.

The Vanderbilt Law Review article, in quoting *Suite v Department of Revenue*, 398 Ill. 41, 74 N.E.2d, 877 (1947), also establishes the following general rule:

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays ... (is measured by the total cost of article and services). If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is engaged in the business of selling at retail, and also engaged in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other.

While the above quotes do not establish rigid rules, they do provide general guidance in determining the purpose of a transaction, and are particularly helpful in addressing the issues at hand.

A similar issue was addressed by the State of Virginia in Ruling of the Tax Commissioner #91-275. In that ruling the Tax Commissioner addressed the treatment of portable toilets and whether they should be treated in the same manner as the taxpayer's refuse disposal operation. The Tax Commissioner of Virginia held:

It has been the longstanding policy of the department to treat the lease or rental of portable toilets as a taxable transaction. The "true object" of the refuse service provided by the Taxpayer is the actual pickup and removal of refuse. The "true object" of the portable toilet operation is the provision of tangible personal property. The waste removal in the portable toilet operation is incidental to the provisions of the toilets. ...

Based on the above and the facts provided by the taxpayer, the true object of the taxpayer's business is the providing of a service. Customers are hiring the taxpayer to haul away and dispose of construction waste. Customers are not renting containers from the taxpayer. Such containers are being used and consumed by the taxpayer in providing a service.

However, it is important to note that if the taxpayer was only providing the container and was not providing the service of hauling away and disposing of the waste (e.g. the customer disposed of the waste or hired a third party to dispose of the waste), then the charge for the container would be subject to the tax as a rental of tangible personal property.

In addition, since the taxpayer provides every customer a container and the true object of the transaction and the taxpayer's method of operating is the providing of a service, the itemized charges are a part of the total charge for the service provided and are not subject to the tax.

Therefore, charges by the taxpayer (as described in the facts) for delivering a garbage container to a construction site and disposing of construction waste placed in the container are not subject to the sales and use tax. However, sales to, or purchases by, the taxpayer of tangible personal property for use in providing its service (e.g., containers, trucks, etc.) are subject to the sales and use tax.

Note: Sales and use taxes are transaction taxes. Therefore, if the taxpayer changes its method of operating, the application of the sales and use tax to the taxpayer's business may also change.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank
Burnet R. Maybank, Director

January 12, 2004
Columbia, South Carolina

2010/10/17

State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #09-5

SUBJECT: Rental of Portable Toilets
(Sales and Use Tax)

EFFECTIVE DATE: Applies to all open periods under the statute.

SUPERSEDES: SC Revenue Advisory Bulletin #01-5 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-36-910 (2000, Supp. 2008)
S. C. Code Ann. Section 12-36-1310 (2000; Supp. 2008)
S. C. Code Ann. Section 12-36-60 (2000)
S. C. Code Ann. Section 12-36-100 (2000)
S. C. Code Ann. Section 12-36-90 (2000; Supp. 2008)
S. C. Code Ann. Section 12-36-130 (2000; Supp. 2008)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2008)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Question:

Is a charge by a business for temporarily providing portable toilets to another person a rental of tangible personal property subject to the sales and use tax or is it a service not subject to the sales and use tax?

Conclusion:

A charge by a business for temporarily providing portable toilets to another person constitutes a rental of tangible personal property subject to the sales and use tax since such is the transfer of tangible personal property for a consideration.



Any additional charges for servicing the toilets (whether optional or mandatory) that are made in conjunction with, or as part of the rental of, portable toilets are includable in "gross proceeds of sales" or "sales price", and, therefore, subject to the tax.

However, since seventy percent of the total charges (rental fees and servicing charges and fees) for the rental or lease of portable toilets are exempt from the sales and use tax under Code Section 12-36-2120(62), only thirty percent of the total charges (rental fees and servicing charges and fees) for the rental or lease of portable toilets are subject to the sales and use tax.

Note: Retailers renting or leasing portable toilets should report all charges (rental fees and servicing charges and fees) for the rental or lease of portable toilets on Line 1 of the "Sales and Use Tax Worksheet" on the sales and use tax return and report a deduction of seventy percent of all charges (rental fees and servicing charges and fees) for the rental or lease of portable toilets on Line 4 of the "Sales and Use Tax Worksheet." Reporting in this manner will result in the retailer only remitting sales tax with respect to thirty percent of all charges (rental fees and servicing charges and fees) for the rental or lease of portable toilets.

Facts:

From time to time, contractors, businesses and events need additional restroom facilities. As such, other businesses provide, under oral or written contracts, portable toilets to such contractors, businesses and events. The necessary servicing of the toilet will also be provided as part of the contract and this typically consists of regular and routine removal and disposal of the waste and the replacement of chemicals and toilet paper. At the customer's request, additional servicing of the toilet will also be provided for an additional fee.

Discussion:

The first issue concerns whether or not persons providing portable toilets for a limited period of time for a fee are renting of tangible personal property.

Code Section 12-36-910 imposes "a sales tax, equal to [six]¹ percent of gross proceeds of sales, upon every person engaged ... within this State in the business of selling tangible personal property at retail."

¹ Code Section 12-36-1110, which increased the state sales and use tax rate from 5% to 6% on June 1, 2007, states:

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to Section 12-36-920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to Section 12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons. (Emphasis added.)

Code Section 12-36-1310 imposes a "use tax ... on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six]² percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State."

The term "tangible personal property" is defined in Code Section 12-36-60, in part, to mean:

personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses."

The term "sale" is defined in Code Section 12-36-100 to mean:

any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both. (Emphasis added.)

From time to time it is necessary to determine if the transaction is a sale or rental of tangible personal property or the furnishing of a service. The so-called "true object" test is generally used to delineate sales of services from sales of tangible personal property.

The "true object" test is best described in 9 *Vanderbilt Law Review* 231 (1956), wherein it is stated:

The true test then is one of basic purpose of the buyer. When the product of the service is not of value to anyone other than the purchaser, either because of the confidential character of the product, or because it is prepared to fit the purchaser's special need - a contract or will prepared by a lawyer, or the accident investigation report prepared for an insurance company - this fact is evidence tending to show that the service is the real purpose of the contract. When the purpose of a contract is to produce an article which is the true object of the agreement, the final transfer of the product should be a sale, regardless of the fact that special skills and knowledge go into its production. Under this analysis, printing work, done on special order, and of significant value only to the particular customer, is still a sale. The purchaser is interested in the product of the services of the

²See footnote #1.

printer, not in the services per se. Similarly, it would seem that contracts for custom-produced articles, be they intrinsically valuable or not, should be classified as sales when the product of the contract is transferred.

The Vanderbilt Law Review article, in quoting *Sulta v Department of Revenue*, 398 Ill. 41, 74 N.E.2d. 877 (1947), also establishes the following general rule:

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays ... [is measured by the total cost of article and services]. If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is engaged in the business of selling at retail, and also engaged in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other.

While the above quotes do not establish rigid rules, they do provide general guidance in determining the purpose of a transaction, and are particularly helpful in addressing the issues at hand.

Based on the above, businesses temporarily providing portable toilets to others for a fee are renting tangible personal property since such constitutes the transfer of tangible personal property for a consideration. See Code Section 12-36-60. In addition, the "true object" of the transaction is the portable toilet and not the servicing of the toilet (regular and routine removal and disposal of the waste and the replacement of chemicals and toilet paper). Such servicing is incidental to the rental of the portable toilets.

Other states have reviewed this issue. North Carolina (Sales and Use Tax Bulletin 34-17) and Virginia (Ruling of the Tax Commissioner 91-275) both consider the business of providing portable toilets for a limited period of time for a fee a rental of tangible personal property subject to the sales and use tax.

The next issue concerns the application of the tax to any charges for servicing the toilets.

The sales tax is imposed upon a retailer's "gross proceeds of sales" which is defined at Code Section 12-36-90, in part, as:

... the value proceeding or accruing from the sale, lease, or rental of tangible personal property... without any deduction for... the cost of materials, labor, or service... [or] any other expenses....

The use tax is based upon the "sales price" of tangible personal property. The term "sales price" is defined at Code Section 12-36-130, in part, as:

... the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

(1) The term includes:

(a) any services or transportation costs that are a part of the sale, whether paid in money or otherwise;....

In *Meyers Arnold, Inc. v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E.2d 920, 923 (1985), the Court of Appeals of South Carolina held the element of service involved in a lay away sale was subject to tax as being part of the sale of tangible personal property. The test used by the court was as follows:

... But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously charged for the service rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds and subject to the sales tax.

Accordingly, the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to the tax.

With respect to the issue at hand, but for the rentals of the portable toilets, the person providing the portable toilets would not receive fees for servicing the toilets.

In Commission Decision #90-38, the Commission held that charges for engraving services, even though optional, were a part of the sale of plaques and trophies by the retailer and includible in gross proceeds of sales. The decision states, in part:

...We find and conclude that here the "engraving charges" are part of the sale of tangible personal property since the customer is not seeking a professional service but is seeking an engraved trophy or plaque....

* * * *

...The Courts have held that although the amount of materials used may be inconsequential with respect to the labor involved where the customer seeks to purchase custom made or designed tangible personal property, the artistic skill of the craftsman is a part of the sales price of the product and is inextricably linked

In summary, charges for servicing the toilets (whether optional or mandatory) that are made in conjunction with, or as part of the rental of, portable toilets are includable in "gross proceeds of sales" or "sales price", and, therefore, subject to the tax.

The final issue concerns an exemption. Code Section 12-36-2120(62) exempts from the sales and use tax:

seventy percent of the gross proceeds of the rental or lease of portable toilets.

Therefore, seventy percent of the total charges (rental fees and servicing charges and fees) for the rental or lease of portable toilets are exempt from the sales and use tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens
Ray N. Stevens, Director

May 19, 2009
Columbia, South Carolina

Hannah Metts

From: Hannah Metts
Sent: Friday, December 13, 2013 12:47 PM
To: Anthony Goldman; Carol McMahan
Cc: rhemphill@mcdonalpatrick.com; Ann Marie Thompson; Jean M. O'Connor (OConnoJ@sctax.org)
Subject: RE: Proposed Orders
Attachments: boggero-out of state citations.pdf; Proposed Order.doc

Dear Mr. Goldman:

Attached please find our proposed Order on behalf of Ms. Boggero and Boggero's Portable Toilets. Also, attached are copies of citations to out-of-state authorities referenced in our proposed Order.

Please let us know if you need anything further.

Regards,
Hannah

Hannah K. Metts, Esquire
McDonald Patrick Poston Hemphill & Roper, LLC
414 Main Street (29646)
Post Office Box 1547
Greenwood, SC 29648
Telephone: 864-229-2511 ext. 7
Facsimile: 864-229-5327
hmetts@mcdonalpatrick.com

Confidential Notice: This e-mail transmission is confidential. It may contain information which is privileged or subject to other confidentiality requirements and exemptions from disclosure under applicable law. It is intended solely for the use of the individual named above. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are hereby advised that any dissemination, distribution or copying of this communication is prohibited. If you have received this e-mail transmission in error, please immediately notify the sender by telephone collect and return the original transmission to the sender by U.S. Mail. Thank you.

Disclosure under IRS Circular 230: Unless expressly stated otherwise, nothing contained in this communication is intended or written to be used, nor may it be relied upon or used, (1) by any taxpayer for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code, and/or (2) by any person to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed in this communication. Any taxpayer should seek independent tax advice with respect to any Federal tax transaction or matter addressed herein.

From: Anthony Goldman [mailto:agoldman@scalp.net]
Sent: Tuesday, December 03, 2013 3:19 PM
To: Carol McMahan
Cc: rhemphill@mcdonalpatrick.com; Hannah Metts; Ann Marie Thompson; Jean M. O'Connor (OConnoJ@sctax.org)
Subject: RE: Proposed Orders

Please submit the proposed orders in MS Office (.doc) format to the Court electronically via email on or before Friday, December 13, 2013.

Regards,

Anthony R. Goldman, Esquire
Judicial Law Clerk to
The Honorable John D. McLeod
S.C. Administrative Law Court

From: Carol McMahan [<mailto:MCMAHAC@sctax.org>]

Sent: Tuesday, December 03, 2013 3:15 PM

To: Anthony Goldman

Cc: rhemphill@mcdonaldpatrick.com; hmetts@mcdonaldpatrick.com; Ann Marie Thompson; Jean M. O'Connor (OConnoJ@sctax.org)

Subject: Proposed Orders

Hello Mr. Goldman –

Hope this email finds you well! After speaking with Ms. Metts today it looks like both parties received the etran on 10/09/2013 and the hardcopy on 10/14/2013. Please advise as to the date the proposed orders are due.

Also would you like the proposals in word, pdf, hardcopy or all three?

Take care,

Carol I. McMahan, Esquire

SCDOR - Litigation

PO Box 12265

Columbia, S.C. 29211

Telephone: (803) 898-5130

Email: mcmahac@sctax.org

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Boggero's Portable Toilets and Eugenia Boggero,	)	
	)	Docket No. 13-ALJ-17-0218-CC
	)	
Petitioners,	)	
	)	
vs.	)	
	)	FINAL ORDER AND DECISION
South Carolina Department of Revenue,	)	
	)	
Respondent.	)	

Appearances:

For Petitioner:	Roy R. Hemphill, Esq. and Hannah K. Metts, Esq. of McDonald Patrick Poston Hemphill & Roper, LLC
For Respondent:	Carol I. McMahan, Esq. and Anne Marie Thompson, Esq. of South Carolina Department of Revenue

STATEMENT OF THE CASE

This contested case was brought by Eugenia Boggero ("Boggero") and Boggero's Portable Toilets (Boggero and Boggero's Portable Toilets collectively referred to hereinafter as "Petitioner") against the South Carolina Department of Revenue ("Respondent" or "Department") concerning Respondent's imposition of sales tax on 30% of Petitioner's gross proceeds derived from the servicing of portable toilets for tax years 2009, 2010, and 2011. Boggero owns and operates Boggero's Portable Toilets in Greenwood, South Carolina. Petitioner was audited by Respondent for the tax years 2009 through 2011 for sales tax purposes. The Respondent's auditor imposed sales tax, penalties, and interest on Petitioner's fees charged for servicing of portable restroom units, and Petitioner timely protested the matter and sought a contested case hearing before the South Carolina Administrative Law Court ("ALC") pursuant to S.C. Code Ann. § 12-60-2540 (2000). The ALC heard the contested case on September 12, 2013

(the "ALC Hearing"). Based upon the testimony and exhibits presented at the ALC Hearing and applicable law, I find Petitioner has satisfied her burden and Respondent's imposition of the sales tax was erroneous.

ISSUE

Should sales tax be imposed on Petitioner's gross proceeds derived from the servicing of portable restroom units for tax years 2009, 2010, and 2011?

POSITION OF THE PARTIES

Petitioner argued that the true object of her business is to provide the service of removing and disposing of human waste in a safe manner and that portable restroom units used in connection with such service are incidental to the service. Respondent argued that Petitioner is in the business of providing tangible personal property for lease at retail.

FINDINGS OF FACT

Having carefully considered the entire record, all testimony, evidence, exhibits and arguments, and taking into account the credibility of the witnesses, I make the following findings of fact:

1. The ALC has personal and subject matter jurisdiction over this matter.
2. Notice of date, time, place, and nature of the ALC Hearing was timely given.
3. Boggero testified that her family has been in the portable restroom business since 1968 and that she became the owner of the portable restroom business in 2005.
4. Boggero testified that she has a South Carolina Department of Health and Environment Control ("DHEC") license that allows her to haul waste and that the hauling of waste was governed and regulated by DHEC.

5. Boggero uses the following equipment in her business: tanker trucks, holding tanks for the waste, holding tanks for fresh water, pumps, hoses, valves, gauges, and other equipment. She also testified that she provides deodorizer for the units as well as sanitizes the units when she services the units.

6. Boggero testified that DHEC regulates certain practices in her business including the separation of fresh water from human waste, spills, and similar things.

7. Boggero also testified that she is a member of the trade organization Portable Sanitation Association International ("PSAI"). According to Boggero's testimony, PSAI requires one service every week for each portable restroom unit when such unit is being used.

8. Boggero testified that DHEC regulates the hauling of waste and that the waste that she services must be taken to Greenwood Metro District ("GMD") for disposal.

9. She stated that in order to dump waste at GMD, an individual or entity must have a license through DHEC to engage in that activity, proper equipment, and an agreement with GMD.

10. Boggero testified that because of her DHEC license, the equipment that she owns, and the agreement that she has with GMD, she is authorized to haul and dispose of human waste.

11. Boggero testified that "we do not, never have, rented anything" and that she has always provided a service. (Transcript, p. 29).

12. Boggero testified that she provided portable restroom services for construction sites, special events, weddings, family reunions, and other activities where the public was not allowed a restroom.

13. Boggero testified that 80% of her business is entailed with construction sites and 20% with special occasions and similar events.

14. Boggero testified that she has several types of portable restroom units: construction units, standard special event unit, VIP units, and handicap units. She also testified that she has high-rise units and free standing sink units.

15. Boggero testified that she also provides portable restroom services to individuals and entities who own their own portable restroom units.

16. Boggero testified that all portable restroom units, either owned by her or owned by a customer, and the sink units all have waste that must be disposed of at the disposal plant.

17. Boggero testified that she charges a weekly service fee for construction units and the amount of that fee depends upon whether the customer is a local customer.

18. Boggero also testified that she does not charge for the delivery of construction units but does charge for delivery of special event units. Boggero testified that she does not charge a fee for pick-up of construction units unless the customer requests a special pick-up that is outside the normal scope of her routine delivery/pick-up schedule.

19. Boggero testified that she charges a different rate for special event units than for construction units because with construction units there is a set route, but with a special event there is more travel time and set-up involved. Also, with special event units there is generally more waste than with a construction unit, and Boggero incurs greater service charges at the disposal plant because of the greater amount of waste, and thus charges a higher rate for the special event services.

20. Petitioner's Exhibit 5 was introduced into evidence, and it was a copy of Petitioner's service agreement for a new customer. Boggero testified that she used Petitioner's Exhibit 5 for customers that paid money in exchange for a service in 2009 through 2011. Boggero testified that she had customers sign a service agreement when a new unit was

delivered. She kept the service agreements on file until the customer paid in full and at that time she disposed of the service agreement. Boggero testified that for tax years 2009 through 2011 she had disposed of all signed service agreements because all of those customers had paid in full.

21. She testified that the service agreement states that customers will be invoiced every four weeks for services and if the customer is late in paying, then the service will be terminated.

22. The agreement calls for service fees, not rental charges. There is no term or time period included as a provision in the service agreement.

23. Petitioner's Exhibits 6 through 18 were invoices during the relevant tax periods, and none of the invoices include the word 'rental'. Petitioner's Exhibits 6 through 9 are examples of construction site invoices, which Boggero testified represented approximately 80% of her business.

24. Petitioner's Exhibit 13 was an invoice to Trehel Corporation, which is a construction company, for a job site at Erskine College. The invoice was for the time period of January 19, 2009 through February 5, 2009, and the original charge was for \$80 or \$20 per week, but Boggero testified that she serviced the unit only 3 times instead of 4 during that month, so she charged the customer only for the 3 services. On Petitioner's Exhibit 13, there was also an extra service fee for January 28, 2009. Boggero testified that she received a request from the customer for an extra service, which was provided on January 28, 2009, and therefore she charged for that service, which was not included in the monthly charge.

25. Petitioner's Exhibit 14 was an invoice for a customer who owned its own portable restroom unit. Boggero testified that the customer will call her to service the portable restroom as needed. Boggero testified that the charge for that service was \$35 because when portable

restrooms set up for several months, they build up waste, more than the average 10 gallons that are removed from the standard portable restroom. Boggero testified that generally 20-25 gallons of waste are removed when restrooms are serviced only a few times a year, so she charged a higher rate for a higher level of service and a higher volume of waste. She testified that the higher charge had nothing to do with a customer owning its own unit.

26. The customers identified in Petitioner's Exhibits 16 and 17 owned their own portable restroom units. Boggero testified that she charges them the same as if it was a unit owned by her, and the reason for that is that she only charges for her services, which are the removal and disposal of waste.

27. She also testified that if she has a unit at a construction site and the customer shuts down for a three week period during the holidays, then she does not charge the customer for those weeks as she does not service the units during those weeks of shut down. Boggero further testified that when there is a long-term placement of a unit with very few requests to service the unit, she does not charge the customer for the extra time for the placement of the unit.

28. Boggero testified that she views the portable restroom units as simply holding waste. Although she provides the units to use, the customers will not use them unless they are serviced. She testified that she would charge the same fee to service a 5 gallon bucket. She testified that she views the portable restrooms as vessels or receptacles for collecting human waste and that she services the human waste.

29. When asked what the true object of her business was, Boggero testified "[w]e remove waste", and this is a service not a rent. (Transcript, p. 50).

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, I conclude the following as matter of law:

1. South Carolina Code Section 12-36-910(A) (2000 & Supp. 2012) and Section 12-36-1110 (Supp. 2012) impose a sale tax on the gross proceeds of sales of tangible personal property at retail in this State.

2. The term “sale” is defined in South Carolina Code Section 12-36-100 (2000) to include “any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including...a rental, lease, or other form of agreement....”

3. South Carolina Code Section 12-26-60 (2000) defines the term “tangible personal property” as something that can “be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses.”

4. In this case, an item of tangible personal property is involved, but the parties dispute whether the transaction itself is a service or a rental.

5. Petitioner asserts that she is providing a service of removing and disposing of human waste, but the Department asserts that Petitioner is providing a rental of tangible personal property, *i.e.*, a portable restroom.

6. Respondent’s Exhibit 8, which is its Sales and Use Tax Manual, provides that the true object test shall be used to determine whether a transaction is the furnishing of services or the sale or lease of tangible personal property. See John McCormack & James McCutchen, South Carolina Sales and Use Tax Manual, Ch. 7, p.1 (James McCutchen et al. eds. Spring 2013).

7. The true object test is described in 9 *Vanderbilt Law Review* 231 (1956) as follows:

The true test then is one of basic purpose of the buyer. When the product of the service is not of value to anyone other than the purchaser, either because of the confidential character of the product, or because it is prepared to fit the purchaser’s special need

– a contract or will prepared by a lawyer, or the accident investigation report prepared for an insurance company – this fact is evidence tending to show that the service is the real purpose of the contract. When the purpose of a contract is to produce an article which is the true object of the agreement, the final transfer of the product should be a sale, regardless of the fact that special skills and knowledge go into its production. Under this analysis, printing work, done on special order and of significant value only to the particular customer, is still a sale. The purchaser is interested in the product of the services of the printer, not in the services per se. Similarly, it would seem that contracts for custom-produced articles, be they intrinsically valuable or not, should be classified as sales when the product of the contract is transferred.

8. In addition, Respondent's Sales and Use Tax Manual further cites the Vanderbilt

Law Review article for the following general rule:

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incident to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays...[is measured by the total costs of article and services]. If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is engaged in the business of selling at retail, and also engaged in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other. (quoting Snite v. Dep't of Rev., 74 N.E.2d 877 (Ill. 1947)).

9. The Court finds, and Respondent's witness James L. McCutchen testified, that every matter must be evaluated on a transaction-by-transaction basis to determine if the imposition of the sales tax is appropriate. See generally 19XX WL 1406 (S.C.Tax.Com.) (reviewing the particular circumstances of that case to make a determination regarding the imposition of sales tax on a portable toilet business).

10. Reviewing the facts of this case, the Court finds and concludes that Boggero provides a service agreement to her customers and does not provide a lease or rental agreement.

11. Further, the only testimony in the record is that Boggero charges her customers for services provided only and not for the rental of the portable restroom unit or sink unit.

12. Although Boggero typically charges more for the special event services than for construction unit services, she testified that is because there is more waste generated with the special events than the construction sites and that more waste has to be removed and disposed. Also, Boggero incurs a greater service charge at the disposal plant for the special event services because of the greater amount of waste accumulated at a special event.

13. Boggero testified that she charges the same fee for customers who own their own portable restroom units and for customers who use her portable restroom units because she only charges customers for the services that she provides. There is no evidence in the record that refutes such testimony.

14. Boggero testified that she views the portable restroom units and sink units as receptacles for holding waste. Although she may provide the restroom and sink units for her customers, her customers would not use them but for the services that she provides in conjunction with such units. Even Respondent's field auditor, John Wesley Butler, testified that if Petitioner did not provide services to her customers, then it would be objectionable to the customer. (Transcript, p. 121).

15. Boggero testified that she would charge the same fee if she was servicing a restroom unit that she provided for a customer or if she was servicing a customer's 5 gallon bucket because the unit or the bucket is a vessel or receptacle for collecting human waste and

Boggero testified that she services human waste. When asked what the true object of her business was, Boggero testified that “[w]e remove waste”. (Transcript, p. 50).

16. Mr. Butler, who is a field auditor with the Department and who originally audited Petitioner, testified that the customer’s ultimate interest is “to get rid of human waste” and that Petitioner’s customers are not qualified to take the waste to the disposal center, but Petitioner is qualified to do so. (Transcript, pp. 119-20). Mr. Butler also testified that Boggero “provide[s] the service of cleaning the portable toilets, of taking the waste out of the portable toilets, and that type of thing” and that her weekly billing is “for the service that she is providing.” (Transcript pp. 101, 135-36).

17. South Carolina does not have any current case law that specifically addresses whether the sales tax should be applied in the matter at hand. The Department has issued two relevant advisory opinions as well as a guidance document.

18. In S.C. Revenue Ruling #09-5 (2009), the Department issued an advisory opinion that concluded that a charge by a business temporarily providing portable toilets to another person is a rental of tangible personal property subject to the sales and use tax. In Revenue Ruling #09-5, the Department utilized the true object test.

19. In S.C. Private Letter Ruling #04-2 (2004), the Department issued an advisory opinion that concluded that a charge by a business for delivering a garbage container to a construction site and disposing of construction debris placed in the container is not subject to the sales and use tax. The Department in that opinion also utilized the true object test and determined that customers are hiring the business to haul away and dispose of construction waste and that any containers used in that transaction were being used and consumed in providing a service.

20. The Department in Private Letter Ruling #04-2 specifically noted that if the business was only providing the container and not also providing the service of hauling away and disposing of the waste, then the charge for the container would be subject to the sales and use tax as a rental of tangible personal property. The Department further noted that as the sales and use taxes are transaction taxes if the taxpayer changed its method of operating, then the application of the sales and use tax to the taxpayer's business may also change.

21. In S.C. Revenue Advisory Bulletin #01-5 (2001), the Department issues its official position regarding the application of the sales and use tax to businesses temporarily providing portable toilets to another person. The Department determined that "but for the rentals of the portable toilets, the person providing the portable toilets would not receive fees for servicing the toilets" and thus the true object was the rental of tangible personal property. S.C. Revenue Advisory Bulletin #01-5.

22. Other states have addressed the imposition of sales tax on portable restroom businesses.

23. The Georgia Department of Revenue has issued an informational bulletin providing guidance on the application of Georgia's sales and use tax to fees charged for portable restrooms. See GA Dep't of Revenue Informational Bulletin SUT 2009-09-25 (2009). In the Informational Bulletin, the Georgia Department of Revenue found that although Georgia had not formally adopted the true object test for determining whether a transaction was a sale or lease of tangible personal property, a service, or both, it would look at the object of the transaction in question to determine the taxability for sales and use tax purposes. The Georgia Department of Revenue found that the true object of a transaction wherein there is a "lease of portable toilets in conjunction with mandatory services that are associated with the providing of portable toilets" is

to “provide a sanitation service.” Id. In making its determination the Georgia Department of Revenue looked to “the value/cost of the tangible personal property that was being transferred as compared with the value/cost of the services that were being provided” and found that the value of the portable toilet, alone, was not significant when compared to the value and costs of the services that were being provided. Id. The Georgia Department of Revenue found that providing a portable toilet unit in conjunction with all of the associated services, including, but not limited to pumping, cleaning, deodorizing, refilling toilet paper, general maintenance, pick-up and delivery, are all part of the non-taxable sanitation services. Id.

24. The Massachusetts Department of Revenue has taken the position that whether a particular transaction is a personal service transaction or a lease of tangible personal property is a question of fact. See Mass. Department of Revenue Directive 00-3: Sales Tax Treatment of Rentals of Toilets (2000). In Massachusetts, the servicing of portable restrooms is not subject to its sales tax if a transfer of a portable toilet unit occurs, the charges for the rent of the unit and for the performance of the services are not itemized, and the fair rental charge for the rental of the unit is not inconsequential as defined by the Massachusetts statutory laws. Id.

25. The State of Washington’s Department of Revenue does not impose its sales tax on portable restroom units because their long-standing position is that the vendor is providing more than rental services. The vendor is removing waste, recharging the chemicals, cleaning, and disinfecting the unit. See WA Dep’t of Rev., Tax Facts, 6 (June 2006).

26. In this case, Boggero testified that she provided services to all customers during the tax periods in question. The Department, however, has produced no evidence that Boggero failed to provide services for any of the invoices at question during this case.

27. Clearly, Boggero did not provide a lease arrangement for any customer who owned its own restroom unit.

28. There is no testimony in the record that Boggero provided a restroom unit without providing a service. To the contrary, Boggero testified that she always provides a service.

29. Further, Boggero testified that she provides services to those customers who own their own units, and thus her services are not inextricably linked to the units that she owns.

30. Moreover, Boggero testified that her charges are based on the amount of waste serviced. Because the construction site units are serviced more often and are used less frequently than the special event units, she charges less per week for the construction site units than for the special event units.

31. The Department's own witness, Mr. Butler, testified that Boggero's customers would find it objectionable if the units were not serviced on a timely basis. Further, the record is replete with uncontradicted testimony from Boggero that she only charges for the services provided to her customers and not for the use of the units.

32. Boggero testified that her business principle is to earn someone's money and not to take it, which is why she does not charge rent. She earns their money by providing a service and giving the best service. As admitted by Respondent's own witness, the customer would not desire a portable restroom unit but for the servicing of such unit.

33. Boggero's customers are engaging her services in order to lawfully remove and dispose of human waste because without Boggero's services, the customers cannot lawfully dispose of the human waste.

34. I find and conclude that based on Petitioner's method of operation and her service agreement, the true object of Petitioner's business is to provide a sanitation service to her

customers. See generally, Ryder Truck Lines, Inc. v. S.C. Tax Comm'n, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966) (“[A] taxing statute must be construed most favorably to the taxpayer, and any doubt should be resolved against the taxing authority.”).

35. Petitioner’s business model is akin to the facts and circumstances set forth in S.C. Private Letter Rule #04-2 in which the Department found that the sales tax did not apply to a business delivering garbage containers to a construction site and disposing of construction waste where the customer is hiring the business to haul away and dispose of waste.

36. Similarly, Petitioner is hired to haul away and dispose of waste, and Petitioner may, at the request of her customers, provide a portable restroom unit or sink unit as part of her sanitation service, but such units are incidental to the actual service of removing, hauling away, and disposing of waste.

ORDER

WHEREFORE, IT IS ORDERED THAT, the true object of Petitioner’s business is to provide a sanitation service of removing, hauling away, and disposing of human waste and that the providing of restroom or sink units are incidental to such service. The Department’s imposition of the sales tax on Petitioner for tax years 2009 through 2011 was erroneous and is hereby reversed.

AND IT IS SO ORDERED.

John D. McLeod
S.C. Administrative Law Judge

Columbia, S.C.



Georgia Department of Revenue
Informational Bulletin SUT 2009-09-25
Application of Georgia Sales and Use Tax to the Providing of Portable
Toilets and Associated Services

- 1) **Purpose/Subject:** This informational bulletin provides guidance on the application of Georgia sales and use tax to charges for portable toilets and charges for certain services associated with portable toilets. The Department of Revenue ("the Department") has reconsidered its prior sales and use tax treatment of charges for portable toilets. Historically, the Department treated charges for portable toilets as sales of nontaxable services. The Department considered changing this policy effective October 1, 2009 by treating such charges as taxable leases or rentals of tangible personal property. However, after much deliberation, including meeting with representatives from the industry, and performing additional research, the Department has elected to continue the historical practice of treating charges for portable toilets as a nontaxable sanitation service.
- 2) **Effective Date:** October 1, 2009.
- 3) **Supersedes:** All previous documents and any oral directives in conflict herewith.
- 4) **Authority:** O.C.G.A. §§ 48-8-2; 48-8-30.
- 5) **Scope:** An informational bulletin is intended to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of law to a specific set of facts or a general category of taxpayers. An informational bulletin does not have the force or effect of law, and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.
- 6) **Issues:**
 - a) Whether charges for providing portable toilets and related services are subject to Georgia sales and use tax?

7) Discussion of Issues

Georgia imposes a sales and use tax on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on some services that are specifically enumerated in the tax code. O.C.G.A. § 48-8-30(a).

Services that are not specifically listed are exempt from Georgia sales and use tax. When a transaction involves both a transfer of tangible personal property and the providing of a nontaxable service, the Department must make a determination as to whether this type of transaction is the sale or lease of tangible personal property, a service, or both.

Many states have adopted a "true object" or "dominant purpose" test for making taxability determinations in cases where it is not entirely clear whether the transaction is the sale or lease of tangible property, a service, or both. While Georgia does not formally subscribe to a "true object" type test; from a policy perspective, we are frequently required to look to the object of a specific transaction to help determine the taxability for sales and use tax purposes.

In the immediate case, the lease of portable toilets in conjunction with mandatory services that are associated with the providing of portable toilets, the Department has determined that the object of this type of transaction is to provide a sanitation service. In making this determination, the Department looked to the value/cost of the tangible personal property that was being transferred as compared with the value/cost of the services that were being provided. It was found that the value of the portable toilet itself was clearly insignificant when compared to the value/cost of the services that were being provided.

Therefore, providing portable toilets along with all the associated services; including but not limited to, pumping, recharging with chemicals, disinfecting, cleaning, deodorizing, refilling toilet paper, general maintenance and repair, pick-up, and delivery, are all considered to part of a nontaxable sanitation service.

All portable toilet sanitation service providers are required to pay sales and/or use tax on all purchases of tangible personal property and taxable services that are used or consumed in the providing of their sanitation service.

FOR MORE INFORMATION

For more information on this subject, contact the Taxpayer Services Division at 404-417-4300, from 8:00 am to 4:30 pm EST, Monday through Friday, excluding holidays.

Persons with hearing or speech impairments may call our TDD number at 404-417-4302.

For forms and other information, visit our website (www.dor.ga.gov).



The Official Website of the Department of Revenue (DOR)

Department of Revenue

About DOR

[Home](#) [Businesses](#) [Help & Resources](#) [Legal Library](#) [Directives](#) [Directives - By Decade](#) [\(2000-2009\) Directives](#) [Directive 00-3: Sales Tax Treatment of Rentals...](#)

Directive 00-3: Sales Tax Treatment of Rentals of Portable Toilets

Introduction: This Directive clarifies the application of the Massachusetts sales tax under G.L. c. 64H to rentals of portable toilets.

Facts: In a typical transaction, a customer enters into a rental agreement with a portable toilet service company or other lessor for the use of one or more individual portable toilet units to be placed on construction sites, at wedding receptions, concerts, or other events where traditional bathroom facilities are unavailable or inadequate.

As part of the contractual agreement, the lessor cleans, maintains, and removes waste from units on a periodic basis for the duration of the contract. Services generally include setting up the units, cleaning and emptying them, replacing paper supplies, disposing of the waste removed, and removing the units at the termination of the contract. The customer is generally charged a flat fee for both the rental and servicing of the unit.

Issue: Are charges for the rental of portable toilet units under a rental and service agreement subject to Massachusetts sales tax?

Directive: The transactions at issue in this directive are mixed transactions that involve both a transfer of tangible personal property and services connected with that transfer. Whether such a transaction is a sale or lease of tangible personal property subject to tax, or a nontaxable service depends on the facts and circumstances.

The entire transaction will be subject to tax where:

- (1) a transfer of tangible personal property, the toilet unit, occurs;
- (2) charges for rental of the unit and performance of the service are not separately stated on the customer invoice; and

(3) the fair rental charge for rental of the unit is not inconsequential as defined in 830 CMR 64H.1.1. A charge is not inconsequential if it exceeds ten percent of the total charge.

If the value of the tangible personal property is less than ten percent of the total charge, the entire transaction above will be exempt from sales tax. In such a case, the service enterprise must pay a sales or use tax at the time it purchases the unit from a supplier.

If charges for the rental of the portable toilet units are separately stated from charges for servicing them, it does not matter whether the cost of the units is consequential or inconsequential in relation to the total cost. Sales tax is imposed only on the separately stated rental charges. Lessors of portable toilet units are required to collect and remit sales tax in accordance with the rules explained in Massachusetts Regulation 830 CMR 62C.16.2: *Sales and Use Tax Returns and Payments*.

Discussion of Law:

A. General

Massachusetts law imposes a five percent sales tax on retail sales of tangible personal property in Massachusetts by any vendor, unless otherwise exempt. G.L. c. 64H, § 2. A retail sale is defined as a sale of tangible personal property for any purpose other than resale in the regular course of business, excluding personal service transactions which involve no sale or which involve sales as inconsequential elements for which no separate charges are made. G.L. c. 64H, § 1. The definition of "sale" specifically includes any transfer of title or possession, or both, exchange, barter, lease, *rental*, conditional or otherwise, of tangible personal property. *Id.* (emphasis added).

The sales tax is calculated based on the sales price of the tangible personal property. "Sales price" is defined as the total amount paid by a purchaser to a vendor as consideration for a retail sale, valued in money or otherwise. G.L. c. 64H, § 1. In determining the sales price, any amount paid for any services that are a part of the sale is included. *Id.*

B. Retail Sale or Personal Service Transaction

The rental of portable toilet units under a rental and service agreement involves both the transfer of tangible personal property, the portable toilet unit itself, and a service, the cleaning and maintenance of the unit. [1] Whether a particular transaction involving the transfer of tangible personal property is a personal service transaction is a question of fact. If

charges for rental and service are not separately stated, the entire transaction will be exempt from sales tax if charges for the rental of the portable toilet unit are "inconsequential." See G.L. c. 64H, § 1. Under the provisions of 830 CMR 64H.1.1(1) the term "inconsequential" means having a value of less than ten percent of the total charge. If the charge for the portable toilet unit exceeds ten percent of the total charge, it is "not inconsequential" within the meaning of 830 CMR 64H.1.1(1), and the sales tax applies to the entire transaction. *Id.* If the charges for the rental of the toilet units are separately stated on the bill, only those charges are subject to the sales tax as a lease of tangible personal property under G.L. c. 64H, § 1, regardless of whether those charges are consequential or inconsequential within the meaning of the regulation.

C. Use of Resale Certificates

If the lessor collects sales tax from its customers for the rental of the portable toilet either because they are separately stated on the bill, or they are a consequential element of a combined bill, then the lessor may present resale certificates to vendors when purchasing portable toilet units. The portable toilet units are being "resold" when rented to customers and are therefore not subject to sales tax when purchased. See G.L. c. 64H, § 1. However, if the lessor is not collecting sales tax on the rental of the units, then the units are not being resold, and the lessor must pay Massachusetts sales or use tax when purchasing the portable toilet units from vendors.

In addition, the lessor is responsible for paying sales tax when purchasing all paper products and other supplies used in the delivery of the service component of the transaction. The lessor is the consumer of these items.

/s/Frederick A. Laskey
Frederick A. Laskey
Commissioner of Revenue

FAL:DMS:sra

March 24, 2000

DD 00-3

[1] Because the two transactions are readily separable, it is not necessary to determine whether the basic purpose of the

transaction is the rental of the portable toilet unit or the services provided. "The predicate for application of this 'basic purpose' test is that the services and the property be inseparable because of the integrated nature of the transaction." *Information Services, Inc. v. Commissioner of Revenue*, 48 Mass. App. Ct. 197, 198 (1999). See also *New England Telephone and Telegraph Co. v. Clark*, 624 A.2d 298, 301 (1993); *Rylander v. San Antonio SMSA*, 2000 Tex. App. Lexis 68 (2000).

© 2013 Commonwealth of Massachusetts.

Mass.Gov® is a registered service mark of the Commonwealth of Massachusetts.

[Site Policies](#) [Contact Us](#)

Tax Facts

Contents

Tax Incentive Programs.....	2
Other Legislation	3
Tax Workshops	4
Disputed taxes continue pending court decision	4
Special Notices.....	5
Taxpayer Rights/Responsibilities	5
Rule Making	6
Question and Answer.....	6
On the Web	7
It's that time of year.....	7
Biz Fair 2006	7

Legislative Tax Changes

The 2006 Legislature made several changes to taxes and programs administered by the Department of Revenue. This publication provides a brief summary of some of the bills affecting excise taxes. For more information, please refer to the bill at <http://apps.leg.wa.gov/billinfo/>.

* Indicates Special Notice will be issued

Business and Occupation (B&O), Sales, and Use Taxes

* Hospital patient lifting devices – ESHB 1672 (chapter 165, Laws of 2006) provides B&O tax credits to hospitals that purchase mechanical lifting devices and other equipment used to minimize manual patient handling, consistent with a safe patient handling program. The credit is available only for purchases made between June 7, 2006 and December 30, 2010. *Effective June 7, 2006.*

Comprehensive cancer centers - ESHB 2314 (chapter 514, Laws of 2005) provides a B&O tax exemption for amounts received by a comprehensive cancer center to the extent those funds are exempt from federal income tax. A sales and use tax exemption also applies to sales of medical supplies, chemicals, or materials to a comprehensive cancer center. This bill was passed in 2005 but takes effect this year. *Effective July 1, 2006.*

* Use tax exemption for state credit unions - HB 2364 (chapter 11, Laws of 2006) provides a use tax exemption for state credit unions on assets acquired from federal, foreign, and out-of-state credit unions as a result of a merger or conversion. *Effective June 7, 2006.*

* Farm fuel users - HB 2424 (chapter 7, Laws of 2006) provides an exemption from sales and use taxes for diesel fuel or aircraft fuel used for producing agricultural products by farmers and persons providing horticultural services for farmers ("farm fuel users"). *Effective March 6, 2006.*

* Farm machinery replacement parts – SHB 2457 (chapter 172, Laws of 2006) establishes a new retail sales tax and use tax exemption for replacement parts purchased by eligible farmers for qualifying farm machinery and equipment. To qualify for the exemption, a farmer must generally have at least \$10,000 of gross income from farming activities and apply to the Department of Revenue. The Department will issue an exemption certificate to eligible farmers. *Effective July 1, 2006.*

* Excise tax return changes – HB 2671 (chapter 256, Laws of 2006) moves the monthly excise tax return due date to the 25th of the month following the reporting period; extends the time by which timely ACH debit electronic filing payments may be initiated to 11:59 p.m. Pacific time with an effective date on or before the next banking day after the due date; and eliminates the five percent penalty added to Department billings unless the amount underpaid is more than 20 percent of the tax due and at least \$1,000. *Billing penalty change effective July 1, 2006; other changes effective August 1, 2006.*

* Nonprofit businesses promoting conventions and tourism – SHB 2778 (chapter 310, Laws of 2006) grants a B&O tax exemption to nonprofit corporations for payments or contributions received from governmental entities or Indian tribes that are used to promote conventions and tourism in Washington. *Effective June 7, 2006.*

* **Tax exemptions for solar hot water systems** - 25HB 2799 (chapter 218, Laws of 2006) provides retail sales tax and use tax exemptions for purchases of qualifying solar energy water heating systems and equipment, replacement parts, and related installation and services. *Effective July 1, 2006; expires July 1, 2009.*

* **Tax obligations for insurers** - SHB 2880 (chapter 278, Laws of 2006) clarifies that insurers are required to pay excise taxes on the sale, purchase, use, or possession of:

- Real property,
- Tangible personal property,
- Extended warranties, and
- Retail services.

Effective March 28, 2006.

* **Livestock nutrient management** - ESHB 3222 (chapter 151, Laws of 2006) expands current sales and use tax exemptions for tangible personal property and services used exclusively to maintain dairy nutrient treatment facilities to include all licensed dairies, concentrated animal feeding lots, and animal feeds lots. Eligible persons must apply to the Department for an exemption certificate. The bill also expands the current sales and use tax exemptions for anaerobic digesters used to treat dairy manure to include anaerobic digesters used to treat all livestock manure. *Effective July 1, 2006.*

* **Customized employment training program** - 2SSB 6326 (chapter 112, Laws of 2006) establishes a new program for customized employment training through community and technical colleges. Participating employers may claim a B&O tax credit for half of the amount repaid for employee training costs. Participating employers are required to increase their employment in this state by a minimum of 75 percent of the number of employees enrolled in the training program. *Effective June 7, 2006.*

* **Enhancing air quality at truck stops** - SSB 6512 (chapter 323, Laws of 2006) provides a B&O tax deduction for businesses that sell, lease, or rent auxiliary power to heavy duty diesel vehicles through onboard or stand-alone electrification systems. In addition, the bill provides various retail sales and use tax exemptions. *Effective June 7, 2006; expires July 1, 2015.*

* **Syrup tax** - SSB 6533 (chapter 245, Laws of 2006) creates a B&O tax credit for the portion of the syrup tax paid by buyers of syrup for use by the buyer to make carbonated beverages for sale. The portion of the syrup tax allowed as a credit is phased in, beginning at 25 percent on July 1, 2006, and increasing by 25 percent each year until it reaches 100 percent of the syrup tax paid on July 1, 2009. *Effective July 1, 2006.*

* **Motion picture industry B&O tax credit** - 2SSB 6558 (chapter 247, Laws of 2006) establishes the Motion Picture Competitiveness Program (MPCP) to encourage filming of movies, television programs, and commercials in Washington. The bill also provides a B&O tax credit for businesses that make contributions to the MPCP and file their taxes electronically. An annual \$3.5 million cap applies. *Effective June 7, 2006; expires July 1, 2011.*

* **Professional employer organizations (PEOs)** - SSB 6671 (chapter 301, Laws of 2006) provides that income derived by a PEO for providing professional employer services is subject to the Service and Other Activities B&O tax classification. A deduction is allowed for amounts received by a PEO from a client that represent the actual cost of wages, benefits, and certain other payments made to or on behalf of covered employees. *Effective July 1, 2006.*

* **Reduced B&O tax rates for timber activities** - SSB 6874 (chapter 300, Laws of 2006) provides a reduced B&O tax rate for timber extracting or extracting timber for hire; manufacturing or processing for hire timber into timber products or wood products; manufacturing or processing for hire timber products into other timber products or wood products selling at wholesale timber extracted by the seller and selling at wholesale timber products or wood products manufactured by the seller from timber or other timber products. Partially offsetting the rate reduction is a new surcharge that takes effect July 1, 2007. *Rate reduction effective July 1, 2006; surcharge effective July 1, 2007.*

Tax Incentive Programs

* **Vegetable seed conditioning** - SHB 1523 (chapter 142, Laws of 2006) broadens the rural county sales and use tax deferral/exemption program for manufacturers to include conditioning of vegetable seed. This deferral exempts the construction and renovation of a building or acquisition of new machinery or equipment that is used for conditioning vegetable seeds in a rural county or distressed area. *Effective July 1, 2006.*

Tax incentives for aluminum smelters extended - HB 2348 (chapter 182, Laws of 2006) extends to January 1, 2012, the package of tax incentives for aluminum smelters. The incentives (a reduced B&O tax rate, B&O tax credits, and sales and use tax exemptions) were originally scheduled to expire January 1, 2007. *Effective June 7, 2006.*

* **Aerospace incentives expanded; special B&O tax rate for FAR part 145 repair stations extended** - HB 2466 (chapter 177, Laws of 2006) expands the B&O tax credit for aerospace preproduction development expenditures and the sales/use tax exemption for computer equipment used to develop, design, and engineer commercial airplanes to non-manufacturing businesses in the aerospace industry. In addition, the B&O tax rate for FAR part 145 repair stations is changed to .002904 from .00275 and is extended to December 31, 2012. The .00275 rate was previously scheduled to expire after June 30, 2006. The bill also modifies the B&O tax credit for property taxes paid on property used in manufacturing commercial airplanes and airplane components to include certain leasehold excise taxes paid. *Effective July 1, 2006; B&O tax credit for certain leasehold excise taxes effective January 1, 2007.*

* **Biotechnology manufacturer tax incentives** - SHB 2640 (chapter 178, Laws of 2006) creates a sales and use tax deferral/waiver program for investments in construction or renovation of structures, or machinery and equipment used for biotechnology product or medical device manufacturing. An application for the deferral must be received and approved by the Department before construction is initiated. *Effective July 1, 2006.*

Contingent tax incentives for semiconductor material manufacturers - SHB 3190 (chapter 84, Laws of 2006) provides that persons who manufacture or process for hire silicon crystals, silicon ingots, raw polished semiconductor wafers, or compound semiconductor wafers may be eligible for a reduced B&O tax rate of .00275 and a sales and use tax exemption for gases and chemicals used in the manufacturing process. These tax incentives are contingent on the siting, expansion or renovation, and commercial operation of a semiconductor fabrication facility in Washington with a combined investment of at least \$350 million by a single firm. Eligible businesses must file electronically with the Department of Revenue and must also file an Annual Report detailing employee information by March 31 of each year. *Effective June 7, 2006.*

* **Tax incentives for dairy and seafood manufacturers** - EHB 3159 (chapter 354, Laws of 2006):

- Provides B&O tax exemptions for manufacturing dairy products and manufacturing certain seafood products, including wholesale sales of such products to purchasers who transport the goods out-of-state. *Effective July 1, 2006; expires July 1, 2012.*
- Expands the sales/use tax deferral/exemption program for fruit and vegetable processors to include processors of dairy products and certain seafood products. *Effective July 1, 2007.*
- Expands the warehouse remittance program to include cold storage warehouses of at least 25,000 square feet that are used to store dairy and seafood products. Cold storage warehouses used to store fruit or vegetables, dairy products, and seafood products will not longer be included in the warehouse remittance program as of July 1, 2012. *Effective July 1, 2007.*
- Establishes a specific B&O tax rate of .00484 for persons inspecting, testing, labeling, or storing canned salmon owned by another person. *Effective July 1, 2006.*
- Provides an expiration date of July 1, 2012, for the B&O tax exemption (RCW 82.04.4266) for manufacturing fresh fruit and vegetables and for wholesale sales of these products to purchasers who transport the products out-of-state. *Effective July 1, 2006.*

Other Legislation

* **Public utility tax credit for billing discounts** - HB 2644 (chapter 213, Laws of 2006) increases the statewide cap to \$5.5 million from \$2.5 million for fiscal year 2007 in computing a public utility tax base credit. Light and power businesses and gas distribution businesses providing billing discounts and qualifying contributions may be eligible for this credit. *Effective July 1, 2006.*

Hospital benefit zones - SHB 2670 (chapter 111, Laws of 2006) allows a local government to establish a hospital benefit zone and finance certain public improvements within that zone using revenue generated from a new sales/use tax that is credited against the state sales/use tax. The revenue received from the tax each fiscal year is limited and must be used to repay the principal and interest on bonds issued to finance the public improvements within the hospital benefit zone. *Effective July 1, 2006.*

Local infrastructure financing tool - E2SHB 2673 (chapter 181, Laws of 2006) allows a local government to create a revenue development area from which annual increases in revenues from local sales, use, and property taxes are measured. The revenue increases are used to pay principal and interest on general obligation or revenue bonds issued to finance public improvements within the development area. State matching funds may also be received through imposition of a local sales/use tax that is credited against the state sales/use tax. *Effective July 1, 2006; expires June 30, 2039.*

Extension of petroleum products tax - SHB 2678 (chapter 276, Laws of 2006) extends the expiration date for the pollution liability insurance program to June 1, 2013. *Effective June 7, 2006.*

Property tax exemption for nonprofit entities - SB 6280 (chapter 319, Laws of 2006) eliminates the requirement that property be irrevocably dedicated to the exempt purpose of the nonprofit organization. The property must still be used for the exempt purpose of the nonprofit organization, but conditions such as reversionary clauses on deeds will no longer disqualify the property from exemption. *Effective June 7, 2006.*

* **Nursing facility bed tax repealed** - SB 6368 (chapter 241, Laws of 2006) repeals entirely the quality maintenance fee imposed on nonexempt nursing facilities. *Effective July 1, 2007.*

* **Direct shipments from out-of-state wineries** - ESB 6537 (chapter 49, Laws of 2006) allows out-of-state wineries to ship an unlimited amount of wine directly to consumers in Washington if the winery has obtained a wine shipper's permit and is registered with the Department of Revenue. Out-of-state wineries shipping to Washington consumers must collect and remit Washington sales or use tax on such sales. *Effective June 7, 2006.*

* **Beer and wine distribution** - 2SSB 6823 (chapter 302, Laws of 2006) grants in-state and out-of-state producers of beer and wine the right to distribute their products directly to Washington retailers. Out-of-state producers must register with the Liquor Control Board as certificate of approval holders. *Effective April 14, 2006; expires June 30, 2008.*

* **Public transit fare income** - SB 6826 (chapter 336, Laws of 2006) provides a deduction from the urban and motor transportation classification of the public utility tax for amounts derived from fees or charges for transit services by a public transportation agency. A "public transportation agency" means urban public transportation systems as defined in RCW 47.04.082 and municipalities as defined in RCW 35.58.272. *Effective June 7, 2006.*

Tax Workshops

Looking for a tax workshop in your area? Check out our web site! We offer workshops free of charge throughout the state. To view the updated schedule or for more information, visit our web site at <http://dor.wa.gov>, click on Doing Business, then select "Workshops" from the menu on the left side.

Once you find the workshop that's right for you, register online or call us to sign up. See you there!

Business Outreach Workshops

These workshops provide a basic overview of taxes that apply to various business activities in Washington. Check our web site for dates and times.

Apportionment Workshop

This workshop covers the approved apportionment methods under new WAC 458-20-194, including: when apportionment is appropriate, separate accounting methods, cost basis methods, and representative third party costs.

7/13/06 Vancouver 10:00 a.m. - 12:00 p.m.
Clark College, Gaiser Hall/Central Conference Room,
1800 E McLoughlin Boulevard
- To register call 1-800-647-7706

Construction Workshop

This workshop provides tax information specific to the construction industry, including: custom and speculative construction, government contracting, public road construction, and construction on Indian land.

7/13/06 Vancouver 1:30 - 3:30 p.m.
Clark College Gaiser Hall/Central Conference Room
1800 E McLoughlin Boulevard
- To register call 1-800-647-7706

Free workshops throughout the state

Visit our web site for more
information <http://dor.wa.gov>

Disputed Taxes Continue in Effect Pending Court Decision

Sales tax on extended service warranties and an additional liter tax on spirits will remain in effect while a case challenging the validity of these taxes winds its way through the appellate courts.

An appeal of a Snohomish County Superior Court ruling that these two tax increases could not be imposed without a vote of the people is pending. The State Supreme Court has issued a stay of the lower court's ruling while an appeal of the case continues through the courts. A final decision is not expected until late this year or early next year. The Department of Revenue will be notifying retailers about the case and educating consumers about their refund options, should the lower court's ruling be upheld.

The Department recommends that purchasers of extended service warranties and hard liquor keep their receipts to facilitate obtaining any refunds that may become due. The Department will provide instructions on how to obtain a refund if a final decision ultimately finds that the taxes are invalid. The Liquor Control Board is developing its own refund procedures.

Special Notices

We recently issued the following Special Notices. These notices discuss current issues as well as changes resulting from new legislation. They are available online by visiting <http://dor.wa.gov> and clicking on "Special Notices" under Quick Clicks. You may also call 1-800-647-7706 to have a copy sent to you.

Apportionment – Approved Methods
– Issued December 21, 2005.

B&O Tax Credit and Training Assistance for New and Expanding Businesses – issued May 5, 2006.

Beer and Wine Sales to Retailers
– issued April 17, 2006.

Dairy Product Processors Receive B&O Tax Exemption – issued May 25, 2006.

Direct Wine Sales to Consumers – New Registration and Tax Collection Requirements – Issued May 10, 2006.

Electric Utility Tax Credit for Rural Economic Development Revolving Fund – updated April 28, 2006.

Farm Fuel Users – Sales and Use Tax Exemption – issued March 8, 2006.

Hospital Safe Patient Handling B&O Tax Credit – issued May 18, 2006.

Livestock Nutrient Management – Tax Exemptions – issued May 16, 2006.

New Due Date for Monthly Tax Return – Modified Electronic Payment Requirements – Billing Penalty Modified – issued May 1, 2006.

Personal Chefs – issued January 31, 2006.

Public Transportation Agencies May Deduct Revenue – issued May 31, 2006.

Replacement Parts for Farm Machinery and Equipment – Sales and Use Tax Exemption – issued May 15, 2006.

Retailers of Fountain Drinks – B&O Tax Credit for Syrup Tax Paid – issued April 14, 2006.

Telephone Program Excise Tax Rates for Fiscal Year 2007 – issued April 20, 2006.

Timber Activities – Reduced Business and Occupation Tax Rate – Issued May 22, 2006.

Taxpayer Rights and Responsibilities

The Taxpayer Rights and Responsibilities law (chapter 82.32A RCW) provides the basic principles that form the Department's relationship with taxpayers – voluntary compliance, fairness, and uniform application.

Whether you are a business owner, homeowner, nonprofit organization, or individual consumer, you are also a Washington State taxpayer with specific rights and responsibilities. We encourage you to become familiar with your rights and responsibilities.

Taxpayer rights

Washington taxpayers have the right to:

- A simple and prompt administrative process for tax refunds and credits
- Timely, fair, and equitable treatment with dignity and respect
- Accurate written information on reporting instruction appeal procedures, refund claims, and reasons for assessment
- Public hearing on proposed rules
- Review and appeal assessments, business registration revocations, and adverse rulings

Taxpayer responsibilities

Washington taxpayers have the responsibility to:

- Register your business with the Department of Revenue
- Know your tax reporting obligations and seek instruction when you are uncertain
- Keep accurate and complete business records
- File returns and pay taxes in a timely manner
- Ensure the accuracy of the information entered on your tax returns
- Substantiate claims for refund
- Notify the Department of Revenue and pay taxes promptly when closing a business

Taxpayer Rights Advocate

Our employees are committed to treating you with fairness and upholding your rights. However, problems may still occur. If you cannot solve a problem through routine channels, you may contact the Department's Taxpayer Rights Advocate.

The Taxpayer Rights Advocate can help you understand your options and the processes and procedures available to resolve the dispute. The Advocate can also serve as a mediator between you and the Department. The Advocate cannot, however, change applications of law or grant relief from taxes that are legally due.

If you think you have not been afforded your rights, you may contact:

Taxpayer Rights Advocate

Washington State Department of Revenue
Taxpayer Services Division
PO Box 47478
Olympia, WA 98504-7478
1-800-647-7706
(360) 705-6714

Rule Making

Following is a list of the Department of Revenue's recent tax rule adoptions and repeals. For specific information on the rule changes, to obtain a copy of a newly adopted rule, or for more information regarding how these rules may affect you, contact us online at <http://dor.wa.gov> and click on Laws and Rules, then one of the bullets under "Rule Making." You may also call our Telephone Information Center at 1-800-647-7706.

Excise tax rule (WAC) adopted or amended:

- 458-20-17803 Use tax on promotional material.
Effective March 27, 2006.
- 458-20-270 Telephone program excise tax rates.
Emergency rule effective May 4, 2006.

Estate tax rules (WAC) adopted or amended: Chapter

- 458-57 WAC Estate and transfer tax. Six current rules were amended to reflect a Supreme Court decision ruling. Seven new rules were adopted to implement the new Washington estate tax that became effective May 17, 2005. Effective April 9, 2006.

Changes to interpretive/policy statements

Our issue interpretive and policy statements, such as Excise Tax Advisories and Property Tax Advisories, to explain how tax applies to a specific set of facts or to address specific issues. These statements are issued or cancelled periodically based primarily on changes in the tax law. Statements that are cancelled can no longer be relied upon for tax application.

Excise tax advisory adopted:

- 2028.04.193 Foreign trade zones. Effective February 1, 2006.
- 2029.04.245 Taxation of network telephone service used to provide Internet access services. Effective February 24, 2006.
- 2030.12.271 Agricultural burning exemption (prior to July 1, 2005). Effective April 28, 2006.
- 2031.04.183 Camping clubs receiving initiation fees and dues income. Effective April 28, 2006.

If you need to pay a balance due, an unpaid tax return,

or a tax assessment, it's easy to send your payment electronically.

Simply visit our web site at <http://dor.wa.gov>.

Question & Answer

A I am renting a portable toilet unit. The company providing the portable toilet is not charging sales tax on the rental – Is this correct?

Q Yes. Our long-standing position is that "rentals" of portable chemical toilets are not rentals of tangible personal property. Typically, the owner of the unit replaces the toilet paper, removes waste from the tank, recharges the chemicals, cleans, and disinfects. This amounts to more than merely renting the unit to a customer.

Instead, businesses providing portable toilet units must report their gross income from providing such services under the Service and Other Activities B&O tax classification. The charge is not subject to sales tax or retailing B&O tax.

When a business buys portable toilets to rent to consumers, sales tax is due on the purchase because the business is not reselling ("renting") them. If sales tax is not paid, use tax is due. The same is true for purchases of chemicals, toilet paper, and other supplies.

Discover the Freedom of Electronic Filing

Sign up for e-file. It's fast, free, secure and available 24/7.

<http://dor.wa.gov>

Need help? 1-877-345-3353



On the Web

You may be richer than you think!
Unclaimed property E-claim goes live

We have an exciting new feature that allows you to search for unclaimed property (UCP) and file the claims via our web site.

Find everything you need through one web site
Simplify your life! More than a dozen state agencies have come together to provide you with a single, easy-to-use location linking the resources you need to do business in Washington State.

Go to <http://business.wa.gov> and you're connected to a wide variety of necessary tools and information. Doing Business at Access Washington is a web site designed exclusively to make it easier and more efficient for you to accomplish licensing, permitting, paying taxes and more.

It's your single gateway to the state services and information you'll need as you build and grow your business. <http://business.wa.gov> - bookmark it today!

It's that time of year . . .

With summer here, we get many questions on the tax applications for recreational and sporting activities and fees. Charges for amusement and recreational activities, such as batting cages, bowling, basketball, rock climbing, swimming, and soccer are subject to sales tax. The guidelines below will help you determine whether or not certain fees are subject to retail sales tax. For purposes of these guidelines, the following definitions apply:

Participation and facilities fee: a fee paid for the right to participate in a sport or for the use of a facility or field.

League fee: a fee that allows a person or team the right to join a group of other sports teams, with the intention that they will compete among themselves.

Participation fees paid for the right to participate in the sport or facilities fees paid to use an amusement or recreational facility (such as a baseball or soccer field, gym, or pool) are subject to retail sales tax.

League fees paid for the right to join in a group of sports teams and compete against them, are not subject to retail sales tax. Instead, this income is subject to B&O tax under the Service and Other Activities classification.

Biz Fair

Washington Small Business Fair

Date: Saturday, September 9

Time: 8:00 a.m. - 3:30 p.m.

Location: Renton Technical College
3000 NE 4th Street
Renton, Washington

BizFair is the largest business fair in Washington. Learn how to start or expand a small business. Attend seminars and get information on topics ranging from taxes to business planning and marketing. We will host a business tax overview, our representative will be available throughout the day to answer your questions.

For a list of exhibitors, seminar topics, and directions to the fair, visit BizFair online at www.bizfair.org.



PRSTRT STD
U.S. POSTAGE PAID
Washington State
Department
of Printing

Taxpayer Services Division
Washington State Department of Revenue
PO Box 47478
Olympia, WA 98504-7478

Department of Revenue Taxpayer Assistance

Telephone Information Center
1-800-647-7706

Northwest: (360) 676-2114
North: (206) 956-3000
Central: (360) 457-2564
Southwest: (253) 437-3440
South: (360) 705-6676
East: (360) 260-6176
West: (425) 356-2911
Northwest: (509) 482-3800
Central: (509) 663-9714
Southwest: (253) 382-2000
South: (509) 575-2783
West: (509) 734-7526



To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users please call 1-800-451-7985.



Printed on recycled paper
N0004-Q/M 6/06

Hannah Metts

From: Carol McMahan <MCMAHAC@sctax.org>
Sent: Friday, December 13, 2013 4:31 PM
To: agoldman@scal.net
Cc: Roy R. Hemphill; Hannah Metts; Ann Marie Thompson
Subject: Boggeros v. SC Department of Revenue
Attachments: FINAL boggero Proposed Order.docx;
Cases_LZM_INC_v_VIRGINIA_DEPARTMENT_OF_TAXATION_606_SE2d_797_01_14_2005.doc;
Cases_Brooner_and_Thomas_Construction_Company_Inc_v_Director_of_Revenue__R_S_81_0068_08_26_1982.doc;
Cases_IN_THE_MATTER_OF_WASTE_MANAGEMENT_OF_NEW_YORK_INC_v_Tax_Appeals_Tribunal_of_the_State_of_N.doc;
Cases_Richard_A_WEISS_Director_Arkansas_Department_of_Finance_and_Administrati on_Appellant_v_B.doc;
Cases_IN_THE_MATTER_OF_The_Proposed_Assessment_of_Sales_and_Use_Tax_for_the_period_May_1_2000_thr.doc

Mr. Goldman:

As requested, here is the Department's proposed order and out of state citation material.

Happy Holidays to all!

Carol I. McMahan, Esquire
SCDOR - Litigation
PO Box 12265
Columbia, S.C. 29211
Telephone: (803) 898-5130
Email: mcmahac@sctax.org

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Eugenia Boggero, d/b/a Boggero's	)	DOCKET NO. 13-ALJ-17-0218-CC
Portable Toilets,	)	
	)	
Petitioner,	)	
	)	PROPOSED FINAL ORDER
v.	)	
	)	
South Carolina Department of Revenue,	)	
	)	
Respondent.	)	
_____	)	

For Petitioner: Roy R. Hemphill, Esquire, and Hannah K. Metts, Esquire, of McDonald, Patrick, Poston, Hemphill and Roper, L.L.C., of Greenwood, South Carolina

For Respondent: Ann Marie Thompson, Esquire, and Carol I. McMahan, Esquire, South Carolina Department of Revenue of Columbia, South Carolina

FINAL ORDER AND DECISION

This matter comes before the Administrative Law Court (ALC or Court) for a contested case hearing pursuant to S.C. Code Ann. § 12-60-470 (Supp. 2012) and S.C. Code Ann. § 1-23-310 et. seq. (Supp. 2012). Eugenia Boggero, d/b/a Boggero's Portable Toilets (Petitioner or Taxpayer), requests that this Court find that the South Carolina Department of Revenue's (Department) Determination issued in this case which imposed sales tax, penalties, and interest for the periods January 1, 2009 through December 31, 2011 (the audit period), finding that the Petitioner is in the business of renting portable toilets, was issued in error.

This contested case came to be heard on Thursday, September 12, 2013 at the ALC in Columbia, South Carolina before the Honorable John D. McLeod, Administrative Law Judge. All parties appeared at the hearing. The Petitioner argued that the true object

of the transactions in question was for a service, the disposal of human waste, and was therefore not subject to the State sales and use tax. The Department conversely argued that the true object of the transactions in question was for the use of tangible personal property, portable restrooms, therefore subject to the State sales and use tax.

After listening to the testimony, weighing all of the evidence entered at the hearing, and taking into consideration all of the arguments presented at trial, I find that the Department's Determination in this matter must be sustained as fully explained below.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented and entered into evidence at the hearing and closely passed upon their credibility, taking into consideration the burden of persuasion by the parties, I make the following findings of fact by a preponderance of evidence:

1. Petitioner owns and operates Boggero's Portable Toilets in Greenwood, South Carolina as a sole proprietor. It is a family business, started and developed by her father. The Petitioner acquired the business from her father in 2005. The Petitioner has never applied for a retail sales tax license; collected sales or use tax from her customers, or remitted sales or use tax to the Department.

2. The Petitioner provides portable toilet installation, sinks, pick-up, and subsequent waste removal for temporary use. The Petitioner also provides holding tanks, trash containers, delivery, and servicing. In providing these portable toilets she also provides soap, toilet paper, towels, and other toiletries as her customers may request.

3. The Department calculated the Petitioner's gross proceeds (the taxable base for the imposition of the State sales and use tax) from the rental of portable toilets to be \$128,901.15 for the audit period. This figure was derived from total gross proceeds (\$429,670.49) minus gross proceeds from trash collection services (\$59,660.47)¹ minus out of state sales, multiplied by 30%.²

4. When a customer contacts the Petitioner and requests delivery of a portable unit, the Petitioner calculates the number of units that she believes the customer may need based on the number of individuals using the unit(s), her experience, and other guidelines.³

5. The Petitioner testified that she and the customer sign what she has entitled a "Service Agreement" (Agreement). This Agreement reflects the following terms, among others:

1. The customer requests delivery and use of portable toilet(s) and or dumpsters from Boggero's Portable Toilets.
2. The customer will be responsible for the following service payments:
of Portable Toilets _____ Cleaned # of Times per
Week _____

¹Trash removal in this case is not subject to sales tax. See, SCPLR 88-20 and 04-

2.

²The South Carolina General Assembly enacted S. C. Code Ann. § 12-36-2120(62) (Supp. 2012), effective July 1, 2003, SB 274, 2003. This exemption excludes 70% of the gross proceeds from the rental of portable toilets from sales tax. Prior to the enactment of this exemption, 100% of the rental or lease of portable toilets and servicing attached to such rental were included in "gross proceeds" and subject to the sales tax. See S-D-115 (1977).

³During the audit period the Petitioner operated and maintained a website at www.boggerotoilet.com, for Boggero's Portable Toilets. This website provides a number of rental options for portable restrooms, including: VIP Units, Special Event Units, Wedding Units, Handicap Units, and Hand Washing Units (as noted specifically on taxpayer invoices submitted into evidence Bates Nos. 2 through 4449).

Price _____
* * * *

4. From the date of this agreement, portable toilets and or dumpsters will be delivered for use by the customer upon request without the signing of another agreement. It is intended that this agreement will cover ongoing and future portable toilets and/or dumpsters deliver and use.

* * * *

6. The Customer understands that service fees **for the use of portable toilets** and or dumpsters may increase in the future, and the undersigned will be responsible for the increased payment without the signing of another agreement

* * * *

8. The equipment is the property of Boggero's Portable Toilet, and is provided to the customer for his exclusive use on the job site listed on delivery ticket or future delivery tickets.
9. The duration of the service period is determined from date of shipment on our part as indicated on this service agreement until date of pick up order.
10. Carefully check equipment upon unloading a destination. All claims for shortages and damaged equipment must be noted on the delivery ticket.
11. The Customer agrees to be present when equipment is returned so that any shortages or damage or equipment will be noted on return report and acknowledged. It is expressly understood and agreed that the Customer shall pay for any parts which are lost or damaged beyond normal wear and tear.
12. Proper placing of the equipment on job location is the sole responsibility of customer with the assistance of Boggero's Portable Toilets. Access to toilets &.or dumpsters for servicing will be the Customers responsibility.
13. The Customer agrees to hold harmless Boggero's Portable Toilets for any and all damages to property and persons not caused by the negligence of Boggero's

Portable Toilets while this equipment is being used under this service agreement or future delivery tickets.

6. The Department conducted a sales tax audit of the Petitioner for the audit period. After a review of the information provided by the Petitioner for the relevant periods, the auditor issued a Proposed Notice of Assessment imposing sales tax, penalties, and interest on the taxpayer's gross proceeds from the taxpayer's portable toilet business (tax: \$8,891.96; interest: \$602.27;⁴ penalty: \$3,191.36).

7. In response to the Petitioner's timely protest of the Proposed Assessment, the Department issued its Department Determination sustaining the imposition of the sales tax, penalties, and interest. Such is the basis of this contested case.

8. Department Auditor, Wes Butler, conducted the sales tax audit. He also prepared summaries of the invoices provided as follows:

1. Gross Sales Per Month From Invoices⁵
2. Nontaxable Trash Sales⁶
3. Specific Invoice Analysis⁷

9. James McCutchen, Esquire, Revenue Law Advisor for the Department, co-authored the Department's 2012-2013 Sales and Use Tax Manual. This manual

⁴Interest continues to accrue until the tax is paid or determined to be in error.

⁵This summary indicates the calculation for determining the amount subject to the State sales and use tax by deducting from the total gross receipts, the total gross receipts for out of state sales, total gross receipts for trash collection services, and multiplying the tax base by 30% to account for the 70% exemption found in § 12-36-2120 (62).

⁶See Fn. 1.

⁷The Summary of "Specific Invoice Analysis" listed all invoices showing "new delivery" specific unit(s) listed and, the charges for same. These charges comprised approximately 28% of the taxpayer's total gross proceeds for all periods at issue (after removing the charges for trash removal and out of state sales).

includes a summary of the South Carolina Sales and Use Tax Law (available in Chapter 36 of Title 12 of the South Carolina Code), South Carolina Regulations, Department Advisory Opinions, and practical examples for tax practitioners and taxpayers. Mr. McCutchen testified that it is the Department's longstanding administrative policy that charges for the rental of portable restrooms are subject to the State sales and use tax. He testified about a 1977 South Carolina Tax Commission Decision, Opinion No. S-D-115, in which the Commission found that charges for the rental of portable restrooms are subject to the State sales and use tax, notwithstanding the fact that such charges were also for the servicing of those portable restrooms. He testified that the Department has issued two Advisory Opinions (S.C. Rev. Rul. #09-5 and S.C. Rev. Proc. #1-5) in which the Department provided guidance to taxpayers and tax practitioners regarding the imposition of sales and use tax on charges for the use of portable restrooms. He further testified that these documents are available in hard copy upon request and also available at the Department's website. Although this website was not provided in the testimony, this Court notes that the Department's website is www.sctax.org.

ISSUES RAISED

1. Are the Petitioner's gross proceeds from the rental and servicing of portable toilets subject to sales tax?
2. If such gross proceeds are subject to the sales tax is the Petitioner liable for the failure to file and failure to pay penalties in addition to the sales tax?

CONCLUSIONS OF LAW

Based upon the Findings of Fact as set forth above, I conclude the following as a matter of law:

A. Jurisdiction And The Burden Of Proof

1. This matter is properly before the Court pursuant to S.C. Code Ann. § 12-60-40 et. seq. (Supp. 2012), “General Appeal Procedures.” A taxpayer may appeal a Department Determination by requesting a contested case hearing before the ALC, S.C. Code Ann. § 12-60-460 (Supp. 2012).

2. The burden of proof is on the party asserting the affirmative in an adjudicatory administrative proceeding. 2 Am. Jur. 2d Administrative Law, § 354 (2004). In the current matter, it is the Petitioner who has requested a contested case hearing to challenge the Department’s imposition of sales tax, interest, and penalties on the gross proceeds from the taxpayer’s business. Thus, the Petitioner asserts the affirmative and must prove that the Department’s Determination is incorrect. Pursuant to S.C. Code Ann. § 12-36-950 (2000) the General Assembly statutorily provided that the Petitioner here bears the burden of proof. This statute provides:

Presumption as to gross proceeds; burden of proof; resale certificate.

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.

3. Here, the Petitioner has not carried that burden. South Carolina statutory law, case law, and the Department’s longstanding administrative practice apply the “true object” test to determine “sales” including the mixture of sales of tangible personal property and services subject to the sales tax. I have determined that the true object of the transactions at issue is for the rental or lease of the tangible personal property – the portable toilets and other personal property provided. The General Assembly has

provided for the imposition of a sales tax on the gross proceeds from such transactions by imposing the sales tax on 100% of gross proceeds. As to this particular business, the General Assembly enacted an exemption which excludes 70% of the gross proceeds from the sales tax base. This results in the imposition of the sales tax on only 30% of the gross proceeds derived from the rental and servicing of the portable toilets, S.C. Code Ann. § 12-36-2120 (62) (Supp. 2009).

B. South Carolina Statutory Law Imposes a Sales Tax on the Gross Proceeds at Issue.

1. The Court's sole responsibility is to determine and give effect to the General Assembly's intent. As to the meaning and application of a statutory provision, recognizing and giving full effect to the General Assembly's intent is the Court's ultimate goal. Sonoco v. South Carolina Dep't of Revenue, 378 S.C. 285, 662 S.E.2d 599 (2008). A Court cannot apply nor construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope. Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993).

2. The Department and the Petitioner disagree over whether the "true object" of the transactions in question is for the rental or lease of tangible personal property or the performance of services. For several reasons I find that the true object is for the rental or lease of tangible personal property.

3. S.C. Code Ann. § 12-36-910 (Supp. 2009) provides for the imposition of a "sales tax on the gross proceeds of sales, . . . upon every person engaged or continuing within this State in the business of selling tangible personal property at retail." S.C. Code Ann. § 12-36-60 (2000) provides for the definition of "tangible personal property" as

“personal property which may be seen, weighed, measured, felt, touched or which is in any other manner perceptible to the senses.”

4. Based upon the facts of this case, as further discussed below, I have determined that portable restrooms are tangible personal property. Further, S.C. Code Ann. § 12-36-70 (1)(c) (2000) provides that a “retailer” or “seller” includes a person operating or “renting, leasing, or otherwise furnishing tangible personal property for a consideration.”

5. In this case the transactions in question include the rental or lease of tangible personal property and the provision of a service. Boggero provides portable toilets for use by its customers as well as other amenities but also services these units and removes and disposes of waste. In such a case, South Carolina applies the “true object” test to determine whether or not the specific transaction(s) are “service” or a sale/rental of tangible personal property, see 27 S.C. Code Ann. Regs. 117-308.⁸

6. Here, the Petitioner is making a sale of both tangible personal property

⁸Regulation 117-308. Professional, Personal, and Other Services.

The receipts from services, when the services are the true object of the transaction, are not subject to the sales and use tax, unless the sales and use tax is specifically imposed by statute on such services (i.e. accommodation services, communication services). The following subsections of this regulation will discuss various types of services. It should also be noted that several businesses, in addition to selling nontaxable services, also sell tangible personal property and should be licensed to report the tax.

This list is not all-inclusive as to services offered in South Carolina, as to services offered by a particular profession, or as to sales made by a particular profession.

and service. S.C. Code Ann. § 12-36-100 (2000) defines “sale” as:

“Sale and purchase” mean any transfer, exchange, or barter conditional or otherwise, of tangible personal property for a consideration including:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

7. Also here, the rental of the portable toilet and servicing are included in the sales tax base, “gross proceeds of sale.” S.C. Code Ann. § 12-36-90 (Supp. 2012) provides:

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:

* * * *

- (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;**

* * * *

(v) **transportation costs;**

* * * *

(vi) **any other expenses.**

(Emphasis added).

The Court of Appeals, in interpreting the definition of “gross proceeds of sales” with respect to lay away fees paid in conjunction with lay away sales, held:

Section 12-35-30 [now Section 12-36-90] defines gross proceeds of sales as “the value proceeding or accruing from the sale of tangible personal property ... without any deduction for service costs.” But for the lay away sales,

Meyers Arnold would not receive the lay away fees. The fees are obviously rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds of sales and subject to the sales tax.

Meyers Arnold v. South Carolina Tax Commission,⁹ 285 S.C. 303, 328 S.E.2d. 920 (1985).

8. I further find the Petitioner's "gross proceeds" from the sale, rental/lease of portable toilets is subject to the sales tax based on the application of the "true object" test.

9. The "true object" test is best described in 9 Vanderbilt Law Review 231 (1956). It states:

The true test then is one of basic purpose of the buyer. When the product of the service is not of value to anyone other than the purchaser, either because of the confidential character of the product, or because it is prepared to fit the purchaser's special need - a contract or will prepared by a lawyer, or the accident investigation report prepared for an insurance company - this fact is evidence tending to show that the service is the real purpose of the contract. When the purpose of a contract is to produce an article which is the

⁹The Tax Commissioners, in Decision S-D-174, held a property damage waiver fee charged by a person engaged in the business of renting tangible personal property was subject to the sales tax. The Commission, in citing Meyers Arnold v. South Carolina Tax Commission, supra, stated:

Just as in Meyers Arnold, supra, the service fee here is taxable. But for the lease of the tangible personal property, the taxpayer would not have received the fee. The fee is obviously charged for the additional service of providing a lease of property free from liability for damage. In the absence of such service, the lessee, under the taxpayer's lease agreements, would be "liable for any loss, theft, damage or destruction of leased property." We find and conclude the fee for the property damage waiver is part of gross proceeds of sale subject to tax.

true object of the agreement, the final transfer of the product should be a sale, regardless of the fact that special skills and knowledge go into its production. Under this analysis, printing work, done on special order, and of significant value only to the particular customer, is still a sale. The purchaser is interested in the product of the services of the printer, not in the services per se. Similarly, it would seem that contracts for custom-produced articles, be they intrinsically valuable or not, should be classified as sales when the product of the contract is transferred.

The Vanderbilt Law Review article, in quoting Snite v Department of Revenue, 398 Ill.

41, 74 N.E.2d. 877 (1947), also establishes the following general rule:

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the **article sold is the substance** of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays...[is measured by the total cost of article and services]. If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is engaged in the business of selling at retail, and also engaged in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other.

(Emphasis added.)

10. This test has been applied by the South Carolina Supreme Court. Fraternal Order of Police v. South Carolina Dept. of Revenue, 352 S.C. 420, 574 S.E.2d 717 (2002) ("According to the 'true object test' sales which are merely incidental to the transaction and not its true object are not exempt from the retail sales tax. See Journal of Multistate Taxation, Vol. 5, No. 6, pp. 244-253 (Jan./Feb. 1996)."). In that case, the Court

found that if the refund issue had been preserved, applying the “true object” test, as between the retailer of the cards and the operation, the sale of the bingo cards were merely incidental to the transaction, the wager. Contrarily here, the customer pays for the “unit,” the four walls, floor, roof, facilities and other amenities provided for their use through the Petitioner’s business. The customer purchases the privacy of the unit. Without this unit there would be no need for service. Thus the service is merely incidental to the transaction – the lease or use of the unit.

11. The Petitioner’s argument that her entitled “Service Agreement” is devoid of the term “rental” and as such the imposition of the sales tax in this case must fail is unavailing. The characterization of the transaction through mere nomenclature cannot be controlling as to whether there is a retail sale of tangible personal property. Rather, the application of the “true object” test leads this Court to one conclusion – the customer pays the Petitioner for the use and possession of the portable toilet unit – for privacy, the four walls, the floor, and the facilities. The use is temporary as referenced in the Agreement - the customer calls to have the unit(s) picked up. Notably, at the time of discovery in this case, all units for the periods at issue had been picked up. Rather, as noted in Regulation 117-308¹⁰ and S.C. Rev. Rul. #09-5 the “true object” test is determinative.

12. The Department has consistently applied the “true object test” in this manner and I find no cogent reasons to depart from such application. Where an administrative agency has consistently applied a statute in a particular manner, we cannot overturn the agency’s construction absent a cogent reason. Gilstrap v. South Carolina

¹⁰See Fn. 8.

Budget & Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992). Greystone Catering, Inc. v. S.C. Dep't of Revenue, 326 S.C. 551, 486 S.E.2d 7 (Ct. App. 1997). Historically, as early as 1977 the South Carolina Tax Commission imposed the sales tax on 100% of the "gross proceeds" from the use of portable toilets. Tax Commission Decision S-D-115 specifically imposed the sales tax as follows "[w]e are satisfied that the charging of placing a portable toilet is a rental charge that is taxable under the provisions of the Sales and Use Tax Act." This position has been consistently applied by the Department, see S.C. Rev. Proc. #01-5, until the General Assembly enacted § 12-36-2120 (62) to exempt 70% of the gross proceeds from the rental of portable toilets in 2003 from the imposition of the sales tax.

13. This Court also finds persuasive and adopts the view of the Virginia Supreme Court as provided in LMZ Inc. v. Virginia Dept. of Taxation, 606 S.E.2d 797 (January 14, 2005) where a similar issue regarding sales tax on portable toilet service and rental was addressed. The court found:

The true object test is the means by which the Department determines the dominant purpose of a mixed sales and service transaction in order to determine whether the transaction is subject to sales tax as a sale of tangible personal property or whether it is a sale of services and therefore exempt from tax. The true object test was adopted by this Court in WTAR, 217 Va. at 883, 234 S.E.2d at 249, in which we acknowledged the endorsement of the test by a preponderance of authorities.

* * * *

As we also noted in WTAR, the taxpayer's "manner of computing the invoice" is not determinative of either the true object of the transaction or whether the service provided is truly separate and distinct from the property leased. 217 Va. at 884, 234 S.E.2d at 249. Otherwise, a taxpayer could create its own tax exemption merely by

altering the printing of its invoices.^[1]

14. Petitioner argues that its provision of portable toilets is akin to a business that provides containers for the removal of trash and their removal. The Petitioner further argues that the Department does not impose a sales tax on that business, and accordingly, should not impose such a tax on the removal of "human waste." However, such is not the case. A similar argument was raised in the case of Ed Robinson v. S.C. Tax Comm., 356 S.C. 120, 588 S.E.2d 97 (2003). In that case, Mr. Robinson argued that imposing sales tax on his laundry gross proceeds was unconstitutional because other service businesses are not taxed.

¹Other jurisdictions have similarly found but based on the application of a different test; see, In the Matter of Waste Mgt. of NY v. T0061 Tribunal of the State of NY et. al, 185 A.2d 479, 585 NYS2d 883 (NY Sup. Ct, 7/16/1992), similar business receipts subject to sales tax; Weiss v. Best Enterprises Inc., 917 SW2d 543 (3/18/96) ("The transactions [lease/rental of portable toilets] were the type of mixed transactions that are fully taxable"); Broomer and Thomas Constr. Co. Inc. v. Dir. Revenue, RS-81-0068 (8/26/1982); Administrative finding that use tax was due on the rental and servicing of portable toilets (taxpayer located in Missouri); In the Matter of Proposed Assessment of Sales and Use Tax for the Period May 1, 2000 through March 31, 2003 by Sec. of Rev. of NC. v. Taxpayer, 2003-41 (2/25/2004) finding:

While the Taxpayer's activity does include the service, or "cleaning" by emptying of waste from the toilet holding tanks, waste removal is not the essence of the transactions in question. The toilet units are more than receptacles. They are enclosures designed for the comfort and privacy of the user. What the customer contracts for is the facility itself and not mere waste removal. The removal of the waste, like the provision of chemicals and toilet paper, is simply routine maintenance necessary to render the toilets usable.

The Court stated:

The State's rational basis for treating dry cleaners differently from other trades in the service industry is to promote the legitimate governmental interests of fostering economic development in a particular segment of the economy. The Legislature achieves this goal by exempting dry cleaners from paying sales taxes on expensive machinery necessary to start the business in exchange for allowing the payment of sales taxes based on later-earned receipts.

Here, the General Assembly has taxed only a portion of the "gross proceeds" generated from the rental of the portable toilets, a mere 30% (§ 12-36-2120 (62)) - a percentage borne out by the Petitioner's records in this case. That is, the Petitioner's invoices show that the toilets, sinks, etc., rented by the taxpayer comprise approximately 28% to 30% of the gross proceeds reflected on all invoices provided for the periods at issue, January 1, 2009 through December 31, 2011. It may well be that this tax on the tangible personal property is used to defray some of the harm done to South Carolina from the processing of waste and use of chemicals to achieve the desired result.

15. Moreover, in this case the South Carolina General Assembly has specifically spoken to the taxability of the portable toilet business at issue. Section 12-36-2120(62) provides a SPECIFIC exemption for gross proceeds derived from the rental or lease of portable toilets. This provision states:

12-36-2120. Exemptions from sales tax.

Exempted from the taxes imposed by this chapter are the gross proceeds of sales, or sales price of:

(62) seventy percent of the gross proceeds of the rental or lease of portable toilets.

(Emphasis added).

16. Here, as required by the General Assembly, first, the auditor calculated the total gross proceeds from the rental of the portable toilets to include all servicing charges (§ 12-36-90 (1)(b)(i) and (ii)). The auditor then reduced this amount by 70% to recognize the statutory exemption granted by the Legislature.¹² It is interesting to note that here, based on the Petitioner's invoices for the periods at issue, the provision of the units for the customers use, rental, comprises approximately 28% of the Petitioner's total gross proceeds almost the exact amount statutorily subject to tax after giving effect to the exemption. Here too, the Department has consistently applied the exemption at § 12-36-2120(62). As S.C. Rev. Rul. #09-5 provides:

Based on the above, businesses temporarily providing portable toilets to others for a fee are renting tangible personal property since such constitutes the transfer of tangible personal property for a consideration. See Code Section 12-36-60. In addition, the "true object" of the transaction is the portable toilet and not the servicing of the toilet (regular and routine removal and disposal of the waste and the replacement of chemicals and toilet paper). Such servicing is incidental to the rental of the portable toilets.

Other states have reviewed this issue. North Carolina (Sales and Use Tax Bulletin 34-17) and Virginia (Ruling of the Tax Commissioner 91-275) both consider the business of providing portable toilets for a limited period of time for a fee a rental of tangible personal property subject to the sales and use tax.

C. The Failure to File and Failure to Pay Penalty.

I find that the Department's imposition of the Failure to File and pay penalties is appropriate in this case. The Petitioner has never filed sales tax returns nor collected and

¹²S.C. Rev. Rul. #09-5 provides that first the total rental to include servicing costs are calculated to which the 70% exemption is applied to arrive at the sales tax base for the imposition of the sales tax.

remitted sales tax as required by law as thoroughly discussed above. Accordingly, pursuant to S.C. Code Ann. § 12-54-43(B)(C), and (D) (Supp. 2012), such penalties must be imposed.

ORDER

Based on the above Findings of Fact and Conclusions of Law, in this case, the Court must impose the sales tax, penalties, and interest as provided in the Department's Determination, on the taxpayer's gross proceeds from her portable toilet business and ORDER the taxpayer to remit the same to the Department within thirty days of receipt of this Court's ORDER.

IT IS SO ORDERED.

The Honorable John D. McLeod
South Carolina Administrative Law Judge

Columbia, South Carolina
December __, 2013

Checkpoint Contents

State & Local Tax Library

State & Local Tax Reporters

States

Virginia

Cases

Supreme Court of Virginia

2005

LZM, INC. v. VIRGINIA DEPARTMENT OF TAXATION, 606 SE2d 797, 01/14/2005

LZM, INC. v. VIRGINIA DEPARTMENT OF TAXATION

Case Information:

Docket/Court: 040779, Supreme Court of Virginia

Date Issued: 01/14/2005

Tax Type(s): Sales and Use Tax

Cite: 606 SE2d 797

Headnote

1. STATUTES - CONSTRUCTION AND OPERATION - GENERAL RULES OF CONSTRUCTION -

Extrinsic aids to construction - Executive construction - Particular state statutes - Licenses and taxes. The interpretation of a tax statute by the Department of Taxation is entitled to great weight.

2. TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - LEVY AND ASSESSMENT -

Evidence - Presumptions and burden of proof. A presumption of validity attaches to an assessment of tax, and the burden is on the taxpayer to show that such assessment was the result of manifest error or in total disregard of controlling evidence.

3. TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - LEVY AND ASSESSMENT -

Judicial review and relief against assessments. A court should not overturn the decision of the Department of Taxation unless the assessment is contrary to law, was an abuse of discretion, or was the product of arbitrary, capricious, or unreasonable behavior.

4.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - LEVY AND ASSESSMENT - Evidence - Presumptions and burden of proof. The taxpayer has the burden of establishing that it comes within the terms of a tax exemption.

5.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS TAXABLE IN GENERAL - Subjects and exemptions in general - In general. When a tax statute is susceptible to two constructions, one granting an exemption and the other denying it, the latter construction is adopted.

6.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS TAXABLE IN GENERAL - Sale or service transaction. The true object test is the means by which the Department of Taxation determines the dominant purpose of a mixed sales and service transaction in order to determine whether the transaction is subject to sales tax as a sale of tangible personal property or whether it is a sale of services and therefore exempt from tax.

7.STATUTES - CONSTRUCTION AND OPERATION - GENERAL RULES OF CONSTRUCTION - Construction with reference to other statutes - Statutes relating to the same subject matter in general - In general. When a given controversy involves a number of related statutes, they should be read and construed together in order to give full meaning, force, and effect to each.

8.STATUTES - CONSTRUCTION AND OPERATION - GENERAL RULES OF CONSTRUCTION - Construction with reference to other statutes - Statutes relating to the same subject matter in general - Statutes that are in pari materia - In general. Appellate courts read related statutes in pari materia in order to give, when possible, consistent meaning to the language used by the General Assembly.

9.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS TAXABLE IN GENERAL - Sale or service transaction. Regulation which applies true object test to transactions that include both sales and service elements to determine whether the transaction is exempt from sales tax under the true object test does not conflict with regulation which states that persons who lease or rent personal property must pay tax on gross proceeds; regulations are not mutually exclusive and neither negates application of the true object test to a lease transaction.

10.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS

TAXABLE IN GENERAL - Sale or service transaction. Portabletoilet company was required to pay sales tax on pumping service component of toilet lease charges pursuant to the true object test; true object of transaction was a functioning toilet which would not be possible absent pumping service, and company charged for pumping services based on number of toilets leased rather than by amount of waste pumped.

11.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS

TAXABLE IN GENERAL - Sale or service transaction. The taxpayer's manner of computing the invoice is not determinative of either the true object of the transaction or whether the service provided is truly separate and distinct from the property leased so as to be exempt from sales tax.

12.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS

TAXABLE IN GENERAL - Sale or service transaction. Portabletoilet leasing company's pumping service was not exempt from sales tax under statutory exemption for maintenance contracts; pumping services did not repair or maintain toilets in order to reduce likelihood of future defects but rather rendered the toilets useful, and toilets were specifically designed to require the pumping services in conjunction with their use.

13.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS

TAXABLE IN GENERAL - Sale or service transaction. Evidence was sufficient to support trial court's finding that portabletoilet company did not offer pumping service as a separate service to individuals, so as to support finding that service was not exempt from sales tax under the true object test, despite finding that company sometimes pumped toilets of other rental companies and charged for that service; company's representative testified that company did not compete for toilet pumping service and did not advertise prices for pumping services, and testified that pumping toilets of another company was a tradition done by all companies.

14.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - LEVY AND ASSESSMENT

- Judicial review and relief against assessments. Trial court's misstatement that portabletoilet company was assessed a sales and use tax for the leasing and pumping service of portabletoilets did not affect the protested amount of sales tax or the trial court's analysis under the true object test of whether the pumping service was subject to sales tax; court's ruling was based on the true object test, which determined whether the entire transaction, including both the sales and service components, was taxable, and assessment was based on taxes owed on "pumping of portabletoilets."

15.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - LEVY AND ASSESSMENT

- Judicial review and relief against assessments. Trial court's incorrect statement in sales tax case as to number of portabletoilets rented from company had no bearing on trial court's finding that company's

pumping service was incidental to the rental of the portabletoilets and that the true object of the transaction was the procurement of the toilets, such that the pumping service was subject to sales tax; no pumping service was offered except upon the leasing of a toilet.

16. TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - LEVY AND ASSESSMENT

- **Judicial review and relief against assessments.** Evidence was sufficient to support trial court's statement in sales tax assessment action that portabletoilet company "charges by the number of portabletoilets leased and not by the amount of waste pumped from the toilets," despite testimony that toilets without service "probably cost less" to rent than those with service; there was nothing in the record to indicate any price differential based on the amount of waste pumped.

FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY, Robert M.D. Turk, Judge

OPINION

PRESENT: All the Justices

OPINION BY JUSTICE G. STEVEN AGEE

I. FACTS AND PROCEEDINGS BELOW

Appellant, LZM, Inc. ("LZM") is in the business of leasing portabletoilets and offers a pumping service to customers who lease LZM toilets. LZM negotiates contracts for the lease and pumping services at the same time and includes all charges in a single invoice, although the rental and pumping charges are separately stated. No toilet rental customer is required to contract for LZM's pumping services, and not all of LZM's toilet rental customers elect to contract for pumping services. LZM charges additional fees for pumping services.

The Virginia Department of Taxation ("Department") conducted a sales tax audit of LZM for the period beginning October 1, 1996, and ending September 30, 1999. The Department found that LZM neglected to collect and remit sales tax during that period for the amounts charged for pumping services provided in conjunction with its portabletoilet rentals. The Department assessed LZM for the deficiency, and after administratively challenging the assessment, LZM paid the amount due, plus interest, under protest. LZM then timely filed a Bill of Complaint to recover the disputed sum. Both parties filed motions for summary judgment.

Based upon the pleadings, a stipulation of facts, and an evidentiary hearing at which supplemental evidence regarding the operation of LZM's business was taken, the trial court denied LZM's motion for summary judgment and granted summary judgment in favor of the Department. We awarded LZM an appeal.

LZM assigns error to (1) the trial court's application of the true object test to its portabletoilet rentals because the transaction involved a lease, not a sale, and the trial court's holding the pumping service is separate and distinct from the lease of the portabletoilets; (2) the trial court's finding that the statutory exemption from taxation for maintenance contracts did not apply; and (3) the trial court's findings of fact which LZM maintains were contrary to the stipulated facts, uncontradicted testimony, and admissions of the parties.¹ For the reasons stated below, we will affirm the judgment of the trial court.

II. ANALYSIS

Charged with the responsibility of administering and enforcing the tax laws of the Commonwealth under Code § 58.1-202, the Department's interpretation of a tax statute is entitled to great weight. *Department of Taxation v. Delta Air Lines, Inc.*, 257 Va. 419, 426, 513 S.E.2d 130, 133 (1999) (citation omitted). Further, "[a]ny assessment of a tax by the Department shall be deemed prima facie correct." Code § 58.1-205. *See General Motors Corp. v. Department of Taxation*, 268 Va. 289, 292-93, 602 S.E.2d 123, 125 (2004); *Chesapeake Hosp. Auth. v. Commonwealth*, 262 Va. 551, 560-61, 554 S.E.2d 55, 59 (2001).

A presumption of validity therefore attaches to an assessment of tax, and the burden is on the taxpayer to show that such assessment was the result of "manifest error" or in "total disregard of controlling evidence." *County of Mecklenburg v. Carter*, 248 Va. 522, 526, 449 S.E.2d 810, 812 (1994) (citation omitted). Plainly, a court should not overturn the Department's decision unless the assessment is contrary to law, was an abuse of discretion, or was the product of arbitrary, capricious, or unreasonable behavior. *Department of Taxation v. Lucky Stores*, 217 Va. 121, 127, 225 S.E.2d 870, 874 (1976).

Exemptions of property from taxation are to be strictly construed against the taxpayer. Va. Const., art. X, § 6(f). *See, e.g., Department of Taxation v. Wellmore Coal*, 228 Va. 149, 163-64, 320 S.E.2d 509, 511 (1984). The taxpayer has the burden of establishing that it comes within the terms of an exemption. *DKM Richmond Assocs. v. City of Richmond*, 249 Va. 401, 407, 457 S.E.2d 76, 80 (1995). When a tax statute is susceptible to two constructions, one granting an exemption and the other denying it, the latter construction is adopted. *WTAR Radio-TV v. Commonwealth*, 217 Va. 877, 879-80, 234 S.E.2d 245, 247 (1977);

Winchester TV Cable Co. v. Commissioner, 216 Va. 286, 289-90, 217 S.E.2d 885, 889 (1975).

A. Application of the true object test to lease transactions

Virginia imposes a retail sales tax on the sale or rental of tangible personal property. Code § 58.1-603. "Sale," for purposes of the tax includes "lease or rental" of tangible personal property. Code § 58.1-602. Charges for services, however, are generally exempt from the sales tax. Code § 58.1-609.5.

In the case at bar, LZM agrees that the gross proceeds of its lease fees for portable toilets are subject to sales tax, but maintains that fees received for toilet pumping services are charges for distinct services and are therefore not subject to tax. The trial court applied the true object test under 23 VAC 10-210-4040 and found that the pumping service charges were taxable.

The true object test is the means by which the Department determines the dominant purpose of a mixed sales and service transaction in order to determine whether the transaction is subject to sales tax as a sale of tangible personal property or whether it is a sale of services and therefore exempt from tax. The true object test was adopted by this Court in WTAR, 217 Va. at 883, 234 S.E.2d at 249, in which we acknowledged the endorsement of the test by a preponderance of authorities.

The Department promulgated regulations pursuant to the Court's adoption of the true object test, in which it explained the test as follows:

If the object of the transaction is to secure a service and the tangible personal property which is transferred to the customer is not critical to the transaction, then the transaction may constitute an exempt service. However, if the object of the transaction is to secure the property which it produces, then the entire charge, including the charge for any services provided, is taxable.

23 VAC 10-210-4040(D) (2004) ("Regulation 4040"). LZM argues that the trial court should not have applied the true object test to the transaction in question because it involved the lease, rather than the sale, of tangible personal property.

LZM bases its argument on the fact that the term "lease" is not found in Regulation 4040 describing the true object test. It asserts that the plain language of the regulations demonstrates that the Department uses a different mode of analysis for lease transactions and that the true object test should only apply to actual

sales. LZM argues that 23 VAC 10-210-840 ("Regulation 840"), not Regulation 4040, applies to lease transactions.

Regulation 840 makes no mention of the true object test and states in pertinent part:

Any person engaged in the business of leasing or renting tangible personal property to others is required to register as a dealer and to collect and pay the tax on the gross proceeds.

23 VAC 10-210-840(A) (2004). Gross proceeds are defined as "the charges made ... for the lease or rental of tangible personal property" including "any service charges in connection with the lease of [the] property." Id. LZM maintains that because not all of its customers contract for toilet pumping services and because such charges are stated separately on its invoices, the pumping services are not "service charges in connection with the lease of [the toilets]," and therefore not taxable under Regulation 840. Id.

It is a familiar rule of statutory construction that when a given controversy involves a number of related statutes, they should be read and construed together in order to give full meaning, force, and effect to each. *Ainslie v. Inman*, 265 Va. 347, 353, 577 S.E.2d 246, 249 (2003) (citation omitted). Moreover, appellate courts read related statutes in pari materia in order to give, when possible, consistent meaning to the language used by the General Assembly. *Industrial Dev. Auth. v. Bd. of Supervisors*, 263 Va. 349, 353, 559 S.E.2d 621, 623 (2002). Regulation 4040 applies the true object test to transactions that include both sales and service elements. Code § 58.1-602 defines a "sale" to include "lease or rental." Since a "sale" thus includes "lease" transactions, the trial court correctly found that Regulation 4040 applies to both actual sale and lease transactions so the true object test is applicable in both instances. We find that, when construed together, no conflict exists between regulations 4040 and 840. They are not mutually exclusive and neither negates application of the true object test to a lease transaction.

Alternatively, LZM argues that even if the true object test applies to lease transactions, the test should not apply to the pumping service component because it is separate and distinct from the toilet lease. In support of its position, LZM posits the segregated billing charges on its invoices (divided between pumping and lease charges) and that the pumping service is an independent transaction not joined to the leasing of a portable toilet.

In WTAR, this Court decided whether the service involved in creating a television commercial should be taxed as part of the final product, the commercial film. In its billing statements, the taxpayer charged

separately for the service and the film. 217 Va. at 878, 234 S.E.2d at 246. The Court, however, applied the true object test and held that "the true object of the buyer of the advertisement was not the service per se, but the end product produced by the service." Id. at 884; 234 S.E.2d at 249. Therefore, the service involved in making the film was taxable. Id.

LZM attempts to distinguish WTAR by arguing that "but for" the service in producing the advertisement, the end product of the commercial film would not come into existence. By contrast, LZM avers that the end product of the leased toilet would be otherwise available and is not dependent upon the provision of the pumping service. Under the facts of this case, however, we must disagree.

Like the film-making services in WTAR, the pumping services provided by LZM produce the true object of the transaction, a functioning portabletoilet, which is the end product the customer seeks. But for the pumping services, the portabletoilet would not function properly and would therefore not be commercially viable. Customers do not rent portabletoilets for the waste removal services.

Moreover, LZM provides the pumping service only to those customers who lease its portabletoilets. The record does not reflect that LZM provides pumping services as an independent commercial endeavor, but only as inextricably connected to the condition precedent of leasing an LZM toilet. ².

Further, LZM charges for pumping services based upon the number of portabletoilets leased and not by the amount of waste pumped. If the pumping service were a separate and distinct object of the transaction, then the price would be based on the requirements of the pumping itself. The trial court found that because all portabletoilets must be pumped eventually and the charge is not regulated by the amount of waste removed, the pumping service makes the lease of portabletoilets the end product or true object sought by the consumer.

As we also noted in WTAR, the taxpayer's "manner of computing the invoice" is not determinative of either the true object of the transaction or whether the service provided is truly separate and distinct from the property leased. 217 Va. at 884, 234 S.E.2d at 249. Otherwise, a taxpayer could create its own tax exemption merely by altering the printing of its invoices.

B. The Maintenance Contract Exemption

Code § 58.1-609.5 exempts from application of the sales tax those maintenance contracts which provide for both repair or replacement parts and repair labor. A maintenance contract is "any agreement whereby a

person agrees to maintain or repair an item of tangible personal property over a specified period of time for a fee which is determined at the time the agreement is entered into." 23 VAC 10-210-910(A) (2004).

The trial court found that while LZM "may call [the contract which included the pumping services] a tax-exempt maintenance contract ... [the evidence shows] that it was ... an incidental agreement and that the main purpose of the entire transaction was for the lease of the toilet[s]." Citing *Strickland v. Sperry Rand Corp.*, 285 S.E.2d 1 (Ga. 1981), LZM argues that the maintenance contract exemption applies to the provision of toilet pumping services.

In *Strickland*, an electronic equipment rental corporation collected and remitted sales tax on its rental charges, but did not collect sales tax on maintenance charges. *Id.* Ruling on an assessed deficiency based on the maintenance charges, the Supreme Court of Georgia held that the maintenance charges were not taxable as part of the gross lease charge. *Id.* at 2. The Court found that the corporation was not liable for sales tax on its maintenance charges because the price of maintenance varied with each piece of equipment, and the cost of maintenance was based upon a cost analysis of repair and preventive maintenance of each particular piece of equipment. *Id.*

The difference between the case at bar and *Strickland* clearly shows that the charges for pumping services are not exempt costs under a maintenance contract. While the electronic equipment in *Strickland* required maintenance only to prevent or correct a defect, the portabletoilets are specifically designed to require the pumping services in conjunction with their use. Such proper and normal use necessitates the regular removal of accumulated waste. The pumping services do not repair or maintain the toilets in order to reduce the likelihood of a defect in the future. Rather, it is the pumping services that render the toilets useful and without which they could not be leased.

The maintenance contract exemption contemplates services in addition to those necessary to the item's immediate function. The exemption, therefore, does not apply to the portabletoilet pumping services, and we find nothing in the statute or regulations that would carve out an additional exception.

C. Trial Court's Findings of Fact

LZM also contends that certain of the trial court's findings were contrary to the undisputed facts. Specifically, LZM contests the trial court's following findings as contrary to stipulated facts, uncontradicted testimony, or the admissions of the parties: (1) that "pumping service is not offered as a separate service to individuals. It is only offered to a lessee of the portabletoilets;" (2) that LZM "was assessed a sales and use

tax...for the leasing and pumping service of portabletoilets" (emphasis added); (3) that 445 toilets were leased by LZW in June 1999; and (4) that LZW charges "by the number of portabletoilets leased and not by the amount of waste pumped from the toilets."

1. Toilet pumping as a separate service

The trial court's letter opinion does recite that LZW's "pumping service is not offered as a separate service to individuals." The trial court also noted that LZW sometimes pumps the toilets of other rental companies and charges those companies for the service. LZW's competitors provide a reciprocal service to LZW where the circumstances make it economically practical. Larry Z. Martin, LZW's representative, testified that LZW does not compete with these other companies for the toilet pumping service, nor does LZW advertise prices for pumping services. Martin testified that pumping the toilets of another company is a "respected tradition between the rental businesses" for the convenience of all toilet rental businesses. Essentially, the trial court found, as we noted in the discussion of LZW's first assignment of error, supra, that LZW was not in the business of pumping portabletoilets, but did so only to make its rental business practical. That finding is supported by the record.

2. Assessment of tax deficiency

The trial court's letter opinion does state that LZW "was assessed a sales and use tax ... for the leasing and pumping service of portabletoilets." The court's ruling, however, is based on the true object test, which determines whether the entire transaction, i.e. both the sales and service components, is taxable. The Department's assessment against LZW was based on taxes owed "on [the] pumping of portabletoilets." The trial court's misstatement of the Department's assessment did not affect the protested amount or the trial court's analysis under the true object test.

3. The number of toilets leased in June 1999

The trial court incorrectly states the number of toilets leased during the month of June 1999 as 445. The record shows that LZW rented 612 toilets during that period: 445 with weekly pumping service, 115 with no service at all, and 52 with extra service. This misstatement of the number of toilets rented has no bearing on the trial court's finding that the pumping service is incidental to the rental of the portabletoilets and that the true object of the transaction was the procurement of the toilets. The fact remains that no pumping service

was offered except upon leasing an LZW toilet.

4. Service charges for pumping toilets

In its letter opinion, the trial court notes that LZW "charges by the number of portable toilets leased and not by the amount of waste pumped from the toilets." Martin testified that toilets without service "probably cost less" to rent than those with service, but there is nothing in the record that indicates any price differential based on the amount of waste pumped.

Even assuming that Martin's statement is correct, the trial court's finding is not contradictory. Its finding that the pumping charge does not vary by the amount of waste pumped is supported by the record.

III. CONCLUSION

We conclude that under Code § 58.1-602 and Regulation 4040, the true object test applies to lease/service transactions as well as sales/service transactions. The trial court did not err in applying the true object test and in finding that the pumping services were inseparable from the portable toilet rentals under the facts of this case. Further, the trial court did not err in holding that the maintenance contract exemption does not apply. The trial court's misstatements did not produce a judgment that was contrary to the testimony and stipulated facts. Accordingly, we will affirm the judgment of the trial court granting summary judgment to the Department.

Affirmed.

1

LZW also assigns error to the trial court's application of 23 VAC 10-210-4040 to lease transactions. This assignment of error is subsumed within its first assignment of error and duplicative, so it will not be separately addressed

2

The record did reflect that LZW and other similar portable toilet rental companies exchange pumping

services where practical, and the pumping company did charge for the pumping. For example, if LZM had several toilets in a location and a competitor had only one, LZM would pump for the competitor who would reciprocate for an LZM toilet in a similar or isolated situation. However, nothing in the record indicated this practice was anything but a practical accommodation of convenience

© 2013 Thomson Reuters/RIA. All rights reserved.

Checkpoint Contents

State & Local Tax Library

State & Local Tax Reporters

States

Missouri

Cases

Missouri Administrative Hearing Commission

1982

Brooner and Thomas Construction Company, Inc. v. Director of Revenue., RS-81-0068,

08/26/1982

Brooner and Thomas Construction Company, Inc. v. Director of Revenue.

Case Information:

Docket/Court: RS-81-0068, Missouri Administrative Hearing Commission

Date Issued: 08/26/1982

Tax Type(s): Sales and Use Tax

OPINION

Statement of the Case, Findings of Fact, Conclusions of Law and Decision

Statement of the Case

This matter appears before the Administrative Hearing Commission upon an appeal filed by Brooner and Thomas Construction Company, Inc., Petitioner herein, in reference to Assessment No. 29789 issued by

the Director of Revenue, Respondent herein, regarding assessment of unpaid sales and use taxes in the amount of \$5,945.17. This dispute concerns taxes assessed against Petitioner for (1) Petitioner's purchase of "Dodge Reports", (2) Petitioner's rental of portable toilets; and (3) Petitioner's purchase of fiberglass roofing.

Pursuant to written notice a hearing was held on November 2, 1981 at the Administrative Hearing Commission in Jefferson City, Missouri. Petitioner was represented by Ronald Thomas, Vice President of Petitioner. Respondent was represented by Truman E. Allen, Associate General Counsel, Missouri Department of Revenue.

Findings of Fact

1. Petitioner is a building contractor in the State of Missouri.
2. On January 22, 1981, Respondent issued Assessment No. 29789 against Petitioner in the amount of \$5,945.17 for unpaid sales and use tax on three separate items.
3. The first item assessed was a daily mailing sheet, the "Dodge Reports," which was sent to Petitioner by the F.W. Dodge Company, and contained lists of construction projects in geographic areas of interest to Petitioner as well as other construction information useful to Petitioner in conducting its business.
4. The second item assessed was Petitioner's rental of portable fiberglass toilets from a firm located in Kansas City, Kansas. The chemically treated toilets were placed on construction sites operated by Petitioner.
5. The rental fee paid by Petitioner included both payment for the use of the toilet and for sanitation service provided by the rental company.
6. The final item assessed by Assessment No. 29789 was fiberglass roofing obtained from Owen-Corning Fiberglass by Petitioner.
7. Petitioner initially had contracted with Gentges Roofing and Sheet Metal, in a contractor-sub-contractor relationship, to provide materials and labor for the construction of a new elementary school in Queen City, Missouri. Before Gentges Roofing and Sheet Metal could perform the contract, they went into receivership and were unable to purchase the necessary materials needed to perform their part of the contract.
8. Petitioner agreed to purchase the needed materials for Gentges Roofing. The amount paid by Petitioner was to be deducted from the total amount charged in the sub-contract.
9. Paragraph Thirteen (13) of the sub-contract agreement provides that the "... Sub-contractor shall

pay all Sales Taxes, Use Taxes, Excise Taxes, Old Age Benefit and Unemployment Compensation Taxes upon the material and labor furnished under this contract, as required by the statutes of the United States Government and the State in which this work is performed."

Conclusions of Law

This Commission has jurisdiction over this appeal pursuant to Sections 144.261 and 161.273, RSMo 1978.

This Commission is no longer required to determine the legality of the tax upon the mailers sent by the F.W. Dodge Company due to the fact that Respondent, on page one of its brief, concedes that the "Dodge Reports" are not subject to taxation. Therefore, this Commission must decide the legality of the tax upon Petitioner's rental of portable toilets and upon Petitioner's purchase of the roofing material for Gentges Roofing and Sheet Metal.

This Commission will first deal with Petitioner's contention that it is not subject to the use tax imposed by Section 144.610, RSMo 1978 upon its rental of portable construction site toilets. Section 144.610, RSMo 1978 states that:

1. A tax is imposed for the privilege of storing, using or consuming within this state any article of tangible personal property purchased on or after the effective date of sections 144.600 to 144.745 in an amount equivalent to the percentage imposed on the sales price in the sales tax law in section 144.020. This tax does not apply with respect to the storage, use or consumption of any article of tangible personal property purchased, produced or manufactured outside this state until the transportation of the article has finally come to rest within this state or until the article has become commingled with the general mass of property of this state.
2. Every person storing, using or consuming in this state tangible personal property purchased from a vendor is liable for the tax imposed by this law, and the liability shall not be extinguished until the tax is paid to this state, but a receipt from a vendor authorized by the director of revenue under the rules and regulations that he prescribes to collect the tax, given to the purchaser in accordance with the provisions of section 144.650, relieves the purchaser from further liability for the tax to which receipt refers.

The rental of an item of tangible personal property can subject the lessee to use tax due to the fact that a rental can constitute a purchase or sale under Section 144.605(5) which states in pertinent part:

(5) "Sale", any transfer, barter or exchange of the title or ownership of tangible personal property, or the right to use, store or consume the same, for a consideration paid or to be paid, and any transaction whether called leases, rentals, bailments, loans, conditional sales or otherwise, and notwithstanding that the title or possession of the property or both is retained for security.

Petitioner contends that it was paying for a service when it was renting the portable toilets. It is the view of this Commission, however, that Petitioner was renting tangible personal property, in the form of on-site toilets, from a company located in Kansas City, Kansas. Therefore, this Commission holds that the use tax upon Petitioner's rental of said portable toilets was valid.

Next, this Commission will consider the legality of a tax upon Petitioner's purchase of roofing material for Gentges Roofing and Sheet Metal.

As noted in Finding of Fact No. 8, Petitioner purchased the needed roofing material for the financially-troubled Gentges Roofing and Sheet Metal Company. Petitioner's Vice-President, Ronald E. Thomas testified that the money provided by Petitioner was to be subtracted from the total amount that Petitioner owed to Gentges. Petitioner also contends that the contractual language which is set forth in Finding of Fact No. 9 relieves it from any tax liability on the roofing material due to the fact that the language expressly provides that the burden was to fall on Gentges, the sub-contractor.

The Missouri Supreme Court dealt with similar issues and arguments in *State ex rel. Thompson-Stearns-Roger v. Schaffner*, 489 S.W.2d 207 (Mo. 1973). In *Thompson-Stearns-Roger*, the taxpayers, contractors, entered into cost plus-a-fixed-fee contracts with the United States. The contracts provided that "[T]itle to all property purchased by the Contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon delivery of such property by the vendor." *Thompson-Stearns-Roger*, supra, at 215. The Supreme Court found that even though title to the goods became vested in the United States, the contractors had sufficient dominion over the goods as to enable the contractors to designate the transferee of the title.

If, as appellants contend, they never had "title" to the materials, etc., involved because "title" passed directly from the vendor to the government, the appellants, nevertheless, did have such dominion over the property as enabled them to designate the transferee of the "title". They did so by virtue of their contract with the government, but the sellers of the

goods were not parties to such contract, and they transferred "title" to the United States because the contractors as purchasers of the goods directed that such be done.

Thompson-Stearns-Rogers, supra, at 215.

The Court went on to hold that:

There is no question that the General Assembly in enacting the sales tax law intended to place the burden of the tax upon the person paying the purchase price ... In defining a "purchaser" as the person to whom either "ownership" or "title" is transferred, the legislature must have intended to include not only transactions in which the person who pays the purchase price is the recipient of the legal title to the property, but also to include the myriad of transactions in which the purchase price is paid by one who does not receive technical legal title but who exercises dominion over the property such as by directing who the recipient of such title shall be. *Thompson-Stearns-Rogers, supra* at 215.

In the matter at hand Petitioner purchased roofing material for Gentges from Owen-Corning Fiberglass. Petitioner had such dominion over the property as to enable it to designate the transferee of the property. Therefore, under the rationale of *Thompson-Stearns-Rogers*, Petitioner was the purchaser and as such is subject to taxation.

Petitioner contends that Paragraph thirteen (13) of its contract with Gentges provides that Gentges is to be responsible for all taxes. As noted above, the legislature intended to place the burden of the tax upon the purchaser. This Commission recognizes that the contract allows Petitioner to recover the taxes from Gentges, but it does not shift the initial tax liability from Petitioner, as purchaser, to Gentges. It is therefore the view of this Commission that Petitioner was in fact initially responsible for said taxes.

Petitioner also argues that it is entitled to a set-off of its taxes due to the expenses it incurred during Respondent's audit of Petitioner's records and that it was unaware that it had signed a waiver of the statute of limitations. This Commission finds that both arguments are without merit and are unnecessary for the final disposition of the matter at hand.

Decision

It is the decision of this Commission that Assessment No. 29789, as it relates to the contested amount of taxes, be upheld.

Wherefore, it is the Order of this Commission that this case be dismissed from the docket of this Commission, effective this date.

© 2013 Thomson Reuters/RIA. All rights reserved.

Checkpoint Contents

State & Local Tax Library

State & Local Tax Reporters

States

New York

Cases

New York Supreme Court, Appellate Division

1992

IN THE MATTER OF WASTE MANAGEMENT OF NEW YORK INC. v. Tax Appeals

Tribunal of the State of N. Y. et al., 185 AD2d 479 585 NYS2d 883, 07/16/1992

**IN THE MATTER OF WASTE MANAGEMENT OF NEW YORK INC. v. Tax
Appeals Tribunal of the State of N. Y. et al.**

Case Information:

Docket/Court: 63840, New York Supreme Court, Appellate Division 3rd Department

Date Issued: 07/16/1992

Tax Type(s): Sales and Use Tax

Cite: 185 AD2d 479, 585 NYS2d 883

Headnote

1.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS TAXABLE IN GENERAL - Nature of transaction in general. Containers, compactors, and portable toilets that waste removal service leased to its customers were not "actually transferred" to its customers in connection with taxable services, such that they would be within sales and use tax exclusion, absent a permanent transfer.

References: McKinney's Tax Law § 1101(b)(4)(i)(B)

OPINION

Mikoli, J.

Proceeding pursuant to CPLR article 78 (initiated in this court pursuant to Tax Law § 2016) to review a determination of respondent Tax Appeals Tribunal which sustained a sales and use tax assessment imposed under Tax Law articles 28 and 29.

Petitioner is the operator of a waste removal service. It leases containers and compactors to its customers. The customers place their waste into the containers and compactors and at scheduled intervals petitioner's trucks go to the customers' premises and remove the waste. Petitioner also leases portable outdoor toilets, or "Port-O-Let" units, which it services.

The Audit Division of the Department of Taxation and Finance (hereinafter Division) determined, as the result of an audit in 1987, that during the audit period petitioner purchased containers, compactors and Port-O-Let units and provided them to its customers as part of its waste removal service without payment of any sales or use tax on the purchases. The Division then issued a notice of sales tax determination and demand for payment of sales and use taxes plus interest in the amount of \$69,904.01. After a hearing, an Administrative Law Judge (hereinafter ALJ) ruled that the containers, compactors and Port-O-Let units were not taxable because petitioner had "actually transferred" them to its customers, thereby coming within the exclusion in Tax Law §1101(b)(4)(i)(B) . The Division excepted to the ALJ's determination and argued at a hearing before respondent Tax Appeals Tribunal (hereinafter the Tribunal) that no actual transfer occurred because petitioner's customers did not permanently possess or consume the equipment and that petitioner retained title to it and could reuse it. The Tribunal reversed the ALJ's determination and sustained the notice of determination and demand and, *inter alia*, held that the rentals of the containers, compactors and Port-O-Let units were not "actual transfers" within the meaning of Tax Law §1101(b)(4)(i)(B) . Petitioner then commenced this CPLR article 78 proceeding to annul the Tribunal's determination.

The determination should be confirmed. Petitioner argues that the Tribunal erroneously interpreted Tax Law §1101(b)(4)(i)(B) because the intent of the statute was to include the type of rentals in dispute as "actual transfers" and that the Tribunal improperly relied on the Court of Appeals' decision in *Matter of U-Need-A-Roll Off Corp. v New York State Tax Commn.* (67 NY2d 690) as precedent, claiming that it is not on point. These arguments are without merit.

Turning first to the case of *Matter of U-Need-A-Roll Off Corp. v New York State Tax Commn.* (*supra*), we

find that while that case is not directly on point, the Tribunal could properly refer to it as persuasive authority because it is factually analogous to the instant case. As to petitioner's statutory contention, we find that the Tribunal's interpretation of "actually transferred" to require a permanent transfer is rational and not erroneous. A statute providing an exception from taxation is to be construed in favor of the government, not the taxpayer(see, *Matter of Grace v New York State Tax Commn.*, 37 NY2d 193, 196). And, as here, where the Division's interpretation is of a provision of the statute it enforces and involves the special competence and expertise of the Division, deference is to be given to that interpretation(see, *Matter of Moran Towing & Transp. Co. v New York State Tax Commn.*, 72 NY2d 166, 173).

This position is reinforced by decisions of the Court of Appeals in factually analogous cases that considered whether items used in transactions with customers were purchased for resale so as to be exempt from the sales tax at time of purchase (see, Tax Law § 1105 (a); § 1101 (b)(4)(i)(A)). As the Court of Appeals has stated, "[i]t should not fall within judicial 'decisional analysis' to determine what is or is not a rental" (*Matter of U-Need-A-Roll Off Corp. v New York State Tax Commn.*, *supra*, at 692-693, quoting *Matter of Albany Calcium Light Co. v State Tax Commn.*, 44 NY2d 986, 988). It follows that what is "actually transferred" should likewise be left to the Division's interpretation. The Division's construction of "actual transfers" in this case is also in accord with its earlier determination involving that term in *Matter of Chem-Nuclear Sys.* *****

Weiss, P.J., Yesawich Jr., Crew III and Mahoney, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

Checkpoint Contents

State & Local Tax Library

State & Local Tax Reporters

States

Arkansas

Cases

Supreme Court of Arkansas

1996

Richard A. WEISS, Director Arkansas Department of Finance and Administration,
Appellant, v. BEST ENTERPRISES, INC., Appellee., 917 SW2d 543, 03/18/1996

Richard A. WEISS, Director Arkansas Department of Finance and Administration, Appellant, v. BEST ENTERPRISES, INC., Appellee.

Case Information:

Docket/Court: 95-527, Supreme Court of Arkansas

Date Issued: 03/18/1996

Tax Type(s): Sales and Use Tax

Cite: 917 SW2d 543

Disposition: REVERSED AND DISMISSED.

Headnote

**1.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS TAXABLE
IN GENERAL -** Bailment, loan, lease, rental, or license of personal property. Taxpayer's business of
providing portable toilets and related services to customers represented taxable rental of tangible personal
property, subject to gross receipts tax, rather than fully exempt provision of services.

2.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS TAXABLE

IN GENERAL - Sale or service transaction. Taxpayer's business of providing portable toilets and related services to customers represented taxable rental of tangible personal property, subject to gross receipts tax, rather than fully exempt provision of services.

3.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS TAXABLE IN GENERAL - Bailment, loan, lease, rental, or license of personal property. In determining whether transaction constitutes lease of personal property subject to gross receipts tax, court looks to all factors involved to determine true nature of transaction.

4.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS TAXABLE IN GENERAL - Bailment, loan, lease, rental, or license of personal property. No specific words are necessary to create lease of personal property, subject to gross receipts tax, but words that are used must have effect of divesting owner of right to possession of property and, for a consideration, investing other party with right to possession for designated period or at will.

5.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS TAXABLE IN GENERAL - Bailment, loan, lease, rental, or license of personal property. If charges for portable toilets and related services have been separately stated, amount charged for services would not have been subject to gross receipts tax; however, since nontaxable service was included as part of total consideration received from rental of portable toilets, charge for services constituted part of gross proceeds, and entire proceeds were subject to taxation.

6.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS TAXABLE IN GENERAL - Sale or service transaction. If charges for portable toilets and related services have been separately stated, amount charged for services would not have been subject to gross receipts tax; however, since nontaxable service was included as part of total consideration received from rental of portable toilets, charge for services constituted part of gross proceeds, and entire proceeds were subject to taxation.

7.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - LEVY AND ASSESSMENT - Evidence - Presumptions and burden of proof. Because taxpayer did not maintain required records differentiating between amounts received for taxable leasing of portable toilets and for nontaxable related services, burden of refuting gross receipts tax assessment was upon taxpayer.

8.TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - PERSONS SUBJECT TO OR LIABLE FOR TAX - Carriers and public utilities. Taxpayer that provided portable toilets and related services to customers failed to establish it was utility or public service exempt from gross receipts tax,

where it was not regulated by Public Service Commission (PSC) or Transportation Commission, it was not authorized to serve a territory by any city, state board, or commission, and its rates were not regulated by official agents.

9. TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS TAXABLE IN GENERAL - Subjects and exemptions in general - In general. Tax exemption presupposes liability, and is properly applied only to grant of immunity to persons or property which otherwise would have been liable to assessment, and exists only by virtue of constitutional or statutory provisions.

10. TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - LEVY AND ASSESSMENT - Evidence - Weight and sufficiency. Taxpayer must prove entitlement to exemption beyond a reasonable doubt.

11. TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - PERSONS SUBJECT TO OR LIABLE FOR TAX - Carriers and public utilities. Principal determinative characteristic of public utility, whose sewer and sanitation services are exempt from tax, is service to, or readiness to service, indefinite public that has legal right to demand and receive its services or commodities.

12. TAXATION - SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES - TRANSACTIONS TAXABLE IN GENERAL - Purpose of use or consumption as affecting taxability - In general. Leasing and servicing of portable toilets did not fall within definition of public utility sewer service, which would be exempt from taxation.

APPEAL FROM THE DECISION OF THE PULASKI COUNTY CHANCERY COURT, Second Division. NO. 94-3630, HON. COLLINS KILGORE, CHANCELLOR.

JOYCE KINKEAD, LITTLE ROCK.

NEIL DEININGER, NORTH LITTLE ROCK. REBA M. WINGFIELD, NORTH LITTLE ROCK.

ROBERT H. DUDLEY, Associate Justice. Newbern and Corbin, JJ., dissent.

OPINION

ROBERT H. DUDLEY, Associate Justice

Best Enterprises, Inc., charges a fee to place its portable toilets at customers' sites. The fee includes

charges for pumping, cleaning, sanitization, and waste disposal services for the toilets. The Department of Finance & Administration audited Best's records, administratively ruled that Best's operation was subject to the gross-receipts tax, and assessed a deficiency. Best paid the assessment, penalty, and interest under protest and filed suit for judicial relief in the chancery court. See Ark. Code Ann. § 26-18-406(a)(1) (Repl. 1992). The chancellor ordered the tax, penalty, and interest refunded. We reverse and dismiss.

In its complaint, Best alleged that Ark. Code Ann. § 26-52-103(a)(3)(E) excludes from gross-receipts taxation, with certain exceptions, furnishing or rendering of a service, and that Ark. Code Ann. § 26-52-301(2) exempts sewer services from the gross-receipts tax. The Director answered that Best's lease of portabletoilets was not excluded from taxation because the lease was an integral part of the business and, since the lease and the attendant cleaning services were not separated, it contended that the transaction was subject to taxation. The Director additionally answered that Best was not exempt from taxation as a sewer service because Best is not a utility or public service and only those entities are exempt.

The facts, which are largely undisputed, show that Best purchases portabletoilets out of state, takes the toilets to its base of operation in Cabot and, from there, delivers the toilets to the customers' sites. After placing a portabletoilet on a customer's site, Best provides pumping, cleaning, sanitation, and waste disposal services for the unit. It charges one fixed price for both the use of portabletoilets and the attendant services. The fixed price is determined by using a chart that was formulated by Best. The fixed price includes the cost of the toilet and other equipment such as the service truck and chemicals, toilet tissue, gloves, boots, and uniforms; the cost of fuel for its truck and time for travel by service personnel to the site; and the cost of labor. The cost of equipment constitutes about eleven percent of the fixed price, and the cost of toilets amounts to about five percent of the fixed price.

When a customer calls for a portabletoilet, Best inquires about the number of people who will use the facility, the location, and the length of time the toilet or toilets will be needed. After receiving the information, Best determines the fixed price by using its chart. The customer signs a written contract. The toilet is delivered and subsequently serviced at least once a week. The frequency of service depends upon the number of people using the toilet. If a toilet is overused, the customer is informed and either frequency of service is increased or the number of toilets is increased, and the fixed price is increased. The customer is billed every four weeks.

Most of the portabletoilets are leased to contractors for use at construction sites. A six-month lease would be considered a short lease; some toilets have been on site since 1987. Best will supply a toilet for only one week, but the fixed charge is about the same as for four weeks.

Servicing the toilets includes pumping waste to the truck, recharging the holding tank with chemicals, deodorizing, cleaning, disinfecting, replacing toilet tissue, removing graffiti, and maintenance. The waste is transported by a service truck to Cabot where it is stored in larger tanks until disposed at a municipal waste-water treatment facility.

The chancellor ruled that providing portabletoilets to customers did not constitute the rental of tangible personal property, but rather that Best is engaged in providing sewer and sanitation services which are exempt from taxation. We reverse and dismiss.

The Director's first point of appeal is that the chancellor erred in ruling that providing portabletoilets did not constitute, in part, the rental of tangible personal property. The point is well taken.

Rentals of tangible personal property are taxable. Ark. Code Ann. § 26-52-103(a)(3)(B) (Repl. 1992). In determining whether a transaction constitutes a lease that is taxable under the gross receipts act, we look to all of the factors involved to determine the true nature of the transaction. *Leathers v. A & B Dirt Movers, Inc.*, 311 Ark. 320, 844 S.W.2d 314 (1992). No specific words are necessary to create a lease, but the words that are used must have the effect of divesting the owner of the right to the possession of his property and, for a consideration, investing the other party with the right to possession for a designated period or at will. *Harbottle v. Central Coal & Coke Co.* 134 Ark. 254, 203 S.W. 1044 (1918). Best's form contract states that it will "supply the sanitation units" and that the customer will "retain absolute and sole control, possession, and custody of the sanitation units and return such units to the contractor at the end of the service period." It further provides that if the toilet is damaged, other than from ordinary wear and tear, the customer is liable for the damages, the customer cannot make alterations or make attachments to the toilets without Best's permission, and the customer will return the toilet to Best at the end of the contract period. One of Best's exhibits introduced at trial was basic industry data published by the School of Business and Public Administration of Howard University. It provides: "As a part of the cost of renting units, the portable sanitation contractor services on a regular basis." One of Best's employees admitted that the customers frequently called the transaction a rental of portabletoilets.

In summary, Best, for a consideration, divested itself for a period of time of the right to the possession of its portabletoilets, and invested the customer with the right of possession of its property. The transactions fit within the definition of leases, and we hold that they were leases. Similarly, a Tennessee Court of Appeals recently held that providing portabletoilets to customers constituted a lease of toilets. *Essary v. Huddleston*, WL 384985 (Tenn. App. 1995).

The chancellor ruled that Best was not in the business of leasing portabletoilets, but rather was a public

utility providing sewer services, which are exempt from the gross-receipts tax. The Director also assigns this part of the ruling as error. The assignment has merit for two reasons.

First, sanitation services are provided for the portabletoilets leased by Best. Manifestly, the leasing of the portabletoilets is an integral part of Best's business. Best offered testimony that it would service toilets owned by another company, but it did not deny that it primarily serviced its own toilets. Thus, it cannot be said that Best was solely providing sewer services.

Second, it is undisputed that part of the fixed charge is related to the cost of the toilets. Best estimated this to be approximately five percent of the charge. If the charges for the toilets and services had been separately stated, the amount charged for services would not have been taxable. However, since the non-taxable service was included as part of the total consideration received from the rental of the portabletoilets, the charge for services constitutes part of the gross proceeds, and the entire proceeds are subject to taxation.

In *Ferguson v. Cook*, 215 Ark. 373, 220 S.W.2d 808 (1949), a monument dealer sought to deduct the cost of labor necessary to make and install monuments from the sales price. We held that the entire sales price was subject to the tax because the statute that is now codified as Ark. Code Ann. § 26-52-103, states in pertinent part:

"Gross receipts" or "gross proceeds" means the total amount of consideration for the sale of tangible personal property and such services as are herein specifically provided for, whether the consideration is in money or otherwise, without any deduction on account of the cost of the properties sold, labor service performed, interest paid, losses, or any expenses whatever. Ark. Code Ann. § 26-52-103(a)(4) (emphasis added). We concluded that "where one sells an article in the preparation of which for sale he has expended labor, which adds to its value and was necessary to make it salable, he must pay the sales tax on the price received, without deduction for the value of the labor performed." *Ferguson v. Cook*, 215 Ark. at 376, 220 S.W.2d at 810 (emphasis added).

In *Larey v. Dungan-Allen*, 244 Ark. 908, 428 S.W.2d 71 (1968), the appellee taxpayer was a corporation engaged in commercial photography. *Id.* at 908, 428 S.W.2d at 72. The Director sought to tax it under the section of the act that levies the tax under "photography of all kinds." *Id.* The taxpayer argued that eighty-five percent of its revenue was recompense for services because in the course of its business, its employees "frequently [had] long consultations with their patrons about matters such as advertising layouts, promotional planning, material for magazine publication, and other activities going beyond the mere taking and developing of pictures." *Id.* at 909, 428 S.W.2d at 72. One of the principal stockholders testified that

taking pictures was "the least of what they [did]." *Id.* The stockholders offered testimony that for a day's work an advertising agency might be charged \$ 200 for photographic services and \$ 10 for five different pictures. *Id.* at 910, 428 S.W.2d at 72. The taxpayer argued that "the incidence of the gross-receipts tax should be similarly divided between nontaxable revenue from professional services and taxable revenue from the taking of pictures." *Id.* We stated that we had previously rejected such an argument in *Ferguson v. Cook*, 215 Ark. 373, 220 S.W.2d 808 (1949) . We concluded by stating that while the tax would not apply in instances where the taxpayers "were paid for services only, such as consultations, without any photographs being involved ... the principle cannot be extended to the point of separating the sale of the photograph from the exercise of that skill 'which adds to its value and was necessary to make it salable.'" *Larey v. Dungan-Allen*, 244 Ark. at 911 , 428 S.W.2d at 73 (citation omitted).

In *Ragland v. Miller Trane Service Agency*, 274 Ark. 227 , 623 S.W.2d 520 (1981) , the taxpayer was in the business of inspecting, servicing, and repairing commercial heating and cooling devices and had two different types of contracts. *Id.* at 228, 623 S.W.2d at 521. The first was an "inspection only" contract, and the Director agreed it was nontaxable. *Id.* at 229, 623 S.W.2d at 521. The second contract provided for the taxpayer to maintain and repair the units, in addition to inspecting them, a minimum of three times a year. *Id.* The trial court found that the full-coverage contract could be broken down into component parts for the purposes of collecting the gross receipts tax. In reversing, we stated that, under the rationale of our established case law, the inspection services enhanced the value of the full coverage contract, and increased the marketability of the taxable services; therefore, the entire transaction was taxable. *Id.* at 231, 623 S.W.2d at 522.

Most recently, in *Leathers v. A&B Dirt Movers, Inc.*, 311 Ark. 320 , 844 S.W.2d 314 (1992) , the taxpayer was a dirt hauler who contended that it provided the nontaxable service of hauling free dirt. *Id.* at 322, 844 S.W.2d at 315. The chancellor ruled that the transactions were not taxable. *Id.* We reversed because the taxpayer's records made the transaction appear as though it involved a sale of dirt, even though the record was devoid of any direct testimony that proved the sale of dirt. *Id.* at 330, 844 S.W.2d at 319 . We held that Ark. Code Ann. § 26-18-506(a) & (d) (1992) requires a taxpayer to keep adequate tax records, and when a taxpayer fails to maintain the required records, the Director may make an estimated assessment of tax due, as "the burden of proof of refuting this estimated assessment is upon the taxpayer." *Id.* at 325, 844 S.W.2d at 316-17; Ark. Code Ann. § 26-18-506(d) . We concluded that the transactions were taxable, because they involved the transfer and possession of tangible personal property.

In summary, just as in *Leathers v. A&B Dirt Movers, Inc.*, the taxpayer's records show the transactions were leases. The transactions were the type of mixed transactions that are fully taxable under *Larey v.*

Dungan-Allen and its progeny. Finally, because Best did not maintain the required records, the burden of refuting the assessment was upon the taxpayer, *Leathers v. A&B Dirt Movers, Inc.*, 311 at 325, 844 S.W.2d at 316-17, and Best did not meet that burden.

Best urges us to adopt a "dominant-use test" for this case. To do so would require us to reject the reasoning of the above cases, and we decline to do so.

The chancellor ruled that Best was entitled to a refund on the additional ground that it provided sewer and sanitation services in the furtherance of public health, and those services are nontaxable. The Director assigns the ruling as error.

Arkansas Code Annotated § 26-52-301 levies an excise tax upon utilities or public service companies "except transportation services, sewer services, and sanitation or garbage collection services." *Id.* § 26-52-301(2). In short, utilities or other public services are subject to the tax, except for their transportation services, sewer services, and sanitation services. To prove that it comes within the exemption, Best must have proved that it was a utility or public service company engaged in sewer services.

In *Ragland v. Meadowbrook Country Club*, 300 Ark. 164, 777 S.W.2d 852 (1989), we said, "The difference between an exclusion and an exemption is that an exemption pertains to sales that would be covered were they not specifically exempted from the Act, while exclusion is simply not included in the first place." *Id.* at 168, 777 S.W.2d at 854. Stated differently, an exemption "presupposes a liability, and is properly applied only to a grant of immunity to persons or property which otherwise would have been liable to assessment, and exists only by virtue of constitutional or statutory provisions." 84 C.J.S. Taxation § 215 at 411 (1954). A taxpayer must prove entitlement to an exemption beyond a reasonable doubt. *City of Fayetteville v. Phillips*, 320 Ark. 540, 899 S.W.2d 57 (1995). Best failed to prove beyond a reasonable doubt that it was exempt from taxation as a utility or public service.

Best did not prove that it was regulated by the Arkansas Public Service Commission or the Arkansas Transportation Commission, that a city, state board, or commission had authorized it to service a territory, or that its rates were regulated by an official agency. In short, it failed to prove that it was a public utility as contemplated by Ark. Code Ann. § 23-1-101.

In *Quinn-Moore v. Lambert*, 272 Ark. 324, 614 S.W.2d 230 (1981), we said that a public utility is entitled to a guaranteed but limited return on its investment, and it cannot pick and choose whom it will serve, while a private entrepreneurship is entitled to pick and choose whom it will serve, but is not entitled to a guaranteed return on its investment. *Id.* at 328, 614 S.W.2d at 232. Indeed, the term "public utility" implies a public use

and service to the public, and the principal determinative characteristic of a public utility is service to, or a readiness to serve, an indefinite public that has a legal right to demand and receive its services or commodities. See 64 Am. Jur. 2d, Public Utilities § 1 at 549 (1972). A public utility holds itself out to the public generally and may not refuse any legitimate demand for service, while a private business independently determines who it will serve. The record is devoid of any evidence that Best is required to serve any area, or indefinite public, or that it is entitled to a return on its investment.

In addition, the lease and service of a toilet does not fit within the definition of a public utility sewer service. Section 8-4-102 of the Arkansas Code Annotated defines "sewage" and "sewer system" as follows:

(1) "Sewage" means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the excrementitious or other discharge from bodies of humans or animals, together with such groundwater infiltration and surface water as may be present.

...

(5) "Sewer system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, which are used for conducting sewage or industrial water or other wastes to a point of disposal.

Ark. Code Ann. § 8-4-102(1) & (5) (Repl. 1993). In summary, Best failed to prove beyond a reasonable doubt that it was exempt as a public sewer service.

We need not address the Director's final point of appeal. Reversed and dismissed.

Newbern and Corbin, JJ., dissent.

Dissenting Opinion

DAVID NEWBERN, Associate Justice

In *Ferguson v. Cook*, 215 Ark. 373, 220 S.W.2d 808 (1949), a dealer in cemetery monuments reported to the tax authority only 50% of the gross proceeds of each sale because he attributed the other 50% to labor expended in the erection of the monuments. The case was tried on stipulations, and there was no evidence as to what might actually have been attributable to labor expended in the erection of monuments or in the creation of the monuments, engraving, etc. In that circumstance, we held the entire amounts taxable. The result in the *Ferguson* case also seems contrary to a statement of general principle written by Justice Frank

G. Smith in that opinion, a statement with which I totally agree, as follows:

This language appears to mean, and we so construe it, that where one sells an article in the preparation of which for sale he has expended labor, which adds to its value and was necessary to make it salable, he must pay the sales tax on the price received, without deduction for the value of the labor performed.

Ark. Code Ann. § 26-52-103(a)(2)(E) (Supp. 1995) provides that "'sale' shall not include the furnishing or rendering of services, except as otherwise provided in this section." Section 26-52-103(a)(4), in pertinent part provides:

"Gross receipts" or "gross proceeds" means the total amount of consideration for the sale of tangible personal property and such services are herein specifically provided for, whether the consideration is in money or otherwise, without deduction on account of the cost of the properties sold, labor services performed, interest paid, losses or any expenses whatsoever.

The confusion caused by the outset provision that a "sale" does not include services followed by a definition of "gross proceeds" which includes "labor services performed" has resulted in uncertainty and in conflicting decisions. For example, *Ragland v. Meadowbrook Country Club*, 300 Ark. 164, 777 S.W.2d 852 (1989), we held that the sale of food and beverages did not include the 15% "gratuity" included in the price to the customer for service. We distinguished *Belvedere Sand & Gravel Co. v. Heath*, 259 Ark. 767, 536 S.W.2d 312 (1976), in which we held taxable the total amount charged to customers by a sand and gravel company for its products, including the labor supplied to the taxpayer company by a contractor for delivery to its customer. Our distinction between the cases seemed to be that the "gratuity" in the *Ragland* case was added to the cost of the food and beverages after the sale whereas the delivery cost of the sand or gravel in the *Belvedere* case was somehow more integral to the sale. That is a distinction without a difference.

We are on the wrong track, and we have been on it since the decision in the *Ferguson* case. It is obvious to me that the General Assembly intended that any service which goes into the creation of an item for sale and indeed adds to its value should be taxable. In view, however, of the general statutory definition of "sale" which excludes services, services ancillary to a sale should not be included. Such an interpretation would be consistent with what Justice Smith said in the *Ferguson* case, albeit probably not consistent with the result reached there.

The unreasonableness of the interpretation given by the majority opinion, and its portent for continued uncertainty in this area, is underlined by the parties' apparent agreement that we will allow a taxpayer to avoid the tax on such services if they are "separately stated" in the bill to the customer. The majority opinion

states, "Since the non-taxable service was included as part of the total consideration received from the rental of the portable toilets, the charge for services constitutes part of the gross proceeds, and the entire proceeds are subject to taxation." That suggests a merchant can avoid taxation on services if they are billed separately from the charge for the item sold, regardless whether the services helped create the value of the item or were ancillary to the sale. Surely that cannot be the intent of the General Assembly. If services ancillary to a sale are to be taxed, the General Assembly could clearly say so. In the absence of such statutory language we should not permit the gross receipts tax on sales to be applied to such services.

I respectfully dissent.

Corbin, J. joins in this dissent.

© 2013 Thomson Reuters/RIA. All rights reserved.

Checkpoint Contents

State & Local Tax Library

State & Local Tax Reporters

States

North Carolina

Cases

North Carolina Department of Revenue

2004

**IN THE MATTER OF: The Proposed Assessment of Sales and Use Tax for the period
May 1, 2000 through March 31, 2003, by the Secretary of Revenue of North Carolina v. [Taxpayer],
2003-441, 02/25/2004**

**IN THE MATTER OF: The Proposed Assessment of Sales and Use Tax
for the period May 1, 2000 through March 31, 2003, by the Secretary of
Revenue of North Carolina v. [Taxpayer]**

Case Information:

Docket/Court: 2003-441, North Carolina Department of Revenue

Date Issued: 02/25/2004

Tax Type(s): Sales and Use Tax

OPINION

FINAL DECISION

This matter was heard before the Assistant Secretary of Administrative Hearings, Eugene J. Cella, in the City of Raleigh, on December 18, 2003, upon application for hearing by the taxpayer wherein it protested the proposed assessment of tax, penalty and interest for the period May 1, 2000 through March 31, 2003. The hearing was held by the Assistant Secretary pursuant to the provisions of G.S. 105-260.1.

Representing the Sales and Use Tax Division were W. Timothy Holmes, Assistant Director, and W. C. Shelton, Administration Officer. The hearing was handled by mail.

Pursuant to G.S. 105-241.1, the Department mailed a Notice of Sales and Use Tax Assessment to the Taxpayer on July 14, 2003 assessing tax, penalty and interest in the amount of \$17,853.56. The Taxpayer objected to the proposed assessment and timely requested a hearing.

ISSUES

The issues to be decided are:

1. Are the Taxpayer's charges to customers for the rental of tangible personal property, i.e., portable toilets, subject to sales tax notwithstanding that the Taxpayer cleans and maintains the toilets during the period of use by the customer and makes no separate charge for such service?
2. Is the Taxpayer liable for the sales tax on the gross receipts from toilets which he did not collect from his customers?
3. Can the Taxpayer avoid the assessment of sales tax based on the fact that he failed to collect the sales tax for the use of portable toilets from his customers during the audit period?

EVIDENCE

The following items were introduced into evidence by the Sales and Use Tax Division:

1. Copy of Memorandum dated May 16, 2001 from the Secretary of Revenue to the Assistant Secretary of Tax Administration, designated Exhibit E-1.
2. Copy of sales and use tax auditor's report for the period May 1, 2000 through March 31, 2003 dated June 15, 2003, designated Exhibit E-2.
3. Copy of Notice of Sales and Use Tax Assessment dated July 10, 2003, designated Exhibit E-3.
4. Copy of letter dated July 14, 2003 from the Taxpayer to the Department of Revenue, designated Exhibit E-4.
5. Copy of letter dated July 24, 2003 from the Sales and Use Tax Division to the Taxpayer, designated Exhibit E-5.
6. Copy of letter dated July 28, 2003 from the Taxpayer to the Sales and Use Tax Division, designated Exhibit E-6.

7. Copy of letter dated August 7, 2003 from the Sales and Use Tax Division to the Taxpayer, designated Exhibit E-7.
8. Copy of sample Statement dated September 30, 2002, designated Exhibit E-8.
9. Copy of sample Statement dated June 16, 2003, designated Exhibit E-9.
10. Copy of sample Credit Memo dated July 20, 2000, designated Exhibit E-10.
11. Copy of three sample invoices for toilet tissue, chemicals and urinal blocks, designated Exhibit E-11.
12. Copy of redacted Final Decision Docket Number 90-22 from the Deputy Secretary of Revenue dated October 1990, designated Exhibit E-12.
13. Copy of redacted Final Decision Docket Number 91-139 from the Deputy Secretary of Revenue dated April 7, 1992, designated Exhibit E-13.
14. Copy of redacted Final Decision Docket Number 94-71 from the Assistant Secretary of Revenue for Legal and Administrative Services dated May 13, 1994, designated Exhibit E-14.
15. Copy of redacted Administrative Decision Number 278 from the Tax Review Board dated February 7, 1994, designated Exhibit E-15.
16. Copy of Sales and Use Tax Technical Bulletin 34-17, revised June 1, 2002, designated Exhibit E-16.
17. Copy of IMPORTANT NOTICE: To All Portable Toilet Businesses, dated May 13, 2002, designated Exhibit E-17.
18. Copy of power point slides for seminars given by the Sales and Use Tax Division in [North Carolina], designated Exhibit E-18.
19. Copy of letter dated September 4, 2003 from the examining auditor to the Sales and Use Tax Division, designated Exhibit E-19.
20. Copy of letter dated October 20, 2003 from the Assistant Secretary of Revenue to the Taxpayer, designated Exhibit E-20.
21. Copy of letter dated October 28, 2003 from the Taxpayer to the Assistant Secretary of Revenue, designated Exhibit E-21.
22. Copy of letter dated November 4, 2003 from the Assistant Secretary of Revenue to the Taxpayer, designated Exhibit E-22. The following additional information was presented by the parties after the hearing date.
23. Copy of letter dated November 17, 2003 from the Taxpayer to the Assistant Secretary of Revenue, designated Exhibit E-23.

24. Copy of various Taxpayer invoices for portabletoilet rentals from August 2001 through November 2002, designated Exhibit E-24.
25. Copy of various Invoices from the Taxpayer's vendors from September 2000 to November 2002, designated Exhibit E-25.
26. Copy of Depreciation Detail Listing, Form 1120, from the Taxpayer's Federal Income Tax return, designated Exhibit E-26.
27. Copy of Brief for Tax Hearing, held on December 18, 2003, designated Exhibit E-27.

FINDINGS OF FACT

Based on the foregoing evidence of record, the Assistant Secretary makes the following findings of fact:

1. The Taxpayer did not charge, collect and remit sales tax on its charges for the rental of its portabletoilets.
2. There was no separation in the Taxpayer's books and records between rental charges and cleaning charges for the use of its portabletoilets. Although the Taxpayer did not separate rental charges from cleaning charges in its records, the auditor allowed the taxpayer nontaxable maintenance fees.
3. The invoices sent to the Taxpayer's customers denote "no service" or a weekly charge of \$15.00 or \$60.00 monthly.
4. The Taxpayer's business does include the service or "cleaning" by emptying waste from of toilets' holding tanks; however, waste removal is not the essence of the transactions in question.
5. The portabletoilets are enclosures designed for the comfort and privacy of the user. The customer contracts for the use of the facility itself and not mere waste removal.
6. The removal of the waste, like the provision of chemicals and toilet paper, is simply routine maintenance necessary to render the toilets usable.
7. There were no optional maintenance agreements and nothing in the record to suggest that the Taxpayer's customers were given the option of renting the portabletoilets from the Taxpayer and performing their own cleaning or hiring a different company to clean the units.
8. The issue of the rental versus optional maintenance charges for portabletoilets was addressed in "Important Notice: To All PortableToilet Businesses" on May 13, 2002 and in Sales and Use Tax Technical Bulletin 34-17, issued June 1, 2002.
9. There is no evidence that the Taxpayer received or complied with the lenient guidelines set forth in the "Important Notice" and Sales and Use Tax Technical Bulletin 34-17.

10. The fact that the Taxpayer paid income tax on the profits from its business has no bearing on the sales and use tax assessment.
11. The Taxpayer did not pay sales and use tax on the purchase of its portabletoilet units.
12. The Taxpayer's purchase invoices indicate that the Taxpayer did pay sales and use tax on the purchase of supplies such as toilet tissue, chemicals and paper towels.
13. Sales tax was due on the rental of the portabletoilets and the examining auditor used a sound and practical method to determine the taxable gross receipts.
14. The Notice of Proposed assessment was mailed to the Taxpayer on July 10, 2003.
15. The Taxpayer notified the Department that it objected to the assessment and timely requested a hearing.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Assistant Secretary of Revenue makes the following conclusions of law:

1. G.S. 105-164.4(a)(2) provides that the "gross receipts" from a lease or rental of tangible personal property are subject to the tax.
2. G.S. 105-164.7 provides that a Taxpayer cannot claim that they failed to collect the sales tax from the customer in order to avoid assessment of sales tax on taxable transactions.
3. The case of *Piedmont Canteen Serv., Inc. v. Johnson*, 250 N.C. 155 , 123 S.E.2d 682 (1962) provides that failure to charge or collect the tax from the purchaser shall not affect the retailer's sales tax liability.
4. The case of *Rent-A-Car Co. V. Lynch*, 39 N.C. App. 709 , 251 S.E.2d 917 , rev'd on other grounds, 298 N. C. 559, 259 , S.E.2d 564 (1979) provides that the sales tax is primarily a privilege or license tax on retailers, and not a tax on consumers. Even though the sales tax is primarily a license or privilege tax on retailers, the intent of the law is that the sales tax be passed on to the consumer.
5. The Notice of Proposed assessment was issued to the Taxpayer pursuant to G.S. 105- 241.1.

DECISION

The Taxpayer operates a portabletoilet business known by the [trade name] and a [rolloff waste container

service). The Taxpayer did not charge, collect and remit sales tax on the charges for the use of the portabletoilet rentals and there was no optional maintenance agreement between the Taxpayer and its customers. There was no separation between rental charges and cleaning charges for use of the portabletoilets in the Taxpayer's books and records. Pursuant to G.S. 105-164.4(a)(2) , the Taxpayer would have been liable for the sales tax on the undiminished gross receipts from the lease or rental of the toilets. However, the examining auditor did not hold the Taxpayer liable for the gross receipts as permitted by the law. Rather, the examining auditor multiplied the Taxpayer's gross receipts by a percentage rate of 18.75% and used the result as taxable receipts. The 18.75% figure was arrived at by using the actual \$60.00 monthly charge made for use of the toilets divided into a standard industry average for rentals of portabletoilets of \$11.25. The \$11.25 average is based on a five-year useful life of the portabletoilets plus a fair mark-up.

The Taxpayer disagrees that any portion of the revenue received for the toilet rental is subject to sales tax. Although there was no written contract between the Taxpayer and its customers, they contend that the funds which they bill and collect are solely for non-taxable cleaning of the portabletoilets. The Taxpayer also contends that it should not have to remit sales tax which they failed to collect from its customers and that it paid income tax on their revenue. They also object to the five year depreciation period used by the auditor in arriving at the percentage of gross taxable receipts.

While the Taxpayer's activity does include the service, or "cleaning" by emptying of waste from the toilet holding tanks, waste removal is not the essence of the transactions in question. The toilet units are more than receptacles. They are enclosures designed for the comfort and privacy of the user. What the customer contracts for is the facility itself and not mere waste removal. The removal of the waste, like the provision of chemicals and toilet paper, is simply routine maintenance necessary to render the toilets usable. Further, there is nothing in the record to suggest that the Taxpayer's customers were given the option of renting the portabletoilets from the Taxpayer and performing their own cleaning or hiring a different company to clean the units.

The Sales and Use Tax Division's position on the issue of the taxability of the receipts for the use of portabletoilets has been addressed in three hearings before the Assistant Secretary and all three Final Decisions supported the State's position in this issue. (Exhibits E-12, E-13 and E-14.) The Tax Review Board's Administrative Decision number 278 rendered on February 7, 1994, further buttresses the State's position (Exhibit E-15).

G.S. 105-164.7 clearly provides that the Taxpayer cannot claim that it failed to collect the sales tax from the

customer in order to avoid assessment of sales tax on taxable transactions. It is also well established in case law that the sales tax must be added to the purchase price and constitutes a debt from the purchaser to the retailer until paid, "but failure to charge or collect the tax from the purchaser shall not affect the retailer's liability," *Piedmont Canteen Serv., Inc. v. Johnson*, 256 N.C. 155, 123 S.E.2d 582 (1962). The sales tax is primarily a privilege or license tax on retailers, and not a tax on consumers. Even though the sales tax is primarily a license or privilege tax on retailers, the intent of the law is that the sales tax be passed on to the consumer. *Rent-A-Car Co. v. Lynch*, 39 N.C. App. 709, 251 S.E.2d 917, rev'd on other grounds, 298 N.C. 559, 259 S.E.2d 564 (1979). Thus, the fact that the Taxpayer failed to collect and remit the tax for the use of the toilets does not relieve it of the liability for such taxes.

With respect to the Taxpayer's contention that the entire amount of the charges represent non-taxable cleaning charges, the Sales and Use Tax Division responds that this issue was addressed with the publication of "Important Notice: To All Portable Toilet Businesses" on May 13, 2002. The Important Notice was sent to all portable toilet rental businesses known to the Department which included all members provided by [a North Carolina organization]. Information from this Important Notice was included in a revision dated June 1, 2002 to Sales and Use Tax Technical Bulletin 34-17, which, along with the Important Notice, was posted on the Department's web site. Further, seminars in [North Carolina] were held by the Sales and Use Tax Division for members of [the organization] to explain and reinforce the aforementioned important notice. The Department provided copies of the Important Notice: To All Portable Toilet Businesses" in exhibits to its brief. There is no evidence that the Taxpayer received or complied with the more lenient guidelines of the Important Notice and Sales and Use Tax Technical Bulletin 34-17.

Given that the examining auditor could have properly assessed sales tax on the entire amount of the taxable gross receipts from the toilet rentals, the Taxpayer's argument about the depreciation period for the toilets seems inappropriate. The Taxpayer derived the income tax benefit from the depreciation deduction but must pay sales tax on the auditor's greatly diminished computation of taxable "gross" receipts for portable toilet rentals. Also, the fact that the Taxpayer paid income tax on the profits from its business receipts has no bearing whatsoever on the sales and use tax determination. The Taxpayer paid no sales tax when it purchased the portable toilet units, but the Taxpayer's invoices indicate that it did remit tax on purchases of supplies such as toilet tissue, chemicals and paper towels. I must agree with the Sales and Use Tax Division that sales tax was due on the rental of the portable toilets and I concur with the examining auditor's lenient, sound and practical method of determining the taxable gross receipts.

Therefore, the proposed assessment of tax, penalty and interest is deemed correct under the law and the facts and is hereby declared to be finally determined and immediately due and collectible as allowed by law.

This 25th day of February, 2004.

Signature _____

Eugene J. Cella

Assistant Secretary of Administrative Tax Hearings

© 2013 Thomson Reuters/RIA. All rights reserved.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 13-ALJ-17-0218-CC
Tracking No. 2014-000214

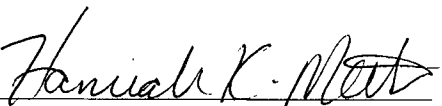
Eugenia Boggero, d/b/a Boggero's Portable Toilets, Appellant

v.

South Carolina Department of Revenue, Respondent.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by any of the parties except for Respondent's Exhibit 4, which Respondent is filing by way of alternative medium, and not any other material.

BY: 
Roy R. Hemphill, SC Bar # 15142
Hannah K. Metts, SC Bar # 72818
McDonald Patrick Poston Hemphill & Roper, LLC
P.O. Box 1547
Greenwood, SC 29648
(864) 229-2511
Attorneys for Appellant

Burnet R. Maybank, III, SC Bar # 3699
Nexsen Pruet, LLC
P.O. Drawer 2426
Columbia, SC 29202
(803) 540-2048
Attorneys for Appellant

June 20, 2014