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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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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.

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# RECORD ON APPEAL

## VOLUME I

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**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports,<br><br>Petitioner,<br><br>v.<br><br>South Carolina Department of Revenue,<br><br>Respondent. | ) | Docket No.: 18-ALJ-17-0393-CC<br><br><br><br>**AMENDED 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 premature Motion for Reconsideration (First Reconsideration).[2] On June 7, 2019, Petitioner filed a Response to the First Reconsideration. On July 18, 2019, a hearing on the merits was held at the Court's offices in Columbia, South Carolina. The Court then issued a Final Order in this case on September 13, 2019, after which the Department filed another Motion for Reconsideration (Second

[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.

FILED RCA 001
October 2, 2019
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Reconsideration) on September 20, 2019. Petitioner filed a Response to the Second Reconsideration on September 30, 2019. This Amended Final Order is issued in response to the Second Reconsideration.

## 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]

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.

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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.

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]

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

[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.

on public highways. Some ATVs and UTVs come with turn signals and mirrors and are lawfully operated upon the highways in other states.

## 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

[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.

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. 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:
>
> * * *
>
> (2) motor vehicle;
>
> (3) motorcycle;
>
> * * *
>
> (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. . . .

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 not entitled to the maximum tax under Code Section 12-36-2110." S.C. Rev. Advisory Bulletin #00-3

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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."

(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-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?
>
> 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. It is for this reason that the Court finds the Department's reliance on section 56-15-10(a) and section 56-3-110 to also be unconvincing. During the tax years at issue, section 56-15-10(a) defined "motor vehicle" as "any motor driven vehicle required to be registered pursuant to Section 56-3-110" except motorcycles. S.C. Code Ann. § 56-15-10(a) (Supp. 2016). Section 56-3-110, in turn, provided:

> Every motor vehicle, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, **operated or moved upon a highway in this State shall be registered and licensed** in

> accordance with the provisions of this chapter. It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter.

§S.C. Code Ann. § 56-3-110 (2006) (emphasis added). Once again, ATVs and UTVs are not operated on the highways; therefore, in using the definition of "motor vehicle" in section 56-15-10(a) (in combination with section 56-3-110) to support its position, the Department merely utilizes the purpose of Title 56 to accomplish the conclusion it seeks. This fallacy is apparent from the very 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." Moreover, restricting 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.

The Department's insistence on relying upon Title 56 is even more disconcerting in light of 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(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). 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"

[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).

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*).[9]

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 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.

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[9] Similarly, the Department cannot bootstrap SCDMV's interpretations of Title 12 to support its case because SCDMV is not entitled to deference in its interpretation of tax law, which it does not administer. Therefore, the Court rejects the Department's attempt to support its arguments with SCDMV 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. In all likelihood, SCDMV is simply regurgitating the Department's position.

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*.[10] "[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").

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

[10] 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.

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).[11] 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 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

[11] 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.

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.[12] Since motor vehicles are still listed as an item subject to the 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

[12] 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).

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.").[13]

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.

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.[14]

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[13] 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.

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

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.

**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

October 2, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, 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).

Stephanie Michelle Perez
Judicial Law Clerk

October 2, 2019
Columbia, South Carolina

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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

RCVD 021 FILED
September 13, 2019
SC ADMIN. LAW COURT

## 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]

[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.

[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.*

[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:
>
> * * *
>
> (2) motor vehicle;
>
> (3) motorcycle;
>
> * * *
>
> (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. . . .

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 not 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?
>
> 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

[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.

[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

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports,<br><br>Petitioner,<br><br>v.<br><br>South Carolina Department of Revenue,<br><br>Respondent. | ) | Docket No.: 18-ALJ-17-0393-CC<br><br>**ORDER DENYING MOTION FOR SUMMARY JUDGMENT** |

## 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). In the Motion, the Department argues the undisputed material facts support the following conclusions entitling it to summary judgment: (1) Petitioner's retail sales of ATVs, UTVs, and utility trailers are not subject to the maximum tax under section 12-36-2110(A) of the South Carolina Code; (2) Petitioner is required to remit use tax upon out-of-state purchases of tangible personal property; and (3) Petitioner is liable for the accruing interest on its unpaid tax liability. On April 17, 2019, Petitioner filed a Response in opposition to the Motion. On April 23, 2019, the Department filed a Reply. Also on April 23, 2019, a hearing on the Motion was conducted before this Court.

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

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FILED
May 15, 2019
SC ADMIN. LAW COURT

## BACKGROUND

Petitioner began operating in 2004. Petitioner sells all-terrain vehicles (ATVs), side-by-side 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. Petitioner also carries motorcycle parts and accessories and has a service department for its customers. During the audit period, Petitioner collected and remitted sales tax up to $300.00 (the "maximum tax") on the retail purchase price of each ATVs, UTVs, and utility trailers because it considered these items to be a "motor vehicle" or "trailer" for the purpose of section 12-36-2110(A) of the South Carolina Code (2014).[2]

Sometime after Petitioner began operating, Mr. Jack DeBruhl, Petitioner's owner, called the Department about the tax liability for the above equipment. He contends he was advised to treat ATV sales like motorcycle sales (which are subject to the maximum tax). Petitioner called the Department again for tax advice when it began selling Polaris Utility Vehicles (UTVs) in 2011 and called again for advice in 2012. Petitioner alleges the Department employees he talked with at these times either told him the items he sold were subject to the maximum tax or did not raise any issues with Petitioner's tax filings.

In 2016, the Department audited Petitioner and, as a result of the audit, issued a Proposed Assessment in the amount of $202,758.14, which included tax, penalty, and interest. The Proposed Assessment resulted from adjustments to sales and use tax on ATVs, UTVs, and utility trailers. In its Assessment, the Department specifically found that sales of ATVs, UTVs, and trailers were not subject to the maximum tax pursuant to section 12-36-2110 of the South Carolina Code. Included within the penalties was a failure to pay and failure to file penalty.

On April 28, 2017, Petitioner timely protested the Proposed Assessment, disputing the adjustments. On July 20, 2017, the Department and Petitioner participated in an appeal conference. Petitioner thereafter submitted additional documentation to the Department. As a result of this additional documentation, the Department issued a Revised Proposed Assessment on August 17, 2017, in the amount of $166,336.50.

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

In a letter dated November 15, 2017, Petitioner protested the Revised Proposed Assessment. In the letter, Petitioner asserted he received erroneous information from Department employees regarding whether the retail sales of ATVs and UTVs were entitled to the maximum tax under § 12-36-2110.

In a letter dated August 13, 2018, the Department issued its determination finding Petitioner owed sales and use tax and accompanying penalties and interest on its retail sales of ATVs, UTVs, and utility trailers for the period of August 31, 2013 through July 31, 2016. Specifically, the Department determined Petitioner owed $154,285.29 in tax, $1,027.36 in penalties, and $22,329.94 in interest, for a total of $177,642.59.

In its Motion, the Department states that based upon the discovery material received in this case so far, the Department withdraws the failure to pay and failure to file penalty in the amount of $819.58 that it assessed for the Sales and Use Tax Return for the period ending May 31, 2015.

## 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).

The Rules of Procedure for the Administrative Law Court (SCALC Rules) provide that the South Carolina Rules of Civil Procedure (SCRCP) "may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules." SCALC Rule 68. Rule 56(c), SCRCP, provides that summary judgment is properly granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Id.* at 330, 673 S.E.2d 801, 803.

## Applicable Tax Law

### *Sales Tax*

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:
>
> * * *
>
> (2) motor vehicle;
>
> (3) motorcycle;
>
> * * *
>
> (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

S.C. Code Ann. § 12-36-2110 (2014).[3]

The trailer or semitrailer described in subsection (5) is one pulled by a "truck tractor," which is defined in section 56-3-20 to be "every motor vehicle designed and used primarily for drawing other vehicles and not constructed so as to carry a load other than a part of the weight of the vehicle and load drawn." S.C. Code Ann. § 56-3-20 (2006). The "travel trailer" referred to in subsection (6) is a subset of "recreational vehicle" and does not refer to a utility trailer drawn by the family truck or an ATV.

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

*Use Tax*

Complementing the sales tax is the use tax, which is "imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of five percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State." S.C. Code Ann. § 12-36-1310 (2014). In other words, if a taxpayer purchases an item at retail outside of South Carolina but uses or consumes that item within South Carolina and the seller has not already charged the taxpayer sales tax, that purchase is subject to use tax in South Carolina. An additional one percent tax is also applied to the use tax pursuant to section 12-6-1110 of the South Carolina Code (2014).

The primary purpose for levying a use tax is to prevent "evasion by purchases at retail from without the State or under other circumstances which might or would avoid application of the retail sales tax." *State v. Byrnes*, 219 S.C. 485, 517, 66 S.E.2d 33, 46 (1951). More specifically, a use tax complements a sales tax by ensuring that the in-state use of an item purchased outside the state is taxed in the same amount it would be if it were purchased from a South Carolina retailer. *Thayer v. S.C. Tax Comm'n*, 307 S.C. 6, 9, 413 S.E.2d 810, 813 (1992). Additionally, the responsibility for paying use tax lies with the purchaser, as "[e]very person storing, using, or otherwise consuming in this State tangible personal property purchased at retail [and did not already pay sales tax on the item] is liable for the use tax, until the tax is paid to the State." S.C. Code Ann. § 12-36-1330(A) (2014).

*Penalties and Interest*

"If any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety." 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.*

## Analysis

*Maximum Tax*

Here, there is no dispute that Petitioner's transactions are subject to sales tax. Petitioner is a retailer in the business of selling tangible personal property at retail. Motorcycles, ATVs, UTVs, and utility trailers are tangible personal property. *See* § 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., S. Weaving Co. v. Query*, 206 S.C. 307, 34 S.E.2d 51 (1945).

The question left before the Court is whether ATVs and UTVs are "motor vehicles" for the purpose of the maximum tax statute.[4] Because "motor vehicle" is not defined in Title 12, and it does not necessarily represent every vehicle that has been motorized (a child's Powerwheels might qualify under such a broad definition), this Court must interpret the statute to discern if it is applicable to these circumstances. *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. 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*, 341 S.C. at 85, 533 S.E.2d at 581; *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

[4] 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.

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. v. Sch. Dist. of Greenville Cty.*, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998). 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.

Because "motor vehicle" is undefined in Title 12 and can be interpreted broadly, this Court looks beyond the Act for assistance. *See Sweat*, 379 S.C. at 374, 665 S.E.2d at 649 ("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."). The Department argues the obvious place to look for a definition of "motor vehicle" is in Title 56, which regulates "motor vehicles." 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).[5] The Department further contends that because the definition of "motor vehicle" contains the term "vehicle," it is necessary to consider the definition of "vehicle." "Vehicle" means "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," 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 that a motor vehicle is something that is licensed for use on public highways. The Department further notes that ATVs and UTVs

[5] The Department's reliance on Chapter 3, Motor Vehicle Registration and Licensing, utilizes statutory provisions which regulate registration and licensing. Since off-road vehicles, like ATVs, are not driven on the highways, an off-road vehicle would not be licensed 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 motor vehicles.

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 also argues it has a long-standing interpretation of what "motor vehicle" means for the purpose of the maximum tax, and this interpretation excludes ATVs. *See Etiwan Fertilizer Co. v. S.C. Tax Comm'n*, 217 S.C. 354, 359, 60 S.E.2d 682, 684 (1950) ("We have held in many cases that where the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons."). Specifically, 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,[6] are not 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-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?
>
> 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 § 12-36-2110(A) since at least 2000.

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[6] 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."

Although "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration," it is less clear whether the Department, in this case, is entitled to such consideration regarding its interpretation of "motor vehicle" under Title 56 when it does not administer Title 56. *See Sweat*, 379 S.C. at 374, 665 S.E.2d at 649. Moreover, the Court finds that the Department has over-looked other applicable statutes that directly speak to this issue. *See 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.").

The Department's emphasis on the term "vehicle" as a necessary element in defining a "motor vehicle" is insightful. The emphasis on "vehicle" attempts to cure an obvious concern that the definition of "motor vehicle" in § 56-3-20(2), without further restriction, is broad enough to include not just ATVs and UTVs, but a child's toy such as a Powerwheels. The Department argues such a broad definition would be absurd. However, section 56-1-10(2) of Title 56 specifically 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(2) (2014) (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.* Thus, 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 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." S.C. Code Ann. § 56-19-1030 (2014). Section 50-26-20, which comes from the "All-Terrain Vehicle Safety Act," 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 (Supp. 2018) (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 to determining whether the legislature considers ATVs "motor vehicles." *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."); *see Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.").

Furthermore, the Court finds the Department's reliance upon by the inference in Title 56, to exclude an ATV and UTV as a "motor vehicle" is outdated. The All-Terrain Motor Vehicle Safety Act (in Title 50) 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. In reconciling the Title 56 and Title 50, the Court finds the greater weight of the evidence, in the form of the legislature's own words and definitions in § 56-1-10(2), § 56-19-1030, and § 50-26-20, leads the Court to conclude 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."). Accordingly, the Court finds the legislature has defined ATVs as "motor vehicles," and ATVs are therefore subject to the maximum tax under § 12-36-2110(A).

Consequently, the Court finds the Department is not entitled to summary judgment as a matter of law regarding the sale of ATVs and UTVs because this Court finds that ATVs and UTVs are subject to the maximum tax in § 12-36-2110(A). *See* Rule 56(c), SCRCP (providing summary judgment is properly granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law"). However, this Court finds that the utility trailers sold by Petitioner are not the types of trailers subject to the maximum tax under § 12-36-2110 because they are not pulled by truck tractors and they are not

recreational travel trailers as contemplated by the statute.[7] Therefore, the Department is entitled to summary judgement regarding Petitioner's sales of utility trailers during the period at issue. *See id.*

*Use Tax*

Next, as to the use tax, it is unclear exactly what the Department assessed use tax on. The Department determination indicates the use tax was assessed, at least in part, on "advertising/marketing materials and business forms." However, the Department determination also indicates Petitioner admitted his liability for $189.86 in use tax due for out-of-state purchases. Because Petitioner has admitted to its liability, the Court finds the Department is entitled to summary judgement on this issue as well.

*Penalty and Interest*

Finally, because the Petitioner had use of monies owed and due to this State for the outstanding tax liability with regards to the trailers at issue, interest is applicable in this matter and continues to accrue until the tax liability for the trailers is paid in its entirety. *See* § 12-54-25(A). Petitioner will not be responsible for the failure to file penalty because the Department has withdrawn this penalty in this case.

**CONCLUSION**

The material facts not in dispute demonstrate the Department is not entitled to summary judgment as a matter of law regarding Petitioner's sales of ATVs and UTVs for the period at issue because these vehicles were subject to the maximum tax.[8] *See* Rule 56(c), SCRCP (providing summary judgment is properly granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law"). However, the material facts not in dispute also demonstrate Petitioner is liable for the outstanding tax with regard to the sales utility trailers for the periods at issue, and the interest accrued, and the Department is entitled to summary judgment on this issue. *See id.* Therefore, the

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[7] The Court also notes that Petitioner did not present any argument at the hearing in this matter concerning this issue.

[8] Petitioner, in his Response to the Department's Motion, not only contested the Department's interpretation of "motor vehicle," but also raised (1) an estoppel argument and (2) a double-taxation argument. However, the Court does not reach these arguments as the statutory interpretation of "motor vehicle" resolves the Motion.

Court finds Petitioner is liable for the outstanding tax liability for the sale of utility trailers as stated on the Department's Revised Proposed Notice of Assessment. Pursuant to § 12-54-25(A), interest continues to accrue on such liability and the Petitioner is responsible for the entire liability until it is satisfied in full. Petitioner is not responsible for the failure to file penalty that was withdrawn by the Department.

## ORDER

**THEREFORE, IT IS HEREBY ORDERED** that the Department's Motion for Summary Judgment is **DENIED** in part and **GRANTED** in part.

**IT IS FURTHERED ORDERED** that the Department's Motion for Summary Judgment regarding the assessed outstanding taxes and interest for Petitioner's sales of ATVs and UTVs for the period at issue is **DENIED**.

**IT IS FURTHER ORDERED** that the Department's Motion for Summary Judgement regarding the assessed outstanding taxes and interest for Petitioner's sales of utility trailers during the period at issue is **GRANTED**.

**IT IS FURTHER ORDERED** that Petitioner shall pay to the Department the portion of the assessed taxes and interest that reflects taxes and interest owed for Petitioner's sales of utility trailers for the period at issue. However, this amount shall be reduced by $819.58, the amount equal to the failure to pay and failure to file penalty that was subsequently withdrawn by the Department.

**IT IS FURTHER ORDERED** that Petitioner shall pay the Department $189.86 in use tax due for out-of-state purchases plus any accrued interest.

**IT IS FURTHER ORDERED** that interest was calculated through September 11, 2017 and will continue to accrue until this matter is resolved.

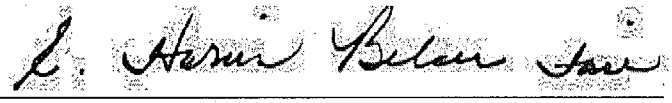
**AND IT IS SO ORDERED.**

Ralph King Anderson, III
Chief Administrative Law Judge

May 15, 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

May 15, 2019
Columbia, South Carolina

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South Carolina Department of Revenue
Litigation & Appeals

OCT 2 2019

Received

September 30, 2019

The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Ste. 224
Columbia, SC 29201

RE: Jack's Custom Cycles, Inc. v. SCDOR
Docket No. 18-ALJ-17-0393-CC

Dear Judge Anderson:

Please find enclosed Petitioner's (Jack's Custom Cycles, Inc d/b/a Jack's Motor Sports) Response in Opposition to Respondent's Motion for Reconsideration. We have also included a copy of Proof of Service.

Please let us know if you have any questions or concerns.

Sincerely,

Margaret Weatherly Dukes

Cc: Nicole M. Wooten, Esq.

Enclosures

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**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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|---|---|---|
| Jack's Custom Cycles, Inc. d/b/a Jack's Motor Sports.<br><br>Petitioner,<br><br>v.<br><br>South Carolina Department of Revenue<br><br>Respondent. | ) | Docket No. 18-ALJ-17-0393-CC |

**PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR RECONSIDERATION**

Petitioner, Jack's Custom Cycles, Inc., d/b/a/ Jack's Motor Sports, submits the following memorandum in opposition to Respondent's, South Carolina Department of Revenue ("Department"), Motion for Reconsideration of the Court's Final Order dated September 13, 2019.

Contrary to the Department's request for reconsideration, the Court properly considered all of the Department's positions and arguments presented at the hearing. As such, the current motion should be denied.

**ARGUMENT**

**I. The Court's finding regarding the Infrastructure Maintenance Fee has no bearing on the merits of the case.**

The Department argues the Court erred in the following finding "[p]etitioner remitted the maximum tax to the Department of 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." Other than assisting with interpreting the legislature's intent, the IMF

Statute has no bearing on the ultimate issue in this case as the Department's improper assessment for alleged additional sales tax was prior to the enactment of the IMF statute. Accordingly, the Court's supplementary statement regarding the Petitioner's payment of the IMF Fee means nothing to the outcome of the case.

## II. The Court properly considered Department's Arguments at the Hearing.

The ALC appropriately considered all of the Department's arguments related to Title 56 as it relates to whether ATVs and UTVs are motor vehicles. The Final Order is not silent on the interpretation of S.C. Code Title 56. The Department's arguments related to Section 56-15-10(a) are the same arguments regarding registration as addressed by the Court throughout the Final Order. The Court found that while portions of Title 56 suggest that ATVs and UTVs should not be operated on South Carolina highways, it does not exclude ATVs or UTVs from being considered "motor vehicles," (Final Order pg.12-13). More so, the Court's extensive analysis of Title 56 correctly concluded the legislature intended the term "motor vehicle" to be more expansive than those motor vehicles required to be registered by the Department of Motor Vehicles. (Final Order pg. 17). The Court stated it clearly "just because an ATV is not licensed for use on a public highway does not mean it is not a "motor vehicle." (Final Order pg. 10). South Carolina Code Ann. §56-15-10(a) does not change that fact.

Finally, the Court considered, and dismissed for several reasons, the Department's request for deference. This additional request for deference based on Department of Motor publications should be dismissed as well. The SCDMV publications regarding "dealers" mirrors the flawed Department interpretation regarding maximum tax and not any separate interpretation of "motor vehicle" as it relates to Title 56. Based the various reasons set forth in the Final Order, the Court found the Department's application of select provisions of Title 56 skewed. In fact, the

Court properly identified that not only was the Department not entitled to deference in its interpretation, but the Department had an "obligation to change its interpretation to accord with the legislature's action" after Chandler's Law was enacted. (Final Order pg. 14).

**CONCLUSION**

The Court's Final Order should not be reconsidered, altered or amended in any manner.

Respectfully Submitted,

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September 30, 2019

STATE OF SOUTH CAROLINA

# DEPARTMENT OF REVENUE
# OFFICE OF THE GENERAL COUNSEL

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September 20, 2019

The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Ste. 224
Columbia, SC 29201

**Re: Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports vs. South Carolina Department of Revenue**
**Docket No. 18-ALJ-17-0393-CC**
**Our File Number: 180052**

Dear Judge Anderson:

Enclosed please find the South Carolina Department of Revenue's (Respondent's) Notice of Motion and Motion for Reconsideration Pursuant to ALC Rule 29(D) and/or to Alter or Amend Pursuant to Rule 59(e), SCRCP, in the above-referenced matter. Also enclosed is a Proof of Service.

Should you have any questions, please do not hesitate to contact me at 803-898-1826 or Nicole.Wooten@dor.sc.gov.

Very truly yours,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Nicole M. Wooten
Counsel for Litigation
c: John A. Ecton, Esquire
Margaret W. Dukes, Esquire
Enclosures
NMW: tm

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports,<br><br>Petitioner,<br><br>v.<br><br>South Carolina Department of Revenue,<br><br>Respondent. | **Docket No. 18-ALJ-17-0393-CC**<br><br>**NOTICE OF MOTION AND MOTION FOR RECONSIDERATION PURSUANT TO ALC RULE 29(D) AND/OR TO ALTER OR AMEND PURSUANT TO RULE 59(e), SCRCP** |

Pursuant to Rule 29(D) of the South Carolina Administrative Law Court Rules and Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP), the South Carolina Department of Revenue (the "Department") respectfully requests that the Administrative Law Court ("Court") alter or amend its Final Order dated September 13, 2019 (the "Order") in two respects. First, the Department respectfully requests the Court amend its Findings of Fact regarding the Infrastructure Maintenance Fee. Second, the Department respectfully requests the Court to amend or alter its Order by ruling on arguments presented at the July 18, 2019 hearing but not ruled on in the Order.

## I. Amend the Order's Findings of Fact Regarding Maximum Tax and Infrastructure Maintenance Fee.

In its Order, the Court made the following Findings of Fact:

> 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.

(Order, p. 4.) However, the evidence presented at the hearing does not support a finding that Petitioner remitted the maximum tax to the Department and the Infrastructure Maintenance Fee ("IMF") to the South Carolina Department of Motor Vehicles ("SCDMV") for each vehicle it sold

during the Audit Period. In fact, Petitioner presented no evidence the IMF was remitted for each vehicle included in the Audit Period. The Audit Period in this matter is August 1, 2013 through July 31, 2016. *See* Stipulations of Fact, ¶4; Respondent's Exhibit 1, 2 and 7. The IMF did not become effective until July 1, 2017, nearly one year after the conclusion of the Audit Period. Although Petitioner attempted to establish it remitted the maximum tax and the IMF on retail sales of a few ATVs or UTVs, these documents do not support Petitioner's assertions to the Court. *See* Petitioner's Exhibit 8. These two receipts, dated February 22, 2018 and April 11, 2018, occurred approximately eighteen months after the conclusion of the Audit Period. Further, one receipt is addressed to Jacks Custom Cycles of Murrells Inlet, and this entity is not the Petitioner in this matter. Finally, Petitioner presented no evidence the maximum tax was remitted to the Department on these specific transactions.[1] Accordingly, the Department respectfully requests the Court to amend its Order by removing the finding that Petitioner "remitted the Infrastructure Maintenance Fee (IMF) to the SCDMV for each vehicle as well. The IMF is an additional $500 fee." (Order, p. 4.)

## II. Amend or Alter the Order to Rule on Arguments Presented at the July 18, 2019 Hearing but Not Ruled on in the Order.

A. S.C. Code Ann. § 56-15-10(a) (2006).

At the hearing in this matter, the Department argued § 56-15-10(a) supports its position an ATV/UTV is not considered a "motor vehicle" for purposes of the partial sales tax exemption found in S.C. Code Ann. § 12-36-2110 (2014) because ATVs/UTVs cannot be licensed for use on

[1]While Petitioner included an invoice which states that 7% sales tax was collected on the retail sale of the ATV/UTV, Petitioner did not present any evidence that such sales tax *was remitted* to the Department on this retail sale. Moreover, this transaction occurred on March 17, 2018 – well outside the Audit Period – and was not included in the Department's Proposed Assessment.

the highway.[2] However, the Order is silent on the Department's argument that § 56-15-10(a) supports the Department's position that an ATV/UTV is not a "motor vehicle" for purposes of § 12-36-2110.

Prior to November 19, 2018, § 56-15-10(a) defined "motor vehicle" as "any motor driven vehicle required to be registered pursuant to Section 56-3-110. This definition does not include motorcycles, or new recreational vehicles as defined in Section 56-14-10."[3] S.C. Code Ann. § 56-3-110 (2018) provides the following:

> **Every motor vehicle**, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, **operated or moved upon a highway in this State shall be registered and licensed** in accordance with the provisions of this chapter. **It shall be a misdemeanor for any person to drive, operate or move upon a highway** or for the owner knowingly to permit to be driven, operated or moved upon a highway **any such vehicle which is not registered and licensed** and the required fee paid as provided for in this chapter.

Section 56-3-110 (emphasis added). ATVs and UTVs are not authorized to operate on the highways of this State because the SCDMV does not license them to operate upon the State's highways. To drive or operate an ATV or UTV on a highway in South Carolina is a misdemeanor. Because ATVs and UTVs are not authorized to operate on the highways of this State, an ATV/UTV is not a "motor vehicle" pursuant to § 56-15-10(a). Thus, the definition of "motor vehicle" in § 56-15-10(a) supports the Department's position that ATVs and UTVs are not entitled to the maximum tax under § 12-36-2110. Accordingly, the Department respectfully requests this

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[2]See Hearing Transcript ("Hr'g Tr.") 19:5-21; 121:12-21. The Court also asked Petitioner's counsel to respond to the Department's argument regarding § 56-15-10(a). (Hr'g Tr. 140:21 – 142:9.)

[3]Effective November 19, 2018, § 56-15-10(a) was amended to exclude "mopeds" from the definition of "motor vehicle."

Court to amend its Order by ruling on the Department's argument that § 56-15-10(a) is applicable in this matter and supports the Department's position that an ATV/UTV is not a "motor vehicle" for purposes of the maximum tax in § 12-36-2110(A).

B. SCDMV Publications.

As part of its argument, the Department offered, without objection from Petitioner, three official publications from the SCDMV, titled "SCDMV Dealer Connection." In these SCDMV publications, South Carolina licensed dealers are informed: (i) ATVs are not subject to the maximum tax and (ii) the dealers must continue to remit sales tax to the Department of Revenue. *See* Exhibits 19, 20, and 21. In its Order, the Court acknowledges "Title 56 is administered by the Department of Motor Vehicles." However, the Court does not address SCDMV's public statements supporting the Department's position in this matter: that ATVs/UTVs are not entitled to the maximum tax. (Order, p. 12.) Accordingly, the Department respectfully requests this Court to alter or amend its Order by ruling on the Department's argument that the SCDMV's interpretation of its statutes – via published guidance to licensed dealers in South Carolina that an ATV/UTV is not a "motor vehicle" for purposes of the maximum tax and IMF – is entitled to deference.[4]

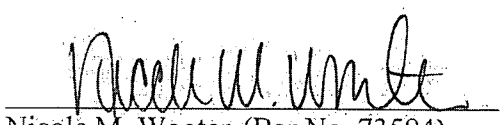
## CONCLUSION

Based on the foregoing, the Department respectfully requests the Court to amend its Findings of Fact regarding the IMF. Further, the Department respectfully requests the Court to amend or alter its Order by ruling on arguments put forth by the Department at the July 18, 2019 hearing in this matter.

**[signature on next page]**

[4] *See* Hr'g Tr. 25:15-26:3; 119:21-121:10.

Respectfully submitted,



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Columbia, South Carolina
September 20, 2019

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| Jack's Custom Cycles, Inc. d/b/a Jack's Motor Sports.<br><br>Petitioner,<br><br>v.<br><br>South Carolina Department of Revenue<br><br>Respondent. | ) | Docket No. 18-ALJ-17-0393-CC |

**PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR RECONSIDERATION**

Petitioner, Jack's Custom Cycles, Inc., d/b/a/ Jack's Motor Sports, submits the following memorandum in opposition to Respondent's, South Carolina Department of Revenue ("Department"), Motion for Reconsideration of the Court's May 15, 2019 Order Denying Department's Motion for Summary Judgment. Specifically, the Department is requesting the Court to reconsider the determination that Petitioner's sales of ATVs and UTVs for the period at issue were subject to maximum tax under S.C. Code Ann. §12-36-2110.

The Department argues the Court erred in its construction of South Carolina statutes in defining "motor vehicle" and by failing to defer to the Department's interpretation of the statutes. The Department's motion is simply a reiteration of its previous arguments and presents no new issue nor demonstrates that the Court failed to consider any material fact or relevant statute. The Motion for Reconsideration should be denied because the Court properly considered all relevant statutes and did not commit clear error in its decision.

## ARGUMENT

### I. The Court properly considered the probative South Carolina statutes in determining the legislative intent and concluding that ATV/UTVs are "motor vehicles."

The Department argues the Court erred in broadly construing S.C Code §12-36-2110(A). The Department reiterates the same arguments presented in its summary judgment motion to conclude that a "motor vehicle" is something that must be licensed to operate on public highways. As the Court correctly noted, the term "motor vehicle" is not defined in Title 12, and the Court must look to the most probative statute to ascertain the intent of the legislature. The Court cannot force a construction and may search for the legislative intent beyond the border of the act. *State v. Sweat*, 665 S.E.2d 645 (Ct. App 2008). After considering the Department's strained construction of S.C. Code Ann. §56-3-20(2) and the layering of definitions to arrive at their interpretation of "motor vehicle," the Court properly considered and applied the more probative statutes directly defining an ATV as a "motor vehicle" and a "motorized vehicle." See S.C. Code §§56-1-10(20) and 50-26-20 (Supp. 2018). The Court applied the proper South Carolina Statutes and did not err in its conclusion that ATV/UTVs are subject to the maximum tax.

### II. The Court Did Not Err In Concluding That The Department Is Not Entitled To Deference

The ALC appropriately considered and correctly concluded that it is not required to give deference to the Department's interpretation of "motor vehicle" or "vehicle" because those terms are defined in Title 56, and the Department is not charged with administering Title 56. The Department of Revenue is not entrusted with administering Title 56 and thus cannot demand deference to self-serving interpretations. The Department's attempt to apply their own interpretation of Title 56 to their statute is misplaced. The Court found that interpretation was

not worthy of deference. See *Kiawah Dev. Partners, II, 411 S.C. at 33, 766 S.E.2d at 717* (quoting *Chevron U.S.A., Inc. v Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843, 104 S. Ct. 1778, 81 L.Ed.2d 694 (1984)(If the statute or regulation is silent or ambiguous with respect to the specific issue, the court then must give deference to the agency's interpretation of the statute or regulation, **assuming the interpretation is worthy of deference.**). Recognizing general deference to an administrative agency's interpretation, where the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation. *Bruning v. S.C. Dep't of Health and Envtl. Control*, 418 S.C. 545. Generally, a specific statutory provision prevails over a more general one. *See Wooten ex rel. Wooten v. S.C. Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999). The Court application of the more specific statutes was proper, was not in error, and should not be reconsidered.

**III. The Court Did Not Overlook The Legislature's Intent In § 56-3-627**

The Department notes that the legislature increased the maximum tax for motor vehicles from $300 to $500 to account for "necessary road maintenance" for items using the highways of this statute. The fact remains that many of the ATV/UTV are titled by the Department of Motor Vehicles (DMV) and permitted to be driven on public highways. For those DMV motor vehicles, the Petitioner is paying the Infrastructure Maintenance Fee (maximum tax) and is still being required at this time to pay the full sales tax to the Department of Revenue. The DMV's recognition of ATVs and UTVs as vehicles for purposes of IMF maximum tax further supports the Court's determination that ATVs and UTVs for the audit period at issue were vehicles subject to maximum tax.

## CONCLUSION

The Court's Order of May 15, 2019 was properly considered, without error, and should not be reconsider, altered or amended in any manner.

Respectfully Submitted,

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June 6, 2019

STATE OF SOUTH CAROLINA

# DEPARTMENT OF REVENUE

# OFFICE OF THE GENERAL COUNSEL


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May 28, 2019

**HAND DELIVERY**
The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Ste. 224
Columbia, SC 29201

**Re: Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports vs. South Carolina Department of Revenue**
**Docket No. 18-ALJ-17-0393-CC**
**Our File Number: 180052**

Dear Judge Anderson:

Please find the South Carolina Department of Revenue's Notice of Motion and Motion for Reconsideration Pursuant to ALC Rule 29(D) and/or to Alter or Amend Pursuant to Rule 59(e), SCRCP in the above-referenced matter. Also enclosed is a Proof of Service.

Should you have any questions, please do not hesitate to contact me at 803-898-1826 or Nicole.Wooten@dor.sc.gov.

Very truly yours,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Nicole M. Wooten
Counsel for Litigation

c: John A. Ecton, Esquire
Margaret W. Dukes, Esquire

Enclosures
NMW: tm

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports,<br><br>Petitioner,<br><br>v.<br><br>South Carolina Department of Revenue,<br><br>Respondent. | **Docket No. 18-ALJ-17-0393-CC**<br><br>**NOTICE OF MOTION AND MOTION FOR RECONSIDERATION PURSUANT TO ALC RULE 29(D) AND/OR TO ALTER OR AMEND PURSUANT TO RULE 59(e), SCRCP** |

Pursuant to Rule 29(D) of the South Carolina Administrative Law Court Rules and Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP), the South Carolina Department of Revenue (the "Department") respectfully requests that the Administrative Law Court ("Court") reconsider, alter, or amend its Order Denying Motion for Summary Judgment dated May 15, 2019 (the "Order"). Specifically, the Department asks the Court to amend the portion of the Order where the Court concluded that Petitioner Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports' (the "Petitioner") retail sales of all-terrain vehicles ("ATVs") and utility task vehicles ("UTVs") are "motor vehicles" for purposes of S.C. Code Ann. § 12-36-2110(A) (2014).[1] For reasons explained more fully below, the Department respectfully requests that this Court reconsider, alter, and amend its Order.

[1]As noted in the Order, the parties – and ultimately the Court – treat ATVs and UTVs as the same for purposes of the maximum tax. (Order, p. 6, n. 4.) Any statements in this motion regarding ATVs applies to UTVs.

## ARGUMENT

### I. The Court Erred In Broadly Construing A Partial Exemption Statute.

In the Order, the Court concluded that the "legislature has defined ATVs as "'motor vehicles,'" and ATVs are therefore subject to the maximum tax under § 12-36-2110(A). (Order, p. 10.) The Court cites to S.C. Code Ann. § 56-1-10(20), § 56-19-1030, and § 50-26-20 (2018) to support its conclusion. As demonstrated below, the Department respectfully asserts the Court construed § 12-36-2110(A) too broadly because the legislature did not explicitly provide for a partial sales tax exemption for the retail sale of an ATV. In addition, the Court should not have construed certain statutes in combination because, even though they all have a relationship to the regulation of ATVs, there are differing purposes behind those statutes. Lastly, the Department respectfully asserts the Court overlooked the legislature's words in S.C. Code Ann. § 56-3-627 (2018) in determining whether an ATV is a "motor vehicle" for purposes of the maximum tax in § 12-36-2110(A).

#### A. The Legislature Did Not Explicitly Provide For A Partial Exemption Of Sales Tax On The Retail Sales of ATVs.

In its Order, the Court recognized that the maximum tax statute is a partial exemption that must be construed against the taxpayer. (Order, p. 6.) Relying on the "specific and definite nature" of the statutes defining ATVs, the Court concluded that the legislature intended to define ATVs as "motor vehicles" that would meet the requirements of the maximum tax statute. *See* Order, p. 10 (citing to § 56-1-10(20), § 56-19-1030, and § 50-26-20). In response, the Department respectfully asserts the Court overlooked the legislature's words in S.C. Code Ann. § 50-26-50 (2018).

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 with 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)).

The All-Terrain Motor Vehicle Safety Act (referred to as "Chandler's Law") passed in 2011. As part of Chandler's Law, the legislature added § 50-26-50:

> All-terrain vehicles are exempt from ad valorem personal property taxes beginning with calendar year 2011.

S.C. Code Ann. § 50-26-50. Chandler's Law creates a property tax exemption for ATVs beginning with calendar year 2011. Although the Court noted in its decision that the Department's position (outlined in S.C. Rev. Advisory Bulletin #00-3) is outdated, the legislature is presumed to know the Department's position that retail sales of ATVs are not subject to the "max tax" under § 12-36-2110(A). If 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. Because partial exemption statutes must be strictly construed against the taxpayer, and the legislature did not explicitly provide for a partial sales tax exemption on the retail sales of ATVs when it created a property tax exemption for ATVs, the Department respectfully asserts the Court failed to consider the legislature intent related to § 50-26-50.

B. <u>The Purpose of Chandler's Law Does Not Relate To The Taxation Of Retail Sales of ATVs.</u>

As noted above, the Court points to Chandler's Law as support for its conclusion that the legislature has defined ATVs as "motor vehicles" and therefore "subject to the maximum tax under § 12-36-2110(A). (Order, p. 10 *citing 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)).

Title 50 relates to Fish, Game and Watercraft and does not relate motor vehicles. The official title of Chandler's Law is the "All-Terrain Vehicle *Safety* Act." (Emphasis added.) Chandler's Law was enacted under 2011 Act 24 (H.B. 3562) and the preamble to 2011 Act 24 states that Chandler's Law was enacted "so as to provide for regulation of the operation of all-terrain vehicles including *minimum age requirements* for the operation of all-terrain vehicles, *safety* course completion requirements, *safety* equipment requirements, and passenger riding requirements . . . ." (emphasis added.) The purpose of Chandler's Law was to provide for additional safety requirements of riders and passengers of ATVs. Chandler's Law does not relate to and has no bearing on the taxation of retail sales of ATVs.

There is no language within the Chandler's Law relating to retail sales of ATVs. *See SUTHERLAND* § 51:3 Statutes deemed to be in pari materia ("Courts routinely find that several acts treating the same subject, but having different objects, are not *in pari materia*. Several jurisdictions have noted that '[t]he adventitious occurrence of like or similar phrases, or even of similar subject matter, in laws enacted for wholly different ends will normally not justify applying the rule.") Because Chandler's Law was enacted for safety purposes of drivers and passengers of ATVs, and it does not create a partial exemption for sales tax purposes for ATVs, ATVs should not be construed to mean "motor vehicle" for sales tax purposes.[2]

C. The Legislature's Words In § 56-3-627 Provide That The Maximum Tax On "Motor Vehicles" Was Increased To Account For Necessary Road Maintenance.

[2]Notably, § 50-26-20 defines ATVs as "motorized vehicles" rather than "motor vehicles."

In its Order, the Court places great weight on "the legislature's own words and definitions in § 56-1-10(20), § 56-19-1030, and § 50-26-20" to conclude that ATVs are motor vehicles. (Order, p. 10.) However, the Department respectfully asserts the Court overlooked the legislature's words in § 56-3-627:

> *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 pursuant to this chapter must pay an infrastructure maintenance fee 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.)

This Court recognized in its Order that the maximum tax pursuant to § 12-36-2110(A) was raised from $300 to $500 pursuant to 2017 S.C. Act No. 40. In the preamble language of 2017 S.C. Act No. 40, the legislature included the following relevant language:

> To amend Section 12-36-2110, relating to the maximum sales tax, so as to increase the maximum tax on certain items; . . . to amend section 12-36-2120, as amended, relating to exemptions from the state sales tax, so as to exempt any item subject to the infrastructure maintenance fee.

2017 S.C. Act 40, preamble; *see also* S.C. Code Ann. § 12-36-2120(83) (2014) (exempting from sales tax "any item subject to the fee set forth in Section 56-3-627.") The Infrastructure Maintenance Fee (IMF) became effective June 30, 2017, and since that date, retail sales of "motor vehicles" are now subject to the IMF rather than the maximum tax under § 12-36-2110(A). As stated in the statute, the legislature enacted the IMF – previously applicable to motor vehicles as a maximum tax under § 12-36-2110(A) – "in order to account for the necessary road maintenance caused by each items traversing the roads of this state[.]". Section 56-3-627. ATVs are not

permitted to operate on the highways of this State; thus, ATVs do not contribute to the deterioration of the State's highways. There is no need to raise additional revenue from ATVs under the IMF (or maximum tax statute) because ATVs cannot be legally operated on the highways of this state. Thus, ATVs are not "motor vehicles" for purposes of § 12-36-2110(A).

The legislature did not explicitly provide for a partial sales tax exemption on the retail sales of ATVs; Chandler's Law did not relate to the taxation of retail sales of ATVs although it created a property tax exemption for ATVs; and 2017 S.C. Act No. 40 recognized a need to increase funds to prevent further deterioration of the State's highways by vehicles that are permitted to use the highways. Because ATVs cannot be operated on the highways of this state, ATVs are not "motor vehicles" for *sales tax purposes*, and the Department respectfully requests that the Court reconsider, alter, and amend its Order to conclude that the Petitioner's retail sales of ATVs and UTVs are not entitled to a partial exemption pursuant to § 12-36-2110(A).

## II. The Department's Long-Standing Interpretation Of A Statute It Is Authorized To Administer Is Entitled to Deference.

The ALC concluded that it is not required to give deference to the Department's interpretation of "motor vehicle" or "vehicle" because those terms are defined in Title 56, and the Department is not charged with administering Title 56. (Order, p. 9.) The Department acknowledges § 12-36-2110(A) does not define "motor vehicle." However, if a statute "'is silent or ambiguous with respect to the specific issues,' the court then must give deference to the agency's interpretation of the statute or regulation. . . ." *Bruning v. S.C. Dep't of Health and Envtl. Control*, 418 S.C. 537, 545, 795 S.E.2d 290, 294 (Ct. App. 2016) (citation omitted).

In *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 826, 838 (2003), the South Carolina Supreme Court recognized that "the Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation." Agencies are given

deference "because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations. *Trident Med. Center v. S.C. Dep't of Health and Envtl. Control*, 412 S.C. 341, 354, 772 S.E.2d 177, 184 (Ct. App. 2015) (citation omitted). Simply stated, our courts "defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" *Id.* (citation omitted).

Here, the Department is not interpreting Title 56. Rather, the Department is interpreting § 12-36-2110(A) – a sales tax statute in Title 12. *See* S.C. Code Ann. § 12-4-10 (2014) ("The South Carolina Department of Revenue is created to administer and enforce the revenue laws of this State[.]"). The Department turned to "Title 56 – Motor Vehicles" as the reasonable place to obtain a definition of "motor vehicle." This is no different from the Department turning to a dictionary to define a term that has not been defined in the statute at issue. Indeed, the South Carolina Supreme Court has recognized that where a specific statute at issue does not define a term, the Court has "tried to glean an appropriate definition" by reviewing secondary sources, state statutes, and appellate decisions. *Sonoco Products Co. v. S.C. Dep't of Rev.*, 378 S.C. 385, 391, 662 S.E.2d 599, 602 (2008); *see also Estate of Nicholson ex rel. Nicholson v. S.C. Dep't of Health and Human Services*, 377 S.C. 590, 660 S.E.2d 303 (Ct. App. 2008) ("'Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.'") (citations omitted).

The Department was reasonable to use the definitions of "motor vehicle," "vehicle," and "highway" for purposes of determining whether the retail sale of an ATV is entitled to receive the partial exemption of sales tax – a statute in which the Department has been given the authority to

administer and enforce. Section 12-4-10. The Department's interpretation of § 12-36-2110(A) is not arbitrary, capricious, or manifestly contrary to the statute.

To the contrary, the Department's interpretation of § 12-36-2110(A) is reasonable given that § 12-36-2110(A) is a partial exemption statute. Since 2000, the Department's position has been that retail sales of ATVs are not subject to the maximum tax. Yet, the legislature has made no effect to "correct" the Department's position despite enacting other laws related to the taxation of ATVs. Moreover, the legislature increased the maximum tax for motor vehicles from $300 to $500 and did so to account for "necessary road maintenance" for items using the highways of this State (and ATVs cannot legally operate on the highways of this state). For all of these reasons, the Department's interpretation of the maximum tax statute is reasonable, and the legislature's actions since 2000 are consistent with the Department's position. Thus, such position should be given deference by this Court.

Therefore, the Department respectfully requests that the Court reconsider, alter, or amend its Order to reflect that the Department is entitled to deference regarding its interpretation of a statute it is legislatively authorized to administer. Because the Department's interpretation of its statute is entitled to deference, the Department requests this Court to reconsider, alter, or amend its Order to reflect that retail sales of ATVs are not entitled to the partial exemption pursuant to § 12-36-2110(A).

## CONCLUSION

Based on the foregoing, the Department respectfully requests that this Court reconsider, alter, or amend its Order and conclude that the Petitioner's retail sales of ATVs and UTVs are not entitled to a partial exemption pursuant to § 12-36-2110(A).

Respectfully submitted,

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May 28, 2019
Columbia, South Carolina

STATE OF SOUTH CAROLINA

# DEPARTMENT OF REVENUE

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April 22, 2019

**VIA EMAIL AND U.S. MAIL**
The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Ste. 224
Columbia, SC 29201

**Re: Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports vs. South Carolina Department of Revenue**
**Docket No. 18-ALJ-17-0393-CC**
**Our File Number: 180052**

Dear Judge Anderson:

Enclosed please find the South Carolina Department of Revenue's (Respondent's) Reply to Petitioner's Response in Opposition to Respondent's Summary Judgment Motion in the above-referenced matter. Also enclosed is a Proof of Service.

Should you have any questions, please do not hesitate to contact me at 803-898-1826 or Nicole.Wooten@dor.sc.gov.

Very truly yours,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Nicole M. Wooten
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c: John A. Ecton, Esquire
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Enclosures
NMW: tm

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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|---|---|
| Jack's Custom Cycles, Inc. d/b/a Jack's Motor Sports,<br><br>Petitioner,<br><br>v.<br><br>South Carolina Department of Revenue,<br><br>Respondent. | **Docket No. 18-ALJ-17-0393-CC**<br><br>**RESPONDENT'S REPLY TO PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S SUMMARY JUDGMENT MOTION** |

**TO: The Honorable Ralph K. Anderson, III, Presiding Judge:**

Pursuant to ALC Rule 19(A), Respondent South Carolina Department of Revenue (Department) submits this Reply to the Response in Opposition to Respondent's Summary Judgment Motion (Response) of Petitioner Jack's Custom Cycles, Inc. d/b/a Jack's Motor Sports (Petitioner) dated April 15, 2019. In the Response, the Petitioner confirms the material facts are not in dispute. Further, the Petitioner's Response asks the Administrative Law Court (Court) to draw erroneous conclusions of law.

For the reasons set forth below, the Department respectfully requests that the Department's motion for summary judgment (Motion) be granted.

## MATERIAL FACTS NOT IN DISPUTE

The Department presented the Material Facts Not in Dispute in the Memorandum in Support of Respondent's Motion. (Mem., pp. 2-3). The Petitioner does not dispute the Department's Material Facts Not in Dispute and "stipulates to those facts presented." (Resp., p. 4). However, the Petitioner "believes there are a few issues of material fact that need further discovery[.]" *Id.* As discussed below, even if the Petitioner's alleged facts are true, those facts are not relevant as to whether the Petitioner's retail sales of ATVs and UTVs are entitled to the

maximum tax pursuant to S.C. Code Ann. § 12-36-2110(A) (2014). Further, the Department objects to the Petitioner's "Background Facts." Specifically, any statements attributed to a Department employee are hearsay, and statements regarding the employment positions of two such Department employees is inaccurate. Finally, the Petitioner states that it is the "retail agent for the Department in the collection of sales tax."[1] The Petitioner is not a "retail agent" for the Department; rather, pursuant to S.C. Code Ann. § 12-36-70 (2014), the Petitioner is the retailer that is legally responsible for the collection and remittance of sales tax due on its sales of tangible personal property.

## DISCUSSION

In its Response, the Petitioner confirms that summary judgment is appropriate in this matter but asserts that it is entitled to summary judgment with regard to the ATV and UTV sales tax issue. However, Petitioner's interpretations of the relevant statutory provisions are erroneous and lead to absurd results. The Petitioner cannot meet the requirements of the relevant statutory provisions to qualify for the maximum sales tax on the retail sale of ATVs and UTVs. Further, the Petitioner's disputed "material facts" are not relevant to the determination of whether the Petitioner's retail sales of ATVs and UTVs qualify for the maximum sales tax.

### I. The Petitioner's Retail Sales Of ATVs And UTVs During The Audit Period Are Not Entitled To The Maximum Tax Pursuant To § 12-36-2110(A).

In the interest of judicial economy, the Department incorporates into this Reply the Department's arguments in its Memorandum. (Mem., pp. 5-12.)

In its Response, the Petitioner argues that its retail sales of ATVs and UTVs qualify for the maximum tax under § 12-36-2110(A) because ATVs and UTVs are "motor vehicles." Under the

[1]The Petitioner again makes this conclusion in its Response at page 15.

Petitioner's interpretation, anything that is self-propelled and not operated on rails is a motor vehicle and therefore qualifies for the maximum tax. The Petitioner reads the definition of "motor vehicle" in isolation and without regard for the definitions of "vehicle" and "highway." *See* S.C. Code Ann. § 56-3-20(1) and (25) (2016). Moreover, the Petitioner's interpretation of "motor vehicle" leads to an absurd result when reading the relevant statutory definitions within Title 56, Chapter 3 as a whole. For example, the Petitioner's interpretation would lead to an absurd result when applying the definition of "motor vehicle." Under Petitioner's interpretation, a lawn mower, a child's battery-operated Power Wheels toy, or even a remote-controlled car would be considered a "motor vehicle" because each are self-propelled and not operated on rails. Lawn mowers and children's toys are clearly not motor vehicles, nor do such qualify for the maximum tax. Courts will not construe a statute in a way to lead to an absurd result. *See Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 378, 735 S.E.2d 453, 455 (2012) (holding "[t]his Court will not construe a statute in a way which leads to an absurd result or renders it meaningless."); *Sonoco Products Co. v. S.C. Dep't of Rev.*, 378 S.C. 385, 391, 662 S.E.2d 599, 602 (2008) (holding that courts "will reject a statutory interpretation 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."); *see also Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000).

Next, the Petitioner asserts that the legislature could have specifically excluded an ATV or UTV from the definition of motor vehicle when it enacted the All-Terrain Vehicle Safety Act, S.C. Code Ann. § 50-26-10 *et seq.* in 2011 (referred to as "Chandler's Law"). However, there was no need for the legislature to specifically exclude ATVs or UTVs from the definition of "motor vehicle." The Department issued guidance in 2000 advising the public of its position with regard to the imposition of maximum tax to ATVs. The Legislature is presumed to know the

Department's position since at least 2000, and there was no reason to specifically exclude an item the Department was already excluding from the list of maximum tax items.

Finally, the Petitioner asserts that an Attorney General opinion determined that ATVs would be considered a "motor vehicle" for purposes of S.C. Code Ann. § 56-3-20 (2016). Petitioner further asserts that Chandler's Law did not declare it unlawful for an ATV to be operated on public highways. Finally, the Petitioner asserts that the Attorney General opinion also acknowledged that ATVs were being driven on public highways.

First, as noted above, the definitions in § 56-3-20 must be read together and in harmony; to read such definitions in isolation, as Petitioner urges this Court to do, leads to absurd results. *See also Charleston County School District v. Harrell*, 393 S.C. 552, 560-561, 713 S.E.2d 604, 609 (2011) (concluding that Attorney General opinions, while persuasive, are not binding upon this court.) Second, it was not necessary for Chandler's Law to prohibit operation of an ATV on the public highways of this state because an existing statute prohibited such activity prior to the effective date of Chandler's Law. S.C. Code Ann. § 56-3-110 (2016) provides that it is a misdemeanor to operate a vehicle on the highways of this state if such vehicle is not registered and licensed. As noted in the Attorney General's opinion and confirmed by the South Carolina Department of Motor Vehicles (SCDMV) affidavit attached to the Department's Memorandum, the SCDMV does not license ATVs or UTVs to operate on the highways of this state. Thus, it was not necessary for Chandler's Law to specifically prohibit the operation of an ATV on the public highways when it was already prohibited by § 56-3-110. Finally, the fact that individuals may drive ATVs and UTVs on the public highways of this state does not make such activity legal. Each day, drivers of this state exceed the posted speed limit. However, it is within the discretion of the South Carolina Department of Public Safety or local police to enforce the traffic laws of this

state – including the operation of ATVs or UTVS on public highways. Whether individuals choose to illegally drive an ATV or UTV on the public highways in this state is not relevant to the application of sales tax in this matter.[2]

The Department must follow the law as written. *Smith v. Wallace*, 295 S.C. 448, 369 S.E.2d 657 (Ct. App. 2008). The Petitioner's retail sales of ATVs and UTVs do not qualify for the maximum tax pursuant to § 12-36-2110(A). ATVs and UTVs are not "motor vehicles" as they are not authorized to operate on the highways of this state. When the terms of a statute are clear and unambiguous, there is no room for construction, and the Department must give such terms their literal meaning. *Duke Power Co. v. S.C. Tax Comm'n*, 292 S.C. 64, 354 S.E.2d 902 (1987).

## II. This Matter Does Not Involve Any Disputed Material Facts.

Despite the Petitioner stipulating that the material facts are not in dispute regarding whether the Petitioner's retail sales of ATVs and UTVs qualify for the maximum tax under § 12-36-2110(A), the Petitioner nonetheless asserts there are material facts in dispute. However, as discussed below, even if such alleged facts are material and true, the Department is entitled to summary judgment in this matter.

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[2]The Petitioner also cites to *Montgomery v. Progressive Advanced Ins. Co.*, (U.S. Dist. Ct. Eastern District of Va., March 6, 2015, available at 2015 WL 1011524) for the conclusion that "even though the ATV Manual indicated the vehicle was designed for off-road use, the reality is that the vehicle was equipped to legally operate both on public roads and off-road." (Resp., p. 8, n. 3.) The Petitioner's reliance on this case is misplaced. It is an unreported decision from another state's federal district court concerning whether a specific UTV is "an 'uninsured or underinsured motor vehicle' as defined in the insurance policy." (emphasis added). Moreover, the *Montgomery* court acknowledged that the Arizona Department of Motor Vehicles issued the ATV in question a "license plate that allowed [the ATV] to be legally operated on public highways." *Id.* at *6. Here, the manufacturer's certificate of origin for ATVs and UTVs specifically state "this off-road vehicle is not intended for, and may not be registered for, on-road use." *See* Memo, Ex. 5. Based upon the manufacturer's definitive statement, the SCDMV will not issue a title for an ATV or UTV without the language "off-road use only." *Id.*

The Petitioner seeks to have the Department estopped from collecting the sales taxes due because the Petitioner asserts it received erroneous verbal advice from Department employees stating that the maximum tax applied to its retail sales of ATVs and UTVs. The Petitioner cites to several cases for the proposition that if three elements of estoppel are proved by the Petitioner, the Department must be estopped from assessing the full amount of sales tax due on the Petitioner's retail sales during the Audit Period. *See S.C. State Highway Dep't v. Metts*, 270 S.C. 73, 240 S.E.2d 816 (1978); *Crescent Company, Inc. v. Insurance Co. of N.A.*, 266 S.C. 598, 225 S.E.2d 656 (1976); and *Abbeville Arms v. City of Abbeville*, 273 S.C. 491, 257 S.E.2d 716 (1979). However, the Petitioner cannot meet any of the three "essential" elements of estoppel, and each element independently disqualifies the Petitioner from any estoppel claim. More importantly and as discussed above, the Petitioner's retail sales of ATVs and UTVs do not meet the requirements of the maximum tax statute. The Department must follow the statute as written, and the Petitioner failed to meet the requirements of the statute. *See Morgan v. S.C. Budget and Control Bd.*, 377 S.C. 313, 319-230, 659 S.E.2d 263, 266-267 (Ct. App. 2008) (concluding "[e]stoppel will not lie against a government entity where a government employee gives erroneous information in contradiction of statute. Simply stated, equity follows the law.") (citations omitted).

A. The Petitioner is presumed to know the law.

In the Response, the Petitioner claims that it "had no knowledge that his understanding of the maximum statute was incorrect, and no other resource to consult other than the divisions within the Department specifically created for the purpose of taxpayer assistance." (Resp., p. 13.) This is simply incorrect. First, the Petitioner is presumed to know the law. *Morgan*, 377 S.C. at 320, 659 S.E.2d at 267 ("[C]itizens are presumed to know the law and are charged with exercising reasonable care to protect their interests.") (citations omitted). Simply put, ignorance is no excuse

to the law. Second, as noted in the Department's Memorandum, the Department has long held the position that ATVs are not entitled to the maximum tax pursuant to § 12-36-2110(A).[3] *See* S.C. Rev. Advisory Bulletin #00-3. Thus, since at least 2000, the Department has notified the public of its position that the maximum tax pursuant to § 12-36-2110(A) does not apply to the retail sale of ATVs. Notably, the Audit Period in this matter is August 31, 2013 through July 31, 2016 – approximately thirteen years after the Department issued S.C. Rev. Advisory Bulletin #00-3.

Second, Department employees can provide assistance to taxpayers, but that assistance is procedural guidance only. While Department employees can refer taxpayers to resources that may be helpful, such as the Department's public policy documents on its website or taxpayer education seminars conducted by the Department, these employees were not "specifically created" for the purpose of filling out returns for taxpayers.

B. The Department provides guidance to South Carolina taxpayers and cannot give legal advice to taxpayers.

The Petitioner next asserts "Department employees consistently advised Petitioner to apply maximum tax" to the retail sales of ATVs and UTVs. (Response, p. 13.) First, the Petitioner concedes this issue is a legal issue "ripe" for determination by the Court. (Resp., p. 4.) Department employees cannot give legal advice to taxpayers. Thus, Department employees cannot advise Petitioner on whether the retail sales of ATVs and UTVs are entitled to the maximum tax under § 12-36-2110(A). Second, the alleged statements of the Department employees have not been produced – only Petitioner's recollection of such statements have been produced. The Department

[3] *See Brown v. S.C. Dep't of Health and Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002), ("The 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.") (citation omitted).

has no way of knowing what facts were presented to the Department employees to elicit the alleged responses.[4] Moreover, each alleged conversation with Department employees "Mechell Avant," "Misty," and "Stan" all took place prior to or after the audit period.[5] None of these alleged conversations took place during the Audit Period.

While the Department provides procedural guidance to the taxpayers of South Carolina and provides the public with guidance on a wide range of tax issues, the Department cannot give legal advice to taxpayers concerning the revenue and regulatory laws of this State. Petitioner claims, without any supporting authority, that "Department employment positions were created specifically to assist taxpayers with . . . the preparation and understanding of sales and use tax. In mid-2012, when the Department started requiring electronic sales tax returns, they made employees available to taxpayers to assist with preparation and submission of returns." (Resp., p. 14.) This is simply incorrect, and there is no statute, regulation, or Department policy document that provides that Department employment positions were created to give legal advice to the public. The Department's employees may provide procedural guidance to taxpayers regarding the

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[4]If the Department provides written or oral advice to a taxpayer that is incorrect, the Department may waive penalties applied to the assessment of taxes related to the incorrect advice. S.C. Rev. Procedure #08-6, p. 7. In the event the advice was oral, the Department employee must verify "that all the facts were provided and that he gave the advice." *Id.* Petitioner has not provided any written correspondence from the Department indicating that the retail sales of ATVs or UTVs are entitled to the maximum tax. However, even if the Petitioner produced such documentation or the Department employee verified the taxpayer's version of the facts in this matter, there are no penalties asserted in this matter as the Department withdrew the failure to file and failure to pay penalties for the period ending May 31, 2015. There are no circumstances in which the Department will waive tax and interest determined to be due by the taxpayer based upon the taxpayer receiving erroneous written or oral advice by a Department employee.

[5]Mechell Arant was employed with the Department in Taxpayer Assistance from 1990 to 2010. Ms. Arant is no longer employed with the Department. The Department does not have any records of a "Misty" being employed in 2012. Finally, the Department does not have any records of a "Stan" being employed in the sales tax division of the Department in 2017.

submission of electronic filed returns, but an employee cannot advise a taxpayer on the legal positions taken within the filed returns.

Finally, the Petitioner cites to several cases to support his position that the government can be estopped based on certain actions of government employees. However, these cases are not applicable here. The courts in *Townes Associates, LTD v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976) and *Abbeville Arms v. City of Abbeville*, 273 S.C. 491, 257 S.E.2d 716 (1979) both held that a governmental body cannot escape liability where officers or agents acted within the proper scope of their authority. Here, even if the Petitioner were able to establish that Department employees made the alleged statements, such advice was legal advice given outside the scope of their authority.[6] Moreover, estoppel is not applicable where the government employee gives erroneous information in contradiction of a statute. *Morgan*, 377 S.C. at 319-230, 659 S.C.2d at 266-267. Therefore, even if the Petitioner were able to establish that Department employees gave him erroneous advice, such advice is neither binding upon the Department nor a basis to escape application of the sales and use tax code.

3. The Petitioner cannot claim prejudicial change of position by failing to seek professional tax advice.

Finally, the Petitioner claims that it collected only $300 of sales tax for each ATV or UTV sale based on the "consistent, definitive advice of Department employees." (Resp., p. 14.) Again, the Department cannot give legal advice to taxpayers in the completion of every required tax return

[6]*See* S.C. Rev. Advisory Bulletin #00-03. This Revenue Bulletin informs the public that the Department's position is that sales of all-terrain vehicles are not entitled to the maximum tax under S.C. Code Ann. § 12-36-2110. In the "Scope" section of the bulletin, the public is informed that the Department's position "is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion."

to be filed in South Carolina.[7] The Petitioner is a profitable business operating since 2004, yet it made the business decision to refrain from seeking guidance from a tax professional regarding its retail sales transactions. Moreover, the Department published a policy document on this specific issue in 2000 – four years before the Petitioner began operating its business in Lexington County, South Carolina. The Petitioner cannot claim prejudicial change of position when it failed to take action to protect its own interests. *Morgan*, 377 S.C. at 320, 659 S.E.2d at 267 ("[C]itizens are presumed to know the law and are charged with exercising reasonable care to protect their interests.").

**III. The Department is Not Subjecting the Petitioner's Retail Sales to Double Taxation.**

To the extent the Petitioner claims that it is required to pay tax twice on the retail sales of his ATVs and UTVs – first to the SCDMV under the Infrastructure Maintenance Fee (IMF) and then to the Department as a sales tax, the Department disagrees. The IMF became effective July 1, 2017 and the Audit Period in this matter ends July 31, 2016. Thus, none of the retail transactions in the Audit Period were subject to the newly enacted IMF. Notably, each document attached as an exhibit (and to support the claim of double taxation) in the Petitioner's Response is dated after the Audit Period. Thus, these records do not support the proposition of the Petitioner and are irrelevant in this matter.

To the extent the Petitioner claims the transactions in the Audit Period were subject to double taxation by the SCDMV and the Department, this claim must fail as well. As noted in the Department auditor's affidavit attached as Exhibit 1 to its Memorandum, the Department has given

[7]This is especially true given most sales tax returns are filed on a monthly basis, rather than yearly.

the Petitioner credit for amounts of tax previously remitted.[8] (Affidavit of Tabitha Wood, ¶9.) Moreover, the Department – and not the SCDMV – is statutorily authorized by the legislature to administer and collect the maximum tax (up to July 1, 2017). If the Petitioner was required to remit sales tax to the SCDMV on any retail transaction within the Audit Period and such sales tax was not subsequently remitted to the Department, Petitioner must seek repayment from the SCDMV and not the Department. The Petitioner, as a retailer, is responsible for remitting sales tax on the gross proceeds of sales, unless the transaction is expressly exempted from such tax. Here, Petitioner's retail sales of ATVs and UTVs do not qualify for the maximum tax provided under § 12-36-2110(A), and thus, he is responsible for remitting the entire 7% sales tax to the Department.

## CONCLUSION

For the reasons set forth above, the Department respectfully requests that this Court grant the Department's Motion for Summary Judgment, as there is no genuine issue of material fact in dispute. Further, although the Petitioner claims there are some facts in dispute, even if true, such facts are not material and are not relevant to the determination of the legal issues discussed in the Department's Motion and Memorandum. Because there are no material facts in dispute, the Department requests that this Court grant the Department's motion for summary judgment, and uphold the Department's Determination in this matter.[9]

**[signature on following page]**

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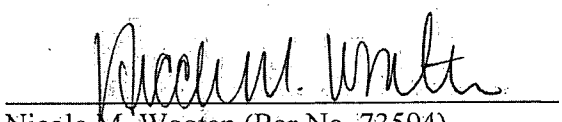
[8]Prior to the implementation of the IMF, any sales tax collected by the SCDMV on behalf of the Department was remitted to the Department by the SCDMV. Under the IMF, those fees are now retained by the SCDMV pursuant to the South Carolina Infrastructure and Economic Development Reform Act, Act No. 40 (enacted May 10, 2017 and effective July 1, 2017).

[9]In the Department's Motion, the Department withdrew the failure to file and failure to pay penalties asserted for the period ending May 31, 2015.



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April 15, 2019

The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Ste. 224
Columbia, SC 29201

RE: Jack's Custom Cycles, Inc. v. SCDOR
Docket No. 18-ALJ-17-0393-CC

Dear Judge Anderson:

Please find enclosed Petitioner's Response in Opposition to Respondent's Summary Judgment Motion in the above matter. We appreciate the Court's consideration in this matter.

We have served Ms. Wooten with this response and have included the Proof of Service.

Please let us know if you have any questions or concerns.

Sincerely,

John A. Ecton

Cc: Nicole M. Wooten, Esq.

Enclosures

S.C.
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APR 15 2019
RECEIVED COLUMBIA
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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | |
|---|---|
| Jack's Custom Cycles, Inc. d/b/a Jack's Motor Sports.<br><br>Petitioner,<br><br>v.<br><br>South Carolina Department of Revenue<br><br>Respondent. | Docket No. 18-ALJ-17-0393-CC |

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

Petitioner, Jack's Custom Cycles, Inc. d/b/a Jack's Motor Sports, submits the following memorandum in opposition to Respondent's, South Carolina Department of Revenue ("Department"), Motion for Summary Judgment. While Petitioner agrees there are legal issues that are ripe for a ruling by the Administrative Law Court, there are other issues that require some additional discovery and present genuine issues of material fact for the Court's consideration.

**BACKGROUND FACTS**

The Petitioner began retail operations in 2004, primarily selling motorcycles, but later became a dealer for Kymco selling off road vehicles, including All-Terrain Vehicles (ATV). (Exhibit 1, Affidavit of Jack DeBruhl, ¶¶2-3). Upon becoming a Kymco Dealer, Petitioner contacted the Department of Revenue Sales Tax Division in an attempt to understand how sales tax would apply to the new products. (Ex. 1, ¶4). Petitioner first spoke with Tax Assistance Officer, Michelle Avant, who advised Petitioner to treat the ATV's the same as motorcycles for sales tax purposes, which qualify for maximum sales tax pursuant to S.C. Code Ann §12-36-2110(A). (Ex. 1, ¶5; Ex. 2). Petitioner prepared the sales tax returns twice and, both times, agent

Avant assured Petitioner the returns were prepared correctly. *Id.* Relying on this advice, Petitioner filed all tax returns and a paid the maximum sales tax on products sold. (Ex. 1, ¶5, 8)

Petitioner, thereafter, began selling Polaris Utility Vehicles ("UTV"). (Ex. 1, ¶3). In October 2011, Petitioner again called the Department of Revenue to seek guidance on sales tax for these products. (Ex. 1, ¶6; Ex. 3). Petitioner was again advised to handle the sales tax for these vehicles the same as he had previously been advised for other products, which qualified for maximum tax pursuant to S.C. Code Ann §12-36-2110(A). *Id.* Again, relying on this advice, Petitioner filed all tax returns and paid the maximum sales tax on products sold. (Ex. 1, ¶6, 8)

In June of 2012, the Department started offering sales tax returns to be filed online. (Ex. 1, ¶7). Petitioner called the Department and spoke with an employee in the sales tax division named Misty regarding the types of products sold by Petitioner, including ATVs and UTVs. (Ex. 1, ¶7; Ex. 4. This Department employee in the Sales Tax Division actually walked him through filing his first electronic sales tax return with maximum tax applied to all products. *Id.* Misty reviewed before submission and advised Petitioner the returns were correctly filed. *Id.* Relying on the advice of this Department Sales Tax Division employee, Petitioner filed all tax returns and paid the maximum sales tax on products sold. (Ex. 1, ¶7, 8).

The Department began a sales tax audit on Petitioner in 2016 for the period of August 2013 through July 2016. (Ex. 1, ¶11). The Department determined that the ATVs, UTVs and trailers sold by Petitioner during the audit period did not qualify for the maximum sales tax exemption under S.C. Code Ann §12-36-2110(A) and issued a proposed assessment for additional tax on the ATVs, UTV, and utility trailers. (Ex. 1, ¶11, 12). Petitioner, as the retail agent for the Department in the collection of sales tax, did not collect any of the additional tax from its customers as now being proposed by the Department. (Ex. 1, ¶1, 8).

Although Petitioner believes that the ATV and UTV sales are subject to the maximum sales tax under S.C. Code Ann §12-36-2110(A), he began collecting full sales tax as now being advised and instructed by the Department and paying the full sales tax when filing returns. (Ex. 1, ¶16).

In July 2017, the South Carolina legislature enacted the Infrastructure and Economic Development Reform Act to address the needs of South Carolina's transportation infrastructure system (Exhibit 7, SC Information Letter #17-8). The Act states that, if you buy or lease a vehicle, trailer, semi-trailer, or other automobile on or after July 1, 2017 that will be titled and/or registered in the state of South Carolina, you will owe an Infrastructure Maintenance Fee (IMF) instead of sales tax (Exhibit 8, SCDMV Website). The amount of IMF owed is based on the sale price of the item purchased; the rate is 5%, but is capped at $500.00 *Id.*

Some of the ATV and UTV products sold by the Petitioner were titled with the South Carolina Department of Motor Vehicles. (Ex. 1, ¶9; Ex. 5). The Department of Motor Vehicles collected the maximum sales tax pursuant to S.C. Code Ann §12-36-2110(A). *Id.* In addition to the sales tax being collected by the Department of Motor Vehicles, Petitioner was paying the maximum sales tax to the Department of Revenue, in effect paying the maximum sales tax twice on those vehicles being titled with the Department of Motor Vehicles. (Ex. 1, ¶10; Ex. 5). This double taxation for the maximum continues to this day as the Department of Motor Vehicles will not issue any title without the tax being paid. (Ex. 1, ¶17; Ex. 5).

The Department issued a Proposed Assessment on January 31, 2017 in the amount of approximately $202,758.14 in additional sales and use tax owed. (Ex. 1, ¶12). On April 28, 2017, Petitioner timely protested the Proposed Assessment. *Id.* In preparation for an appeal meeting in July 2017, Petitioner again contacted the Department of Revenue and spoke with Stan of the Sales Tax Division. (Ex. 1, ¶12; Ex. 6). In explaining the amount of tax owed pursuant to the new IMF

law, Stan advised that nothing changed on July 1, 2017, as far as sales tax is concerned except the max tax cap, which increased from $300 to $500. *Id.* Stan answered several questions with detailed hypothetical scenarios, confirming each time that Petitioner's understanding was correct and that the products qualified for the maximum tax per S.C. Code Ann §12-36-2110(A). *Id.*

At the present time, Petitioner is paying the Department of Motor Vehicles the IMF max tax for all vehicles that are being titled by the Department of Motor Vehicles and then having to pay the full sales tax to the Department of Revenue. (Ex. 1, ¶16-17). Petitioner is still being double taxed on the ATV and UTVs that are being titled through the Department of Motor Vehicles. (Ex. 1, ¶16-17; Ex. 5).

**FACTS IN DISPUTE**

In response to the Department's Material Facts Not in Dispute section of its Memorandum, the Petitioner does not dispute any of the numbered items in that section and stipulates to those facts presented. Accordingly, the Petitioner submits that the issues presented in the Department's Motion and Memorandum regarding whether the Petitioner's ATV and UTV products are "Motor Vehicles" as set out by the South Carolina Legislature and S.C. Code Ann §12-36-2110(A) are legal issues that are ripe for the Court legal determination.

However, Petitioner believes there are a few issues of material fact that need further discovery and create genuine issues that cannot be determined at this summary judgment stage. These genuine issues of material fact include:

1. The Department's Sales Tax Division employees provided authorized advice to Petitioner on several occasions related to the application of the maximum tax on products sold.
2. Petitioner paid sales tax to both the Department of Motor Vehicles and the Department of Revenue on ATVs and UTVs that were titled through the Department of Motor Vehicles.

3. The Department of Revenue, in the audit, did not account for all the sales tax paid to the Department of Motor Vehicles upon issuance of the additional sales tax imposed by the audit/examination.

## SUMMARY JUDGMENT

Summary Judgment is appropriate when the moving party shows that no genuine issue exists as to a material fact, and that such party is entitled to judgment as a matter of law. Rule 56(c), South Carolina Rules of Civil Procedure. Under the summary judgment standard, every benefit of the doubt is given to the party opposing summary judgment. Watters v. Terminix Service, Inc., 376 S.C. 632 ((S.C. App. 2008). "In determining whether there exists triable issues of fact, all inferences from the facts of the record must be viewed in the light most favorable to the party opposing the Motion for Summary Judgment." Tom Jenkins Realty, Inc. v. Hilton, 278 S.C. 624, 300 S.E.2d 594, 595 (1983). Further, summary judgment is not appropriate where further inquiry into the facts is desirable to clarify application of the law. Evening Post Publ'g Co. v. Berkeley County Sch. Dist., 392 S.C. 2011).

## ARGUMENTS

### I. The ATVs and UTVs sold by Petitioner during the audit period are "Motor Vehicles" and subject to the maximum tax under S.C. Code Ann §12-36-2110(A).

The main issue presented to the Court is whether the ATVs and UTVs sold by Petitioner during the audit period are "motor vehicles" and, therefore, subject to the maximum tax per S.C. Code Ann §12-36-2110(A).[1]

[1] ATVs and UTVs may also be exempted from tax pursuant to the Agricultural Exemption. It is our understanding the Department considered agricultural exemptions for all products sold with proper certificates.

South Carolina Code Ann §12-36-2110(A), which provides for maximum sales tax of $300.00 on all sales and leases of motor vehicle and certain trailers, among other items, which reads in pertinent part:

> (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 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 trailers, 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.

If a statute's language is plain, unambiguous, and conveys a clear meaning "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 625 S.E.2d 636, 640 (2006); Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Administrative Law Judges must follow the law as written. Drummond DPPC v. State, Dep't of Revenue, 378 S.C. 362 662 S.E.2d 587 (SC 2008).

Although §12-36-2110(A) does not define the term "motor vehicle," the language is clear and unambiguous. As such, the applicable term "motor vehicle" must be given its plain and ordinary meaning.

Motor Vehicle has been specifically defined in S.C. Code Ann §56-3-20 as follows:

> (2) "Motor Vehicle" means 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 on rails.

It is undisputed that All-Terrain Vehicles (ATV) and Utility Vehicles (UTV) are self-propelled vehicles that are not operated on rails. (See Hill v. State Farm Mut. Auto. Ins. Co., 375 S.E.2d 727, 729 (Va .1989)(citing the American Heritage Dictionary 2d Edition 1982 for the plain definition of motor vehicle as being a self-propelled wheeled conveyance that does not run on rails.) South Carolina's definition is the same, with the intended exception of mopeds. ATVs and UTVs have four wheels, capable of being driven in forward or in reverse, have headlamps for driving at night, mirrors and brake lights for safety, and capable of being driving at high speeds. UTVs also have steering wheels, as opposed to handlebars, and have side-by-side, front and back row seating with safety belts.

There is no South Carolina statute that specifically excludes an ATV or UTV from the definition of motor vehicle, something the legislature could easily have written into the statute. Mopeds were specifically excluded as a motor vehicle. The General Assembly already defined ATV in 2011, and would have excluded ATV from the definition if it intended to have it excluded for purposes of applying the maximum tax.

In South Carolina "[t]he General Assembly has the power to prescribe legal definitions by statute, and such definitions are binding upon the courts, and should prevail." Purvis v. State Farm Mut. Auto. Ins. Co., 304 S.C 283, 403 S.E.2d 662, 665 (Ct. App. 1990). In 2011, the General Assembly enacted The All-Terrain Vehicle Act and specially defined All-terrain Vehicles as follows:

> S.C. Code Ann §50-26-20. 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.[2]

When the General Assembly specifically addressed the maximum tax issue in §12-36-2110(A), it did so with specific knowledge of the limitations imposed on ATV, UTV and the definitions of motor vehicle. It specifically excluded mopeds in definition under maximum tax, and did not exclude ATVs or UTVs from the definition. In Section 2210(A), the General Assembly took measures to specifically define other areas where the maximum tax would NOT apply, such as those relating to aircraft, trailers or construction equipment. See §56-36-2110(A)(1)(5)(7).

When the General Assembly uses plain language, with exclusions and exceptions, the Courts should interpret those statutes using that plain language to not impose additional meanings to those words. If the General Assembly did not intend for ATVs or UTVs to be motor vehicles subject to the maximum tax, it would have written it into the statute.

Moreover, the South Carolina Attorney General Henry McMaster determined specifically that "an ATV would be construed to be a motor vehicle within such definition" as defined in S.C. Code Ann §56-3-20 noted above. See Exhibit 11 (S.C. Att'y Gen. Op. of Jan. 5, 2006). In this same Opinion, the Attorney General cites several other statutes with the same definition of motor vehicle to conclude that ATVs are motor vehicles.[3] This Attorney General opinion was clear and concise. The Attorney General Opinion also acknowledged that ATVs were being driven on public roads.

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[2] The ATV act further identifies what is unlawful with regards to operation of the ATV. Per the Act, it is not unlawful to operate the ATV on public roads. S.C. Code Ann §50-26-30.

[3] The court in Montgomery v. Progressive Advanced Ins. Co., found an ATV meets the standard definition of motor vehicle. 2015 WL 1011524 page 11 (U.S. Dist. Ct. Eastern District of Va., March 6, 2015). The Montgomery Court concluded that even though the ATV Manual indicated the vehicle was designed for off-road use, the reality is that the vehicle was equipped to legally operate both on public roads and off-road. Id. at 11.

According to the plain language of S.C. Code Ann §12-36-2110(A), ATV and UTVs are motors vehicles that were subject to the maximum tax at all times relevant to the audit. Petitioner appropriately paid the full tax owed on these vehicles.

**A. The Department's Definition of "Motor Vehicle" is a Strained Construction of the Statute Unintended by the General Assembly.**

The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Buist v. Huggins, 367 S.C. 268, 625 S.E.2d 636, 640 (2006); Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

This Court should not attempt to impose a different meaning of motor vehicle as requested by the Department. The Department attempts to narrow the definition of "motor vehicle" by referring to other statutes to support its narrowing definition. The first attempt to narrow the definition is through S.C. Code Ann §56-3-20(1), the definition of "vehicle."

> (1) "Vehicle" means 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.

Emphasizing the statutory construction for the definition of "vehicle" in the above section, the General Assembly utilized the term "is or may be transported" upon a highway. These use of these specific terms is important, and the Court must interpret the statute as written. Thus if a device is transporting a person on a highway, it is a "vehicle." Additionally, the General Assembly used the term "or" not the term "and" which is how the Department of Revenue is interpreting the statute. Again, the Attorney General has acknowledged, in his opinion, that ATVs are being driven on highways, even though it may be a misdemeanor to do so. See Exhibit 11 (S.C. Att'y Gen. Op. of Jan. 5, 2006).

The Department's second attempt to narrow the definition of motor vehicle refers to another section defining a "highway." S.C. Code Ann §56-3-20(25).

> (25) "Street" or "highway" 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.

Based on the Department's reasoning, this Court would need to keep narrowing down words in the definitions to determine definitions of "boundary lines," streets as "publicly maintained," "any part," "use of the public," and then again "vehicular travel." The Department then goes on to strain the combination of these definitions to conclusively determine that ATV and UTV are not "motor vehicles because they are designed exclusively for off road use and not authorized to operate upon the highways of South Carolina." (Respondent's Memo in Support pg 8, Emphasis added).

As noted previous, the General Assembly, per S.C. Code Ann §50-26-20 defined ATVs to mean "a motorized vehicle designed primarily (not exclusively) for off-road travel on low-pressure tires which has three or more wheels and handle bars for steering."[4] Neither the ATV nor the UTVs sold the Petitioner indicate that they are "exclusive" for off-road use, and the specific statute dealing with ATVs does not claim these vehicles are "exclusive" for off-road. The fact is that the ATV is intended or designed primarily for off-road use, but the reality is that the vehicle is equipped to legally operate both on public roads and off-road and is being driven on public roads. Being designed to be driven "primarily" off public roads is very different from not being designed to ever be driven on a pubic road. Again this fact was acknowledged in the SC Attorney General

[4] It should be noted that Utility Vehicle, such as a Polaris Ranger, are different than All-terrain vehicles in that these are four-wheeled vehicles with steering wheels (not handle bars) and designed for individuals to sit side-by-side. These could also be referred to as side-by-side vehicles with capacity of two or four individuals.

Opinion of January 5, 2006 directly addressed the relevant issue in this matter and defining an ATV as a motor vehicle per statute analysis.

The Department thereafter quotes the Manufacturer's Certificates of Origin and Certificates of Title stating that these ATVs and UTV are "intended for off road use only." Thereafter, the Department relies on the previously identified Attorney General Opinion of January 5, 2006 for the position that ATV cannot be registered or licensed by the Department of Motor Vehicles and thus cannot meet the definition of "motor vehicle." See Exhibit 11 (S.C. Att'y Gen. Op. of Jan. 5, 2006). Other courts have addressed this issue and determined that although a vehicle may not be operated legally (not licensed) on a public road, does not mean the vehicle did not meet the definition of motor vehicle. See Montgomery v. Progressive Advanced Ins. Co., 2015 WL 1011524 page 11 (U.S. Dist. Ct. Eastern District of Va., March 6, 2015)(forklift could not legally operate on the highway, but still constituted a motor vehicle as being self-propelled vehicle.) As such, while these ATV or UTV may not be able to be registered or licensed to operate on South Carolina public roads, they nevertheless meet the definition of motor vehicle as defined by statutes.

Furthermore, by applying the statutory definition of motor vehicle as discussed above, the Attorney General Henry McMaster determined specifically that "an ATV would be construed to be a motor vehicle within such definition." The Attorney General went on to note that ATVs should be properly equipped with brakes, lights, horn, mirrors, tires, mufflers, etc. The ATVs and UTVs relevant to the issues presented in this matter are such equipped. (Exhibit 1, Petitioner's Affidavit). The South Carolina Attorney General found that ATVs are motor vehicles.

The Department's forced construction for the definition of motor vehicle by layering several statutes to arrive at their determination is clearly against the statutory and case law addressing this issue directly. The General Assembly clearly set out the products that are subject

to the maximum tax per S.C. Code §12-36-2110(A), several other statutes define "motor vehicle" as identified in the maximum tax statute, and the Attorney General confirmed long ago that ATV (and UTVs) are "motor vehicles" as defined. As such, it is clear and unambiguous that the ATVs and UTVs sold by Petitioner for the terms of the audit were properly taxed at the maximum sales tax and properly paid by Petitioner.

**II. Respondent is estopped from retroactively assessing Petitioner Sales & Use tax on retail sales of items sold during August 31, 2013 through July 31, 2016 after providing specific advice to Petitioner that the maximum sales tax pursuant to S.C. Code Ann §12-36-2110(A) applied to the products to be sold.**

At the time the Petitioner began selling ATVs and UTVs, he consulted with the Department of Revenue Sales Tax Division as to the proper way to account for and pay the proper amount of Sales Tax on these specific products. Exhibit 1, ¶4,5,7,8,13 The Department of Revenue is charged with administering the revenue and regulatory laws of the State with integrity, effectiveness and fairness to all taxpayers (Exhibit 9, SCDOR website) The Sales Tax Division of the Department of Revenue is authorized to provide assistance to taxpayers with questions regarding returns and payments (Ex. 1, 4,5,7,8,13 ). When the Department began requiring electronic sales tax returns, Petitioner would frequently call the sales tax division for assistance with specific portions of the returns, including the maximum tax application. As a result, the Department is estopped from claiming the Petitioner calculated the sales tax improperly.

The courts have consistently held that there are three essential elements necessary to invoke the doctrine of estoppel. South Carolina State Highway Dept. v. Metts, 270 S.C. 73, 240 S.E.2d 816 (1978); Crescent Company, Inc. v. Insurance Co. of N. A., 266 S.C. 598, 225 S.E.2d 656 (1976). First, the relying party must have a lack of knowledge and of the means of knowledge of the truth as to the facts in question. Abbeville Arms v. City of Abbeville, 273 S.C. 491 (1979). The second element is reliance upon the conduct of the party estopped. *Id.* The third and final

element requires action, on the part of the relying party, based thereon of such a character as to constitute a prejudicial change of position. *Id.*

1. Petitioner had no knowledge that his understanding of the maximum tax statute was incorrect, and no other resource to consult other than the divisions within the Department specifically created for the purpose of taxpayer assistance.

When Petitioner began selling ATV's, UTV's and utility trailers, he consulted the Department of Revenue to ensure his understanding of the maximum tax statute was correct. The Department of Revenue was Petitioner's only source of knowledge regarding the sales tax on products sold.

2. Petitioner relied on repeated advice from Department employees to claim the maximum sales tax on products sold during the August 31, 2013 through July 31, 2016 audit periods.

Over the course of the periods in question, Petitioner had several discussions with Department employees regarding the application of maximum tax to products sold, including ATV's and UTV's. The Department employees consistently advised Petitioner to apply maximum tax and, accordingly, Petitioner only collected the max capped amount from his customers.

South Carolina courts previously took the position that that estoppel will not generally lie against a governmental body. Looper v. City of Easley, 172 S.E. 705 (1934). Recently, however, the courts have abolished the doctrine of sovereign immunity as it applies to state and local subdivisions of government, for actions taken by public employees within official capacities. McCall v. Batson, 329 S.E. 2d 741 (1985); Repko v. County of Georgetown, 818 S.E. 2d 943 (2018). The Court in Townes Associates, LTD. v. City of Greenville, 221 S.E. 2d 771 (1976) held that a governmental body cannot escape liability where officers or agents acted within the proper scope of their authority. The Supreme Court of South Carolina considered the scope of

authority issue in Abbeville Arms v. City of Abbeville, 257 S.E. 2d 716 (1979). The Court of Appeals later applied the same scope of authority standard in Oswald v. County of Aiken, 315 S.E. 2d 146 (1984). In both cases, the Courts upheld the estoppel doctrine against governmental entities.

Similar to the City Zoning Administrator in Abbeville and County Administrators in Oswald, the Department employees who provided Petitioner with erroneous advice were acting within the proper scope of authority. A primary component of the City Zoning Administrator's job in Abbeville was to approve or reject building permits. Likewise, the Department employment positions were created specifically to assist taxpayers with various issues, including the preparation and understanding of sales and use tax. In mid-2012, when the Department started requiring electronic sales tax returns, they made employees available to taxpayers to assist with preparation and submission of the returns.

3. Prejudicial change of position

In Abbeville, the court determined respondent's expenditure of approximately $90,000 to $100,000 in preparation of a project in which the City erroneously permitted clearly demonstrated a prejudicial change of position.

Similarly, Petitioner only collected the maximum sales tax from his customers pursuant to the consistent, definitive advice of Department employees. Had Petitioner been provided accurate advice from inception, he would have collected the full amount of sales & use tax in lieu of the maximum cap. Petitioner did not benefit from the Departments erroneous advice, he paid all tax collected from customers. Respondent is now expecting Petitioner to pay roughly $200,000.00 that could have been collected from his customers over the course of the audited periods.

III. **The Department of Revenue and the Department of Motor Vehicle Taxed Petitioner Sales Tax on the Same Products Causing the Petitioner to be Double Taxed.**

Petitioner, as a retail agent of the South Carolina Department of Revenue, collects sales tax from retail customers. Prior to the audit, Petitioner collected the amount of tax as advised and as he believed proper. Petitioner always paid the tax collected over to the Department. Subsequent to the audit and upon direction by the Department to collect the full sales tax (not maximum tax) on the ATVs and UTVs, the Petitioner began collecting accordingly. Through the process of the audit and subsequent, the Petitioner has found that he is being taxed twice on products that are being titled with the Department of Motor Vehicles.

In essence, on vehicles that were and are being titled by the Department of Motor Vehicles, the Department of Motor Vehicles collects the maximum tax as imposed by the maximum tax statute or by the new Infrastructure Maintenance Fee (IMF). After paying the tax to the DMV, the Petitioner is required to pay the full tax amount to the Department of Revenue. The Petitioner in effect pays two taxes on the same products. Further discovery is necessary to determine what vehicles were titled and taxed by the Department of Motor Vehicles and then again taxed by the Department of Revenue. The Petitioner is current reviewing files to make this determination and to produce the documents to Respondent for proper adjustment.

## CONCLUSION

As noted, there are undisputed facts relating to the legal issues of whether the ATVs and UTVs sold by the Petitioner during the term of the audit are "motor vehicles" subject to the maximum tax per S.C. Code Ann §1236-2110(A). The Petitioner, therefore, requests the Court's summary judgment determination that the ATVs and UTV sold by Petitioner are "motor vehicles"

by definition and thus are entitled to the maximum tax application, and that Petitioner paid the proper amount of tax on those products.

In the alternative, the Petitioner requests the Court's summary judgment determination that the South Carolina Department of Revenue is estopped from retroactively applying the sales tax assessment after providing specific authorized advice to Petitioner on collecting the maximum tax from customers.

The Petitioner also requests the Court to deny the Respondents summary judgment motion and allow additional time for discovery regarding the issues related to the overpayment of taxes and double taxation of products sold by Petitioner and titled by the Department of Motor Vehicles.

Respectfully Submitted,

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Irmo, South Carolina

April 15, 2019

# Petitioner's Exhibits in Support of Response to Motion for Summary Judgment

**Exhibit 1**: Affidavit of Jack DeBruhl

**Exhibit 2**: Petitioner's notes on conversation with SCDOR employee Michelle Avant

**Exhibit 3**: Petitioner's notes on conversation with SCDOR employees in October 2011

**Exhibit 4**: Petitioner's contemporaneous notes on conversation with SCDOR employee Misty

**Exhibit 5**: Documentation substantiating payments made by Petitioner to the South Carolina Department of Motor Vehicles on products sold

**Exhibit 6**: Petitioner's contemporaneous notes on conversation with SCDOR employee Stan

**Exhibit 7**: SC Information Letter #17-8

**Exhibit 8**: South Carolina Department of Motor Vehicles statement on Infrastructure Maintenance Fee

**Exhibit 9**: South Carolina Department of Revenue statement on mission

**Exhibit 10**: Nationwide website difference between ATV and UTV

**Exhibit 11:** Determination of "motor vehicle" definition by South Carolina Office of Attorney General

**Exhibit 12:** Montgomery v. Progressive Insurance Company, 2015 WL 1011524

# EXHIBIT 1

SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | |
|---|---|
| Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports<br><br>Petitioner,<br>vs.<br><br>South Carolina Department of Revenue,<br><br>Respondent. | **AFFIDAVIT OF JACK DEBRUHL**<br><br>DOCKET NO. 18-ALJ-17-0393-CC |

I, Jack DeBruhl, after first being duly sworn, do hereby make oath and affirm as follows:

1. I am over eighteen years of age, suffer from no known disability, and am competent to testify to the facts set forth herein. The statements in this affidavit are made based on my personal knowledge, including my review of the issues in this case.

2. I am the owner of Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports. Upon establishing Jack's Motor Sports in 2004, I received the required retail license from the South Carolina Department of Revenue, formally allowing me to become an agent to collect sales tax on products sold on behalf of the state government.

3. When I started the company, Jack's Motor Sports primarily sold motorcycles, but later became a dealer for Kymco selling off-road vehicles, including All Terrain Vehicles (ATV). Around September 2011, I began selling Polaris Utility Vehicles. Polaris UTV's are different than ATV's in that they seat multiple riders (some with second row seating), have a steering wheel, and allow for side-by-side riding. (Exhibit 1) The products sold are four-wheeled, self-propelled, capable of being driven forward or in reverse, have headlamps for night driving and capable of traveling in excess of 60 mph.

4. I contacted the Department of Revenue several times specifically to discuss how to properly calculate sales tax on products sold by Jack's Motor Sports.

5. The first Department of Revenue employee I spoke to was Tax Assistance Officer, Michelle Avant, who specifically advised me to treat the ATV's the same as motorcycles for sales tax purposes and apply the maximum sales tax. I prepared the sales tax returns twice with agent Avant and, both times, agent Avant assured me that all returns were prepared correctly. Relying on agent Avant's advice, the maximum sales tax was paid to the

Department of Revenue upon filing the returns. I kept notes regarding this conversation, which are attached and included as part of this Affidavit. (Exhibit 2)

6. When I started selling Polaris Utility Vehicles at Jack's Motor Sports in 2011, I again called the Department of Revenue to seek guidance on sales tax for these products, and was advised to apply maximum tax to all products sold. Relying on this advice, I collected maximum tax from customers on products sold and paid the amounts over to the Department of Revenue. I again kept notes regarding this conversation, which are attached and included as part of this Affidavit. (Exhibit 3)

7. In June 2012, the Department of Revenue began accepting electronic sales tax returns. I called the Department and spoke with an employee in the sales tax division named Misty, who walked me through filing Jack's Motor Sports first electronic sales tax return with maximum tax applied to all products. Misty reviewed before submission and confirmed that the return was filed correctly. Relying on agent Misty's advice, the maximum sales tax was paid to the Department of Revenue upon filing the returns. I again kept contemporaneous notes regarding this conversation, which are attached and included as part of this Affidavit. (Exhibit 4)

8. I relied on the specific, consistent advice of Department of Revenue employees to collect sales and use tax from my customers and paid all tax collected on products sold to the Department. Had I been advised to collect additional tax, I would have collected whatever amount the Department of Revenue advised was appropriate.

9. Some products sold at Jack's Motor Sports are required to be titled with the Department of Motor Vehicles (DMV). When I, or one of my employees, would take the sales information to the DMV, the DMV required us to pay the maximum sales tax (up to the $500 cap) before issuing title on the product.

10. When I would prepare the monthly Sales Tax Returns to the Department of Revenue, I was instructed, both by the language of the return and Department employees, to pay the same maximum sales tax the DMV had required on the products. There was no applicable line item on the Department's Sales Tax Returns to deduct the tax already paid to the DMV.

11. The Department of Revenue conducted an audit for periods August 31, 2013 through July 31, 2016 and determined the ATV, UTV and utility trailer products did not qualify for maximum sales tax, despite prior contrary advice received by Department employees.

12. As a result of the audit, the Department of Revenue proposed to assess additional $202,758 in sales and use tax, interest and penalties. I timely protested the Proposed Assessment on April 28, 2017.

13. In preparation for an appeal meeting in July 2017, I again contacted the Department of Revenue and spoke to Stan. Stan explained that nothing changed on July 1, 2017 as far as sales tax is concerned, except the max tax cap, which increased from $300 to $500. Stan answered several questions with detailed hypothetical scenarios, confirming each time that my understanding was correct and that the products qualified for maximum tax. I kept

contemporaneous notes regarding this conversation, which are attached and included as part of this Affidavit. (Exhibit 5)

14. On July 20, 2017, I, along with my CPA, participated in an appeal conference regarding the April 28, 2017 Proposed Assessment. During the conference, I explained my prior conversations with Department employees, all of whom advised to apply maximum tax to products sold, to Audit Supervisor Rodger Watson. I also explained the double taxation issue with the DMV and Department of Revenue.

15. I provided additional information to the Department of Revenue and received the revised Proposed Assessment on August 17, 2017 in the amount of $166,336.50. With professional assistance, I protested the Revised Proposed Assessment on November 15, 2017.

16. I believe the UTV and ATV sales are subject to the maximum sales tax, but I have started collecting and paying full sales tax per recent instruction and advice by the Department of Revenue.

17. I continue to pay maximum tax to the Department of Motor Vehicles, up to the $500 cap, as that entity will not issue any title without the payment of tax.

FURTHER AFFIANT SAYETH NOT

Jack DeBruhl

SWORN and subscribed to before me
This 15 day of April, 2019

Notary Public for South Carolina
My Commission Expires 10-22-2025

# What is the difference between an ATV and UTV?

ATVs and UTVs are different vehicles. They serve different purposes, and have different insurance needs.

## What is an ATV?

At its simplest, an all-terrain vehicle (ATV) is defined as a vehicle with the following: a straddle seating position, handlebar steering, and the ability to maneuver through a variety of terrain conditions. While there are a variety of ATV customizations and modifications available, at their base all ATVs share those three features.

### Wheels and Tires

ATVs have either three or four wheels. Tires are kept at a lower pressure than standard car or UTV tires.

### Steering

The operator can steer the ATV by using handlebars.

### Seating and passenger capacity

On an ATV, the operator is seated in a straddle position. ATVs are normally built for just one rider, some are made to carry the operator and one passenger.

### Speed and handling

ATVs are not "one-size-fits-all" and should be sized appropriately for the operator.

When operated safely and correctly, ATVs offer a quick and nimble means of transportation over a variety of terrain.

### Braking and acceleration

The majority of stock ATVs come with a thumb throttle. Pressing the throttle with the thumb controls acceleration. It is possible to modify an ATV to use a twist throttle, which allows the operator to control the vehicle's acceleration by twisting the ATV's handle.

Given the unpredictable nature of the terrain ATVs cover, twist throttles can make it difficult and dangerous to control the vehicle. For example, if a rider leans forward and unknowingly twists the throttle while going downhill, the vehicle may unexpectedly pick up speed. This can easily cause the rider to be thrown forward off of the vehicle, and the vehicle may roll and fall on the rider.

To brake, operators can use either the brake handle or the foot pedal, depending on what type of ATV they are operating.

### Safety equipment

ATVs often do not come with safety equipment as part of the vehicle. Some do have "roll bars"—strong steel pipes that form a cage-like structure around the operator to provide protection if the vehicle rolls.

ATV operators should strongly consider wearing protective clothing, boots, and gloves—and should always wear a helmet.

### Cabin

ATVs are open and do not have a cabin. However, as mentioned above, some do have roll bars.

### Uses

As a quick means of transportation over rough ground, ATVs are a valuable tool. However, they are mainly used for recreation, like racing or trail riding.

### Cost

Compared to UTVs, an ATV is a much more budget friendly option. When planning their purchase, potential buyers should make sure to account for the additional costs of safety gear and insurance.

## ATV insurance needs

While ATVs can be used safely, accidents happen. And when they do, being on the back of a powerful vehicle without seatbelts isn't the safest place to be. That's why you should always make sure you're properly protected —first with gear, and then with insurance.

Medical coverage is an important option to consider for ATVs, which lack many of the safety features of UTVs. Nationwide offers this and other ATV insurance options.

## What is a UTV?

Utility Terrain Vehicles, or UTVs, are built and used more for work than recreation. They are large, powerful, able to seat passengers side by side, and built with lots of storage space. They're commonly used to haul equipment and supplies in locations that make using a truck impractical or impossible.

### Wheels and Tires

Like a car, UTVs have a standard wheel base (four wheels). However, they can have more wheels for specialized purposes.

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### Steering

Again, the UTV handles more like a car than an ATV, and is steered via a steering wheel.

### Seating and passenger capacity

Normally, between two and four passengers can ride safely in a UTV. Passengers sit side by side, which has earned the vehicle the nickname "side-by-side". You may also see the UTV referred to as a SxS, again referencing the seating arrangement.

### Speed and handling

UTVs are faster and more powerful than ATVs, but not as nimble. Their max speed is generally between 25 mph and 50 mph.

### Braking and acceleration

Both braking and acceleration on a UTV are controlled by foot pedals.

### Safety equipment

With occupant restraints (seatbelts) considered standard, and the option to add a windshield and roll bars, UTVs tend to have more safety features than ATVs do.

### Cabin

It's not unusual for UTVs to have a cabin. Oftentimes it's similar to the roof on a golf cart, but fully enclosed cabins are available.

### Uses

UTVs have a lot of storage space. Most known for hauling feed, hay, and supplies on farms, they are becoming more popular within non-agricultural communities. They're not uncommon at schools, where they're used to transport water jugs, sports equipment and occasionally, athletes.

The many available modifications for UTVs are making the vehicle a popular choice for transporting equipment in many industries.

### Cost

The customizability and versatility that make a UTV appealing comes at a price. UTVs tend to be more expensive than ATVs, especially after they've been modified.

## UTV insurance needs

UTVs are covered by ATV polices, but like the vehicle itself, the policy often needs to be adjusted to do exactly what it's supposed to. Since UTVs are often modified in order to perform a certain job, adequate comprehensive insurance that covers damage to the vehicle and its modifications can be a valuable tool to quickly return a UTV to proper working order. Nationwide agents are happy to discuss UTV insurance options that best set you and your vehicle up for success.

Product, coverage, discounts, insurance terms, definitions and other descriptions are intended for informational purposes only and do not in any way replace or modify the definitions and information contained in your

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individual insurance contracts, policies, and/or declaration pages from Nationwide affiliated underwriting companies, which are controlling. Such products, coverages, terms and discounts may vary by state and exclusions may apply.

## Share Article



Products underwritten by Nationwide Mutual Insurance Company and Affiliated Companies. Not all Nationwide affiliated companies are mutual companies, and not all Nationwide members are insured by a mutual company. Subject to underwriting guidelines, review, and approval. Products and discounts not available to all persons in all states. Nationwide Investment Services Corporation, member FINRA. Home Office: One Nationwide Plaza, Columbus, OH. Nationwide, the Nationwide N and Eagle, and other marks displayed on this page are service marks of Nationwide Mutual Insurance Company, unless otherwise disclosed. © 2019 Nationwide Mutual Insurance Company.

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ROA 116

Mechell Arant
Taxpayer Assistance Officer
Collection Services

SOUTH CAROLINA DEPARTMENT OF REVENUE

301 Gervais Street
Post Office Box 125
Columbia, South Carolina 29214
(803) 898-5499 (898-5800 main line)
(803) 898-5104 (FAX)
arantm@sctax.org

2004 Started business — unsure along the way we started which had off road veh. Concerned about taxes

* Consulted w/ Mechell Arant (Tax Assistance Officer) about how to do these returns — we were guided to do as motorcycles.
* I even came to the office when @ museum and actually did the return there — 2 times
* Looked all over the internet

9-30-11 We started selling the Polaris Off Road Vehicles so Around Oct. 2011 I called back in to the help desk + explained what we were selling and want to be sure how to tax.

DOR > does it require to be titled

me > alot of times as in when financed lenders especially require a title + lein.

DOR > OK then, handle it like a motorcycle.

me > So off we go — and now in a dispute

June 2012 Started doing Return online + talked + Consulted w/ Misty @ DOR 803-896-1436

She walked us through it and said all the same info. that we were doing it correct.



AFF-Ex 2

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AFF-Ex3

Location License: 03236114-7 Period: 06/2012
Location Name: JACKS CUSTOM CYCLES

**Filing Steps**
- Welcome
- Sales
- Max Tax
- DME
- Accommodations
- Local Taxes
- Food Tax
- Submit Tax Return
- Payment
- Final Confirmation
- Survey

| | |
|---|---|
| Gross Proceeds of Sales, Rentals, Use Tax And Withdrawals for Own Use | 20821 |
| Total Amount of Deductions | 8566 |
| Net Taxable Sales | 12255 |
| Tax | 735 |
| Taxpayer's Discount | 15 |
| Sales and Use Tax Net Amount Payable | 720 |
| Penalty and Interest | 0 |
| Total Sales and Use Tax Due | 720 |

5% Sales and Use Tax (also Personal 5% Sales)

| | |
|---|---|
| Gross Proceeds of Sales, Rentals, Use Tax And Withdrawals for Own Use | 93608 |
| Total Amount of Deductions | 57805 |
| Net Taxable Sales | 35803 |
| Tax | 1790 |
| Taxpayer's Discount | 36 |
| Sales and Use Tax Net Amount Payable | 1754 |
| Penalty and Interest | 0 |
| Total Sales and Use Tax Due | 1754 |

Edit

Local Taxes

| | |
|---|---|
| Total Local Taxes Due Details | 121 |

Edit

Total of all Taxes Due 2595

Next >

Privacy Statement

SC Tax. or 8

Cyclejack

jcc1500 com

this right here shows we called + Misty @ 896-1436 walked us thru the on line process + it had 2 Off road units in it + she said the max tax was correct

ROA 2/20/19 2012

Aff-Ex 4

7-19-17 Called DOR 803-898-5000 (2:25 PM)
talked w/ Stan

Stan says nothing changed but tax cap
gave examples

Answers

$20,000 m/vehicle
max Tax $500

$10,000.
60 hp.
Off Road
max Tax
$500

$8,000.
Off Road - ATV
Caps @ 10,000
or 5%
$400 Now

Mine

he was firm 5% caps @ 10,000
$500 where used to be $300.

There is no 7% on Vehicles or Off Road.

Not heard of any 7% No cap. for Off Road
Use the Cap process.

I gave Stan multiple options
+ he without a doubt confirmed
that we were doing our tax computations
correctly.

then was just given to exit meeting w/ me
and I specifically asked him to call Stan in to our
meeting and he said NO DO IT

ROA 120

Aff. Ex 5

# EXHIBIT 2

SOUTH CAROLINA DEPARTMENT OF REVENUE

Mechell Arant
Taxpayer Assistance Officer
Collection Services

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arantm@sctax.org

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Concerned about taxes

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* Looked all over the internet

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were selling and want to be sure how to tax.
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me > alot of times as in when financed lenders especially
require a title + lein.
DOR > OK, then, handle it like a motorcycle.
me > So off we go — and now in a dispute

June 2012 Started doing Return online + talked + Consulted w/ Misty
@ DOR · 803-896-1436
She walked us through it and said all the same info.
that we were doing it correct.

# EXHIBIT 3

SOUTH CAROLINA DEPARTMENT OF REVENUE

Mechell Arant
Taxpayer Assistance Officer
Collection Services

301 Gervais Street
Post Office Box 125
Columbia, South Carolina 29214
(803) 898-5499 (898-5800 main line)
(803) 898-5104 (FAX)
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@ DOR 803-896-1436
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that we were doing it correct.

# EXHIBIT 4

DOR SALES

Location License: 03236414-Z
Location Name: JACKS CUSTOM CYCLES

Period: 06/2012

Filing Steps
- Welcome
- Sales
- Max Tax
- DME
- Accommodations
- Local Taxes
- Food Tax
- Submit Tax Return
- Payment
- Final Confirmation
- Survey

| | |
|---|---|
| Gross Proceeds of Sales, Rentals, Use Tax And Withdrawals for Own Use | 20821 |
| Total Amount of Deductions | 8566 |
| Net Taxable Sales | 12255 |
| Tax | 735 |
| Taxpayer's Discount | 15 |
| Sales and Use Tax Net Amount Payable | 720 |
| Penalty and Interest | 0 |
| Total Sales and Use Tax Due | 720 |

5% Sales and Use Tax (Max Tax 5% Sales)

| | |
|---|---|
| Gross Proceeds of Sales, Rentals, Use Tax And Withdrawals for Own Use | 93608 |
| Total Amount of Deductions | 57805 |
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| Penalty and Interest | 0 |
| Total Sales and Use Tax Due | 1754 |

Edit

Local Taxes

| | |
|---|---|
| Total Local Taxes Due Details | 121 |

Edit

Total of all Taxes Due 2595

Next >

Privacy Statement

Started doing Return On line

Missy @ 896-1434 Cleint Likes change before Max Tax

Tax Consultant helper

SC tax.org

Cyclejack

jcc1500 aol.com

this right here shows we called & Missy @ 896-1436 walked us thru the on line process & it had 2 off road units in it & she said the max tax was correct

ROA 12620 12 June

# EXHIBIT 5

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
0032 Lexington
122 PARK RD
LEXINGTON, SC 29072-0000

Receipt of Fees Paid
12/11/2018 2:43:33 PM

30812432
JACKS MOTORSPORTS
1500 W MAIN ST
LEXINGTON, SC 29072-2330

Reference No: 143102653

5% 99.70
15.00 Titlefee
114.70

Trailer DMV charged Tax + DOR charged Tax

SERVICES

| Customer Name | ServiceDescription | Identifier | Amount |
|---|---|---|---|
| AREVALOS, JOSEPH MERCEDES | MCO TITLE | VIN: [redacted] | $114.70 |
| DEBRUHL, RENEE CORBETT | SC TITLE TRANSFER | VIN: [redacted] | $22.50 |
| DEBRUHL, RENEE CORBETT | NEW REGISTRATION | | $40.00 |
| HICKS, DANIEL G | MCO TITLE | VIN: [redacted] | $15.00 |
| | | Donate Life SC: | $0.00 |
| | | Total Fees Due: | $192.20 |

PAYMENTS

| | | | | |
|---|---|---|---|---|
| Check #10318 | 30812432 | JACKS MOTORSPORTS | | $192.20 |
| | | | Total Payments: | $192.20 |

End of Receipt

Mr Arevalos Deal was included in that month Sales TAX return @ 7%

DMV says trailers are 5%

15.00
22.50 - title ~~$150.00~~ $150.00 x .05% = 75
40.00 - reg + plate fee

Visit our web site at www.scdmvonline.com
and take a moment to share your feedback about your DMV experience

*Refunds will be initiated for overpayments of $1.00 or more
12/11/2018 2:43:33 PM

# BILL OF SALE

SOLD TO

NAME

ADDRESS

CITY STATE

PHONE E-MAIL

DATE / /

| TAKE | TRADE | NEW Y | SERIAL NUMBER | |
|---|---|---|---|---|
| | | USED | ENGINE NUMBER | |

**All USED MOTORCYCLES sold "AS IS"**
NO WARRANTY ON USED MOTORCYCLES UNLESS WRITTEN HEREON.

1 ✓

2 ✓

✓

✓

ODOMETER STATEMENT OF MILEAGE

_____, certify that the odometer mileage indicated on the vehicle described above is

_____ miles.

| | |
|---|---|
| PRICE OF VEHICLE | |
| PREPARATION | |
| FREIGHT | |
| OPTIONAL EQUIPMENT | |
| POLYGLYCOAT | |
| TIRE SEAL | |
| TIRE SEAL ATC TIRE SEAL 4 WHEEL | |
| TOTAL | |
| TRADE-IN MAKE & YEAR | |
| SERIAL # | |
| TAXABLE AMOUNT | |
| BIKE & ACC. TAX 7% → | |
| NON BOLT-ON TAX | |
| EXTENDED WARRANTY | |
| TETRAFLUOROETHYLENE OIL TREATMENT | |
| TITLE & DOC. FEE | |
| PAY OFF on TRADE-IN | |
| TOTAL | |
| PREVIOUS DEPOSIT | |
| CASH RECEIVED | |
| BALANCE | |

INITIAL CHECK UPS ARE **NOT** COVERED UNDER WARRANTY. THERE IS A CHARGE.

INITIAL FIRST CHECK UP DUE AT 600 MILES OR 6 WEEKS FOR BIKES WITHOUT SPEEDOMETERS AND 3000 MILES OR 6 MONTHS WHICHEVER OCCURS FIRST THEREAFTER.

M-B/S - 3 RECEIVED BY

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
0032 Lexington
122 PARK RD
LEXINGTON, SC 29072-0000

Receipt of Fees Paid
1/31/2018 2:43:32 PM

30812432
JACKS MOTORSPORTS
1500 W MAIN ST
LEXINGTON, SC 29072-2330

Reference No: 134064764

Everytime we go to DMV & get a title on a off road unit or trailer they charge Sales TAX Also

Pay tax twice

SERVICES

| Customer Name | ServiceDescription | Identifier | Amount |
|---|---|---|---|
| BUCZKOWSKI, JAMES HENRY | SC TITLE TRANSFER | [redacted] | $515.00 |
| BUCZKOWSKI, JAMES HENRY | TRANSFER PLATE | VIN: [redacted] | $10.00 |
| CHERRY, CARDELL FREDDIE | MCO TITLE | | $15.00 |
| HUNTER, DANNY EUGENE JR | SC TITLE TRANSFER | VIN: [redacted] | $15.00 |
| HUNTER, DANNY EUGENE JR<br>CHERRY, CARDELL FREDDIE | SALES TAX/USE TAX-FEE COLLECTION | VIN: [redacted] | $200.00<br>$174.75 |
| | | Donate Life SC: | $0.00 |
| | | Total Fees Due: | $929.75 |

PAYMENTS

| | | | |
|---|---|---|---|
| Check #10201 | 30812432 | JACKS MOTORSPORTS | $929.75 |
| | | Total Payments: | $929.75 |

End of Receipt

DMV Charged vs Sales TAX Also

Plus they contend Sales Tax on Trailers is 5%

DOR says its 7%

which is what we paid to DOR.

Entered in GD & the Board Requested 1/31/18

Double Taxed again

Visit our web site at www.scdmvonline.com
and take a moment to share your feedback about your DMV experience

*Refunds will be initiated for overpayments of $1.00 or more

1/31/2018 2:43:32 PM

# BILL OF SALE

Danny Hunter
[redacted]

JACK'S CUSTOM CYCLES, INC.
DBA **JACK'S MOTORSPORTS**
1500 W. MAIN ST.
LEXINGTON, SC 29072
(803) 359-4864 FAX (803) 359-4964

Nº 3139

DATE 12/24/17

Polaris Sportsman
2016 450

NEW / USED
SERIAL NUMBER [redacted]
ENGINE NUMBER

**ALL USED MOTORCYCLES sold "AS IS"**
NO WARRANTY ON USED MOTORCYCLES UNLESS WRITTEN HEREON.

| | |
|---|---|
| PRICE OF VEHICLE | 5000 00 |
| PREPARATION | |
| FREIGHT | |
| # Down | 1000 00 |
| POLYGLYCOAT | |
| TIRE SEAL | |
| TIRE SEAL ATV TIRE SEAL 4 WHEEL | |
| TOTAL | 4000 |
| TRADE-IN MAKE & YEAR | |
| TAXABLE AMOUNT | 4000 00 |
| BIKE & ACCESS | 280 00 |
| NON-BOLTED ITEM | |
| EXTENDED WARRANTY | |
| TETRAFLUOROETHYLENE OIL TREATMENT | |
| TITLE & DOC FEE | 195 00 |
| PAY OFF or TRADE-IN | |
| TOTAL | 4475 00 |
| PREVIOUS DEPOSIT | 247 00 |
| CASH RECEIVED | |
| | 4228 00 |

www.JacksMotorSports.com

170 →

ODOMETER STATEMENT OF MILEAGE

Louis DeBruhl (print) hereby certify that the odometer now reads [redacted] miles and to the best of my knowledge that reading does not reflect the actual mileage of the vehicle described above.

685 miles

Financed w/ Ally

Bal. down pay

WARNING — ODOMETER READING IS NOT CORRECT MILEAGE

ODOMETER DISCREPANCY

IF REPAIRS ARE **NOT** COVERED UNDER WARRANTY, THERE IS A CHARGE

FIRST CHECK-UP DUE AT 500 MILES OR 3 WEEKS FOR BIKES WITHOUT SPEEDOMETERS AND 1000 MILES OR 3 MONTHS WHICHEVER OCCURS FIRST THEREAFTER.

M-B/S 3

ACCEPTED BY Wayne Hunter

ROA 131

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
0032 Lexington
122 PARK RD
LEXINGTON, SC 29072-0000

Receipt of Fees Paid
4/11/2018 2:19:43 PM

30812432
JACKS MOTORSPORTS
1500 W MAIN ST
LEXINGTON, SC 29072-2330

Reference No: 136327430

off Road

Total Sale Price
$

SERVICES

| Customer Name | ServiceDescription | Identifier | Amount |
|---|---|---|---|
| GONZALES, JAIME ORTIZ | MCO TITLE | [redacted] | $15.00 |
| GONZALES, JAIME ORTIZ | SALES TAX/USE TAX | | $500.00 |
| GODWIN, JAMES WALKER | SC TITLE TRANSFER | | $215.00 |
| GODWIN, JAMES WALKER | NEW REGISTRATION | | $10.00 |
| BEARD, JOSEPH EDWARD | SC TITLE TRANSFER | | $324.75 |
| BEARD, JOSEPH EDWARD | NEW REGISTRATION | | $10.00 |
| | | Donate Life SC: | $0.00 |
| | | Total Fees Due: | $1,074.75 |

PAYMENTS

| | | | | |
|---|---|---|---|---|
| Check #10213 | 30812432 | JACKS MOTORSPORTS | | $1,074.75 |
| | | | Total Payments: | $1,074.75 |

End of Receipt

17,469 Sales Price
Paid to D.O.R. on
# 13221, Tax Return

This is a off Road unit +
as you see here the DMV
says its max TAX @ 500.

Either Way paid it
twice — @ DMV
+ On Line Sales Tax Report

Entered in QB & Register

Visit our web site at www.scdmvonline.com
and take a moment to share your feedback about your DMV experience
*Refunds will be initiated for overpayments of $1.00 or more
4/11/2018 2:19:43 PM

ROA 1102

SOLD TO

NAME [redacted]

ADDRESS [redacted]

E-MAIL [redacted]

JACK'S TOPTON CYCLES, INC.
DBA **JACK'S MOTORSPORTS**
1500 W. MAIN ST.
[redacted]

DATE 3/26/16

| MAKE | MODEL | NEW/USED | |
|---|---|---|---|
| | 4XP4 | NEW ✓ | SERIAL NUMBER |
| | Grand | USED | ENGINE NUMBER |

**All USED MOTORCYCLES sold "AS IS"**
NO WARRANTY ON USED MOTORCYCLES UNLESS WRITTEN HEREON.

Slingshot
4XAASEA0F5105752
2049

ODOMETER STATEMENT OF MILEAGE

[redacted] certify that the odometer indicated on the vehicle described above is [redacted] miles.

| | |
|---|---|
| PRICE OF VEHICLE ✓ | 21997 00 |
| PREPARATION | 350 00 |
| FREIGHT ✓ | 475 00 |
| OPTIONAL EQUIPMENT ✓ | 7033 97 |
| POLYGLYCOAT | |
| TIRE SEAL | |
| TIRE SEAL ATC TIRE SEAL 4 WHEEL | |
| TOTAL | 29855 97 |
| TRADE-IN MAKE & YEAR | 13610 00 |
| SERIAL # | [redacted] |
| TAXABLE AMOUNT | 16245 97 |
| BIKE & ACC. TAX ✓ | 1316 23 |
| NON BOLT-ON TAX ✓ | 100 00 |
| EXTENDED WARRANTY ✓ | 1500 00 |
| Riders Advantage GAP Coverage @ 150% Value ✓ | 858 00 |
| TITLE & DOC. FEE ✓ | 145 00 |
| PAY OFF on TRADE-IN | 14,143 50 |
| TOTAL | 35888 33 |
| PREVIOUS DEPOSIT | 5150 00 |
| CASH RECEIVED | 30738 33 |

ROA 133

PAID

Financed

ITEMS ARE **NOT** COVERED UNDER WARRANTY. THERE IS A CHARGE.

FREE CHECK UP DUE AT 600 MILES OR 6 WEEKS FOR BIKES WITHOUT SPEEDOMETERS AND [illegible] MONTHS WHICHEVER OCCURS FIRST THEREAFTER.

SERVICED BY

M-B/S - 3

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
0032 Lexington
122 PARK RD
LEXINGTON, SC 29072-0000

Receipt of Fees Paid
2/22/2018 2:31:08 PM

32107113
JACKS CUSTOM CYCLES OF MURRELLS INLET
11980B HWY 17 BYP
MURRELLS INLET, SC 29576-9339

Reference No: 134686289

SERVICES

| Customer Name | ServiceDescription | Identifier | Amount |
|---|---|---|---|
| CLAMP, KEVIN WAYNE | MCO TITLE | [redacted] | $15.00 |
| CLAMP, KEVIN WAYNE | FEE COLLECTION | | $500.00 |
| ROBERTS, DAVID SCOTT | MCO TITLE | | $15.00 |
| ROBERTS, DAVID SCOTT | FEE COLLECTION | | $92.50 |
| DEBRUHL, JACK LEAMAN | ISSUE GOLF CART PMT | | $5.00 |
| | | Donate Life SC: | $0.00 |
| | | Total Fees Due: | $627.50 |

PAYMENTS

| | | | |
|---|---|---|---|
| Check #10203 | 32107113 | JACKS CUSTOM CYCLES OF MURRELLS INLET | $627.50 |
| | | Total Payments: | $627.50 |

End of Receipt

Off Road
Tax XP-1000
Ag Use
Should not have even been any TAX?

✓ Done Entered 2-21-18

But DMV contends that Tax Should Be $500 which is MAX TAX

Would have done on the return as Ag. use.

Visit our web site at www.scdmvonline.com
and take a moment to share your feedback about your DMV experience
*Refunds will be initiated for overpayments of $1.00 or more
2/22/2018 2:31:08 PM

NEW SALE

JACK'S CUSTOM CYCLES, INC.
DBA JACK'S MOTORSPORTS
1500 W. MAIN ST.
LOVINGTON, NM 88260
(575) 396-[illegible] FAX (575) 396-[illegible]

SOLD TO

NAME [redacted]

ADDRESS [redacted]

E-MAIL [redacted]

DATE 8/1/15

| | NEW/USED | |
|---|---|---|
| MILEAGE 1000 | NEW ✓ | SERIAL NUMBER [redacted] |
| | USED | ENGINE NUMBER |

**All USED MOTORCYCLES sold "AS IS"**
NO WARRANTY ON USED MOTORCYCLES UNLESS WRITTEN HEREON.

| | |
|---|---|
| PRICE OF VEHICLE | 19999 00 |
| PREPARATION | 350 00 |
| FREIGHT | 275 00 |
| OPTIONAL EQUIPMENT TOTAL | 4250 00 |
| ~~POLYGLYCOAT~~ | 2500 00 |
| ~~TIRE SEAL~~ | 2675 00 |
| TIRE SEAL ATC TIRE SEAL 4 WHEEL | |
| TOTAL | 29,049 00 |
| TRADE-IN MAKE & YEAR | [redacted] |
| SERIAL # | |
| TAXABLE AMOUNT | 29,049 00 |
| BIKE & ACC. TAX | 1,743 00 |
| NON BOLT-ON TAX | |
| EXTENDED WARRANTY | |
| TETRAFLUOROETHYLENE OIL TREATMENT | |
| TITLE & DOC. FEE | 45 00 |
| PAY OFF on TRADE-IN | |
| TOTAL | 30,837 00 |
| PREVIOUS DEPOSIT | ROA 135 |
| CASH RECEIVED | |
| | 30,702 00 |

$2193.00
Dealer Discount
+ any rebate
$500.00

ODOMETER STATEMENT OF MILEAGE

I [redacted] certify that the odometer reading stated on the vehicle described above is [ ] [ ] [ ] [ ] [ ] miles.

Safe Load Union

pd
CHK 26430

UP TO 1,000 MILES OR 60 DAYS ARE NOT COVERED UNDER WARRANTY. THERE IS A CHARGE.

FIRST SERVICE IS DUE AT 600 MILES OR 6 WEEKS FOR BIKES WITHOUT SPEEDOMETERS AND EVERY 55 MILES OR 3 MONTHS WHICHEVER OCCURS FIRST THEREAFTER.

M-B/S - 3

RECEIVED BY: [redacted]

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
0032 Lexington
122 PARK RD
LEXINGTON, SC 29072-0000

Receipt of Fees Paid
1/11/2018 2:51:36 PM

32107113
JACKS CUSTOM CYCLES OF MURRELLS INLET
11980B HWY 17 BYP
MURRELLS INLET, SC 29576-9339

Reference No: 133522545

SERVICES

| Customer Name | ServiceDescription | Identifier | Amount |
|---|---|---|---|
| PETERSON, GEORGE RICHARD | MCO TITLE | [redacted] | $15.00 |
| PETERSON, GEORGE RICHARD | SALES TAX/USE TAX | | $258.35 |
| RIDGEWAY, CODY EMILE | MCO TITLE | | $15.00 |
| RIDGEWAY, CODY EMILE | SALES TAX/USE TAX | | $352.10 |
| | | Donate Life SC: | $0.00 |
| | | Total Fees Due: | $640.45 |

PAYMENTS

| | | | |
|---|---|---|---|
| Check #11975 | 32107113 | JACKS CUSTOM CYCLES OF MURRELLS INLET | $640.45 |
| | | Total Payments: | $640.45 |

End of Receipt

Entered on Check Book x Q B 1-12-18 Lw

Dmv Charged Tax & Should have Been Agusi

On Petersons Deal Should be No Tax

On the ridgeway deal the Dmv says tax should be @ 5% NOT 7%

Visit our web site at www.scdmvonline.com
and take a moment to share your feedback about your DMV experience

*Refunds will be initiated for overpayments of $1.00 or more
1/11/2018 2:51:36 PM

BILL OF SALE

SOLD TO

NAME

ADDRESS

CITY STATE

PHONE E-MA

JACK'S CYCLE SALES, INC.
DBA JACK'S MOTORSPORTS
1800 W MAIN ST.
[illegible]

DATE 12/2/11

| YEAR | MODEL | NEW/USED | SERIAL NUMBER / ENGINE NUMBER |
|---|---|---|---|
| | | NEW | [redacted] |
| | | USED | |

All USED MOTORCYCLES sold "AS IS"
NO WARRANTY ON USED MOTORCYCLES UNLESS WRITTEN HEREON.

[redacted]

D/D=300
R=100

| | |
|---|---|
| PRICE OF VEHICLE | |
| PREPARATION | |
| FREIGHT | |
| OPTIONAL EQUIPMENT | |
| POLYGLYCOAT | |
| TIRE SEAL | |
| TIRE SEAL ATC TIRE SEAL 4 WHEEL | |
| TOTAL | |
| TRADE-IN MAKE & YEAR | |
| SERIAL # | [redacted] |
| TAXABLE AMOUNT | |
| BIKE & ACC. TAX | |
| NON BOLT-ON TAX | |
| EXTENDED WARRANTY | |
| TETRAFLUOROETHYLENE OIL TREATMENT | |
| TITLE & DOC. FEE | |
| PAY OFF on TRADE-IN | |
| TOTAL | |
| PREVIOUS DEPOSIT | ROA 137 |
| CASH RECEIVED | |
| BALANCE DUE | 5467 |

Farm Use

ODOMETER STATEMENT OF MILEAGE

_____ certify that the odometer of the vehicle described [illegible]

_____ miles.

PARTS ARE NOT COVERED UNDER WARRANTY. THERE IS A CHARGE.

FREE CHECK UP DUE AT 600 MILES OR 6 WEEKS FOR BIKES WITHOUT SPEEDOMETERS AND 1000 MILES OR 3 MONTHS WHICHEVER OCCURS FIRST THEREAFTER

RECEIVED BY _____

M-B/S - 3

BILL OF SALE

DBA JACK'S MOTORSPORTS

[redacted]

E-MAIL [redacted]

DATE 12/15/17

| | NEW | SERIAL NUMBER |
|---|---|---|
| | USED | ENGINE NUMBER |

[redacted]

All USED MOTORCYCLES sold "AS IS"
NO WARRANTY ON USED MOTORCYCLES UNLESS WRITTEN HEREON.

1-9-18 Recv. CK from Finance 12,600 ✓

[redacted]

pay off + trade

| | |
|---|---|
| PRICE OF VEHICLE | |
| PREPARATION | |
| FREIGHT | |
| OPTIONAL EQUIPMENT | |
| POLYGLYCOAT | |
| TIRE SEAL | |
| TIRE SEAL ATC TIRE SEAL 4 WHEEL | |
| TOTAL | |
| TRADE-IN MAKE & YEAR | |
| SERIAL | |
| TAXABLE AMOUNT | |
| 7% BIKE & ACC. TAX | |
| NON BOLT-ON TAX | |
| EXTENDED WARRANTY | |
| TETRAFLUOROETHYLENE OIL TREATMENT | |
| TITLE & DOC. FEE | 95 00 |
| PAY OFF on TRADE-IN | |
| TOTAL | |
| PREVIOUS DEPOSIT ROA 138 | |
| CASH RECEIVED | |
| Amt Financed | 14,000 00 |

ODOMETER STATEMENT OF MILEAGE

_____ certify that the odometer reading indicated on the vehicle described above is _____ miles.

Acct # [redacted]

1048 West Town + Country Rd – Orange – Ca – 92868

ITEMS ARE NOT COVERED UNDER WARRANTY. THERE IS A CHARGE.

FIRST CHECK UP DUE AT 600 MILES OR 6 WEEKS FOR BIKES WITHOUT SPEEDOMETERS AND [illegible] OR 6 MONTHS WHICHEVER COMES FIRST THEREAFTER.

M-B/S - 3

APPROVED BY _____

898-5000

Your Sales Return has been received.

If you need to cancel your request, click the Cancel Submission link.

For questions regarding your Sales Return contact the South Carolina Department of Revenue by visiting https://dor.sc.gov/mydorway-contact.

12-20-18 Come & send but she was wrong

Sales Return

# Form ST-455
## State Sales, Use, Maximum Tax and Special Filers Tax Return

Form Instructions

Name: JACKS MOTOR SPORTS

File Number: 032364147

Filing Period: October 31, 2017

Due Date: November 20, 2017

## STATE SALES AND USE TAX WORKSHEET

| Return Attributes | | Business Location | |
|---|---|---|---|
| Are you filing all zeroes on this return? | | County | Lexington |
| Has the business been permanently closed? | | Municipality | Unincorporated |

**Worksheet #1: Gross Proceeds and Purchases**

| | | | |
|---|---|---|---|
| Item 1. | Gross Proceeds of Sales, Rentals and Withdrawals for Own Use | Cash Reg + Farm + On Road + Off Road + Out of State Sales | 93,380.00 |
| Item 2. | Out-of-State Purchases Subject to Use Tax | | 0.00 |
| Item 3. | All Gross Proceeds of Sales / Rental, Use Tax and Withdrawals for Own Use | | 93,380.00 |

(1)

**Worksheet #2: 6% Sales and Use Tax**

| | | | |
|---|---|---|---|
| Item 4. | Gross Proceeds of Sales / Rentals and Withdrawals of Inventory for Own Use | Cash Register Sales Inc. Labor | 18,903.00 |
| Item 5. | Out-of-State Purchases Subject to Use Tax | NON TAX - TAX and = Off Road Unit Sales total | 0.00 |
| Item 6. | Total Gross Proceeds of Sales at 6% | | 18,903.00 |
| Item 7. | Sales and Use Tax Allowable Deductions | | |
| Item 8. | Total Amount of Deductions | Ag Labor | 9,302.00 |
| Item 9. | Net Taxable Sales and Purchases | Cash Reg. Balance | 9,601.00 |

**Worksheet #3: 5% Sales and Use Tax**

| | | | |
|---|---|---|---|
| Item 10. | Total Gross Proceeds of Sales / Rentals and Withdrawals for Own Use | all units except for Cash Reg. | 74,477.00 |
| Item 11. | Out-of-State Purchases Subject to Use Tax | | 0.00 |
| Item 12. | Total Gross Proceeds at 5% | | 74,477.00 |
| Item 13. | Sales and Use Taxable Allowable Deductions | DEDUCTIONS | |
| Item 14. | Total Amount of Deductions | Farm units (other) exempt sales | 74,477.00 |
| Item 15. | Net Taxable Sales and Purchases | Out of State (other) out of State Deliveries (1) | 0.00 |
| | | On Road Unit (other) other | |
| | | TRADE IN | |

Need help? Check out our Tutorials. | Still have a question? Contact Us.

Your online session will timeout after 15 minutes of inactivity.

This is where we have been double taxed @ DMV

DMV has been taxing Off Road @ DMV also / So double tax ??

ROA 139

Your Sales Return has been received.

If you need to cancel your request, click the Cancel Submission link.

For questions regarding your Sales Return contact the South Carolina Department of Revenue by visiting: https://dor.sc.gov/mydorway-contact

Sales Return

1. Form ST-455 Worksheet

# Form ST-455
## State Sales, Use, Maximum Tax and Special Filers Tax Return

Form Instructions

Name: JACKS MOTOR SPORTS

File Number: 032364147

Filing Period: October 31, 2017

Due Date: November 20, 2017

## SCHEDULE FOR LOCAL TAXES

Instructions

Enter the counties/municipalities for which you had taxable sales in the below table.

- If there are no municipalities applicable and taxes are to be paid for the county only, select Unincorporated for the municipality.
- The county selected will allow you to populate the local and/or special local taxes collected for that county.
- Report your **Net Taxable Sales** for the applicable local tax types.
- Include all counties and municipalities for both the ST-389 and ST-3T.

Business Location

The business location must be entered in the county/municipality table below.

County: Lexington Municipality: Unincorporated

Enter the counties/municipalities for which you had taxable sales

| County | Municipality | Capital Project | Catawba Tribal | Local Option | School District / Education Capital Improvement | Tourism Development | Transportation |
|---|---|---|---|---|---|---|---|
| Lexington | | 0.00 | 0.00 | 0.00 | 9,602.00 | 0.00 | 0.00 |
| | | 0.00 | 0.00 | 0.00 | 9,602.00 | 0.00 | 0.00 |

Need help? Check out our Tutorials | Still have a question? Contact Us

Your online session will timeout after 15 minutes of inactivity.

WRONG

Cash Reg Sales + Labor
~~less the labor~~
less credit

w/ Reg
+
off Road Sales
Taxable

Then put Labor as a deduction Credit

This should have been Total of Cash Reg Sales w/o Labor + off Road Sales + Trailers @ 7%

Should have been

ROA 140

Your Sales Return has been received.

If you need to cancel your request, click the Cancel Submission link.

For questions regarding your Sales Return contact the South Carolina Department of Revenue by visiting https://dor.sc.gov/mydorway-contact.

Sales Return

1. Form ST-455 Worksheet 2. County Detail

# Form ST-455
## State Sales, Use, Maximum Tax and Special Filers Tax Return

Form Instructions

Name: JACKS MOTOR SPORTS

File Number: 032364147

Filing Period: October 31, 2017

Due Date: November 20, 2017

## SCHEDULE FOR LOCAL TAXES

Tax From ST-389

| | A. Net Taxable Amount | B. Tax Due |
|---|---|---|
| Capital Project Tax | 0.00 | 0.00 |
| School District / Education Capital Improvement Tax | 9,602.00 | 96.02 |
| Transportation Tax | 0.00 | 0.00 |
| Catawba Tribal Tax | 0.00 | 0.00 |
| Local Option Tax | 0.00 | 0.00 |
| Tourism Development Tax | 0.00 | 0.00 |
| Total Amounts | 9,602.00 | 96.02 |

ST-389 Worksheet

| | | |
|---|---|---|
| Item 1: | Total Gross Proceeds of Sales / Rental, Use Tax and Withdrawals of Inventory for Own Use | 18,903.00 |
| Item 2: | Local Tax Allowable Deductions | |
| Item 3: | Total Amount of Deductions | 9,302.00 |
| Item 4: | Net Sales and Purchases | 9,601.00 |

Add the labor deduction here →

Need help? Check out our Tutorials. Still have a question? Contact Us.

Your online session will timeout after 15 minutes of inactivity.

ROA 141

Your Sales Return has been received.

If you need to cancel your request, click the Cancel Submission link.

For questions regarding your Sales Return contact the South Carolina Department of Revenue by visiting: https://dor.sc.gov/mydorway-contact

Sales Return

1. Form ST-455 Worksheet 2. County Detail 3. Form ST-389

# Form ST-455
## State Sales, Use, Maximum Tax and Special Filers Tax Return

Form Instructions

Name: JACKS MOTOR SPORTS

File Number: 032364147

Filing Period: October 31, 2017

Due Date: November 20, 2017

## ST-593 SCHEDULE OF MAXIMUM TAX ALLOCATION

| | | |
|---|---|---|
| 1. | Enter total net taxable sales/purchases subject to max tax | 0.00 |
| 2. | Enter total tax due on net | 0.00 |
| | Distribution of sales and use tax reported on Line 2 | |
| 2A. | Enter tax due on net taxable portion up to $6,000 | 0.00 |
| 2B. | Enter tax due on net taxable portion above $6,000 but not exceeding $10,000 | 0.00 |

Only for Boat & Plane dealers

Register Tax collected

Nothing should Be here

Need help? Check out our Tutorials. | Still have a question? Contact Us.

Your online session will timeout after 15 minutes of inactivity.

Cash Reg. Tax 2nd Q

ROA 142

Last Page

Your Sales Return has been received.

If you need to cancel your request, click the Cancel Submission link.

For questions regarding your Sales Return contact the South Carolina Department of Revenue by visiting https://dor.sc.gov/mydorway-contact.

Sales Return

1. Form ST-455 Worksheet 2. County Detail 3. Form ST-389 4. ST-593

# Form ST-455
## State Sales, Use, Maximum Tax and Special Filers Tax Return

Form Instructions

Name: JACKS MOTOR SPORTS

File Number: 032364147

Filing Period: October 31, 2017

Due Date: November 20, 2017

## SALES AND USE TAX RETURN SUMMARY

| Return Attributes | | Business Location | |
|---|---|---|---|
| Are you filing all zeroes on this return? | | County | Lexington |
| Has this business been closed? | | Municipality | Unincorporated |

**Sales, Use, Maximum Tax and Special Filers Tax**

| | | | |
|---|---|---|---|
| 1. | All Gross Proceeds of Sales / Rental, Use Tax and Withdrawals for Own Use | 93,380.00 | |
| | | A: Sales/Use 6% | B: Sales/Use 5% |
| 1A. | Total Gross Proceeds of Sales / Rental, Use Tax and Withdrawals for Own Use | 18,903.00 | 74,477.00 |
| 2. | Total Amount of Deductions | 9,302.00 | 74,477.00 |
| 3. | Net Taxable Sales and Purchases | 9,601.00 | 0.00 |
| 4. | Tax Due | 576.06 | 0.00 |

**Tax From ST-389**

| | | |
|---|---|---|
| | Total Local Sales and Use Taxable Amount | 9,602.00 |
| | Total Local Sales and Use Tax Due | 96.02 |

**Summary**

| | | |
|---|---|---|
| 5. | Total State Sales and Use Tax Due | 576.06 |
| 6. | Local Sales and Use Tax Due from ST-389 | 96.02 |
| 7. | Total Sales and Use Tax Due | 672.08 |
| 8. | Estimated Taxpayer's Discount | 13.44 |
| | Check here to override estimated taxpayer's discount | |
| 9. | Sales and Use Net Tax Amount Payable | 658.64 |
| 10. | Projected Penalty and Interest | 0.00 |
| 11. | Amount Due | 658.64 |

**Distribution Of Tax**

| | |
|---|---|
| Tax due on net taxable portion up to $6,000 | 0.00 |
| Tax due on net taxable portion above $6,000 but not exceeding $10,000 | 0.00 |

Exhibit U



Your Sales Return has been received.

If you need to delete your request, click the Delete Submission link on the prior page.

For questions regarding your Sales Return contact the South Carolina Department of Revenue by visiting: https://dor.sc.gov/mydorway-contact

August 18

Sales Return

Return

Form Instructions

Form **ST-455**
**State Sales, Use, Maximum Tax and Special Filers Tax Return**

Name: JACKS MOTOR SPORTS
File Number: 032364147
Filing Period: August 31, 2018
Due Date: September 20, 2018

## STATE SALES AND USE TAX WORKSHEET

| Return Attributes | | Business Location | |
|---|---|---|---|
| Are you filing all zeroes on this return? | No | County | Lexington |
| Has the business been permanently closed? | No | Municipality | Unincorporated |

### Worksheet #1: Gross Proceeds and Purchases

| | | |
|---|---|---|
| Item 1. | Gross Proceeds of Sales, Rentals and Withdrawals for Own Use (ALL SALES) Cash Reg w/Labor + On Road + Off Road + Out of State + Farm | 349,997.57 |
| Item 2. | Out-of-State Purchases Subject to Use Tax | 0.00 |
| Item 3. | All Gross Proceeds of Sales / Rental, Use Tax and Withdrawals for Own Use | 349,997.57 |

### Worksheet #2: 6% Sales and Use Tax

| | | |
|---|---|---|
| Item 4. | Gross Proceeds of Sales / Rentals and Withdrawals of Inventory for Own Use Cash Reg Sales w/Labor + | 22,656.69 |
| Item 5. | Out-of-State Purchases Subject to Use Tax Off Road + | 0.00 |
| Item 6. | Total Gross Proceeds of Sales at 6% | 22,656.69 |
| Item 7. | Sales and Use Tax Allowable Deductions | |
| Item 8. | Total Amount of Deductions → Non Taxable Labor → | 8,492.88 |
| Item 9. | Net Taxable Sales and Purchases = Taxable Cash Reg Sales Total → | 14,163.81 |

### Worksheet #3: 5% Sales and Use Tax

| | | |
|---|---|---|
| Item 10. | Total Gross Proceeds of Sales / Rentals and Withdrawals for Own Use All Units except Cash Reg → | 327,340.88 |
| Item 11. | Out-of-State Purchases Subject to Use Tax | 0.00 |
| Item 12. | Total Gross Proceeds at 5% | 327,340.88 |
| Item 13. | Sales and Use Taxable Allowable Deductions | |
| Item 14. | Total Amount of Deductions | 319,025.00 |
| Item 15. | Net Taxable Sales and Purchases | 8,315.88 |

DEDUCTIONS
- Exempt Sales = Farm Units
- Out of State Deliveries
- Exempt Sales = On Road Units # Tax Paid @ DMV
- Trade Ins

DMV has been taxing us @ for Off-Road & Ag.

ATV Sales @ DMV ?

Tutorials | Contact Us

Your online session will timeout after 15 minutes of inactivity.

ROA 144

Your Sales Return has been received.

If you need to delete your request, click the Delete Submission link on the prior page.

For questions regarding your Sales Return contact the South Carolina Department of Revenue by visiting: https://dor.sc.gov/mydorway-contact.

## Sales Return

1. Form ST-455 Worksheet

# Form ST-455
## State Sales, Use, Maximum Tax and Special Filers Tax Return

Form Instructions

Name: JACKS MOTOR SPORTS

File Number: 032364147

Filing Period: August 31, 2018

Due Date: September 20, 2018

## SCHEDULE FOR LOCAL TAXES

### Instructions

Enter the counties/municipalities for which you had taxable sales in the below table.

- If there are no municipalities applicable and taxes are to be paid for the county only, select Unincorporated for the municipality.
- The county selected will allow you to populate the local and/or special local taxes collected for that county.
- Report your Net Taxable Sales for the applicable local tax types.
- Include all counties and municipalities for both the ST-389 and ST-3T.

### Business Location

The business location must be entered in the county/municipality table below.

County: Lexington ▾ Municipality: Unincorporated ▾

### Enter the counties/municipalities for which you had taxable sales

| County | Municipality | Capital Project | Catawba Tribal | Local Option | School District / Education Capital Improvement | Tourism Development | Transportation |
|---|---|---|---|---|---|---|---|
| Lexington | | 0.00 | 0.00 | 0.00 | 22,656.69 | 0.00 | 0.00 |
| | | 0.00 | 0.00 | 0.00 | 22,656.69 | 0.00 | 0.00 |

Cash Rec Sales Invoices ~~Labor~~

Tutorials | Contact

Your online session will timeout after 15 minutes of inactivity.

NO Labor

ROA 145

Your Sales Return has been received.

If you need to delete your request, click the Delete Submission link on the prior page.

For questions regarding your Sales Return contact the South Carolina Department of Revenue by visiting: https://dor.sc.gov/mydorway-contact.

## Sales Return

1. Form ST-455 Worksheet 2. County Detail

**Form ST-455**
**State Sales, Use, Maximum Tax and Special Filers Tax Return**

Form Instructions

Name: JACKS MOTOR SPORTS

File Number: 032364147

Filing Period: August 31, 2018

Due Date: September 20, 2018

## SCHEDULE FOR LOCAL TAXES

### Tax From ST-389

| | A. Net Taxable Amount | B. Tax Due |
|---|---|---|
| Capital Project Tax | 0.00 | 0.00 |
| School District / Education Capital Improvement Tax | 22,656.69 | 226.57 |
| Transportation Tax | 0.00 | 0.00 |
| Catawba Tribal Tax | 0.00 | 0.00 |
| Local Option Tax | 0.00 | 0.00 |
| Tourism Development Tax | 0.00 | 0.00 |
| **Total Amounts** | **22,656.69** | **226.57** |

### ST-389 Worksheet

| | | |
|---|---|---|
| Item 1. | Total Gross Proceeds of Sales / Rental, Use Tax and Withdrawals of Inventory for Own Use | 22,656.69 |
| Item 2. | Local Tax Allowable Deductions | |
| Item 3. | Total Amount of Deductions | 8,492.88 |
| Item 4. | Net Sales and Purchases | 14,163.81 |

labor deduction

Previous Next

Tutorials | Contact

Your online session will timeout after 15 minutes of inactivity.

ROA 146

Your Sales Return has been received.

If you need to delete your request, click the Delete Submission link on the prior page.

For questions regarding your Sales Return contact the South Carolina Department of Revenue by visiting https://dor.sc.gov/mydorway-contact.

## Sales Return

1. Form ST-455 Worksheet 2. County Detail 3. Form ST-389

## Form ST-455
## State Sales, Use, Maximum Tax and Special Filers Tax Return

Form Instructions

Name: JACKS MOTOR SPORTS

File Number: 032364147

Filing Period: August 31, 2018

Due Date: September 20, 2018

### ST-593 Schedule of Maximum Tax Allocation

| | | |
|---|---|---|
| 1. | Enter total net taxable sales/purchases subject to max tax | 8,315.88 |
| 2. | Enter total tax due on net This # is here automatically (where does it come from) | 415.79 |

### Distribution of sales and use tax reported on Line 2

| | | |
|---|---|---|
| 2A. | Enter tax due on net taxable portion up to $6,000 this I have to put in | 415.79 |
| 2B. | Enter tax due on net taxable portion above $6,000 but not exceeding $10,000 because its pink | 0.00 |

Previous Next

Tutorials | Contact

Your online session will timeout after 15 minutes of inactivity.

ROA 147

Your Sales Return has been received.

If you need to delete your request, click the Delete Submission link on the prior page.

For questions regarding your Sales Return contact the South Carolina Department of Revenue by visiting: https://dor.sc.gov/mydorway-contact.

## Sales Return

1. Form ST-455 Worksheet 2. County Detail 3. Form ST-389 4. ST-593

# Form ST-455
## State Sales, Use, Maximum Tax and Special Filers Tax Return

Form Instructions

Name: JACKS MOTOR SPORTS

File Number: 032364147

Filing Period: August 31, 2018

Due Date: September 20, 2018

## SALES AND USE TAX RETURN SUMMARY

### Return Attributes

Are you filing all zeroes on this return?

Has this business been closed?

### Business Location

County: Lexington

Municipality: Unincorporated

### Sales, Use, Maximum Tax and Special Filers Tax

| | | | |
|---|---|---|---|
| 1. | All Gross Proceeds of Sales / Rental, Use Tax and Withdrawals for Own Use | 349,997.57 | |
| | | A: Sales/Use 6% | B: Sales/Use 5% |
| 1A. | Total Gross Proceeds of Sales / Rental, Use Tax and Withdrawals for Own Use | 22,656.69 | 327,340.88 |
| 2. | Total Amount of Deductions | 8,492.88 | 319,025.00 |
| 3. | Net Taxable Sales and Purchases | 14,163.81 | 8,315.88 |
| 4. | Tax Due | 849.83 | 415.79 |

### Tax From ST-389

| | | |
|---|---|---|
| | Total Local Sales and Use Taxable Amount | 22,656.69 |
| | Total Local Sales and Use Tax Due | 226.57 |

### Summary

| | | |
|---|---|---|
| 5. | Total State Sales and Use Tax Due | 1,265.62 |
| 6. | Local Sales and Use Tax Due from ST-389 | 226.57 |
| 7. | Total Sales and Use Tax Due | 1,492.19 |
| 8. | Estimated Taxpayer's Discount | 29.84 |
| | Check here to override estimated taxpayer's discount | |
| 9. | Sales and Use Net Tax Amount Payable | 1,462.35 |
| 10. | Projected Penalty and Interest | 0.00 |
| 11. | Amount Due | 1,462.35 |

This sheet populates automatically

### Distribution Of Tax

| | |
|---|---|
| Tax due on net taxable portion up to $6,000 | 415.79 |
| Tax due on net taxable portion above $6,000 but not exceeding $10,000 | 0.00 |

ROA 148

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
# STATE SALES, USE, AND MAXIMUM TAX RETURN
Mail To: SC Department of Revenue, Sales Tax, Columbia, SC 29214-0101

ST-455
(Rev. 6/28/17)
5162

Place an X in all boxes that apply:
☐ AMENDED Return ☐ Change of Address (Make changes to address below) ☐ Business Permanently Closed Date _____ (Complete form C-278 and return your license.)

If the area below is blank, fill in name and address.

JACKS CUSTOM CYCLES INC

Jack need to office new taxes set up CK# 11741 8/22/17 JC 8/9

| RETAIL LICENSE OR USE TAX REGISTRATION | |
|---|---|
| 0323641147 | |
| FEIN | |
| SID Number | |
| 7-17 | 8-20-17 |
| Period Ended | File Return On or By |

COMPLETE THE WORKSHEET ON THE REVERSE SIDE FIRST.

| | | Column A. Sales/Use 6% (Tax Rate) | Column B. Sales/Use 5% (Tax Rate) |
|---|---|---|---|
| 1. | All Gross Proceeds of Sales/Rental, Use Tax and Withdrawals for Own Use (From Item 3 of worksheets) | 123154 00 | |
| 1A. | Total Gross Proceeds of Sales/Rental, Use Tax and Withdrawals for Own Use (From Items 6 and 12 of worksheets) | 5994.00 | 117160 00 |
| 2. | Total Amount of Deductions (From Items 8 and 14 of worksheets) | 1724.00 | 117,160.00 |
| 3. | Net Taxable Sales and Purchases (Line 1A minus line 2 for each column) | 4269.50 | 0 |
| 4. | Tax Due (Line 3 x Tax Rate) | 256.17 | 0 |

Total Sales

| | | |
|---|---|---|
| 5. | Total Sales and Use Due (Add line 4 of columns A and B.) | 256.17 |
| 6. | Local Tax Due ST-389 (From Column B, line 2, page 7 of 8 of form ST-389) | 42.70 |
| 7. | TOTAL SALES AND LOCAL TAXES (Add lines 5 and 6) | 298.87 |
| 8. | Taxpayer's Discount (See instructions. For timely filed returns and taxes paid in full only.) | 5.98 |
| 9. | NET TAX PAYABLE (Line 7 less Line 8) | 291.89 |
| 10A | Penalty (See Instr.) | — |
| 10B | Interest (See Instr.) | — |
| 10 | Total Penalty and Interest (Add Line 10A and Line 10B) | — |
| 11. | Total Amount Due (Add Line 9 and Line 10) | 291.89 |

Was still Confused should be Dept of Rev. I did later

Department of Revenue
AUG 21 2017
RECEIVED COLUMBIA
TAXPAYER ASSISTANCE

**IMPORTANT: Sign and date return on reverse side. Attach form ST-593, if applicable.**

ROA 149

51621050

## COLUMN A - SALES AND USE TAX

### WORKSHEET #1 - GROSS PROCEEDS AND PURCHASES

Item 1. Gross Proceeds of Sales, Rentals and Withdrawals for Own Use (Total of All Sales) 1. _____

Item 2. Out-of-State Purchases Subject to Use Tax 2. _____

Item 3. All Gross Proceeds of Sales/Rental, Use Tax and Withdrawals for Own Use (Add Items 1 and 2. Enter total here and on line 1, Column A, on front of ST-455.) 3. _____

If local tax is applicable, enter the total on Item 1 of ST-389 worksheet.

Note: Sales of unprepared foods are exempt from the State sales and use tax rate. However, local taxes still apply to sales of unprepared foods unless the local tax law specifically exempts such sales. Sales that are subject to a local tax must be entered on Form ST-389 (local sales tax worksheet).

### WORKSHEET #2 - 6% SALES AND USE TAX

Item 4. Gross Proceeds of Sales/Rentals and Withdrawals of Inventory for Own Use (Enter Sales subject to 6% tax rate requirements.) 4. _____

Item 5. Out-of-State Purchases Subject to Use Tax 5. _____

Item 6. Total Gross Proceeds at 6% (Add Items 4 and 5. Enter total here and on line 1A, Column A on front of ST-455.) 6. _____

Item 7. Sales and Use Tax Allowable Deductions (Itemize by Type of Deduction and Amount of Deduction)

| Type of Deduction | Amount of Deduction |
|---|---|
| a. Sales Exempt During "Sales Tax Holiday" | $ |
| b. Sales over $100.00 delivered onto Catawba Reservation | $ |
| | $ |
| | $ |
| | $ |
| | $ |
| | $ |

Item 8. Total Amount of Deductions (Enter total here and on line 2 of Column A on front of ST-455.) 8. < _____ >

Item 9. Net Taxable Sales and Purchases (Item 6 minus Item 8. Enter total here and on line 3, Column A on front of ST-455.) 9. _____

**REMINDER: Form ST-389 must be completed and attached for all local taxes.**
For questions regarding this form, call this office toll free (844) 898-8542.

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. ☐ Yes ☐ No Preparer's name _____ Phone number _____

I hereby certify that I have examined this return and to the best of my knowledge and belief it is a true and accurate return.

| Owner, Partner or Title | Printed Name | Taxpayer's Signature |
|---|---|---|
| Owner | Jack DeBruhl | Jack DeBruhl |
| Daytime Phone No. | Date | E-mail Address |
| 359-4864 | 8-21-17 | |

IMPORTANT: This return becomes DELINQUENT if it is postmarked after the 20th day (return with payment due on or before the 20th) following the close of the period. Sign and date the return.

ROA 150

51622058

## COLUMN B - SALES AND USE TAX

WORKSHEET #3 - 5% SALES AND USE TAX

Item 10. Gross Proceeds of Sales/Rentals and Withdrawals for Own Use (Enter sales subject to 5% tax rate requirements such as airplanes and boats.) 10. 117,160.00

Item 11. Out-of-State Purchases Subject to Use Tax 11. _____

Item 12. Total Gross Proceeds at 5% (Add Items 10 and 11. Enter total here and on line 1A, Column B on front of ST-455.) 12. _____

Item 13. Sales and Use Tax Allowable Deductions (Itemize by Type of Deduction and Amount of Deduction)

| Type of Deduction | Amount of Deduction |
|---|---|
| a. Sales over $100.00 delivered onto Catawba Reservation | $ |
| Infrastructor Maintence fee | $ |
| Sales | $ 117,160.00 |
| | $ |
| | $ |
| | $ |

Item 14. Total Amount of Deductions (Enter total here and on line 2 of Column B on front of ST-455.) 14. <117,160.00>

Item 15. Net Taxable Sales and Purchases (Item 12 minus Item 14. Enter total here and on line 3, Column B on front of ST-455.) 15. 0



51623056

For Tax Periods 5-1-17 and after

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

# SCHEDULE FOR LOCAL TAXES

(Attach to form ST-3, ST-389, ST-403, and ST-455 when filed.)

ST-389
(Rev. 4/12/17)
5063

Business Name

Retail License or Use Tax Registration Number

Period ended

Page ____ of ____

NOTE: DO NOT TAKE CREDITS OR REPORT NEGATIVE AMOUNTS ON THIS FORM.
To apply for refunds, see ST-14.

| Name of County or Jurisdiction | Code | Net Taxable Amount (A) | | Local Tax (B) |
|---|---|---|---|---|
| 1. CAPITAL PROJECT TAX | | | | |
| AIKEN | 1002 | | x 1% = | |
| ALLENDALE | 1003 | | x 1% = | |
| BAMBERG | 1005 | | x 1% = | |
| BARNWELL | 1006 | | x 1% = | |
| CHESTER | 1012 | | x 1% = | |
| COLLETON | 1015 | | x 1% = | |
| FLORENCE | 1021 | | x 1% = | |
| GEORGETOWN | 1022 | | x 1% = | |
| GREENWOOD | 1024 | | x 1% = | |
| HAMPTON | 1025 | | x 1% = | |
| HORRY | 1026 | | x 1% = | |
| LANCASTER | 1029 | | x 1% = | |
| LEE | 1031 | | x 1% = | |
| MARION | 1034 | | x 1% = | |
| MCCORMICK | 1033 | | x 1% = | |
| NEWBERRY | 1036 | | x 1% = | |
| ORANGEBURG | 1038 | | x 1% = | |
| SUMTER | 1043 | | x 1% = | |
| WILLIAMSBURG | 1045 | | x 1% = | |
| YORK | 1046 | | x 1% = | |

Submit all pages containing applicable data.



ROA 152

50631092

NOTE: DO NOT TAKE CREDITS OR REPORT NEGATIVE AMOUNTS ON THIS FORM.
To apply for refunds, see ST-14.

Business Name _____ Retail License or Use Tax Registration Number _____

Period ended _____ Page _____ of _____

| Name of County or Jurisdiction | Code | Net Taxable Amount | | Local Tax |
|---|---|---|---|---|
| 2. SCHOOL DISTRICT / EDUCATION CAPITAL IMPROVEMENT TAX | | (A) | | (B) |
| AIKEN | 5021 | | x 1% = | |
| ANDERSON | 5040 | | x 1% = | |
| CHARLESTON | 5101 | | x 1% = | |
| CHEROKEE | 5111 | | x 1% = | |
| CHESTERFIELD | 5131 | | x 1% = | |
| CLARENDON | 5140 | | x 1% = | |
| DARLINGTON | 5161 | | x 1% = | |
| DILLON | 5170 | | x 1% = | |
| HORRY | 5261 | | x 1% = | |
| JASPER | 5271 | | x 1% = | |
| KERSHAW | 5281 | | x 1% = | |
| LEXINGTON | 5320 | 4269.50 | x 1% = | 42.70 |
| MARLBORO | 5351 | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |

Submit all pages containing applicable data.



ROA 153

5053098

NOTE: DO NOT TAKE CREDITS OR REPORT NEGATIVE AMOUNTS ON THIS FORM.
To apply for refunds, see ST-14.

Business Name

Retail License or Use Tax Registration Number

Period ended



If your sales or purchases are delivered within a city or town, you must use the CITY or TOWN code to properly identify the specific municipality, not the general county code.
List one entry per line. If additional lines for Local Option are needed, complete ST-389-A.

6. LOCAL OPTION TAX

| Name of County or Jurisdiction | Code | (A) Net Taxable Amount | | (B) Local Tax |
|---|---|---|---|---|
| | | | x 1% = | |
| | | | x 1% = | |
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| | | | x 1% = | |
| | | | x 1% = | |

Submit all pages containing applicable data.



ROA 154

50635093

NOTE: DO NOT TAKE CREDITS OR REPORT NEGATIVE AMOUNTS ON THIS FORM.
To apply for refunds, see ST-14.

Business Name _____ Retail License or Use Tax Registration Number _____

Period ended _____ Page _____ of _____

| Name of County or Jurisdiction | Code | Net Taxable Amount (A) | | Local Tax (B) |
|---|---|---|---|---|
| 7. TOURISM DEVELOPMENT TAX | | | | |
| MYRTLE BEACH | 2615 | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
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| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |
| | | | x 1% = | |

SUMMARY: Complete all pages of the ST-389 first, then enter totals here.

1. Enter total of Column A from pages 1, 3, 4, 5, 7 and all ST389-A's..... 1 ▶ 426950

2. Enter total of Column B from pages 1, 3, 4, 5, 7 and all ST389-A's..... 2 42.70

NOTE: Other counties may adopt local taxes at a later date.

For answers to questions pertaining to completing this form, call toll-free (844) 898-8542.

Mail to: Department of Revenue, Sales Tax, Columbia, SC 29214-0101

Submit all pages containing applicable data.



ROA 155

50637099

NAME

SOLD TO [redacted]

MAIL [redacted]

| MAKE | MODEL | NEW OR USED | |
|---|---|---|---|
| Honda | Shadow | NEW ✓ | SERIAL NUMBER [redacted] |
| 2011 | | USED | ENGINE NUMBER |

**All USED MOTORCYCLES sold "AS IS"**
NO WARRANTY ON USED MOTORCYCLES UNLESS WRITTEN HEREON.

(Make Check)

# Lewis Enterprises
Suntrust Financial
P.O. Box 1764
Columbus, NC
28722

Parts Shop 2.
Labor → 98.
Hol. 6500-614 → 80.
Hol 60000-013 → 98
28811750 → 340
CCAF → 23

ODOMETER STATEMENT OF MILEAGE

I Lewis Enterprises, certify that the odometer mileage indicated on the vehicle described above is [ ] [ ] [ ] [ ] [ ] miles.

Dealer Discounts & Rebates applied

| | |
|---|---|
| PRICE OF VEHICLE | 17,777 — |
| PREPARATION | 294. — |
| FREIGHT | 150. — |
| OPTIONAL EQUIPMENT | |
| POLYGLYCOAT | |
| TIRE SEAL | |
| TIRE SEAL ATC | |
| TIRE SEAL 4 WHEEL | |
| TOTAL | 23,343. — |
| TRADE-IN MAKE & YEAR | [redacted] |
| SERIAL # | |
| TAXABLE AMOUNT | 23,343 CC |
| BIKE & ACC. TAX | 588. CC |
| NON BOLT-ON TAX | |
| EXTENDED WARRANTY | |
| TETRAFLUOROETHYLENE OIL TREATMENT | |
| TITLE & DOC. FEE | 135. — |
| PAY OFF on TRADE-IN | |
| TOTAL | 14,628 CC |
| PREVIOUS DEPOSIT | 2,348 CC |
| CASH RECEIVED | 16,295. CC |
| To finance | 12,009 CC |

DMV

_____ INITIAL CHECK UPS ARE **NOT** COVERED UNDER WARRANTY. THERE IS A CHARGE.

_____ INITIAL FIRST CHECK UP DUE AT 600 MILES OR 6 WEEKS FOR BIKES WITHOUT SPEEDOMETERS AND 3000 MILES OR 6 MONTHS WHICHEVER OCCURS FIRST THEREAFTER.

M-B/S - 3 RECEIVED BY _____

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
0032 Lexington
122 PARK RD
LEXINGTON, SC 29072-0000

Receipt of Fees Paid
7/26/2017 10:44:28 AM

30812432
JACKS MOTORSPORTS
1500 W MAIN ST
LEXINGTON, SC 29072-2330

Reference No: 128778083

SERVICES

| Customer Name | ServiceDescription | Identifier | Amount |
|---|---|---|---|
| GREENE, MITCHEL THOMAS | SC TITLE TRANSFER | [redacted] | $446.50 |
| GREENE, MITCHEL THOMAS | NEW REGISTRATION | | $10.00 |
| ARMSTRONG, JAMES JR | MCO TITLE | | $515.00 |
| ARMSTRONG, JAMES JR | NEW REGISTRATION | | $10.00 |
| MACK, TIMOTHY CHRISTOPHER | MCO TITLE | | $15.00 |
| MACK, TIMOTHY CHRISTOPHER | TRANSFER PLATE | | $10.00 |
| | | Donate Life SC: | $0.00 |
| | | Total Fees Due: | $1,006.50 |

PAYMENTS

| | | | |
|---|---|---|---|
| Check #11704 | 30812432 | JACKS MOTORSPORTS | $1,006.50 |
| | | Total Payments: | $1,006.50 |

End of Receipt

Entered in QB + Ck Book 7-27-17

Visit our web site at www.scdmvonline.com
and take a moment to share your feedback about your DMV experience

*Refunds will be initiated for overpayments of $1.00 or more
7/26/2017 10:44:28 AM

ROA 157

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
0032 Lexington
122 PARK RD
LEXINGTON, SC 29072-0000

**Receipt of Fees Paid**
**8/16/2017 10:05:22 AM**

**30812432**
**JACKS MOTORSPORTS**
**1500 W MAIN ST**
**LEXINGTON, SC 29072-2330**

**Reference No:** 129476751

**SERVICES**

| Customer Name | ServiceDescription | Identifier | Amount |
|---|---|---|---|
| SMITH, JAMES R | MCO TITLE | [redacted] | $515.00 |
| SMITH, JAMES R | NEW REGISTRATION | | $0.00 |
| SMITH, JAMES R | EXCHANGE PLATE | | $10.00 |
| | | **Donate Life SC:** | $0.00 |
| | | **Total Fees Due:** | $525.00 |

**PAYMENTS**

| | | | | |
|---|---|---|---|---|
| Check #10170 | 30812432 | JACKS MOTORSPORTS | | $525.00 |
| | | | **Total Payments:** | $525.00 |

**End of Receipt**

Entered in A/B 8/18/17

Visit our web site at www.scdmvonline.com
and take a moment to share your feedback about your DMV experience

*Refunds will be initiated for overpayments of $1.00 or more

# BILL OF SALE

**JACK'S CUSTOM CYCLES, INC.**
1500 W. MAIN ST.
LEXINGTON, SC 29072
(803) 359-4864 FAX (803) 359-[illegible]

SOLD TO
NAME [illegible]
ADDRESS [redacted]
CITY
PHONE
E-MAIL [redacted]
DATE 1/1/[illegible]

| MAKE | MODEL | NEW or USED | SERIAL NUMBER | ENGINE NUMBER |
|---|---|---|---|---|
| 2017 | Slingshot SLR | NEW X | [redacted] | |

**All USED MOTORCYCLES sold "AS IS"**
NO WARRANTY ON USED MOTORCYCLES UNLESS WRITTEN HEREON.

Built Wing Duty - Tour Slider - Tri-Tone

Key # 8174

| | |
|---|---|
| PRICE OF VEHICLE | [illegible] |
| PREPARATION | [illegible] |
| FREIGHT | [illegible] |
| OPTIONAL EQUIPMENT | [illegible] |
| POLYGLYCOAT | |
| TIRE SEAL | |
| TIRE SEAL ATC TIRE SEAL 4 WHEEL | |
| TOTAL | [illegible] |
| TRADE-IN MAKE & YEAR | |
| SERIAL | |
| TAXABLE AMOUNT | 33,443.00 |
| BIKE & ACC. TAX | |
| NON BOLT-ON TAX | |
| EXTENDED WARRANTY | |
| TETRAFLUOROETHYLENE OIL TREATMENT | |
| TITLE & DOC. FEE | 185.00 |
| PAKAGE DISCOUNT | 1700.00 |
| TOTAL | 32,728.00 |
| PREVIOUS DEPOSIT | [illegible] |
| CASH RECEIVED | 20,000.00 |
| Bal. Due | 12,728.00 |

92 DMV ☆

**ODOMETER STATEMENT OF MILEAGE**

I [illegible], certify that the odometer mileage indicated on the vehicle described above is

| | | | | |
|---|---|---|---|---|
| | | | | 4 |

miles.

R-100 Yr Wtr

Dealer Discount

_____ INITIAL CHECK UPS ARE **NOT** COVERED UNDER WARRANTY. THERE IS A CHARGE.

_____ INITIAL FIRST CHECK UP DUE AT 600 MILES OR 6 WEEKS FOR BIKES WITHOUT SPEEDOMETERS AND 3000 MILES OR 6 MONTHS WHICHEVER OCCURS FIRST THEREAFTER.

M-B/S-3 RECEIVED BY _____

SOLD TO

NAME

ADDRESS

CITY STATE

[redacted] E-MAIL

DATE 7/24/17

| MAKE | MODEL | NEW / USED | SERIAL NUMBER / ENGINE NUMBER |
|---|---|---|---|
| Honda | Grom | NEW / USED | [redacted] |

**All USED MOTORCYCLES sold "AS IS"**
NO WARRANTY ON USED MOTORCYCLES UNLESS WRITTEN HEREON.

245 = 70% ✗ Should be 50% PC DMV

**ODOMETER STATEMENT OF MILEAGE**

I _____, certify that the odometer mileage indicated on the vehicle described above is

| | | | | | |
|---|---|---|---|---|---|
| 2 | 5 | 3 | 7 | 3 | miles. |

PC Chk

_____ INITIAL CHECK UPS ARE **NOT** COVERED UNDER WARRANTY. THERE IS A CHARGE.

_____ INITIAL FIRST CHECK UP DUE AT 600 MILES OR 6 WEEKS FOR BIKES WITHOUT SPEEDOMETERS AND 3000 MILES OR 6 MONTHS WHICHEVER OCCURS FIRST THEREAFTER.

M-B/S - 3 RECEIVED BY _____

| | |
|---|---|
| PRICE OF VEHICLE | 3500 — |
| PREPARATION | |
| FREIGHT | |
| OPTIONAL EQUIPMENT | |
| POLYGLYCOAT | |
| TIRE SEAL | |
| TIRE SEAL ATC TIRE SEAL 4 WHEEL | |
| TOTAL | |
| TRADE-IN MAKE & YEAR | |
| SERIAL # | [redacted] |
| TAXABLE AMOUNT | 3500 — |
| BIKE & ACC. TAX | 190 — |
| NON BOLT-ON TAX | |
| EXTENDED WARRANTY | |
| TETRAFLUOROETHYLENE OIL TREATMENT | |
| TITLE & DOC. FEE | 240 — |
| PAY OFF on TRADE-IN | |
| TOTAL | 3930 — |
| PREVIOUS DEPOSIT | |
| CASH RECEIVED | |

# BILL OF SALE

NAME [redacted]

SOLD TO

JACK'S CUSTOM CYCLES, INC.
1500 W. [illegible] ST.
LEXINGTON, SC 29072
(803) 359-4864 FAX (803) 359-4764
www.JacksCustomCycles.com

DATE 8/13/19

| MAKE | MODEL | PUT ON USED |
|---|---|---|
| Can-Am | Spyder F3 Limited (2017) | NEW ✓ / USED |

SERIAL NUMBER [redacted]
ENGINE NUMBER

**All USED MOTORCYCLES sold "AS IS"**
NO WARRANTY ON USED MOTORCYCLES UNLESS WRITTEN HEREON.

2 Ea. Saddlestop Kits @ 60.00 ea
# 2720-0011

DMV collected 520 - 204.45
DOR say 7% should be

**ODOMETER STATEMENT OF MILEAGE**

I [redacted], certify that the odometer mileage indicated on the vehicle described above is

[ ][ ][ ][N/A][ ] miles.

_____ INITIAL CHECK UPS ARE **NOT** COVERED UNDER WARRANTY. THERE IS A CHARGE.

_____ INITIAL FIRST CHECK UP DUE AT 600 MILES OR 6 WEEKS FOR BIKES WITHOUT SPEEDOMETERS AND 3000 MILES OR 6 MONTHS WHICHEVER OCCURS FIRST THEREAFTER.

M-B/S - 3 RECEIVED BY _____

| | |
|---|---|
| PRICE OF VEHICLE | 5495.00 |
| PREPARATION | Discount 1500.00 |
| FREIGHT | |
| OPTIONAL EQUIPMENT | 1200.00 |
| POLYGLYCOAT | |
| TIRE SEAL | |
| TIRE SEAL ATC | |
| TIRE SEAL 4 WHEEL | |
| TOTAL | 4195.00 |
| TRADE-IN MAKE & YEAR | [redacted] |
| SERIAL # | |
| TAXABLE AMOUNT | 4195.00 |
| BIKE & ACC. TAX | 293.65 |
| NON BOLT-ON TAX | |
| EXTENDED WARRANTY | |
| TETRAFLUOROETHYLENE OIL TREATMENT | |
| TITLE & DOC. FEE | 105.00 |
| PAY OFF on TRADE-IN | |
| TOTAL | 4593.65 |
| PREVIOUS DEPOSIT | |
| CASH RECEIVED | |

PW DMV

Debit C

ROA 161

# BILL OF SALE

JACK'S CUSTOM CYCLES, INC.
[illegible] W. [illegible] ST.
LEXINGTON, SC [illegible]
(803) 359-4964 FAX (803) 359-4964

NAME [redacted]

SOLD TO [redacted]

| MAKE | MODEL | NEW OR USED | | |
|---|---|---|---|---|
| [illegible] | Slingshot SL | NEW ✓ | SERIAL NUMBER | [redacted] |
| | | USED | ENGINE NUMBER | |

DATE [illegible]

**All USED MOTORCYCLES sold "AS IS"**
NO WARRANTY ON USED MOTORCYCLES UNLESS WRITTEN HEREON.

Key
# [illegible]
[illegible]

Slingshot SL

**ODOMETER STATEMENT OF MILEAGE**

I [illegible], certify that the odometer mileage indicated on the vehicle described above is

[ ][ ][ ][ ][ ] miles.

_____ INITIAL CHECK UPS ARE **NOT** COVERED UNDER WARRANTY. THERE IS A CHARGE.

_____ INITIAL FIRST CHECK UP DUE AT 600 MILES OR 6 WEEKS FOR BIKES WITHOUT SPEEDOMETERS AND 3000 MILES OR 6 MONTHS WHICHEVER OCCURS FIRST THEREAFTER.

M-B/S - 3 RECEIVED BY [illegible]

| | |
|---|---|
| PRICE OF VEHICLE | [illegible] |
| PREPARATION | [illegible] |
| FREIGHT | [illegible] |
| OPTIONAL EQUIPMENT | |
| POLYGLYCOAT | |
| TIRE SEAL | [illegible] |
| TIRE SEAL ATC | |
| TIRE SEAL 4 WHEEL | |
| TOTAL | [illegible] |
| TRADE-IN MAKE & YEAR | |
| SERIAL # | [redacted] |
| TAXABLE AMOUNT | [illegible] |
| BIKE & ACC. TAX | [illegible] |
| NON BOLT-ON TAX | |
| EXTENDED WARRANTY | |
| TETRAFLUOROETHYLENE OIL TREATMENT | |
| TITLE & DOC. FEE | [illegible] |
| PAY OFF on TRADE-IN | |
| TOTAL | [illegible] |
| PREVIOUS DEPOSIT | [illegible] |
| CASH RECEIVED | [illegible] |

Pd DMV

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
0032 Lexington
122 PARK RD
LEXINGTON, SC 29072-0000

Receipt of Fees Paid
8/8/2017 11:38:04 AM

30812432
JACKS MOTORSPORTS
1500 W MAIN ST
LEXINGTON, SC 29072-2330

Reference No: 129213440

SERVICES

| Customer Name | ServiceDescription | Identifier | Amount |
|---|---|---|---|
| IRIZARRY, BRANDON JAMES | MCO TITLE | [redacted] | $15.00 |
| IRIZARRY, BRANDON JAMES | SALES TAX/USE TAX | | $205.45 |
| ZAHM, MATTHEW BRENNAN | SC TITLE TRANSFER | | $190.00 |
| ZAHM, MATTHEW BRENNAN | NEW REGISTRATION | | $10.00 |
| VANLAAN, KIRK VINCENT | MCO TITLE | | $515.00 |
| VANLAAN, KIRK VINCENT | NEW REGISTRATION | | $10.00 |
| | | Donate Life SC: | $0.00 |
| | | Total Fees Due: | $945.45 |

PAYMENTS

| | | | | |
|---|---|---|---|---|
| Check #10169 | 30812432 | JACKS MOTORSPORTS | | $945.45 |
| | | | Total Payments: | $945.45 |

End of Receipt

DOR

✓ Entered in QB & Check book Register

Exit of Escrow "Book 8620"

8-8-17

Visit our web site at www.scdmvonline.com
and take a moment to share your feedback about your DMV experience

*Refunds will be initiated for overpayments of $1.00 or more
8/8/2017 11:38:05 AM

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Page 1 of 1

# Sales Tax Liability by Category

Jack's Motorsports

Date From: 7/1/2017 **Date To: 7/31/2017**

**Date: Friday, August 18, 2017**

**Time: 4:05:11 PM**

| Category | Non Taxable Amount | Taxable Amount | Tax Collected |
|---|---|---|---|
| or Unit Sales - ATV Off Road | $0.00 | $11,986.00 | $630.00 |
| or Unit Sales - Street Motorcycle | $4,270.74 | $48,398.00 | $600.00 |
| or Unit Sales - SxS | $56,322.00 | $13,479.00 | $836.22 |
| or Unit Sales - Trailer | $65.10 | $3,620.00 | $128.90 |
| s Department - Accessories | $2,178.90 | $1,415.01 | $99.08 |
| s Department - Batteries | $0.00 | $358.86 | $25.13 |
| s Department - Gas, Oil, & Grease | $5.85 | $865.40 | $61.15 |
| s Department - Hard Parts | $2,148.69 | $1,769.00 | $123.88 |
| s Department - Merchandise | $1,107.85 | $573.42 | $40.18 |
| s Department - Tires | $0.00 | $1,061.85 | $74.33 |
| oping & Receiving | $287.18 | $0.00 | $0.00 |
| vice Department - Labor | $4,079.80 | $0.00 | $0.00 |
| vice Department - Shop Fee's | $362.40 | $0.00 | $0.00 |
| vice Department - Warranty Labor | $1,361.43 | $0.00 | $0.00 |
| | $72,189.94 | $83,526.54 | $2,618.87 |

Came to DOR 8-21-17 monday to do tax since couldn't do on line

| CUSTOMER | UNIT | Sale Amt. | TAX Rec. | DMV | Trade value | And over 6000 | CASH Reg. MISC |
|---|---|---|---|---|---|---|---|
| M. Caldera | SP SSC 2010 | 4945 | 349. | | | | |
| R. Stevenpilson | 17 S/S AZ m. Chevy 2005 of State | 28,386 | | 500 | 16000. | 12386 | Combined Gross Sales # 5993.50 |
| J. Armstrong | 17/SS Black | 23343 | | 500 | — | 17343 | |
| J. Smith | 17/SS Blue | 32443 | | 500 | — | 26443 | C/R 2266.67 |
| M. Zahm | 05 m/cycle | 3500 | | 190. | — | — | NON TAXABLE # 1723.83 |
| B. Izzarg | 5% 7% Trailer | 4109 | | 5% 205.45 | — | — | |
| VanLan | S/S SL SS. Red | 25,379 | | 500 | — | 19379 | |
| | | ~~111,160~~ 111,160 | | 2395.45 | 16000 | 75,551 | Sales Tax Col. # 299.54 |

May not need this column any more

How to separate OR Road from On Road on DOR

# EXHIBIT 6

1-19-17 Called DOR 803-898-5000 (2:25 PM)
talked w/ Stan

Stan says nothing changed but tax cap
gave examples

Answers

$20,000 m/vehicle
max Tax $300

$10,000. 60 hp. Off Road max Tax $500

$8000. Off Road-ATV Caps @ 10,000 or 5% $400 Now

Wants Mailed

he was firm 5% caps @ 10,000
$500 where used to be $300.

There is no 7% on Vehicles or Off Road.

Not heard of any 7% No cap. for Off Road
Use the cap process

I gave Stan multiple options
+ he without a doubt confirmed
that we were doing our tax computations
correctly.

this was just prior to our meeting w/ IRS
and I specifically used him to call Stan in the
meeting and he told IRS DOR IT

# EXHIBIT 7

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

# SC INFORMATION LETTER #17-8

| | |
|---|---|
| SUBJECT: | South Carolina Infrastructure and Economic Development Reform Act |
| DATE: | June 21, 2017 |
| REFERENCE: | Act No. 40 (Enacted May 10, 2017) |
| AUTHORITY: | S.C. Code Ann. Section 12-4-320 (2014)<br>SC Revenue Procedure #09-3 |
| SCOPE: | An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value. |

The General Assembly recently enacted the South Carolina Infrastructure and Economic Development Reform Act to address the needs of South Carolina's transportation infrastructure system and to set the State on the path toward a first-class road network. The revenues from this act will provide the resources needed to build and maintain a safe highway system for the residents and businesses of South Carolina.

While the act increases the motor fuel user fee and the maximum tax on the purchase or lease of motor vehicles and certain trailers and semitrailers, it also provides property tax relief and income tax relief.

The purpose of this information letter is to provide information on tax changes under this act that will become effective July 1, 2017. As such, this information letter will only address the imposition of a new infrastructure maintenance fee upon the registration of a vehicle with the Department of Motor Vehicles, the changes in the motor fuel user fee and the motor carrier road tax, and the application of the sales and use tax to motor vehicles, trailers, semitrailers, and other items. The provisions of the act concerning income and property tax relief will be summarized when the Department issues its annual legislative summary later this summer.

Note: The Department does not typically summarize legislation that will be administered by another state agency. However, since the changes to the sales and use tax law are so intertwined with the new infrastructure maintenance fee that will be administered by the Department of Motor Vehicles, this information letter will summarize the new infrastructure maintenance fee.

The summary of the new infrastructure maintenance fee in this information letter has been reviewed and approved by the Department of Motor Vehicles.

House Bill 3516, Section 2 (Act No. 40)

## Motor Fuel User Fee - Increase in the Per Gallon Fee

Code Section 12-28-310(A) imposes a user fee of sixteen cents per gallon on:

(1) all gasoline, gasohol, or blended fuels containing gasoline that are used or consumed for any purpose in this State; and

(2) all diesel fuel, substitute fuels, or alternative fuels, or blended fuels containing diesel fuel that are used or consumed in this State in producing or generating power for propelling motor vehicles.

Code Section 12-28-310(D) has been added so that beginning July 1, 2017, the user fee will increase by two cents a gallon each year for six years as follows:

| Date of Increase | New User Fee Rate Per Gallon |
|---|---|
| July 1, 2017 | 18 cents |
| July 1, 2018 | 20 cents |
| July 1, 2019 | 22 cents |
| July 1, 2020 | 24 cents |
| July 1, 2021 | 26 cents |
| July 1, 2022 | 28 cents |

The inspection fee imposed under Code Section 12-28-2355(A) at the rate of one-quarter cent per gallon, and the environmental impact fee imposed under Code Section 12-28-2355(B) at the rate of one-half cent per gallon, did not change.

House Bill 3516, Section 3 (Act No. 40)

## Motor Carrier Road Tax - Increase in the Per Gallon Tax

Code Section 56-11-410 imposes a road tax on every motor carrier of sixteen cents per gallon for the privilege of using the streets and highways of South Carolina. The road tax is calculated on the amount of gasoline or other motor fuel used by the motor carrier in its operations in South Carolina, provided the motor carrier is allowed a credit against the road tax for the South Carolina motor fuel user fee imposed by Code Section 12-28-310 and paid by the carrier for operations within and without South Carolina.

Code Section 56-11-410 has been amended to increase the road tax, beginning July 1, 2017, two cents a gallon each year for six years as follows:

| Date of Increase | New Road Tax Rate Per Gallon |
|---|---|
| July 1, 2017 | 18 cents |
| July 1, 2018 | 20 cents |
| July 1, 2019 | 22 cents |
| July 1, 2020 | 24 cents |
| July 1, 2021 | 26 cents |
| July 1, 2022 | 28 cents |

House Bill 3516, Section 10 (Act No. 40)

## Motor Fuel User Fee - Inventory Tax Repealed

Code Section 12-28-530, which concerns the payment in certain circumstances of the motor fuel user fee on motor fuel inventories when there has been an increase in the user fee rate, has been repealed and will not apply to the increased user fee rate beginning July 1, 2017 or to any future increase in the user fee rate.

House Bill 3516, Section 5 (Act No. 40)

## New Infrastructure Maintenance Fee – SC Department of Motor Vehicles

Code Section 56-3-627 has been added to impose a new infrastructure maintenance fee beginning July 1, 2017 to account for necessary road maintenance in South Carolina. This fee will be in addition to the registration fees imposed by Chapter 3 of Title 56.

The owner of each vehicle, trailer, semi-trailer or other item that must be registered pursuant to Chapter 3 of Title 56 must pay the infrastructure maintenance fee upon first registering the vehicle, trailer, semi-trailer or other item with the SC Department of Motor Vehicles. The SC Department of Motor Vehicles may not issue a registration until the fee has been collected.

The infrastructure maintenance fee is remitted to the SC Department of Motor Vehicles and is imposed under three circumstances as follows:

- Purchases or Leases from a Dealer

The infrastructure maintenance fee is imposed when the owner first registers a vehicle, trailer, semi-trailer or other item required to be registered under Chapter 3 of Title 56 that was purchased or leased from a dealer. The fee is the lesser of:

- 5% of gross proceeds of sale, or sales price (as those terms are defined in Chapter 36 of Title 12); or
- $500.

If the dealer has a South Carolina retail license or offers to license and register the item, then the dealer must collect the fee and remit it to the Department of Motor Vehicles.

◆ Purchases or Leases from a Person Other than a Dealer

The infrastructure maintenance fee is imposed when the owner first registers a vehicle, trailer, semi-trailer or other item required to be registered under Chapter 3 of Title 56 that was purchased or leased from a person other than a dealer, such as an individual or a business that is not licensed as a dealer. The fee is the lesser of:

- 5% of fair market value; or
- $500.

Code Section 56-3-627(C)(2) excludes from the infrastructure maintenance fee the following purchases and leases from non-dealers:

- Items transferred to members of the immediate family;
- Items transferred to legal heirs, legatees, and distributees;
- Certain transactions involving the formation of a partnership or corporation;
- Items transferred to licensed dealers, financial institutions and secured parties (as a result of repossession) for resale;
- Items transferred to a seller or secured party as a partial payment;
- Transactions exempt from the sales and use tax; and
- Transfers where a sales or use tax has been previously paid on the transaction necessitating the transfer.

◆ Vehicles First Registered Out-of-State and Later Registered in South Carolina by the Same Owner

The infrastructure maintenance fee is imposed when a vehicle, trailer, semi-trailer or other item required to be registered under Chapter 3 of Title 56 was first registered in another state by the owner and is subsequently registered for the first time in South Carolina by the same owner. This fee is $250.

For example, if a person living in Georgia purchased a motor vehicle and first registered it with the Georgia Department of Motor Vehicles, then that person would owe the $250 Infrastructure Maintenance Fee if that person subsequently moved to South Carolina and registered that same motor vehicle with the South Carolina Department of Motor Vehicles.

The $250 fee for a vehicle registered out-of-state and later registered in South Carolina does not apply if the owner of the item is serving on active duty in the armed forces of the United States. The $250 fee also does not apply to a spouse or dependent of a person serving on active duty in the armed forces of the United States.

House Bill 3516, Section 7B (Act No. 40)

## Exemption from the Sales and Use Tax – Items Subject to the New Infrastructure Maintenance Fee

Code Section 12-36-2120 has been amended to add an exemption from state and local sales and use tax for the gross proceeds of sales, or sales price, of any item subject to the infrastructure maintenance fee imposed under Code Section 56-3-627.

House Bill 3516, Section 7A (Act No. 40)

## Sales to Nonresidents – Sales Tax on Certain Transactions Remitted to the SC Department of Motor Vehicles

Beginning July 1, 2017, the Infrastructure Maintenance Fee applies to vehicles, trailers, semi-trailers or other items required to be registered with the South Carolina Department of Motor Vehicles under Chapter 3 of Title 56. It does not apply to the sale of vehicles, trailers, semi-trailers or other items sold to persons that will register and use such items in another state.

If a person purchases a vehicle, trailer, semi-trailer or other item in South Carolina to be registered and used in another state (*e.g.*, a nonresident) the sales and use tax applies, unless otherwise exempt.

Code Section 12-36-2110(A)(5) has been added to provide that the sales tax due on the sale of items subject to a maximum tax under Code Section 12-36-2110(A)(1) that will be registered in another state must now be collected by and remitted to the SC Department of Motor Vehicles, not the SC Department of Revenue.

House Bill 3516, Section 7A (Act No. 40)

## Maximum Sales and Use Tax

The maximum sales and use tax imposed in Code Section 12-36-2110(A)(1) has increased from $300 to $500 beginning July 1, 2017. This increase applies to each sale or lease of each:

- aircraft, including unassembled aircraft which is to be assembled by the purchaser, but not items to be added to the unassembled aircraft;
- motor vehicle;
- motorcycle;
- boat;

- trailer or semitrailer, pulled by a truck tractor, as defined in Code Section 56-3-20, and horse trailers, but not including house trailers or campers as defined in Code Section 56-3-710;
- fire safety education trailer;
- recreational vehicle, including tent camper, travel trailer, park model, park trailer, motor home, and fifth wheel; or
- self-propelled light construction equipment with compatible attachments limited to a maximum of one hundred sixty net engine horsepower.

However, the maximum tax imposed under Code Section 12-36-2110(C) for musical instruments and office equipment purchased by a religious organization remains $300. The maximum tax imposed under Code Section 12-36-2110(B) for certain energy efficient manufactured homes remains the same as well.

House Bill 3516, Section 7C (Act No. 40)

## Casual Excise Tax

Since motor vehicles and motorcycles are subject to the new infrastructure maintenance fee remitted to the Department of Motor Vehicles, Code Section 12-36-1710 – which imposes a casual excise tax on the issuance of a certificate of title or other proof of ownership on certain items – has been amended to remove motor vehicles and motorcycles. The casual excise tax now only applies to boats, boat motors, and airplanes.

# EXHIBIT 8

MENU



# NEW FEE BEGINNING JULY 1, 2017

June 27, 2017

## New Vehicle-Related Fee Beginning July 1, 2017

Beginning July 1, 2017, people who purchase vehicles in South Carolina will owe a new type of fee instead of paying a sales tax.

Due to legislation commonly referred to as the Roads Bill, if you buy or lease a vehicle, trailer, semi-trailer, or other automobile on and after July 1, 2017 that will be titled and/or registered in this state, you will owe an Infrastructure Maintenance Fee (IMF) instead of sales tax. The IMF is in addition to applicable title and registration fees (/Fees) and property taxes. You will **not** be able to title or register the item until you pay the IMF.

The amount of IMF you owe is based on the sale price of the item you buy. You will owe 5% of the purchase price, but it will be no more than $500. If you purchase an item that is $9,999 or less, your IMF will be 5% of the sale price. If it is $10,000 or more, you will owe $500.

You have **45 days** to register your vehicle.

### Transferring Registration to South Carolina

Beginning July 1, 2017, people who move to South Carolina (/Vehicle-Owners/Moving-To-SC) with a vehicle, trailer, semi-trailer, or other automobile that needs to be registered in SC will owe a $250 Infrastructure Maintenance Fee (IMF), in addition to applicable title and registration fees (/Fees) and property taxes, per item that needs to be registered in this state.

For example, if you move to SC from Georgia with a vehicle that was previously registered in Georgia, when you register that vehicle with the SCDMV, you will owe the IMF, applicable title and registration fees, and property taxes. You pay your property taxes to your county treasurer. You **must** bring your **original** paid property tax receipt when you visit the SCDMV.

FIND AN SCDMV BRANCH (/Locations)

You have **45 days** to register your vehicle.

### Out-of-State Residents Purchasing Items in South Carolina

ROA 176

MENU

Beginning July 1, 2017, people who buy a vehicle, trailer, semi-trailer, or other item in South Carolina that will be registered in another state will not owe an Infrastructure Maintenance Fee, but will pay a sales tax upon purchasing the item.

Under the changes in legislation, the sales tax has increased from 5% of the sale price, with a maximum of $300, to 5% of the sale price, with a maximum of $500.



**CONTACT**

help@scdmvonline.com (mailto:help@scdmvonline.com?subject=Question%20for%20the%20SCDMV)

803-896-5000

Hearing Impaired Number (/About)

**MAILING ADDRESS**

SCDMV

PO Box 1498

Blythewood, SC 29016

ROA 177

STREET ADDRESS

10311 Wilson Boulevard
Building C
Blythewood, SC 29016

MENU

Select Language ▼

BACK TO TOP

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Website by **Cyberwoven** (http://www.cyberwoven.com) & **NWN** (http://www.nwnit.com)

ROA 178

# EXHIBIT 9

ABOUT US

| Leadership |
| --- |
| |
| Taxpayers' Bill of Rights |
| Locations |

The mission of the SCDOR is to administer the revenue and regulatory laws of the State with integrity, effectiveness and fairness to all taxpayers, while maintaining the highest security and the protection of taxpayer information.

ROA 180

1. Fairly administer and enforce the revenue and regulatory laws of the State of South Carolina.
2. Ensure taxpayer security by utilizing state-of-the-art technology.
3. Maintain a positive customer service experience for all stakeholders.
4. Promote and maintain a competent, productive, and diverse workforce.

The SCDOR strives to be an innovative and trustworthy service partner for all stakeholders.

SCDOR strives to exemplify a culture that embodies:

***Excellence*** demonstrated by focusing on proactive customer service.

***Open Communication*** demonstrated through vibrant two-way communication with stakeholders.

***Functional Security*** demonstrated through the protection of taxpayer information.

***Leadership*** demonstrated by modeling integrity, ethical behavior, and the highest standards of conduct.

***Vision and Innovation*** demonstrated by planning and problem solving.

***Ownership*** of problems by taking responsibility for actions and performance.

***Accountability*** demonstrated through performance metrics and evaluations.

***Collaboration*** among teams for everyday process improvement.

***Empowering Employees*** to make a positive difference by enhancing their skills and knowledge, as well as recognizing their contributions.

***Professionalism*** demonstrated by competent, resourceful, accountable, and courteous employees.

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ROA 182

# EXHIBIT 10

# What is the difference between an ATV and UTV?

ATVs and UTVs are different vehicles. They serve different purposes, and have different insurance needs.

## What is an ATV?

At its simplest, an all-terrain vehicle (ATV) is defined as a vehicle with the following: a straddle seating position, handlebar steering, and the ability to maneuver through a variety of terrain conditions. While there are a variety of ATV customizations and modifications available, at their base all ATVs share those three features.

### Wheels and Tires

ATVs have either three or four wheels. Tires are kept at a lower pressure than standard car or UTV tires.

### Steering

The operator can steer the ATV by using handlebars.

### Seating and passenger capacity

On an ATV, the operator is seated in a straddle position. ATVs are normally built for just one rider, some are made to carry the operator and one passenger.

### Speed and handling

ATVs are not "one-size-fits-all" and should be sized appropriately for the operator.

When operated safely and correctly, ATVs offer a quick and nimble means of transportation over a variety of terrain.

### Braking and acceleration

The majority of stock ATVs come with a thumb throttle. Pressing the throttle with the thumb controls acceleration. It is possible to modify an ATV to use a twist throttle, which allows the operator to control the vehicle's acceleration by twisting the ATV's handle.

Given the unpredictable nature of the terrain ATVs cover, twist throttles can make it difficult and dangerous to control the vehicle. For example, if a rider leans forward and unknowingly twists the throttle while going downhill, the vehicle may unexpectedly pick up speed. This can easily cause the rider to be thrown forward off of the vehicle, and the vehicle may roll and fall on the rider.

To brake, operators can use either the brake handle or the foot pedal, depending on what type of ATV they are operating.

### Safety equipment

ATVs often do not come with safety equipment as part of the vehicle. Some do have "roll bars"—strong steel pipes that form a cage-like structure around the operator to provide protection if the vehicle rolls.

ATV operators should strongly consider wearing protective clothing, boots, and gloves—and should always wear a helmet.

### Cabin

ATVs are open and do not have a cabin. However, as mentioned above, some do have roll bars.

### Uses

As a quick means of transportation over rough ground, ATVs are a valuable tool. However, they are mainly used for recreation, like racing or trail riding.

### Cost

Compared to UTVs, an ATV is a much more budget friendly option. When planning their purchase, potential buyers should make sure to account for the additional costs of safety gear and insurance.

## ATV insurance needs

While ATVs can be used safely, accidents happen. And when they do, being on the back of a powerful vehicle without seatbelts isn't the safest place to be. That's why you should always make sure you're properly protected —first with gear, and then with insurance.

Medical coverage is an important option to consider for ATVs, which lack many of the safety features of UTVs. Nationwide offers this and other ATV insurance options.

## What is a UTV?

Utility Terrain Vehicles, or UTVs, are built and used more for work than recreation. They are large, powerful, able to seat passengers side by side, and built with lots of storage space. They're commonly used to haul equipment and supplies in locations that make using a truck impractical or impossible.

### Wheels and Tires

Like a car, UTVs have a standard wheel base (four wheels). However, they can have more wheels for specialized purposes.

ROA 185

### Steering

Again, the UTV handles more like a car than an ATV, and is steered via a steering wheel.

### Seating and passenger capacity

Normally, between two and four passengers can ride safely in a UTV. Passengers sit side by side, which has earned the vehicle the nickname "side-by-side". You may also see the UTV referred to as a SxS, again referencing the seating arrangement.

### Speed and handling

UTVs are faster and more powerful than ATVs, but not as nimble. Their max speed is generally between 25 mph and 50 mph.

### Braking and acceleration

Both braking and acceleration on a UTV are controlled by foot pedals.

### Safety equipment

With occupant restraints (seatbelts) considered standard, and the option to add a windshield and roll bars, UTVs tend to have more safety features than ATVs do.

### Cabin

It's not unusual for UTVs to have a cabin. Oftentimes it's similar to the roof on a golf cart, but fully enclosed cabins are available.

### Uses

UTVs have a lot of storage space. Most known for hauling feed, hay, and supplies on farms, they are becoming more popular within non-agricultural communities. They're not uncommon at schools, where they're used to transport water jugs, sports equipment and occasionally, athletes.

The many available modifications for UTVs are making the vehicle a popular choice for transporting equipment in many industries.

### Cost

The customizability and versatility that make a UTV appealing comes at a price. UTVs tend to be more expensive than ATVs, especially after they've been modified.

## UTV insurance needs

UTVs are covered by ATV polices, but like the vehicle itself, the policy often needs to be adjusted to do exactly what it's supposed to. Since UTVs are often modified in order to perform a certain job, adequate comprehensive insurance that covers damage to the vehicle and its modifications can be a valuable tool to quickly return a UTV to proper working order. Nationwide agents are happy to discuss UTV insurance options that best set you and your vehicle up for success.

Product, coverage, discounts, insurance terms, definitions and other descriptions are intended for informational purposes only and do not in any way replace or modify the definitions and information contained in your

individual insurance contracts, policies, and/or declaration pages from Nationwide-affiliated underwriting companies, which are controlling. Such products, coverages, terms and discounts may vary by state and exclusions may apply

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# EXHIBIT 11

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The State of South Carolina
# OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

January 5, 2006

The Honorable P. J. Tanner
Sheriff, Beaufort County
Post Office Box 1758
Beaufort, South Carolina 29901

Dear Sheriff Tanner:

In a letter to this office you questioned your enforcement authority as to all-terrain vehicles (ATVs).

Pursuant to S.C. Code Ann. § 56-1-20 (1991), no person may drive a motor vehicle on the roadways of this State unless he or she is properly licensed or excepted by Section 56-1-30. Such requirement would in my opinion apply to drivers of ATV's. For purposes of Section 56-1-20, pursuant to S.C. Code Ann. § 56-1-10(7) (Supp. 2005), the term "motor vehicle" is defined as "every vehicle which is self-propelled, except 'moped' as defined in Article 9 of this chapter, and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails." Therefore, an ATV would be construed to be a motor vehicle within such definition. S.C. Code Ann. § 56-1-440 states that an individual who drives a motor vehicle on a public highway without a driver's license in violation of Section 56-1-20 is guilty of a misdemeanor.

S.C. Code Ann. § 56-5-4410 (1991) prohibits any person from driving any motor vehicle on a highway of this State which does not have the proper equipment required by various other code provisions, such as proper brakes, lights, horns, mirrors, tires, mufflers, etc. See, for example, S.C. Code Ann. §§ 56-5-4850 through 56-5-4900; 56-5-4450; 56-5-4950; 56-5-4990; 56-5-5040; and 56-5-5020. Therefore, unless the vehicle is properly equipped as statutorily required, it may not be operated on the highways. Such requirements would also apply to ATV's inasmuch as S.C. Code Ann. § 56-5-130 (1991) similarly defines "motor vehicle" for purposes of Section 56-5-4410 as "every vehicle which is self-propelled, except mopeds, and every vehicle which is propelled by electric power obtained by overhead trolley wires, but not operated upon rails..."

For any vehicle to be operated on the highways of this State, it must be properly registered and licensed as required by S.C. Code Ann. § 56-3-110 (1991). Such provision states:

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REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

> Every motor vehicle...driven, operated or moved upon a highway in this State shall be registered and licensed in accordance with the provisions of this chapter. It shall be a misdemeanor for any person to drive, operate or move upon a highway...any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter.

The term "motor vehicle" is defined by S.C. Code Ann. § 56-3-20 (Supp. 2004) for purposes of Section 56-3-110 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." Such definition would, in my opinion, include ATV's. It is my understanding that the State Department of Public Safety will not register or license ATV's. Without such registration and licensing, ATV's cannot be operated on public highways of this State. It is my information that such registration and licensing are denied because it has been determined that ATV's are not designed to be road vehicles.

Hopefully these provisions will be helpful to you in your attempts to deal with ATV's being driven on public highways. If there are any questions, please advise.

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General

# EXHIBIT 12

2015 WL 1011524
Only the Westlaw citation is currently available.
United States District Court, E.D. Virginia,
Norfolk Division.

Amanda MONTGOMERY, Plaintiff,
v.
PROGRESSIVE ADVANCED INSURANCE COMPANY, Defendant.

Action No. 2:14cv231.
|
Signed March 6, 2015.

**Attorneys and Law Firms**

William Lawrence Perkins, III, Price, Perkins & Larkin, Virginia Beach, VA, for Plaintiff.

Thomas Jeffrey Salb, Taylor & Walker PC, Norfolk, VA, for Defendant.

***OPINION & ORDER***

TOMMY E. MILLER, United States Magistrate Judge.

***1** This declaratory judgment action is before the Court on cross motions for summary judgment, as well as Plaintiff's motion to amend responses to requests for admissions. Plaintiff is seeking a declaration that the 2007 Yamaha Rhino, in which she was a passenger during an off-road accident in Arizona, is an "uninsured or underinsured motor vehicle" as defined in the policy of motor vehicle liability insurance Defendant issued to Plaintiff in Virginia. On January 28, 2015, the Court held a hearing on the motions. W. Lawrence Perkins, III, Esq., represented Plaintiff, and T. Jeffrey Salb, Esq., represented Defendant. Jody Stewart was the Official Court Reporter. For the reasons stated on the record, the Court GRANTS Plaintiff's motion to amend responses to requests for admissions (ECF No. 20), GRANTS Plaintiff's motion for summary judgment (ECF No. 13), DENIES Defendant's motion for summary judgment (ECF No. 10), and FINDS that the 2007 Yamaha Rhino is an "uninsured or underinsured motor vehicle" as defined in the insurance policy.

## I. UNDISPUTED FACTS

This action relates to injuries Plaintiff sustained in Arizona while riding off-road in a 2007 Yamaha Rhino ("the Rhino") operated by her brother, Joseph Montgomery. The relevant facts are not in dispute. Plaintiff is seeking coverage for her injuries under the uninsured/underinsured endorsements in the motor vehicle liability insurance policy issued to her by Defendant in Virginia ("the Policy"), which has uninsured/underinsured coverage limits of $100,000. Policy, Ex. 1 to Def.'s Mem. in Support of Sum. Judg. ("Def.'s Mem."), ECF No. 11–2. The Policy defines "uninsured motor vehicle" and "underinsured motor vehicle" as "a land motor vehicle or trailer of any type" that does not meet certain coverage limits, but provides, "neither 'uninsured motor vehicle' nor 'underinsured motor vehicle' includes: [ ][a] farm type tractor or other equipment designed for use principally off public roads while not on public roads." Policy 12–13, ECF No. 11–2.

On February 12, 2012, Plaintiff was riding in the front passenger seat of the Rhino operated by her brother, Joseph Montgomery, in Globe, Arizona. Compl. ¶¶ 9–10. The Rhino is a four-wheel vehicle with two bucket seats in the front, a bench seat in the back, an open top, open sides, and roll bars. *See* Ex. 3–6 to Def.'s Mem., Photos of the Rhino, ECF Nos. 11–4, 11–5. Joseph Montgomery was driving the Rhino off-road at Round Mountain Park where there was no improved, paved, or maintained road. Dep. of Joseph Montgomery ("Dep.") 23:2–4, ECF No. 11–7, 12–10; Arizona Police Crash Report, ECF No. 11–6; Ans. to Req. for Admission 13, ECF No. 11–1. Joseph Montgomery began driving the Rhino up a hill, and then attempted to back down the hill, when the vehicle rolled onto its passenger side injuring Plaintiff. Dep. 23:11–21, ECF No. 11–7; Ans. to Req. for Admission 11, ECF No. 11–1.

The Owner's Manual for the Rhino states that the vehicle is designed for off-road use only, and should not be used on paved surfaces or public roads. Owners Manual, ECF No. 11–3 at 5, 15, 21, 93. The third page of the manual states,

> ***2** [t]his vehicle is designed and manufactured for off-road use only.



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> Use on public streets, roads, or highways is not only illegal in most areas, it also increases the risk of an accident involving other vehicles. This vehicle does not meet federal motor vehicle safety standards for on-road use.

ECF No. 11–3 at 5. The manual explains that the vehicle handles and maneuvers differently from cars, ATVs, go-carts, golf-cars, and grounds-keeping vehicles. ECF No. 11–3 at 16, 72. The vehicle "has higher ground clearance and other features to handle rugged terrain," and must be driven slowly and turned gradually if it must be driven on pavement. ECF No. 11–3 at 15, 21, 72. The vehicle is intended for use by an operator sixteen years old or older with a valid motor vehicle license. ECF No. 11–3 at 17.

Joseph Montgomery testified that the previous owner made several modifications to the Rhino, including the addition of rear view lights, rear view mirrors, seatbelts, and other lighting. Dep. 9:4–21. Joseph Montgomery understood that these modifications were made so that the Rhino could be used on the highway. *Id.* Following his purchase of the Rhino, Joseph Montgomery registered the Rhino with the Arizona Motor Vehicle Division, and obtained license plates for the vehicle. Dep. 7:11–22; Vehicle Registration, ECF No. 12–1. Joseph Montgomery insured the Rhino through a motor vehicle liability insurance policy issued by Defendant in Arizona, with liability limits of $15,000. Dep. 13:25–14:8; ECF No. 11–7. Joseph Montgomery explained that he used the Rhino primarily for driving on public roads, and that the Rhino would travel at speeds up to 45 miles per hour. Dep. 11:11–25, 22:24–23:1; ECF No. 11–7. In order to drive the Rhino off-road, Joseph Montgomery was required to purchase an "off-road vehicle sticker" from Arizona, and this sticker was necessary to operate the Rhino in the area where the accident occurred. Dep. 15:20–16:6, 22:13–23:16, 24:2–12; ECF No. 11–7.

## II. MOTION TO AMEND RESPONSES TO REQUESTS FOR ADMISSION

Plaintiff has moved to amend the responses given to two requests for admissions propounded by Defendant. ECF No. 20. Courts may permit amendment of responses to requests for admission "if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits." Fed. R. Civ. Proc. 36(b).

Defendant's requests for admission, Plaintiff's original responses, and Plaintiff's proposed amended responses are as follows:

> 2. Please admit that at the time of the vehicle incident referred to in the Complaint herein, the plaintiff was a passenger on a 2007 Yamaha model RGG All–Terrain vehicle (ATV).
>
> RESPONSE: Admitted, except that the plaintiff believes the model was R66.
>
> AMENDED RESPONSE: The plaintiff admits that she was a passenger on a 2007 Yamaha model R66 vehicle. The plaintiff admits that the body style of the vehicle according to the Arizona vehicle registration indicated ATV. The plaintiff denies that the vehicle was an All–Terrain Vehicle (ATV) as defined in § 46.2–100 of the Code of Virginia (2011).
>
> *3 4. Please admit that the document attached as Exhibit 2 is a true, correct and complete copy of the Yamaha Owner's Manual for the model ATV in which the plaintiff was riding as a passenger at the time of the incident referred to in the Complaint.
>
> RESPONSE: Plaintiff does not own the vehicle and does not have access to the Owner's Manual and therefore is unable to truthfully admit or deny this request. This appears to be the Owner's Manual applicable to the vehicle and this can be confirmed at the deposition of the owner.
>
> AMENDED RESPONSE: Plaintiff does not own the vehicle and does not have access to the Owner's Manual and therefore is unable to truthfully admit or deny this request. This appears to be the Owner's Manual applicable to the vehicle and this can be confirmed at the deposition of the owner. The plaintiff admits that the body style of the vehicle according to the Arizona vehicle registration indicated ATV. The plaintiff denies that the vehicle was an All–Terrain Vehicle (ATV) as defined in § 46.2–100 of the Code of Virginia (2011).



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Plaintiff asserts her original responses were based on the fact that the vehicle registration issued by the Arizona Motor Vehicle Division referred to the body style of the Rhino as "ATV," as well as the fact that off-road vehicles, such as the Rhino, are often referred to generically as "ATVs." Pl.'s Mem. in Support Mot. to Amend Resps. 3; ECF No. 21. Plaintiff argues the Rhino is not an ATV under the Virginia Code definition of an ATV that was in effect on the date of the accident, February 12, 2012.[1]

The Court FINDS that allowing the amendment promotes the presentation of the case on the merits, and does not prejudice Defendant in defending the case on the merits. Accordingly, Plaintiff's motion to amend responses to requests for admission is GRANTED.

## III. STANDARD OF REVIEW FOR CROSS MOTIONS FOR SUMMARY JUDGMENT

A. Summary Judgment

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). For the evidence to present a "genuine" issue of material fact, it must be "such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party "seeking summary judgment always bears the initial responsibility of informing the [court] of the basis for its motion." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In deciding a motion for summary judgment, the Court must view the facts, and inferences to be drawn from the facts, in the light most favorable to the non-moving party. *Id.* at 255. Finally, either party may submit as evidence "pleadings, depositions, answers to interrogatories, and admissions on file, together with ... affidavits" to support or rebut a summary judgment motion. Fed.R.Civ.P. 56(c).

*4 Both parties in this case agree that there are no issues of genuine fact, and that the case should be decided on the cross-motions for summary judgment.

**B. Virginia Insurance Contract Interpretation**

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, diversity of citizenship, so it must apply state law in interpreting the relevant insurance policy provisions. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). The Court employs the choice-of-law rules of the Commonwealth of Virginia to determine which state's laws to apply. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). Under Virginia law, "'the law of the place where an insurance contract is written and delivered controls issues as to its coverage.'" *Firemen's Ins. Co. v. Kline & Son Cement Repair, Inc.*, 474 F.Supp.2d 779, 788 (E.D.Va.2007) (quoting *Buchanan v. Doe*, 431 S.E.2d 289 (Va.1993)). It is undisputed that the Policy was issued and delivered to Plaintiff in Virginia. Therefore, this Court will apply the federal standard for summary judgment, and will apply Virginia law to analyze the underlying insurance policy issue. *See Gen. Accident Fire and Life Assurance Corp., Ltd. v. Akzona, Inc.*, 622 F.2d 90, 93 n. 5 (4th Cir.1980); *Resource Bankshares Corp. v. St. Paul Mercury Ins. Co.*, 407 F.3d 631, 635–36 (4th Cir.2005).

Under Virginia law, "[c]ourts interpret insurance policies, like other contracts, in accordance with the intention of the parties gleaned from the words they have used in the document." *Seals v. Erie Ins. Exch.*, 674 S.E.2d 860, 862 (Va.2009) (quoting *Floyd v. N. Neck Ins. Co.*, 427 S.E.2d 193, 196 (Va.1993)). Therefore, "a court must adhere to the terms of a contract of insurance as written, if they are plain and clear and not in violation of law or inconsistent with public policy." *Blue Cross & Blue Shield v. Keller*, 450 S.E.2d 136, 140 (Va.1994). Virginia courts "interpret the unambiguous terms of a contract according to their plain meaning." *Univest Constr., Inc. v. Amtech Elevator Servs.*, 699 S.E.2d 223, 231 (Va.2010). However, "[b]ecause insurance companies typically draft their policies without the input of the insured, the companies bear the burden of making their contracts clear." *Resource Bankshares Corp.*, 407 F.3d at 636. "Accordingly, if an ambiguity exists, it must be construed against the insurer." *Id.* (citing *Caldwell v. Transp. Ins. Co.*, 364 S.E.2d 1, 3 (Va.1988)). "[L]anguage is ambiguous when it may be understood in more than one way or when it refers to two or more things at the same time." *Granite State Ins. Co. v. Bottoms*, 415 S.E.2d 131, 134 (Va.1992). Moreover, "[l]anguage in a policy purporting to exclude certain events from coverage will be construed most strongly against the insurer." *Seals*, 674 S.E.2d at 862 (quoting *St. Paul Fire & Marine Ins. Co. v. S.L. Nusbaum & Co., Inc.*, 316 S.E.2d 734, 736

(Va. 1984)). With these principles of law in mind, the Court will address the motions for summary judgment.

## IV. ANALYSIS

*5 The issue in this case is whether the Rhino meets the Policy's definition of uninsured motor vehicle or underinsured motor vehicle. The Policy defines "uninsured motor vehicle" and "underinsured motor vehicle" as "a land motor vehicle or trailer of any type" without sufficient insurance coverage, but provides, "neither 'uninsured motor vehicle' nor 'underinsured motor vehicle' includes: [ ][a] farm type tractor or other equipment designed for use principally off public roads." Policy 12–13, ECF No. 11–2. This Court FINDS that the Rhino was an uninsured or underinsured motor vehicle under the Policy and was not a "farm type tractor or other equipment designed for use principally off public roads."

### A. The Rhino Falls Within the Definition of an Uninsured or Underinsured "land motor vehicle or trailer of any type"

To determine whether coverage exists, the Court must first determine whether the Rhino falls within the Policy's broad definition for an uninsured or underinsured motor vehicle. The Policy defines uninsured motor vehicle as:

> a land motor vehicle or trailer of any type ... [t]o which no liability bond, policy, deposit or money or security applies at the time of the accident in at least the minimum limits required by Va.Code Ann. Section 46.2–472.

ECF No. 11–2 at 20. The undisputed evidence is that the Rhino was insured under a policy of motor vehicle liability insurance carrying liability limits of $15,000 per person. Def.'s Mem 2, ECF No. 11; Compl. ¶ 11, ECF No. 1. As section 46.2–472 of the Code of Virginia provides for minimum limits of $25,000 for bodily injury, the Rhino's insurance does not meet the minimum requirements of the Virginia statute. Based on the limited record before the Court, it appears that the Rhino qualifies as uninsured under the Policy's definition.

The Rhino is also apparently underinsured under the Policy definition, because "the sum of [ ] the limits of liability under all liability bonds or policies" for the Rhino is less than the uninsured motorists coverage under the Policy. ECF No. 11–2 at 19. The Policy has uninsured/underinsured coverage limits of $100,000. Policy, ECF No. 11–2 at 3. With respect to the coverage limits, the parties have not contested that the Rhino was uninsured or underinsured under the Policy. Based on the information in the record, it appears the Rhino was both.

The next issue, which *is* contested by the parties, is whether the Rhino is a motor vehicle, defined in the Policy as "a land motor vehicle or trailer of any type." Applying the Policy's definition of motor vehicle, "a land motor vehicle or trailer of any type," does not require reference to the definitions contained in the Virginia Code. Both parties addressed the issue of whether the Rhino is an all-terrain vehicle or "ATV" as defined by Section 46.2–100 of the 2011 Code of Virginia. Def.'s Mem. 14, ECF No. 11; Pl.'s Mem. in Support Sum. Judg. 2–3, ECF No. 12. The Supreme Court of Virginia, however, refused to rely on statutory definitions when determining whether a moped was an uninsured motor vehicle where the definition of motor vehicle was very similar to that used in the instant Policy[2] because, "[t]he policy contains no indication to the insured that cross-reference must be made to provisions scattered through the Code of Virginia in order to determine the meaning of the seemingly unambiguous term 'motor vehicle.' " *Hill v. State Farm Mut. Auto. Ins. Co.*, 375 S.E.2d 727, 729 (Va. 1989).[3] The Court construed the policy's definition for uninsured motor vehicle to include a moped even though a moped was not included in the statutory definition of an uninsured motor vehicle. *Id.* at 730. Accordingly, the Court finds the discussion of whether the Rhino qualifies as an ATV under § 46.2–100 of the 2011 Code of Virginia irrelevant to determining whether the Rhino is covered by the Policy.

*6 As opposed to relying on the statutory definition, the Court in *Hill* referenced a dictionary definition of motor vehicle as "a self-propelled wheeled conveyance that does not run on rails." *Hill*, 375 S.E.2d 727, 729 (citing The American Heritage Dictionary 817 (2d ed.1982)). In *Hill*, a moped, that was not required to be, and was not, registered, licensed, or insured, collided with a truck on a public highway. *Id.* at 728. The Court found that there was no clear indication that mopeds were intended to be excluded from coverage. *Id.* at 729–

30). The Court noted that implicit in the arguments of both parties regarding the meaning of the term "motor vehicle" was the fact that the policy language may be subject to two or more interpretations. *Id.* at 730. Finding that any ambiguity must be construed against the insurer, the Court concluded the policy's definition of motor vehicle included the moped. *Id.* at 730; *See also CUNA Mutual Ins. Soc. v. Norman*, 375 S.E.2d 724, 725 (Va.1989) (holding that disputes over ambiguous policy language are resolved against the insurer because the insurer selected the language of the policy); *White Tire Dist. v. Pennsylvania Nat. Mutual*, 367 S.E.2d 518, 519 (Va.1988) ("Where there is doubt or uncertainty and where the language of a policy is susceptible of two constructions, it is to be construed liberally in favor of the insured and strictly against the insurer.").

The Rhino is a four-wheeled, self-propelled, vehicle that was registered with the Arizona Department of Motor Vehicles, with a license plate that allowed the Rhino to be legally operated on public highways. The Rhino is most certainly a "self-propelled wheeled conveyance that does not run on rails." *Hill*, 375 S.E.2d at 729. The Court finds that, under a plain reading of the Policy, and giving the terms their normal and customary meaning, the Rhino is "a land motor vehicle or trailer of any type." Further, to the extent the term "motor vehicle" is ambiguous, the language must be construed against the insurer to include the Rhino. *See Hill*, 375 S.E.2d at 730. The question becomes whether the Rhino is "[a] farm type tractor or other equipment designed for use principally off public roads," and, thus, excluded from coverage. Policy 12–13, ECF No. 11–2.

**B. The Rhino is not clearly a "farm type tractor or other equipment designed for use principally off public roads"**

The Policy's broad inclusive definition of uninsured and underinsured motor vehicle as "a land motor vehicle or trailer of any type" is qualified by language excluding:

1. A farm type tractor or other equipment designed for use principally off public roads while not on public roads; or

2. Any vehicle:

a. Operated on rails or crawler treads; or

b. While located for use as a residence or premises.

ECF No. 11–2 at 19–20. Accordingly the Court must next determine whether this language applies to the Rhino such that the Rhino is not included in the Policy's definition of an uninsured or underinsured motor vehicle.

*7 The Supreme Court of Virginia has allowed insurers to include reasonable exclusions in their uninsured motor vehicle coverage to exclude certain risks. *See State Farm Mut. Auto. Ins. Co. v. Gandy*, 383 S.E.2d 717, 717 (Va.1989). The caveat is that "it is incumbent upon the insurer to employ exclusionary language that is clear and unambiguous." *Id.* at 718. The Court has found the exclusion contained in the Policy for "farm type tractor or other equipment designed for use principally off public roads, while not upon public roads" to be clear and unambiguous. *Id.* at 719; *See also Moore*, 448 S.E.2d at 613. Applying this unambiguous exclusion, the Supreme Court of Virginia has found a forklift operated on private property was not a covered uninsured or underinsured motor vehicle, while a moped operated on a public highway and a family-class stock car operating on a racetrack were covered.

The Virginia Supreme Court found no coverage existed for injuries sustained when a forklift ran over Harold Gandy's foot while he was standing on private property. *State Farm Mut. Auto. Ins. Co. v. Gandy*, 383 S.E.2d 717, 718–19 (Va.1989). Assuming without deciding that the forklift was a motor vehicle, the Court found the forklift was "equipment designed for use principally off public roads." *Id.* In reaching this conclusion, the Court referenced the dictionary definition of forklift in addition to noting that the forklift had one seat for the operator only, was not registered with the Division of Motor Vehicles, was not licensed with a vehicle tag, was used only in the private yard of the company that owned it, could reach a speed of approximately twenty miles per hour, and was not on a public highway at the time of the accident. *Id.*; *See also Reese v. Wheeler, et. al.*, 2004 WL 1320900, *4 (Del.Super.2004) (the Superior Court of Delaware, applying Virginia law, found a Yard Dog roll-off jockey truck used to move trailers around a loading dock was "equipment designed principally for use off public roads, while not upon public roads" because it was equipment in the ordinary meaning of the word, not designed for use on public roads, not used on public roads, not registered with the Department of Motor Vehicles, not licensed, and not on a public road at the time of the accident).

In the *Hill* case, the Court found the policy language did not clearly exclude mopeds from coverage, as the only clear exclusions were for "farm tractors, vehicles operated on rails or crawler treads, and vehicles located for use as a residence." *Hill*, 375 S.E.2d at 729–30. Presumably, the Court did not address the exclusion for "other equipment designed for use principally off public roads while not on public roads," because the accident in *Hill* occurred on a public road. *Id.* Finding that any ambiguity must be construed against the insurer, the Court concluded the policy's definition of motor vehicle included the moped. *Id.* at 730.

*8 Similarly, the Court found a family-class stock car involved in an accident off public roads was not "a farm type tractor or other equipment designed for use principally off public roads." *See Moore v. State Farm Mut. Auto. Ins. Co.*, 448 S.E.2d 611, 613 (Va.1994). In *Moore*, the plaintiff was struck by the stock car during warm-ups at a speedway. *Id.* at 612. The stock car, which was used exclusively for racing on race tracks, was a Chevrolet Nova that had been stripped of head lights, tail lights, turn signals, muffler, side mirrors, and emergency brake. *Id.* Recognizing that "to bar coverage, exclusionary language must clearly bring the particular event, thing, or circumstance in question within its scope," the Supreme Court of Virginia held that even with the modifications, the stock car was not "so altered as to place it clearly within the class of equipment designed for use principally off public roads." *Id.* at 613 (citing *Floyd v. Northern Neck Ins. Co.*, 427 S.E.2d 193, 196 (Va.1993)).

Although the Rhino accident occurred off public roads, the Virginia Supreme Court made clear in *Moore* that the location of the accident is not dispositive. Instead, the nature of the motor vehicle at the time of the accident determines whether it falls within the definition of uninsured or underinsured motor vehicle—whether the Rhino is a "farm type tractor or other equipment designed for use principally off public roads." The Rhino is a four-wheeled vehicle, that is self-propelled, operates in forward and reverse, and reaches speeds of up to 45 miles per hour. It has two seat-belted bucket seats in the front, a bench seat in the back, rear-view mirrors, head lights, tail lights, and break lights. It was registered with the Arizona Division of Motor Vehicles, with a license plate that allowed the Rhino to be legally operated on public highways, as well as a sticker that allowed off-road use. The Rhino was insured under a policy of motor vehicle liability insurance issued by Defendant in Arizona. According to Mr. Montgomery, the Rhino was principally used on public highways. Despite an owner's manual that indicates the Rhino was designed for off-road use, the reality is that the vehicle was equipped and licensed to legally operate both on public highways and off-road, and was operated both on and off public highways. The Rhino is much more similar to the moped and family-class stock car, than it is to a forklift or a roll-off jockey truck.

The Court must apply Virginia law requiring that the "language in a policy purporting to exclude certain events from coverage will be construed most strongly against the insurer," and that "to bar coverage, exclusionary language must clearly bring the particular event, thing, or circumstance in question within its scope." *See Seals*, 674 S.E.2d at 862; *Moore*, 448 S.E.2d at 613. Construing the exclusionary language in the Policy against Defendant, and applying the normal and customary use of the phrase "farm type tractor or other equipment designed for use principally off public roads," the Court cannot find that the Rhino clearly falls within the exclusion. Therefore, the Rhino is an uninsured and underinsured motor vehicle as defined in the Policy.

## IV. CONCLUSION

*9 The Court GRANTS Plaintiff's motion to amend responses to requests for admissions, GRANTS Plaintiff's Motion for Summary Judgment, DENIES Defendant's Motion for Summary Judgment, and FINDS that the 2007 Yamaha Rhino is an "uninsured or underinsured motor vehicle" as defined in the Policy. The Clerk is DIRECTED to send copies of this Opinion and Order to all counsel of record.

**All Citations**

Not Reported in F.Supp.3d, 2015 WL 1011524

Footnotes



WESTLAW

1. Section 46.2-100 of the 2011 Code of Virginia provides, "'All-terrain vehicle' means a three-wheeled or four-wheeled motor vehicle powered by gasoline or diesel engine and generally characterized by large, low pressure tires, a seat designed to be straddled by the operator, and handlebars for steering that is intended for off-road use by an individual rider on various types of unpaved terrain."

2. The insurance policy in *Hill* contained the following definition, "Motor vehicle means a land motor vehicle or trailer other than: (a) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, (b) a vehicle operated on rails or crawler-treads or, (c) a vehicle while located for use as a residence or premises." *Hill v. State Farm Mut. Auto. Ins. Co.*, 375 S.E.2d 727, 728 (Va.1989).

3. *Hill* explains that the statute must be consulted in those cases where the insurance policy at issue is not providing the minimum coverage required by law. 375 S.E.2d at 729 (citing *USAA Ins. Co. v. Yaconiello*, 309 S.E.2d 324, 325 (Va.1983)). There has been no argument made in this case, however, that the Policy does not provide at least the minimum coverage required by the uninsured motorist statute. *See* Va.Code § 38.2-2206.

Similarly, both parties have cited and discussed a case out of West Virginia holding that a policy did not provide uninsured motorist coverage for an injury sustained while the plaintiff was a passenger on an ATV being driven off road. *See Boniey v. Kuchinski*, 677 S.E.2d 922, 929 (W.Va.2009). When defining uninsured motor vehicle, the *Boniey* policy provided that "[a]n uninsured motor vehicle does not include a motor vehicle ... Designed for use mainly off public roads, except while on public roads." *Id.* at 925. There was no question in *Boniey* that the ATV was excluded from the policy's definition of uninsured motor vehicle; the sole issue was whether the policy's provision excluding certain vehicles from coverage violated West Virginia's uninsured motorist statute. *Id.* As the *Boniey* case was decided based on the policy's compliance with a West Virginia statute, the Court does not find it instructive in resolving the instant case.

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STATE OF SOUTH CAROLINA

# DEPARTMENT OF REVENUE

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March 22, 2019

The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Ste. 224
Columbia, SC 29201

**Re: Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports vs. South Carolina Department of Revenue**
**Docket No. 18-ALJ-17-0393-CC**

Dear Judge Anderson:

Enclosed please find the South Carolina Department of Revenue's (Respondent's) Motion for Summary Judgment and Memorandum in Support of Respondent's Motion for Summary Judgment in the above-referenced matter. Also enclosed is a Proof of Service.

Should you have any questions, please do not hesitate to contact me at 803-898-1826 or Nicole.Wooten@dor.sc.gov.

Very truly yours,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

Nicole M. Wooten
Counsel for Litigation

c: John A. Ecton, Esquire
Margaret W. Dukes, Esquire

Enclosures
NMW: tm

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | | |
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| Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports,<br><br>Petitioner,<br><br>v.<br><br>South Carolina Department of Revenue,<br><br>Respondent. | ) | **Docket No. 18-ALJ-17-0393-CC**<br><br>**RESPONDENT'S MOTION FOR SUMMARY JUDGMENT** |

PLEASE TAKE NOTICE that pursuant to Rule 56(c), SCRCP, and ALC Rule 68, Respondent South Carolina Department of Revenue (Department), by and through its undersigned attorney, will ten days from the date of service hereof, or as soon thereafter as counsel may be heard, move before the Presiding Judge of the Administrative Law Court (ALC) for an Order granting summary judgment to the Department in the above-referenced matter. This Motion is based on the grounds that no genuine issue of material fact is in dispute as to the following issues: (1) Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports' (Petitioner) retail sales of all-terrain vehicles (ATVs), utility task vehicles (UTVs), and utility trailers are not entitled to the maximum tax provided for under S.C. Code Ann. § 12-36-2110(A) (2014); (2) pursuant to S.C. Code Ann. § 12-36-1310 (2014), Petitioner is required to remit to the Department use tax due upon out-of-state purchases of tangible personal property made between August 31, 2013 and July 31, 2016; and (3) Petitioner is liable for interest on the unpaid tax liability, and interest continues to accrue until the liability is satisfied in full. Accordingly, the Department is entitled to judgment as a matter of law.

Summary judgment should be granted when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *R.J. Hendricks, II v. Clemson Univ.*, 353 S.C. 449, 455, 578 S.E.2d 711, 714 (2003); Rule 56(c), SCRCP; ALC Rule 68. As explained more fully in the Memorandum of Law included herewith, the material facts in this matter are not in dispute. Moreover, the Department is entitled to judgment as a matter of law on these issues and, therefore, summary judgment is appropriate.

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

Respectfully submitted,

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Columbia, South Carolina
March 22, 2019

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports,<br><br>Petitioner,<br><br>v.<br><br>South Carolina Department of Revenue,<br><br>Respondent. | ) | Docket No. 18-ALJ-17-0393-CC<br><br>**MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION FOR SUMMARY JUDGMENT** |

Respondent South Carolina Department of Revenue (Department), by and through the undersigned counsel, respectfully submits this Memorandum in Support of Respondent's Motion for Summary Judgment. For the reasons set forth below, the Administrative Law Court (ALC) should grant summary judgment in the Department's favor as there is no genuine issue of material fact, and the Department is entitled to judgment as a matter of law.

## BACKGROUND

The Petitioner owns and operates Jack's Motor Sports, a motorcycle and all-terrain vehicle (ATV) dealership in Lexington, South Carolina. The Petitioner is also a Polaris dealership, selling Polaris ATVs and utility task vehicles (UTVs). The Petitioner also sells utility trailers. During the relevant period, when the Petitioner sold an ATV, UTV, or utility trailer to a customer, the Petitioner collected and remitted to the Department sales tax up to $300.00[1] on the retail purchase

[1]For the relevant time period, the maximum sales tax for motor vehicles was $300.00. The statutory framework has since been amended. The current maximum is $500.00, but as discussed in footnote 4, that fee is not considered a sales tax under the current system.

price of such item. The Petitioner limited or capped the amount of sales tax collected on ATVs, UTVs, and utility trailers because it considered such items to be a "motor vehicle" or "trailer" for purposes of the maximum tax provided for in S.C. Code Ann. § 12-36-2110(A) (2014).

The Department examined the Petitioner's Sales and Use Tax Returns for the period August 31, 2013 through July 31, 2016. During the course of the audit, the Department discovered that the Petitioner collected from its customers no more than $300.00 of sales tax related to each retail sale of ATVs, UTVs, and utility trailers. Further, the Petitioner did not remit use tax on tangible personal property purchased outside of South Carolina. As a result, the Department ultimately issued the Petitioner a proposed assessment for unpaid taxes on August 17, 2017. The Petitioner timely protested the proposed assessment on November 15, 2017.

The material facts, which are not in dispute, demonstrate the following as a matter of law: 1) the Petitioner's retail sales of ATVs, UTVs, and utility trailers are not subject to the maximum tax provided for under § 12-36-2110(A); 2) pursuant to S.C. Code Ann. § 12-36-1310 (2014), the Petitioner is required to remit to the Department use tax due upon out-of-state purchases of tangible personal property; and 3) the Petitioner is liable for interest on the unpaid tax liability; and interest continues to accrue until the liability is satisfied in full.

## MATERIAL FACTS NOT IN DISPUTE

1. The Petitioner owns and operates Jack's Motor Sports, a motorcycle, ATV, and UTV dealership located in Lexington, South Carolina. (Exhibit 1, Affidavit of Tabitha Wood, ¶¶3, 6; Exhibit 2, www.jacksmotorsports.com, last visited March 22, 2019). The Petitioner also sells motorcycles parts, accessories, and utility trailers. (Ex. 1, ¶6; Ex. 2.) Finally, the Petitioner has a parts and service department for its customers. (Ex. 2.)

2. The Department conducted an audit examination of the Petitioner's South Carolina Sales and Use Tax Returns for the periods August 31, 2013 through July 31, 2016 ("Periods at Issue"). (Ex. 1, ¶¶3-4.)

3. Based upon its audit examination, the Department issued a Proposed Assessment in the amount of $202,758.14 (tax, penalty, and interest) on January 31, 2017. (Ex. 1, ¶10.) The Proposed Assessment resulted from adjustments to sales and use tax on motorcycles purchased out-of-state, ATVs, UTVs, and trailers. *Id.* The Department also assessed use tax related to the Petitioner's out-of-state purchases of tangible personal property. *Id.* Finally, the Department imposed failure to file and failure to pay penalties related to the May 31, 2015 Sales and Use Tax Return period. *Id.* In the Proposed Assessment, the majority of the adjustments related to the retail sales of ATVs, UTVs, and trailers. Specifically, the Department treated such sales as not entitled to the maximum tax provided for in § 12-36-2110(A). (Ex. 1, ¶¶8-10.)

4. On April 28, 2017, the Petitioner timely protested the Proposed Assessment. (Ex. 1, ¶11.)

5. On July 20, 2017, the Department, the Petitioner, and the Petitioner's Power of Attorney participated in an appeal conference regarding the April 28, 2017 Proposed Assessment.

6. As a result of additional documentation received from the Petitioner, the Department issued a Revised Proposed Assessment on August 17, 2017, in the amount of $166,336.50 (tax, penalty, and interest as of September 18, 2017). (Ex. 1, ¶12.)

7. By letter dated November 15, 2017, the Petitioner protested the Revised Proposed Assessment. (Ex. 1, ¶13.)

8. The Department issued the Department Determination in this matter on August 13, 2018, upholding the Revised Proposed Assessment.

9. The Petitioner timely requested a contested case hearing on September 12, 2018.

10. The Petitioner admits that it is liable for $189.86 of use tax due for the out-of-state purchases made during the Periods at Issue. (Exhibit 3, Requests to Admit, ¶1.)

11. The Department assessed a failure to file and failure to pay penalty due to the Petitioner's failure to file the Sales and Use Tax Return and failure to pay the corresponding tax due for such return for the period ending May 31, 2015. (Ex. 1, ¶¶10, 12.)

12. Based upon documentation received by the Petitioner during discovery, the Department withdraws the failure to pay and failure to file penalty (in the amount of $819.58) assessed for the Sales and Use Tax Return for the period ending May 31, 2015.

13. As of the date of this filing, the outstanding sales and use tax and interest as stated on the August 17, 2017 Revised Notice of Proposed Assessment remain unpaid. (Ex. 1, ¶14.)

## ARGUMENTS

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Young v. S.C. Dep't of Disabilities & Special Needs*, 374 S.C. 360, 649 S.E.2d 488 (2007); *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 644 S.E.2d 724 (2007); *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *Eagle Container Co., LLC v. County of Newberry*, 366 S.C. 611, 622 S.E.2d 733 (Ct. App. 2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any genuine issue as to any material fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to

the non-moving party.[2] *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 642 S.E.2d 751 (2007); *Med. Univ. of S.C. v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Moore v. Weinberg*, 373 S.C. 209, 216, 644 S.E.2d 740, 743 (Ct. App. 2007); *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

## I. The Petitioner's Retail Sales of ATVs, UTVs, And Utility Trailers During The Periods At Issue Are Not Entitled To The Maximum Tax Pursuant to § 12-36-2110(A).

### A. Statutory Background.

South Carolina imposes a sales and use tax on persons engaged in the business of selling tangible personal property at retail. *See* S.C. Code Ann. §§ 12-36-910(A) and 12-36-1110 (2014) (imposing a sales tax of six percent (6) on "the gross proceeds of sales . . . upon every person engaged or continuing within this State in the business of selling tangible personal property at

[2] *See also Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009) ("Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'") (citation omitted).

retail.").[3] "Retailers" are defined as every person "selling or auctioning tangible personal property whether owned by the person or others[.]" S.C. Code Ann. § 12-36-70(1)(a) (2014). "Sale at retail" and "retail sale" are defined, in relevant part, as "[a]ll sales of tangible personal property except those defined as wholesale sales." S.C. Code Ann. § 12-36-110 (2014).

Here, there is no dispute that the Petitioner's transactions are subject to sales tax. The Petitioner is a retailer in the business of selling motorcycles, ATVs, UTVs, and utility trailers, which are tangible personal property, at retail to its customers. 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 S. Weaving Co. v. Query*, 206 S.C. 307, 34 S.E.2d 51 (1945).

Section 12-36-2110(A) provides for a maximum sales tax of $300.00 ("maximum tax" or "cap") on all sales and leases of motor vehicles and certain trailers, among other items:

> (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;

[3]Lexington County imposes an additional one percent (1%) school district tax on sales at retail. *See* S.C. Code Ann. § 4-10-420 (Supp. 2018).

(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(1) (2014).[4]

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). Accordingly, in order to claim an exemption a taxpayer has the burden of "clearly bring[ing] himself with 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)).

### B. The Petitioner Is Liable For 7% Sales Tax On The Retail Sale Of ATVs And UTVs.

Section 12-36-2110(A) does not define "motor vehicle." Nevertheless, it is proper to consider the definition of "motor vehicle" as defined by Title 56 for purposes of the maximum tax. *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

[4]Effective July 1, 2017, sales or purchases of most motor vehicles, motorcycles, and semitrailers are subject to a new Infrastructure Maintenance Fee (IMF) instead of a sales and use tax or a casual excise tax. *See* § 12-36-2110 and S.C. Code Ann. § 56-3-627 (Rev. 2018). Because the Periods at Issue occurred prior to June 30, 2017, the IMF does not apply in this matter. *See* Exhibit 7, S.C. Rev. Ruling #18-1.

together, if possible, to produce a single, harmonious result."). S.C. Code Ann. § 56-3-20 (2016) defines "motor vehicle" as follows:

> (2) "Motor vehicle" means 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.

Section 56-3-20(2) (emphasis added). Because the definition of "motor vehicle" contains the term "vehicle," it is necessary to consider the definition of "vehicle," which immediately precedes "motor vehicle:"

> (1) "Vehicle" means 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," it is necessary to consider the definition of "highway."

> (25) "Street" or "highway" 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.)

These definitions, in combination, conclusively demonstrate that ATVs and UTVs are not "motor vehicles" because they are designed exclusively for off road use and are not authorized to operate upon the highways of South Carolina. *See* S.C. Code Ann. § 50-26-20 (Supp. 2018); 2011 Act No. 24, § 1, eff. July 1, 2011.

The South Carolina Department of Motor Vehicles (SCDMV) processes title applications for ATVs and UTVs. (Exhibit 4, SCDMV affidavit, ¶3.) As part of the titling process, the SCDMV requires the applicant to provide the manufacturer's certificate of origin (MCO). (Ex.

4, ¶4.) An MCO specifically states the ATV or UTV is "intended for off road use only." (Attachments to Exhibit 4, Manufacturer's Certificate of Origin for an ATV and UTV.) Any title issued by the SCDMV for an ATV or UTV must contain the same language. (Ex. 4, ¶5 and attachments.)

Further, once an ATV or UTV title is issued, any subsequent title issued by the SCDMV must contain the same language. (Ex. 4, ¶6.) Simply put, ATVs and UTVs cannot be licensed for use on the highways of South Carolina because ATVs and UTVs cannot meet the statutory definitions of "motor vehicle" or "vehicle."[5] Thus, Petitioner is not entitled to the maximum tax provided for under § 12-36-2110(A) because ATVs and UTVs do not meet the statutory definition of "motor vehicle."

Moreover, S.C. Code Ann. § 56-3-110 (2016) provides the following:

> Every motor vehicle, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, operated or moved upon a highway in this State shall be registered and licensed in accordance with the provisions of this chapter. **It shall be a misdemeanor for any person to drive, operate or move upon a highway** or for the owner knowingly to permit to be driven, operated or moved upon a highway **any such vehicle which is not registered and licensed** and the required fee paid as provided for in this chapter;

S.C. Code Ann. § 56-3-110 (2016) (emphasis added). ATVs and UTVs are not authorized to operate on the highways of this State because the SCDMV does not license them to operate upon

[5] *See also* S.C. Att'y Gen. Op. of Jan. 5, 2006 (2006 WL 148719) ("[T]he State . . . will not register or license ATV's. Without such registration and licensing, ATV's cannot be operated on public highways of this State. . . . [S]uch registration and licensing are denied because it has been determined that ATV's are not designed to be road vehicles."); S.C. Att'y Gen. Op. of July 3, 2007 (2007 WL 2459760) ("As stated in the January 5, 2006 opinion, it is the understanding of this office that the State '. . . will not register or license ATVs. Without such registration and licensing, ATVs cannot be operated on public highways of this State.'").

the State's highways. It is a misdemeanor to do so. Because ATVs and UTVs are not authorized to operate on the highways of this State, ATVs and UTVs are not "motor vehicles" entitled to the maximum tax under § 12-36-2110.

### C. The Department Has Long Held The Position that ATVs Are Not Entitled To The Maximum Tax Pursuant to § 12-36-2110(A).

The Department issues advisory opinions to provide guidance concerning the application of law administered by the Department. The advisory opinions are drafted by the Department's Policy Division and are recommended to the Director. These advisory opinions include Revenue Rulings, Revenue Procedures, Letter Rulings, and Information Letters. In 2000, the Department issued an advisory opinion informing the public of its position on whether the sales of ATVs are entitled to the maximum tax pursuant to § 12-36-2110. (Exhibit 5, S.C. Rev. Advisory Bulletin #00-3.)[6] S.C. Rev. Advisory Bulletin #00-03 concludes "it is the department's opinion that sales of all terrain vehicles .... as described in the facts,[7] are not entitled to the maximum tax under Code Section 12-36-2110.") (Ex. 5, p. 4, emphasis in original.) Thus, since at least 2000, the

[6]Advisory opinions are available to the public on the Department's website at www.dor.sc.gov. For the Court's convenience, a copy of S.C. Rev. Advisory Bulletin #00-3 is attached as Exhibit 5. As indicated on page 1 of #00-3, revenue advisory bulletins do not have the force or effect of law, and are not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

[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." (Ex. 5, p. 2.)

Department has notified the public of its position that the maximum tax pursuant to § 12-36-2110(A) does not apply to the sale of ATVs.[8]

Further, the Department issued S.C. Rev. Ruling #18-1 on March 5, 2018 to provide guidance to the public concerning the application of the new IMF, which became effective July 1, 2017. (Ex. 7.) S.C. Rev. Ruling #18-1 provides specific examples regarding whether the IMF or the sales and use tax applies on the purchase of certain items. *Id.* In S.C. Rev. Ruling #18-1, the Department again informs the public that sales of all-terrain vehicles are not entitled to the maximum tax:

> A maximum tax does not apply to the sale or lease of the following items:
>
> ***
>
> - All-terrain vehicles, legend race cars, golf carts and any other items not meeting the definition of a motor vehicle.
>
> Sales 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.
>
> ***
>
> 31. Are sales by a retailer of all-terrain vehicles ("ATVs") subject to the sales and use tax?
>
> 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.

(Ex. 7, pp. 7, 16.)

Additionally, the SCDMV, via its website located at www.scdmvonline.com, informs the public of certain documentation needed before the SCDMV can issue a title on an ATV:

[8] *See also* S.C. Rev. Ruling #10-6 (issued Mar. 23, 2010) (stating the Department's opinion that sales of low speed vehicles are entitled to the maximum tax pursuant to § 12-36-2110(A)). Notably, all terrain vehicles are not "low speed vehicles." *Id.*

Titling an ATV

If you own an all-terrain vehicle (ATV), you may title it by submitting **all** of the following:

- Completed Application for Title (SCDMV Form 400)
- Manufacturer's Certificate of Origin or previous title properly assigned to the applicant
- $15
- Sales tax (there is no maximum sales tax on ATVs)

*See* Exhibit 6, screen-print of www.scdmvonline.com/Vehicle-Owners/Types-Of-Vehicles/All-Terrain-Vehicles) (emphasis in original). Thus, the public is notified that prior to the SCDMV issuing a title for an ATV, the applicant must provide proof that sales tax has been paid, and it is not subject to the maximum sales tax. *Id.*

The Department has publicly maintained that the sale of ATVs (and similarly, UTVs) are not entitled to the maximum tax pursuant to § 12-36-2110(A). Although ATVs and UTVs may be titled by the SCDMV, ATVs and UTVs are for off-road use only and may not legally operate on streets or highways. Thus, ATVs and UTVs are not "motor vehicles" or "vehicles" and are not subject to the maximum tax. The material facts not in dispute establish that the Petitioner's sales of such ATVs and UTVs are not entitled to the maximum tax for the Periods at Issue, and thus, the Department is entitled to summary judgment as a matter of law on this issue.

**D. The Petitioner is Liable for 7% Sales Tax On Utility Trailers.**

Likewise, the maximum tax of § 12-36-2110(A) does not apply to utility trailers sold by the Petitioner during the Periods at Issue. As noted above, § 12-36-2110(A) provides for a maximum tax on the sales of certain trailers:

(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[.]

S.C. Code Ann. § 12-36-2110(A)(5) and (6) (2014).

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. *See* Ex. 3, p. 3, ¶10 (the Petitioner admitting the utility trailers are capable of being pulled by a truck). It is the Department's long-standing administrative position that sales of trailers that are capable of being pulled by an automobile, minivan or pick-up truck – and that are not horse trailers or a trailer pulled by a truck tractor – are subject to this State's sales and use tax rate of 6%, plus any applicable local sales and use tax. In 2008, the Department issued a revenue ruling informing the public that the sale of "stock" trailers are subject to tax at the rate of 6% of the gross proceeds from the sale, plus any applicable local sales and use tax administered and collected by the Department. *See* S.C. Rev. Ruling #08-9, issued July 18, 2008, p. 1.[9]

[9] *See also* S.C. Rev. Ruling #08-7, issued June 30, 2008, p. 3 (concluding that a boat trailer is subject to the sales and use tax rate of 6% regardless if it is purchased alone or in conjunction with the sale of a boat); S.C. Information Letter #14-2, dated February 6, 2014, p. 5 (stating trailers or semitrailers capable of being pulled by vehicles other than a truck tractor are not entitled to the maximum tax); S.C. Information Letter #17-10,[9] issued on June 27, 2017, p. 8 (stating 6% sales tax plus any local sales and use tax is due on the purchased of a utility trailer from a licensed retailer); Ex. 7, p. 7 (stating trailers or semitrailers capable of being pulled by vehicles other than a truck tractor are not subject to the maximum tax).

Subsections 12-36-2210(A)(5) and (6) provide the maximum tax is available for specific types of trailers. The utility trailers sold by the Petitioner during the Periods at Issue are not the types of trailers specified in the §§ 12-36-2110(A)(5) and (6). Because the Petitioner cannot meet the strict requirements of the maximum tax statute, it is not entitled to claim the partial exemption for the sales of utility trailers made during the Periods at Issue. *York County Fair Ass'n, Inc.*, 249 S.C. at 341, 154 S.E.2d at 363 (concluding that in order to claim an exemption a taxpayer has the burden of "clearly bring[ing] himself with the constitutional or statutory language upon which he relies."). Accordingly, the Department properly assessed 7% sales tax on the gross proceeds of sales of utility trailers sold by the Petitioner during the Periods at Issue, and the Department is entitled to summary judgment on this issue.

## II. The Petitioner Is Liable For Use Tax On The Consumption of Tangible Personal Property Purchased Outside of South Carolina During The Audit Period.

S.C. Code Ann. § 12-36-1310(A) (2014) provides the following:

> **A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State**, at the rate of five percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

Section 12-36-1310(A) (emphasis added). In other words, if a taxpayer purchases an item at retail outside of South Carolina but uses or consumes that item within South Carolina and the seller has not already charged the taxpayer sales tax, that purchase is subject to use tax in South Carolina.

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). The primary purpose for levying a use tax is to

prevent "evasion by purchases at retail from without the State or under other circumstances which might or would avoid application of the retail sales tax." *State v. Byrnes*, 219 S.C. 485, 517, 66 S.E.2d 33, 46 (1951). More specifically, a use tax complements a sales tax by ensuring that the in-state use of an item purchased outside the state is taxed in the same amount it would be if it were purchased from a South Carolina retailer. *Thayer v. S.C. Tax Comm'n*, 307 S.C. 6, 9, 413 S.E.2d 810, 813 (1992). Additionally, the responsibility for paying use tax lies with the purchaser, as "[e]very person storing, using, or otherwise consuming in this State tangible personal property purchased at retail [and did not already pay sales tax on the item] is liable for the use tax, until the tax is paid to the State." S.C. Code Ann. § 12-36-1330(A) (2014).

Here, the Petitioner's out-of-state purchases of tangible personal property for use or consumption in South Carolina (i.e., advertising/marketing materials and business forms) are subject to use tax pursuant to § 12-36-1310(A). The Petitioner admits this in his Response to Respondent's Request for Admissions. (Ex. 3, p. 2, ¶1.) The Department properly assessed use tax against the Petitioner for out-of-state purchases made during the Periods at Issue, and the Petitioner admits such use tax liability. Accordingly, the Department is entitled to summary judgment as a matter of law on Petitioner's use tax liability for the out-of-state purchases of tangible personal property made during the Periods at Issue.

## III. The Petitioner Is Statutorily Liable For Interest That Continues to Accrue.

Interest is mandated by South Carolina law. Specifically, S.C. Code Ann. § 12-54-25(A) (2014) provides the following: "If any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety." 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, 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.*, Final Order and Decision, 01-ALJ-17-0187-CC, (C.J. Anderson, Dec. 13, 2001), 2001 WL 1744519 *7. "Unlike a penalty, there is no South Carolina statute which grants general authority to waive interest. Although there is a statute which allows interest to be compromised, that provision anticipates a settlement or quid pro quo." *Id.* Because the Petitioner and the Department did not reach a settlement, compromising the interest in this matter is not applicable.

Put simply, "[i]nterest is not a penalty." *Id.* Because the Petitioner had use of monies owed and due to this State for the outstanding tax liability, interest is applicable in this matter and continues to accrue until the tax liability is paid in its entirety. The material facts not in dispute demonstrate that the Petitioner is liable for the outstanding tax with regard to the sales of ATVs, UTVs, and utility trailers for the Periods at Issue, and the Department is entitled to summary judgment on all these issues. The Petitioner is liable for the outstanding tax liability as stated on the Department's Revised Proposed Notice of Assessment. Pursuant to § 12-54-25(A), interest continues to accrue on such liability and the Petitioner is responsible for the entire liability until it is satisfied in full.

## CONCLUSION

As the material facts are not in dispute, the Petitioner is in the business of selling of ATVs, UTVs, and utility trailers to its customers. These items are tangible personal property and the gross proceeds from the sales of these items are subject to tax under S.C. Code Ann. § 12-36-90 (2014). South Carolina law dictates that the Petitioner's gross proceeds from the sales of ATVs, UTVs, and utility trailers are subject to the entire 7% sales tax rate. The maximum tax of $300.00

on the retail sale of "motor vehicles" and certain types of trailers is inapplicable here. The Petitioner also admits that it is responsible for the use tax liability assessed for the Periods at Issue.

THEREFORE, the Department respectfully requests this Court grant the Department's Motion for Summary Judgment and enter an order finding the following: (1) that the Petitioner's sales of ATVs, UTVs, and utility trailers are not entitled to the maximum tax pursuant to § 12-36-2110(A); (2) that the Petitioner is liable for use tax on the consumption of tangible personal property purchased outside of South Carolina during the Periods at Issue; and (3) that the Petitioner is responsible for tax and interest in the amount of $165,516.92, and the interest continues to accrue until the liability is satisfied in full.

Respectfully submitted,

Nicole M. Wooten (Bar No. 73594)
Counsel for Litigation
Marcus Antley, III (Bar No. 102176
Counsel for Litigation
Jason P. Luther (Bar No. 78021)
General Counsel for Litigation
P.O. Box 12265
Columbia, SC 29211-9979
803-898-1826
803-896-0171 (Fax)
Attorneys for Department of Revenue
Nicole.Wooten@dor.sc.gov
Courtorders@dor.sc.gov

Columbia, South Carolina
March 22, 2019

# *EXHIBIT 1*

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | | |
|---|---|---|
| Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports, Petitioner, vs. South Carolina Department of Revenue, Respondent. | ) | **DOCKET NO. 18-ALJ-17-0393-CC** |
| | ) | **AFFIDAVIT OF TABITHA WOOD** |

I, Tabitha Wood, after first being duly sworn, do hereby make oath and affirm as follows:

1. I am over eighteen years of age, suffer from no known disability, and am competent to testify to the facts set forth herein. The statements in this affidavit are made based on my personal knowledge, including my review of the issues in this case.

2. I am an Auditor III/Sales Tax Auditor D-1 in the Field Operations section for the South Carolina Department of Revenue (Department). I have a B.S. in Accounting from the University of South Carolina. I have been employed with the Department since 2004, and I have worked as a sales tax auditor in Field Operations since 2006. As an auditor, I regularly conduct field audits of books, records, and South Carolina sales and use tax returns in my ordinary course of employment.

3. In my capacity as an auditor, I was assigned to conduct the audit examination of the books, records, and Sales and Use Tax returns for Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports (Petitioner). The Petitioner's business is located in Lexington County.

4. As part of my work, I have personally inspected the Petitioner's Sales and Use Tax Returns and related records for the periods August 31, 2013 through July 31, 2016 (Periods at Issue).

5. During the Periods at Issue, the sales tax rate in Lexington County was 7%.

6. In reviewing Petitioner's records related to the Sales and Use Tax Returns for the Periods at Issue, I determined that Petitioner received revenue from the retail sale of motorcycles, all-terrain vehicles (ATVs), utility task vehicles (UTVs), and utility trailers.

7. In my review of the Petitioner's records related to its Sales and Use Tax Returns for the Periods at Issue, I determined that the Petitioner did not remit use tax to the Department on the out-of-state purchases of tangible personal property. After determining the Petitioner did not remit such use tax, I calculated the use tax due for each transaction by multiplying the tax rate for

Lexington County by the price of the out-of-state purchases made by the Petitioner during the Periods at Issue.

8. In my review of the Petitioner's Sales and Use Tax Returns for the Periods at Issue, I determined that the Petitioner collected from its customers no more than $300.00 of sales tax for each sale of an all-terrain vehicle (ATV), utility task vehicle (UTV), and utility trailer.

9. After a review of the Petitioner's records and the Department's records, I calculated the sales tax due for each transaction by multiplying the tax rate for Lexington County by the price the Petitioner charged its customers for each ATV, UTV, and utility trailer sold during the Periods at Issue. I then applied the amount of tax previously remitted by the Petitioner during the Periods at Issue as a credit against the amount sales tax due on the purchase of such ATVs, UTVs, and utility trailers.

10. After a review of the Petitioner's records and the Department's records, I prepared and issued a Proposed Notice of Assessment on January 31, 2017 to the Petitioner for $202,758.14 due in sales and use tax, interest, and penalties. The outstanding sales tax liability stated in the Proposed Notice of Assessment is based upon Petitioner's sales of motorcycles, ATVs, UTVs, and utility trailers. The outstanding use tax liability stated in the Proposed Notice of Assessment is based upon Petitioner's out-of-state purchases in which it did not remit use tax to the Department during the Periods at Issue. The penalties stated in the Proposed Notice of Assessment are based upon the Petitioner's failure to file and failure to pay sales tax due for the period ending May 31, 2015.

11. The Petitioner timely protested the Notice of Proposed Assessment on April 28, 2017.

12. After receiving additional information from the Petitioner, I prepared and issued a Revised Notice of Proposed Assessment 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 Notice of Proposed Assessment did not include any sales tax assessments related to the retail sales of motorcycles.

13. The Petitioner timely protested the Revised Notice of Proposed Assessment, and I forwarded Petitioner's file to the Department's Appeal section.

14. As of the date of this affidavit, the outstanding tax, interest, and penalties as stated on the August 17, 2017 Revised Notice of Proposed Assessment remain unpaid.

FURTHER AFFIANT SAYETH NOT.

**[Signature on following page]**

Tabitha Wood

Tabitha Wood

SWORN and subscribed to before me
this 22nd day of March, 2019.

Geneva C. McIntosh

Notary Public for South Carolina
My Commission Expires: 2/5/2020

# EXHIBIT 2

MAP & HOURS 1500 W MAIN ST. LEXINGTON, SC
(803) 359-4864

JACK'S MOTORSPORTS

Search Here... GO

U-HAUL

HOME | SHOWROOM | SERVICE | PARTS DEPT. | DEALER INFO | CUSTOMER CORNER | CONTACT

BROWSE
## NEW MODELS

BROWSE
## PRE-OWNED

LOOK FOR
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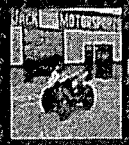
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## OUR BRANDS

POLARIS
TRIKE
DOWN 2 EARTH
POLARIS POWER
U-HAUL

## ABOUT US

If you need extras for your motorcycle, Polaris® or Slingshot®, Jack's Motorsports in Lexington, South Carolina can help. If you are looking for new or used Polaris® ATVs or UTVs as well as the Slingshot® we have great deals. We also carry motorcycle parts and accessories, pre-owned motorcycles, and more from Harley-Davidson® and leading V-Twin manufacturers and distributors. At Jack's Motorsports, we offer service on most any V-Twins, installation of Polaris OEM and aftermarket parts and accessories, insurance claims work, and additional services for all our customers.

Browse through our extensive online product catalogs to find everything you need for yourself, your bike, or the racer in your life. We make it easy to find what you're looking for. If you're outside of Lexington County, Richland County, or the surrounding area, bookmark our site and come back frequently to see the specials and discounts available to our online customers.

CONTACT US
1500 W Main St.
Lexington, SC 29072
Phone: (803) 359-4864
Fax: (803) 359-1184
MAP & HOURS

QUICK LINKS
NEW INVENTORY
PRE-OWNED INVENTORY
GET FINANCED
PARTS DEPARTMENT
CUSTOMER TESTIMONIALS

HOURS
TUES. - FRI. 9:00AM - 5:30PM
SATURDAY 9:00AM - 4:00PM
SUNDAY CLOSED
MONDAY BY APPOINTMENT

E-NEWSLETTER SIGN-UP

POLICY | PRIVACY | TERMS | SITE MAP

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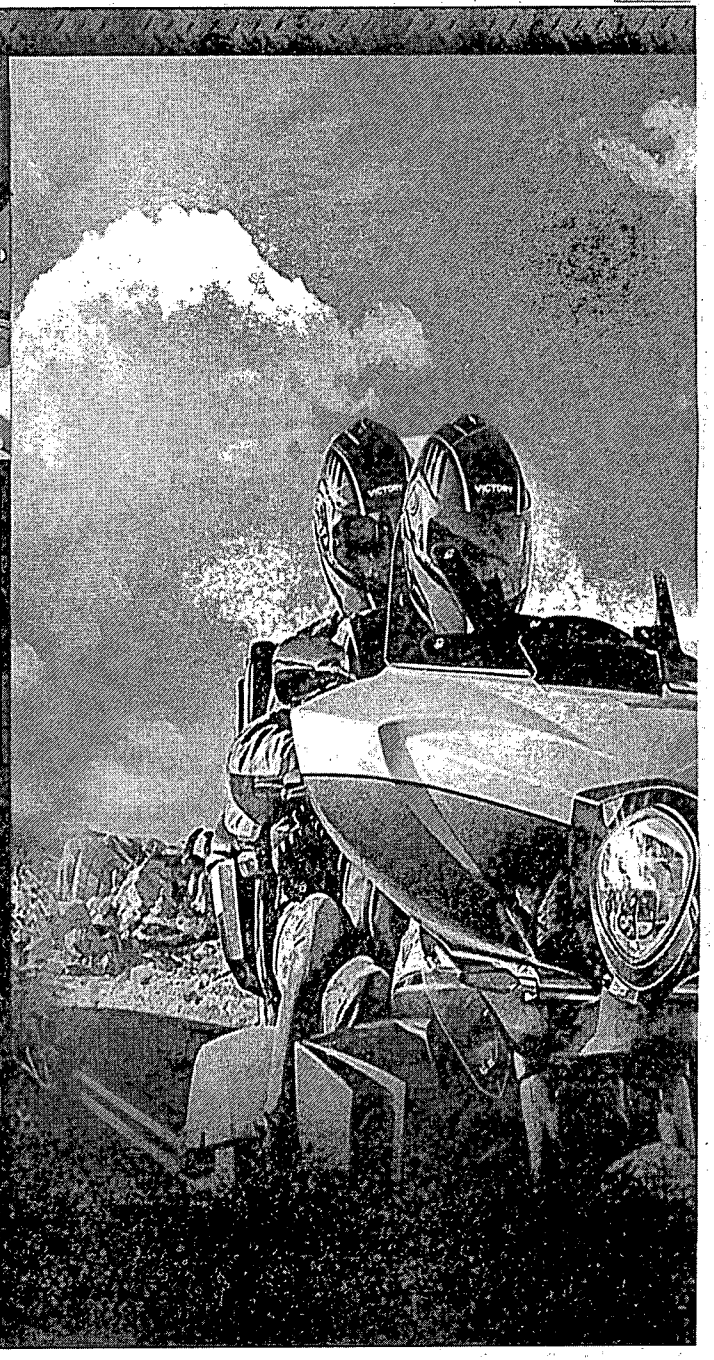

# *EXHIBIT 3*

SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

| | | |
|---|---|---|
| Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports<br><br>Petitioner,<br>vs.<br><br>South Carolina Department of Revenue,<br><br>Respondent. | ) | DOCKET NO. 18-ALJ-17-0393-CC |

**OBJECTIONS AND RESPONSES OF PETITIONER TO REQUESTS FOR ADMISSIONS**

Each of Petitioner's responses, in addition to any specifically stated objections, is subject to and incorporates the following General Objections. The assertion of the same, similar, or additional objections, or a partial response to an individual Request does not waive any of Petitioner's General Objections.

1. Petitioner objects to these Requests to the extent that they are overbroad and unduly burdensome and impose obligations in excess of those imposed by the South Carolina Rules of Civil Procedure.

2. Petitioner objects to these Requests to the extent that they seek information that is neither relevant to the claims or defenses of any party to this litigation, nor reasonably calculated to lead to the discovery of admissible evidence.

3. Petitioner objects to these Requests to the extent that they seek information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, protection, or immunity.

4. Petitioner objects to these Requests to the extent that they call for legal conclusions or otherwise attempt to re-cast legal issues as factual matters.

5. The following Responses reflect Petitioner's present knowledge, information and belief and may be subject to change or modification based on Petitioner's further discovery, or facts or circumstances which may come to Petitioner's knowledge. Petitioner specifically

reserves the right to further supplement, amend or otherwise revise these Responses to these Requests in accordance with South Carolina Rules of Civil Procedure.

## RESPONSES TO REQUESTS FOR ADMISSION

1. Petitioner is liable for use tax in the amount of $189.86 (plus interest) on the consumption of tangible personal property purchased outside of South Carolina from August 31, 2013 through July 31, 2016 ("Audit Period").

**RESPONSE:** Admitted

2. Petitioner made retail sales to its customers for the period ending May 31, 2015

**RESPONSE:** Admitted

3. Petitioner failed to file a South Carolina Sales and Use Tax Return for period ending May 31, 2015.

**RESPONSE:** Denied

4. Petitioner failed to pay any sales or use tax for the period ending May 31, 2015.

**RESPONSE:** Denied

5. Petitioner sold all-terrain vehicles (ATVs), side-by-side or utility vehicles (UTVs) and utility trailers during the Audit Period.

**RESPONSE:** In addition to the foregoing General Objections, Petitioner's interpretation of the products sold and Respondent's use of the terms "all-terrain vehicles (ATVs), side-by-side or utility vehicles (UTVs) and utility trailers" are included in the legal definition of "motor vehicle" at set forth in the South Carolina Statutes and object to any inference by Respondent otherwise contradicting the legal definition. Subject to and without waiving the foregoing General and Specific Objections, Petitioner admits it sold "motor vehicles" as defined by statute, and otherwise denies this Request as written and inferred by Respondent.

6. Petitioner did not remit more than $300 of sales tax to the Department for each retail sale of an ATV, UTV, and utility trailer during the Audit Period

**RESPONSE:** In addition to the foregoing General Objections, Petitioner's interpretation of the products sold and Respondent's use of the terms "all-terrain vehicles (ATVs), side-by-side or utility vehicles (UTVs) and utility trailers" are included in the legal definition of "motor vehicle" at set forth in the South Carolina Statutes and object to any inference by Respondent otherwise contradicting the legal definition. Petitioner specifically objects to this Request as it

infers the products sold by Petitioner during the Audit period were not "motor vehicles" as statutorily defined. Subject to these objections, Petitioner admits it paid the maximum sales tax of $300.00 on the retail products sold during the Audit Period.

7. The ATVS and UTVs sold by the Petitioner during the Audit Period are vehicles with three or more wheels designed primarily for off-road travel but do not include vehicles that are required to be licensed or titled for highway use.

**RESPONSE:** In addition to the foregoing General Objections, Petitioner's interpretation of the products sold and Respondent's use of the terms "all-terrain vehicles (ATVs), side-by-side or utility vehicles (UTVs) and utility trailers" are included in the legal definition of "motor vehicle" at set forth in the South Carolina Statutes and object to any inference by Respondent otherwise contradicting the legal definition. Petitioner specifically objects to this Request as it infers the products sold by Petitioner during the Audit period were not "motor vehicles" as statutorily defined. Subject to these objections, Petitioner denies this request as written.

8. The utility trailers sold by the Petitioner during the Audit Period are not included in the types of trailers listed in S.C. Code Ann. § 12-36-2110(A)(5)(2014).

**RESPONSE:** Subject to the General Objections, Petitioner denies this request as written.

9. The utility trailers sold by the Petitioner during the Audit Period are not included in the types of trailers listed in S.C. Code Ann. §12-36-2110 (A)(6)(2014).

**RESPONSE:** Subject to the General Objections, Petitioner denies this request as written.

10. The utility trailers sold by the Petitioner during the Audit Period are capable of being pulled by an automobile, minivan, or truck.

**RESPONSE:** Subject to the General Objections, Petitioner admits the trailers sold during the audit period could be pulled by a truck.

ECTON LAW FIRM, PA

By: _____

John A. Ecton
Margaret Laurin Dukes
7911 Broad River Road, Ste. 100
Irmo, South Carolina 29063
803-771-9800
Attorneys for Petitioner

Irmo, South Carolina

February 22, 2019

# EXHIBIT 4

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | | |
|---|---|---|
| Jack's Custom Cycles, Inc., d/b/a Jack's Motor Sports,<br><br>Petitioner,<br><br>vs.<br><br>South Carolina Department of Revenue,<br><br>Respondent. | ) | **DOCKET NO. 18-ALJ-17-0393-CC**<br><br>**AFFIDAVIT OF LORI JACKSON** |

I, Lori Jackson, after first being duly sworn, do hereby make oath and affirm as follows:

1. I am over eighteen years of age, suffer from no known disability, and am competent to testify to the facts set forth herein. The statements in this affidavit are made based on my personal knowledge.

2. I am an Administrative Coordinator I in the Mail-In Titles and Registrations division of the South Carolina Department of Motor Vehicles (SCDMV). I have been employed with the SCDMV since April 4, 2011, and I have worked as a Supervisor in Mail-In Titles and Registrations since December 3, 2018. As a supervisor, I regularly process title and registration applications for the SCDMV in my ordinary course of employment.

3. The SCDMV processes title applications for all-terrain vehicles (ATVs) and utility task vehicles (UTVs) owned by South Carolina residents.

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

5. Because the MCO states that such an ATV or UTV is intended for off-road use only, any ATV or UTV title issued by the SCDMV must be branded for off road use only. (See attached copies of SCDMV issued titles for ATVs and a UTV).

6. Once a SCDMV title is issued for an ATV or UTV with the branding for off road use only, any subsequent SCDMV issued title for such ATV or UTV must be branded for off road use only.

7. In my review of the SCDMV's records, I am not aware of any ATV or UTV title being issued for an ATV or UTV that is not branded for off road use only

FURTHER AFFIANT SAYETH NOT.

Lori Jackson

Lori Jackson

SWORN and subscribed to before me
this 14th day of March, 2019.

Notary Public for South Carolina
My Commission Expires: February 26, 2023

# MANUFACTURER'S CERTIFICATE OF ORIGIN

## American Honda Motor Co. Inc.

DATE
09/17/2018

VEHICLE IDENTIFICATION NO.
[redacted]

BODY TYPE
4 WHEEL A.T.V.

H.P.(S.A.E) 26.6

WHEELS 4

ENGINE NO.
TE40E-8604998

SHIPPING WEIGHT
585.0

NO.CYLS. 1

BRAKE

INVOICE NO.
7026810 105405

MAKE HONDA

MODEL YEAR 2019

ENG.DISP

MAX.SPEED

SERIES OR MODEL
RANCHER 4X4
TRX420FM1 248448

I, THE UNDERSIGNED AUTHORIZED REPRESENTATIVE OF THE COMPANY, FIRM OR CORPORATION NAMED BELOW, HEREBY CERTIFY THAT THE NEW VEHICLE DESCRIBED ABOVE IS THE PROPERTY OF THE SAID COMPANY, FIRM OR CORPORATION AND IS TRANSFERRED ON THE ABOVE DATE AND UNDER THE INVOICE NUMBER INDICATED TO THE FOLLOWING DISTRIBUTOR OR DEALER.

NAME OF DISTRIBUTOR, DEALER, ETC.

[redacted]

THIS VEHICLE WAS NOT MANUFACTURED FOR USE ON PUBLIC STREETS, ROADS, OR HIGHWAYS.

IT IS FURTHER CERTIFIED THAT THIS WAS THE FIRST TRANSFER OF SUCH NEW VEHICLE IN ORDINARY TRADE AND COMMERCE.

American Honda Motor Co., Inc.

BY: _____
(SIGNATURE OF AUTHORIZED REPRESENTATIVE) VICE PRESIDENT

048479928

Torrance, California
CITY - STATE

FORM 1454 (10-02)

# CERTIFICATE OF ORIGIN FOR A VEHICLE

YAMAHA

## YAMAHA MOTOR CORPORATION, U.S.A.

DATE
06/28/2018

INVOICE NO.
91433674

VEHICLE IDENTIFICATION NO.
[redacted]

YEAR
2019

MAKE
YAMAHA 421 CC

BODY TYPE
4-WHEEL OFF ROAD VEHICLE

SHIPPING WEIGHT
606.000 LBS

| H.P. (S.A.E.) | G.V.W.R. | NO CYLS. | SERIES OF MODEL | ENGINE ID. NO. |
|---|---|---|---|---|
| 26.8 | | 1 | YFM45KDXRG | J341E-0015553 |

NOTICE: THIS VEHICLE WAS NOT MANUFACTURED FOR USE ON PUBLIC STREETS, ROADS OR HIGHWAYS. SUCH USE IS PROHIBITED BY LAW.

I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle/boat or motor described above is the property of the said company, firm or corporation and is transferred on the above date and under the Invoice Number indicated to the following distributor or dealer.

NAME OF DISTRIBUTOR, DEALER, ETC.

[redacted]

PID: AJ803-0100586

It is further certified that this was the first transfer of such new vehicle in ordinary trade and commerce.

YAMAHA MOTOR CORPORATION, U.S.A.

BY: Exec. Vice President, Secretary/Treasurer
(SIGNATURE OF AUTHORIZED REPRESENTATIVE) (AGENT)

YA 5522353

Cypress, California 90630
CITY - STATE

Y10512 REV. 8/2016

RZR3365

# CERTIFICATE OF ORIGIN FOR A VEHICLE

POLARIS INDUSTRIES INC.

DATE
09/03/15

INVOICE NO.
441540

VEHICLE IDENTIFICATION NO.
[redacted]

MODEL YEAR
2016

MAKE
POLARIS

BODY TYPE
RZR-16,TURBO,PS,VEL BLUE

LENGTH
"

SHIPPING WEIGHT
1478

| H.P.(S.A.E.) | G.V.W.R. | NO.CYLS. | SERIES OR MODEL |
|---|---|---|---|
| | | 2 | Z16VDE92AV |

| ENGINE SIZE | ENGINE SERIAL NO. | ENGINE MODEL |
|---|---|---|
| 925 cc | 0120505203219 | 1205052 |

THIS OFF-ROAD VEHICLE IS NOT INTENDED FOR, AND MAY NOT BE REGISTERED FOR, ON-ROAD USE.

I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle described above is the property of the said company, firm or corporation and is transferred on the above date and under the Invoice Number indicated to the following distributor or dealer.

NAME OF DISTRIBUTOR, DEALER, ETC.

[redacted]

It is further certified that this was the first transfer of such new vehicle in ordinary trade and commerce.

POLARIS INDUSTRIES INC.

BY: BQ Mary — President/COO
(SIGNATURE OF AUTHORIZED REPRESENTATIVE) (AGENT)

MEDINA, MINNESOTA 55340 USA
CITY-STATE

PI005044904

Received

GO POWERSPORTS
1719 E PALMETTO ST
FLORENCE SC 29506

# CERTIFICATE OF ORIGIN FOR A VEHICLE

POLARIS INDUSTRIES INC.

DATE
06/14/18

INVOICE NO.
497143

VEHICLE IDENTIFICATION NO.
[redacted]

MODEL YEAR
2019

MAKE
POLARIS

BODY TYPE
RGR-19, CREW, 1000XP, PS, NSTAR

LENGTH
"

SHIPPING WEIGHT
2394

H.P.(S.A.E.)

G.V.W.R.

NO.CYLS.
2

SERIES OR MODEL
R19RSU99AS

ENGINE SIZE
999 CC

ENGINE SERIAL NO.
1205641003230

ENGINE MODEL
1205641

THIS OFF-ROAD VEHICLE IS NOT INTENDED FOR, AND MAY NOT BE REGISTERED FOR, ON-ROAD USE.

I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle described above is the property of the said company, firm or corporation and is transferred on the above date and under the Invoice Number indicated to the following distributor or dealer.

NAME OF DISTRIBUTOR, DEALER, ETC.

[redacted]

It is further certified that this was the first transfer of such new vehicle in ordinary trade and commerce.

POLARIS INDUSTRIES INC.

BY: _____ EVP of Finance/CFO
(SIGNATURE OF AUTHORIZED REPRESENTATIVE) (AGENT)

MEDINA, MINNESOTA 55340 USA
CITY-STATE

PI005989215

AMERICAN BIKER OF CHARLESTON, L.L.C.
dba AMERICAN BIKER
679 TREELAND DR
LADSON SC 29456

P012966

# CERTIFICATE OF ORIGIN FOR A VEHICLE

POLARIS® INDUSTRIES INC.

| DATE | | | INVOICE NO. |
|---|---|---|---|
| 11/30/18 | | | 887828 |
| VEHICLE IDENTIFICATION NO. | | MODEL YEAR | MAKE |
| [redacted] | | 2019 | POLARIS |
| BODY TYPE | | LENGTH | SHIPPING WEIGHT |
| RZR-19,TURBO,S4,72,DX,P.B | | " | 1989 |
| H.P.(S.A.E.) | G.V.W.R. | NO.CYLS. | SERIES OR MODEL |
| | | 2 | Z19VPL92AK |
| ENGINE SIZE | ENGINE SERIAL NO. | | ENGINE MODEL |
| 925 cc | 0120590452256 | | 1205904 |

THIS OFF-ROAD VEHICLE IS NOT INTENDED FOR, AND MAY NOT BE REGISTERED FOR, ON-ROAD USE.

I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle described above is the property of the said company, firm or corporation and is transferred on the above date and under the Invoice Number indicated to the following distributor or dealer:

NAME OF DISTRIBUTOR, DEALER, ETC.

[redacted]

It is further certified that this was the first transfer of such new vehicle in ordinary trade and commerce.

POLARIS INDUSTRIES INC.

BY: _____ EVP of Finance/CFO
(SIGNATURE OF AUTHORIZED REPRESENTATIVE) (AGENT)

PI006164851

MEDINA, MINNESOTA 55340 USA
CITY-STATE

[redacted]

S2032B (MODIFIED)

# STATE OF SOUTH CAROLINA
# CERTIFICATE OF TITLE
## OF A VEHICLE

| VEHICLE ID NUMBER | YEAR | MAKE | MODEL | NEW/USED |
|---|---|---|---|---|
| [redacted] | 2017 | YAMA | YXM700 | NEW |

| BODY STYLE | DATE ISSUED | ODOMETER | WEIGHT | TITLE NUMBER |
|---|---|---|---|---|
| ATV | 05-18-2017 | | 1825 | [redacted] |

VEHICLE BRAND(S)
EXEMPT
OFF ROAD USE ONLY

FULL NAME OF OWNER(S)
[redacted]

CUSTOMER NUMBER: [redacted]

THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH.

KEVIN A. SHWEDO
EXECUTIVE DIRECTOR

HENRY McMASTER
GOVERNOR

KEEP IN A SAFE PLACE - ANY ALTERATION OR ERASURE VOIDS THIS TITLE

051381216

14025 672012-23 4-12-07

# STATE OF SOUTH CAROLINA
# CERTIFICATE OF TITLE
## OF A VEHICLE

| VEHICLE ID NUMBER | YEAR | MAKE | MODEL | NEW/USED |
|---|---|---|---|---|
| [redacted] | 2006 | HARS | MHX70 | NEW |

| BODY STYLE | DATE ISSUED | ODOMETER | WEIGHT | TITLE NUMBER |
|---|---|---|---|---|
| ATV | 04-09-2007 | | 400 | [redacted] |

VEHICLE BRAND(S)
EXEMPT
OFF ROAD USE ONLY

FULL NAME OF OWNER(S)
[redacted]

CUSTOMER NUMBER: [redacted]

FIRST LIENHOLDER
GEORGETOWN KRAFT CREDIT UNION
1530 BOURNE ST
GEORGETOWN SC 294404775
DATE OF LIEN 11/17/2006

1ST LIEN RELEASED 4/15/07
(DATE)
BY [signature]
(AUTHORIZED AGENT)

TITLE SECTION NOV 13 2007

THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

MARK SANFORD
GOVERNOR

DO NOT ALTER OR ERASE ANY INFORMATION ON THIS CERTIFICATE OF TITLE

037943139

# STATE OF SOUTH CAROLINA
# CERTIFICATE OF TITLE
## OF A VEHICLE

| VEHICLE ID NUMBER | YEAR | MAKE | MODEL | NEW/USED |
|---|---|---|---|---|
| [redacted] | 2016 | POLS | RZR | NEW |

| BODY STYLE | DATE | ODOMETER | WEIGHT | TITLE NUMBER |
|---|---|---|---|---|
| UTV | 9/29/2017 | 3 | 1495 | [redacted] |

VEHICLE BRAND(S)
ACTUAL MILEAGE
OFF ROAD USE ONLY

FULL NAME OF OWNER(S) CUSTOMER NUMBER: [redacted]

[redacted]

THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH.

KEVIN A. SHWEDO
EXECUTIVE DIRECTOR

HENRY MCMASTER
GOVERNOR

KEEP IN A SAFE PLACE - ANY ALTERATION OR ERASURE VOIDS THIS TITLE

39284825

# EXHIBIT 5

State of South Carolina

**Department of Revenue**

301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE ADVISORY BULLETIN 00-03

SUBJECT: All Terrain Vehicles and Legend Race Cars Maximum Tax Provisions (Sales and Use Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-36-2110 (Supp. 1998)
S. C. Code Ann. Section 56-3-20 (1976; Supp. 1998)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1998)
S. C. Code Ann. Section 1-23-10(4) (Supp. 1998)
SC Revenue Procedure #99-4

SCOPE: The purpose of a Revenue Advisory Bulletin is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Advisory Bulletin does not have the force or effect of law, and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Questions:

1. Are sales of all terrain vehicles as described in the facts entitled to the maximum tax under Code Section 12-36-2110 as "motor vehicles" or "recreational vehicles?"

2. Are sales of legend race cars as described in the facts entitled to the maximum tax under Code Section 12-36-2110 as "motor vehicles" or "recreational vehicles?"

Conclusions:

1. It is the department's opinion that sales of all terrain vehicles as described in the facts are not entitled to the maximum tax under Code Section 12-36-2110.

2. It is the department's opinion that sales of legend race cars as described in the facts are not entitled to the maximum tax under Code Section 12-36-2110.

ROA 241

Facts:

The question has arisen as to whether all terrain vehicles or legend race cars are entitled to the maximum tax of $300.

All 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.

Legend race cars are automobile race cars powered by motorcycle engines and used at various speedways around the nation. These vehicles can be titled but cannot be licensed for use on the highways of South Carolina.

Discussion:

The issue is whether all terrain vehicles and legend race cars are "motor vehicles" or "recreational vehicles" entitled to the maximum tax of $300 as set forth in Code Section 12-36-2110(A).

Code Section 12-36-2110(A) reads in part:

> (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;
>
> (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.
>
> In the case of a lease, the total tax rate required by law applies on each payment until the total tax paid equals three hundred dollars. Nothing in this section prohibits a taxpayer from paying the total tax due at the time of execution of the lease, or with any payment

under the lease. To qualify for the tax limitation provided by this section, a lease must be in writing and specifically state the term of, and remain in force for, a period in excess of ninety continuous days.

Even though Code Section 12-36-2110 does not refer to the definition in Code Section 56-3-20 with respect to "motor vehicles" (it does with respect to trailers and semitrailers), under the above rule of construction, it is proper to do so under the rule of statutory construction of statutes in pari materia.

The following from 73 Am. Jur. 2D Statutes Section 188 explains this rule of construction:

> Under the rule of statutory construction of statutes in pari materia, statutes are not to be considered as isolated fragments of law, but as a whole, or as parts of a great, connected, homogenous system. Such statutes are considered as if they constituted but one act, so that sections of one act may be considered as though they were parts of the other act, as far as this can reasonably be done. Indeed, as a general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, unless a different purpose is shown plainly.

Code Section 56-3-20 defines a "motor vehicle" as follows:

> (2) "Motor vehicle:" 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.)

Code Section 56-3-20 defines a "vehicle" and "highway" as follows:

> (1) "Vehicle:" 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; (Emphasis added.)
>
> (25) "Street" or "highway:" 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.

Based on the phrase "is or may be transported or drawn upon a highway" as found in the definition of "vehicle," a motor vehicle or a recreational vehicle is one which is authorized for use on the highways of this state.

All terrain vehicles and legend race cars are not authorized to operate on the highways of this state.

Based on the above, it is the department's opinion that sales of all terrain vehicles and legend race cars, as described in the facts, are not entitled to the maximum tax under Code Section 12-36-2110.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth Carpentier
Elizabeth Carpentier, Director

March 27, 2000
Columbia, South Carolina

ROA 244

# EXHIBIT 6

# ALL-TERRAIN VEHICLES

*You may hear an ATV referred to as a four-wheeler.*

## What is an ATV?

All-terrain vehicles are designed primarily for off-road travel and are no more than 50 inches wide. They may have three or more low-pressure tires and handle bars for steering. They do not include lawn tractors, battery-powered children's toys, or a vehicle that is required to be licensed or titled for highway use.

### Titling an ATV

If you own an all-terrain vehicle (ATV), you may title it by submitting **all** of the following:

- Completed Application for Title (SCDMV Form 400) (/-/media/Forms/400.ashx?la=en&hash=C4D4788A5F04A91A20A326D325F00180FA7D6955)
- Manufacturer's Certificate of Origin or previous title properly assigned to the applicant
- $15
- Sales tax (there is no maximum sales tax on ATVs)

ATVs must have **all** of the following equipment in good working condition:

- An effective muffler system
- USDA Forest Service approved spark arrester
- Brake system

### What is against the law when it comes to an ATV?

It is against the law to remove the age restriction warning label attached to the all-terrain vehicle (ATV) by the manufacturer.

You **cannot** drive an ATV:

- More than 30 minutes after sunset or more than 30 minutes before sunrise unless headlights are one
- Under the influence of alcohol or drugs
- In a reckless manner

Parents or guardians **cannot** allow:

- Anyone less than six to drive an ATV
- Anyone 16 or younger to drive an ATV unless with an adult
- Anyone less than 16 drive an ATV with a passenger who is not an adult
- Anyone less than 16 to drive an ATV in violation of the warning label on the vehicle
- Anyone 15 or younger to:
  - Drive an ATV without successfully completing a "hands-on" ATV safety course approved by the All-Terrain Vehicle Safety Institute (AVSI)
  - Drive or ride an ATV in South Carolina without a helmet and eye protection

SC Code Sections 56-19-1010, -1020, -1030, (http://www.scstatehouse.gov/code/t56c019.php) 50-26. (http://www.scstatehouse.gov/code/t50c026.php)



CONTACT
help@scdmvonline.com (mailto:help@scdmvonline.com?subject=Question%20for%20the%20SCDMV)
803-896-5000
Hearing Impaired Number (/About)

MAILING ADDRESS
SCDMV
PO Box 1498
Blythewood, SC 29016

STREET ADDRESS
10311 Wilson Boulevard
Building C
Blythewood, SC 29016

Select Language



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Website by **Cyberwoven** (http://www.cyberwoven.com) & **NWN** (http://www.nwnit.com)

# EXHIBIT 7

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

# SC REVENUE RULING #18-1

| | |
|---|---|
| SUBJECT: | Motor Vehicles, Motorcycles, Trailers, Semitrailers, Pole Trailers and Other Vehicles<br>(Sales and Use Tax) |
| EFFECTIVE DATE: | July 1, 2017 |
| SUPERSEDES: | SC Revenue Ruling #10-6[1], SC Revenue Ruling #05-4, SC Revenue Advisory Bulletin #00-03[2], SC Revenue Ruling #97-5, and all previous advisory opinions and any oral directives in conflict herewith. |
| REFERENCES: | Title 12, Chapter 36 of the S.C. Code of Laws (2014, Supp. 2016)<br>Act 40 of 2017, Sections 5 and 7 (Enacted May 10, 2017) |
| AUTHORITY: | S.C. Code Ann. Section 12-4-320 (2014)<br>S.C. Code Ann. Section 1-23-10(4) (2005)<br>SC Revenue Procedure #09-3 |
| SCOPE: | The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion. |

## INTRODUCTION:

South Carolina imposes a sales and use tax on persons engaged in the business of selling tangible personal property at retail, including motor vehicles, motorcycles, trailers, semitrailers, and pole trailers. However, effective July 1, 2017, sales or purchases of most motor vehicles, motorcycles, trailers, semitrailers, and pole trailers are subject to a new Infrastructure Maintenance Fee instead of a sales and use tax or a casual excise tax.

[1] See Question #29 of this advisory opinion (SC Revenue Ruling #18-1).
[2] See Questions #31 and 33 of this advisory opinion (SC Revenue Ruling #18-1).

***Infrastructure Maintenance Fee***

The General Assembly recently enacted the South Carolina Infrastructure and Economic Development Reform Act to address the needs of South Carolina's transportation infrastructure system. As part of its effort to improve the State's transportation infrastructure network, a new infrastructure maintenance fee became effective July 1, 2017.

*Registration in South Carolina upon Purchase or Lease*: The owner of each vehicle, trailer, semitrailer or other item that must be registered pursuant to Chapter 3 of Title 56 must pay the infrastructure maintenance fee upon first registering the vehicle, trailer, semitrailer or other item with the SC Department of Motor Vehicles ("SCDMV"). The infrastructure maintenance fee is remitted to SCDMV and is imposed at a rate of 5% of the gross proceeds of the sale, not to exceed $500, for a sale by a licensed SCDMV dealer, or 5% of the vehicle's fair market value, not to exceed $500, for a sale by a person who is not a SCDMV licensed dealer.

Sales that are subject to the new infrastructure maintenance fee are exempt from state and local sales and use taxes (Code Section 12-36-2120(83)).

If a dealer has a South Carolina retail license or offers to license and register the item, then the dealer must collect the infrastructure maintenance fee and remit it to SCDMV. Generally, based on information from SCDMV, a dealer is a person in the business of selling motor vehicles (e.g., cars, trucks, motorcycles, and motor homes) that is licensed with SCDMV. A dealer also includes, effective November 19, 2018, a person licensed with SCDMV in the business of selling mopeds.

*Registration in South Carolina after First Registration in Another State*: The infrastructure maintenance fee is also imposed when a vehicle, trailer, semitrailer or other item required to be registered under Chapter 3 of Title 56 was first registered in another state by the owner and is subsequently registered for the first time in South Carolina by the same owner. This infrastructure maintenance fee is $250, but it does not apply to active duty members of the military, their spouses, and their dependents.

***Sales and Use Tax and Casual Excise Tax***

Sales of vehicles by persons engaged in the business of selling tangible personal property at retail that are not required to be registered with SCDMV under Chapter 3 of Title 56 are subject to the sales and use tax. The tax due on such sales depends on whether the vehicle is subject to the maximum tax provisions of Code Section 12-36-2110 and whether the vehicle will be registered by the purchaser in his state of residence.

If the sale of a vehicle is subject to the maximum tax provisions of Code Section 12-36-2110, then the sales and use tax is imposed at a rate of 5% of "gross proceeds of sales" or "sales price," not to exceed $500. Local sales and use taxes do not apply.

If the sale of a vehicle is not subject to the maximum tax provisions of Code Section 12-36-2110, then the sales and use tax is imposed at a rate of 6% of "gross proceeds of sales" or "sales price," plus any applicable local sales and use tax.

However, if the vehicle is a motor vehicle, or a trailer, semitrailer, or pole trailer of a type to be registered and licensed, and is sold to a nonresident for registration in his state of residence, then the sales tax is imposed at the lesser of the sales tax due in the purchaser's state of residence or the sales tax due in South Carolina, unless the sale is otherwise excluded or exempted from the South Carolina sales and use tax. However, no sales tax is due in South Carolina if the nonresident purchaser cannot receive a credit in his state of residence for sales tax paid to South Carolina.

The casual excise tax, which is imposed upon the issuance of a certificate of title or other proof of ownership for certain items, no longer applies to motor vehicles and motorcycles effective July 1, 2017.

**GENERAL SUMMARY:**

The application of the new infrastructure maintenance fee or the sales and use tax on the sale or purchase of a vehicle can generally be summarized as follows (unless the transaction is otherwise exempt):

General Rule:

- If the vehicle is required to be registered under Chapter 3 of Title 56 and is registered with the SCDMV, the infrastructure maintenance fee applies and is remitted to the SCDMV. The sale or purchase of a vehicle that is subject to the infrastructure maintenance fee is exempt from state and local sales and use taxes.

- If the vehicle is of a type that is not required to be registered with the SCDMV, then the sales and use tax would apply and is remitted to the Department of Revenue (e.g., a utility trailer purchased for personal use).

Sales to Nonresidents:

**Maximum Tax Items**

- If the vehicle is subject to the maximum tax provisions of Code Section 12-36-2110(A)(1) (e.g., motor vehicle, motorcycle, recreational vehicle), is of a type that would be registered in South Carolina if not for it being registered out-of-state, and is sold by an SCDMV licensed dealer to a nonresident who will register it in his home state, then the sales tax applies and is remitted to the SCDMV. (Note: The sales tax imposed on such sales to a nonresident by a person who is not a licensed SCDMV dealer are remitted to the Department of Revenue.)

However, based on Code Section 12-36-930 and Code Section 12-36-2120, the sales tax is not due if (1) the purchaser's state of residence does not impose a sales tax on the motor vehicle, trailer, semitrailer or pole trailer, (2) the purchaser's state of residence does not allow a credit for sales tax paid in South Carolina on the motor vehicle, trailer, semitrailer or pole trailer, or (3) the sale is otherwise exempt from the sales tax.

**Items Not Subject to the Maximum Tax**

- If the vehicle is a trailer, semitrailer or pole trailer that is not subject to the maximum tax provisions of Code Section 12-36-2120(A)(1), is of a type required to be licensed and registered, and is sold to a nonresident who will register it in his home state, then the sales tax applies and it is remitted to the Department of Revenue.

  However, based on Code Section 12-36-930 and Code Section 12-36-2120, the sales tax is not due if (1) the purchaser's state of residence does not impose a sales tax on the trailer, semitrailer or pole trailer, (2) the purchaser's state of residence does not allow a credit for sales tax paid in South Carolina on the trailer, semitrailer or pole trailer, or (3) the sale is otherwise exempt from the sales tax.

- If the vehicle is a trailer, semitrailer or pole trailer that is not subject to the maximum tax provisions of Code Section 12-36-2110(A)(1), is of a type not required to be licensed and registered, and is sold to a nonresident, then the sales tax applies and it is remitted to the Department of Revenue, unless the sale is otherwise exempt from the sales tax.

Casual Excise Tax:

- The casual excise tax no longer applies to motor vehicles and motorcycles. Effective July 1, 2017, the casual excise tax only applies to aircraft, boats and boat motors. The infrastructure maintenance fee, however, is paid on motor vehicles and motorcycles at the time of registration with SCDMV under the above rules.

Note: SC Information Letter #17-10 provides charts that include the applicable rate for the infrastructure maintenance fee or the sales and use tax for each of the above scenarios and also provides general information, including information on exemptions for active duty military members.

**PURPOSE:**

The purpose of this advisory opinion is to provide additional guidance in a question and answer format with respect to the application of the sales and use tax to sales or purchases of motor vehicles, motorcycles, trailers, semitrailers and pole trailers on or after July 1, 2017. It will address issues involving sales to residents and nonresidents, sales of farm trailers, sales by nonretailers (i.e., casual sales), leases and short-term rentals of motor vehicles, and sales to resident and nonresident members of the military and their spouses.

## DEFINITIONS:

For purposes of this document, the terms "dealer", "retailer", and "nonretailer" are defined as follows:

Dealer: A person in the business of selling motor vehicles (e.g., cars, trucks, motorcycles, and motor homes) that is licensed with SCDMV.

Retailer: A person engaged in the business of selling tangible personal property (including, but not limited to motor vehicles, motorcycles, and motor homes) at retail. A person engaged in the business of selling tangible personal property at retail in South Carolina must obtained a retail license from the Department of Revenue.

Nonretailer: A person not engaged in the business of selling tangible personal property at retail. However, a nonretailer may sell tangible personal property on a casual and isolated basis, such as an individual who may sell his 20-year-old car because he plans to purchase a new car from a dealer. For more information on casual and isolated sales, see SC Regulation 117-322.

## QUESTIONS AND ANSWERS:

### General Guidance

1. Are sales of motor vehicles by a retailer licensed as a "dealer" with the SCDMV subject to the sales and use tax?

   **For sales on or after July 1, 2017**, the application of the sales and use tax on sales of motor vehicles by a retailer licensed as a "dealer" with the SCDMV is as follows:

   (a) Sales of motor vehicles to residents for registration in South Carolina are exempt from the sales and use tax under Code Section 12-36-2120(83) since such sales are subject to an infrastructure maintenance fee ("IMF") upon registration of the motor vehicle at the SCDMV. The IMF is remitted by the dealer to the SCDMV.

   (b) Sales of motor vehicles to nonresidents who will register the motor vehicle in South Carolina with the SCDMV are exempt from the sales and use tax under Code Section 12-36-2120(83) since such sales are subject to an IMF upon registration of the motor vehicle at the SCDMV. The IMF is remitted by the dealer to the SCDMV.

   (c) Sales of motor vehicles to nonresidents who will register the motor vehicle in their state of residence are subject to the sales tax in South Carolina at the lesser of the sales tax due in the purchaser's state of residence or 5% of the gross proceeds of sales, but no more than $500. This sales tax is paid to the SCDMV.

Note: If the purchaser's state of residence does not impose a sales tax on the purchase of a motor vehicle or does not allow the purchaser a credit against its use tax for a sales tax paid on the motor vehicle in South Carolina, then the sale of the motor vehicle is not subject to the South Carolina sales tax. See SC Information Letter #14-2.

2. Are sales by a retailer of trailers, semitrailers, and pole trailers subject to the sales and use tax?

The application of the state sales and use tax on sales of trailers, semitrailers, and pole trailers by a retailer depends on the type and use of the trailer, semitrailer, and pole trailer. For information concerning specific trailers, semitrailers and pole trailers, see the questions below.

3. What is the rate of the IMF?

The IMF is calculated as follows:

(a) For purchases or leases from a person licensed as a dealer with the SCDMV, the IMF is 5% of the "gross proceeds of sales" of the purchase or lease, but no more than $500. The term "gross proceeds of sales" is defined in the same manner as in Code Section 12-36-90 of the sales and use tax law.[3]

(b) For purchases or leases from a person not licensed as a dealer with the SCDMV, the IMF is 5% of the "fair market value" of the vehicle, but no more than $500.[4]

The IMF is remitted to the SCDMV upon registration of the motor vehicle at the SCDMV.

Note: An IMF in the amount of $250 is also due on motor vehicles and other items required to be registered with the SCDMV that were first registered in another state but which were subsequently registered in South Carolina by the same owner. For example, if a person is a resident of Virginia and his motor vehicle is registered with the State of Virginia, and that person later moves to South Carolina, the registration by that person of that same motor vehicle in South Carolina is subject to an IMF of $250.

---

[3] Generally, the term "gross proceeds of sales" is defined in Code Section 12-36-90 as the value proceeding or accruing from the sale of tangible personal property, without any deductions for the cost of goods sold; the cost of materials, labor, or service; interest paid; losses; transportation costs; manufacturers or importers excise taxes imposed by the United States; or any other expenses. It does not, however, include the value of any trade-in.

[4] "Fair market value" is defined in Code Section 56-3-627(C)(4) to mean the total purchase price less any trade-in, or the valuation shown in a national publication of used values adopted by the Department, less any trade-in

4. Are motor vehicles, motorcycles, trailers and semitrailers subject to a maximum sales and use tax?

The sales and use taxes are imposed at the rate of 5% for the sale or lease of certain tangible personal property subject to a maximum tax. Local taxes administered and collected by the Department on behalf of local jurisdictions do not apply to the sale or lease of tangible personal property subject to a maximum tax.

A $500 maximum tax applies to each sale or each lease of the following items:

- motor vehicles;
- motorcycles (on-road or off-road);
- recreational vehicles, including tent campers, travel trailers, park trailers, motor homes and fifth wheels;
- boats;
- aircraft;
- trailers or semitrailers capable of being pulled only by a truck tractor;
- self-propelled light construction equipment with compatible attachments limited to a maximum of 160 net engine horsepower;
- fire safety education trailers; and
- horse trailers.

In order for the lease of any of the above items to qualify for the $500 maximum tax, the lease must be in writing and must specifically state the term of, and remain in force for, a period in excess of 90 continuous days. In addition, the sales or use tax applies to each renewal of the lease, and the maximum tax for that renewal will apply only if (1) the lease renewal is in writing and (2) the lease renewal specifically states a term of, and remains in force for, a period in excess of 90 continuous days.

A maximum tax does not apply to the sale or lease of the following items:

- trailers or semitrailers capable of being pulled by a vehicle other than a truck tractor;
- pole trailers;
- boat trailers;
- self-propelled light construction equipment with compatible attachments with a net engine horsepower that exceeds 160; and
- all-terrain vehicles, legend race cars, golf carts and any other items not meeting the definition of a motor vehicle.

Sales 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.

Note: If an item subject to the maximum sales and use tax is required to be registered with the SCDMV under Chapter 3 of Title 56, then the sale on that item is exempt from the sales and use tax and is subject to the IMF.

## Sales by a Retailer of Motor Vehicles, Motorcycles, Mopeds, Trailers, and Semitrailers to Residents of South Carolina

5. Are sales by a retailer of motor vehicles and motorcycles to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

   No. However, such motor vehicles and motorcycles are subject to an IMF upon registration at the SCDMV.

   Note: See Question #30 concerning dirt bikes.

6. Are sales by a retailer of trailers and semitrailers that can only be pulled by a truck tractor to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

   No. However, the trailer or semitrailer is subject to an IMF upon registration at the SCDMV.

7. Are sales by a retailer of pole trailers to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

   No. However, the pole trailer is subject to an IMF upon registration at the SCDMV.

8. Are sales by a retailer of utility trailers and boat trailers that will be used for business purposes to residents of South Carolina subject to the sales and use tax?

   No. However, utility trailers and boat trailers that will be used for business purposes in South Carolina must be registered with the SCDMV and are therefore subject to an IMF upon registration at the SCDMV.

9. Are sales by a retailer of utility trailers and boat trailers that will be used for personal purposes to residents of South Carolina subject to the sales and use tax?

   Yes. Since utility trailers and boat trailers that will be used for personal purposes are not required to be registered with the SCDMV, such sales are subject to the sales and use tax and are not subject to an IMF. The sales and use tax is imposed on sales of utility trailers and boat trailers used for personal purposes at a rate of 6%, plus any applicable local sales and use tax.

10. Are sales by a retailer of recreational vehicles that are pulled by a motor vehicle (e.g., tent campers, travel trailers, park models, park trailers, and fifth wheels) to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

    No. However, recreational vehicles that are pulled by a motor vehicle, such as tent campers, travel trailers, park models, park trailers, and fifth wheels, are subject to an IMF upon registration at the SCDMV.

11. Are sales by a retailer of mopeds to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

    For sales of mopeds prior to November 19, 2018, the sale of a moped is subject to the sales and use tax. The tax is imposed at a rate of 6%, plus any applicable local sales and use tax.

    For sales of mopeds on or after November 19, 2018, the sale of a moped is not subject to the sales and use tax. The sale of a moped on or after November 19, 2018 is subject to the IMF upon registration with the SCDMV.

**Sales by a Retailer of Motor Vehicles, Motorcycles, Mopeds, Trailers, and Semitrailers to Nonresidents**

12. Are sales by a retailer of motor vehicles for registration in South Carolina subject to the sales and use tax?

    No. However, the motor vehicle is subject to an IMF upon registration at the SCDMV.

13. Are sales by a retailer of motor vehicles to nonresidents for registration in their state of residence subject to the sales and use tax?

    Yes. However, the calculation of the tax depends on the purchaser's state of residence. Sales of motor vehicles to nonresidents who will register the motor vehicle in their state of residence are subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 5%, but no more than $500. **When purchased from a licensed SCDMV dealer, this sales tax is paid to the SCDMV.**

    If the purchaser's state of residence does not impose a sales tax on the purchase of a motor vehicle or does not allow the purchaser a credit against its use tax for a sales tax paid on the motor vehicle in South Carolina, then the sale of the motor vehicle is not subject to the South Carolina sales tax.

    For additional information on sales to nonresidents of motor vehicles, see SC Information Letter #14-2.

    Note: If the seller delivers the motor vehicle to the nonresident at a point outside of South Carolina, or delivers the vehicle to a common carrier who will deliver the motor vehicle to the nonresident at a point outside South Carolina, then the sale is exempt from the tax under Code Section 12-36-2120(36).

14. Are sales by a retailer to nonresidents of trailers and semitrailers of a type required to be registered for registration in their state of residence subject to the sales and use tax?

Yes. However, the calculation of the tax depends on the purchaser's state of residence and whether the trailer or semitrailer is subject to the maximum sales and use tax in Code Section 12-36-2110.

(a) If the trailer or semitrailer is subject to the maximum tax of $500 under Code Section 12-36-2110, then the sale is subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 5%, but no more than $500. **When purchased from a licensed SCDMV dealer, this sales tax is paid to the SCDMV.**

(b) If the trailer or semitrailer is not subject to the maximum tax of $500 under Code Section 12-36-2110, then the sale is subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 6% plus any applicable local sales tax. **This sales tax is paid to the Department of Revenue.**

If the purchaser's state of residence does not impose a sales tax on the purchase of a trailer or semitrailer of a type required to be registered or does not allow the purchaser a credit against its use tax for a sales tax paid on the trailer or semitrailer in South Carolina, then the sale of the trailer or semitrailer is not subject to the South Carolina sales tax. For additional information on sales to nonresidents of trailers and semitrailers of a type required to be registered, see SC Information Letter #14-2.

Note: If the seller delivers the trailer or semitrailer to the nonresident at a point outside of South Carolina, or delivers the vehicle to a common carrier who will deliver the trailer or semitrailer to the nonresident at a point outside South Carolina, then the sale is exempt from the tax under Code Section 12-36-2120(36).

15. Are sales by a retailer to nonresidents of trailers and semitrailers of a type that are not required to be registered subject to the sales and use tax?

Yes. Sales to nonresidents of trailers and semitrailers of a type that are not required to be registered are subject to the sales and use tax at a rate of 6% plus any applicable local sales tax.

Note: If the seller delivers the trailer or semitrailer to the nonresident at a point outside of South Carolina, or delivers the vehicle to a common carrier who will deliver the trailer or semitrailer to the nonresident at a point outside South Carolina, then the sale is exempt from the tax under Code Section 12-36-2120(36).

16. Is the guidance provided in SC Information Letter #14-2 the most recent sales tax guidance available from the Department of Revenue regarding purchases by nonresidents from surrounding states?

Yes, as of the date of this advisory opinion, SC Information Letter #14-2 is the most recent sales tax guidance available from the Department of Revenue regarding purchases by nonresidents from surrounding states. However, sellers should monitor the "Law and Policy" section of the Department's website from time to time to determine if a new information letter has been issued with respect to motor vehicles, and trailers, semitrailers, and pole trailers of a type to be licensed and registered, which are sold to nonresidents.

17. Can SC Form ST-385, the "Affidavit for Intent to License Motor Vehicle, Trailer, Semitrailer or Pole Trailer Purchased in South Carolina in Purchaser's State of Residence," still be used for sales to nonresidents by licensed SCDMV dealers of motor vehicles and trailers, semitrailers, and pole trailers of a type to be registered and licensed?

Yes, as of the date of this advisory opinion, SC Form ST-385 can still be used with respect to such sales to nonresidents.

**Sales by a Retailer of Farm Trailers for Use in Farming Crops for Sale**

18. Are sales by a retailer of farm trailers that will be used in farming crops for sale subject to the sales and use tax?

Sales of flatbed trailers or stock trailers for use in farming in hauling farm crops (e.g., hay, corn, peaches) are exempt under Code Section 12-36-2120(16) if the flatbed trailer or stock trailer will be used solely in the "planting, cultivating, or harvesting" of farm crops for sale in their "original state of production or preparation for sale."

Sales of flatbed trailers or stock trailers are **not** exempt under Code Section 12-36-2120(16) if the flatbed trailer or stock trailer will be used solely for a purpose other than the "planting, cultivating, or harvesting" of farm crops (e.g., hay, corn, peaches) for sale in their "original state of production or preparation for sale." For example, sales of flatbed or stock trailers for use solely in:

(a) hauling tractors, harvesting equipment, or cattle; or

(b) hauling farm crops (e.g., hay, corn, peaches) from a storage area to market or to a buyer

are **not** exempt from the sales and use tax under Code Section 12-36-2120(16).

Sales of flatbed trailers or stock trailers that will be used for both exempt and nonexempt purposes are exempt from the sales and use tax if used substantially (not merely incidentally) in the "planting, cultivating, or harvesting" of farm crops (i.e., hay, corn, peaches) for sale in their "original state of production or preparation for sale."

For more detail regarding this exemption, see SC Revenue Ruling #99-3.
Note: If a farm trailer is exempt from the sales and use tax under Code Section 12-36-2120(16), then it is exempt from the IMF.

## Sales by a Nonretailer of Motor Vehicles, Motorcycles, Mopeds, Trailers, and Semitrailers (Casual Sales)

19. Are sales by a nonretailer of motor vehicles and motorcycles subject to the sales and use tax or casual excise tax?[5]

    No. However, such motor vehicles and motorcycles are subject to an IMF upon registration of the motor vehicle or motorcycle at the SCDMV.

20. Are sales by a nonretailer of mopeds subject to the sales and use tax or casual excise tax?

    No. However, mopeds sold by a nonretailer on or after November 19, 2018 are subject to an IMF upon registration of the moped at the SCDMV.

21. Are sales by a nonretailer of trailers and semitrailers subject to the sales and use tax or casual excise tax?

    No. However, trailers and semitrailers of a type required to be registered with the SCDMV under Chapter 3 of Title 56 are subject to an IMF upon registration of the trailer and semitrailer at the SCDMV.

## Leases and Short-Term Rentals of Motor Vehicles

22. Are leases of motor vehicles by a retailer licensed as a "dealer" with the SCDMV, which upon leasing the motor vehicles must be registered with the SCDMV, subject to the sales and use tax?

    **For leases executed on or after July 1, 2017**, the application of the state sales and use tax on the lease of a motor vehicle by a retailer licensed as a "dealer" with the SCDMV is as follows:

[5] The casual excise tax is imposed under Code Section 12-36-1710 on the issuance of a certificate of title or other proof of ownership of a boat, boat motor, or airplane. It is intended to apply to the sale by a nonretailer of a boat, boat motor, or airplane. Prior to July, 1, 2017, the casual excise tax also applied to the sale by a nonretailer of a motor vehicle or motorcycle. On or after July 1, 2017, the sale of a motor vehicle or a motorcycle for registration in South Carolina is subject to the IMF upon registration at the SCDMV.

(a) Leases of motor vehicles to residents for registration in South Carolina are exempt from the state sales and use tax under Code Section 12-36-2120(83) since such leases are subject to the IMF upon registration of the motor vehicle at the SCDMV.

(b) Leases of motor vehicles to nonresidents who will register the motor vehicle in South Carolina with the SCDMV are exempt from the state sales and use tax under Code Section 12-36-2120(83) since such leases are subject to an IMF upon registration of the motor vehicle at the SCDMV.

(c) Leases of motor vehicles to nonresidents who will register the motor vehicle in their state of residence are subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 5%, but no more than $500. **This sales tax is paid to the SCDMV.** (Local sales and use taxes do not apply to sales or lease of motor vehicles subject to the IMF or to the maximum sales tax.)

Note: If the lessee's state of residence does not impose a sales tax on the lease of a motor vehicle or does not allow the lessee a credit against its use tax for a sales tax paid on the motor vehicle in South Carolina, then the lease of the motor vehicle is not subject to the South Carolina sales tax. See SC Information Letter #14-2.

23. Are motor vehicle lease payments paid to a retailer after July 1, 2017 for a motor vehicle registered in South Carolina subject to the sales tax for leases executed prior to July 1, 2017?

Since the lease was executed prior to July 1, 2017, all lease payments are subject to the sales tax and the maximum sales tax remains at $300 for the lease. If the $300 maximum sales tax on the lease of the motor vehicle had not been paid in full prior to July 1, 2017, then the tax must be remitted by the retailer to the Department of Revenue with each lease payment until the maximum sales tax of $300 has been paid in full for that lease. The lessor, however, has the option to remit the remainder of the tax due (up to $300) in one payment.

Note: If the lease is renewed on or after July 1, 2017, then lease payments made as a result of the renewal of the lease are not subject to the sales tax.

24. Are short-term rentals (e.g., daily, weekly) of motor vehicles subject to the sales tax?

Yes. The exemption for sales of motor vehicles subject to an IMF upon registration of the motor vehicle at the SCDMV does not apply since short-term rentals are not registered by the customer and therefore are not subject to an IMF.

For example, if a person rents a motor vehicle for a week while in South Carolina on business, or a person rents a motor vehicle to move furniture from one location to another, then the rental payments are subject to the sales tax and not subject to the IMF.

Note: For information on what is included in "gross proceeds" (the basis or measure of the sales tax) for purposes of short-term motor vehicle rentals, see SC Revenue Ruling #93-1.

## Sales of Motor Vehicles and Motorcycles to Members of the Military

25. Are sales of motor vehicles and motorcycles to members of the military, or to spouses of members of the military, who are residents of South Carolina for registration in South Carolina subject to the sales tax?

    No. However, the motor vehicle is subject to an IMF upon registration at the SCDMV.

26. Are sales of motor vehicles (excluding trucks) and motorcycles to nonresident members of the military subject to the sales tax?

    No, provided the nonresident member of the military is located in South Carolina by reason of orders of the U.S. Armed Forces. Under South Carolina law, sales of motor vehicles (excluding trucks) and motorcycles to nonresident members of the military located in South Carolina by reason of orders of the U.S. Armed Forces are exempt from the sales tax under Code Section 12-36-2120(25), regardless of the state in which the motor vehicle or motorcycle will be registered.

    However, for this exemption under Code Section 12-36-2120(25) to apply, the purchaser must provide the vendor within ten days of the sale either:

    (a) a statement from a commissioned officer of the Armed Forces of a higher rank than the purchaser certifying that the buyer is a member of the Armed Forces on active duty and a resident of another state; or
    (b) a leave and earnings statement from the appropriate department of the armed forces which designates the state of residence of the purchaser.

    This exemption does not apply to spouses of members of the military when the spouse purchases a motor vehicle or motorcycle in his or her name only. However, if the motor vehicle (excluding trucks) or motorcycle is purchased in the name of both spouses, the exemption in Code Section 12-36-2120(25) applies.

    Note: See Question #27 below for information concerning sales of motor vehicles and motorcycles to spouses of nonresident members of the Armed Forces and sales of trailers and semitrailers to nonresident members of the military and their spouses.

27. Are sales of motor vehicles, motorcycles, trailers, and semitrailers to nonresident members of the military, or to spouses of nonresident members of the military, subject to the sales tax?

No. Under federal law known as the Servicemembers Civil Relief Act,[6] sales of motor vehicles (including trucks), motorcycles, trailers, and semitrailers to nonresident members of the military, or to spouses of nonresident members of the military, who are in South Carolina by reasons of orders from the U.S. Armed Forces are not subject to the sales tax provided:

(a) the motor vehicle or motorcycle will not be used in a trade or business; and,
(b) a license, fee, or excise tax is paid by the servicemember or the servicemember's spouse in the servicemember's state of domicile or residence.

For purposes of the Servicemembers Civil Relief Act, a "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated only on a rail line.[7] Note: See Question #26 above for information on the South Carolina sales and use tax exemption for sales of motor vehicles (excluding trucks) and motorcycles to nonresident members of the military.

**Dealers Filing of Sales Tax Returns**

28. Are sales of motor vehicles and other items subject to the IMF required to be reported on the sales and use tax return filed with the Department of Revenue?

Yes. All sales of tangible personal property, whether or not exempt from the sales and use tax, are required to be reported on the sales and use tax return. The return includes a Worksheet on which the retailer reports all sales of tangible personal property and also reports as a deduction all sales exempt from the sales and use tax. By taking a deduction for exempt sales, such as sales of motor vehicles subject to the IMF, the retailer will not pay a sales tax on any exempt sales.

For example, if a retailer who is licensed as a dealer with the SCDMV sells $1,000,000 in cars during the month and all sales were to residents for registration with the SCDMV, then the dealer would report the $1,000,000 as part of his "gross proceeds of sales," but also take a deduction for the $1,000,000 for exempt sales (sales of motor vehicles subject to the IMF). As such, no sales tax would be due with respect to these motor vehicle sales. Note, however, that the dealer would still owe sales tax on the sale of parts sold at retail, short-term rentals of motor vehicles, and other transactions not subject to the IMF and not otherwise exempt from the sales and use tax.

Note: The licensed SCDMV dealer is, however, responsible for collecting and remitting the IMF to the SCDMV.

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[6] 50 U.S.C. Section 3901 et.seq.
[7] See 50 U.S.C. Section 3911(8); 49 U.S.C. Section 30102(a)(7).

## Low-Speed Vehicles, Dirt Bikes, All-Terrain Vehicles, Golf Carts, and Go-Carts

29. Are sales by a retailer of low-speed vehicles subject to the sales and use tax?

Low-speed vehicles are subject to registration with the SCDMV in the same matter as a motor vehicle. Therefore, sales of low-speed vehicles are:

(a) Subject to an IMF if sold to residents or nonresidents for registration in South Carolina; or
(b) Subject to the sales tax if sold to nonresidents for registration in the purchaser's state of residence.

For sales to residents and nonresidents subject to the IMF, see Questions #5 and #12 of this advisory opinion. For sales to nonresidents subject to a sales tax, see Question #13.

30. Are sales by a retailer of dirt bikes subject to the sales and use tax?

Yes. Since a dirt bike cannot be used on the roads and highways, it is not subject to registration with the SCDMV and, therefore, not subject to an IMF. As such, sales of dirt bikes are subject to the sales and use tax at the rate of 5% of gross proceeds of sales, but no more than $500.

31. Are sales by a retailer of all-terrain vehicles ("ATVs") subject to the sales and use tax?

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.

32. Are sales of golf carts and go-carts subject to the sales and use tax?

Yes. Since golf carts and go-carts are not required to be registered with the SCDMV, sales of golf carts and go-carts are subject to the sales and use tax at a rate of 6%, plus any applicable local sales and use taxes.

33. Are race cars[8], including legend race cars[9], subject to the sales and use tax?

Yes. Since a race car, including a legend race car, cannot be used on the roads and highways, it is not subject to registration with the SCDMV and, therefore, not subject to the IMF. As such, sales of race cars, including legend race cars, are subject to the sales and use tax at the rate of 6%, plus any applicable local sales and use taxes.

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[8] For purposes of this advisory opinion, a "race car" is an automobile or truck for use only on race tracks and speedways and that is not authorized for use on the highways of South Carolina.
[9] For purposes of this advisory opinion, a "legend race car" is an automobile race car powered by a motorcycle engine for use only on race tracks and speedways and that is not authorized for use on the highways of South Carolina.

**Additional Information:**

The Department, in SC Information Letter #17-10, issued several charts to provide guidance regarding the application of either the sales and use tax or the IMF to sales of motor vehicles, motorcycles, and various types of trailers, semitrailers, pole trailers, and other items.

If you have questions regarding the new IMF remitted to the SCDMV, or sales taxes remitted by licensed SCDMV dealers to the SCDMV on certain sales to nonresidents, please contact the SCDMV at cartaxes@scdmv.net.

If you have questions regarding all other sales and use tax matters, please contact the SCDOR at (803) 898-5000 or salesandusetax@dor.sc.gov.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell
W. Hartley Powell, Director

March 5, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
Docket No. 18-ALJ-17-0393-CC

| | |
|---|---|
| Jack's Custom Cycles, Inc. d/b/a Jack's Motorsports, | ) |
| Petitioner, | ) |
| v. | ) |
| South Carolina Department of Revenue | ) |
| Respondents. | ) |

# ADMINISTRATIVE HEARING

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**Thursday, July 18, 2019**
10:02 a.m. - 1:10 p.m.

The administrative hearing before the Honorable Ralph King Anderson, III was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 18th day of July, 2019 before Travis McLeod, Court Reporter and Notary Public in and for the State of South Carolina.

## APPEARANCES

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**EXHIBITS**

**(Petitioner's Exhibit Numbers 1 though 7 and Respondent's Exhibit Numbers 1 though 24 were marked prior to the hearing and introduced as follows:)**

**Petitioner's Exhibit Number 1** . . . . . 5,7,30
(License to Sell Vehicles)
**Petitioner's Exhibit Number 2** . . . . . 5,7,31
(Color Photographs)
**Petitioner's Exhibit Number 3** . . . . . 5,7,32
(Polaris Sportsman 570 Owner's Manual)
**Petitioner's Exhibit Number 4** . . . . . 5,7,33
(Polaris RZR 570 Owner's Manual)
**Petitioner's Exhibit Number 5** . . . . . 5,36
(About Us)
**Petitioner's Exhibit Number 6** . . . . . 5,7,43
(Handwritten Notes)
**Petitioner's Exhibit Number 7** . . . . . 5,62
(SCDMV Form 400)
**Petitioner's Exhibit Number 8** . . . . . 64
(SCDMV Receipt of Fees Paid)

**Respondent's Exhibit Number 1** . . . . . 5,6
(August 11, 2016 Audit Appointment Letter)
**Respondent's Exhibit Number 2** . . . . . 5,6
(F5-43 signed by the Department auditor on August 26, 2016)
**Respondent's Exhibit Number 3** . . . . . 5,6
(Petitioner's Sales Tax Return for period ending December 2013)
**Respondent's Exhibit Number 4** . . . . . 5,6
(Petitioner's Sales Tax Return for period ending June 2015)
**Respondent's Exhibit Number 5** . . . . . 5,6
(Petitioner's Sales Tax Return for period ending January 2016)
**Respondent's Exhibit Number 6** . . . . . 5,6
(Petitioner's Invoices during the Audit Period)
**Respondent's Exhibit Number 7** . . . . . 5,6
(January 31, 2017 Proposed Assessment)
**Respondent's Exhibit Number 8** . . . . . 5,6
(Work Papers Related to January 31, 2017 Proposed Assessment)

**Respondent's Exhibit Number 9** . . . . . 5,6
(Petitioner's August 28, 2017 Protest)
**Respondent's Exhibit Number 10** . . . . . 5,6
(August 17, 2017 Amended Proposed Assessment)
**Respondent's Exhibit Number 11** . . . . . 5,6
(Work Papers Related to August 17, 2017 Proposed Assessment)
**Respondent's Exhibit Number 12** . . . . . 5,6
(Petitioner's November 15, 2017)
**Respondent's Exhibit Number 13** . . . . . 5,6
(January 30, 2018 Department Letter)
**Respondent's Exhibit Number 14** . . . . . 5,6
(August 13, 2018 Department Determination)
**Respondent's Exhibit Number 15** . . . . . 5,6
(DSCMV copies of Titles and Manufacturers certificate)
**Respondent's Exhibit Number 16** . . . . . 5,6,84
(SCDMV Documents related to Petitioner's Retail Sale During Audit Period)
**Respondent's Exhibit Number 17** . . . . . 5,6
(Polaris 2015 Manual)
**Respondent's Exhibit Number 18** . . . . 5,110,112
(DOR Way Notes)
**Respondent's Exhibit Number 19** . . . . . 5,6,88
(SCDMV Issue 7)
**Respondent's Exhibit Number 20** . . . . . 5,6,88
(SCDMV Issue 8)
**Respondent's Exhibit Number 21** . . . . . 5,6,88
(SCDMV Issue 10)
**Respondent's Exhibit Number 22** . . . . . 5,6
(SCDOR Revenue Advisory Bulletin #00-03)
**Respondent's Exhibit Number 23** . . . . . 5,6
(SCDOR Information Letter #17-10)
**Respondent's Exhibit Number 24** . . . . . 5,6
(SCDOR Revenue Ruling #18-1)

**(All Exhibits were retained by the Court.)**

## STIPULATIONS

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

**(Petitioner's Exhibit Numbers 1 though 7 and Respondent's Exhibit Numbers 1 though 24 were marked prior to the hearing.)**

**CALL TO ORDER:**

**THE COURT:** Okay. This is a hearing in the matter of Jack's Customs Cycles, Inc. d/b/a Jack's Motorsports, Petitioner, versus South Carolina Department of Revenue, Respondent. The docket is 18-ALJ-17-0393-CC. Now, are there any motions or stipulations the parties wish to make before we proceed?

**MS. WOOTEN:** Yes. Yes, Your Honor. The parties have reached -- some of the stipulations, we'd be stipulating to most of the facts in this matter.

**THE COURT:** Okay.

**MS. WOOTEN:** May I approach?

**THE COURT:** Yeah.

**MS. WOOTEN:** Thank you, Your Honor. Also, the Department would like to offer Respondent's Exhibits 1 through 24 into the record. If Mr. Ecton has any objections.

**MR. ECTON:** One second. Your Honor, we have -- we have no objection except for, I think it might be item -- I believe it's item 18.

**THE COURT:** So, it's 1 through 23, but you object to 18.

**MR. ECTON:** I object. That's right. I object to Item 18, which appears to be notes.

**THE COURT:** Well, since we're in the preliminary stage, you're going to win on your objection because we ain't even got things entered.

**MR. ECTON:** True. Correct.

**THE COURT:** So, I -- I'll hereby introduce or allow the introduction of 1 through 17 and 19 through 23. 23?

**MS. WOOTEN:** It's 24, Your Honor.

**THE COURT:** 24. Okay.

**MS. WOOTEN:** Yes, Your Honor.

**THE COURT:** 19 through 24 are introduced.

**(Respondent's Exhibit Numbers 1 through 17 and 19 through 24 are admitted into the record.)**

**MR. ECTON:** Correct, Your Honor. Then, we'll object at the appropriate time.

**THE COURT:** Okay. Well, she will offer it at the appropriate time and then, we'll hear your objection.

**MR. ECTON:** And Your Honor, Petitioner would like to introduce items 1 through 7 that we've pre-marked. Exhibits 1 through 7 on the

Petitioner's side, Your Honor.

**MS. WOOTEN:** Your Honor, the Department would object to Number 5. These contain notes or statements that Department employees allegedly made, so we would object as hearsay.

**THE COURT:** Y'all have the same type format. So ---

**MS. WOOTEN:** And the same thing for Number 7. We don't have a problem with the invoice that's on Number 7. It's a DMV invoice. We don't have a problem with that, but it has handwritten notes of alleged statements and we would object to those as hearsay.

**THE COURT:** All right. So, 1 through 4 and 6 are admitted. Did I do math or ---

**MR. ECTON:** Correct, Your Honor.

**THE COURT:** --- sequential ordering correctly? Okay.

**(Petitioner's Exhibit Numbers 1 through 4 and 6 are admitted into the record.)**

**MS. WOOTEN:** Your Honor, if I may ask, I put the -- our marked Exhibits with the exception of 18.

**MR. ECTON:** We'll do it as we present, Your Honor.

**THE COURT:** Okay. All right. So, with that said, I'll hear opening statements. Before -- before we proceed, I'm going to let y'all know, over

the weekend, I broke my ankle and then -- then I had the wonderful event of somebody picking my leg up and then dropping it on my wheelchair, which made things even more fun. But, so I'm going to lean back at times during this hearing. Even though y'all may be boring -- boring, that isn't the reason I'm leaning back. So, I'm not sending any messages, I hope you understand. And also, Ms. Wooten, I think the world of you, but I want to respond to one thing. Just want to be on the record. In one of your responses or your motion for reconsideration, you said that I overlooked sections 56-26-50. And I just want the record somewhere to be clear that that was never mentioned by the Department in the prior proceedings or pleadings, so -- and I think at most I've not, you said that I've overlooked it. But I failed to discover its existence on my own. And the same thing for 56-3-627, it was mentioned in a footnote, but it was mentioned for another reason other than the reason that you're arguing at this point and time. So, even though I don't think I overlooked it, I still think you're wonderful.

**MS. WOOTEN:** Thank you, Your Honor, for correcting that in my ---

**THE COURT:** Yeah.

**MS. WOOTEN:** --- statement.

**THE COURT:** Okay.

**PETITIONER'S OPENING STATEMENT:**

**MR. ECTON:** Thank you, Your Honor. May it please the Court. Your Honor, in this case, as Your Honor well knows and has already heard a detailed summary judgement motion, the -- we've stipulated to some facts for purposes of the hearing to -- for, I guess, judicial economy and tried to get this thing pretty quick. But the stipulated issue for the Court today is whether ATVs and UTVs sold by the Petitioner during the periods at issue, of the audit, are considered a motor vehicle for purposes of South Carolina Code Section 12-36-2110(A) and thus subject to the maximum tax and partial tax exemption. And in our opinion, the Court could rule right now on those issues -- on that issue alone just by the stipulated facts that we've presented and by what's already been presented to the Court in previous hearings. But for the Court's convenience and stuff, we have -- we

intend to put some additional evidence to confirm what the Court previously determined. But we ---

**THE COURT:** Were y'all -- are you going to offer a witness for the party?

**MR. ECTON:** Yes, Your Honor.

**THE COURT:** Because I've got some questions about ATVs I'd like to learn. I've ---

**MR. ECTON:** That -- and -- and that's exactly what we -- we have.

**THE COURT:** Okay.

**MR. ECTON:** Specific definitions, photos, manuals that we'll put in, so that you can see everything you want to know about ATVs and UTVs.

**THE COURT:** Well, I want to know how fast -- how fast they can travel and I even saw something at the mall that I want to know if that was a -- like a Baja type vehicle. I want to know if that qualifies as a ATV or UTV. It looked like it was a two-passenger. So, I want to know what ATVs and UTVs really are.

**MR. ECTON:** Certainly.

**THE COURT:** So.

**MR. ECTON:** Certainly. And I think the -- the

legislature -- you -- you pointed in your previous order, the legislature's already determined that.

**THE COURT:** Yeah.

**MR. ECTON:** Whether they're motor vehicles. But, Your Honor -- Your Honor, we also want to offer some evidence as to the advice and instructions that were given Mr. DeBruhl. He wants to -- he wants the Court to hear exactly what he did in trying to determine what the Department's position was on sales tax of these type vehicles. You know, Mr. DeBruhl's been a lifelong resident. He's run a good business. He's run his business -- started out with motorcycles and got into ATVs somewhere around 2011 and then, UTVs and different things. But he's always collected the tax that he was told to collect, that he thought was appropriate to collect, and paid it over. So, we're not talking about a situation where someone was -- was collecting tax or not collecting tax and not paying it over to the government. So, he was running his business as a -- as business owners should in South Carolina collecting and paying over tax. So, we -- and that's

something that he wants to present to the Court too, Your Honor, and things that he was told. And -- and it relates -- you know, I know the issue that -- that we have in front, but it also relates to, you know, that -- whether or not -- if the Court reverses its previous decision, whether or not the interest should be charged. We recognize there's some -- there's some issues with -- with authority and different things on sales tax and I think we -- they didn't exceed their scope, but we'll -- we can talk about that throughout the hearing and stuff, Your Honor. But to the gist of the issue that we're talking about, the -- the Department's argument is basically that -- based on that bulletin that they had in 2000. And it details out all those different steps that they try to get to have their self-serving conclusion that it is -- is it not a motor vehicle, ATVs are not motor vehicles and thus subject to the higher tax in this case, not the minimum -- maximum tax that's allowed. Now, the -- the Department notes in one of the briefs to the Court that the sales tax -- Sales Tax Division has unique skill in administrating

-- and expertise in administering their statutes. And -- and what you'll hear from Jack is, you know, that they gave him bad advice. So, even along those lines, no one pointed him to any bulletin that they're pointing to now that says, hey, these ATVs are not motor vehicles. So ---

**THE COURT:** So ---

**MR. ECTON:** So, you'll hear that from him.

**THE COURT:** That unique skill was not exemplified in the communications with him?

**MR. ECTON:** Correct, Your Honor. Correct. So -- and -- and I tell you, we wouldn't be in this position today -- you know, he wouldn't looking at a $200,000 fine or what we're calling a fine because not collecting the correct -- if he -- if they told him to collect that tax, you'll hear from him, he'll say, I would have collected what they said, although I think it's wrong, I would have collected it and passed it through. It -- it's not something that he keeps. It's something that he's charged to pass through on it. So -- so, he would have done that. Now, they're saying $180,000 with -- including interest and stuff, and after he's

relied on their advise. So, we don't think it's fair. We don't think it's right, but we understand where we are with the situation now. On the issue of the motor vehicle, we intend, as Your Honor was wanting -- we intend to offer additional evidence, photos, manuals, descriptions of what these ATVs and UTVs are. So -- so, you'll get a clearer understanding of whether these are, in your mind, motor vehicles or not. We believe the legislature has already addressed it, that they are motor vehicles several times. And your court -- the Court pointed out in detail, you know, the different statutes and the Court was right. Those particular statutes are very specific as to what an ATV is, what the legislature believes an ATV is in those statutes. And even the -- even the Department asserts that you need to look to that DMV definition. And when the Court did, it didn't work out for him on certain ones that -- that are specific with intent on that. So, the Department also said, well just because you cannot register a licensed ATVs, UTVs to drive on public road, well they're not motor vehicles then. And

we'll say that's -- that's inaccurate because I think the evidence is going to show these are being driven on the road and they can be driven on the road, and DMV actually will let them be driven on the road. I mean, I was -- yesterday, I was at my son's orientation, USC. So, the police officer gets up and he's giving his speech -- you know, the -- the captain of the police department. He's saying, we patrol this whole campus. We have statewide authority, which I didn't know they did. But they have statewide authority, the USC police. We control this campus and we patrol it four different ways. And he's saying, by foot, by -- I think little segways or whatever, but also, on his picture was a AT -- a UTV. We patrol these streets on this UTV. I didn't talk to him afterwards about it and ask about it, but they're everywhere. You -- you can drive around Columbia and you're going to see them. You're going to hear testimony that -- that people bought these UTVs from Jack for that purpose, for the purpose of driving around downtown here. So, the Department charged -- you'll hear from -- about the Department of

Motor Vehicles too, charging the maximum tax on ATVs, UTVs when they're titled. So, the Department of Motor Vehicles charges that. Then, you'll have -- I think there's some new documents that DOR put in evidence today kind of indicating some things different than that, but ---

**THE COURT:** Is the IMF tax collectible on UTVs and ATVs?

**MR. ECTON:** They shouldn't, but they are.

**THE COURT:** They aren't? They ---

**MR. ECTON:** They should not be.

**THE COURT:** That's all I want to know.

**MR. ECTON:** No. So -- so, we -- we have a couple of documents that we'll -- we'll put in, which is Exhibit 7, if -- and if we need to redact some of the notes on there, we can redact some of the notes on there, but yeah they -- they are -- for -- for that particular right there, they are charging that $500 max tax on it. Although the bulletins that we just -- that we just put in -- some of those later ones that we just saw today will say they're not paying sales tax and IMF max tax on -- or IMF fee on it.

**THE COURT:** Well, now -- because you just said that

they shouldn't be.

**MR. ECTON:** They should not.

**THE COURT:** Well, don't you -- but the ultimate conclusion would be that they should be, wouldn't it?

**MR. ECTON:** No, Your Honor. And I'll explain.

**THE COURT:** Okay.

**MR. ECTON:** I explain it to you throughout the -- throughout the course. But no, they're -- they're still motor vehicles. Actually, they should be charging 300.

**THE COURT:** Oh, okay. That's what you're -- all right.

**MR. ECTON:** Yeah. So. But the bottom line is it's the Court's previous interpretation of the -- of the vary specific statutes identifying ATVs as motor vehicles was correct. We don't think the Department from the time of that ruling had any just -- substantial justification of moving forward with it. I mean, we talked and said, you know, we -- we don't think there is because the Court ordered this -- this is a motor vehicle for purposes of that statute. We don't think there's any substantial justification to it. We'll help the Court confirm that through

the testimony.

**THE COURT:** Okay.

**MR. ECTON:** Thank you.

**THE COURT:** Who's up? Okay.

**RESPONDENT'S OPENING STATEMENT:**

**MS. WOOTEN:** Thank you, Your Honor. Your Honor is very aware of the facts in this case and I won't go through them, but just -- I wanted to point out a few things in opening. The Department's position is laid out in Revenue Advisory Bulletin 00-03. We went through that motion for summary judgement hearing our reasoning behind it. The Department would add today that there are additional statutes that were not mentioned in the motion for summary judgement that we believe are applicable and --

**THE COURT:** Those are the ones you sent forth in the reconsideration.

**MS. WOOTEN:** And there's additional beyond the motion for reconsideration. There's another --

**THE COURT:** All right.

**MS. WOOTEN:** --- statute that we believe has bearing on this issue.

**THE COURT:** And you're going to enlighten me on that right now or you're going to ---

**MS. WOOTEN:** Sure. I can.

**THE COURT:** --- hold me in suspense? All right.

**MS. WOOTEN:** 56-15-10 defines motor vehicle as ---

**THE COURT:** Wait a second. Let me get a pen to ---

**MS. WOOTEN:** Sure.

**THE COURT:** --- write down ---

**MS. WOOTEN:** 56-10 ---

**THE COURT:** Hold on. I gotta -- that way I can type. All right. 56 ---

**MS. WOOTEN:** Dash 10.

**THE COURT:** Dash.

**MS. WOOTEN:** 50 -- I'm sorry. 56-15-10.

**THE COURT:** All right.

**MS. WOOTEN:** It defines motor vehicle as any motor driven vehicle required to be registered pursuant to 56-3-110. And that is the statute that we've already reference showing that it's a misdemeanor to drive a vehicle on the highway that is not registered and licensed.

**THE COURT:** All right. So ---

**MS. WOOTEN:** ATVs and UTVs cannot be registered or licensed.

**THE COURT:** Chapter 15 is what?

**MS. WOOTEN:** It is the Regulation of Manufacturers, Distributers and Dealers -- Dealers of Motor Vehicles.

**THE COURT:** Okay. If a ATV is not a motor vehicle, what is it?

**MS. WOOTEN:** Your Honor, it -- it may -- it's a vehicle and it has a motor, but motor vehicle is a defined term and that's where the Department has the problem.

**THE COURT:** Wasn't your argument though that -- I start with motor and that vehicles are -- have their own special implication and that that's where your argument kind of went concerning the fact that it wasn't a vehicle? Now, you're telling me it is a vehicle.

**MS. WOOTEN:** It -- in the common sense term, if I can say, it is a vehicle. But it is not a vehicle for purposes of Title 56.

**THE COURT:** Is a golf cart a motor vehicle?

**MS. WOOTEN:** I don't believe so, Your Honor. I think we have a policy document on that.

**THE COURT:** I'm talking ---

**MS. WOOTEN:** Right in front of me.

**THE COURT:** How about under DMV, is it is a vehicle?

**MS. WOOTEN:** I believe they can be registered.

There are certain requirements for golf carts. They can only be driven within two miles of your home, but there are other requirements for golf carts. But golf carts are not ATVs and they're not UTVs.

**THE COURT:** Well, I'm just trying to sort through all this. It's -- so, it can be driven on the roadway. Do y'all -- how do y'all treat a golf cart? Do you treat it as a motor vehicle?

**MS. WOOTEN:** I don't believe we do, Your Honor.

**THE COURT:** All right.

**MS. WOOTEN:** But I can check that and I will have a definite answer you before the end of the hearing. But I don't believe we do.

**THE COURT:** A golf cart ---

**MS. WOOTEN:** And I believe the -- I'm sorry. I believe the reason is because the restrictions on golf carts, it can't be driven more than two miles from your home. It can't be driven on certain highways in excess of a speed limit, I believe, of 55 ---

**THE COURT:** 35.

**MS. WOOTEN:** --- miles an hour.

**THE COURT:** 35.

**MS. WOOTEN:** 35. But because of all of that, it

can't be driven on every highway in the state.

**THE COURT:** Yeah. I gotcha.

**MS. WOOTEN:** We would treat it the same way.

**THE COURT:** All right. And ---

**MS. WOOTEN:** And I will confirm for you before the end of hearing.

**THE COURT:** Then, how about mopeds?

**MS. WOOTEN:** Mopeds are different. That law changed in November of 2018. There are different requirements for mopeds. Again, I'm not sure if the ---

**THE COURT:** They can't be driven more than 35 miles an hour, but they can be driven on any roadway. So, how -- how do -- how do y'all treat them is what I'm getting at?

**MS. WOOTEN:** I'm not sure how we treat them. But prior to the new law, which went into effect in 2018, they would have been treated the same way as a golf cart. And these periods that were here today for the audit period is prior to 2018.

**THE COURT:** Both of those are considered specialized vehicles, golf carts and mopeds. So, they're distinguished in -- by DMV, but ATVs and UTVs are not considered specialized vehicles. So,

that takes me back to if they're not a motor vehicle, what are they? Can you help with that?

**MS. WOOTEN:** Your Honor, I would defer to the statutes and the statutes say that it is a motor vehicle, but you have to look at the other terms of the statute.

**THE COURT:** Yeah, but ---

**MS. WOOTEN:** And ---

**THE COURT:** --- I get that, but if it's not a specialized vehicle -- they've got their own definition for golf carts, for -- for mopeds and they -- they -- they say, okay we've got some vehicles out there. These are specialized vehicles. These are going to be treated different. And then, now we've got this other class of vehicles and there's nothing that really distinguishes specifically ATVs and UTVs that I saw as it's ---

**MS. WOOTEN:** Not for U -- not for UTVs.

**THE COURT:** --- in -- in the -- in the DMV law.

**MS. WOOTEN:** Sure. And my response -- two responses I think to that would be, so you can have -- a vehicle can be termed something depending on its use or other purposes in the law. And we

have a case from 1994. It's a Supreme Court case where the Supreme Court said, despite it being defined in Chapter -- or Title 56-3-20 -- being defined -- farm tractor means every motor vehicle designed and used primarily as a farm implement, etcetera, the Supreme Court found that though it was not a quote, motor vehicle, because it was not authorized to operate on the highway. So, I would just submit, Your Honor, that -- you know, there may be different meanings for motor vehicle purposes behind it, but ATVs and UTVs do not meet the definition for motor vehicle for sales tax purposes under Title 12.

**THE COURT:** All right.

**MS. WOOTEN:** And, Your Honor, if I could just ---

**THE COURT:** So, the new issues I'm looking at now are Title 56-15-10 and the Supreme Court Case. You want to give me the cite on that one?

**MS. WOOTEN:** Sure. It's Anderson versus State ---

**THE COURT:** All right.

**MS. WOOTEN:** And I have a copy, Your Honor and opposing counsel ...

**THE COURT:** Yeah the -- you have a -- also, I want to pull it up on Westlaw.

**MS. WOOTEN:** And Your Honor, we would say that it's not a new position. We just believe this is further support of our position that we already had the motion for summary judgement hearing.

**THE COURT:** Okay. I'll rephrase that. Not new argument, but new -- what?

**MS. WOOTEN:** Support.

**THE COURT:** New support.

**MS. WOOTEN:** And briefly, Your Honor, again, we believe it's a partial exemption statute that should be strictly construing as the taxpayer. And at this hearing, the Department intends to present evidence following -- as part of your order on the motion for summary judgement, talked a little bit about deference and the Department of Revenue and that we were ---

**THE COURT:** Yeah. I've got a whole new -- new explanation of that. But further explain what I -- I meant. And shooting more arrows at you.

**MS. WOOTEN:** I'm sure you do, Your Honor. We would like to present -- we offered into evidence and it was admitted. The DMV has published guidance on this issue and it supports the Department's position in this matter.

**THE COURT:** Okay.

**MS. WOOTEN:** That ATVs and UTVs are not subject to the max tax.

**THE COURT:** Well, that would be helpful.

**MS. WOOTEN:** And secondly, to the -- again, to the extent the Court thinks this is relevant, we have testimony regarding statements that the Petitioner alleges the Department made to him regarding the max tax issue. And just a few points in response to Mr. Ecton's opening. With regard to interest, that is mandated by statute. It cannot be waived. The Department cannot waive that. We don't think there's any authority for that to be waived. The only for interest to stop accruing is for a payment to be made. And then, the taxpayer to seek a refund of that amount. But unfortunately, interest continues to run until it's paid in its full -- paid in full. With regard to the ATVs and UTVs, the testimony of what they are, what they look like, how they operate. You know, a customer can add whatever they want to to an ATV or a UTV, but at the end of the day, the DMV does not license and register then to operate on a highway. So, they can have the turn signals, they can have mirrors, they can

have all of these features that appear to be car-like or motorcycle-like, but at the end of the day, they can't be driven on the road. And then there's been, you know, some statements that, well, we see these all over town. We see them driving on the road on USC's campus. That's a police enforcement issue. There is a specific statute out there that says it's a misdemeanor to drive these on the highway. So, whether or not that's happening, that's the Department of Revenue's administration.

**THE COURT:** So, law enforcement is breaking the law themselves.

**MS. WOOTEN:** I -- I think it's an enforcement issue, Your Honor. I think that is ---

**THE COURT:** Oh, so they should be enforcing the law against themselves.

**MS. WOOTEN:** I will leave at ---

**THE COURT:** After they broke the law. So, you're just adding another layer to it. They're breaking the law and now you're saying it's an enforcement issue, which means that they're not also enforcing that which they're breaking.

**MS. WOOTEN:** No. I think I'll stop there. That is a police -- a police or a law enforcement

issue. That's not something the Department of Revenue can regulate. And there have been some statements that the DMV or collected the sales tax prior to the IMF and that's not true. We have published guidance from the DMV that specifically states that was collected from the -- collected by the Department of Revenue. Now, the Department of Motor Vehicles collects IMF and there's also published guidance from the DMV that says if the DMV collects an IMF on an item that is not subject -- or that is subject to sales tax, the taxpayer can make a deduction on their sales tax return for whatever amount was collected under the IMF. Because as Mr. Ecton stated, if it's subject to the IMF, it's not subject to sales tax. So, we recognize that things are going to fall through the cracks. There may be some, you know, collection of IMF that should have been sales tax and vice versa, but there are ways to remedy that if that occurs. Thank you, Your Honor. The Department's ready to begin.

**MR. ECTON:** Thank you, Your Honor. We -- we call Jack DeBruhl.

**THE COURT:** This ---

**MR. ECTON:** Oh. Sorry.

**JACK DEBRUHL**, having been duly sworn, testifies as follows:

**MR. DEBRUHL - DIRECT EXAMINATION BY MR. ECTON:**

Q: Jack, if you would for the record, give your full name.

A: Jack DeBruhl.

Q: Can you spell the last name for us?

A: D-E, capital B as in bravo, R-U-H-L.

Q: And -- and where do you live?

A: I live at 164 West Circle Drive in Lexington, S-C.

Q: You a lifelong resident of Lexington?

A: All my life.

Q: All your life. Now, my understanding, you started a business, Jack's Cycles.

A: Jack's -- yes. Jack's Custom Cycles.

Q: Okay. And about when -- when did you start that?

A: We applied for paperwork in, I think October of '03. Probably opened -- I think it was May of '04.

Q: All right. Are you -- are you licensed? Do you have a license retail -- retail license with the Department of Revenue?

A: We have a South Carolina Automobile Dealer's license, a sales tax license and any other license that are required.

Q: All right. Let me hand you, if I could, Your Honor, what's previously been marked Plaintiff's Exhibit 1. If you can identify that for the Court for us.

**(Petitioner's Exhibit Number 1 was introduced in the record at this time.)**

A: This is a motor vehicle license from the DMV, says our license number is 31775, that is required to sell motor vehicles in the state of South Carolina

Q: Okay. Now, at some point and time you started selling ATVs, UTVs. When'd you start ATVs about?

A: I think it was like around '06 or so, we started with a brand called Kymco and they're ATVs and -- and mopeds -- mopeds and scooters. And -- but it's a great product, but not a household name and it -- it just -- it was hard to make any money at it and we just eventually dropped that line. And then, later about 2010 or '11, we took on Polaris.

Q: I'm going to hand you what's been previously

marked Defendant's Exhibit Number 2 and -- which are three pages of photographs. If you can identify that for the Court.

**(Petitioner's Exhibit Number 2 was introduced in the record at this time.)**

**MR. ECTON:** Your Honor, as I -- as I pull these, do you want me to hand them to you? Is that ---

**THE COURT:** You can put the on the Elmo.

**MR. ECTON:** You need to see them at all?

**THE COURT:** Well, the Elmo everybody see them.

**MR. ECTON:** Okay.

**THE COURT:** If you -- you know how to use the Elmo.

**MR. ECTON:** Yeah. Well, sort of, but after ---

**THE COURT:** Well, if you can just stick it on that.

A: We can just -- we can do it the old school way.

**THE COURT:** Okay. Well.

A: Because you wanted -- said you want to learn. This is a UTV, utility vehicle. Okay. This is otherwise known as side by sides, crew cab or regular cab. You can haul -- it'll have seatbelts up for six people. Steering wheel. Operates just like a -- a car. Gas, brake, safety switches, taillights, headlights. And this would be considered an ATV. You straddle it like a motorcycle or bicycle. It has

handlebars like a motorcycle or bicycle. Front rear beaks, headlights, taillights, the same. These have horsepower up to 140 horsepower. These now have horsepower up to 90 horsepower.

**THE COURT:** Well, what is a ---

A: They don't speed rate anything. You wondering how fast they go? These will go 80 miles an hour.

**THE COURT:** How about the UTVs?

A: 110 or so.

**THE COURT:** Okay.

A: This style here normally is governed around 65. This style here can go over 100.

**THE COURT:** Okay.

Q: Not advised to go that fast.

A: That's why they put seatbelts in them.

Q: Okay. So -- so you described each of them. Kind of the ATVs, UTVs. Let me introduce for the -- for the record what's been previously marked as Defendant's Exhibit Number 3, which is a Polaris Sportsman. And I'll have you identify it. But, this has 146 -- 147 pages to it. If you can identify that for the Court.

**(Petitioner's Exhibit Number 3 was introduced in the record at this time.)**

A: This is a printed copy of a owner's manual. This one here is for Sportsman 570, which is considered a ATV. It comes with every vehicle, as well as MSO for titling and registration. Then it has all about how to operate it, safety features and so forth, just like a regular car or truck manual that everybody might be more accustomed to.

Q: That's the -- the ATV?

A: This -- this one here says Sportsman and that Sportsman is considered their ATV.

Q: Okay.

A: And their Ranger and Razor manual is these side by sides.

Q: I need one second. All right. Let me introduce and have you identify Plaintiff's Exhibit Number 4. And if you would, tell the Court what that one is.

**(Petitioner's Exhibit Number 4 was introduced in the record at this time.)**

A: It's basically the same thing, but this is for the side by side because it will get more into how the -- the gear shift works, which is basically just like your -- again, your car or truck. It's park, neutral, reverse, low and

high. And just operational features, standard features, how to check oil, engine, how the drivetrain works and stuff like that. But that's considered a side by side ---

Q: Okay.

A: --- vehicle.

Q: And on those side by side vehicles, what kind of seating does it have?

A: You can have -- they will have minimum of seatbelts for two passengers, three passenger models, seatbelts for three and ---

Q: Is that -- is that all in one row? Three?

A: Uh-huh (affirmative response).

Q: Okay.

A: And then, you can have a four passenger, which is two and two or a six passenger, which is three and three, which would have seatbelts for all six people.

Q: Okay. Forward, reverse?

A: They all have that. Just like the vehicle y'all may have drove over here, park, neutral, reverse, low and high.

Q: Okay. Headlights, taillights?

A: Headlights, taillights, brake lights. On the ATVs, your -- your front brakes work together

-- front and rear brakes work together. And then, the UTVs have all-wheel disk breaks. So, just like one pedal in your motor vehicle, you push the pedal and all -- you know, brakes on all four wheels.

Q: Now, you consider those vehicles you just described to be motor vehicles?

A: I do.

Q: Have you always thought they were subject to the maximum tax?

A: Yes. I have.

Q: You paid over the max -- you collect the maximum tax and pay over $300?

A: We collected maximum tax at that time, which was 5 percent up to $6,000, which is $300. And then July 17, I believe they raised that limit to 10, which created a $500 maximum tax and -- but somewhere along the way, we got into this audit.

Q: And I'll ask you about that. Let me ask you, have you ever seen ATVs, UTVs being driven on the public roads?

A: Often.

Q: All right. Did -- did you ever sell anyone an ATV, UTV with the intention that they're going

ride them on the road?

A: We have had people specifically come purchase them for that reason.

Q: All right. Do you know who the City Center Partnership is?

A: Yes, sir.

Q: All right. Let me hand you what's been marked Plaintiff's Exhibit 5. If you can identify that for the Court, please.

**(Petitioner's Exhibit Number 5 was introduced in the record at this time.)**

A: This is a outfit here in Columbia. They have multiple vehicles. They purchase them specifically for shuttling people around the city of Columbia ---

**MS. WOOTEN:** Objection, Your Honor. I'm going to -- it's not relevant to this matter.

**THE COURT:** Do you wish to explain further or just stop there?

**MS. WOOTEN:** I mean, I can explain further. It's not relevant to whether or not max tax is -- is available for these vehicles. What someone else does with it is not relevant.

**THE COURT:** All right. It's not relevant on your interpretation of the matter. How about under

his interpretation?

**MS. WOOTEN:** The DMV will not license and register them for operation on a highway, so it's not -- it's illegal for one to do that. And so, it's not relevant in this matter.

**THE COURT:** All right.

**MR. ECTON:** Your Honor, it -- it's directly relevant in the sense that that's what the issue is. I think they -- they're whole argument is you can -- they can't be driven on the public road. I think their -- their whole argument in -- in previously with the bulletin of 2000 and all that, laid it out what they're trying to get to of the point of well, it's a highway, so you can't drive them on the highway because you just can't be licensed. So, it is -- it is relevant in the sense that what are these actually being used for and -- and are they being driven on the road. It -- and I think the statute, if you go back and look at that statute it says, is or may be driven on the road. Well, these are being driven on the road.

**THE COURT:** All right.

**MR. ECTON:** So, it's very relevant even in -- even

to their argument they're saying that.

**THE COURT:** All right. As to your argument, it's relevant, so I'm -- I'm going to overrule the objection.

**MS. WOOTEN:** Yes, Your Honor.

**THE COURT:** It'll depend on my ultimate decision.

Q: And so -- so, Jack, if you would, did you sell City Center Partnership a UTV?

A: We did and they actually drove it from our shop, which is on the other side of Lexington, all the way back to the City of Columbia.

Q: You watched it?

A: Uh-huh (affirmative response). I questioned it. They said, oh no, we're fine.

**MS. WOOTEN:** Objection, Your Honor. Hearsay.

**THE COURT:** I'll sustain ---

A: In fact ---

**THE COURT:** --- that objection.

A: We sell hospitals, police departments and other agencies as well here in the Columbia area.

Q: Okay. There -- there's a photo in that Exhibit. The vehicle -- is there a UTV vehicle showed in that photo?

A: Yes, sir. The one we sold them.

Q: What's your understanding of -- okay. What's

your understanding of what -- what they do with those vehicles?

A: Well, my understanding that in busy times, special events, and things like that, it's a way that they can -- they can, hey, I need a ride, flag them down or whatever. And it's kind of safety issue. They can get them quicker to their cars. It's just ---

Q: Around where?

A: The City of Columbia from -- specifically from down here at the river to Millwood -- where Millwood forks off.

Q: And you -- you've witnessed that before?

A: Yes, sir.

Q: Let me -- as part of this Exhibit, if I could, the back pages to this Exhibit show the audit that was actually produced by the Department of Revenue. Is City Center Partnership included in that as far as a vehicle sold to them?

A: It is.

Q: Okay.

A: I think I -- I saw it on this first page somewhere.

Q: I think it might like five or six down on it. That's fine.

A: It's definitely on here. Yeah. I see it.
Q: Okay.
A: And they're a non-profit organization. They have about 27,000 miles on that vehicle. They called us two weeks ago looking at buying another one. They're going to see ---
Q: To replace it?
A: --- if they can put that in their budget.
**MS. WOOTEN:** Objection, Your Honor. Hearsay.
**THE COURT:** I sustain the objection that you've gave, unless you ---
**MR. ECTON:** That's fine, Your Honor.
**THE COURT:** Okay.
Q: You know, Jack, as a -- as a licensed dealer in -- with the retail license with Department of Revenue, you collect sales tax and customers and pay it over to Department of Revenue, is that right?
A: That's correct.
Q: And during the period of the audit, did you collect sales tax and pay it over on -- on all your ATVs and UTVs?
A: Correct. When -- when I started selling the ATVs, I called them up and the person that answers the phone in the sales tax division

can't help you, they'll refer you to the help desk or help center. Told them what we're selling, asked them how to do it and asked things like does it have MSOs, require titling and whatever.

**MS. WOOTEN:** Objection, Your Honor. Hearsay.

**MR. ECTON:** Your Honor, I don't think he's saying -- offering that for the truth of the matter. He's just saying what they told him. ---

**THE COURT:** Yeah.

**MR. ECTON:** They sent him over to the -- to the Department.

**THE COURT:** I'll let you respond to that, but I -- I think it was ---

**MS. WOOTEN:** And may -- and I may have jumped the gun, but ---

**THE COURT:** Yeah.

**MS. WOOTEN:** --- any statements from the Department employees about what was said regarding this max tax issue, if that Department employee is not here, then I'm -- I'm going to object as hearsay. But I may have jumped the gun on that.

**THE COURT:** Well, I don't know if you jump the gun. It's a proper objection. He's got a proper

exception. So, I don't think that's jumping the gun, but I think I'm going to overrule the objection ---

**MS. WOOTEN:** Okay.

**THE COURT:** --- based on the parameters of which Mr. Ecton said he's offering the evidence and it will be admitted within those parameters. All right?

**MR. ECTON:** Right. And we may have other parameters in -- in a minute, Your Honor.

**THE COURT:** Okay.

**MR. ECTON:** Which I anticipate another objection on, so.

**THE COURT:** Okay.

Q: But -- so -- so, you -- you -- Jack, you were talking about when you had called the Department. Now, when you started selling ATVs and UTVs, did you know exactly what you were supposed to charge as sales tax? And so, you can took an action to call them and say, here's what I got ---

A: Right.

Q: --- what do I need to do. Okay. I'm going to hand you what's been previously marked Plaintiff's Exhibit 6.

**THE COURT:** That would be Petitioner's.

**MR. ECTON:** Sir?

**THE COURT:** Petitioner's, not Plaintiff's.

**MR. ECTON:** Oh, I'm sorry. Petitioner's.

Q: Can you identify those?

**(Petitioner's Exhibit Number 6 was introduced in the record at this time.)**

A: These are my notes, my handwriting, and they're all taken from a total review from my 2004 sales tax return to current because whenever we had an issue where the numbers wouldn't come out right, we would call them and try to figure out what was wrong. They can actually get online and look at what you're doing.

Q: Yeah. Describe that process for the Court. I think that's important because I didn't really know about it. But describe the process. When you have an issue with any sales tax that you're trying to submit to the Department and say -- you do it online, right?

A: Unlike probably a retail store, where we're a motor vehicle, we're going to have two different types of tax. We have tax -- we have cash register sales, we have labor, and we have motor vehicles, and we -- and they break that

down as on-road and off-road. Well, so -- and trailers. So, you have two columns and if you don't get -- and every month we write down a grid of a customer's name, what we sold, and what column does that -- that sales amount go into, and total them up. And we also total the sales tax that we collect, so then when we get to the end, it passes the smell test as to what they want versus what we collected and sounds about right. Now, if you put a wrong number in a wrong block, it'll pink. You can't get to the next page because you don't have something right.

Q: You said it'll ping, it'll lock up?

A: It -- the square ---

Q: The online ---

A: --- where you would type in the number, goes pink. And it'll tell you, you cannot proceed what -- until this and that line match this line. And we got our numbers, so we -- we feel like we're right, so we call over there, we go over it. Ah, okay. Well, we get it fixed and proceed and do the -- do the return. And that's happened many times.

Q: And they can actually sign on to your system

and help you fix it?

**MS. WOOTEN:** Objection. Leading.

A: The fact is they can ---

**THE COURT:** Woah. Woah.

**MR. ECTON:** Yeah.

**THE COURT:** Stop.

A: I'm sorry.

**THE COURT:** When she objects, you have to stop.

A: Oh. Okay.

**THE COURT:** Any response?

**MR. ECTON:** Nah. I don't think it's leading, but if ---

**THE COURT:** You want to rephrase it?

**MR. ECTON:** Sure.

**MS. WOOTEN:** Your Honor, and I -- I hate to interrupt Mr. Ecton again, but I want the record to be clear. Mr. Ecton handed that up as Exhibit Number 6. That is actually Exhibit Number 5 and that is one that we objected to. So, I want it to be ---

**THE COURT:** So ---

**MR. ECTON:** I'm sorry. And that may be. I think it was numbered a little different.

**THE COURT:** So, it is Exhibit 6 and you don't object to that one?

**MS. WOOTEN:** I don't object to Exhibit 6. I object to what I thought was Exhibit 5. What was handed up as -- in my book as 5, which is his notes.

**MR. ECTON:** Right. And I think -- I think when -- when I got it handed back, they were labeled one other -- one off. So, I think this is the one she objects to. She does not object to 5.

**THE COURT:** All right.

**THE COURT:** No. No. No. That takes me to the next level. All right. So, he's looking at something that you object to coming into evidence.

**MS. WOOTEN:** Yes.

**THE COURT:** That's one issue. It's -- the other issue is do you object to him looking at it because he can look at it all day until you object.

**MS. WOOTEN:** That's -- that's right. That's why I said for record -- for the record. I just want to reflect what Exhibit he's looking at.

**THE COURT:** Okay.

**MS. WOOTEN:** I -- I don't object to him looking at it. I do object to him testifying about the contents, specific contents and it coming into

evidence.

**THE COURT:** All right. So, where we can be clear.

**MR. ECTON:** Sure.

**THE COURT:** You can look at it, but testifying as to the contents or content is kind of splitting hairs. If he's looking at it and then testifying to it, why are looking it ---

**MS. WOOTEN:** There ---

**THE COURT:** Are you objecting?

**MS. WOOTEN:** Yes. I'm objecting. There's hearsay in that document.

**THE COURT:** Oh, okay.

**MS. WOOTEN:** Which is why I'm objecting to it.

**THE COURT:** Mr. Ecton?

**MR. ECTON:** Your Honor, it -- the objection whether -- it's my understanding, would be whether he's testifying as to an -- an out of Court statement offered for the truth of it. Right now, he's just reviewing what he did and he's testifying right now as to what he did and not really what they're saying. Now ---

**THE COURT:** Okay.

**MR. ECTON:** --- I think we have -- we have a -- an exception to that in that those notes are contemporaneous taken at the time ---

**THE COURT:** Well, contemporaneous notes can be used to refresh memory that is lost.

**MR. ECTON:** Okay.

**THE COURT:** So, at this point and time, I would say that why don't you pull the notes. If he needs them, you can ---

**MR. ECTON:** Certainly.

**THE COURT:** --- use them to refresh his memory. And therein, we'll be able to -- and also there's recorded recollection too. But that would have to be no memory at all. So, now you're standing. You're seat must be very uncomfortable.

**MS. WOOTEN:** I just want to make sure I have the right ex -- Exhibit Numbers for mine because there's appear to be ---

**THE COURT:** Well, it doesn't matter because this is not an Exhibit.

**MS. WOOTEN:** It is not ---

**THE COURT:** Oh. Oh.

**MS. WOOTEN:** --- but there are others ---

**THE COURT:** Oh. Oh.

**MS. WOOTEN:** --- that entered that are messed up.

**THE COURT:** Oh, okay.

**MR. ECTON:** 5 was the manual. 5 was the last manual

I believe.

**THE COURT:** Okay.

**MS. WOOTEN:** Yeah.

**MR. ECTON:** And we had them as 1.

**MS. WOOTEN:** Okay.

**MR. ECTON:** That was the problem.

**MS. WOOTEN:** All right. What is your 1? We'll start at the beginning. My one is the motorcycle license.

**MR. ECTON:** And I got ...

**MS. WOOTEN:** Is that right?

**MR. ECTON:** That's right.

**MS. WOOTEN:** Number 2 are pictures. Number 3 is a Polaris Sportsman 570 manual. Number 4 is a Polaris Razor 570 manual. Number 5 is ---

**THE COURT:** About us.

**MS. WOOTEN:** Okay.

**MR. ECTON:** City Center Partnership.

**MS. WOOTEN:** Yeah. Those are backwards. I'm sorry. That was 5? What was 4?

**MR. ECTON:** 5. 4 was the second manual.

**MS. WOOTEN:** But that's what I had as 3.

**THE COURT:** Well, what -- what is that?

**MR. ECTON:** No. Because it's not an exhibit. We'll withdraw that as an Exhibit for now.

**THE COURT:** Okay.

**MS. WOOTEN:** Okay.

**THE COURT:** Okay.

**MR. ECTON:** But we'll ask to enter Exhibit Number 5, which is the City Center Partnership.

**THE COURT:** All right. So ---

**MR. ECTON:** Which is think there was an objection to that.

**THE COURT:** All right. So, what was 5 where the record will be clear, has be withdrawn as an Exhibit and what was 6 is now considered 5. And it was previously admitted, is that right?

**MS. WOOTEN:** I don't think so, Your Honor.

**THE COURT:** Okay.

**MS. WOOTEN:** That's ---

**THE COURT:** Well, then y'all explain it to me.

**MR. ECTON:** Let -- let me explain, if I could, Your Honor. I -- I handed the Exhibits and I said they're separated by blue tabs and we didn't have them listed. And Reporter listed them out, but we were -- we were looking at the manuals as one exhibit ---

**THE COURT:** Oh, okay.

**MR. ECTON:** And we separated those out, so it added a number with that name.

**THE COURT:** Oh. So that was an extra.

**MR. ECTON:** So, it was off. It was off ---

**THE COURT:** Okay.

**MR. ECTON:** --- by one is all it was. And so, she's objecting to what we have identified as Petitioner's Number 6 ---

**THE COURT:** Okay.

**MR. ECTON:** --- which are the handwritten notes. I think everything else -- that one and then the final one, you objected to.

**MS. WOOTEN:** Well, I have two after that.

**THE COURT:** I thought you had -- you introduced 1 through 7 or soft introduced 1 through 7.

**MR. ECTON:** Which it should have been 1 through 8.

**MS. WOOTEN:** Okay.

**THE COURT:** Oh, okay.

**MS. WOOTEN:** That's what happened.

**THE COURT:** There you go.

**MR. ECTON:** Does that sound right?

**THE COURT:** Yeah.

**MR. ECTON:** All right. It's going to be -- it's going to be 6 is objection.

**MS. WOOTEN:** And 8 will be objected to as well. Those were the two that I objected to.

**THE COURT:** Okay. All right. That's just -- y'all

made it clear. I'm -- I'm not going to try to repeat it. Thank you.

**MR. ECTON:** Thank you, Your Honor.

Q: Jack, if you would -- I know when we first met, you explained to me in detail what you did to try to determine what the proper sales tax were at the times -- at different times during that -- during your process. If you would explain to the Court what you -- what actions you took to try to make a determination of the proper sales tax with your -- with Department of Revenue.

A: I wish their phones calls were recorded and we could solve this real quick, but we know on the 20th of the month your sales tax is due. So, we keep our receipts and certain things from a file in a sales tax file. And we're totaling this up as we go. So -- because I like to try to do it five days before it's due, so if you due have issue, you can call them. And along the years, we've had issues where something wasn't -- just the numbers -- we can't get to the end for some reason. And I would call them, we get to these help desks and I'd write people's names down. It's not hearsay because

it is a fact that I say, okay, I'm not asking for tax advice, I'm telling you this is what we sold this column, this is what we sold in this column and I putting it in this line, but it's not working or we got a -- and they would explain that you have to do -- I just didn't have a process right. And I would print that whole return and write in red what goes in that block, so the next time, we just always use our guide. But along the way, still you would get numbers mixed up sometimes. And I'd write that person's name down. And the next time I call, I might talk to somebody else and they'd say, well, that's wrong, you gotta do it this way.

**MS. WOOTEN:** Objection, Your Honor. Hearsay.

**MR. ECTON:** That's -- it's not offered for the truth of that matter asserted in that particular conversation, but ---

**THE COURT:** So, it's admitted with that caveat.

Q: Go ahead.

A: Okay. So ---

**THE COURT:** And -- in other words, I want the record to be clear. It's admitted to reflect his state of mind.

**MR. ECTON:** Correct.

A: It was just the truth. I'm just kind of asked what I -- what I did and this is our process.

**THE COURT:** Okay.

A: And so -- and when you get to the end, it tells you what -- what -- okay, you owed. And that's right about what we collected. You do it on time, you get 2 percent discount. Hit the button, electronic check, send it in. We used to handwrite it and have to mail it and then we started somewhere along the way doing it online, which is what prompted a lot of the phone calls thereafter that.

Q: What about when you started selling ATVs and some particular time?

A: Well, I remember some specific calls and you know, I was told I -- I asked, does it require titling. I said it has an MSO and especially if we finance it, they do require titling. And I -- I can remember certain things specifically. The lady said, well, you treat it just like a motorcycle. It's a motor vehicle. Well, okay. I'd write their name down. That's what that person told me.

**MS. WOOTEN:** Objection, Your Honor. I don't want to keep objecting. I don't know if in need to

make a standing objection ---

**THE COURT:** No. Because I want to think through each one of them. So ---

**MS. WOOTEN:** Okay. I'm going to object to hearsay of something is a motor vehicle, is it subject to max tax. I mean, all of that is -- whatever the Department employees allegedly said is heresay.

**MR. ECTON:** No. I think it -- it goes like what Your Honor was saying, it's not offered for that treat. It's offered for his state of mind on how he is interpreting what he needs to do to complete a proper sales tax return.

**THE COURT:** And that is relevant for what purposes?

**MR. ECTON:** Relevant for the purposes of identifying what the Department believe -- or what -- what the Department employees have said regarding that.

**THE COURT:** Well, that takes you back to the truth of the matter asserted. Originally, this was offered regarding whether he should be assessed on penalty or interest. Is ---

**MR. ECTON:** Certainly.

**THE COURT:** Is that what it's offered for or is it offered for another purpose now?

**MR. ECTON:** It's -- it's offered for one, Your Honor, the -- we still, you know -- we would offer it for the interest issue because I think the estoppel argument we have and we don't have that. Based on previous law, we understand what the previous law is on -- on whether or not we believe they're acting within the scope of their authority, Your Honor.

**THE COURT:** Okay.

**MR. ECTON:** So, we're getting into a kind of legal argument, but we believe they're acting within the scope of their authority. And so, what they say and his reaction to what they say leads us to that this is what -- this is what he needs to be charging and collecting, so ...

**MS. WOOTEN:** I have no problems with his reaction and -- and what he did. I have a problem with him saying, the Department employee told me this. That's the problem. That's the hearsay. You know, he can say I had a conversation with the Department employee and based on that information, I did X, Y, Z. But I think it's hearsay if he's telling us -- or stating what the Department employee said. And also, just to clarify one issue. There are no penalties

in this matter. The only issue would be interest and interest is not a penalty.

**THE COURT:** Okay.

**MS. WOOTEN:** So.

**THE COURT:** I think I've distinguished that.

**MS. WOOTEN:** I'm sorry.

**THE COURT:** I think I distinguished it when I was referencing that while ago. The ---

**MR. ECTON:** The ---

**THE COURT:** --- penalties or interest.

**MS. WOOTEN:** Or interest. Right. And I just want to be clear, there are not penalties in this matter.

**THE COURT:** Okay.

**MS. WOOTEN:** It's only interest and tax.

**THE COURT:** Okay. Can you rephrase the question?

**MR. ECTON:** Certainly, Your Honor.

**THE COURT:** And let's just start over.

Q: Jack, in -- do you remember who you spoke with, just the names? Not what they said. Names of people that you ---

A: I ---

Q: --- spoke with over time.

A: I do and have them wrote down.

Q: Okay. If you remember them, let us know what

-- what you remember first.

A: The people I've talked to along the way?

Q: Uh-huh (affirmative response). Regarding the particular issue about ATVs, UTVs.

A: Well, a Marie Johnson November of '17 and Ayona Myers. A lady named Emma. Misty. When I started doing the return online, this is -- well, I talked to you know a lady about how do we get this right, what we're supposed to do. And you know, fast forwarded, Sierra Murphy, 3/28/19. That's when I determined that by accident, I happened to see that the -- my mother would go to the DMV for us and she didn't -- she just -- whatever they said, she thought was right. But I saw the receipt where they're charging us for the max tax on these vehicles. So, I -- and this after the, you know, audit and we're talking about, going back and forth. I go down to the DMV and confront that lady in person and she says, I can tell you right now ---

**MS. WOOTEN:** Objection, Your Honor. Hearsay.

A: I was just asked ---

**THE COURT:** Woah.

**MR. ECTON:** I don't know where it's going, Your

Honor. So -- so, I can ask the question to kind of clean it up.

**THE COURT:** Yeah. Go ahead.

**MR. ECTON:** All right.

Q: In your conversations with DMV, did they charge you -- was it was the IMF fee that you're talking about, the intra- ---

A: Talking about the max tax?

Q: Yeah.

A: Yes.

Q: All right. Stumbled on that one. So, you were talking about that. After, the -- the new law.

A: Uh-huh (affirmative response).

Q: For the 500. And you -- and you talking about, they charged you a $500 fee?

A: Specifically, anything I bring down there to get a title on, besides a mobile home, they're going to charge me max tax up to $500.

Q: Okay. After -- let me ask you this and we'll kind of clean this up. After all your discussions, I know that you kind of took some contemporaneous notes and different things along all those lines. But after your discussion with sales tax division, what was your understanding of how you were supposed to

apply the sales tax to ATVs and UTVs?
A: From talking to the Department that collects the money ---
Q: Yeah.
A: --- that's supposed to help me?
Q: What'd you do?
A: The max tax.
Q: Okay. And so that's what you've collected?
A: Right.
Q: All right.
A: Right there.
Q: In any of your discussions during those times, did anyone ever direct you to any bulletin that said, you got to go look at this?
A: No, sir.
Q: Okay.
A: I -- I even went there the day of the eclipse and we did it there in person and we still did the max tax.
Q: Okay. All right. So, after the time of the audit, after the Department came back and said you owe us $200,000 ---
**THE COURT:** Let's -- where I could be clear, so, you said on the day of the eclipse.
A: Uh-huh (affirmative response). That morning.

**THE COURT:** You went and prepared the tax return with somebody at the Department of Revenue and as a result of their assistance, you ---

A: Just validated everything I had been doing.

**THE COURT:** And so you only -- you paid what?

A: Sir?

**THE COURT:** The max tax?

A: Uh-huh (affirmative response).

**THE COURT:** Okay.

Q: And after the time of the audit, when they came in and said you owed a couple hundred thousand dollars for taxes you never collected because of that advise or because of what you understood you were supposed to be doing after those conversations, did you start collecting a 7 percent tax?

A: Well, it wasn't because of the audit. We talked to my accountant and told him -- you know, he's aware of what's going on and we went and had a meeting over there at DOR and the person we spoke with -- he validated. He said, well, this is the way you're supposed to be doing it. So, we started doing it ---

Q: Not tax -- not max tax. He said you need ----

A: 7 percent with no cap on it.

Q: Okay.
A: I just wish somebody would have told me that earlier, I'd have collected 2 more percent.
Q: All right. All right. But -- and you would have paid it over, just like you paid over everything else, right?
A: I feel like it.
Q: You don't profit it from it. All right.
A: I didn't keep a dollar.
Q: All right. I'm going to hand you what's previously been marked as Petitioner's Number 7. Okay. If you can identify that for the Court.

**(Petitioner's Exhibit Number 7 was introduced in the record at this time.)**

A: Well, this is what we call Form 400.
Q: Okay. What's a Form 400?
A: One of the forms that's from the DMV that is required if you register or title anything at the DMV. And the reason I went down there, it clearly says right there at the top, you gonna pay 500 -- this is an old form here I think.
Q: This is one during the audit period. What -- what's the date on that one?
A: Well, it says revised 4 of 2010. But it tells

you on the new form, collect -- if you title anything, they're going to collect up to $500.

Q: Does that particular ---

A: Right at the top of that form.

Q: In that particular form there, it is your understanding that's one -- one of the vehicles that was subject to the audit?

A: This one here. Yeah. It was -- he was in the audit. This -- it sure was.

Q: What kind of vehicle is that?

A: This is side-by-side four-seater, sits four people. Seatbelts for four.

Q: Polaris Razor.

A: 2013 Razor IV they call it because it's a four-seater.

Q: All right. I'll direct your attention to -- there's an X -- X mark on the title only.

A: Right.

Q: Box.

A: Right.

Q: What does the DMV collect from you when you take that down there to get titled?

A: Well, it tells you here in small print, sales tax, 5 percent of the sales price up to $300 max.

Q: And a $15 title fee?
A: Correct.
Q: And then they'll give you that sticker of origin.
A: Correct. You have to fill this form out anything you title at DMV or tag. Because on the back of it is where you list your insurance information and stuff.
**MR. ECTON:** Your Honor, we're to Exhibit Number 8 and I understand there's a -- there's a objection to this one coming in. Let me -- I guess, let me get him to identify it first and then I'll see what the objection is, Your Honor. Okay. Actually, I need to get this marked as Petitioner's Exhibit Number 8.
**(Petitioner's Exhibit Number 8 was marked for identification purposes.)**
**MR. ECTON:** Sorry about that. It's my fault.
Q: Jack, I'm going to -- I'm going to hand you what we've -- what's been marked Petitioner's Exhibit Number 8 and it's a -- it's three pages. I'll see if you would, if you can identify that for me.
A: These are -- a receipt that you get when you go to the DMV and process paperwork. It'll --

they'll list a customer's name, what the service description was and then an identifier via VIN number, and then how much they charged you. And then when you walk out the door, that's your total paid. This particular one resulted in -- it was in -- after the audit, we were collecting this 7 percent ---

**MS. WOOTEN:** Objection, Your Honor. I'd like to address the objection before he continues to testify from the document.

**THE COURT:** Oh, it hasn't been offered into evidence. So, that's a valid objection. He's publishing the exhibits and hasn't been introduced, so.

**MR. ECTON:** Right.

**THE COURT:** All right. So, do you ---

**MR. ECTON:** Okay. Your Honor, we would moved to introduce it into evidence.

**THE COURT:** All right.

**MS. WOOTEN:** I would object, Your Honor. I don't have a problem with the -- the form, the DMV part, but there's a lot of handwritten notes on there that contain hearsay and we would object to those. If they can be redacted, I don't have a problem with the document coming in.

**THE COURT:** All right.

**MR. ECTON:** Your Honor, I believe Mr. Debruhl can testify that those are contemporaneous notes that he took at the time that he received this -- this back from the DMV. So, exception to the hearsay rule on that.

**THE COURT:** There is?

**MR. ECTON:** I think so.

**THE COURT:** To ---

**MR. ECTON:** Contemporaneous notes.

**THE COURT:** I don't think -- give me a second.

**MR. ECTON:** And Your Honor, if there is specific objections to any of that handwritten notes ---

**THE COURT:** I'll tell you what ---

**MR. ECTON:** --- I don't mind redacting that.

**THE COURT:** All right. As it stands now, I'm not going to let it into evidence, but if he wishes to explain the foundation of the contemporary notes, I may be -- I'll hear that again. I don't see contemporary notes right off in the hearsay rules.

**MR. ECTON:** I think if I -- if I look at it, there's really only one note on there that would relate to any hearsay.

**THE COURT:** Okay.

**MR. ECTON:** So, we'll be glad to redact ---

**THE COURT:** That note.

**MR. ECTON:** --- that note or whatever ---

**THE COURT:** Can you show ---

**MR. ECTON:** DOR ---

**THE COURT:** Could you show me what you're talking about? And if you ask -- if it were contemporary notes,, if we were talking about recorded recollection is that what your ---

**MR. ECTON:** Yeah. Recorded recollection of whatever the ---

**THE COURT:** That's about as -- concerning a matter which a witness once had knowledge, but not has insufficient recollection. All right.

**MR. ECTON:** Okay. No. We've -- we've -- we've agreed that we could redact two sections on here. I don't know what the proper procedure would be to do that, but ---

**THE COURT:** Just take a -- take a black pen and mark over it. I'm not going to make an effort to try to figure it out.

**MR. ECTON:** The -- can we take the time here real quick to do it.

**THE COURT:** We got a black pen over here.

**MR. ECTON:** Perfect. Perfect. Thank you. Thank

you. Your Honor, is there anyway we could make a copy of this? It kind of bleeds through a little bit.

**THE COURT:** We can definitely do that. I -- I'm not going to be looking for it.

**MS. WOOTEN:** Okay.

**THE COURT:** But it's -- we can make a copy if you want to make a copy real quick.

**MR. ECTON:** Is that okay?

**THE COURT:** Okay. Let's just take ---

**MR. ECTON:** One of them looks like it bleeds through.

**MS. WOOTEN:** Okay.

**THE COURT:** Let's just take a five to ten minute break.

**(Off the Record)**

Q: Mr. Debruhl, I handed you -- or I'm handing you a copy of Petitioner's Exhibit Number 8. It's been redacted. If you would, can you identify that for the Court?

A: This ---

Q: You may have already identified it.

A: This is a particular DMV receipt dated April 18th ---

Q: Okay.

A: --- on where we took several Form 400s down to the DMV to get titles for vehicles.
Q: Okay. The vehicle that's listed on that form -- look at the next page back. Is that a bill of sale from your store?
A: Correct.
Q: Okay. And -- and is the person who bought the vehicle under that bill of sale, is that's what referenced to the South Carolina Department of Motor Vehicle receipt of fees paid?
A: Correct. It's the first one on that receipt.
Q: Jamie Ortiz?
A: Right.
Q: Okay. And what kind of vehicle did you sell him?
A: It was a Polaris 1000 Razor XP IV.
Q: And that's a $21,999 value?
A: Yes, sir. Uh-huh (affirmative response).
Q: On that bill of sale, did you pay the 7 percent sales tax at that time?
A: I did. And I clearly highlighted it. It was $1,222.83.
Q: Okay. Take a look at the receipt from the Department of Motor Vehicle, and did you also pay the Infrastructure Maintenance Fee on that?

A: $500.
Q: Okay. Take a look -- so right now, as of April of '18, the Department of Motor Vehicles collected an Infrastructure Maintenance Fee on the titled UTVs? Okay. Take a look at the other page in that, it's another receipt of fees paid to date and then identify that one.
A: This receipt is February of '18.
Q: All right. In that, did the Department also collect a Infrastructure Maintenance Fee.
A: They did on a unit that was agriculture use. And every time we went there, we sent that form as well.
Q: All right. Explain that for the Court.
A: If you can have a -- it's my understanding, a true deduction for a vehicle that you want to use for -- the list has like 10 items on it you can pick. If you qualify one of those 10 items, the customer and -- and say that that applies, then you don't -- you're not required to pay sales tax. But I think -- I always tell them, you need to disclose that to your accountant. I think you take it as a ---
Q: For agriculture use?
A: Yeah. Right.

Q: And so, even if you have an agriculture exemption with that sale, DMVs collecting 500 maintenance fee ---

A: Exactly.

Q: --- still?

A: Uh-huh (affirmative response).

Q: Okay.

A: And it wasn't until sometime when I discovered that was happening, but it -- so -- I said, we got to go back on all our receipts because they've been doing it for sometime. Ever -- well, since July 17.

Q: Yeah. Let me ask you one -- one question about that February of 2018. That says, Jack's Custom Cycles of Murrells Inlet.

A: Yeah.

Q: What is that? That's -- that's not the same store as your Lexington store, Jack's Motorsports there, is it? On the other receipt.

A: That's absolutely correct. That is a business that we did open for a short period of time in 2000 and -- well, 10 years ago. At the time of this, that business was closed for like nine years. And so, I don't know why it would even come up in their system, and therefore, I don't

even know where that sales tax money went to once it got in their system.

Q: During the time of the audit, did anyone ever mention to you that they applied any of the sales tax that may have been attributable to Murrells Inlet as a credit to any part of your item?

A: I discovered that -- no, sir. They did not. I discovered this by going back through these receipts. I'm like, well, how did they even come up with that because that business had been closed for -- and the number with the DMV has been -- it's cancelled like September -- I can't remember the year, but it was like -- this year is 10 years ago.

Q: Okay. So -- so, as I understand it, when you go title a ATV or UTV with the Department of Motor Vehicles, at the time during the audit -- the time period during the audit, they charged you a maximum tax of $300?

A: Uh-huh (affirmative response).

Q: To title it.

A: It ---

Q: And even now, they charge you the IMF fee on that.

A: And we would send either a bill of sale or agriculture form, especially with a trailer a bill of sale, and they would contend it's 5 percent, not 7 percent.

Q: Okay. But as far as ATV, UTVs, they charge you ---

A: I ---

Q: --- the Infrastructure Maintenance Fee? Okay.

**MR. ECTON:** Your Honor, that's -- that's all we have. We'll -- let me have that. Thank you.

**THE COURT:** Ms. Wooten.

**MS. WOOTEN:** Thank you, Your Honor. May I approach the witness? Do you have Petitioner's Exhibits?

**MR. DEBRUHL - CROSS-EXAMINATION BY MS. WOOTEN:**

Q: I'm going to hand you what's been marked as Petitioner's Exhibit 1. You're a licence motorcycle dealer with the Department of Motor Vehicles, correct?

A: Correct.

Q: You were -- do you have a motor vehicle dealer license for the Department of Motor Vehicles?

A: That's what? Well, the way it works with us is opposite from -- like, we can sell five cars or trucks a year and the rest motorcycles is my

understanding or I pay another $15,000 bond and -- and sell unlimited. So, we do trade a truck or two in every now and then. That's why we have that instead of paying another bond, where a car dealer can't sell five motorcycles.

Q: So, I'll ask my question again. Do you have a motor vehicle dealer license from the Department of Motor Vehicles?

A: I do.

Q: Where is that?

A: Right here.

**MS. WOOTEN:** May I approach, Your Honor.

**THE COURT:** Uh-huh.

**MS. WOOTEN:** Thank you.

Q: On this document right here, what type of license does it say on Petitioner's Exhibit 1?

A: Motorcycle.

Q: Does it say motor vehicles?

A: Every time I fill out my license renewal, I have to fill out a motor vehicle dealer license.

Q: Does this document say this is a motor vehicle license from the Department of Motor Vehicles?

A: It's what -- it says, license type, motorcycle.

Q: Does it say Department of -- or does it say

motor vehicle license type?
A: It says ---
Q: Yes or no?
A: Well, license to sell vehicles in accordance with South Carolina Code of Laws.
Q: Type of license ---
A: Motorcycle.
Q: Does it say ---
A: Motorcycle.
Q: Does it say motor vehicle?
A: It does not.
Q: Do you have a license to sell motor vehicles in South Carolina?
A: According to the Department of Motor Vehicles, yes. I can.
Q: Where is that license?
A: And I just sold one this month.
Q: Again, does that document say it is a license to sell motor vehicles?
A: I am licensed to sell you a four-door pickup truck if I have one and you want to buy it. Yes, I can.
Q: The Department of Motor Vehicles does issue motor vehicle dealer licenses, correct?
A: Yes.

Q: And that is a different type of license than a motorcycle license, correct?
A: If you -- you either going to buy one bond or two bonds, but I can sell you a motor vehicle.
Q: Can you sell more than five in one year?
A: No.
Q: Why not?
A: Just a -- I didn't want to pay two bonds.
Q: But if you have a motor vehicle dealer license, you could pay -- or you could sell more than five a year, correct?
A: That's my understanding.
Q: Thank you. And your position in this matter is that ATVs and UTVs are motor vehicles, correct?
A: Uh-huh (affirmative response).
Q: And you sell tem at your dealership in Lexington?
A: Uh-huh (affirmative response).
Q: Do you sell them anywhere else, like ---
A: No, ma'am.
Q: That's it, just at your dealership. Not at the fairground, not at the Sportsman Classic. Do you sell them there?
A: We show them there.
Q: Do you sell any there?

A: Back at -- no, ma'am. We do not deliver vehicles offsite.
Q: You do not deliver any vehicles off of your site?
A: No. I said offsite. At the fairgrounds. You can't come to the fairgrounds and leave with a vehicle at the Sportsman Classic. They have to come back to the shop. We can finish our business their at the shop.
Q: So, for every ATV and UTV you sell, you finish all of the business at your shop in Lexington?
A: Uh-huh (affirmative response).
Q: So, ATVs and UTVs cannot receive a license plate for DMV, is that correct?
A: In this state.
Q: And that's because they can't be registered, correct?
A: Define registration.
Q: Registered with the Department of Motor Vehicles and receive a registration card that allows you to get a license plate.
A: Correct. You can get a title.
**THE COURT:** You said they can't receive a license plate and then you said in this state.
A: Some states -- a lot of states allow it.

**THE COURT:** A lot of states allow them to have license plates?

A: Uh-huh (affirmative response).

**THE COURT:** So ---

A: Neighboring states.

**THE COURT:** So, is an ATV, UTV then -- would you say that they were designed to be operated upon the highways? Are they designed where they can be properly operated upon a highway?

A: What a lot of people do is put different tires on it.

**THE COURT:** All right.

A: And it hand -- handles real well.

**THE COURT:** Go ahead.

**MS. WOOTEN:** Thank you.

A: I have a permit.

Q: You -- you testified earlier regarding ATVs and UTVs, what types of things that they have on them, the steering wheel, the brakes, the taillights. ATVs and UTVs do not come stock with mirrors, correct?

A: Some of them do.

Q: But some do not, correct?

A: Correct.

Q: ATVs do not come stocked with mirrors, correct?

A: Correct.
Q: Okay. Turn signals. UTVs do not come stock with turn signals, correct?
A: Correct.
Q: ATVs do not come stock with turn signals, correct?
A: Correct.
Q: ATVs and UTVs do not have air bags, correct?
A: Correct. Neither do motorcycles.
Q: But ATVs and UTVs are designed to be operated on a highway, correct?
A: What do you mean?
Q: Can they be operated -- or does the manufacturer design them to operate on a highway?
A: It's just type of tire that's on it. That's why change the tires.
Q: Does the manufacturer design ATVs and UTVs to operate on a highway?
**MR. ECTON:** Asked and answered, Your Honor.
**THE COURT:** Well ---
**MS. WOOTEN:** He said -- oh.
**THE COURT:** It was asked by me and then, now ---
**MR. ECTON:** He answered already.
**THE COURT:** --- it's been asked by her, so -- but

she can -- I'll let her ask the question again.

Q: Does the manufacturer have specifications in it's ownery (ph) -- owner's manual for ATVs and UTVs about whether or not they are designed to operate on a highway?

A: I think they do have that in there.

Q: And what do they state?

A: I haven't read that whole manual page by page, but I think if you do certain things to it, you can operate it on the road.

**MS. WOOTEN:** May I approach, Your Honor?

Q: I'm going to hand you part of what's been marked as Exhibit 4.

A: Uh-huh (affirmative response).

Q: This is Page 7. Sir, I'm going to stand over you so I can look at this. The third paragraph, would you read the first sentence, please?

A: Yep. This is considered an off-road vehicle familiar -- familiarize yourself with laws and regulations concerning operation of this vehicle in your area.

Q: Thank you. So, ATVs and UTVs are not like cars, correct? They don't have turn -- they don't come with turn signals, they don't come

with mirrors, they do not come with air bags, and they cannot be operated -- they are designed to be operated, correct? So they are not like cars.

A: They're not like cars except for the air bag thing.

Q: Turn signals.

A: They made one with turn signals.

Q: But not all of them come with turn signals.

A: Correct.

Q: And not all of them come with mirrors, correct?

A: Correct.

Q: Thank you. You testified earlier that you spoke to someone at the Department of Revenue in 2004 when you began selling ATVs, correct? And based on that conversation you have been collecting max tax on those ATVs, is that correct?

A: Correct.

Q: Okay. You spoke -- you claim you spoke to someone in 2011 and asked the same question and received a similar response, is that correct?

A: Correct.

Q: You claim that you spoke to a Misty in 2012 and based on that conversation, you continued to

treat the ATVs in the same way, is that correct?

A: Correct.

Q: You also stated that you talked to a Marie Johnson, someone with the last name of Myers, someone with the first name of Emma and a Sierra Murphy regarding the same issue and you -- based on those conversations, you continued to do what you were doing with regard to ATVs, UTVs and max tax, is that correct?

A: Correct.

Q: Why do you keep calling the Department to ask the same question, when you've gotten the same answer every time?

A: Only because when we would have -- the situation may came up where we have things totaled up a certain way and the sales tax return -- something's not flowing right or the numbers don't jive and I ask them what are we missing, you know, did I make a mistake or whatever. And I'd tell them this is what we sold, like motorcycles, Polarises, trailers, what number -- where am I not putting the right number in the right block. I mean, it's like nine pages or something.

Q: Okay. But you testified earlier, you have an accountant, correct?
A: I do.
Q: Prior to this litigation, you never reviewed the Department's policy document regarding ATVs, correct?
A: The Department of Revenue?
Q: Yes.
A: I don't think I ever had one.
Q: They're available online. You've never gone online to the Department's website and reviewed our policy documents related to ATVs?
A: No. No. There's serious lack of training there.
Q: Is -- is that a yes or no? Have -- prior to this litigation, did you got the Department's website and search for policy documents on ATVs or UTVs?
A: Not to my knowledge.
Q: And you've never requested a private letter ruling from the Department's Policy Division regarding how ATVs are taxed in South Carolina, correct?
A: No. I don't think I've requested anything like that. I would just call them up and ask them

how to do it, and go with what -- the information I had is.

**MS. WOOTEN:** I'm going to approach again, Your Honor.

Q: I'm going to hand you two different Exhibits. The first one, is Petitioner's, I believe, 6. You recall seeing this document when Mr. Ecton asked you questions earlier?

A: Yes, ma'am.

Q: Okay. I'm going now hand you Respondent's -- excuse me -- 16. If you'll look at Respondent's 16 and flip to, I believe the 4th page.

**(Respondent's Exhibit Number 16 was introduced in the record at this time.)**

**MR. ECTON:** Which one is that?

**MS. WOOTEN:** Respondent's 16 is a copy of the certified DMV documents.

**MR. ECTON:** So, he's looking at which ones again?

**MS. WOOTEN:** Respondent's 16.

Q: If you'll flip to the 5th page in that Exhibit.

A: All right. It appears to be the same thing this is, right?

Q: Right. And you testified that the DMV would have collected the sales tax on this item,

correct?
A: Yeah.
Q: Okay. If you'll flip the page. Who is the signature on the back of the title that is exhibit -- on Page Number 6 in this exhibit?
A: You talking about the backside of this?
**MS. WOOTEN:** May I approach again, Your Honor?
A: You talking about that?
Q: Yes.
A: The customer.
Q: What's the customer's name?
A: Joseph Bucoly (ph).
Q: If you'll look down a the bottom section of that -- the back of that title where it says this section for DMV use only.
A: Uh-huh (affirmative response).
Q: Beside title there's an amount written in. How much is that amount?
A: $15.
Q: And that is the title fee, correct?
A: Yes, ma'am.
Q: All right. If you'll look on the column next to it. There's a column that says user sales tax. There's nothing written in that column, is there?

A: No, ma'am.
Q: All right. If you'll flip -- if you will look at Petitioner's Exhibit 8. I'll see if I can find it up here for you. Here you go. It just says Exhibit 8. What is the date of this receipt?
A: This one?
Q: Petitioner's Exhibit 8. What is the date of the receipt?
A: 4/11.
Q: Of?
A: 2018.
Q: All right. And there's another invoice in there. That date is also in 2018, correct?
A: Correct.
Q: The IMF became effective in 2017, correct?
A: Correct.
Q: And the audit period in this matter ended in 2016, correct?
A: Yeah.
Q: All right. Prior to the IMF, sales taxes on motor vehicles were collected by the Department of Revenue, correct?
A: Correct.
Q: Okay.

A: No. Say that again?
Q: Prior to the IMF, sales tax on motor vehicles was collected by the Department of Revenue, correct?
A: Correct.
Q: And the D ---
A: No. No. That's not. No. That's not correct.
Q: That's not correct? Okay.
A: All right.
Q: I'm going to hand you an Exhibit.
A: Motor vehicles? We always paid on the sales tax return.
Q: Which is reported to?
A: DOR.
Q: Did I say motor vehicles? I believe I said Department of Revenue. Prior to the IMF, sales tax on motor vehicles was reported to the Department of Revenue, correct?
**THE COURT:** Oh you said DMV.
Q: Did I. I apologize. Department of Revenue.
A: It confused me. Yeah.
**COURT REPORTER:** Here. Those are on type of the mic.
**MS. WOOTEN:** Oh. I'm sorry. Did I make you miss a little bit?

Q: I'm going to hand you Exhibit 19, 20 and 21.
**(Respondent's Exhibit Numbers 19, 20, and 21 were introduced in the record at this time.)**
A: Okay.
Q: The Department of Motor Vehicles has published guidance on whether ATVs are subject to max tax, correct?
A: Repeat that.
Q: The Department of Motor Vehicles has published guidance on whether ATVs are subject to max tax, correct?
A: If you say so.
Q: I'm asking you.
A: I don't know. I guess they do somewhere.
Q: All right. All right. If you will, look at --
-
A: I like to talk to them in person.
Q: If you will look at Exhibit 20?
A: 20.
Q: Uh-huh (affirmative response).
A: I gotcha.
Q: All right. The second page of 20, there is a section on that page that says vehicles not subject to maximum tax and non-dealer retail sales. Would you please read the first two

sentences?

A: Vehicles not subject to maximum tax and for retailers that are licensed dealers, sales taxes are still reported to Department of Revenue. These vehicles include but agree not limited to mopeds purchased prior to November 19, '18, pole trailers, utility trailers, boat trailers, farm trailers, golf carts, ATVs and go-carts.

Q: All right. If you'll look up at the top of the page on this DMV publication, the date is August 2017, correct?

A: Yep.

Q: Okay. All right. Now, if you'll flip to Exhibit 21. On the first page, there's a column to the right that is entitled, IMF reminders. Would you please read the first sentence of the second bullet point that begins for vehicles where sales taxes are still due?

A: For vehicles where sales taxes are still due but are presented for titling, ATVs, go-carts, golf carts, mopeds purchased prior to November of '18, be sure to indicate the retail sax -- sales tax ID on form 400. Retailers will report the state sales tax on these items to

SCDOR, but when presented for titling, DMV must have an indication that sales taxes will be reported by the retailer.

Q: Thank you. Since the IMF, if the DMV charges the IMF fee on the item that is subject to sales tax, a taxpayer can take a deduction on their sales tax return, correct?

A: That's -- the business?

Q: Yes. For that particular item, if the DMV collects the IMF fee on an item that is subject to sales tax, the taxpayer can take a deduction for that amount on the taxpayers sales tax return, correct?

A: That is my understanding of just recent. And I called the DOR about that and you just wouldn't believe the answer I got because I -- I can't find nowhere in the return to put that information and the lady told me -- just keep good notes. Unbelievable.

**MR. ECTON:** All right. I think he can answer the question. She opened the door.

**THE COURT:** Response to the question.

**MR. ECTON:** That is responsive.

**MS. WOOTEN:** Okay. Keep going.

A: I got -- I got the person's name I talked to.

I said, well, where do you put -- I -- because that's when I realized that we were being -- we're getting -- paying tax over here at DMV and I'm turning in tax there, but I'm not getting the credit for it. Where do you put that? She said, well, I don't know. But just subtract it out and keep good notes. I said, what? Keep good notes?

Q: So ---

A: What kind of answer is that?

Q: I'm sorry. I didn't mean to interrupt. I thought you were finished.

A: It's sad that you can't call up the agency that collects the money and people there have a job to help you and you can't get the right information and that is where -- my position. It's sad.

Q: If you will return to Exhibit 19 on Page 3. There's question an answers on ---

A: And where do you get these from? Do they mail them out?

**THE COURT:** Well, you're not allowed to ask her ---

A: Oh. I'm sorry.

Q: Okay.

A: I thought we were still talking about.

Q: Exhibit 19 on Page 3.
A: Okay.
Q: Question Number 18.
A: All right. What -- do you want me to read it?
Q: Yes. Please read the question and answer.
A: I tried to fill out the -- the form ST455 every month to pay sales taxes. It sounds like that will go away and I will pay directly to the DMV when I title vehicles.
Q: So what is the answer?
A: For vehicles titled or titled and registered, the IMF is paid at the time of transaction to the DMV. You will note the deduction on the 455 sent to the Department of Revenue and the DOR will be communicating instructions regarding this. Well, two things on that right there, one, they couldn't tell me where to do it and two, these things here, are they supposed to come in the mail because I don't get them? I've never seen this.

**MS. WOOTEN:** Your Honor, may I have moment please. That's all from the Department of Revenue.

**THE COURT:** Redirect.

**MR. DEBRUHL - REDIRECT EXAMINATION BY MR. ECTON:**

Q: Ms. Wooten asked you about your conversations

that you had -- several conversations with different people throughout your inquiries as to sales tax on ATVs and motor vehicles and all that as -- or UTVs. And when she's asking you that, tell me what -- what those conversations were. What did they tell you?

A: Well, again, it's not tax advice that I'm asking to be clear on that. It's just that, look here, we're not getting it on Page 3 or whatever. The numbers just aren't -- they either turn pink or we feel like it's wrong. This is the total of the columns I got. This is the grand total. We go back through it. We would find -- we would find our mistake or error or something in the wrong block or whatever, and -- and we'd get it done. And that's what -- my understanding is that's what those people are there for. Now, how far do you want me to go with that? I mean ---

Q: Well -- well, what -- you mentioned you spoke with someone named Stan. What Stan tell you?

A: Okay. So, afer this audit thing, I think the first finding -- because they did all that at my accountant's office. We took all the files, everything over there, spent like three weeks

or something over there. And then, they came up with a report. And then, we made an appointment to go over there and speak to someone at the Department of Revenue and go over this and get some clarification on it. Two hours before we go over there -- or an hour, I call over there and get a guy on the phone named Stan. And I gave him three scenarios. I told him everything I sale, motor vehicle, a motorcycle and an ATV, and the max tax is what I was explained that that's what I would charge. I used $8,000 as a -- as a number on the ATV. And he said, that'd be $400. And the guy, I remembered like it was yesterday, he said, dude, you got it. You -- you already know how to do it.

**MS. WOOTEN:** Objection, Your Honor. Hearsay.

A: Well, can I clarify that, Your Honor.

**THE COURT:** No, sir. You can't.

**MR. ECTON:** No. She opened the door on -- on the conversations in the -- I was writing down. She said, in your conversation with Misty, your conversation with -- she's opened the door about those conversations.

A: I had ---

**MS. WOOTEN:** Your Honor, I asked if based on those conversations did he continue to treat the things the same way as before. I didn't ask him what was said in those conversations.

**THE COURT:** Yeah. But you asked him about the conversation.

**MS. WOOTEN:** I asked him what he did based on those conversations. I did not ask him what those individuals said.

**THE COURT:** All right.

**MR. ECTON:** Your Honor, she opened the door when she starts asking about those conversations that he had with the Department of Motor Vehicles, he's allowed to explain himself on what those conversations were.

**THE COURT:** Yeah.

**MR. ECTON:** Not just his actions afterwards now.

**THE COURT:** Yeah.

**MR. ECTON:** It's opened up.

**THE COURT:** Overrule the objection.

A: So, we go over there to have this meeting, my accountant, his assistant and myself. And we spoke with that gentleman right over with the blue tie on and I told him about my prior conversation with the guy named Stan. And I

said, if you don't believe, why don't you call him in here and let's ask him. And his answer was, no, I can't do that.

Q: Okay.

A: Unlike the -- we're sitting in the agency collects the money ---

**THE COURT:** Well, if you could just respond to his questions.

A: Okay. Sure.

Q: Did you have conversation with the tax assistance officer with the Department of Revenue named Michelle Arant at some point and time?

A: Yes, sir. That names is very familiar.

Q: Do you remember your conversation with her?

A: Well, it was a similar situation. Something wasn't working out and ---

Q: Would documents help you recollect?

A: Yeah. Yeah. The time would help me.

Q: I'm going to hand you what's been previously marked as ---

**THE COURT:** Has he seen these?

**MS. WOOTEN:** They've been previously marked.

Q: That is Petitioner's Exhibit Number 6 and tell me if that helps you recollect your

conversation ---

A: Okay. Yeah.

Q: --- with Michelle Arant.

A: So, that was back when we started selling ---

**THE COURT:** One second, you -- you should take it back now.

A: That was back when we started selling.

Q: Hang on. Before you start talking, review it by yourself. Did that help refresh your memory as to your conversation with Ms. Arant?

A: That was when we first started selling off road vehicles. And I called and explained what we were selling, how do you tax them. I'm hearing different opinions and that was when they were still at the museum. I even went there and the information I got was to treat as motorcycles because they come with a MSO.

Q: You picked up one of her cards at the time?

A: I did. I went there. Yeah. Wouldn't have got that if I wasn't there in person.

Q: In your experience, when you title -- when you take some -- an ATV or UTV down to get a title to get a title from DMV, they charge you the sales tax or did they charge you the sales tax on it? The $300 max tax when you titled it.

A: After July 17, I think. Otherwise, we were putting it on the sales tax return, I believe, and paying the tax that way. But I was doing it on the return the way I was guided to do it.

Q: Did -- did they ever charge you -- DMV ever charge you $300 max tax on it?

A: Yes. After '17.

Q: Before '17?

A: I don't think we paid any tax at the DMV prior to '17.

Q: All right. Appreciate it. Thank you.

**MS. WOOTEN:** Nothing from the Department, Your Honor.

**MR. DEBRUHL - CLARIFICATION BY THE COURT:**

**THE COURT:** I got a few questions for you. Where I can just be clear on motorcycles. Are they -- during the audit period, were they subject to the maximum tax?

A: Correct. Well, they always have been.

**THE COURT:** Okay.

A: And are ---

**THE COURT:** Still now.

A: Yeah.

**THE COURT:** Yeah. Were they subject to the maximum tax whether they were on the road or off the

road motorcycles?

A: I can't answer that one because we didn't sell of off-road motorcycles.

**THE COURT:** Oh, okay.

A: I can give you some clarification you were asking for earlier about mopeds and golf carts.

**THE COURT:** All right. I'll just deal with that on the law. Okay. Thank -- any follow up questions?

**MR. ECTON:** Nothing, Your Honor. Nothing.

**MS. WOOTEN:** Nothing, Your Honor.

**THE COURT:** All right. You may step down.

**MR. ECTON:** The Petitioner rests.

**THE COURT:** All right. We're going to take a -- take a short break for lunch.

**MS. WOOTEN:** Your Honor, I -- I would ask, we have one witness. She will be very brief.

**THE COURT:** Oh, yeah.

**MS. WOOTEN:** She needs to get back to the Department of Revenue. If we have no objection, we'd like to call her so that she can be excused.

**THE COURT:** Well, I didn't know you only had one witness.

**MR. ECTON:** No problem.

**THE COURT:** Okay.

**MS. WOOTEN:** We have two witnesses, but our first witness needs to get back to work.

**THE COURT:** Okay.

**MS. WOOTEN:** The Department calls Katie Lake.

**THE COURT:** Can you answer that question that I asked him?

**MS. WOOTEN:** The golf carts and ATVs?

**THE COURT:** No. Motorcycles. Are off-the-road ---

**MS. WOOTEN:** Our position ---

**THE COURT:** Are on-the-road motorcycles taxed both the same way?

**MS. WOOTEN:** I don't believe so, Your Honor, because they have -- our position is that they would have to be driven ---

**THE COURT:** I know what your position is. I'm talking about what -- how they are ---

**MS. WOOTEN:** I couldn't put my hands on it right now, but I could find that for you.

**MR. ECTON:** I believe they are, but we may need to find it, but I believe they are taxed the same.

**THE COURT:** Would you step on up?

**KATIE LAKE**, having been duly sworn, testifies as follows:

**MS. LAKE - DIRECT EXAMINATION BY MS. WOOTEN:**

Q: Would you please state your name for the

record?
A: Katie Lake.
Q: Okay. And where are you currently employed?
A: The Department of Revenue.
Q: And what is your position at the Department?
A: Employer Relations Manager.
Q: What your job duties as Employee Relations Manager?
A: I work in the Human Resource Department and I interpret policy and assist supervisor in enforcing them, other employer recognition programs and such.
Q: Are you one of the persons authorized to review the Department of Revenue Human Resources records?
A: I am.
Q: Can anyone at the Department access those records?
A: No.
Q: What kind of information is contained in the employee records that you are authorized to review?
A: It's employee information. Personal identifiable information such as start dates, when they separate, where they worked at while

they were at the company, and then, of course, other PI, addresses, birth dates and things of that nature.

Q: Do you know why you're here today?

A: Yes.

Q: Have you reviewed the Department's employment records prior to this hearing?

A: I have.

Q: When did you review those records?

A: At the beginning of this year.

Q: Are those records kept in the course of a regularly conducted business activity?

A: They are.

Q: It is regular practice of the Department to make those records?

A: It is.

Q: And are the records made at or near the time of the event that it records?

A: They are.

Q: And were the records made by authorized personnel at the Department?

A: Yes, ma'am.

Q: Is the information in the records accurate?

A: Yes, ma'am.

Q: What records does the department have on an

employee named Michelle Arant?
A: She was employed with the Department of Revenue from 1990 to 2010.
Q: And what division was she employed with?
A: She was taxpayer assistance officer.
Q: Was she ever employed in the Sales Tax Division?
A: No.
Q: What records does the Department have for an employee named Misty that would have been employed in 2012?
A: None.
Q: And what records does the Department have for an employee by the name of Stan that would have been employed in 2017?
A: He was employed at the call center from 2015 to 2018. And November 2nd, 2018, he became an ABL Specialist.
Q: And what is his name?
A: Stanley Nash.
Q: Did he ever work in the sales tax division?
A: No.
Q: Were any other Stans or Stanleys employed in 2017 with the Department?
A: No, ma'am.

**MS. WOOTEN:** That's all, Your Honor.

**MS. LAKE - CROSS-EXAMINATION BY MR. ECTON:**

Q: Ms. Lake, I understand you said Ms. Arant was not in the Sales Tax Division.

A: That's correct.

Q: Would she have received calls related to sales tax?

A: I -- I wouldn't know.

Q: Do you know if she ever gave any advice regarding sales tax?

A: She's a Taxpayer Assistance Officer, but I don't know what limit of information she would give.

Q: But you have no idea whether or not she spoke with Jack about -- Jack Debruhl about how he should be doing his sales tax?

A: I do not know either way.

Q: Okay. And Stan Nash, call center, can you explain why he would be giving out sales tax advice?

A: I don't know if he did or did not.

Q: Okay. You don't have any idea whatsoever.

A: Correct.

Q: You just know when they work?

A: Right.

Q: Okay. Thank you.
**MS. WOOTEN:** Nothing further from the Department.
**THE COURT:** You may step down.
A: Thank you.
**MS. WOOTEN:** Your Honor, I ask that Ms. Lake be excused from this hearing.
**MR. ECTON:** No objection.
**THE COURT:** Ms. Lake, do you want to be excused to go back to work or do you want an excuse?
A: Thank y'all.
**MS. WOOTEN:** Thank you, Your Honor.
**THE COURT:** She's excused. She didn't answer that question by the way. All right. So, now we're going to take a lunch break?
**MS. WOOTEN:** Yes, Your Honor. We can take one.
**THE COURT:** How quick will the next witness be?
**MS. WOOTEN:** How long will they ---
**THE COURT:** No. I said ---
**MS. WOOTEN:** Maybe 20 minutes.
**THE COURT:** I -- I asked how quick.
**MS. WOOTEN:** I don't -- I don't know ---
**THE COURT:** You rephrased that to how long.
**MS. WOOTEN:** I know how -- or how quick my questions will be. I have no idea ---
**THE COURT:** Well, how quick will your questions be?

**MS. WOOTEN:** 15 minutes, maybe 20.

**MR. ECTON:** I don't even know who it is, so it -- it could be pretty short on mine.

**MS. WOOTEN:** It's Stanley Nash.

**THE COURT:** Okay.

**MR. ECTON:** So, pretty quick.

**THE COURT:** Yeah.

**MR. ECTON:** For me.

**THE COURT:** Okay.

**MS. WOOTEN:** Your Honor, the Department calls Stanley Nash.

**STANLEY NASH**, having been duly sworn, testifies as follows:

**MR. NASH - DIRECT EXAMINATION BY MS. WOOTEN:**

Q: Could you please state your name for the record?

A: Stanley Nash.

Q: And where are you currently employed?

A: South Carolina Department of Revenue.

Q: And what is your current position with the Department?

A: I am an ABL Regulatory Analyst.

Q: And when did you begin that position?

A: November 2nd, 2018.

Q: What other positions have you held at the

Department?
A: I worked in the call center.
Q: Okay. When did you work in the call center?
A: In 2015 to 2018.
Q: And what were your job -- what was your title in the call center?
A: Call Center Representative.
Q: And what were your job duties in the call center as the representative?
A: Answer calls and respond to emails.
Q: Have you worked in the Department's Sales Tax Division?
A: No.
Q: And do you know why you're here today?
A: Yes.
Q: Okay. What was the process a Call Center Representative goes through when he or she receives a call from a taxpayer?
A: First, you will answer the call and introduce yourself. And then, you will find out what it is that the taxpayer's calling about.
Q: And once you determine what the taxpayer is calling about, what do you do next?
A: You would sit there and screen the call and find out where that person would need to go

next.

Q: And personally, how many calls did you handle a day when you working the call center?

A: About 75 calls to 100 calls a day.

Q: And what would the variation be from 75 to 100 on average?

A: The variation as far as ---

Q: Whether you received 75 calls Monday or maybe 100 the next day.

A: Well, it depends on the time of the month. It could be the end of the month for sales tax or it could be for individual income taxes due. So, calls will fluctuate.

Q: How do you remember whether you spoke to a taxpayer regarding their account at the Department?

A: The notes we will put in the system.

Q: What's the name of that system?

A: Doorway.

Q: Now, what notes, if any, are kept in Doorway?

A: All notes of phone calls, as well as taxpayer interaction.

Q: During your time in the call center, do you recall speaking to a taxpayer regarding a maximum tax issue?

A: Max tax. No.
Q: What tax topics or issues can a call center representative speak to taxpayers about?
A: Can you repeat that again? I'm sorry.
Q: Sure. What tax topics or issues can a call center representative speak to a taxpayer about?
A: Specific tax questions that are transferred to that question.
Q: What training or guidance does the Department give to the call center reps regarding incoming calls from the taxpayer?
A: We're trained on how to answer calls and how to interact with the taxpayers, and that's basic training we will receive.
Q: Does the call center representative speak to the taxpayer on specific tax topics?
A: No. That call is transferred to that section.
Q: Do you have any training from the Department in sales tax?
A: No.
Q: Do you have any training from the Department in corporate income?
A: No, ma'am.
Q: Do you have any training from the Department on

individual income tax?
A: No, ma'am.
Q: Do you have any training from the Department on motor -- motor field tax?
A: No, ma'am.
Q: Any training from the Department on tobacco tax?
A: No, ma'am.
Q: Okay. What knowledge do you have of Jack's Custom Cycle, Inc. or Jack's Motorsports?
A: I have no knowledge of it.
Q: Have you ever spoken to Mr. Jack Debruhl?
A: I do not recall that conversation. No.
Q: Have you ever met Jack Debruhl prior to today?
A: No, ma'am.
Q: Did you participate in a conference with him in 2017?
A: No, ma'am.
Q: I'm going to hand you what's been marked as Respondent's Exhibit 18. Do you recognize this document?
**(Respondent's Exhibit Number 18 was introduced into the record at this time.)**
A: I do.
Q: What is it?

A: These are notes that came from Doorway.
Q: Was this record made and kept in the ordinary course of a regularly conducted business activity?
A: Yeah.
Q: Is it the regular practice of the Department to make these records?
A: Yes.
Q: Are the records made at or near the time of the event that it records?
A: It is. Yes.
Q: Are the records made by authorized personnel at the Department of Revenue?
A: Yes.
Q: As part of your job duties, do you have access to Doorway?
A: Yes.
Q: And as part of your job duties, are you required to put notes in Doorway?
A: Yes.
Q: Did you review the electronic version of this document to verify its accuracy?
A: I did.
Q: And does it contain all the notes entered on Jack's sales tax account with the Department?

A: Yes.

**MS. WOOTEN:** Your Honor, at this time, I'd like to offer Exhibit 18 into evidence.

**MR. ECTON:** No objection, Your Honor.

**THE COURT:** All right. It's admitted.

**(Respondent's Exhibit Number 18 was admitted into the record.)**

**MS. WOOTEN:** Thank you.

Q: In reviewing Exhibit 18, did you speak to someone associated with Jack's Motorsports?

A: Yes.

Q: Who did you speak to?

A: Crystal Williams and regarding sales tax account, transferred the call to Nicole Wooten.

Q: And what date was that?

A: October 19th, 2018.

Q: What other -- looking at Exhibit 18, what other dates did you speak to Jack's or its representative?

A: There are no other.

Q: As a call center representative, are you required to input notes into Doorway when you speak to a taxpayer?

A: Yes.

Q: Why?

A: It is required.
Q: By?
A: By the Department -- the call center department.
Q: And looking at Exhibit 18, what notes were entered on Jack's account in June of 2012?
A: None.
Q: All right. And looking at Exhibit 18, what notes were entered on Jack's account in July of 2017?
A: None.
Q: Are there any reference in July of 2017 on Exhibit 18?
A: There are references.
Q: What are those references?
A: July the 21st, 2017, it was a batch. And then, there was another batch on the 3rd of July and then, it looks like an audit referenced on July 19th, 2017.
Q: And what does batch mean?
A: That was generated by the system, by Doorway.
Q: Would have individual employee entered in that information?
A: No.
Q: Okay. All right. Looking at that Exhibit, how

many calls are recorded as received by the Department from the taxpayer or its representative?

A: Around 16.

Q: Okay. Thank you, Your Honor.

**THE COURT:** Cross?

**MR. NASH - CROSS-EXAMINATION BY MR. ECTON:**

Q: Mr. Nash, you mentioned that you -- you receive about 100 calls a day while you were in the call center over about three years?

A: Yes. 75 to 100.

Q: So, that's about 708 -- by my calculation, that's 708,000 calls that you would receive during that three-year period. Does that sound about right?

A: Sounds right.

Q: You know everyone of those calls in there? Do you know everyone of those calls in the system?

A: All the calls are noted ---

Q: Okay.

A: --- in the system.

Q: And I -- I missed -- was this all calls that was -- that were related to Jack Debruhl and Jack's service?

A: These are the call that were notated on him.

Q: And they're coded somehow for him? Or how -- how do you pull this to say this is every call -- I just don't know. I'm just wondering.
A: The account. There's an account number that the taxpayer has that identifies him.
Q: So, when he calls in, you pull up that account number?
A: He provides it to us.
Q: Okay. Do you have any recollection of ever talking with Jack?
A: I don't not recall.
Q: Okay. So, you're just looking at what -- what's in here?
A: Basically.
Q: And then -- then whatever's in here sometimes gets referred -- he gets referred over to somebody else sometimes too, right?
A: Can you repeat that question?
Q: So -- so, if he calls here and -- are these all your notes?
A: No.
Q: Just -- this is from other people too. Anybody that came into that system, right? Or that can log into that system.
A: Based on the -- these notes, yes.

Q: Okay. So, you don't know -- other than this, you don't whether you had any conversation with Jack about sales tax?
A: I do not recall other than the notes, sir.
Q: Okay.
**THE COURT:** You said that you make these notes when they give you their account number?
A: No, sir. We pull up the account based off the account number.
**THE COURT:** Okay.
A: And after the conversation, then the notes are placed into the system.
**THE COURT:** All right. So, what happens if a caller doesn't know their account number?
A: Then, you -- we can actually go by an address or a name.
**THE COURT:** The product.
A: --- or telephone number or something like that.
**THE COURT:** And you do that first until you find their account number before you give advice?
A: We find out who the account is, but we don't necessarily give advice.
**THE COURT:** Okay. But before you provide information?

A: Yes, sir.
**THE COURT:** Okay.
**MR. ECTON:** Okay. I -- I don't have any further.
**MS. WOOTEN:** Nothing further from the Department.
**THE COURT:** You may step down.
A: Should I leave this here?
**MS. WOOTEN:** Yes. You can leave that there. Thank you.
**THE COURT:** I assume you rest now.
**MS. WOOTEN:** I'm sorry?
**THE COURT:** I assume you rest now.
**MS. WOOTEN:** I -- the Department rests.
**THE COURT:** Any reply to testimony?
**MR. ECTON:** No reply, Your Honor.
**THE COURT:** All right. Well, you want to take a short break and hear closing arguments or ...
**MS. WOOTEN:** Your Honor, I haven't talked to Mr. Ecton about this and this is -- this is up to him, but you know, the Department would be willing to do proposed orders in lieu of closing. You are well aware of the issues, the facts.
**THE COURT:** I don't even know if I need proposed orders.
**MS. WOOTEN:** Okay.

**THE COURT:** I might take a break -- a break to think about that.

**MS. WOOTEN:** Okay.

**THE COURT:** We've got a lot of evidence.

**MR. ECTON:** I'd like to present closing though, Your Honor.

**THE COURT:** Okay.

**MS. WOOTEN:** That's fine, Your Honor.

**THE COURT:** We've got evidence for a lot of stuff not necessarily going to affect me one way or the other. So, I'll take a short break and give y'all a point and time to prepare.

**MS. WOOTEN:** Thank you, Your Honor.

**MR. ECTON:** About how long, Your Honor?

**THE COURT:** How long do you want?

**MR. ECTON:** You want a lunch break or do you just want to ---

**THE COURT:** No. I was going to take a short break before we do closings.

**MR. ECTON:** Okay. Anytime's fine with me. Yeah.

**THE COURT:** Okay.

**MR. ECTON:** Five, maybe ten minutes.

**THE COURT:** Okay.

**MS. WOOTEN:** Ten minutes.

**THE COURT:** Ten minutes it is.

(Off the Record)

**THE COURT:** Y'all be seated. All righty. I guess I need -- I've been hearing some more significant cases lately. I haven't had closing arguments in a while. But you can go -- you can open or you can go first, last or both. Let's do that way in closing.

**MR. ECTON:** First, last -- first and last. Actually ---

**THE COURT:** That's it, first last or both. So, you want to go first, let her argue and then, go last?

**MR. ECTON:** I'll let her argue and then I'll go.

**THE COURT:** Okay.

**RESPONDENT'S CLOSING STATEMENT:**

**MS. WOOTEN:** Thank you, Your Honor. The position of the Department has maintained since 2000, and that is ATVs and UTVs are not subject to the max tax. It is a partially limited statute and is strictly construed against the taxpayer. The Department's interpretation is reasonable. We use Department of Motor Vehicles' definition. They support our position. The DMV agrees with our position and they are the ones entrusted with administering Title 56. I

would also like to point out that ATVs cannot be registered and licensed and they cannot be operated on the state.

**THE COURT:** You said, DMV agrees with your position. Where am I getting that from?

**MS. WOOTEN:** Your Honor, if you -- in some of the DMV manuals or publications that I have exhibits, they specifically state that ATVs are subject to sales tax.

**THE COURT:** So, I'm now going to relying on DMV's interpretation of the Department of Revenue's laws?

**MS. WOOTEN:** No, Your Honor. It's just support for our position that the ---

**THE COURT:** Right.

**MS. WOOTEN:** --- the agency that is administering Title 56 treats ATVs the same way that the Department does for sales tax purposes. It's the Department's -- it's the Department's statute. It's the way that we interpret it. Motor vehicle is not defined in the -- the statute. It's reasonable for us to use motor vehicle definition ---

**THE COURT:** I was just -- I was just asking about the DMV part because how do I know the DMV

didn't get -- didn't consult with the Department of Revenue in order to reach that determination in it. And you're arguing that's it's DMV interpretation, but DMV may have gotten that interpretation from the Department of Revenue. So, you can now say that DMV agrees with your interpretation, when they're interpretation was dependent upon yours.

**MS. WOOTEN:** DMV published guidance supports the Department's position ---

**THE COURT:** Okay.

**MS. WOOTEN:** --- in the matter. Yeah. And -- and as you noted -- or as I noted earlier, the Department would also rely on the definition of motor vehicle of 65-15-10, which requires motor vehicles to be licensed and registered. And I'll point this out for the Court. In 2003, the legislature attempted to amend the statute to require ATVs to be registered. That legislation did not pass. Again, ATVs cannot be registered ---

**THE COURT:** There's a case on that. I can't rely on pending legislation.

**MS. WOOTEN:** We also submitted for your consideration the case of Anderson versus State

Farm Mutual Insurance Company. Despite tractor being defined as motor vehicle in Title 56, the Court said the tractor is not a quote, motor vehicle, because it's not authorized to operate on the highway. Again, Your Honor, we would rely on our policy documents. This has been our position since 2000. It's available on our website. Policy documents have been available on our website since at least 1997. Mr. Debruhl acknowledge that he did not attempt to go look at the policy documents. It's been out there for everyone to see. We -- and it's available for everyone. We would also point to the inner -- Infrastructure Maintenance Fee statute that was enacted in July 1 of 2018. The very introductory language of it says for the necessary road maintenance -- increasing fees for the necessary road maintenance. There's no need to increase fees on vehicles that can't be allowed to operate on the vehicle -- or on the highway. And the Department would submit that that's further evidence that the max tax never applied to ATVs. It didn't before the IMF and it doesn't apply now. Finally, briefly I talked about the dealer

connection issues where those published guidance from the DMV supports our position in this matter. And also, I would point to -- I'll get that -- to the extent the Court believes Department employees statements are relevant in this matter ---

**THE COURT:** Yeah.

**MS. WOOTEN:** We -- of course, the -- the Department would says it's not, the estoppel cases. But ---

**THE COURT:** That's not going to be a major part of my -- I have to make the legal analysis.

**MS. WOOTEN:** Right. And Mr. Debruhl stated several times he was not asking for tax advice. The Department's is very clear in that we don't give tax advice. He has an accountant. That's what his accountant is for. He also acknowledged that he sells -- he can only sell up to five vehicles -- motor vehicles a year because he does not have a motor vehicle license from the Department. But yet, he claims ATVs and UTVs are motor vehicles and he sells much more than five of those a year. And to your last -- or one of the questions you asked at the beginning, what is an ATV and I'll

submit Your Honor, an ATV is a all terrain vehicle. The fact that the ATV has a definition in Title 56 -- several definitions in Title 56. The fact that it is not included in the max tax statute, shows the legislature didn't intend to give a property tax or a sales tax exemption to motor or ATVs or UTVs. In fact ---

**THE COURT:** Back up.

**MS. WOOTEN:** -- the legislature ---

**THE COURT:** Back up. Say that again.

**MS. WOOTEN:** The fact ---

**THE COURT:** The fact it was ---

**MS. WOOTEN:** The max statute is a partial exemption statute. The fact that the legislature did not include it in the list of things that are eligible for max tax, motor vehicle, aircraft, motorcycles, boats, certain types of trailers, certain types of recreational vehicles, certain types of light construction equipment. The fact the legislature did not include ATVs in there is evidence that never intended for ATVs and UTVs to be subject to the max tax. And further support for that is that the legislature specifically exempted ATVs from

property tax exemption and that's in -- or for property tax and that's in Chandler's Law in the DNR code. The legislature knows how to create exemptions when they want to. They did it for property tax reasons on ATVs. It did not extend that to sales tax.

**THE COURT:** All right. Don't lose your place, but -- so, if motor -- if an ATV is a motor vehicle and fits within the max tax for motor vehicle, then the legislature would not need to specifically create an exemption for them under Chandler's Law because it was already -- it's already a motor vehicle. And -- I would think. So -- and then inversely, if the legislature defined it, then defining as a motorized vehicle could cert -- could arguably be making it clear that they intended it to be under motor vehicle to begin with. So, I -- that point, can you explain it a little bit further?

**MS. WOOTEN:** I'll try, Your Honor. One thing I would point out is that -- and it's something that you brought up, is that these definitions, some say motor vehicles ---

**THE COURT:** I brought up ---

**MS. WOOTEN:** --- some say motorized vehicles.

**THE COURT:** Brought up in my previous orders?

**MS. WOOTEN:** In your -- no. Right ---

**THE COURT:** Oh, okay.

**MS. WOOTEN:** Just now. So, I believe Chandler's Law refers to it as a motorized vehicle.

**THE COURT:** A motorized vehicle.

**MS. WOOTEN:** So, and that is not a motor vehicle. So, again, it's different. It's ---

**THE COURT:** So ---

**MS. WOOTEN:** There's different terminology.

**THE COURT:** A motor vehicle is a term of art?

**MS. WOOTEN:** I believe so. And again, you cannot look at motor vehicle definition in isolation. You have to read the other definitions in Title 56 to determine what is a motor vehicle for sales tax purposes. That is the Department's position.

**THE COURT:** Did -- did the Supreme Court treat motor vehicle as a term of art?

**MS. WOOTEN:** It is in quotation marks, Your Honor, in that Anderson case.

**THE COURT:** Yes because Anderson relied on White and White did not treat motor vehicles as a term of art. He went back and uses CJS definition for motor vehicle. So, I'm trying ---

**MS. WOOTEN:** I would -- I would submit that it is treated as a term of art because it's in quotation marks in the opinion.

**THE COURT:** Okay.

**MS. WOOTEN:** And again, you cannot read -- the Department would respectively submit that the definition of motor vehicle -- one definition in 56 cannot be read in isolation with all the other definitions. They are -- again, there is a definition of motor vehicle that says it has to be registered and licensed. ATVs cannot be. It's not a motor vehicle. And then you have the definitions of vehicle. You have the definitions of highway. You have the misdemeanor statute. Again, this is a partial exemption statute. It's strictly construed against the taxpayer. The Department's position is reasonable. It's not arbitrary. It's supported by Title 56 definitions and we would ask the Court to uphold the assessment against ATVs and UTVs, as they are not subject to max tax.

**THE COURT:** One -- maybe one last there. So, from now on when I see the appellate courts put phrases in quotes, by doing so, I am to now

interpret that when they do so, they mean that that phrase is a term of art and not simply some phrase that they're referring to.

**MS. WOOTEN:** No, Your Honor. I think the distinction is a phrase versus a term. If you see a quotation in a court case, that is a quote ---

**THE COURT:** No. I'm talking about the term. Yeah. Anytime that they do a term ---

**MS. WOOTEN:** In this particular case, I believe they were referencing a specific statute that had motor vehicle in it and I believe that is why they were using the quotation marks.

**THE COURT:** Okay. All right.

**MS. WOOTEN:** Thank you.

**PETITIONER'S CLOSING STATEMENT:**

**MR. ECTON:** Thank you, Your Honor. We've got just a couple of things. Your Honor was right. The legislatures define the motor vehicle and if we look at Anderson, and I'll just take that case real quick since it was presented. They're -- they're talking about farm tractors. And the statute specifically excludes farm tractors and motor vehicles. I mean, it says it in there. Chandler's Law says ATVs are not tractors. So,

I mean, it tells you that's not it. So, there's a distinction between those two and what they're talking about in this insurance case, which is they're interpreting some insurance laws related to that on Anderson. So, I don't think Anderson is a -- is a great case to look at to determine whether an ATV or a UTV is a motor vehicle. So, basically, Your Honor, you know, what we have is -- is Mr. Debruhl started a business long ago, always trying to do the right thing, treats his customers fairly and pays over his taxes. He's done that forever. He gets an audit in 2017 and they tell him he's not collecting the proper amount of tax. They tell him you owe $200,000 extra even though he didn't collect it. It's money that he doesn't have. It's money he didn't collect. Yet he tells them during the audit, no, no, no, I talked to people there and they say no, it is that I'm supposed to do the max tax. And so, noone ever advised him to look at this bulletin. Look at -- look at that, so that you know where it is. So -- and we recognize there are restrictions -- some restrictions on whether or not an

employee exceeded their scope of authority and all that stuff, but I do -- and I don't have the case cite, but there's a case that says if you get improper advice from an agency that the interest that is related to it can be waived, even though I think the Department of Revenue said no interest can never be waived. I think that case law actually identified and I'll have to find that case again, Your Honor. But -- so, really the -- the reason that the Department of Revenue hit him with additional tax is because they're saying that these ATVs are not motor vehicles. And so -- and we got that stipulated issue. And we know exactly what that issue is. The facts are straightforward, Your Honor. We provided the support as to what these vehicles are with photos in there, manuals in there. You got specific descriptions from Mr. Debruhl and basically, we concede that these are much like motorcycles or much like cars or a jeep. I would consider more so a jeep, like a Wrangler, compared to those things -- that -- the UTVs. So, your previous rule in your order, that was ---

**THE COURT:** I'm going to stop you.

**MR. ECTON:** Yes, sir.

**THE COURT:** Do you know if the Department distinguishes off-the-road versus on-the-road motorcycles on the max tax?

**MR. ECTON:** I've seen it somewhere, Your Honor.

**THE COURT:** So, they do?

**MR. ECTON:** I've seen it. Well, I've seen it listed in the -- in the 2010 statute. There may be an explanation in that statute, but after motorcycles -- you know, the separate -- the separate section, A, B, C, I think motor -- I think motor vehicle may be B -- item B under that. C says motorcycles. And I've ---

**THE COURT:** Yeah.

**MR. ECTON:** --- seen it where it says parens on and off road.

**THE COURT:** Both.

**MR. ECTON:** I've seen that.

**THE COURT:** Okay.

**MR. ECTON:** Somewhere, but it may just be an interpretation of it, so may -- it's not in the statute, so. It just says motorcycles in there.

**THE COURT:** Okay.

**MR. ECTON:** And I don't know of any distinction between on or off road.

**THE COURT:** Well, the statute doesn't, so.

**MR. ECTON:** Yeah. And I know -- I know you got Enduro cycles that are dirt bike cycles that have all the necessary equipment to ride on the road.

**THE COURT:** I had one.

**MR. ECTON:** Yeah. I had -- okay. I -- I did too, so. So, as -- as the Department throughout this whole litigation has -- has agreed that there's no separate definition in that statute 20 -- 12-36-210 identifying what motor vehicles are and -- or the definition of motor vehicles. So, it was correct to go look to other statutes. And you looked to other statutes and he said, all right, here's what we -- gives us information as to why these are correct. The Department uses that -- what I call before that forced construction of motor vehicle. Well, then it's a vehicle. Then it says, well it needs to be a highway. So, they're getting down to that last conclusion that just because they're not licensed or registered by the DMV, they're not motor vehicles. And I think Your

Honor correctly pointed out, that's not the case. Just because they don't -- they're not registered, doesn't mean they're not motor vehicles, and Your Honor pointed out. Very specific statutes. 56-110-20, that defines ATV as a quote, motor vehicle, period. It says motor vehicle. It has some other language too also. 56-19-1030, the titling section for motor vehicles. And these are all under Department of Motor Vehicle controlled statutes or administered statutes. Titling section of that says you use the definition found in the 50-26-20, which says ATV means motorized vehicle. And it specifically says, it doesn't mean a child's batteried toy. And it specifically says it doesn't mean a long tractor. So, distinguishing back to this case -- Anderson case. So, you -- your Court -- you pointed out in your order, 39-6-20 parens D on the trade and commerce statutes a definition -- specific definition says ATVs are motorized vehicles. So, very specific, very clear statutes that have identified by the South Carolina Legislature -- Legislation that ATVs are motor vehicles. So, now I believe we spoke

before, but the -- the -- the Department of Revenue sent you a motion for reconsideration and in that motion they pointed out about three items that they -- that they considered was inaccurate in your order. And one of them, you guys were just talking about the partial exemption statute or the Department of Revenue was. Now, they're citing language must be given plain and ordinary meaning. Taxpayer must bring themself within the statutory language and I think he's done that. You know, it's -- the -- the legislature that's identified this have already said it's a motor vehicle. Three statutes stating they're motor vehicles, very clear. All three occasions, they defined. The intent, again, is clear. The Department of Revenue says you should give deference to us. So, the deference issue that they're saying -- or we're interpreting our statute this way. And it says that in -- the Court pointed out, you only give deference because they're entrusted with administration of their statute, you know, and regulations because they have unique skill and experience. Actually, this is what the Department pointed

out in their -- in their brief. They have unique skill and expertise. Well, they didn't show it to Jack on certain occasions. They told him this is what you need to do and so, he relied on that. But they go to interpret Title 56, Department of Motor Vehicles, in defining a motor vehicle. They're not charged with the definition of motor vehicle, so I think your Court was right when you were looking at that deference issue and saying, wait a minute, you guys are charged with interpreting ---

**THE COURT:** They don't have unique skills in interpreting Title 56.

**MR. ECTON:** The motor vehicle statute, right. And that's what -- that's what we're getting at. In the memo, the Department of Revenue mentions that it's reasonable for them to look to that. So, they're still looking to that statute or to 56 just likes it's reasonable, it's no different than looking at a dictionary definition of the term that's not defined in a statute. And I'll agree with that. Because if you go and look at dictionary definitions of what an ATV is, I'll give you Webster's dictionary. You can go look it up. A small

motor vehicle with three or four wheels designed for use on various types of terrain. Webster's. Oxford dictionary, a small open motor vehicle with one seat or three or more wheels fitted with large tires, designed for use on rough ground. So, if you even go do what they're suggesting to do under motion to reconsider, they're saying, hey, go look at this, it's just like a definition. There's your definition again. So, it looks like maybe the legislature pulled that definition or used it, small motor vehicle or three or four wheels in their definitions in Title 56 on direct specific definitions of it. So -- and so, we're glad if you want to use Dictionary definition for that. Finally, DOR argues that you overlooked the language of 56-3-627. All right. That is the Infrastructure Maintenance Fee statute. On this one, you kind of got a follow a little bit on it, but that one began January 1st, 2017. And in that one, it says, and I'll read it -- what that statute says. 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. So, required to be registered in pursuant to that. Must pay an infrastructure maintenance fee upon first registering the vehicle or other item. It goes on to talk about some trailers. Department of Motor Vehicles may not issue a registration until the infrastructure maintenance fee has been collected. So, we're talking not tiling, but registration and licensing. B says, if upon purchasing or leasing the item from a dealer, the owner first registers the item in this State, then the fee exceeds 5 percent, not -- or then the fee equals 5 percent, not to exceed $500. So, that's the max on it of the gross proceeds as defined in 36, Title 12. Okay so, in -- in the Department's brief, it's stating that -- that IMF became effective June 30th, 2017. And since that date, they say retail sales of motor vehicles are no subject to the IMF fee rather than the maximum tax under 36 -- 12-36-210. And that statements not totally true. That states is motor vehicles that are

required to be registered have to fall under that. Okay. So -- so, then you go back to that statute. Look at that statute again and the revisions that they made. All right. And they say, just because it can't be title and registered then -- or it can't be registered, then it's not a motor vehicle. Closer look, effective July 1 -- going back to 12-36-2010, A, the maximum tax imposed by this chapter is $300 for each sale made after June 30th or after July of -- at least after that for B, motor vehicles. So, they still say motor vehicle. Okay. So, then they say in -- in section three of that same -- that same statute, 20 -- 2110, not withstanding any other provision of this section, after June 30th, 2017, the maximum tax imposed pursuant to this chapter on the sale, lease or registration of an item enumerated in 1, motor vehicle, only applied to not subject to the fee pursuant to 56-3-627, the IMF fee. So, what they basically is saying, the legislature kept the 300 max tax on some motor vehicles and those are motor vehicles that aren't required to be registered pursuant to the IMF fee. So, that's why I was

getting at in -- in my opening saying, we don't think they're required to be registered. And -- and it -- they shouldn't be collecting an IMF fee, although they are. We show they are still on that. They should only be collecting $300 pursuant to the revised July 1, 2017 statute. So, the max tax applies to those vehicles. So -- but it's clear, if you read those, all motor vehicles are not subject to the maximum tax and the legislature knew that and put it in here like that. So, only those required to be registered -- or that are not required to be registered are subject to $300. I don't know if -- if DMV even realizes that they're charging an IMF fee on -- on those still. And -- and so -- because in some of the -- some of the exhibits that were -- were put up from Department of Revenue, they're even saying in here, a max rate motor vehicle is increased from 5 to 300 effective -- that's not accurate. It's only those required to be registered. That's the accurate part. That's what the statute says. Only those required to be registered. That's what changed in it. Same with this one when they read this one into

the record. Had Mr. Debruhl read that one into the record. So -- so even these aren't correct based on the statutes if you look it. And even the new statute that we have in there. So, Your Honor, these are motor vehicles. I don't know of any other definitions that they -- they would fall under. The legislature defined them as motor vehicles, very specific. They even contemplated it in the new statutes because it -- they -- shows that there are motor vehicles that are not registered to drive on the road. Although, I would submit these are being driven on the road and I think Mr. Duval -- Debruhl mentioned, he has a permit to drive these on the road in his testimony. So, Your Honor, we think you're -- you are correct in your previous Order that these are motor vehicles and some of this new -- an implication of some of these statutes supports that even -- even more so.

**THE COURT:** How about 56-15-10?

**MR. ECTON:** That ---

**THE COURT:** Ms. Wooten just ---

**MR. ECTON:** Yeah. Let me see that.

**THE COURT:** She gave me direction to look at 15 --

56-15-10 and Anderson. You've already discussed Anderson.

**MR. ECTON:** Yes, sir. Regulation of manufacturer, distributors and dealers. Using chapter, the following shall ...

**THE COURT:** If you hadn't had a chance to ---

**MR. ECTON:** No. I -- I can address that. I looked at it real quick, Your Honor. One second, Your Honor, if I could. I don't know if had that -- that 110 available, but I -- I do remember looking further down. Even in -- if you -- if you can go down to Article 5 of that same regulation, motor vehicles with regards to transaction placed at a wholesale are not limited to motor homes, manufactured, recreational vehicles, motorcycles, motor vehicles as provided for in Section 56-3-20. So, then it goes back to 56-3-20 to assert and identify certain things too. So -- so, it's -- you know, it's identified -- I -- I don't think this is controlling. The legislature determined they don't have to be registered. These are any motor driven vehicle required to be registered under that -- under that definition of motor vehicle. I think the other

one is motor vehicle, it -- it contemplates -- the legislature's already contemplated other motor vehicles not being registered. So, I don't think this applies to the ATVs, UTVs. I think motor vehicles -- they're -- when they're looking at that, motor vehicles required to be registered 500 fee on, Motor vehicles not required, 300 fee on is what I -- what I believe it is, Your Honor.

**THE COURT:** Okay. All right. As it stands ---

**MR. ECTON:** No. I'm sorry. I'm just seeing if she had anything else to add for me.

**THE COURT:** Anything else.

**MS. WOOTEN:** No. I'm good.

**MR. ECTON:** Thank you, Your Honor.

**DECISION:**

**THE COURT:** I'll let y'all know whether I wish proposed orders or not. As it stands now, I think I'm going to just -- I mean, I've got motion for reconsideration, your responses, your arguments today. I may just -- all right. I think I got a good enough grasp where I -- I don't need to drive up everybody's time. So, thank you very much. This hearing is adjourned.

**MR. ECTON:** Thank you, Your Honor.

**MS. WOOTEN:** Thank you.

**(There being nothing further, the administrative hearing concluded at 1:10 p.m.)**