STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports, Petitioner, v. South Carolina Department of Revenue, Respondent.	)	Docket No.: 18-ALJ-17-0393-CC **FINAL ORDER**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Request for a Contested Case Hearing filed by Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports (Petitioner) challenging the decision of the South Carolina Department of Revenue (Department) determining Petitioner was liable for sales and use tax and related penalties for retail sales of all-terrain vehicles (ATVs), side-by-side vehicles (UTVs), and utility trailers from August 31, 2013, through July 31, 2016. The Department assessed Petitioner for a total of $177,642.59 in tax, penalty, and interest as of September 11, 2018.[1] On March 22, 2019, the Department filed a Motion for Summary Judgment (Motion), which this Court denied in part and granted in part in an Order dated May 15, 2019. Specifically, the Court granted the Department's Motion with respect to the tax assessed on utility trailers but denied the Motion as to the ATVs and UTVs. Thereafter, on May 28, 2019, the Department filed a Motion for Reconsideration (Reconsideration).[2] On June 7, 2019, Petitioner filed a Response to the Reconsideration. On July 18, 2019, a hearing on the merits was held at the Court's offices in Columbia, South Carolina.

[1] Specifically, the Department assessed Petitioner for $154,285.29 in tax, $1,027.36 in penalties, and $22,329.94 in interest.

[2] Although the Department prematurely filed the Motion for Reconsideration before a hearing on the merits had taken place, the parties agreed the Court would entertain the Motion for Reconsideration and Petitioner's response to it as part of its decision on the merits.

STIPULATIONS OF FACT

At the start of the hearing on the merits, the parties submitted the following stipulations of fact to the Court:

1. Petitioner Jack's Custom Cycles, Inc. d/b/a Jack's Motor Sports began operating in 2004. The Petitioner is a licensed motorcycle dealer with the Department of Motor Vehicles. The Petitioner sells all-terrain vehicles (ATVs), side-by-sides vehicles or utility task vehicles (UTVs), motorcycles, and utility trailers. The utility trailers sold by the Petitioner are generally sold in conjunction with the sale of a motorcycle, ATV, or UTV. These utility trailers are trailers capable of being pulled by an automobile, minivan or pick-up truck.

2. All-terrain vehicles (ATVs) are three-and-four wheeled vehicles, generally characterized by large, low-pressure tire[s], a seat designed to be straddled by the operator and handlebars for steering. ATVs are intended for off-road use. ATVs are capable of being driven forward and in reverse. ATVs also have headlamps and brake lights.

3. Side-by-side or utility task vehicles (UTVs) are four-wheeled vehicles with a steering wheel and foot pedals, wherein the operator sits in a bench styled seat or single seat with seat belts and occupants have side-by-side forward facing seats. UTVs can have single front row or front and back row seating capacity. UTVs are capable of being driven forward and in reverse. UTVs also have head lamps and brake lights.

4. The Department conducted an audit examination of the books, records, and Sales and Use Tax returns of the Petitioner for the periods [of] August 31, 2013 through July 31, 2016 (Periods at Issue).

5. The Petitioner's business is located in Lexington County. During the Periods at Issue, the sales tax rate in Lexington County was 7%.

6. During the Periods at Issue, Petitioner received revenue from the retail sale of motorcycles, all-terrain vehicles (ATVs), utility task vehicles (UTVs), and utility trailers. The Petitioner collected and remitted sales tax up to $300.00 (the "maximum tax") on the retail purchase price of each ATV, UTV, and utility trailer because it considered these items to be [a] "motor vehicle" or "trailer" for the purpose of S.C. Code Ann. § 12-36-2110(A) (2014).[3]

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[3] At the time this case arose, section 12-36-2110(A) provided that the maximum tax on certain retail sales was $300.

7. During the Periods at Issue, the Petitioner made out-of-state purchases of tangible personal property but did not remit use tax to the Department on such purchases.

8. After a review of the Petitioner's records and the Department's records, the Department issued a Proposed Notice of Assessment ("PNOA") on January 31, 2017 to the Petitioner for $202,758.14 due in sales and use tax, interest, and penalties. The Department's PNOA assessed the full seven percent (7%) sales tax on the retail sales of ATVs, UTVs, and utility trailers sold during the Periods at Issue as it concluded that such sales were not entitled to the partial exemption under § 12-36-2110(A). The PNOA also asserted use tax due in the amount of $189.86 with regard to the out-of-state purchases of tangible personal property. Finally, the PNOA asserted failure to file and failure to pay penalties for the Sales and Use Tax Return for the period ending May 31, 2015.

9. The Petitioner timely protested the PNOA on April 28, 2017.

10. After receiving additional information from the Petitioner, the Department issued a Revised PNOA on August 17, 2017 to the Petitioner for $166,336.50 due in sales and use tax, interest, and penalties for the Periods at Issue. The Revised PNOA did not include any sales tax assessments related to the retail sales of motorcycles.

11. The Petitioner timely protested the Revised PNOA.

12. The Department issued its final agency decision (Department Determination) on August 13, 2018.

13. The Petitioner timely requested a contested case hearing with the Administrative Law Court (ALC).

14. The Department filed a motion for summary judgment (motion) on March 22, 2019. In its motion, the Department withdrew the failure to pay and failure to file penalty assessed for the Sales and Use Tax Return for the period ending May 31, 2015.

15. The Petitioner filed a response in opposition to the motion on April 17, 2019, and the Department filed a reply on April 23, 2019.

16. On April 23, 2019, the ALC conducted a hearing on the Department's motion and issued an order on May 15, 2019.

17. On July 18, 2019, Petitioner submitted a check to the Department in the amount of $5,220.26. This amount represents the entire tax and interest for the following items: (1) the assessed tax and interest that reflects sales tax and interest owed for Petitioner's sales of utility

trailers for the Periods at Issue; and (2) the use tax and interest owed on Petitioner's out-of-state purchases of tangible personal property made during the Periods at Issue.

18. The Department withdrew the failure to file and failure to file penalty from the revised PNOA; thus, no further reduction is necessary related to the penalties asserted in the revised PNOA.

19. The sole issue remaining for this Court is whether the ATVs and UTVs sold by Petitioner during the Periods at Issue are considered a "motor vehicle" for purposes of S.C. Code Ann. § 12-36-2110(A) and thus subject to the maximum tax or partial tax exemption.

20. The South Carolina Department of Motor Vehicles (SCDMV) processes title applications for ATVs and UTVs owned by South Carolina residents.

21. As part of the title application for a new ATV or UTV, the applicant must furnish a manufacturer's certificate of origin (MCO). In SCDMV records, MCOs for an ATV or UTV contain a statement that the ATV or UTV is "intended for off-road use only."

22. As part of the title application process for ATVs and UTVs and prior to issuance of a title, the SCDMV collects a title processing fee of $15.00.

FINDINGS OF FACT

In addition to the Stipulations of Fact, the Court makes the following findings of fact based upon a preponderance of the evidence:[4]

Petitioner remitted the maximum tax to the Department on his sales of ATVs and UTVs and also remitted the Infrastructure Maintenance Fee (IMF) to the SCDMV for each vehicle as well. The IMF is an additional $500 fee.

Although the Department contends ATVs and UTVs are not motor vehicles, ATVs and UTVs can reach speeds of between 65-110 miles per hour. Petitioner has also sold ATVs and UTVs to people who intended to operate them on public highways, and he has seen them driven on public highways. Some ATVs and UTVs come with turn signals and mirrors and are lawfully operated upon the highways in other states.

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[4] Petitioner also presented facts to establish estoppel. Although those facts raise concerns as to the errant advice the Department's employees allegedly gave to Petitioner, Petitioner presented no facts establishing that this issue could be legally considered and, in fact, this issue is not probative of the single issue the parties agreed was before the Court.

ISSUE

Whether, during the Periods at Issue, ATVs and UTVs were considered "motor vehicles" for purposes of section 12-36-2110(A) and thus subject to the maximum tax.

DISCUSSION

This Court has jurisdiction over this case pursuant to section 12-60-460 of the South Carolina Code (2014) and section 1-23-600 of the South Carolina Code (Supp. 2018). This is a contested case, and it is heard *de novo*. *Be Mi, Inc. v. S.C. Dep't of Revenue*, 408 S.C. 290, 297, 758 S.E.2d 737, 740 (Ct. App. 2014) ("In reaching a decision in a contested violation matter, the ALC serves as the sole finder of fact in the de novo contested case proceeding." (citation omitted)); *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002) (explaining that a contested case before the ALC is "in the nature of a de novo hearing with the presentation of evidence and testimony"). The standard of review is a preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2018); *see also Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998) ("Absent an allegation of fraud or a statu[t]e or a court rule requiring a higher standard, the standard of proof in administrative hearings is generally a preponderance of the evidence."). Because Petitioner is challenging a Department Determination, Petitioner has the burden of proof to show by a preponderance of the evidence that the Department's Determination was incorrect. *Leventis v. Dep't of Health and Envtl. Control*, 340 S.C. 118, 132-33, 530 S.E.2d 643, 651 (Ct. App. 2000) (holding that, generally, the complaining party bears the burden of proof).

The question left before the Court is whether ATVs and UTVs are "motor vehicles" for the purpose of the maximum tax statute.[5] Because "motor vehicle" is not defined in Title 12, and "motor vehicle" clearly does not include every vehicle that is motorized (a child's Powerwheels might qualify under such a broad definition), this Court must interpret the maximum tax statute to discern if it is applicable to ATVs and UTVs. *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C.*, 409 S.C. 331, 343, 762 S.E.2d 561, 567 (2014) ("If a statute is ambiguous, the courts must construe its terms."). Additionally, because the maximum tax is a partial-exemption statute, the statute must be construed against the taxpayer. *John D. Hollingsworth on Wheels, Inc. v.*

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[5] The parties presented their cases as though UTVs are treated in the same manner as ATVs for the purpose of taxation. Therefore, although ATVs and UTVs are different objects, this Court shall treat them the same for the purpose of the maximum tax. Therefore, any conclusion regarding ATVs will apply to UTVs.

Greenville Cty. Treasurer, 276 S.C. 314, 317, 278 S.E.2d 340, 342 (1981) ("The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption.").

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *see Ray Bell Const. Co. v. Sch. Dist. of Greenville Cty.*, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998) ("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, **and that language must be construed in the light of the intended purpose of the statute**." (emphasis original)). When interpreting a statute, "[t]he Court will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." *Harris v. Anderson Cty. Sheriff's Office*, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). "If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself." *State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010). Additionally, "[h]owever plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention." *Ray Bell Const. Co.*, 331 S.C. at 26, 501 S.E.2d at 729. Finally, it must also be noted that "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Sweat*, 379 S.C. at 374, 665 S.E.2d at 649.

Applicable Tax Law

In this State, a "sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail." S.C. Code Ann. § 12-36-910(A) (2014). An additional one percent tax is also applied to the sales tax pursuant to section 12-6-1110 of the South Carolina Code (2014). Tangible personal property is defined as "personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses." S.C. Code Ann. § 12-36-60 (2014). Further, a retail sale is the "sale of tangible personal property not at wholesale." S.C. Code Ann. § 12-36-110 (2014).

Section 12-36-2110(A) provides for a maximum sales tax of $300.00 on sales and leases of certain items. Specifically:

> (A) The maximum tax imposed by this chapter is three hundred dollars for each sale made after June 30, 1984, or lease executed after August 31, 1985, of each:
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> * * *
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> (2) motor vehicle;
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> (3) motorcycle;
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> (5) trailer or semitrailer, pulled by a truck tractor, as defined in Section 56-3-20, and horse trailers, but not including house trailers or campers as defined in Section 56-3-710 or a fire safety education trailer;
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> (6) recreational vehicle, including tent campers, travel trailer, park model, park trailer, motor home, and fifth wheel. . . .

S.C. Code Ann. § 12-36-2110 (2014).[6]

Regarding interest on unpaid taxes, "[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety." S.C. Code Ann. § 12-54-25(A) (2014). Interest is the compensation allowed by law for the use or forbearance or detention of money. *Rosen v. U.S.*, 288 F.2d 658, 660 (3rd Cir. 1961). Further, "[f]or administrative convenience, the department may waive up to thirty days' interest." *Id.* However, generally, a waiver of interest is not statutorily authorized, as interest represents the time value of money. *Anonymous Taxpayers v. S.C. Dep't of Rev.*, 01-ALJ-17-0187-CC, 2001 WL 1744519, *7 (Dec. 13, 2001). "Although there is a statute which allows interest to be compromised, that provision anticipates a settlement or quid pro quo." *Id.*

Department Publications

In 2000, the Department issued an advisory opinion informing the public that "it is the department's opinion that sales of all terrain vehicles . . . as described in the facts,[7] are <u>not</u> entitled to the maximum tax under Code Section 12-36-2110." S.C. Rev. Advisory Bulletin #00-3 (emphasis in original). Thereafter, in 2018, the Department issued S.C. Revenue Ruling #18-1 in which it advised the public that the maximum tax does not apply to the sale or lease of "[a]ll-

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[6] Effective November 19, 2018, the maximum tax under this section was raised to $500. 2017 S.C. Act No. 89.

[7] Under the "facts" of S.C. Rev. Advisory Bulletin #00-03, "[a]ll terrain vehicles are vehicles with three or more wheels designed for off road use. These vehicles can be titled but cannot be licensed for use on the highways of South Carolina."

terrain vehicles, legend race cars, golf carts and any other items not meeting the definition of a motor vehicle." S.C. Revenue Ruling #18-1, 7. The Revenue Ruling further opined that "[s]ales or leases of these items not subject to the maximum tax are subject to a state tax rate of 6%, plus any applicable local sales and use tax." *Id.* Indeed, in this Revenue Ruling, the Department responded to the following question:

> 31. Are sales by a retailer of all-terrain vehicles ("ATVs") subject to the sales and use tax?
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> Yes. Since ATVs are not required to be registered with the SCDMV, sales of ATVs are subject to the sales and use tax at a rate of 6%, plus any applicable local sales and use taxes.

Id. at 16.

Therefore, the Department has publicly maintained that the sale of ATVs is not subject to the maximum tax pursuant to section 12-36-2110(A) since at least 2000.

Analysis

There is no dispute that Petitioner's sales of ATVs and UTVs are retail sales of tangible personal property subject to sales tax. *See* § 12-36-910(A); § 12-36-60. Thus, Petitioner's sales are subject to sales tax in South Carolina unless the transaction is expressly exempted as a matter of legislative grace. *See, e.g., Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 140, 796 S.E.2d 165, 173 (Ct. App. 2016) ("In conjunction with these rules of statutory construction, we must also be cognizant of our policy to strictly construe a tax credit against the taxpayer as it is a matter of legislative grace.").

The term "motor vehicle" is undefined in Title 12. The Department thus argues the definition of "motor vehicle" in Title 56 should be used to clarify its meaning. Following this reasoning, the Department cites to section 56-3-20(2) of the South Carolina Code (2016), which defines "motor vehicle" as "every *vehicle* which is self-propelled, except mopeds, and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails." (emphasis added). The Department further contends that because the definition of "motor vehicle" contains the term "vehicle," it is necessary to consider the definition of "vehicle" under Title 56. In Title 56, "vehicle" is defined as "every device in, upon or by which any person or property *is or may* be transported or drawn upon a *highway*, except devices moved by human power or used exclusively upon stationary rails or tracks." S.C. Code Ann. § 56-3-20(1) (2016) (emphasis added). Likewise, because the definition of "vehicle" contains the term "highway," the

Department asserts it is necessary to consider the definition of "highway," which means "the entire width between boundary lines of every way publicly maintained when any part thereof is ***open to the use of the public for purposes of vehicular travel.***" S.C. Code Ann. § 56-3-20(25) (2016) (emphasis added.). Combining these definitions, the Department argues a motor vehicle is something that is licensed for use on public highways. The Department maintains ATVs and UTVs are designed for off-road use and are not authorized to operate upon the highways of South Carolina; therefore, the Department concludes ATVs and UTVs cannot be "motor vehicles" because they are not licensed to operate on public highways.

The Department's emphasis on "vehicle" attempts to cure a concern that the term "motor vehicle," without further restriction, is broad enough to include a child's toy such as a Powerwheels. However, the Department's use of section 56-3-20(2) to cure its concerns about the broad meaning of "motor vehicle" in section 12-36-2110(A) raises significant equal protection concerns, as evidenced by the Department's treatment of motorcycles. Pursuant to section 12-36-2110, the maximum tax applies to both motor vehicles and motorcycles. However, the Department did not distinguish between its application of the maximum tax to off-road motorcycles and those driven on the public highways. Therefore, the Department's interpretation of the maximum tax statute attaches an additional requirement to motor vehicles that does not exist for motorcycles.

The Department's reliance on the definition of "motor vehicle" in Chapter 3 of Title 56 is also problematic because Chapter 3 governs Motor Vehicle Registration and Licensing of vehicles used ***on*** the public highways. Therefore, since off-road vehicles, like ATVs, are not driven on the highways, an off-road vehicle would not be licensed to operate upon a highway and, thus, using Chapter 3 for the definition of motor vehicle would naturally achieve the result the Department seeks, which is to preclude ATVs from being defined as a motor vehicle.

The Department's insistence on relying upon Title 56 is even more disconcerting in light section 12-36-2110's definition of a "truck tractor," "house trailer," and "camper" for the purpose of the maximum tax. *See* § 12-36-2110. In defining those terms, the legislature directs the Department to utilize the definitions of sections 56-3-20 and 56-3-710. *See* S.C. Code Ann. § 56-3-20 (Supp. 2018) (defining "truck tractor"); S.C. Code Ann. § 56-3-710 (2018) (defining "house trailer"). Therefore, the legislature specifically instructs the Department to consult the definitions in Title 56 to determine whether a "house trailer" or a "camper" is entitled the maximum tax, but it does not similarly direct the Department to Title 56 for the definition of "motor vehicle." If the

legislature had intended that the definitions of Title 56 be used to determine what a motor vehicle is, then presumably the legislature would have referenced the definitions in Title 56 as it did a mere two subsections later.

Additionally, the Department's use of Title 56, Chapter 3 to define "motor vehicle" is further discredited by its reliance upon selective provisions of Title 56 while ignoring the implications of the dictionary definition of "motor vehicle," other provisions of Title 56, and the statute that specifically regulates ATVs and defines them as motorized vehicles. *See Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002) ("Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning."); S.C. Code Ann. § 56-1-10(2) (2014); S.C. Code Ann. § 56-19-1030 (2014); S.C. Code Ann. § 50-26-10 *et. seq.* (Supp. 2018) (referred to as the "All-Terrain Vehicle Safety Act" or "Chandler's Law"). Merriam-Webster's dictionary defines "motor vehicle" as "an automotive vehicle not operated on rails," which is a very broad definition and not nearly as restrictive as the Department's interpretation. https://www.merriam-webster.com/dictionary/motor%20vehicle (last visited September 9, 2019). And, indeed, other parts of Title 56 recognize ATVs as motorized vehicles, thus supporting a broader definition of motor vehicle than what the Department puts forth. Specifically, section 56-1-10(2) of Title 56 defines "all terrain vehicle" or "ATV" to be "a ***motor vehicle*** measuring fifty inches or less in width, designed to travel on three or more wheels and designed primarily for off-road recreational use, but not including farm tractors or equipment, construction equipment, forestry vehicles, or lawn and grounds maintenance vehicles. § 56-1-10(2) (emphasis added). Therefore, in Title 56, the legislature has defined an ATV as a "motor vehicle" despite the same statute also recognizing ATVs as "designed primarily for off-road recreational use." *Id.* Accordingly, just because an ATV is not licensed for use on a public highway does not mean it is not a "motor vehicle."

Further, section 56-19-1030, which is also found in Title 56 (Chapter 19 governing "Protection of Titles to and Interests in Motor Vehicles") provides, in relevant part, "[f]or purposes of this article [titling], an all-terrain vehicle (ATV) is defined as provided in Section 50-26-20." § 56-19-1030. Section 50-26-20, which comes from the "All-Terrain Vehicle Safety Act" or "Chandler's Law," provides:

> For the purposes of this chapter, "all-terrain vehicle" or "ATV" means a **motorized vehicle** designed primarily for off-road travel on low-pressure tires which has three or more wheels and handle bars for steering, but does not include lawn tractors,

> battery-powered children's toys, or a vehicle that is required to be licensed or titled for highway use. The term "ATV" includes Type I-single passenger all-terrain vehicles and Type II-tandem passenger all-terrain vehicles.

§ 50-26-20 (emphasis added).

Similarly, in Title 39, "all-terrain vehicles" or "ATVs" are defined as "three-and-four-wheeled **motorized vehicles**, generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator and handlebars for steering, which are intended for off-road use by an individual rider on various types of nonpaved terrain. S.C. Code Ann. § 39-6-20(d) (Supp. 2018) (emphasis added).

Considering the specific and definite nature of these statutes defining ATVs as motor vehicles in Title 56 and Title 50, but also in Title 39, the Court finds that these statutes are more probative of whether the legislature considers ATVs "motor vehicles" without resort to the forced construction utilized by the Department. *Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995) ("The general rule of statutory construction is that a specific statute prevails over a more general one."). The Court therefore finds the Department's reliance upon select provisions of Title 56 to exclude ATVs and UTVs is flawed. Moreover, the Court finds the legislature's own words and definitions in section 56-1-10(2), section 56-19-1030, and section 50-26-20, leads to the conclusion that ATVs are motor vehicles. *See Amisub of S.C., Inc. v. S.C. Dep't of Health and Envtl.*, 407 S.C. 583, 598, 757 S.E.2d 408, 416 (2014) ("[S]tatutes dealing with the same subject matter are *in pari material* and must be construed together, if possible, to produce a single, harmonious result.").

Agency Deference

The Department nonetheless contends its interpretation of "motor vehicle" is entitled to deference. "[T]he deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons." *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014). Additionally, the agency's interpretation must be a "long-standing" one. *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 530–31 (2010) ("An agency's long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons, but the interpretation will not be sustained if it contradicts a statute's plain language."). However, if "plain language of the statute

is contrary to the agency's interpretation, the Court will reject the agency's interpretation." *Brown v. Bi–Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003).[8] The Court will also reject the agency's interpretation if "it is arbitrary, capricious, or manifestly contrary to the statute." *Kiawah Dev. Partners, II*, 411 S.C. at 34–35, 766 S.E.2d at 718 (internal quotation marks and citation omitted).

In this instance, the Court finds the Department is not entitled to deference for several reasons. First, the Department argues that its resort to Title 56 for a definition of "motor vehicle" is no different from the Department turning to a dictionary for the definition. The Department's argument is ironic since it ignores the dictionary definition because it conflicts with its conclusions. The Department cannot create a flawed definition that is unsupported by the dictionary and apply that definition to its interpretation of the statute and then claim it is entitled to deference.

Second, the extent to which the courts extend deference to administrative agencies has limits. For instance, an agency is entitled to deference as to the statutes or regulations ***it administers*** but not beyond. *See Kiawah Dev. Partners, II*, 411 S.C. at 34, 766 S.E.2d at 718. Accordingly, there is a distinction between giving deference to the Department's interpretation of its own statutes and regulations and giving deference to the Department's interpretation of another state agency's statutes and regulations. Although the Department is entitled to deference to its interpretation of statutes in Title 12 because it administers these statutes, it is not permitted to bootstrap its own interpretation of Title 56 to its interpretation of Title 12 because Title 56 is administered by the Department of Motor Vehicles. Thus, if the Court determines that the Department's interpretation of a statute in Title 56 is an error of law, and it is that interpretation that supports the Department's ultimate conclusion, then the court may find the Department's conclusion erroneous without giving it deference. *See S.C. Dep't of Revenue v. Blue Moon of Newberry, Inc.*, 397 S.C. 256, 261, 725 S.E.2d 480,483 (2012) (holding the construction of a regulation is a question of law to be decided by the court *de novo*).

I find the Department's use of select provisions to reach an interpretation that ATVs are not motor vehicles under Title 56 was specious. Although portions of Title 56 suggest that ATVs and UTVs are vehicles that should not be openly operated upon our highways, Title 56 does not

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[8] Indeed, where the plain language of a statute is unambiguous, the court should not even employ the rules of construction to interpret the statute. *See Paschal v. State Election Comm'n,* 317 S.C. 434, 437, 454 S.E.2d 890, 892 (1995).

exclude ATVs and UTVs from being considered motor vehicles, as demonstrated by section 56-1-10(2) and 56-19-1030. Because the Department's interpretation of Title 56 is flawed, any application to Title 12 is also flawed. Moreover, the Department ignores the dictionary definition of "motor vehicle" and ignores the plain language defining ATVs as "motor vehicles" in Title 50, Chapter 26 (Chandler's Law), both of which are contrary to its interpretation.

Next, the Department has failed to show how, despite their different purposes, Title 56 and Title 12 are so intermeshed that they should be construed *in pari materia*.[9] "[S]tatutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result." *See Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Control*, 407 S.C. 583, 598, 757 S.E.2d 408, 416 (2014). However, "[c]ourts routinely find that several acts treating the same subject, but having different objects, are not in *pari materia*." SHAMBIE SINGER & NORMAN J. SINGER, 2B SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 51:3 (7th ed.). Here, the object of Title 12, which is to impose taxes, is certainly different than the object of Title 56, which is to ensure public safety on public highways.

Finally, the Department argues it is entitled to deference because the legislature is presumed to know the Department's interpretation of a statute, and since the legislature did not amend the maximum tax statute when it passed Chandler's Law, it acquiesced to the Department's interpretation. Thus, the Department argues that "[i]f the Legislature intended for the Department to change course—thus making retail sales of ATVs subject to the maximum tax—it could have (and should have) done so as part of Chandler's Law when it enacted § 50-26-50." Although a version of the Department's reasoning is utilized by the courts in determining agency deference, there is no common law presumption that the legislature is aware of state agencies' interpretations. Rather, the legislature is presumed to know its own definitions, the laws that it has passed, and appellate courts' interpretations of its laws. *See City of Camden v. Fairfield Elec. Co-op., Inc.*, 372 S.C. 543, 548, 643 S.E.2d 687, 690 (2007); *Whitner v. State*, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997) (holding there is a "basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects").

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[9] Quizzically, in a responsive pleading the Department argued that the use of Chandler's Law in construing the term "motor vehicle" is not an appropriate application of the principle of construing statutes *in pari materia*. Since Chandler's law and Title 56 ostensibly have the same purpose (safety), it is a mystery why one would be probative yet the other not.

Indeed, the legislature is not under the same obligation as courts to give deference to an agency's interpretation—it is the maker of the laws. In fact, the Department's reasoning appears to create an agency deference standard that is binding upon the legislature. However, the legislature is not required to distinguish its meaning of the laws from an agency's interpretation when amending its legislation. Inversely, agencies have an ongoing responsibility to correctly interpret the statutes they administer as those laws are enacted and amended. In this case, Chandler's Law (in Title 50), which specifically defines ATVs as motorized vehicles, was passed in 2011 after the Department issued Revenue S.C. Rev. Advisory Bulletin #00-3, but before the Department issued S.C. Revenue Ruling #18-1. Therefore, the Department had the obligation to change its interpretation to accord with the legislature's action, but it did not. And, even if the Department's interpretation is long-standing, this fact cannot insulate it from a finding that its interpretation is erroneous. *See Sweat*, 386 S.C. at 351, 688 S.E.2d at 575–76 (holding that although the construction of a statute by the agency who administers it is accorded "the most respectful consideration," an "administrative construction affords no basis for the perpetuation of a patently erroneous application of the statute" (internal quotations marks and citation omitted)).

Strict Construction

The Department next contends its interpretation is supported by the principle of strict construction of tax exemptions. In South Carolina, it is well settled that "the language of a tax exemption statute must be given its plain, ordinary meaning and must be construed strictly against the claimed exemption." *Owen Indus. Prods., Inc. v. Sharpe*, 274 S.C. 193, 195, 262 S.E.2d 33, 34 (1980); *see also Southeastern-Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981) ("As a general rule, tax exemption statutes are strictly construed against the taxpayer."). Accordingly, in order to claim an exemption a taxpayer has the burden of "clearly bring[ing] himself within the constitutional or statutory language upon which he relies." *York County Fair Ass'n, Inc. v. S.C. Tax Comm'n*, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967) (*quoting Textile Hall Corp. v. Hill*, 215 S.C. 262, 54 S.E.2d 809 (1949)). Nevertheless, "[t]his rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor" and "[i]t does not mean that we will search for an interpretation in [DOR]'s favor where the plain and unambiguous language leaves no room for construction." *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74–75, 716 S.E.2d 877, 881 (2011). In this case, the plain language of "motor vehicle," on its face, includes ATVs and UTVs

because they are, in the general sense, motorized vehicles. *See Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."). It is only the Department's skewed application of selected provisions of Title 56 that excludes ATVs and UTVs as motor vehicles. *See Sweat*, 386 S.C. at 350, 688 S.E.2d at 575 (holding words should be given "their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation"). And, as already discussed, the Department ignored other, more specific statutory definitions of ATVs to arrive its restricted interpretation.

In its defense, the Department also contends Chandler's Law should not be utilized in construing whether an ATV is a motor vehicle because its purpose is "to provide for additional safety requirements of riders and passengers of ATVs but [it] does not have bearing on the taxation of retail sales of ATV." In other words, the Department contends that since Title 50 and Title 12 have distinctly different purposes, the Court should not utilize Title 50 to construe Title 12. However, the Department advocates using Title 56 to interpret Title 12 when these Titles, likewise, do not have the same purpose. Moreover, Title 56 and Chandler's Law have similar purposes—they both concern vehicle safety—but in different arenas (state highways and ATVs respectively). Therefore, if Title 56 can be considered, it seems absurd that another statutory scheme also addressing public safety (Chandler's Law) cannot be considered in arriving at a definition for "motor vehicle."

Infrastructure Maintenance Fee

Finally, the Department argues this Court's order denying summary judgment placed great weight on the legislature's own words and definitions in sections 56-1-10(20), 56-19-1030, and 50-26-20, without recognizing the implications of the legislature's passage of section 56-3-627 of the South Carolina Code (2018) (the Infrastructure Maintenance Fee or IMF).[10] Section 56-3-627 provides:

> ***In order to account for the necessary road maintenance caused by each item traversing the roads of this State***, in addition to the registration fees imposed by this chapter, the owner of each vehicles or other item that is required to be registered

[10] It is notable that the Court did not overlook section 56-3-627. Though section 56-3-627 was cited in a footnote, it was not cited for the proposition the Department now puts forth. Since it was never cited for the current proposition, the Court did not overlook this statue, but rather failed to discover its implications on its own.

> pursuant to this chapter must pay an infrastructure maintenance fee [IMF] upon first registering the vehicle or other item . . . The Department of Motor Vehicles may not issue a registration until the infrastructure maintenance fee has been collected.

(emphasis added).

The Department contends that since ATVs are not permitted to operate on the highways of this State, and thus do not contribute to the deterioration of the State's highways, there is no need to raise additional revenue from ATVs under the IMF for road maintenance. And, since the IMF replaced the maximum tax, by implication a motor vehicle that is not currently subject to the IMF could not have been previously subject to the maximum tax.

The Court finds the Department's argument about the implications of section 56-3-627 to be incorrect for at least two reasons. First, because section 56-3-627 was enacted after the Periods at Issue, it was not directly applicable to the Periods at Issue in this case. *See* 2017 S.C. Acts No. 40 (effective July 1, 2017). It thus can only be utilized as a tool in discerning legislative intent to reflect whether the legislature intended to change or clarify the law. "Generally, the legislature's subsequent acts 'cast no light on the intent of the legislature which enacted the statute being construed.' Rather, this Court will look first to the *language* of the statute to discern legislative intent, because the language itself is the best guide to legislative intent." *Whitner v. State*, 328 S.C. 1, 9, 492 S.E.2d 777, 781 (1997) (internal citations omitted). However, "[a] subsequent statutory amendment may be interpreted as clarifying original legislative intent," *Stuckey v. State Budget & Control Bd.*, 339 S.C. 397, 401, 529 S.E.2d 706, 708 (2000), and the courts have also held that when the Legislature adopts an amendment to a statute, it is presumed that the Legislature intended to make some change in the existing law, *Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 135 S.E.2d 841 (1964).

In this case, at the same time the legislature enacted section 56-3-627 (the IMF), it also amended the maximum tax statute. 2017 S.C. Acts No. 40 (effective July 1, 2017). If, as the Department claims, the IMF completely replaced the max tax for all motor vehicles, then the legislature should have eliminated the "motor vehicle" category from the maximum tax statute. However, it did not. The amended section 12-36-2110 still has "motor vehicle" listed as a category subject to the maximum sales tax.[11] Since motor vehicles are still listed as an item subject to the

[11] Indeed, the legislature did not just continue listing motor vehicles under as a category subject to the maximum sales tax. Rather, the General Assembly struck section (A) and replaced section (A)(1)(b) with the same language listing motor vehicles. *Compare* S.C. Code Ann. § 12-36-2110(A)(2) (Supp. 2016) *with* S.C. Code Ann. § 12-36-2110(A)(1)(b) (Supp. 2018).

maximum tax, the Court must presume that listing has a purpose and has not been rendered superfluous. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[W]e must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for [t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law." (internal quotation marks and citations omitted)); *Hodges*, 341 S.C. at 88–89, 533 S.E.2d at 583 ("It is presumed that the Legislature is familiar with prior legislation, and that if it intends to repeal existing laws it would . . . expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first.").

Therefore, to give effect to the legislature's continued inclusion of "motor vehicle" in the maximum tax statute, the Court must interpret the statute to allow application of the maximum tax to motor vehicles that are not subject to the IMF—motor vehicles not operated upon the State's highways. Interpreting the maximum tax's definition of "motor vehicle" to apply to ATVs and other off-road vehicles prevents this category of vehicles from being rendered superfluous in the statute. *See CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 ("[W]e must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for [t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law." (internal quotations marks and citations omitted)).

I further find the legislature's continued inclusion of "motor vehicle" as a category subject to the maximum sales tax, even though certain motor vehicles are subject to the IMF, clarifies that the legislature originally intended "motor vehicle" to be more expansive than just motor vehicles operated upon public highways. *See Stuckey*, 339 S.C. at 401, 529 S.E.2d at 708 (holding "[a] subsequent statutory amendment may be interpreted as clarifying original legislative intent.").[12]

Additionally, section 56-3-627(H) provides for an exemption from the IMF for any transaction that is exempt pursuant to section 12-36-2120(25). Interestingly, section 12-36-2120(25) exempts from taxes the gross proceeds of the sales price of:

> motor vehicles (excluding trucks) or motorcycles, which are required to be licensed to be used on the highways, sold to a resident of another state, but who is located in South Carolina by reason of orders of the United States Armed Forces.

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[12] Interpreting "motor vehicle" under section 12-36-2110 to still apply to motor vehicles not used on the highway is consistent with section 12-36-2110's application to the other listed categories, including airplanes and boats, which also are not, or should not be, operated upon the State's public highways.

S.C. Code Ann. 8 12-36-2120(25) (Supp. 2018). Because this section specifically identifies motor vehicles "used on public highways," we can infer that motor vehicles exist that are not used on public highways, such as ATVs, UTVs, and off-road motorcycles.[13]

In sum, section 56-3-627 should not be given greater weight that the other statutes; rather, each provision should be construed in light of the legislative purpose of the statute. Importantly, the purpose of section 56-3-627 is not for taxation to raise general revenue but to fund the Infrastructure Maintenance Trust Fund for road maintenance.

Conclusion

I do not find the Department necessarily erred in turning to Title 56 for guidance. *See State v. Morgan*, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002) ("[I]f the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself."). Rather, I find the Department erred when it failed to use all of the statutes which clarify the legislature's viewpoint regarding ATVs to inform its interpretation. When all statutes related to ATVs are considered, then Chandler's Law in Title 50, which specifically regulates and defines an ATV, is clearly the most pertinent statute. Although Chandler's Law does not address the operation of ATVS upon the highways, that function is not expressed as a purpose of determining taxation in Title 12. In addition, the legislature's repeated definition of ATVs as motorized vehicles or motor vehicles beyond Chandler's Law and throughout the Code suggests the legislature intended a similar definition in Title 12. Thus, I find ATVs and UTVs are motor vehicles for the purpose of the maximum tax under section 12-36-2110.

CONCLUSION

I find ATVs and UTVs are motor vehicles for the purpose of section 12-36-2110 and Petitioner properly remitted the maximum tax on his sales of ATVs and UTVs to the Department during the Periods at Issue.

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[13] This recognition resolves the inconsistency of applying the maximum tax partial-exemption to both on-road and off-road motorcycles.

ORDER

THEREFORE, IT IS HEREBY ORDERED the Department Determination is REVERSED with regard to its assessment of Petitioner for regular sales tax on Petitioner's sales of ATVs and UTVs during the Periods at Issue.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

September 13, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, 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, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair
Judicial Law Clerk

September 13, 2019
Columbia, South Carolina