

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

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

Opinion No. 5615 (S.C. Ct. App. Filed January 16, 2019)
Appellate Case No. 2019-000670

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

**REPLY IN RESPONSE TO THE SOUTH CAROLINA DEPARTMENT OF
REVENUE'S RESPONSE BRIEF AND IN SUPPORT OF RENT-A-CENTER'S
BRIEF**

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Pursuant to South Carolina Appellate Court Rule 242(g), Petitioners Rent-A-Center East, Inc. (“RAC East”) and Rent Way, Inc. (“Rent Way”) (collectively “Rent-A-Center”) file this Reply in response to the South Carolina Department of Revenue’s (the “Department”) Brief (the “Dept.’s Brief”). For the reasons stated in Rent-A-Center’s Brief and herein, this Court should reverse the Court of Appeals’ decision.

STANDARD OF REVIEW

The Department correctly states the standard of review where factual issues are being appealed (i.e. the Court may reverse or modify an ALC decision if it is “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record...”). Dept.’s Brief at pp. 5-7. However, it fails to acknowledge that the primary issues in this case are questions of law. In contrast to the “substantial evidence” standard as to factual findings or mixed questions of law and fact, an appellate court is free to correct errors of law without any deference to the lower court. *See* S.C. Code Ann. § 1-23-610(a) and (d) (stating that the appellate court may reverse or modify a decision of the Administrative Law Court (“ALC”) if the rights of the petitioner have been prejudiced because the decision is in violation of statutory provisions or affected by other error of law); Appellate Practice in South Carolina, 3d ed. (2016) at p. 97 (stating that “[g]enerally, appellate courts do not defer to the administrative tribunal when deciding pure questions of law and will interpret statutes according to principles of statutory construction”)(citation omitted); *CFRE, LLC v. Greenville Co. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (stating that “questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below”). The primary issues in this case involve questions of statutory interpretation—whether the sales tax imposition statute or the measure of tax statute impose sales tax on

retailers when they are not selling tangible personal property or certain enumerated services. This Court is free to decide these issues without any deference to the ALC.

Additionally, while the Department is correct that an agency's longstanding interpretation of a statute is usually entitled to deference, an interpretation that is contrary to the statute's plain language will not be sustained. *Media General Communications, Inc. v. S.C. Dep't of Rev.*, 388 S.C. 138, 149, 694 S.E.2d 525, 530-31 (2010).

ARGUMENT

The Department's primary argument appears to be that the imposition statute addresses who is subject to paying sales tax (*i.e.*, all retailers selling tangible personal property) but that it is silent as to **what** transactions are subject to sales tax. *See* Dept.'s Brief at pp. 12-19. This is a curious interpretation given that the purpose of an imposition statute is to place a taxpayer on notice of what activities will subject him to tax. *See* Tr., R. p. 223:3-17 (testimony of Rent-A-Center's tax policy expert). The Department does appear to agree with Rent-A-Center that the Court of Appeals' decision "is not imposing a sales tax on persons regardless of what they are selling." Dept.'s Brief at p. 13. Though how it could make this representation is unclear, when, according to the Department, the imposition statute does not address what transactions are subject to tax. The more logical reading, if one agreed with the Department, is that retailers are subject to sales tax on all transactions regardless of what they are selling. Of course, such an interpretation would produce absurd results as clearly a sale of a non-taxable service or intangible cannot become subject to sales tax simply because the retailer also sells tangible personal property. This may explain why the Department has disavowed this conclusion.

I. THE IMPOSITION STATUTE ONLY IMPOSES SALES TAX ON RETAILERS WHEN THEY ARE SELLING TANGIBLE PERSONAL PROPERTY AND CERTAIN LISTED SERVICES.

No such strained interpretations are necessary to read the literal wording of the imposition statute as Rent-A-Center suggests. The heading of the statute leads the way: “Five percent tax on tangible personal property; laundry services, electricity, communication services, and manufacturer-consumed goods.” S.C. Code Ann. §12-36-910. The imposition statute then imposes sales tax of 5% of the gross proceeds of sales on “every person engaged or continuing within this State in the business of *selling tangible personal property*” and states that the sales tax imposed “*also applies to*” and discusses the services listed in the heading. *Id.* (emphasis added). The only logical reading of this statute is that sales tax applies to sales of tangible personal property and “also applies to” the services listed therein. This interpretation is consistent with the requirement in §12-36-60 that services or intangibles be subject to sales tax under chapter 36 of title 12 in order to be subject to tax. S.C. Code Ann. §12-36-60. *Brown v. James*, 389 S.C. 41, 53, 697 S.E.2d 604, 611 n.13 (Ct. App. 2010) (statutes dealing with same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result).

The Department claims that Rent-A-Center is attempting to delete or add language to the statute. Dept.’s Brief at p. 14. This is not the case. Rent-A-Center agrees that the imposition statute identifies the persons responsible for paying sales tax, i.e. retailers selling tangible personal property. It is likewise not attempting to add language to the statute. As previously discussed, the heading and remainder of the statute as well as related statutes make clear that sales tax is imposed on retailers of tangible personal property when they are selling tangible personal property or certain listed services. It is only then that that a retailer is engaged in the business of selling tangible personal property.

In fact, it is the Department that is ignoring or attempting to delete the statutory language in §12-36-60, which requires that intangibles or services be subject to sales tax under Chapter 36 of Title 12 in order to come within the definition of tangible personal property for purposes of §12-36-90 and §12-36-910. S.C. Code Ann. §12-36-60; *Alltel Commc'ns, Inc. v. S.C. Dept. of Rev.*, 2015 WL 7681302 at *13 (S.C. Admin. Law Ct. Nov. 13, 2015) (Department's interpretation that insurance coverage, which is not tangible personal property, is subject to sales tax "would require the court to read out of the statute language that limits the application of sales tax to "services and intangibles... the sale or use of which is subject to tax under this chapter.").

As in *Alltel*,¹ the Waivers sold by Rent-A-Center are not tangible personal property but rather are intangibles. Contrary to the unsupported and incorrect statement of the Department that "South Carolina taxes intangibles," (*see* Dept.'s Brief at p. 25, n. 11) (a position that has not been previously taken by the Department in this case), no statute imposes a tax on intangibles, and thus the Waivers are not subject to sales tax. As previously stated, "tangible personal property" is defined in §12-36-60 to include only those "services and intangibles... the sale or use of which is subject to tax under this chapter." S.C. Code Ann. §12-36-60. While the statute lists several services (which are repeated in §12-36-60), no intangibles have yet been identified by the Legislature as taxable. Thus, intangibles are not subject to sales tax. S.C. Code Ann. §§12-36-60 and 12-36-910. *Alltel*, 2015 WL 7681302 at *13 (finding insurance coverage sold with wireless

¹ The Department argues that *Alltel*, an ALC decision, is not binding and should not be relied upon by this Court. Dept.'s Brief at p. 18. While it is true that *Alltel* is not binding, it also involved the issue of whether an intangible sold in conjunction with the sale of tangible personal property was subject to sales tax. Thus, its analysis is instructive and should be considered by this Court just as other non-binding precedent may be considered.

phones was not subject to sales tax because it was not tangible personal property or a service or intangible taxable under chapter 36 of title 12); *Southeast Cinema Entm't v. S.C. Dept. of Rev.*, 2014 WL 2417715 at *5-6 (S.C. Admin. Law Ct. May 28, 2014)(stating that “purchase of a trademark license is generally considered an intangible and un-taxable” but finding trademarks taxable because contract stated purchase price was for sale of theater and trademarks were necessary to operate it).

The Department also challenges Rent-A-Center’s assertion that, in fact, the Department has a long-standing policy of viewing sales tax as a transactional tax. It erroneously states that “[n]othing cited or relied upon by the Taxpayers in their Brief demonstrates that the Department applies §12-36-910(A) to transactions and not to persons.” Dept.’s Brief at p. 14. To the contrary, Rent-A-Center cited a plethora of support for this assertion, including testimony of the Department’s policy manager who testified that “the way the Department looks at it, sales tax is a transactional tax” (Tr. R. at p. 271:23-25); the Department’s 2018 Sales and Use Tax Manual, which states that sales tax is a “transaction tax;” and the 2015 Sales and Use Tax Manual, which states that sales tax applies to “the sale and use of tangible personal property” as well as certain listed services. Rent-A-Center’s Brief at p. 13. *See also Boggero v. S.C. Dept. of Revenue*, 414 S.C. 277, 286, 777 S.E.2d 842, 846, n. 5 (2015) (noting that the Department conceded in its briefing that “the imposition of the sales tax must be evaluated on a transaction-by-transaction basis”). This principle has also been affirmed by at least one South Carolina court. *Tronco Catering, Inc. v. S.C Dept. of Rev.*, 2010 WL 5781622 at *5 (S.C. Admin. Law Ct. 2010) (stating that sales tax under §12-36-90 is a transactional tax that must be determined on a transaction-by-transaction basis, and “[e]ach transaction must be analyzed separately and

the type of transaction specifically identified.”). The Department fails to address this evidence and instead points only to a statement in one of its manuals that sales tax applies to retailers of tangible personal property (Dept.’s Brief at pp. 14-15), a fact not inconsistent with the statute also applying that tax to particular transactions of those retailers.

The Department also relies heavily on *Meyers Arnold, Inc. v. S.C. Tax Comm’n.*, 285 S.C. 303, 328 S.E.2d 920 (Ct. App. 1985) and *Travelscape, LLC v. S.C. Dept. of Rev.*, 391 S.C. 89, 705 S.E.2d 28 (2011). While the Department claims that *Meyers Arnold* (and presumably *Travelscape*) would have turned out differently if the imposition statute is construed to apply to retailers when they are selling tangible personal property (see Dept.’s Brief at p. 17), that is not the case. The layaway fee in *Meyers Arnold* and the facilitation and service fee in *Travelscape* were costs of service and thus could not be deducted from gross proceeds under §12-36-90(1)(b)(ii). The cost of service rule precludes a retailer from deducting from the sum paid by the customer to purchase tangible personal property (i.e. the gross proceeds) any amounts representing a component of the cost incurred in providing the tangible personal property for purchase as that would result in bifurcation of receipts and avoidance of sales tax for items that are part of the tangible personal property sold. See *Rent-A-Center’s* Brief at p. 18. The layaway fee and the facilitation and service fee were both costs incurred to make possible the sales of the layaway item and hotel room respectively. In contrast, the Waiver fee is not a service cost associated with the rental of household items but rather is the purchase price of a separate intangible waiver just as the indemnification coverage was not a service cost for the sale of wireless phones in *Alltel*. *Alltel*, 2015 WL 7681302 at *16.

In sum, the plain language of the relevant statutes shows that sales tax is imposed on retailers when they are selling tangible personal property and “also applies to” the sale of certain listed services. Because the Waivers are not tangible personal property and are not one of the listed services, and because no imposition statute imposes a tax on intangibles (such as the Waivers), the Waivers are not subject to sales tax.

II. THE MEASURE OF TAX STATUTE DOES NOT REACH THE WAIVER PROCEEDS BECAUSE THEY ARE NOT “VALUE PROCEEDING OR ACCRUING FROM THE SALE, LEASE OR RENTAL OF TANGIBLE PERSONAL PROPERTY.”

The measure of tax statute, even if it applies (which is denied), does not reach the Waiver proceeds because they are not “value proceeding or accruing from the sale, lease or rental of tangible personal property.” S.C. Code Ann. §12-36-90. Per the plain language of this statute, if the value does not proceed or accrue from *the sale of tangible personal property*, it is not gross proceeds. The sale of Waivers, which are intangibles, is clearly not value proceeding or accruing from the sale of tangible personal property but rather is value proceeding or accruing from the sale of the intangible Waivers. The undisputed evidence showed that a customer did not receive a Waiver simply by entering a Rental Agreement but rather had to make a second itemized purchase to obtain a Waiver. *See* Tr., R.p. 157:1-159:11; 164:13-17; 170:20- 171:10. The Department’s assertion that it is a “fiction” that two transactions take place completely ignores the facts. Dept.’s Brief at p. 7. Customers can and often do have Rental Agreements without Waivers as they are optional for an additional cost, and even if purchased, a Waiver can be canceled at any time without impacting the Rental Agreement. *See* R. pp. 163:6-10; 164:1-12; 170:20- 171:10; Waiver, R. pp. 344-345. In order to purchase a Waiver, the customer must enter into a second transaction for an additional cost. *Id.*

To avoid the plain language of the statute, the Department urges this Court to adopt a "but for" test, purportedly set forth in *Meyers Arnold*, to support including the Waivers in Rent-A-Center's gross proceeds. Dept.'s Brief at pp. 21-22. The Department claims that "[b]ut for the rental of tangible personal property, the Taxpayers would not receive the Waiver fees" and thus the fees must be included in the Taxpayers' gross proceeds of sales. *Id.* at 21. Of course, no "but for" test appears in the relevant statutes. Had the Legislature intended that to be the test, then it would have included that language therein. Nor did the ALC apply or adopt a "but for" test in this case. Moreover, that is not even the holding in *Meyers Arnold*. As the ALC in *Alltel* observed, that holding:

reflects that the Court of Appeals was applying the definition of gross proceeds found in... §12-36-30 (1976) [sic], which is "the value proceeding or accruing from the sale of tangible personal property... **without any deduction for service cost.**" *Meyers Arnold, supra* (emphasis supplied). In other words,... *Meyers Arnold* addresses an attempt by a taxpayer to exclude from gross proceeds a cost of service provided by the retailer in the sale of tangible personal property. Here, Alltel has not excluded any costs associated with the selling of its communications services from its revenues.

Alltel, 2015 WL 7681302, at *16 (emphasis added). *See also* S.C. Code Ann. §12-36-90(b) (providing that the term "gross proceeds" includes the proceeds from the sale of tangible personal property *without any deduction for*:... (ii) the cost of materials, labor, *or service*...." *Id.* (emphasis added). The Waiver at issue here is not a "service cost" of the rental of tangible personal property. Instead, it is optional with a separately stated cost, is not a cost of producing the item rented, is not added to the purchase price of the item rented and is not a cost necessary to accomplish the sales transaction involving the rented item.

Rent-A-Center would also note that the Court of Appeals has not subsequently mentioned or applied a "but for" test, and this test does not appear to be used in any other jurisdictions. In addition, if South Carolina had adopted a "but for" test, the Legislature

could not have adopted a regulation exempting installation of labor sold in conjunction with parts from sales tax as clearly there would be no installation labor needed "but for" the sale of the repair parts. *See* S.C. Reg. 117-313.3 (2002). The same reasoning applies to several other regulations. *See* S.C. Code Ann. Regs. §117-306 (repair charges) and §117-313.4 (alteration charges); and §117-318.2 (interest charges on seller financing). These regulations would be invalid if the imposition statute imposed sales tax on any service or intangible that would not be sold "but for" the sale of the tangible personal property. *Home Medical Systems, Inc. v. S.C. Dept. of Rev.*, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009) (citations omitted)(stating that "[r]egulations authorized by the Legislature have the force of law. . . . Nonetheless, a regulation may not alter or add to a statute.").²

The Department's interpretation of the measure of tax statute also ignores and runs counter to one of its own revenue rulings interpreting "gross proceeds" of sale. S.C. Rev. Ruling #06-08. This ruling looks at dictionary definitions of "gross" and "proceeds" (as well as some other relevant terms) and concludes that gross proceeds are "the total amount of money derived, exclusive of deductions, from a commercial venture and accruing or proceeding from charges" for certain communication services. *Id.* at p. 5. While the primary topic of this ruling was sales tax on communication services, there is no logical reason why gross proceeds should be interpreted any differently in this context. Gross proceeds should be all money derived from the rental of items of tangible personal property, not the sale of separate intangible Waivers.

²The Department also cites to S.C. Rev. Ruling #93-1 and Commission Decision S-D-174 (1986). Both use the same flawed logic as the Department asserts here to conclude that collision damage waivers sold by a car rental company and property damage waivers sold by a rental company were subject to sales tax.

Finally, the Department claims that Rent-A-Center's interpretation "ignores the inclusion of language allowing taxation beyond the purchase price of the tangible personal property" and that its interpretation would render this language meaningless. Dept.'s Brief at p. 26. This is incorrect. The "value proceeding or accruing from" language is included to capture the value of an in-kind transfer as well as a monetary payment for tangible personal property. The language is not meaningless. In sum, the Court of Appeals erred in reaching the measure of tax statute and in finding the Waiver proceeds to be part of Rent-A-Center's gross proceeds, and this Court should reverse that decision.

III. THE TRUE OBJECT TEST SHOULD NOT HAVE BEEN APPLIED, AND EVEN IF APPLIED, IT WOULD NOT SUPPORT TAXING THE WAIVERS.

As argued in its Brief, Rent-A-Center contends that no bundled (also referred to as "mixed") transaction exists here because the Waivers are optional, specifically identified in a separate document and sold for an additional price. As its tax policy expert explained, a bundled or mixed transaction is one integrated transaction with two elements, which if isolated would receive different sales tax treatment such that one must determine how to characterize the transaction. R. p. 234:24-235:5. *See also Tronco's Catering*, 2010 WL 5781622 at *3 (discussing application of the true object test to a single contract). However, when two transactions are present, that inquiry is spared. *Tr.*, R. p. 212:11-17. Thus, the true object test need not be applied here because two separate transactions, one of which is optional, are present. *Tr.*, R. p. 235:4-16.

The Department contends that only one transaction takes place here- "a customer chooses to rent a durable consumer good free from liability in certain situations." Dept.'s Brief at p. 29. It states that Rent-A-Center is asking the Court to "focus on individual

portions of the transaction and treat such as though the other parts of the transaction did not occur simultaneously.” *Id.* None of these statements are correct or supported by substantial evidence. The transactions do not always occur at the same time; Waivers can be purchased at the time of the rental, later, or not at all and can be canceled at any time; and customers who purchase a Waiver when they enter a Rental Agreement sign two separate documents, pay two separate prices,³ and receive two separate benefits. Waiver, R. pp. 344-345; Rental Agreement, R. p. 342; Sample Receipt, R. pp. 346-347; Tr., R. pp. 164:1-12; 166:14-167:3; and 169:12-170:3.

Even if the Court determines that the true object test should be applied, none of the factors cited by the South Carolina cases applying the true object test as supporting an inextricable link are present in this case. Rent-A-Center’s Brief at §III. The Department’s response to these authorities is unavailing, and its interpretation of the true object test is contrary to the law. For example, the theater in *Southeast Cinema* could not operate without the trademark, and the contract did not itemize the price of the trademark. Contrast that with a rental item here, which can be used without a Waiver, and the fact that the Waiver price is separately itemized. The Department’s response fails to address the vastly different facts between the two cases.

In addition, *Boggero* found a service fee to be taxable where the true object of the transaction was the renting of toilets. However, the evidence at trial showed that servicing the toilets was not optional, the invoices were not itemized, which would make it difficult

³ The Department also takes issue with the fact that the price of the Waiver is based on a percentage of the value of the item rented. Dept.’s Brief at pp. 3 and 29. This makes perfect sense as the fee (paid in exchange for a waiver of liability in case of certain losses) would need to be representative of the value of the item that could be lost. This relationship does not make the transactions inextricably linked.

to separate the transactions (not to mention it appears to be an improper deduction of service costs). The gist of the Department's Brief is that *Boggero* did not condition its ruling on the facts before it, but certainly those were the facts the Court was considering. And the facts here are completely contrary to the *Boggero* facts as the price of the Waiver is separately itemized and a rental item can be and often is rented without an optional Waiver. Again, the Department fails to address the difference in the facts.

Additionally, the ALC in *A Southern Bartender* held that where the bartending services were a separate line item on the invoice, these services were "separable from the provision of alcohol and/or other tangible goods, and thus, do not represent the retail sale of tangible personal property," which also supports finding the separately itemized Waivers here not linked to the Rental Agreements. *Keith Purdy, d/b/a A Southern Bartender v. S.C. Dept. of Rev.*, Docket No. 17-ALJ-17-0002-CC at *8-9 (April 26, 2018), *appeal filed*, July 5, 2018. The Department agrees this case does not support the Department but states that it was wrongly decided because the bartending services were a "cost of service" that should not be deducted from gross proceeds. Dept.'s Brief at p. 37. Even if the Department is correct, that would not impact this case as no cost of service is at issue here.

The Department also relies heavily on the fact that a customer does not purchase a Waiver without an underlying Rental Agreement to argue that only one transaction takes place and that there is an inextricable link. While it is true that a customer would have no reason to purchase a Waiver if no item was rented, this does not mean the Waiver is not a separate transaction and does not inextricably link it with the Rental Agreement. Just because a factual predicate exists does not convert two transactions into one or mean they are not separate. As Rent-A-Center's tax policy expert testified, one might offer to sell ten

carwashes with the purchase of a car, but the carwashes do not become taxable because one had to purchase the car to buy the carwashes. R. p. 252:12- 253:8.

The Department also completely misconstrues Rent-A-Center's tax policy expert's testimony on the engraved trophy example. Dept.'s Brief at pp. 34-35. He did not say that once you purchase any optional item, it is no longer optional. Instead, he testified that even if the sale of an engraved trophy was separated into three optional contracts- one for the parts, one for assembly and one for engraving, each contract would be subject to sales tax as each step is part of the cost of service of creating the final product of an engraved trophy. R. p. 255:23-257:20. He also testified that if a customer entered all three agreements, he wanted the finished product of an engraved trophy and thus the separate contracts could not be described as optional. R. pp. 249:9-250:24. While the Department argues that he never specifically stated that his testimony hinged on the fact that the trophy was altered or improved, that is exactly what his testimony that "[y]ou're paying a price to get an engraved trophy" means. *Id.* at 250:18-20. The engraved trophy example is completely contrary to the facts here where the optional Waiver is not incorporated into and does not alter or improve a rented item. It is not a part of the tangible personal property being sold.

None of the facts discussed in the ALC's order, the Court of Appeals' decision or the Department's Brief showed anything other than that the Waiver and Rental Agreement transactions were related in some ways. Certainly substantial evidence did not support that the transactions were so inextricably linked that they could not be separated. Thus, the Court of Appeals' finding to the contrary should be reversed.

IV. THE COURT OF APPEALS FAILED TO CONSTRUE THE IMPOSITION STATUTE IN FAVOR OF THE TAXPAYER, AND RENT-A-CENTER IS ENTITLED TO ARGUE IN THE ALTERNATIVE.

The Department claims that Rent-A-Center is making an “inconsistent and inaccurate argument” regarding whether the sales tax imposition statute is ambiguous (such that it must be construed in favor of the taxpayer) and that it is not entitled to make alternative arguments. *See* Dept.’s Brief at pp. 9-12. The Department appears to misunderstand Rent-A-Center’s position as well as the law on alternative pleading. Moreover, if an imposition statute is ambiguous, then the law clearly requires a court to construe it in favor of the taxpayer, which the Court of Appeals failed to do.

First, Rent-A-Center contends that the sales tax imposition statute is not ambiguous in that it clearly imposes sales tax on retailers only when they are selling tangible personal property. Rent-A-Center’s Brief at pp. 30-32. And if the Court does not agree that it unambiguously show this but finds that it is ambiguous on this issue, then it must be construed in the taxpayer’s favor. *Cooper River Bridge, Inc. v. S.C. Tax Comm’n*, 182 S.C. 72, 76, 188 S.E.2d 508, 509-10 (1936).

Alternatively, if the Court finds the Department’s interpretation of the statute compelling, then Rent-A-Center contends that the statute is ambiguous as it certainly does not unambiguously impose a tax on retailers without further stating what is subject to tax. In this event, the statute at least has more than one reasonable interpretation and thus is ambiguous. *Id.* The Department’s argument that the statute does not have more than one reasonable interpretation in these circumstances is not compelling. It claims that neither *Meyers Arnold, Boggero* nor *Alltel* found the imposition statute to be ambiguous, and, thus, this Court should likewise find it not ambiguous. Dept.’s Brief at pp. 9-11. The Department

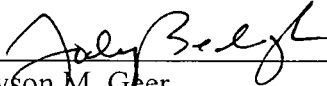
fails to mention that *Alltel* reached the opposite conclusions as to the meaning of the imposition statute and concluded that the same interpretation the Department urges this Court to adopt would render the statute ambiguous and thus inapplicable to the taxpayer. *Alltel*, 2015 WL 7681302 at *13.

Moreover, in *Boggero*, the parties agreed on the meaning of the taxing statutes, and thus, the Court did not evaluate whether an ambiguity existed. *Boggero*, 414 S.C. 277, 283, 777 S.E.2d 842, 845. Additionally, as was previously discussed, both *Myers Arnold* and *Boggero* are distinguishable. *See supra* §§I and III. In sum, Rent-A-Center asserts that the sales tax imposition statute is not ambiguous in that it clearly taxes only sales of tangible personal property and certain enumerated services. Alternatively, if it is ambiguous, which the Court must find it is if there is more than one rational reading of the statute, then it must be construed in Rent-A-Center's favor, which the Court of Appeals failed to do.

CONCLUSION

Rent-A-Center's appeal is not a request to re-weigh the evidence nor is it based on unreasonable theories of law as the Department claims. The Department's reading of the sales tax imposition statute, which affects many taxpayers in South Carolina, departs from established law (as well as prior construction by the Department) by focusing only on the retailer and not on what the retailer is selling. This interpretation could subject numerous non-taxable items (such as intangibles and services) to sales tax simply because the seller also sells tangible personal property. Because the sales tax imposition statute does not impose a tax on intangibles like the Waivers at issue here, the Court should reverse the Court of Appeals' decision in this matter.

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Charleston, South Carolina
October 28, 2019

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

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

Opinion No. 5615 (S.C. Ct. App. Filed January 16, 2019)
Appellate Case No. 2019-000670

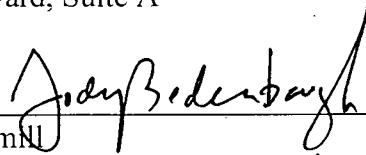
South Carolina Department of Revenue, Respondent,
v.
Rent-A-Center East, Inc. and Rent Way, Inc., Appellants.

PROOF OF SERVICE

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

Pleadings: Rent-A-Center East, Inc. and Rent Way, Inc.'s Reply in Response to South Carolina Department of Revenue's Brief

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October 28, 2019