THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Chief Administrative Law Judge

---

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

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

v.

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

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This matter came before the Administrative Law Court (ALC) in accordance with the Administrative Procedures Act, S.C. Code Ann. § 1-23-310, *et seq.* (2005). Respondent Jack's Custom Cycles, Inc. d/b/a Jack's Motor Sports (Respondent or Taxpayer) requested a contested case hearing to challenge a final agency decision issued by the Appellant South Carolina Department of Revenue (Department) on August 13, 2018. (R. pp. 766-773; Dep't Ex. 14, pp. 1-8.) In the final agency decision, the Department concluded, *inter alia*, the Taxpayer's retail sales of all-terrain vehicles ("ATVs") and side-by-side vehicles ("UTVs") are not entitled to the partial sales tax exemption in S.C. Code Ann. § 12-36-2110(A) (2014). (R. p. 773; Dep't Ex. 14, p. 8.) The Department assessed the Taxpayer a total of $177,642.59 in sales and use tax, penalties, and interest as of September 11, 2018 for the sales and use tax periods of August 31, 2013 through July 31, 2016 (Audit Period). (R. pp. 766; 744-756; Dep't Ex. 14, p. 1; Dep't Ex. 10.)

On March 22, 2019, the Department filed a Motion for Summary Judgment (Motion), the Taxpayer filed a Response on April 15, 2019, and the Department filed a Reply on April 22, 2019. (R. pp. 200-264; 92-198; 79-90; Department's Motion, pp. 1-65; Taxpayer's Response, pp. 1-107; Department's Reply, pp. 1-12.) The ALC denied the Department's Motion in part and granted in part by Order dated May 15, 2019. (R. pp. 41-53; ALC Order, pp. 1-13.) Specifically, the ALC granted the Department's Motion with respect to the tax assessed on utility trailers but denied the Motion as to the sales tax assessed on ATVs and UTVs. *Id.* On May 28, 2018, the Department filed a Motion for Reconsideration, and the Taxpayer filed a Response on June 6, 2018. (R. pp. 69-77; 64-67; Department's Motion for Reconsideration, pp. 1-9; Taxpayer's Response, pp. 1-4.)

The ALC held a hearing on July 18, 2019 and issued its Final Order (Initial Order) on September 13, 2019, reversing the Department's assessment with regard to the Taxpayer's retail

sales of ATVs and UTVs during the Audit Period. (R. pp. 21-40; Initial Order, pp. 1-20.) The Department filed a Motion to Alter/Amend pursuant to Rule 59(e), SCRCP and ALC Rule 29(D). (R. pp. 59-63; Mot. to Alter/Amend., pp. 1-5.) The Taxpayer filed a response to the Department's Motion to Alter/Amend. (R. pp. 55-57; Second Response pp. 1-3.) On October 2, 2019, the ALC issued an Amended Final Order (Amended Order), reflecting the changes made to the Initial Order upon consideration of the Department's Motion to Alter/Amend. (R. pp. 1-20; Amended Order pp. 1-20.) In the Amended Order, the ALC deleted certain Findings of Fact from the Initial Order and ruled on two arguments presented by the Department during the hearing but not ruled upon in the Initial Order. *Id.*

On October 31, 2019, the Department filed its notice of appeal of the ALC's Amended Order to this Court.

STATEMENT OF FACTS

A. The Taxpayer's Business Operations.

In 2004, the Taxpayer began operating a motorcycle dealership located in Lexington, South Carolina. (R. pp. 293; 2; Hr'g Tr. 29:20-22; Amended Order, p. 2.) The Taxpayer is a licensed motorcycle dealer with the South Carolina Department of Motor Vehicles (SCDMV). (R. pp. 337; 2; 408; Hr'g Tr. 73:16-20; Amended Order, p. 2; Taxpayer Ex. 1.) The Taxpayer does not have a motor vehicle license from the SCDMV; thus, it cannot sell more than five motor vehicles per year. (R. pp. 339-340; Hr'g Tr. 75:23-76:12.) The Taxpayer also sells ATVs, UTVs, and utility trailers. (R. pp. 294-295; Hr'g Tr. 30:14-31:20.)

B. ATVs and UTVs.

ATVs are three-and-four wheeled vehicles, generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering. (R. p. 2;

Amended Order, p. 2.) ATVs are intended for off-road use. *Id.* ATVs are capable of being driven forward and in reverse. *Id.* ATVs also have headlamps and brake lights. *Id.* ATVs are not required to have mirrors or turn signals, and they do not have air bags. (R. pp. 342-343; Hr'g Tr. 78:20-79:9.) The manufacturer of an ATV specifically informs owners that ATVs are off-road vehicles and should never be operated on public highways. The notification provided by the manufacturer of the ATVs sold by the Taxpayer reads as follows:

Operating on Public Roads

> Operating this ATV on public streets, roads or highways could result in a collision with another vehicle.
>
> Never operate the ATV on any public street, road or highway, including dirt and gravel roads. In many states it's unlawful to operate ATVs on public streets, roads and highways.
>
> ***
>
> **NEVER** operate:
>
> - On public roads – a collision can occur with another vehicle.
>
> ***
>
> **OPERATION**
> **Safe Operation Practices**
>
> 6. Operate this vehicle off-road only. Never operate the vehicle on pavement or on any public street, road or highway, including dirt and gravel roads.

(R. pp. 426, 434, 461; Taxpayer Ex. 3, pp. 13, 21, 48) (emphasis in original.)

UTVs are four-wheeled vehicles with a steering wheel and foot pedals, where the operator sits on a bench styled seat or single seat with seat belts and occupants have side-by-side forward facing seats. (R. p. 2; Amended Order, p. 2.) UTVs can have single front row or front and back row seating capacity. *Id.* UTVs are capable of being driven forward and in reverse. *Id.* UTVs

also have headlamps and brake lights. *Id.* UTVs are not required to have mirrors or turn signals, and they do not have air bags. (R. pp. 342-343; Hr'g Tr. 78:20-79:9.) Similar to an ATV, the manufacturer of an UTV specifically informs owners that UTVs are off-road vehicles and should not be operated on public highways. The notification provided by the manufacturer of the UTVs sold by the Taxpayer reads as follows:

INTRODUCTION

> The RZR is an off-road vehicle. Familiarize yourself with all laws and regulations concerning the operation of this vehicle in your area.
>
> ***
>
> **PROPER USE WARNING**
> **WARNING**
>
> - Do not allow operation on public roads (unless designated for off-highway vehicle access) – collisions with cars and trucks can occur.
>
> ***
>
> **Drive Responsibly**
> Avoid loss of control and rollovers:
>
> - Avoid paved surfaces.
>
> ***
>
> **Operating on Pavement**
>
> This vehicle's tires are designed for off-road use only, not for use on pavement. Operating this vehicle on paved surfaces (including sidewalks, paths, parking lots and driveways) may adversely affect the handling of the vehicle and may increase the risk of loss of control and accident or rollover. Avoid operating the vehicle on pavement. If it's unavoidable, travel slowly, travel short distances and avoid sudden turns or stops.

Operating on Public Roads

> Operating this vehicle on public streets, roads or highways could result in a collision with another vehicle. Never operate this vehicle on any public street, road or highway, including dirt and gravel roads (unless designated for off-highway use). In some areas it's unlawful to operate this vehicle on public streets, roads and highways.

(R. pp. 566, 572, 573, 579; Taxpayer Ex. 4, pp. 4, 10, 11, 17) (emphasis in original.) In fact, the Taxpayer acknowledges that ATV and UTV manufacturers have specifications in the Owner's Manual regarding whether these vehicles are designed to operate on a highway. (R. p. 344; Hr'g Tr. 80:2-6.)

C. The Department's Audit Examination.

The Department conducted an audit examination of the Taxpayer's Sales and Use Tax Returns for the Audit Period. (R. p. 2; Amended Order, p. 2.) The Taxpayer received revenue from the retail sales of ATVs and UTVs during the Audit Period. *Id.* During the course of the audit, the Department discovered the Taxpayer collected from its customers no more than $300.00 of sales tax related to each retail sale of an ATV or UTV. (R. pp. 2-3; Amended Order, pp. 2-3.) The Taxpayer collected and remitted sales tax up to $300.00 (the "maximum tax" or "max tax") on the retail purchase price of each ATV or UTV because it considered these items to be a "motor vehicle" for purposes of § 12-36-2110(A). *Id.*

After a review of the Taxpayer's records and the Department's records, the Department ultimately issued a Revised Proposed Notice of Assessment ("Revised Assessment") on August 17, 2017 to the Taxpayer for $166,336.50 due in sales and use tax, interest, and penalties for the Audit Period because the Department contended that the partial sales tax exemption does not apply to the Taxpayer's sales and it should have been collecting full sales tax of seven percent (7%). (R. pp. 3; 744-756; Amended Order, p. 3; Dep't Ex. 10.) The Taxpayer timely protested the Revised

Assessment, and the Department issued its final agency decision ("Department Determination") on August 13, 2018. *Id*; (R. pp. 766-773; Dep't Ex. 14.)

On July 18, 2019, the Taxpayer submitted a check to the Department in the amount of $5,220.26. (R. p. 4; Amended Order, p. 4.) 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 the Taxpayer's sales of utility trailers for the Audit Period; and (2) the use tax and interest owed on the Taxpayer's out-of-state purchases of tangible personal property made during the Audit Period. *Id.* Thus, these issues were resolved prior to the contested case hearing before the ALC. The sole issue before the ALC was whether an ATV or UTV sold by the Taxpayer during the Audit Period is considered a "motor vehicle" for purposes of § 12-36-2110(A) and thus subject to the partial tax exemption (also referred to as the maximum tax). *Id.*

D. The Department's Long-Standing Policy.

The Taxpayer is not entitled to a partial exemption of sales tax due on the retail sale of an ATV or UTV because such vehicle is not a "motor vehicle" for purposes § 12-36-2110(A). In 2000, the Department issued an advisory bulletin regarding the taxation of retail sales of ATVs. (S.C. Rev. Advisory Bulletin #00-03). The advisory bulletin instructs that "it is the department's opinion that sales of all-terrain vehicles . . . as described in the facts,[1] are not entitled to the maximum tax under Code Section 12-36-2110.") (R. p. 823; Dep't Ex. 22, p. 4) (emphasis in original.) Thus, since at least 2000, the Department has been consistent in its public position that

[1]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." (R. p. 821; Dep't Ex. 22, p. 2.)

the maximum tax or partial exemption pursuant to § 12-36-2110(A) does not apply to the retail sale of an ATV or UTV.

More recently, 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 Infrastructure Maintenance Fee (IMF)[2], which became effective July 1, 2017. (R. pp. 843-859; Dep't Ex. 24, S.C. Rev. Ruling #18-1.) 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 a retail sale of an ATV is 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.

(R. pp. 849, 858; Dep't Ex. 24, pp. 7, 16.) In coordination with the SCDMV, the Department also issued S.C. Information Letter #17-10 to assist auto dealers and other retailers in determining

[2]Effective July 1, 2017, sales or purchases of most motor vehicles, motorcycles, and semitrailers are subject to the 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 Audit Period occurred prior to June 30, 2017, none of the Taxpayer's retail sales of ATVs or UTVs are subject to the IMF. *See* R. pp. 843-859; Dep't Ex. 24, S.C. Rev. Ruling #18-1.

whether certain transactions would be subject to the IMF (rather than sales or use tax) effective July 1, 2017. (R. pp. 824-842; Dep't Ex. 23, S.C. Information Letter #17-10.)

E. The SCDMV Does Not Treat ATVs or UTVs as Motor Vehicles.

An ATV or UTV cannot be registered with the SCDMV; thus, it cannot receive a South Carolina license plate and is not authorized to operate on the State's highways. (R. p. 341; Hr'g Tr. 77:13-22.) However, the SCDMV processes title applications for ATVs and UTVs owned by South Carolina residents. (R. p. 4; Amended Order, p. 4.) As part of the title application for a new ATV or UTV, the applicant must furnish a manufacturer's certificate of origin (MCO). *Id.* An MCO specifically states the ATV or UTV is "intended for off road use only." (R. pp. 774-793; Dep't Ex. 15, Manufacturer's Certificate of Origin for an ATV and UTV.) Because the MCO for an ATV or UTV states that such 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. (R. p. 774; Dep't Ex. 15, p. 1.) Once the SCDMV title is issued for an ATV or UTV with the branding for off-road use only, any subsequent SCDMV issued title for the ATV or UTV must also be branded for off-road use only. *Id.* In other words, an ATV or UTV is never authorized for travel on a public road.

As part of the title application process for ATVs or UTVs, the SCDMV collects a title-processing fee of $15.00, but the SCDMV did not collect sales or use tax from the Taxpayer during the Audit Period upon its application to transfer ownership of an ATV or UTV to a Taxpayer's customer. (R. p. 4; Amended Order, p. 4.) In fact, the only evidence in the record shows that the SCDMV treated the Taxpayer's sales as ATVs, not motor vehicles. (R. p. 799; Dep't Ex. 16, p. 6.)

The SCDMV also informs the public via official "SCDMV Dealer Connection" publications ("SCDMV Publications") that the maximum tax does not apply to ATVs. These

SCDMV Publications were issued after the effective date of the newly enacted IMF:

> **Vehicles not subject to Maximum Tax and Non-Dealer Retail Sales**
>
> For vehicles types not subject to the maximum tax, and for retailers that are not licensed dealers, sales taxes are still reported to the Department of Revenue. These vehicles include but are not limited to mopeds purchased prior to November 19, 2018, pole trailers, utility trailers, boat trailers and farm trailers, golf carts, ATVs and go-carts.

(R. p. 812; Dep't Ex. 20, p. 2) (emphasis in original).

> **IMF Reminders**
>
> ***
>
> - For vehicles where **sales** taxes are still due, but are presented for titling (ATVs, Go carts, Golf Carts, Mopeds purchased prior to November 19, 2018), be sure to indicate the retail sales tax ID on the Form 400. Retailers will report the state sales tax on these items to SCDOR;

(R. p. 813; Dep't Ex. 21, p. 1) (emphasis in original).

Finally, the SCDMV informs the public via its website[3] that the maximum sales tax does not apply to ATVs:

> **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 (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

[3] *See* South Carolina Rules of Evidence (SCRE), 201(f).

assigned to the applicant
- $15
- Sales tax (there is no maximum sales on ATVs)

www.scdmvonline.com/Vehicle-Owners/Types-Of-Vehicles/All-Terrain-Vehicles (last visited December 2, 2019) (emphasis in original).

ARGUMENTS

I. STANDARD OF REVIEW.

In an appeal from the decision of an administrative agency, the Administrative Procedures Act provides the appropriate standard of review. *Olson v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct. App. 2008); *Turner v. S.C. Dep't of Health & Envtl. Control*, 377 S.C. 540, 544, 661 S.E.2d 118, 120 (Ct. App. 2008); *Clark v. Aiken County Gov't*, 366 S.C. 102, 107, 620 S.E.2d 99, 101 (Ct. App. 2005). S.C. Code Ann. § 1-23-610(D) (Supp. 2013) provides the applicable standard:

> (D) The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the Appellant has been prejudiced because of the finding, conclusion, or decision is:
>
> > (a) in violation of constitutional or statutory provisions;
> > (b) in excess of the statutory authority of the agency;
> > (c) made upon unlawful procedure;
> > (d) affected by other error of law;
> > (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> > (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The statute at issue in this matter – § 12-36-2110(A) – is a partial exemption statute, and "[t]he language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption." *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331

S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (citing *Southeastern–Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981)); *see also John D. Hollingsworth on Wheels, Inc. v. Greenville Cty. Treasurer*, 276 S.C. 314, 317, 278 S.E.2d 340, 342 (1981).

Resolution of the issues in this case depends upon the rules of statutory construction and when construing a statute, "the cardinal rule . . . 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 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.") 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).

Finally, "[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." *State v. Sweat*, 379 S.C. 367, 374, 665 S.E.2d 645, 649 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010); *see also Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (quoting *Dunton v. S.C. Bd. of Examin'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)); *also Nucor Steel v. S.C. Pub. Serv. Comm'n*, 310 S.C. 539, 543, 426 S.E.2d 319, 321 (1992) (recognizing that where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason). "[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).

II. THE ADMINISTRATIVE LAW COURT ERRED IN BROADLY CONSTRUING A PARTIAL TAX EXEMPTION STATUTE BY CONCLUDING THAT AN ATV OR UTV IS A "MOTOR VEHICLE" FOR PURPOSES OF S.C. CODE ANN. § 12-36-2110(A).

In its Amended Order, the ALC concluded that "ATVs and UTVs are motor vehicles for the purposes of the maximum tax under section 12-36-2110." (R. p. 19; Amended Order, p. 19.) However, the ALC construed § 12-36-2110(A) too broadly; the legislature did not explicitly provide for a partial sales tax exemption on the retail sale of an ATV or UTV. The relevant statutes and case law provide that the Taxpayer's retail sales of ATVs and UTVs during the Audit Period are not entitled to the maximum tax pursuant to § 12-36-2110(A). Further, although the ALC found a single statute (S.C. Code Ann. § 56-1-10(20) (Rev. 2018)) that referred to ATVs and UTVs as "motor vehicles," because the question before the Court is the application of a partial tax exemption, that single statute is not controlling or even persuasive. *Anderson v. State Farm Mutual Auto Insurance Company*, 314 S.C. 140, 442 S.E.2d 179 (1994).

A. The Taxpayer's Retail Sales of ATVs and UTVs During The Audit Period Are Not Entitled To The Partial Sales Tax Exemption Pursuant To § 12-36-2110(A).

1. 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 retail."). "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 Taxpayer's sales of ATVs and UTVs are retail sales of tangible personal property subject to sales tax. (R. p. 8; Amended Order, p. 8.) The Taxpayer is a retailer in the business of selling ATVs and UTVs – which are tangible personal property – at retail to its customers. Thus, the Taxpayer's sales of ATVs and UTVs are subject to the full 7% sales tax unless the transaction is expressly exempted as a matter of law.[4] *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 on all sales and leases of motor vehicles, 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;
>
> (6) recreational vehicle, including tent campers, travel trailer, park model, park trailer, motor home, and fifth wheel; or

[4]The State's sales tax rate is 6%. *See* §§ 12-36-910(A) and 12-36-1110. The Taxpayer's business is located in Lexington County, and 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).

(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(A) (2014).

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) (emphasis added). 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) (emphasis added) (*quoting Textile Hall Corp. v. Hill*, 215 S.C. 262, 54 S.E.2d 809 (1949)).

2. The Taxpayer is Liable for 7% Sales Tax On the Retail Sale of ATVs and UTVs During the Audit Period.

Section 12-36-2110(A) does not define "motor vehicle." Therefore, it is proper to consider the definition of "motor vehicle" as defined elsewhere in the code. Title 56 is the most logical place to look for guidance because its very purpose is to regulate "Motor Vehicles." *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."). 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.

S.C. Code Ann. § 56-3-20(2) (2016) (emphasis added).[5] 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).[6] 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.) *Cf.* S.C. Code Ann. § 56-1-10(6) (2016) (defining "highway").

These definitions, in combination, 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. Specifically, the SCDMV processes title applications for ATVs and UTVs, but does not provide license plates for them. (R. p. 774; Dep't Ex. 15, p. 1, ¶3.) As part of the titling process, the SCDMV requires the applicant to provide the MCO. (R. p. 774;

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[5]Section 56-3-20(2) was in effect during the Audit Period. Pursuant to 2017 Act No. 89 (H.3247), effective November 19, 2018, § 56-3-20(2) was deleted and subsequently codified at S.C. Code Ann. § 56-1-10(7). The language of then-enacted § 56-3-20(2) is identical to § 56-1-10(7).

[6]Section 56-3-20(1) was in effect during the Audit Period. Pursuant to 2017 Act No. 89 (H.3247), effective November 19, 2018, § 56-3-20(1) was deleted and subsequently codified at S.C. Code Ann. § 56-1-10(28) (Rev. 2018). The language of then-enacted § 56-3-20(1) is identical to § 56-1-10(28).

Dep't Ex. 15, p. 1, ¶4.) An MCO specifies that the ATV or UTV is "intended for off road use only." (R. pp. 776-778, 784-793; Dep't Ex. 15, pp. 3-5, 11-20.) Any title issued by the SCDMV for an ATV or UTV must contain the same language. (R. p. 774; Dep't Ex. 15, p. 1, ¶4.)

Further, once an ATV or UTV title is issued, any subsequent title issued by the SCDMV must contain the same language. (R. p. 774; Dep't Ex. 15, p. 1, ¶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."[7] Thus, the Taxpayer is not entitled to the partial tax exemption provided for under § 12-36-2110(A) because ATVs and UTVs do not meet the statutory definition of "motor vehicle." *See Home Medical Systems*, 382 S.C. 556, 677 S.E.2d 582 (stating tax exemption statutes are strictly construed against the taxpayer); *see also CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011); *Berkeley County School Dist.*, 383 S.C. 334, 679 S.E.2d 913.

Other sections of Title 56 further support the Department's assertion that ATVs and UTVs are not motor vehicles. Specifically, Title 56, Chapter 15 entitled "Regulation of Manufacturers, Distributors, and Dealers" defines "motor vehicle" as "any motor driven vehicle required to be registered pursuant to Section 56-3-110." S.C. Code Ann. § 56-15-10(a) (2016). 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**

[7]*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.'").

> **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). When § 56-3-110 and § 56-15-10(a) are read in conjunction, it is clear that ATVs and UTVs are not "motor vehicles." ATVs and UTVs cannot be registered or licensed with the SCDMV and it is illegal to operate those vehicles on a highway. Because ATVs and UTVs cannot be registered or licensed, they do not meet the requirements of § 56-3-110. Because ATVs and UTVs do not meet the requirements of § 56-3-110, they are not vehicles required to be registered. Finally, because ATVs and UTVs are not vehicles required to be registered pursuant to § 56-3-110, those vehicles do not satisfy the definition of motor vehicle as stated in § 56-15-10(a). These statutes support the Department's position in this matter: an ATV or UTV is not a "motor vehicle" because ATVs and UTVs cannot be registered and licensed to operate on the highways of this State. It is a misdemeanor to do so. Thus, ATVs and UTVs are not entitled to the partial sales tax exemption under § 12-36-2110(A); rather a seller like the Taxpayer must collect the full amount of sales tax for each retail sale.

Thus, the ALC erred in broadly construing a partial tax exemption statute in favor of the Taxpayer where the legislature did not explicitly provide for such exemption. *See Home Medical Systems, Inc.*, 382 S.C. 556, 677 S.E.2d 582; *CFRE, LLC*, 395 S.C. 67, 716 S.E.2d 877; *Berkeley County School Dist.*, 383 S.C. 334, 679 S.E.2d 913. Further, the ALC erred by ignoring the overwhelming relevant statutory provisions[8] and the Department's longstanding published policy and instead focused on one definition in Title 56. Such interpretation and analysis constitutes a

[8]Although the definitions relevant to what is a "motor vehicle" in Title 56 should be convincing, other statutory provisions in Title 12 provide even more support for the Department's position. *See supra,* pp. 23-24.

broad interpretation and is not a strict construction of § 12-36-2110(A) as required for a partial tax exemption statute.

B. Section 56-1-10(20) Does Not Transform an ATV or UTV into a "Motor Vehicle" for Purposes of a Partial Tax Exemption Statute.

In its Amended Order, the ALC relied upon § 56-1-10(20) to support its conclusion that an ATV or UTV is a motor vehicle for purposes of the partial sales tax exemption statute. Article 1 of Title 56 addresses drivers licenses and defines ATVs as "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." However, simply because the General Assembly used the term "motor vehicle" for the narrow purpose of establishing when a driver's license is required, does not entitle an ATV purchase to a partial sales tax exemption. First, the predominant authority in Title 56 directs that an ATV is not a motor vehicle. Second, the South Carolina Supreme Court has concluded that a type of vehicle can have different meanings under South Carolina law depending upon its use or purpose.

In *Anderson v. State Farm Mutual Auto Insurance Company*, 314 S.C. 140, 442 S.E.2d 179 (1994), the Court was tasked with determining whether a farm tractor is considered a "motor vehicle" for insurance purposes under the Motor Vehicle Financial Responsibility Act of Title 38. In *Anderson*, the Court specifically found that the "fact that farm tractors are subject to statutes regulating traffic on the highway [in Title 56], does not convert farm tractors to motor vehicles for insurance purposes." *Id.* at 142, 442 S.E.2d at 180. Based upon this conclusion, the Court held that "a farm tractor does not come under the plain and unambiguous definition of a motor vehicle ***because it is not 'designed for use upon a highway'*** although it may be incidentally used on a highway." *Id.* at 143, 442 S.E.2d at 181 (emphasis added). Thus, the *Anderson* Court found that

a "farm tractor is not a motor vehicle for purposes of uninsured or underinsured motor vehicle" even though a "farm tractor" was defined in Title 56 as "a *motor vehicle* designed and used primarily as a farm implement." *Id.* at 143, 442 S.E.2d at 181; *see* S.C. Code Ann. § 56-5-220 (1991) (emphasis added).[9]

Here, an ATV or UTV is not a "motor vehicle" for purposes of a partial sales tax exemption. Like the farm tractor in *Anderson*, ATVs are not designed for use upon a highway. (R. pp. 426, 434, 462; 566, 572, 573, 579; Taxpayer Ex. 3, pp. 13, 21, 48; Taxpayer Ex. 4, pp. 4, 10, 11, and 17.) Because ATVs and UTVs are not designed for use on public highways, the SCDMV will not register an ATV or UTV for use on the public highways of South Carolina. (R. pp. 341; 774-775; Hr'g Tr. 77:13-22; Dep't Ex. 15, p. 1-2.) Although Title 56 contains one definition suggesting that an ATV is a motor vehicle for a limited purpose, Title 56 contains other definitions that unambiguously exclude an ATV – and similarly, UTV – from the definition of "motor vehicle." *See* S.C. Code Ann. § 56-15-10 (a) (providing a "motor vehicle" must be registered pursuant to § 56-3-110); § 56-3-110 (providing every "motor vehicle" driven on this State's highways must be registered); § 56-3-20(25) (providing that "highway" is portion of the road "open to the use of the public for purposes of vehicular travel"), § 56-3-20(1) (providing that a "vehicle" is one that may be "drawn upon a highway").

These definitions support the Department's position in this matter: that an ATV or UTV is not a "motor vehicle" *for purposes of the partial sales tax exemption.* And in fact, our Supreme Court confirmed such position is valid in *Anderson* when it concluded that although a specific type of vehicle may be defined as a "motor vehicle" in Title 56, that vehicle may be defined differently

[9]Section 56-5-220 in its current form defines "farm tractor" "[e]very motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry[.]"

for another purpose under state law. *Anderson* at 143, 442 S.E.2d at 181. Accordingly, the ALC erred in broadly construing a partial sales tax exemption by transforming an ATV or UTV to a "motor vehicle" when the relevant statutes neither require nor compel such conclusion.

III. THE ADMINISTRATIVE LAW COURT ERRED IN FAILING TO GIVE DEFERENCE TO THE DEPARTMENT'S LONG-STANDING INTERPRETATION OF A STATUTE IT IS AUTHORIZED TO ADMINISTER.

Section 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); *see also Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 826, 838 (2003) (concluding "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).

In its Amended Order, the ALC recognized "the 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." (R. p. 12; Amended Order, p. 12) (*citing Kiawah Dev. Partners, II*, 411 S.C. at 34, 766 S.E.2d at 718 (emphasis added)). Nonetheless, the ALC concluded the Department is not entitled to deference regarding the Department's interpretation of "motor

vehicle" or "vehicle" for several reasons: (1) the Department's position "ignores the dictionary definition" of motor vehicle; (2) the Department does not administer Title 56; (3) the Department failed to show how Title 56 and Title 12 "are so intermeshed that they should be construed *in pari materia*"; and (4) there is no presumption that the legislature was aware of the Department's interpretation of "motor vehicle" for purposes of § 12-36-2110. (R. pp. 12-15; Amended Order, pp. 12-15.) The ALC erred in declining to give deference to the Department's interpretation in this matter.

First, our legislature defined motor vehicle three times in Title 12 – which is administered by the Department – as a vehicle that is registered for highway use. Those definitions in Title 12 are consistent with the Department's interpretation of § 12-36-2110(A) by using the definitions in Title 56. Second, the ALC relied upon an incomplete definition of "motor vehicle" from Merriam Webster, and the complete definition supports the Department's position that "motor vehicle" is a vehicle that is used upon a highway. Third, the SCDMV is authorized to administer Title 56, and the SCDMV issued several official publications informing licensed dealers that retail sales of ATVs do not qualify for the max tax – or partial sales tax exemption. Fourth, the legislature similarly defined "motor vehicle" in Title 12 *and* Title 56. Thus, these statutes are *in pari materia* and should be construed together to produce a "single, harmonious result" – that ATVs and UTVs are not entitled to the partial sales tax exemption. *Amisub of S.C., Inc.*, 407 S.C. at 598, 757 S.E.2d at 416. Finally, case law confirms the Department's consistent interpretation of § 12-36-2110(A) is entitled to "great weight" when our legislature has not amended the statute since the Department issued guidance to the public in 2000. *Marchant v. Hamilton*, 279 S.C. 497, 500, 309 S.E.2d 781, 783 (Ct. App. 1983) ("Administrative interpretations of statutes, consistently followed by the

agencies charged with their administration and not expressly changed by Congress, are entitled to great weight.")

A. The Department's interpretation of § 12-36-2110(A) is reasonable and supported by three definitions of "motor vehicle" in Title 12.

The Department's interpretation of § 12-36-2110(A) is reasonable, and our legislature has confirmed such interpretation when it codified the following three statutes in Title 12:

> (41) "Motor vehicle" **means a vehicle that** is propelled by an internal combustion engine or motor and **is designed to permit the vehicle's mobile use on highways**. **It does not include**:
>
> (a) farm machinery including machinery designed for off-road use but capable of movement on roads at low speeds;
> (b) a vehicle operated on rails; or
> (c) **machinery designed principally for off-road use**.

S.C. Code Ann. § 12-38-110(41) (2014) (emphasis added). Section 12-38-110 is provided under Chapter 28 entitled "Motor Fuels Subject to User Fees." Similarly, Title 12, Chapter 54 "Uniform Method of Collection and Enforcement of Taxes Levied and Assessed by the South Carolina Department of Revenue" provides for the following definition of "motor vehicle":

> (3) "Motor vehicle" means a self-propelled vehicle **which is registered for highway use** under the laws of any state or foreign country.

S.C. Code Ann. § 12-54-122(A)(3) (2014) (emphasis added).

Finally, a statute contained within Title 12, Chapter 37 "Assessment of Property Taxes" provides for a similar definition with regard to "Motor Carriers":

> (B) "Commercial motor vehicle" means a motor propelled vehicle used for the transportation of property **on a public highway**, except for farm vehicles using FM tags as allowed by the Department of Motor Vehicles.
>
> (C) "Large commercial motor vehicle" means a commercial motor vehicle with a gross vehicle weight of greater than twenty-six

> thousand pounds that is registered under the International Registration Plan or **used on a highway** for the transportation of property.
>
> (D) "Small commercial motor vehicle" means a commercial motor vehicle with a gross vehicle weight of less than or equal to twenty-six thousand pounds that is registered under the International Registration Plan or **used on a highway** for the transportation of property.

S.C. Code Ann. §§ 12-37-2810 (B), (C), and (D) (2014) (emphasis added). The Department is charged with administering Title 12, and these three statutes clearly show that the Department always considers a "motor vehicle" to be one that is used on public roads only. Every time the General Assembly provided a definition of "motor vehicle" within Title 12, that definition required lawful operation on a highway. While the General Assembly did not provide a definition of "motor vehicle in § 12-36-2110(A), the Department logically and properly interpreted "motor vehicle" in § 12-36-2110(A) in a way consistent with all other definitions of "motor vehicle" found in Title 12. Specifically, an ATV or UTV is not a "motor vehicle" for purposes of § 12-36-2110(A) because these vehicles are not authorized to operate on the highways of this State. The ALC failed to recognize or address the other definitions of "motor vehicle" within Title 12. Moreover, the interpretation of "motor vehicle" utilized by the ALC is not consistent with any of the other definitions of "motor vehicle" within Title 12. Accordingly, the ALC erred in failing to give deference to the Department where the legislature has provided for similar definitions of "motor vehicle" in Title 12.

B. The ALC's Conclusions Regarding Merriam Webster's Definition of "Motor Vehicle" is Contradicted by the Complete Definition in the Dictionary.

As noted above, because section 12-36-2110(A) does not define "motor vehicle," the Department turned to Title 56 to assist in defining "motor vehicle" for purposes of the partial sales tax exemption statute. 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 the dictionary to assist in defining a term used in a statute.

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); *see also Centex Intern., Inc. v. S.C. Dep't of Rev.*, 406 S.C. 132, 750 S.E.2d 65 (2013) (using Black's Law Dictionary and Merriam-Webster to determine if a taxpayer qualified for a corporate tax credit where "qualified" was not defined in the statute); *cf. Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing, and Regulation*, 337 S.C. 476, 523 S.E.2d 795 (Ct. App. 1999) ("Where the legislature elects not to define the term in the statute, the court will interpret the term in accord with its usual and customary meaning.").

Nevertheless, the ALC erroneously concluded the Department is not entitled to deference in this matter because it used a definition from Title 56, which the Department is not authorized to administer. (R. p. 12; Amended Order, p. 12.) The ALC further concluded the following:

> 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 ignore 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.**

(R. p. 13; Amended Order, p. 13) (emphasis added). As support for its conclusion, the ALC stated the following:

> 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%vehicle (last visited September 9, 2019).

(R. p. 11; Amended Order, p. 11.) However, the language quoted by the ALC is not the full definition of "motor vehicle" as found in Merriam-Webster's dictionary; rather the *entire* definition of "motor vehicle" is:

> motor vehicle noun
>
> Definition of *motor vehicle*
> : an automotive vehicle not operated on rails
> ***especially*: one with rubber tires for use on highways**

https:// https://www.merriam-webster.com/dictionary/motor%vehicle (last visited December 2, 2019) (bold emphasis added). The Department did not "ignore" the dictionary definition. To the contrary, the *entire* dictionary definition supports the Department's position in this matter: an ATV or UTV is not a "motor vehicle" for purposes of the partial exemption statute because ATVs and UTVS cannot be operated on the highway. The entire dictionary definition supports the Department's interpretation of § 12-36-2110(A) as a "motor vehicle" is "one with rubber tires *for use on highways*" and the ALC erred by using an incomplete definition from the dictionary to support its conclusion.

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. *See* S.C. Code Ann. § 12-4-10 (2014). The Department's interpretation of § 12-36-2110(A) is not arbitrary, capricious, or manifestly contrary to the statute, is supported by Title 12 definitions, and is supported by the dictionary definition of "motor vehicle." *Trident Med. Center*, 412 S.C. at 354, 772 S.E.2d at 184 (concluding the court will "defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'") Moreover, other courts have recognized that a broad definition from a dictionary cannot be used in the strict construction of a tax exemption statute:

> [This Court is] not at liberty to use a [dictionary] definition that is just arguably acceptable. Rather, it has been the well settled rule . . . that the court will find an exemption from taxation only where the legislature has authorized such by clear and explicit language; statutes exemption persons or property from taxation are to be strictly construed.

See Pac. Nw. Annual Conference of United Methodist Church v. Walla Walla Cty., 82 Wash.2d 138, 140, 508 P.2d 1361, 1363 (Wash. 1973).

This is especially true in this matter where the ALC used an incomplete definition from the dictionary to define "motor vehicle" for purposes of § 12-36-2110(A). By relying on an incomplete definition in the dictionary, the ALC erred in broadly construing a partial exemption statute and further erred in failing to give deference to the Department's long-standing interpretation of § 12-36-2110(A) when such interpretation is supported by the *entire* definition in the dictionary.

C. The SCDMV's practices and publications support the Department's interpretation of § 12-36-2110(A).

South Carolina Courts have repeatedly held that an agency is entitled to deference in the interpretation of the statutes or regulations it is authorized to administer. *Kiawah Dev. Partners, II*, 411 S.C. at 34, 766 S.E.2d at 718. Even the ALC recognized the deference doctrine as

pronounced by the *Kiawah* Court. (R. p. 13; Amended Order, p. 13.) Because Title 56 is administered by the SCDMV, it is entitled to deference of its interpretations of Title 56 statutes and related regulations. *See* S.C. Code Ann. § 56-1-5 (2016); 2003 Act No. 51, Section 3. In its Amended Order, the ALC concluded that while the Department is entitled to deference of the interpretation of Title 12 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." (R. p. 13; Amended Order, p. 13.) The ALC further noted that "there is a distinction between giving deference to the Department's interpretation of another state agency's statutes and regulations." *Id.*

In response to the ALC's analysis (see ALC Order on Department's Motion for Summary Judgment), the Department offered, without objection from the Taxpayer, three official publications from the SCDMV – the SCDMV Publications. (R. p. 49; ALC Order, p. 9.) In the SCDMV Publications, South Carolina licensed dealers are informed that: (i) ATVs are not subject to the maximum tax and (ii) the dealers must continue to remit sales tax to the Department of Revenue. (R. pp. 806-819; Dep't Ex. 19, 20, and 21.) In its Order, the ALC acknowledges "Title 56 is administered by the Department of Motor Vehicles" yet it declines to give any deference to the DMV's statements within its official publications:

> Therefore, the [ALC] 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.

(R. p. 13; Amended Order, p. 13) (emphasis added). First, the ALC erred in finding that statements by the DMV – issued to the public – do not reflect the official position of such agency. There is simply no evidence in the record to support the ALC's conclusion that "SCDMV is simply

regurgitating the Department's position." (R. p. 13; Amended Order, p. 13.) To the contrary, the uncontroverted evidence in the record establishes – via official SCDMV Publications – that it does not consider an ATV to be a "motor vehicle" but rather a "[v]ehicle not subject to Maximum Tax." (R. p. 812; Dep't Ex. 20, p. 2.) Further, S.C. Information Letter #17-10 was issued by the Department "in coordination with the Department of Motor Vehicles." (R. p. 825; Dep't Ex. 23, p. 2.) As part of S.C. Information Letter #17-10, ***both agencies*** "prepared several charts to assist dealers and other retailers in determining whether the new IMF or sales/use tax applies to the retail sale. *Id.* In one chart, the agencies inform the public that an ATV "purchased from a licensed retailer with the Department who is not a licensed dealer with the SCDMV" is subject to sales tax remitted by the retailer to the Department at the rate of 6% plus any applicable local sales tax. (R. pp. 832, 838; Dep't Ex. 23, pp. 9, 15.) Finally, the DMV website informs the public of certain requirements that must be met prior to the SCDMV issuing a title to a customer for an ATV:

> **Titling an ATV**
>
> If you own an all-terrain (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 on ATVs)

www.scdmvonline.com/Vehicle-Owners/Types-Of-Vehicles/All-Terrain-Vehicles (last visited December 2, 2019) (emphasis in original).

The SCDMV made several public statements regarding its position on whether an ATV – or similarly, UTV – is a "motor vehicle." Even if the SCDMV is "simply regurgitating the Department's position" in this matter, it is SCDMV's official, stated position and such position is entitled to deference as SCDMV is authorized to administer Title 56. The SCDMV's practices

and official publications regarding Title 56 statutes support the Department's interpretation of § 12-36-2110(A), and the ALC erred in concluding SCDMV's statements do not constitute its official position when there is no evidence to support such a conclusion.

D. The ALC erred in failing to construe similar definitions of "motor vehicle" in Title 12 and Title 56 *in pari materia.*

As discussed above, Title 12 contains three definitions that provide a "motor vehicle" is one which is permitted to operate on the highways of this State. *See* §§ 12-28-110(41); 12-54-122(A)(3); and 12-37-2810(B), (C), and (D). Similarly, Title 56 contains several definitions that provide a "motor vehicle" is one that is required to be registered and licensed for use on the highway. S.C. Code Ann. §§ 56-3-110; 56-15-10(a); and 56-3-20(1), (2), and (25). Nevertheless, the ALC concluded the Department "failed to show how, despite their different purposes, Title 56 and Title 12 are so intermeshed that they should be construed *in pari materia.*" (R. p. 14; Amended Order, p. 14.) More specifically, the ALC concluded 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." (R. p. 14; Amended Order, p. 14.)

"[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.*, 407 S.C. at 598, 757 S.E.2d at 416. As discussed above *infra* Part III, § A (pp. 23-34), Title 12 provides for three definitions of "motor vehicles" similar to the related definitions in Title 56 that require a "motor vehicle" to be registered and/or licensed for use on the highways. These statutes deal with the same subject matter – motor vehicle – and can be construed together to produce a similar, if not identical, result – that an ATV is not a "motor vehicle" for purposes of § 12-36-2110(A) because ATVs are not authorized to operate on the highway. Thus, the ALC erred in failing to

construe similar definitions of "motor vehicle" in Title 12 and Title 56 *in pari materia*, and the Taxpayer is not entitled to the partial sales tax exemption of § 12-36-2110(A).

Finally, following the ALC's erroneous and broad construction of § 12-36-2110(A) anything that is self-propelled and not operated on rails is a "motor vehicle" and therefore qualifies for the partial tax exemption. The ALC interprets 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). Moreover, the ALC'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 ALC's interpretation would lead to an absurd result when applying the definition of "motor vehicle." Under the ALC's interpretation, a lawn mower, a child's 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.*, 378 S.C. at 391, 662 S.E.2d at 602 (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*, 341 S.C. at 91, 533 S.E.2d at 584.

Accordingly, the ALC also erred in its interpretation of § 12-36-2110(A) because its broad construction of such statute leads to an absurd result when applying the definition of "motor vehicle."

E. The Department's Interpretation of § 12-36-2110(A) is Presumed Correct Because the Legislature Has Not Amended the Statute Subsequent to the Department's Issuance of S.C. Rev. Advisory Bulletin #00-03 in 2000.

The Department's interpretation of § 12-36-2110(A) is also entitled to deference because the legislature is presumed to know the Department's position since 2000 when it issued S.C. Rev. Advisory Bulletin #00-03. Because the legislature did not amend § 12-36-2110(A) in 2011 when it passed Chandler's Law (*supra*, Part IV), the Department's interpretation of § 12-36-2110(A) is presumed to be correct. Specifically, if the legislature intended for the Department to change course – thus making retail sales of ATVs subject to the maximum tax – it could have amended the maximum tax statute as part of "Chandler's Law"[10] when it enacted S.C. Code Ann. § 50-26-10 *et seq.* (Supp. 2019).

Nevertheless, the ALC concluded the Department is not entitled to deference because "there is no common law presumption that the legislature is aware of state agencies' interpretations." (R. p. 14; Amended Order, p. 14.) Although the ALC takes issue with the Department's contention that the legislature is presumed to know the Department's interpretation of a statute it is authorized to administer, South Carolina case law supports the Department. (R. p. 14; Amended Order, p. 14.) *See Marchant v. Hamilton*, 279 S.C. at 500, 309 S.E.2d at 783 ("Administrative interpretations of statutes, consistently followed by the agencies charged with their administration and not expressly changed by Congress, are entitled to great weight."); *Etiwan Fertilizer Co. v. S.C. Tax Comm'n*, 217 S.C. 354, 60 S.E.2d 682 (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."); *Tronco's*

[10] *See supra,* pp. 33-37 for discussion of Chandler's Law.

Catering, Inc. v. S.C. Dep't of Rev., 09-ALJ-17-0089-CC, (J. Matthews, Apr. 12, 2010), available at 2010 WL 5781622, *3 (S.C. Admin.Law.Judge.Div.) ("When, as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the Legislature, there is created a strong presumption that such interpretation or construction is correct.") (*citing Ryder Truck Lines Inc. v. S.C. Tax Comm'n*, 248 S.C. 148, 149 S.E.2d 435 (1966)).

Here, the Department has maintained the same position with regard to § 12-36-2110(A) and ATVs since at least 2000, and the legislature has not amended § 12-36-2110(A). Accordingly, the ALC erred by declining to give deference to the Department's interpretation of § 12-36-2110(A) when the legislature has not made any changes to § 12-36-2110(A).

IV. THE ADMINISTRATIVE LAW COURT ERRED IN ITS CONSIDERATION OF "CHANDLER'S LAW" TO ASCERTAIN THE INTENT OF THE LEGISLATURE REGARDING A PARTIAL TAX EXEMPTION STATUTE.

In 2011, the South Carolina Legislature passed the All-Terrain Motor Vehicle Safety Act (referred to as "Chandler's Law"). Chandler's Law was enacted under 2011 Act 24 (H.B. 3562), Section 1, effective July 1, 2011, and is codified as S.C. Code Ann. § 50-26-10 (Supp. 2019) *et seq*. In its Order, the ALC correctly concludes that Chandler's Law should be considered when determining the definition of "motor vehicle" for purposes of § 12-36-2110(A). However, the ALC's ultimate conclusion regarding Chandler's Law is flawed for several reasons. First, Chandler's Law defines an ATV as a "*motorized* vehicle" rather than a "motor vehicle." Second, the purpose of Chandler's Law can be ascertained by the official title of Chandler's Law: the All-Terrain Motor Vehicle Safety Act, and such title does not relate to the taxation of retail sales of ATVs. Finally, when Chandler's Law was enacted, the legislature created a property tax exemption for ATVs, but did not extend a partial sales tax exemption on ATVs. For all of these

reasons more fully explained below, the ALC erred in it interpretation and application of Chandler's Law to this matter.

A. Chandler's Law Defines ATVs as "Motorized Vehicles" and Not "Motor Vehicles."

In its Order, the ALC concludes the Department "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." (R. p. 13; Amended Order, p. 13.) The ALC further concluded that "[w]hen 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." (R. p. 19; Amended Order, p. 19.) However, S.C. Code Ann. § 50-26-20 (Supp. 2019) defines ATVs as "motorized vehicles" rather than "motor vehicles." Notably, § 12-36-2110(A) provides for a partial sales tax exemption for a "motor vehicle" and it does not provide for an exemption for a "motorized vehicle." Thus, the ALC erred in heavily relying upon § 50-26-20 as "clearly the most pertinent statute" when such statute does not define the specific term at issue in § 12-36-2110(A) – "motor vehicle." In fact, a logical conclusion as to why the legislature used the term "motorized" is to prevent confusion with other, more relevant Title 56 statutes.

B. The Purpose of Chandler's Law Does Not Relate to the Taxation of Retail Sales of ATVs.

As noted above, the ALC points to Chandler's Law as support for its conclusion that the legislature has defined ATVs as motor vehicles. (R. pp. 11-12; Amended Order, p. 11-12) (*citing Amisub*, 407 S.C. at 598, 757 S.E.2d at 416.) However, Title 50 relates to Fish, Game and Watercraft and does not relate to 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. Moreover, it does not define "motor vehicle" and does not relate to motor vehicles.

In its reliance upon an unrelated safety statute, the ALC ignored the definition of "motor vehicle" found at § 56-15-10(a) which addresses manufacturers, distributors, and dealers. Manufacturers, distributors, and dealers are the entities that sell motor vehicles, and therefore statutes addressing those sellers are logically more relevant and applicable to a sales tax statute than a statute aimed at child safety. The ALC's interpretation of "motor vehicle" is not consistent with how the General Assembly chose to define "motor vehicle" when regulating those who sell motor vehicles, and that inconsistency further proves the ALC erred in its interpretation.

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.

C. Chandler's Law created a property tax exemption for ATVs but did not extend a partial sales tax exemption on such ATVs.

The ALC found Chandler's Law defines ATVs as "motorized vehicles," and the Act was passed in 2011 after the Department issued S.C. Rev. Advisory Bulletin #00-03 (informing the public that retail sales of ATVs are not entitled to the partial tax exemption in § 12-36-2110(A), but before the Department issued S.C. Rev. Ruling #18-1 (confirming retail sales of ATVs are not subject to the IMF *or* the partial sales tax exemption). Thus, the ALC concluded the Department was required to acknowledge its prior "erroneous" interpretation when it issued S.C. Rev. Ruling #18-1, to "accord with the legislature's action" of enacting Chandler's Law.

As discussed in this brief, the legislature is presumed to know the Department's position that retail sales of ATVs are not subject to the partial tax exemption under § 12-36-2110(A). *See infra* Part III, § E (pp. 32-33). As part of Chandler's Law, the legislature included § 50-26-50, which provides as follows:

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

Chandler's Law created a property tax exemption for ATVs beginning with calendar year 2011. The legislature was aware of the Department's position with regard to retail sales of ATVs and provided for a *property tax exemption* for ATVs; however, it did not provide for a partial sales tax exemption for ATVs despite knowing the Department's interpretation of § 12-36-2110(A) since at least 2000.

Because partial tax 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 ALC erred in its interpretation related to § 50-26-50. *See Owen Indus. Prods., Inc.*, 274 S.C. at 195, 262 S.E.2d at 34; *Se.-Kusan,*

Inc., 276 S.C. at 489, 280 S.E.2d at 58 ("As a general rule, tax exemption statutes are strictly construed against the taxpayer."); *York County Fair Ass'n, Inc.*, 249 S.C. at 341, 154 S.E.2d at 363 (*quoting Textile Hall Corp. v. Hill*, 215 S.C. 262, 54 S.E.2d 809 (1949)) (finding a taxpayer, in order to claim an exemption, has the burden of "clearly bring[ing] himself with the constitutional or statutory language upon which he relies.")

CONCLUSION

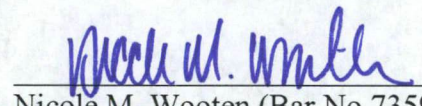
This case involves the interpretation of the undefined term "motor vehicle" within § 12-36-2110(A), a tax exemption statute. Definitions of "motor vehicle" in both Title 12 and Title 56 support the Department's position in this matter. In addition the Department's long-standing published policy, as well as the published policies of the SCDMV, clearly state that the ATVs and UTVs are not motor vehicles subject to the tax exemption found in § 12-36-2110(A). Rather than looking to the definitions in Title 12 or Title 56 that support the Department's interpretation, the ALC chose to ignore those definitions, ignore the Department's long-standing interpretation, and ignore the SCDMV's interpretation. Instead, the ALC chose to rely upon an incomplete and inaccurate portion of the definition of "motor vehicle" in Merriam Webster's dictionary, and other less applicable definitions in Title 56. Because § 12-36-2110(A) is an exemption statute, it must be strictly construed against the exemption.

Moreover, because § 12-36-2110(A) is a tax statute administered by the Department, the Department's interpretation of that statute is entitled to great deference and should not be overturned absent cogent reason. In the face of differing definitions of "motor vehicle," it was an error for the ALC rely only upon the definitions that supported its interpretation and ignore the numerous definitions that contradict that interpretation. Despite it being an exemption statute, the ALC chose to broadly construe "motor vehicle" to include ATVs and UTVs and that broad

construction is an error of law. An interpretation that requires ignoring applicable statutory definitions and ignoring long-standing interpretations is the very opposite of strict construction.

Furthermore, it was an error for the ALC to disregard the long-standing interpretation of the Department as well as the published interpretation of the SCDMV. There is no cogent reason for the interpretation of two state agencies to be disregarded in this matter. The ALC erred in determining that the Taxpayer's retail sales of ATVs and UTVs during the Audit Period are entitled to the partial sales tax exemption under § 12-36-2110(A), failed to give deference to the Department's long-standing interpretation of a statute it is authorized to administer, and erred in its interpretation of Chandler's Law.

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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

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

v.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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