

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Honorable Ralph King Anderson, III, Chief Administrative Law Judge

RECEIVED  
FEB 28 2020  
SC Court of Appeals

Case No. 18-ALJ-17-0393-CC  
Appellate Case No. 2019-001831

Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports,.....Respondent,

v.

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

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT PROPERLY CONSIDER RELEVANT STATUTES AND LEGISLATIVE INTENT IN DETERMINING THAT ATVs AND UTVs ARE MOTOR VEHICLES FOR PURPOSES OF S.C. CODE ANN. § 12-36-2110(A)?
- II. DID THE ADMINISTRATIVE LAW COURT GIVE PROPER CONSIDERATION OF THE DEFERENCE DOCTRINE TO THE AGENCY'S INTERPRETATION OF STATUTES IT ADMINISTERS?
- III. WAS THE ADMINISTRATIVE LAW COURT'S CONSIDERATION OF STATUTORY LANGUAGE IN "CHANDLER'S LAW" PROPER TO ASCERTAIN LEGISLATIVE INTENT IN DEFINING MOTOR VEHICLE?
- IV. HAS THE APPELLANT ABANDONED THE ISSUE NOT CONTAINED IN IT'S INITIAL BRIEF REGARDING THE ADMINISTRATIVE LAW COURT'S UTILIZATION OF THE "INFRASTRUCTURE MAINTENANCE FEE" STATUTE AS A GROUND FOR IT'S DETERMINATION THAT ATV/UTVs ARE MOTOR VEHICLES SUBJECT TO MAX TAX?

## STATEMENT OF THE FACTS

Jack's Custom Cycles, Inc. d/b/a Jack's Motor Sports ("Jacks or Taxpayer") began operating in 2004. Jacks is licensed by the Department of Motor Vehicles. (R. Vol. II p. 408; R. Vol. I p. 294, lines 10-13). The type of license is motorcycle and includes Polaris as a "Franchise Vehicle Make." (R. Vol. II p. 408). Jacks sells all-terrain vehicles ("ATVs"), side-by-side vehicles or utility task vehicles ("UTVs"), motorcycles, and utility trailers. Polaris vehicles sold by Jacks include ATVs and UTVs. (R. Vol. II pp. 412-560; R. Vol. I p. 297, lines 1-3) and (R. Vol II pp. 561-707; R. Vol. I p. 297, lines 19-22).

ATVs are three-and-four wheeled vehicles, generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator and handlebars for steering. ATVs are straddled by the operator like a motorcycle, are capable of being driven forward and in reverse, have headlamps and brake lights, and have horsepower up to 140cc. (R. Vol. I p. 295, line 24 – p. 296 line 4). ATVs will travel up to 80 miles per hour. (R. Vol. I p. 296, lines 7-8).

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. (R. Vol I p. 295, lines 18-23; R. Vol. I p. 297, line 19 – R. Vol. I p. 298, line 24). UTVs will travel up to 100 miles per hour. (R. Vol. I p. 296, line 13). UTVs operate just like a car. (R. Vol. I p. 295, line 22; R. Vol. I p. 298, lines 20-22).

During the Periods at Issue in the Sales Tax Audit, the Taxpayer received revenue from the retail sale of ATVs and UTVs. The Taxpayer collected and remitted sales tax up to \$300.00 (the "maximum tax") on the retail purchase price of each ATV and UTV because Jacks considered

these items to be “motor vehicles” for the purpose of S.C. Code Ann. § 12-36-2110(A) (2014). (R. Vol. I p. 299, lines 6-15; R. Vol. I p. 304, lines 20-23).

These ATVs and UTVs are being driven on public roads. (R. Vol. I p. 299, lines 21-23). In fact, Jacks has sold ATVs and UTVs to individuals and companies specifically purchasing these motor vehicles to drive them on public roads. (R. Vol. I p. 4; R. Vol. I p. 300, lines 2-3). Jack’s sold a Polaris UTV to City Center Partnership specifically for the purpose of shuttling people around the city of Columbia. (R. Vol. II pp. 708-709; R. Vol. I p. 300, lines 4-15). City Center Partnership purchased an UTV from Jack’s shop in Lexington and drove it back to the city of Columbia. (R. Vol. I p. 302, lines 7-12). During special events, City Center Partnership provides rides in these UTVs for people to get around Columbia, including from the river area to Millwood Avenue. (R. Vol. II pp. 708-709; R. Vol. I p. 303 lines, 3-13). The actual UTV City Center Partnership bought and operated by on Columbia roads was included in Department of Revenue audit. (R. Vol. II pp. 708-709; R. Vol. I p. 303, lines 18-20). Moreover, the Taxpayer has seen ATVs and UTVs driven on public highways. (R. Vol. I pp. 4-5).

The South Carolina Department of Motor Vehicles (“SCDMV”) processes title applications for ATVs and UTVs owned by South Carolina residents. (R. Vol. I p. 4). The SCDMV utilizes Form 400 to title ATVs and UTVs. (R. Vol. II p. 718). Form 400 identifies what is required in order to obtain a South Carolina Title, including a Manufacturers Certificate of Origin, \$15.00 Titling Fee, and Sales Tax (5% of Selling Price or \$300 Max). (R. Vol. II p. 718).

ATVs and UTVs can be licensed for use, and lawfully operate, upon public roads in neighboring states. (R. Vol. I p. 5; R. Vol. I p. 341, line 23 - R. Vol. I p. 342, line 5). In fact, ATVs and UTVs can be safely and properly operated upon highways by placing different tires on the vehicles as many people do. (R. Vol. I p. 342, lines 6-13). Modifying the tires allows the UTV to

handle better on the roadway. (R. Vol. I p. 342, lines 10-13). ATVs and UTVs can reach speeds between 65-110 miles per hour. (R. Vol. I p. 4).

### STANDARD OF REVIEW

The Standard of Review for an appeal from a decision of the Administrative Law Court (“ALC”) is set forth in S.C. Code Ann. § 1-23-610(B) (Supp. 2018) as follows:

(B) The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The appellate court should affirm the ALC decision unless it is unsupported by substantial evidence in the record or contains an error of law. *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008). A decision of the ALC should be upheld, therefore, if it is supported by substantial evidence contained in the underlying record. *Risher v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 198, 203, 712 S.E.2d 428, 431 (2011) (citing *Southeast Res. Recovery, Inc. v. S.C. Dep't of Health & Envtl. Control*, 358 S.C. 402, 407, 595 S.E.2d 468, 470 (2004)) (“Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached.”). The limited substantial evidence standard of review is intended only to assure

that the agency's action is properly supported and that, therefore, no abuse of delegated authority occurred. See *Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973) (citing *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 281 S.E.2d 118 (1981)).

### ARGUMENTS

- I. THE ADMINISTRATIVE LAW COURT PROPERLY CONSIDERED RELEVANT STATUTES AND LEGISLATIVE INTENT IN DETERMINING THAT ATVs AND UTVs ARE MOTOR VEHICLES FOR PURPOSES OF S.C. CODE ANN. § 12-36-2110(A).

The issue decided by the ALC was simple – are ATVs and UTVs considered “motor vehicles” for purposes S.C. Code Ann. § 12-36-2110(A) and thus subject to the maximum tax. (R. Vol. I p. 5.) After a thorough and detailed analysis, the ALC properly concluded that ATVs and UTVs were “motor vehicles” and that the taxpayer remitted the proper maximum sales tax for the periods at issue. (R. Vol. I p. 19).

The ALC methodically reviewed and analyzed South Carolina statutes, case law and other authorities to arrive at the proper determination. Contrary to Appellant’s argument that “the ALC found a single statute (S.C. Code Ann. §56-1-10(20) (Rev.2018)) that referred to ATVs and UTVs as ‘motor vehicles’,” the ALC properly considered and analyzed numerous statutes to arrive at its final decision, including those cited and referred by Appellant as relevant to the case. In fact, the same Title (Title 56) that Appellant utilizes, and requests the Court to use, was thoroughly examined to reject all of the Appellant’s arguments. Now, Appellant states it is not controlling or “even persuasive” to the matter.<sup>1</sup> (Appellant Initial Brief p. 13).

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<sup>1</sup> In one instance the Appellant argues Title 56 is not persuasive, and then next argues several sections of Title 56 to arrive at its self-serving conclusion. (Appellant Initial Brief p. 15-17; citing S.C. Code Ann. §§ 56-3-20(2); 56-3-20(1); 56-3-20(25); 56-15-10(a); and 56-3-110).

After properly determining that sales of ATVs and UTVs are retail sales of tangible personal property subject to state sales tax, the ALC analyzed whether those vehicles should receive the partial sales-tax exemption. (R. Vol. I p. 8) (S.C. Code Ann. §12-36-910(A)).

The ALC reviewed Section 12-36-2110(A) which states 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:

- (1) aircraft, including unassembled aircraft which is to be assembled by the purchaser, but not items to be added to the unassembled aircraft;
- (2) motor vehicle;
- (3) motorcycle;
- (4) boat;
- (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;
- (6) recreational vehicle, including tent campers, travel trailer, park model, park trailer, motor home, and fifth wheel; or
- (7) self-propelled light construction equipment with compatible attachments limited to a maximum of one hundred sixty net engine horsepower.

S.C. Code Ann. § 12-36-2110 (2014).<sup>2</sup>

Naturally, the ALC looked to Title 12 of the South Carolina statutes for a definition of “motor vehicle.” (R. Vol. I p. 5). Since Title 12 does not define “motor vehicle,” the ALC properly determined it must seek an interpretation of the maximum tax statute to discern if it is applicable to ATVs/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.”).

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<sup>2</sup> This code section was modified in conjunction with the Infrastructure Maintenance Fee Statute per 2017 S.C. Act No. 40 (effective July 1, 2017). Motor Vehicles continue to have a maximum tax exemption under the revised statute. S.C. Code Ann. §12-36-2110((A)(1)(b) (Supp. 2018).

In making a determination through statutory interpretation, the cardinal rule is to ascertain the intent of the legislature. *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). “When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” *Id.* In interpreting a statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” *Id.* at 499, 640 S.E.2d at 459.

It is a well-recognized rule of statutory construction, that in the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt. *Travelscape, LLC v. S.C. Dep’t of Revenue*, 391 S.C. 89, 705 S.E.2d 28 (2011)(citing *South Carolina Nat’l Bank v. South Carolina Tax Comm’n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989)). However, as the ALC recognized and applied accordingly, a tax-exempt statute will be construed against the taxpayer claiming the exemption. *John D. Hollingsworth on Wheels, Inc. v. 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.”). ---- “This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer’s favor.” *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). “It 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.” *Id.* at 74–75, 716 S.E.2d at 881. “It is only when the literal application of the statute produces an absurd result will we consider a different meaning.” *Id.* at 75, 716 S.E.2d at 881. 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).

The ALC started its analysis by considering Appellant’s argument that Title 56 should be used to clarify the meaning of “motor vehicle” for use in Title 12. After analyzing the Appellant’s argument consisting of three layers of definitions in Title 56 to arrive at the conclusion that ATVs/UTVs cannot be considered “motor vehicles” because they are not licensed to operate on public highways, the ALC properly rejected this contention.

In essence, Appellant’s argument is that ATVs and UTVs cannot be considered “motor vehicles” because they are not licensed to operate on public highways. (R. Vol. I p. 9) (emphasis added). The Appellant layers three definitions (“motor vehicle,” “vehicle,” and “highway”) in Title 56 to arrive at this conclusion. Of importance is Section 56-3-20(1) which defines “vehicle” 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). Thus, the specific statute Appellant relies upon as long-standing support of its position specifically says “is or may” be drawn upon a highway. There is no restriction that it “must” first be licensed for the highway. The “use of the word ‘may’ signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute.” *Kennedy v. South Carolina Ret. Sys.*, 345 S.C. 339, 352-53, 549 S.E.2d 243, 250 (2001).

This section alone debunks Appellant’s argument as properly analyzed by the ALC. The underlying record establishes that these ATVs and UTVs are being driven on public roads. (R. Vol. II p. 708; R. Vol. I p. 299, lines 21-23). In fact, Jacks has sold ATVs and UTVs to individuals and

companies specifically purchasing these motor vehicles to drive them on public roads. (R. Vol. I p. 4; R. Vol. I p. 300, lines 2-3). City Center Partnership purchased an UTV from Jack's shop in Lexington and drove it back to the city of Columbia. (R. Vol. I p. 302, lines 7-12). The Taxpayer has seen ATVs and UTVs driven on public highways. (R. Vol. I pp. 4-5). During special events, City Center Partnership provides rides in these UTVs for people to get around Columbia, including from the river area to Millwood Avenue (R. Vol II p. 708; R. Vol. I p. 303, lines. 3-13).

Appellant further cites *Anderson v. State Farm Mutual Auto Insurance Company* to support its position that ATVs and UTVs are not motor vehicles because they are not licensed for use upon a highway. *Anderson v. State Farm Mut. Auto Ins. Co.* 314 S.C. 140, 442 S.E.2d 179 (1994). In *Anderson*, the Court limited its ruling to issues arising “under the Motor Vehicle Financial Responsibility Act, S.C. Code Ann. § 56-9-10 *et seq.* This insurance section states:

(4) “Motor vehicle”: Every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles but excepting traction engines, road rollers, farm tractors, tractor cranes, power shovels, mopeds, and well drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails;

S.C. Code Ann. § 56-9-10(4). Citing *White v. South Carolina Department of Parks, Recreation and Tourism*, the Court explained the restriction in the legislation: a vehicle must be designed to operate on the highway in order to come within the term motor vehicle.<sup>3</sup> *White v. South Carolina Department of Parks, Recreation and Tourism*, 271 S.C. 91, 245 S.E.2d 125 (1978)(finding the language plain and unambiguous). The legislature did not place any such highway restriction on any definition of ATVs.

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<sup>3</sup> The finding by the Court stated, “the uninsured motorist statutes were not intended to apply to injuries inflicted by vehicles not subject to registration or compulsory insurance provisions. *Anderson* at 143, 442 S.E.2d at 181.

Moreover, the Court in *Anderson* found a farm tractor was “a machine designed and intended to be used as an agricultural implement and not as a means for transportation upon a highway.” *Id.* at 143, 442 S.E.2d at 181. Unlike farm tractors, ATVs and UTVs are designed to transport individuals and are not considered machines used as agricultural implements. (R. Vol. II pp. 409-707). As noted in the Statement of Facts, Jacks sold a Polaris UTV to City Center Partnership specifically for the purpose of shuttling people around the city of Columbia. (R. Vol. II pp. 708-717; R. Vol. I p. 300, lines 4-5). And during special events, City Center Partnership provides rides in these UTVs for people to get around Columbia, including from the river area to Millwood Avenue. (R. Vol. II pp. 708-717; R. Vol. I p. 303, lines 3-13).

It is clear ATVs and UTVs are not farm tractors, and the legislature specifically addresses the issue by definition. Section 56-1-10(20) 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.” S.C. Code Ann. §56-1-10(20) (emphasis added).

The Appellant’s argument with regards to *Anderson* and farm tractors relates back to their main contention that vehicles not licensed by the SCDMV cannot be considered motor vehicles. The ALC properly noted the flaw in this reasoning as there are motor vehicles designed to transport individuals, whether on-road or off-road, that are not registered and licensed. (R. Vol. I p. 11). The ALC found there are motor vehicles in existence that are not used on public highways, such as ATVs, UTVs, and off-road motorcycles. (R. Vol. I p. 18).

For additional support of its decision, the ALC found the maximum tax exemption of Section 12-36-2110 applies to both “motor vehicles” and “motorcycles.” The ALC noted that the Department

seeks to treat off-road motor vehicles different from off-road motorcycles, which raises equal protection concerns. (R. Vol. I p. 9). The ALC found there was no distinction made between off-road motorcycles and motorcycles driven on the roads as related to the maximum tax exemption. Both are exempted. However, the Department attempts to treat off-road motor vehicles differently creating an additional requirement not existent for motorcycles. (R. Vol. I p. 9). Through this analysis, the ALC found Appellant's reliance on Chapter 3 of Title 56 problematic since that statute governs registration and licensing of vehicles use on the public highways. (R. Vol. I p. 9).

The ALC found additional problems with Appellant's argument that ATVs and UTVs are not "motor vehicles" because they are not licensed for operation on public roads. The ALC analyzed Section 56-15-10(a) and Section 56-3-110 and rejected the licensing argument. (R. Vol. I pp. 9-10). The ALC noted the fallacy of utilizing the language of Section 56-3-110 by examining the language of Section 56-15-10(a), which defines a "motor vehicle," in part, as a "motor driven vehicle required to be registered pursuant to Section 56-3-110." The only vehicles registered pursuant to Section 56-3-110 are vehicles "driven, operated or moved upon a highway in this State." "[R]estricting the regulation of "motor vehicles" under Section 56-15-10(a) to a subset of vehicles that are driven on the public highways suggests there are other 'motor vehicles' that are not driven on the public highways." (R. Vol. I p. 10).

The ALC further discredits the Department's use of Title 56 by looking at the legislature's direction to utilize specific definitions in Title 56 for other exempt items noted in Section 12-36-2110. The ALC provides specific examples for a "truck tractor," "house trailer," and "camper." (R. Vol. I p. 10). As noted by the ALC, "[i]f 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.” (R. Vol. I p. 10). The ALC properly found the Department’s reliance upon select provisions of Title 56 flawed. (R. Vol. I p. 12)

Finally, the ALC notes additional problems with Appellant’s reliance on select provisions of Title 56, Chapter 3 through its attempt to define “motor vehicle” while ignoring other more direct provisions of Title 56 and actual dictionary definitions specifically defining ATVs/UTVs as “motor vehicles” and “motorized vehicles.” (R. Vol. I p. 10); citing *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(20) (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”).

The ALC properly utilized the dictionary definition of motor vehicle. (R. Vol. I p. 11).

Various dictionary definitions for “motor vehicle” include:

Merriam-Webster: Motor vehicle – an automotive vehicle not operated on rails. (cited as The Merriam-Webster.com Dictionary, Merriam-Webster Inc., <https://www.merriam-webster.com/dictionary/motor%20vehicle>, last visited December 30, 2019)<sup>4</sup>.

Oxford Dictionary: Motor Vehicle - any road vehicle driven by an engine. (<https://www.oxfordlearnersdictionaries.com/us/definition/english/motor-vehicle>, last visited December 30, 2019).

Cambridge Dictionary: Motor Vehicle - a car, bus, truck or other vehicle powered by a motor that uses roads. (<https://dictionary.cambridge.org/us/dictionary/english/motor-vehicle>, last visited December 30, 2019).

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<sup>4</sup> Appellant asserts the ALC failed to consider the full definition contained in Websters Dictionary by not including language describing, not limiting, the definition: “especially: one with rubber tires for use on highways.” This additional description using the term “especially” does not mean “exclusively” as Appellant would desire.

All of these definitions are consistent with the ALC's interpretation of "motor vehicle" and do not have any requirement that they must be operated on public roads. Appellant's attempt to qualify Webster's definition to require "use on highways" is stretching, and merely an attempt to force the construction to meet their position.

Additional Webster definitions support the ALC interpretation of whether ATVs/UTVs are motor vehicles. Merriam-Webster defines "all-terrain vehicle" as "a small motor vehicle with three or four wheels that is designed for use on various types of terrain." (See *The Merriam-Webster.com Dictionary*, Merriam-Webster Inc., <https://www.merriam-webster.com/dictionary/all-terrain%20vehicle>, last visited December 30, 2019). This is a similar definition utilized by the South Carolina Legislature in defining all-terrain vehicle. (See Chandler's Law; S.C. Code Ann. §56-1-10(20)).

As properly noted by the ALC, our South Carolina Legislature has specifically and consistently addressed the definition of all-terrain vehicles in four separate statutes – S.C. Code Ann. § 56-1-10(20), S.C. Code Ann. § 56-19-1030, S.C. Code Ann. § 50-26-20 and S.C. Code Ann. § 39-6-20(d)(Supp. 2018).

The ALC noted, "[s]pecifically, section 56-1-10(20) 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(20) (emphasis added) (R. Vol. I p. 11). This same statute clearly rejects Appellant's argument that ATVs/UTVs must be licensed in order to be considered motor vehicles by recognizing that ATVs are "designed primarily for off-road recreational use." *Id.*; (R. Vol. I p. 11).

Most importantly, the ALC found that “just because an ATV is not licensed for use on a public highway does not mean it is not a ‘motor vehicle.’” (R. Vol. I p. 11).

The second specific section noted by the ALC as defining an ATV as a “motorized vehicle” is Section 56-19-1030. This section refers to the definition of ATV as defined in “Chandler’s Law” the “All-Terrain Vehicle Safety Act.” S.C. Code Ann § 50-26-20.

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.

S.C. Code Ann. § 50-26-20 (emphasis added)

Finally, the ALC noted the specific definition for ATVs in Title 39. Title 39 defines ATVs 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).

The ALC found the Department’s analysis of combining three select definitions in Title 56 to support its position as “forced construction” of the statutes and rightfully rejected that position. (See *Harris v. Anderson Cty. Sheriff’s Office*, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009) (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.) (R. Vol. I p. 12).

The finding of substantial evidence that ATVs/UTVs are motor vehicles, with the backing of specific and definite statutes defining ATVs/UTVs as motor vehicles, clearly supports the ALC’s

finding that ATVs are motor vehicles for purposes of the maximum tax provisions. *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 ALC decision should be affirmed.

II. THE ADMINISTRATIVE LAW COURT GAVE PROPER CONSIDERATION OF THE DEFERENCE DOCTRINE TO THE AGENCY’S INTERPRETATION OF STATUTES IT ADMINISTERS.

Appellant asserts that the ALC failed to give proper deference to the Department’s interpretation that a vehicle must be registered for highway use before it can be considered a motor vehicle. Appellant specifically notes the ALC’s reasons for the conclusion that the Department is not entitled to the deference in seeks. (Appellant’s Initial Brief p. 22). However, the Appellant also argues several issues in its initial brief that were not presented to the ALC. As such, no error could have been committed on issues not brought before the ALC.

In addressing the Agency Deference issues brought before the Court at the Hearing, the ALC analyzed and properly ruled that deference to administrative agencies has limits and the Department is not entitled to deference regarding interpretation of statutes it does not administer. (R. Vol. I p. 13). Specifically, the deference doctrine 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 and Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014). The ALC correctly notes, however, that the extent to which the courts extend deference is limited in that agencies are entitled to deference as to the statutes or regulations *it administers* but not beyond. (R. Vol. I p. 13).

The ALC recognized that the Department of Revenue would have deference to interpretations of Title 12, which it administers. (R. Vol. I p. 13). However, the ALC concluded that the Department of Revenue is not permitted to interpret Title 56 regarding motor vehicle regulations simply to support its own definition of motor vehicle. (R. Vol. I p. 13).

The Department interprets three layers of definitions in Title 56 to reach the conclusion that ATVs/UTVs cannot be considered “motor vehicles” because they are not licensed to operate on public highways. The ALC correctly concluded that the Department is not entitled to deference in their interpretation of Title 56, as Title 56 is administered by the Department of Motor Vehicles (R. Vol. I p. 13). The ALC further found that even if deference over Title 56 was extended to the Department of Revenue, the Department’s interpretation of Title 56 is flawed, as it does not exclude ATV’s and UTV’s from being considered motor vehicles. (R. Vol. I p. 13) *citing* S.C. Code Ann. §§ 56-1-10(20) and 56-19-1030).

Appellant further argues that the ALC failed to give due deference to the Department of Motor Vehicles (“DMV”). The Appellant presented three publications from the DMV to support its position that ATVs are not subject to the maximum tax and informing licensed dealers that they must submit sales tax to the Department of Revenue. The Appellant did not offer any evidence other than these publications regarding whether the DMV considers ATVs and UTVs to be motor vehicles. The Appellant is merely using these publications to support its position that ATVs are not subject to maximum tax. The ALC properly rejected the Department of Revenue’s attempt to support its arguments about defining motor vehicle with DMV publications that advise dealers that ATVs are not subject to the maximum tax and dealers must continue to remit sales tax to the Department of Revenue. (R. Vol. I p. 13, footnote 9). In the same sense that the Department of

Revenue is not entitled to deference for interpretation of DMV statutes, the ALC concluded that the DMV cannot interpret Title 12 through publications regarding issues of tax law.

Moreover, Appellant contends that the DMV's practices and publications support the Department's interpretation of section 12-36-2110(A) (Appellant's Initial Brief p. 27). These publications are actually contrary to actual practice at the DMV. The DMV processes title applications for ATVs and UTVs owned by South Carolina residents (R. Vol I p. 4) and utilizes Form 400 to title ATVs and UTVs (R. Vol. II p. 718). Form 400 identifies what is required in order to obtain a South Carolina Title, including a Manufacturers Certificate of Origin, \$15.00 Titling Fee, and Sales Tax (**5% of Selling Price or \$300 Max**). (R. Vol. II p. 718). The DMV's practice of using the same Form to title ATVs and UTVs that is required to title other motor vehicles, and instructing owners to pay maximum tax, supports the ALC's conclusion that ATVs and UTVs are motor vehicles. The DMV publications the Department offers in support of Agency Deference are not reliable, as they are contradictory to the instructions of Form 400.

Finally, Appellant states that the ALC failed to allow deference to the Department for interpretation of three Title 12 statutes. (S.C. Code Ann. §§ 12-38-110(41); 12-54-122(A)(3); and 12-37-2810(B)(C)(D)). These three statutes as addressed in Appellant's Initial Brief were never presented to the ALC at the hearing or at any point during the case. This Court's review of the administrative hearing should be confined to the record. Section 1-23-610 provides the proper judicial review of a final decision of administrative law judge, as follows:

(B) The review of the administrative law judge's order must be **confined to the record**. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact.

S.C. Code Ann. § 1-23-610 (Supp. 2018) (emphasis added); *See Ross v. Medical Univ. of South Carolina*, 317 S.C. 377, 453 S.E.2d 880 (1994)(an administrative appeal must be confined to the

record except in cases of alleged irregularities in the procedure before the agency not apparent on the record); *Pringle v. Builders Transport*, 298 S.C. 494, 381 S.E.2d 731 (1989); *Smith v. South Carolina Dept. of Social Services*, 284 S.C. 469, 327 S.E.2d 348 (1985); S.C. Code Ann. § 1-23-380(A)(5) (Supp.1994).

Even if this Court decides to address the issues not presented to the ALC in the underlying matter, the ALC ruling should still be affirmed. The Appellant's argument remains that ATVs/UTVs cannot be considered motor vehicles because they are not registered and licensed for highway use in South Carolina. All three of the new statutes address motor vehicles for "use on highways."

As the ALC correctly found, just because South Carolina does not license ATVs/UTVs for use on highways, does not mean they are not motor vehicles. (R. Vol. I p. 11). In fact, these statutes actually support the ALC's factual conclusions and ultimate legal decision. The ALC found factually that ATVs and UTVs can be licensed for use, and lawfully operate, upon public roads in neighboring states. (R. Vol I. p. 5; R. Vol. I p. 341, line 23- R. Vol. I p. 342, line 5). In fact, ATVs and UTVs can be safely and properly operated upon highways by placing different tires on the vehicles as many people do. (R. Vol. I p. 342, lines 6-13). Most importantly, Section 12-54-122(A)(3) as offered by Appellant directly states "registered for highway use under the laws of **any state** ..." S.C. Code Ann. 12-54-122(A)(3) (emphasis added).

Accordingly, the ALC's finding should be affirmed as is properly supported by substantial evidence as factually found by the ALC. The Appellate Courts will not substitute findings of fact made by the underlying court. (S.C. Code Ann. § 1-23-610(B)(Supp. 2018) (The Court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact.). A decision of the ALC should be upheld, therefore, if it is

supported by substantial evidence contained in the underlying record. *Risher v. S.C. Dep't of Health & Env'tl. Control*, 393 S.C. 198, 203, 712 S.E.2d 428, 431 (2011) (citing *Southeast Res. Recovery, Inc. v. S.C. Dep't of Health & Env'tl. Control*, 358 S.C. 402, 407, 595 S.E.2d 468, 470 (2004) (“Substantial evidence is ‘evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached.’”) The limited substantial evidence standard of review is intended only to assure that the agency's action is properly supported and that, therefore, no abuse of delegated authority occurred. See *Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973) (citing *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 281 S.E.2d 118 (1981).

### III. THE ADMINISTRATIVE LAW COURT’S CONSIDERATION OF STATUTORY LANGUAGE IN “CHANDLER’S LAW” WAS PROPER TO ASCERTAIN LEGISLATIVE INTENT IN DEFINING MOTOR VEHICLE.

It is undisputed the ALC’s consideration of the “All-Terrain Motor Vehicle Safety Act” or “Chandler’s Law” was clearly appropriate in determining whether an ATV/UTV meets the definition of “motor vehicle.” (See 2011 Act. No. 24 (H.B. 3562); S.C. Code Ann. § 50-26-10 (Supp. 2019) *et seq.*). However, Appellant contends the ALC should not have used the statute to ascertain the legislative intent of whether an ATV is a motor vehicle. (Appellant’s Initial Brief p. 33).

The ALC’s analysis and use of Chandler’s Law was appropriate and proper. As noted by the ALC, the specific definition of ATV as set forth by the South Carolina Legislature can be found in Chandler’s Law as follows:

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.

S.C. Code Ann. § 50-26-20 (emphasis added). Not only did the ALC properly emphasize the importance of the legislature definitely defining ATVs and motorized vehicles in this Act, but also it noted the legislature's intent to utilize this definition in two other statutes. (R. Vol. I p. 11); See S.C. Code Ann. §56-19-1030 (directing use of the above cited definition), and S.C. Code Ann. § 39-6-20(d) (a restated version of the above definition.)<sup>5</sup>

In determining legislative intent for the definition of ATVs as motor vehicles, the ALC was correct in utilizing the "specific and definite nature of these statutes" over the "forced construction utilized by the Department" in other more general statutes. (R. Vol. I pp. 11-12). *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."). Ultimately, the ALC's conclusion that "the legislature's own words and definitions in section 56-1-10(20), 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 Env'tl.*, 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.").

Next, Appellant contends that the ALC's use of Chandler's Law ("a safety statute for ATVs") was inappropriate as it has a purpose other than taxation. The ALC correctly and succinctly rebuffed this argument. (R. Vol. I p. 16). Appellant's whole argument uses three layers of definitions in Title 56 (a vehicle safety statute) to arrive at a restrictive interpretation of ATVs. The

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<sup>5</sup> S.C. Code Ann. § 39-6-20(d) defines an ATV as "three-and-four-wheeled motorized vehicles, generally characterized by large, low-pressured tires, a seat designed to be straddle by the operator and handlebars for steering, which are intended for off-road use by an individual rider on various types of nonpaved terrain."

ALC's analysis of relevant statutes, including the comparison of Title 56 and Chandler's Law as having similar safety purposes, was directly on point and appropriate. As such, the use of Chandler's Law as a ground for the ALC's decision and finding that ATVs/UTVs are considered motor vehicles should be affirmed.

IV. THE APPELLANT ABANDONED THE ISSUE NOT CONTAINED IN IT'S INITIAL BRIEF REGARDING THE ADMINISTRATIVE LAW COURT'S UTILIZATION OF THE "INFRASTRUCTURE MAINTENANCE FEE" STATUTE AS A GROUND FOR IT'S DETERMINATION THAT ATV/UTVs ARE MOTOR VEHICLES SUBJECT TO MAX TAX.

As a ground for determining that ATVs and UTVs are motor vehicles that are subject to the maximum tax of S.C. Code Ann. § 12-36-2110(A), the ALC made specific findings through an analysis of the Infrastructure Maintenance Fee legislation. S.C. Code Ann. § 56-3-627 (R. Vol. I pp.16-18). The Infrastructure Maintenance Fee ("IMF") was passed by the legislature in 2017. See 2017 S.C. Acts No. 40 (effective July 1, 2017). Section 56-3-627 provides in part:

- (A) 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 vehicle or other item that is required to be registered pursuant to this chapter must pay an infrastructure maintenance fee upon first registering the vehicle or other item. Also, the owner of each trailer or semitrailer must pay the fee upon first registering the trailer or semitrailer. The Department of Motor Vehicles may not issue a registration until the infrastructure maintenance fee has been collected. The infrastructure maintenance fee must be credited to the Infrastructure Maintenance Trust Fund.
- (B) If upon purchasing or leasing the item from a dealer, the owner first registers the item in this State, then the fee equals five percent, not to exceed five hundred dollars, of the gross proceeds of sales, or sales price, as those terms are defined in Chapter 36, Title 12.

S.C. Code Ann. § 56-3-627 (2018).

Since the IMF was enacted after the Period at Issue in this matter, the ALC properly utilized the statute as a tool to discern legislative intent to reflect whether the legislature intended to change

or clarify a law. (R. Vol. I p. 17). “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). (R. Vol. I p. 17).

The IMF enactment is important in this matter because at the same time it was enacted, the legislature amended the maximum tax statute. (2017 S.C. Act No. 40). The amendment to Section 12-36-2110 provided:

(A)(1) 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:

- (a) aircraft, including unassembled aircraft which is to be assembled by the purchaser, but not items to be added to the unassembled aircraft;
- (b) motor vehicle;
- (c) motorcycle;
- (d) boat;
- (e) 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;
- (f) recreational vehicle, including tent campers, travel trailer, park model, park trailer, motor home, and fifth wheel; or
- (g) self-propelled light construction equipment with compatible attachments limited to a maximum of one hundred sixty net engine horsepower.

\* \* \*

(3) Notwithstanding any other provision of this subsection, after June 30, 2017, the maximum tax imposed pursuant to this chapter on the sale, lease, or registration of an item enumerated in item (1) only applies to items not subject to the fee pursuant to Section 56-3-627.

S.C. Code Ann. § 12-36-2110 (effective July 1, 2017).

The IMF replaced the maximum tax for motor vehicles “required to be registered pursuant to this chapter.” S.C. Code Ann. § 56-3-627(A). In conjunction with this replacement, revised Section 12-36-2110(A)(3) exempted items subject to the IMF. However, the term “motor vehicle” remained as a partial exemption subject to the \$300.00 maximum tax per S.C. Code Ann. § 12-36-2110(A)(1).

Appellant’s position is that since ATVs and UTVs are not registered or licensed by the DMV they cannot be motor vehicles under maximum tax statute. As the ALC properly noted, if 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. (R. Vol. I p. 17). Not only did the legislature not eliminate motor vehicle from the statute, it actively modified the statute by striking Section A and replacing it with Section (A)(1)(b) affirmatively including “motor vehicle” in the language. (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)).

The ALC properly considered this issue and found that the legislature’s continued inclusion of “motor vehicle” in the maximum tax statute required that the Court 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)); *Hodges v. Rainey*, 341 S.C. 79, 88-89, 533 S.E.2d 578, 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.”)

Accordingly, the ALC properly found that 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.”). (R. Vol. I p. 18).


Although argued previously at other stages of the case, Appellant failed to argue this issue in its initial brief. Pursuant to Rule 208(b)(1)(D), all issues must be argued in the initial brief. See *First State Sav. and Loan v. Phelps*, 299 S.C. 411, 385 S.E.2d 821 (1989). By failing to argue this issue in its brief, the Appellant has abandoned the issue and is precluded from having it considered. *Jinks v. Richland Cty.*, 355 S.C. 341, 585 S.E.2d 281 (2003). Accordingly, the ALC’s finding on this issue should be affirmed.

## CONCLUSION

The ALC thoroughly and methodically reviewed and analyzed every argument presented by the Appellant and all relevant statutes related to the issue at hand. The ALC considered the Department’s previous position regarding ATVs and properly rejected that position as flawed and erroneous in light of the specific and definitive statutory language presented by the South Carolina Legislature. The ALC properly rejected the sole argument that in order for ATVs and UTVs to be motor vehicles, they must be registered or licensed for use on a highway by the Department of

Motor Vehicles. Simply the ALC was correct to find that “just because an ATV is not licensed for use on a public highway does not mean it is not a ‘motor vehicle.’” The ALC found support for this position on several fronts, but importantly through the specific words of the legislature and acknowledgement of the more recent enactment of the Infrastructure Maintenance Fee Statute. Accordingly, the decision of the ALC finding that ATVs and UTVs are motor vehicles for purposes of S.C. Code Ann. § 12-36-2110(A) is supported by the evidence and contains no error of law. The ALC decision should be affirmed.

Respectfully Submitted,



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February 28, 2020

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Chief Administrative Law Judge

Case No. 18-ALJ-17-0393-CC  
Appellate Case No. 2019-001831

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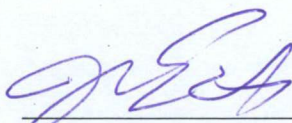
Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports,.....Respondent,

v.

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

CERTIFICATE OF COUNSEL

In compliance with Rule 211, the Respondent's Final Brief is identical to the brief previously served under Rule 208 with the exception that it now contains references to the record.



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