

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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SC Court of Appeals

Synovus Bank,)
)
Petitioner,)
)
vs.)
)
South Carolina Department of Revenue,)
)
Respondent.)
_____)

Docket No. 17-ALJ-17-0418

**ORDER DENYING MOTION
FOR RECONSIDERATION**

This case is before the South Carolina Administrative Law Court (Court or ALC) pursuant to a Request for Contested Case filed by Synovus Bank (Petitioner) on November 16, 2017. Petitioner contests the decision of the South Carolina Department of Revenue (Respondent or Department) in which the Department determined Petitioner could not deduct net operating loss (NOL) carryforwards when computing its bank tax liability for tax years 2011 through 2014. The Court issued a Final Order in this matter on April 17, 2020. Following that decision, Petitioner timely filed a Motion for Reconsideration (Motion) on May 12, 2020. Thereafter, the Court withdrew its Final Order to address Petitioner’s Motion.

I generally find that the arguments made in Petitioner’s Motion are without merit or are a reiteration of the arguments made in the hearing into this matter. *See* CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2810.1 (2d ed. 1995) (observing that Rule 59(e) motions may be appropriate to preserve an issue raised in a contested case for appellate review or to ask the court to decide an issue which has been raised but not ruled upon, but they “may not be used to relitigate old matters”). Nevertheless, I have amended the Final Order to address points raised by the Department. Furthermore, I briefly address the following issue:

In its response to Petitioner’s Motion for Reconsideration, the Department seems to suggest that there are two means by which agency deference can be invoked. The first is when the agency charged with administering a statute interprets a statute that is a silent or ambiguous. This facet of the agency deference was recently discussed in *Kiawah Development Partners, II v. South Carolina Department of Health & Environmental Control*, 411 S.C. 16, 32–33, 766 S.E.2d 707, 717 (2014) (*Kiawah*). In *Kiawah*, the South Carolina Supreme Court held that if a statute or regulation “is silent or ambiguous with respect to the specific issue,” then the court must give

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deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference.¹ The second is when the agency has taken a uniform position for many years such that it can be characterized as a long-standing interpretation of a statute or regulation. For example, in *Charleston County Assessor v. University Ventures, LLC*, the South Carolina Supreme Court noted “[w]e have previously ‘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.’” 427 S.C. 273, 289, 831 S.E.2d 412, 420 (2019) (quoting *Etiwan Fertilizer Co. v. S.C. Tax Comm’n*, 217 S.C. 354, 359, 60 S.E.2d 682, 684 (1950)); see also *Media Gen. Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 140, 694 S.E.2d 525, 526 (2010).

However, these holdings must not be treated as separate principles but as part of an overall determination of when it is appropriate to apply the agency deference doctrine. The danger of culling out the “long-standing interpretation” piece of the construction of an ambiguous statute/regulation is illustrated by both extremes of its application. On one hand, ignoring the requirement of a long-standing administrative interpretation would allow an agency to construe its statutes or regulations on a case-by-case basis and seek deference for that mutable interpretation. The fallacy of that viewpoint can be seen in the arguments in *Harry v. South Carolina Department of Health and Environmental Control*, 09-ALJ-07-0255-CC; 2010 WL 8425978 (July 15, 2010). In *Harry*, the Department sought deference for a new interpretation of its regulations by a staff member who had been with the Department for eight months even though the Department had interpreted the regulation contrary to that staff member’s interpretation for over fifteen years. *Id.* Thus, if there is no requirement that the interpretation be long-standing, an agency can simply espouse a view of the law in one case and a different view of the law in the next case and seek deference for both views no matter how short the timeframe. See also *Billy Keyserling, Mayor of the City of Beaufort, the City of Beaufort, Mayor Joseph P. Riley, Jr., Mayor of the City of Charleston, the City of Charleston, Tim Goodwin, Mayor of the City of Folly Beach, the City of Folly*, No. 15-ALJ-07-0319-CC, 2016 WL 1627204, at *6-7 (Apr. 19, 2016). This certainly raises

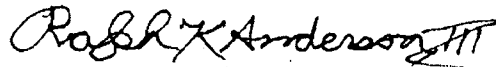
¹ It is also notable that the issue of long-standing administrative interpretation was never raised before the ALC or the Supreme Court in *Kiawah*. Therefore, there would have been no need for the Supreme Court to directly address the issue.

the potential for equal protection issues. See *Weaver v. South Carolina Coastal Council*, 309 S.C. 368, 423 S.E.2d 340 (1992). On the other hand, if the long-standing interpretation requirement is a separate principle, then an agency that has a long-standing interpretation of a statute/regulation could claim deference even though that interpretation is contrary to the plain meaning of the law.

Accordingly, the Department's suggested interpretation of the agency deference doctrine is untenable. The Supreme Court's holding in *Kiawah* that deference is given to an agency's interpretation of a silent or ambiguous statute "assuming the interpretation is worthy of deference" accounts for the need to consider the entire doctrine before granting deference. *Kiawah*, 411 S.C. at 32-33, 766 S.E.2d at 717.

IT IS THEREFORE ORDERED that Petitioner's Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED.

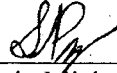


Ralph King Anderson, III
Chief Administrative Law Judge

June 22, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Michelle Perez
Judicial Law Clerk

June 22, 2020
Columbia, South Carolina