THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SC 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.

FINAL REPLY BRIEF OF APPELLANT

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Pursuant to Rule 208(a)(3), SCACR, the Appellant South Carolina Department of Revenue (Department) files its Reply to the Initial Brief of Respondent Jack's Custom Cycles, Inc. d/b/a Jack's Motor Sports (Taxpayer).

ARGUMENTS

I. THE RELEVANT STATUTES COUPLED WITH LEGISLATIVE INTENT ESTABLISH TAXPAYER IS NOT ENTITLED TO A PARTIAL SALES TAX EXEMPTION BECAUSE AN ATV OR UTV IS NOT A "MOTOR VEHICLE" FOR PURPOSES OF S.C. CODE ANN. § 12-36-2110(A).

A. S.C. Code Ann. § 56-15-10(a) Requires A "Motor Vehicle" To Be Licensed For Use On The Highway.

Taxpayer asserts "[t]here is no restriction that [a motor vehicle] 'must' first be licensed for the highway." (Taxpayer's Br., p. 8.) However, Title 56 factually provides that a motor vehicle must be licensed for use on the highway and driving an unlicensed vehicle is a criminal offense:

> 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). When § 56-3-110 and § 56-15-10(a) are read in conjunction, it is clear that a "motor vehicle" must be licensed for use on the highway.

Taxpayer further argues that because it has seen ATVs and UTVs driven on the highways in South Carolina, there is no requirement that such vehicles must be licensed for use on the highway. Following that logic, if Taxpayer witnesses a bank robbery, bank robbery must be legal. One does not follow the other, and the argument leads to an absurd result. Most importantly, for purposes of a sales tax exemption, it is irrelevant whether or not individuals choose to drive an ATV or UTV on a South Carolina highway because § 56-3-110 provides that it is a misdemeanor

to drive any unregistered or unlicensed vehicle on the highway. The underlying record conclusively establishes that South Carolina Department of Motor Vehicles (SCDMV) will not register or license ATVs or UTVs for highway use. (R. pp. 341; 774; Hr'g Tr. 77:13-22; Dep't Ex. 15, p. 1.) Finally, the manufacturers inform ATV and UTV owners that their vehicles are exclusively for off-road use and should not be operated on public roads. (R. pp. 344; 426, 434, 461; 566, 572, 573, 579; Hr'g Tr. 80:2-6; Taxpayer Ex. 3, pp. 13, 21, 48; Taxpayer Ex. 4, pp. 4, 10, 11, 17.) Simply put, ATVs and UTVs cannot be registered or licensed with the SCDMV and it is illegal to operate those vehicles on a highway.

Reading the relevant statutes together, an ATV or UTV is not a "motor vehicle" and ATVs and UTVs are not entitled to the partial sales tax exemption allowed by § 12-36-2110(A). *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 materia* and must be construed together, if possible, to produce a single, harmonious result.").

B. The Legal Analysis And Factual Conclusions In *Anderson* Confirm That A Type Of Vehicle Can Have Different Meanings Under South Carolina Law Depending Upon Its Use Or Purpose.

In its brief, the Taxpayer unsuccessfully attempts to distinguish *Anderson v. State Farm Mutual Auto Insurance Company*, 314 S.C. 140, 442 S.E.2d 179 (1994) from this case. Taxpayer contends that the *Anderson* Court "found a farm tractor was 'a machine designed and intended to be used as an agricultural implement and not as a means for transportation upon a highway.'" (Taxpayer's Br., pp. 9-10.) The Taxpayer then argues ATVs and UTVs are not like farm tractors because they are "designed to transport individuals and are not considered machines used as agricultural implements." *Id.* at 10. However, the Taxpayer omits the important phrase "upon a highway" from his statement of the Court's analysis. *Anderson*, 314 S.C. at 143, 442 S.E.2d at

181 ("A farm tractor is defined as a machine designed and intended to be used as an agricultural implement and not as a means of transportation on the highway, although occasionally it may operate on a highway.") (emphasis added).

In *Anderson*, the Court 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). Like the farm tractor in *Anderson*, ATVs and UTVs are not designed for use upon a highway. (R. pp. 426, 434, 461; 566, 572, 573, 579; Taxpayer Ex. 3, pp. 13, 21, 48; Taxpayer Ex. 4, pp. 4, 10, 11, and 17.) Consistent with the analysis above, the relevant Title 56 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. As the *Anderson* Court confirmed, although a type of vehicle may be a "motor vehicle" in Title 56, that vehicle may be categorized differently for another purpose. *Anderson* at 143, 442 S.E.2d at 181. Accordingly, the ALC erred by treating an ATV or UTV as a "motor vehicle" despite clear and contrary statutory authority. This broad construction of the sales tax exemption is unwarranted and unsupported by the weight of authority. *See Home Medical Systems v. S.C. Dep't of Rev.*, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009) (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. v. S.C. Dep't of Rev.*, 383 S.C. 334, 345, 679 S.E.2d 913, 919.

C. The Taxpayer's Additional Dictionary Definitions Support The Department's Position.

As argued in the Department's Initial Brief, the ALC erred in its Amended Order by using an incomplete definition from a dictionary to support its conclusion. (Department's Initial Br., p. 26.). In response, Taxpayer argues the ALC properly utilized Merriam Webster's definition of "motor vehicle." (Taxpayer's Br., p. 12.) However, like the ALC, Taxpayer fails to include the entire definition of motor vehicle by excluding the last sentence of the definition: "*especially*: one with rubber tires for use on highways." *Motor Vehicle*, MERRIAM-WEBSTER, https:// https://www.merriam-webster.com/dictionary/motor%vehicle (last visited January 13, 2020). Again, the Merriam-Webster's definition is entirely consistent with the Department's interpretation of § 12-36-2110(A), and our courts have repeatedly held 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 v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718.)

Taxpayer cites two additional dictionary definitions of "motor vehicle" in support of its argument:

> motor vehicle *noun*
>
> **any road vehicle** driven by an engine

Motor Vehicle, OXFORD LEARNER'S DICTIONARIES, https://www.oxfordlearnersdictionaries.com /us/definition/English/motor-vehicle?q=motor+vehicle (last visited January 13, 2020) (bold emphasis added).

> motor vehicle
> *noun*

a car, bus, truck or other vehicle powered by a motor **that uses roads**

Motor Vehicle, CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english /motor-vehicle (last visited January 13, 2020) (bold emphasis added).

Curiously, despite each definition's judgment that motor vehicle should be used on the road, Taxpayer concludes "[a]ll of these definitions are consistent with the ALC's interpretation of 'motor vehicle' and do not have any requirement that they must be operated on public roads." (Taxpayer's Br., p. 12.) Taxpayer simply ignores the parts of the definitions of "motor vehicle" which do not support its argument.

The Department correctly combined the definitions of "motor vehicle," "vehicle," and "highway" to conclude that the retail sale of an ATV/UTV is not entitled to the partial sales tax exemption – a statute in which the Department has been given the authority to administer and enforce. *See* § 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"; § 12-4-10.

The Department's interpretation of § 12-36-2110(A) is not arbitrary, capricious, or manifestly contrary to the statute, but is supported by Title 56 provisions in Title 12 that similarly define "motor vehicle" (discussed below), and multiple dictionary definitions of "motor vehicle." *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) (concluding the court will "defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'")

Relying on an incomplete dictionary definition, the ALC erred in broadly construing a partial exemption statute and compounded by the error by failing to give deference to the Department's long-standing interpretation of § 12-36-2110(A) when its interpretation is supported by the entire definition in the multiple dictionaries. *See 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."; *Kiawah Dev. Partners, II*, 411 S.C. at 34, 766 S.E.2d at 718

D. ATVs Are Also Defined As "Motorized Vehicles."

In its brief, Taxpayer asserts the "South Carolina Legislature has specifically and consistently addressed the definition of all-terrain vehicles in four separate statutes[.]" (Taxpayer's Br., p. 13.) However, §§ 50-26-20 and 39-6-20(7)(d) refer to ATVs as "a "motorized vehicle" rather than a "motor vehicle." (emphasis added). Similarly, § 56-19-1030 defines ATV as provided for under § 50-26-20 (which defines ATV as a "motorized vehicle).[1] 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." The legislature did not provide a partial sales tax exemption on the retail sale of a "motorized vehicle." To the extent the court determines these statutes are relevant in the statutory construction of a sales tax exemption, the language of § 12-36-2110(A) must be strictly construed against Taxpayer, and § 12-36-2110(A) does not provide an exemption for "motorized vehicles." *Owen Indus. Prods., Inc.*, 274 S.C. at 195, 262 S.E.2d at 34 (concluding "the language of a tax exemption statute must be given its plain, ordinary meaning

[1]Further, § 56-19-1030 concerns the titling application and fees associated with ATVs when making an application for an ATV title with the SCDMV.

and must be construed strictly *against* the claimed exemption") (emphasis added); *see also York County Fair Ass'n, Inc.*, 249 S.C. at 341, 154 S.E.2d at 363; *Textile Hall Corp.*, 215 S.C. 262, 54 S.E.2d 809. It is reasonable to conclude that the General Assembly used "motorized" rather than "motor" in Chandler's Law to prevent confusion with other, more relevant Title 56 statutes.

II. THE DEPARTMENT IS AUTHORIZED TO ADMINISTER S.C. CODE ANN. § 12-36-2110(A), AND ITS INTERPRETATION IS NOT ARBITRARY, CAPRICIOUS, OR MANIFESTLY CONTRARY TO THE STATUTE.

Because § 12-36-2110(A) does not define "motor vehicle," the Department's interpretation of the statute is entitled to deference. *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). 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*, 412 S.C. at 354, 772 S.E.2d at 184 (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).

A. The Department Used Title 56 Definitions To Support Its Interpretation Of § 12-36-2110(A).[2]

It is undisputed the Department is authorized to administer Title 12 statutes and regulations, and the SCDMV is authorized to administer Title 56 statutes and regulations. Section 12-4-10 (providing the Department "is created to administer and enforce the revenue laws of this state"; S.C. Code Ann. § 56-1-5 (2016); 2003 Act No. 51, Section 3 (establishing SCDMV and providing for powers, duties, responsibilities and statutory authority). In its brief, Taxpayer argues the Department cannot interpret Title 56 statutes. The Department agrees, but the Department's position is not an interpretation of Title 56 statutes. Rather, because § 12-36-2110(A) is administered by the Department and it does not define "motor vehicle," the Department applied relevant Title 56 definitions to support its interpretation of § 12-36-2110(A). *See* S.C. Code Ann. §§ 56-3-110; 56-15-10(a); and 56-3-20(1), (2), and (25). Moreover, SCDMV is authorized to administer Title 56, and its official publications match the Department's position in this matter. (R. pp. 806-810; 811-812; 813-819; Dep't Ex. 19, 20, 21.) Here, the ALC concludes that the Department's position is not entitled to deference because it attempts to interpret Title 56 statutes,

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[2]In its brief, Taxpayer mischaracterizes the Department's argument by stating "[i]n one instance the Appellant argues Title 56 is not persuasive, and then next argues several sections of Title 56 to arrive at its self-serving conclusion." "Now, Appellant states [Title 56] is not controlling or 'even persuasive' to the matter." (Taxpayer's Br., p. 5, n. 1; p. 5 (text)).

Contrary to Taxpayer's assertion in its brief, the Department does not argue that Title 56 is unpersuasive; rather, Taxpayer completely misstates a phrase within the Department's brief:

> 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.**

(Dep't Br., p. 13.)

and similarly, the SCDMV's publications are not entitled to deference because it attempts to interpret a Title 12 statute.

Such circular logic leads to an absurd result as the ALC disregarded both the Department's and SCDMV's positions on the matter. *See Kiawah Dev. Partners, II*, 411 S.C. at 34, 766 S.E.2d at 718 (concluding an agency is entitled to deference in the interpretation of the statutes or regulations it is authorized to administer). The official, public positions of the Department and the SCDMV are the most relevant when considering the ultimate issue in this matter: whether an ATV or UTV is a "motor vehicle" for purposes of a partial tax exemption statute. And significantly, both agencies' official positions in this matter are consistent – that ATVs and UTVs do not qualify for the partial sales tax exemption of § 12-36-2110(A).

B. It Is Undipusted That The SCDMV Publications Are Consistent With The Department's Postion In This Matter.

In response to the Department's argument that SCDMV publications support its position, Taxpayer states "Appellant did not offer any evidence other than these publications regarding whether the DMV considers ATVS and UTVs to be motor vehicles." Taxpayer confuses quantity and quality. The only evidence in the record regarding SCDMV's position includes the three official publications from the SCDMV that are available on its public website. (R. pp. 806-810; 811-812; 813-819; Dep't Ex. 19, 20, and 21.) 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. *Id.* These SCDMV Publications reflect the official position of such agency, and Taxpayer offered no evidence suggesting otherwise. To the contrary, the uncontroverted evidence establishes that SCDMV does not consider an ATV to be a "motor vehicle" but rather a "[v]ehicle not subject to Maximum Tax": (1) SCDMV Publications; (2) S.C. Information Letter #17-10; and (3) and SCDMV's website. (R.

pp. 812; 825; 832, 838; Dep't Ex. 20, p. 2, Dep't Ex. 23, p. 2; Dep't Ex. 23, pp. 9, 15; www.scdmvonline.com/Vehicle-Owners/Types-Of-Vehicles/All-Terrain-Vehicles (last visited January 13, 2020).

The record establishes categorically that the SCDMV made several public statements regarding its position on whether an ATV – or similarly, UTV – is a "motor vehicle" and, like the Department, concluded at every opportunity that they are not. *See* S.C. Code Ann. §§ 1-23-610(B) (Supp. 2015). Even if the Department's position is not entitled to deference, the ALC should have deferred to the SCDMV, which administers 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.

C. SCDMV Did Not Collect Sales Tax On Taxpayer's Retail Sales Of ATVs Or UTVs During The Audit Period.

Taxpayer erroneously argues that the SCDMV Publications contradict SCDMV's practice of titling an ATV because the Form 400 "instruct[s] owners to pay maximum tax." Taxpayer further argues the fact that SCDMV uses Form 400 in the titling process of an ATV or motor vehicle establishes the SCDMV considers an ATV to be a motor vehicle.

First, SCDMV Form 400 is not limited to the title application process for motor vehicles. Form 400 has multiple uses as it is also used in the titling process of a "Manufactured Home/Mobile Home." (R. pp. 794-805; Dep't Ex. 16.) Second, there is no evidence in the record establishing the Taxpayer paid "maximum tax" to the SCDMV during the Audit Period. To the contrary, a title application related to Taxpayer's sale of an ATV during the Audit Period confirms the SCDMV did not collect any use or sales tax with the title application. (R. pp. 794-795; 348-350; Dep't Ex. 16, pp. 1-2; Hr'g Tr. 84:17-86:1 (Taxpayer acknowledging SCDMV did not collect

any sales or use tax on the titling application for the ATV sold by Taxpayer during the Audit Period)). In fact, the SCDMV only collected a $15.00 title fee when processing the application. That is consistent with the information on SCDMV's public website:

> **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 January 13, 2020) (emphasis added); (R. pp. 795; 348-350; Dep't Ex. 16, p. 2; Hr'g Tr. 84:17-86:1.)

D. The Legislature Confirmed The Department's Interpretation Of § 12-36-2110(A) Is Not Arbitrary, Capricious, Or Manifestly Contrary To The Statute In Other Parts Of Title 12.

The Department's interpretation and application of § 12-36-2110(A) is not arbitrary, capricious, or manifestly contrary to the statute. *See Trident Med. Center*, 412 S.C. at 354, 772 S.E.2d at 184 (stating courts will "defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'") As support for the Department's reasonable interpretation of § 12-36-2110(A), the Department cited three statutes in Title 12: S.C. Code Ann. § 12-38-110(41) (2014); S.C. Code Ann. § 12-54-122(A)(3) (2014); and S.C. Code Ann. §§ 12-37-2810 (B), (C), and (D) (2014). These statutes demonstrate that each 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 that is consistent with all other definitions of "motor vehicle" found in Title 12.

Taxpayer argues the Court should not consider these statutes because they were not presented to the ALC. (Taxpayer's Br., p. 15.) The Taxpayer cites to several cases to support its assertion the Department did not preserve this issue. However, Taxpayer is confusing issue preservation and evidentiary issues with additional legal authority. In *Ross v. Medical University of South Carolina*, 317 S.C. 377, 453 S.E.2d 880 (1994), the Court held the lower court had jurisdiction to order discovery and admit extrinsic evidence in APA cases upon an alleged irregularity in the agency proceeding below. Thus, the issue before the *Ross* court was whether *evidence* outside of the record should be admitted and did not involve supporting legal authority. *Ross*, 317 S.C. at 380-381, 453 S.E.2d 882-883 That is distinguishable from the instant case where the Department cites supporting legal authority for its interpretation of § 12-36-2110(A).

Taxpayer next cites to *Pringle v. Builders Transport*, 298 S.C. 494, 381 S.E.2d 731 (1989). In *Pringle*, the Court found appellant failed to state grounds or errors of law in support of the appeal. *Pringle*, 298 S.C. at 495, 381 S.E.2d at 731. Here, the parties stipulated that the "sole issue" before the ALC "is whether the ATVs and UTVs sold by [Taxpayer] 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." (R. p. 4; Amended Order, p. 4.) It is undisputed the Department appealed the ALC's determination on that issue. It is also undisputed the Department also appealed the ALC's failure to give deference to the Department's interpretation of § 12-36-2110(A). Finally, it is undisputed that "motor vehicle" is undefined for purposes of § 12-36-2110(A). The three specific Title 12 statutes cited by the Department do not define "motor vehicle" for purposes of § 12-36-2110(A); rather, the statutes were cited merely as

additional support for the Department's position that ATVs are not "motor vehicles" for purposes of a partial sales tax exemption. This is no different from the Department citing a case to the appellate courts that was not cited to the trial court below.

Taxpayer also cites to *Smith v. South Carolina Department of Social Services*, 284 S.C. 469, 327 S.E.2d 348 (1985) to support its assertion that this Court cannot consider §§ 12-38-110(41), 12-54-122(A)(3), and 12-37-2810 (B), (C), and (D). In *Smith*, the Court determined the appellant's petition for review (appeal) was too "broad, vague, and unspecific" to notify the appellate court of any alleged errors of the administrative hearing below. *Smith*, 284 S.C. at 471, 327 S.E.2d at 349. Similar to the *Pringle* analysis above, there is no dispute the Department appealed the "sole" issue in this matter, and the Title 12 statutes were cited as legal authority in support of the Department's argument in this matter.

Finally, Taxpayer argues the ALC's "factual conclusions and ultimate legal decision" are correct because "ATVs and UTVs can be licensed for use, and lawfully operate, upon public roads in neighboring states." (Taxpayer's Br., p. 18.) As an initial note, there is no evidence in the record – other than Taxpayer's self-serving testimony – that neighboring states currently permit ATVs and UTVs to be lawfully operated on public roads. *Cf. Lowe v. Comm'r of Internal Rev.*, T.C. Memo 2016-206, 112 T.C.M. (CCH) 514, available at 2016 WL 6610853 (concluding taxpayer was not entitled to dependency exemption absent evidence other than wife's self-serving testimony that child's principal place of abode was with taxpayers). More importantly – even if ATVs may be lawfully operated on public roads in another state – it is still unlawful to operate an ATV or UTV upon the highway in South Carolina. *See* § 56-3-110. Furthermore, only the South Carolina tax exemption is at issue, so it is irrelevant whether neighboring states permit ATVs or UTVs to operate upon their public roads.

For these reasons and those stated in the Department's initial brief, the ALC erred in failing to give deference to the Department's interpretation of § 12-36-2110(A).

III. THE LEGISLATURE DID NOT PROVIDE FOR A PARTIAL SALES TAX EXEMPTION FOR THE RETAIL SALE OF ATVS OR UTVS WHEN IT PASSED CHANDLER'S LAW.

As noted above and in the Department's Initial Brief, Chandler's Law defines an ATV as a "motorized vehicle" rather than a "motor vehicle," and Chandler's Law – by its own title – establishes that the Act does not relate to the taxation of retail sales of ATVs. *See* 2011 Act No. 24 (H.B. 3562), Section 1, effective July 1, 2011, codified at S.C. Code Ann. § 50-26-10 *et seq.* Significantly – and not addressed anywhere in Taxpayer's Initial Brief – when the legislature enacted Chandler's Law, it created a property tax exemption for ATVs but did not extend a partial sales tax exemption on ATVs. In its initial brief the Taxpayer acknowledges the importance of ascertaining the legislature's intent when considering Chandler's Law yet is completely silent as to the legislature declining to extend a partial sales tax exemption on ATVs when 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* Department's Br., Part III, § E (pp. 32-33). Further, as noted above, Chandler's Law created a property tax exemption for ATVs beginning with calendar year 2011. *See* S.C. Code Ann. § 50-26-50 (providing "All-terrain vehicles are exempt from ad valorem personal property taxes 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. *See* (R. pp. 820-823; Dep't Ex. 22, S.C. Rev. Adv. Bulletin #00-3; *Marchant*, 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 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)).

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 consideration of § 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.*, 215 S.C. 262, 54 S.E.2d 809 (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."))

IV. THE ALC DID NOT CONCLUDE THE INFRASTRUCTURE MAINTENANCE FEE IS A BASIS FOR ITS DETERMINATION THAT ATVS AND UTVS SHOULD BE CONSIDERED "MOTOR VEHICLES" FOR PURPOSES OF § 12-36-2110(A).

Taxpayer asserts the Department abandoned the argument regarding the ALC's analysis of the Infrastructure Maintenance Fee ("IMF"). *See* Taxpayer's Br., p. 21; S.C. Code Ann. § 56-3-627 (Supp. 2018). Specifically, Taxpayer argues that "as a ground for determining that ATVs and UTVs are motor vehicles that are subject to the maximum tax . . . the ALC made specific findings" regarding the IMF. (Taxpayer's Br., p. 21.) However, Taxpayer misconstrues the ALC's Amended Order regarding the IMF. The ALC did not conclude the sole issue in this case is based upon provisions of the IMF; rather, the ALC concluded the IMF does not apply to the Audit Period at issue. (R. p. 17; Amended Order, p. 17, "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." (emphasis added.) The ALC also concluded the IMF "can only be utilized as a tool in discerning legislative intent to reflect whether the legislature intended to change or clarify the law." *Id.* (emphasis added).

Further, Taxpayer is incorrect in the following statement in his brief:

> [T]he legislature's continued inclusion of "motor vehicle" in the maximum tax statute required that the Court interpret the statute to allow application of the maximum tax to motor vehicles that are not subject to the IMF – motor vehicles not operated upon the State's highways.

(Taxpayer's Br., p. 23.) The Taxpayer is correct that there are motor vehicles that are subject to the maximum tax and not the IMF; however, those motor vehicles that are still subject to the maximum tax are not "motor vehicles not operated the State's highways" as the Taxpayer suggests. (Taxpayer's Br., p. 23). Rather, the maximum tax – and not the IMF – applies to retail sales of motor vehicles to out of state residents. *See* R. pp. 834; 845-846, 851; Dep't Ex. 23, p.11 (S.C.

Information Letter #17-10, Chart 2, explaining motor vehicles purchased in South Carolina by a nonresident to be registered or used outside of South Carolina are "Maximum Sales Tax Items); Dep't Ex. 24, p. 3-4, 9 (S.C. Revenue Ruling #18-1, summarizing Sales to Nonresidents, to include maximum tax items).[3] Thus, the Taxpayer is correct in his statement that the IMF replaced the maximum tax for motor vehicles "required to be registered pursuant to this chapter", but motor vehicles required to be registered under the IMF include sales to South Carolina residents. It does not include retail sales to non-residents – such sales are still subject to the maximum tax in § 12-36-2110(A) as the IMF does not apply to retail sales to non-residents for use registration or use outside of South Carolina.[4]

CONCLUSION

Taxpayer's Brief essentially recites verbatim the statements and conclusions from the ALC's Amended Order without providing additional analysis. As discussed more fully in the Department's Initial Brief, this case involves the interpretation of the undefined term "motor vehicle" within § 12-36-2110(A), a tax exemption statute. Because § 12-36-2110(A) is an exemption statute, it must be strictly construed against the exemption. The ALC erred in broadly construing § 12-36-2110(A) (2014) in favor of Taxpayer where the legislature did not explicitly provide for such partial sales tax exemption on the retail sale of an ATV or UTV.

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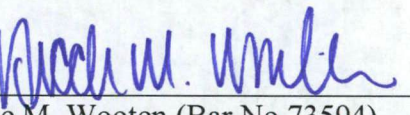
[3]On these sales to nonresidents, no sales tax is due if the purchaser cannot receive a credit in his resident states for sales tax paid to South Carolina or the nonresident's state does not impose a sales tax on the sale of a motor vehicle. *See* Dep't Ex. 23, p. 18.

[4]One exception is the retail sales of motor vehicles to nonresident members of the military, which are not subject to the sales tax. (R. p. 857; Dep't Ex. 24, p. 15 (explaining relevant provisions of the Servicemembers Civil Relief Act, codified at 50 U.S.C. § 3901 *et seq.*)) 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. *See* 50 U.S.C. § 3911(8) and 49 U.S.C. § 30102(a)(7) (defining "motor vehicle" for purposes of the Servicemembers Civil Relief Act).

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. Furthermore, it was an error for the ALC to disregard the published interpretation of the SCDMV. There is no sound reason for the interpretation of two state agencies (whose expertise is directly on point) to be disregarded in this matter. For the reasons set forth more fully in the Department's initial brief as well as this reply, 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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March 3, 2020

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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

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v.

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

CERTIFICATE OF COUNSEL

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

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