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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Case No. 2024-000013

Administrative Law Court Case No. 19-ALJ-17-0416-CC

Tractor Supply Company ..... Appellant,

v.

South Carolina Department of Revenue ..... Respondent.

BRIEF OF AMICI CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE SOUTH CAROLINA CHAMBER OF COMMERCE IN SUPPORT OF APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

I. Did the Administrative Law Court (ALC) err by applying the wrong legal standard for step one of the alternative-apportionment statute?

II. Did the ALC err by finding combined unitary reporting authorized under step two of the alternative-apportionment statute in this case?

III. Did the ALC err in finding the Department of Revenue met its burden of proof under the wrong standard for step one of the alternative-apportionment statute?

IV. Did the ALC err in concluding combined unitary reporting is reasonable and equitable under step two of the alternative-apportionment statute?

V. Did the ALC err in concluding that the Administrative Procedures Act was not violated?

INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United States of America (U.S. Chamber) is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files amicus briefs in cases, like this one, that raise issues of concern to the nation's business community.

The South Carolina Chamber of Commerce (State Chamber) is a not-for-profit, statewide organization with a mission of serving as the leading voice for business in South Carolina and a vision of making South Carolina's economy the most vibrant in the United States, creating opportunity and prosperity for all. The

State Chamber's membership is comprised of businesses from across the state and across industries, from startups and family-owned businesses to multi-national enterprises—all of whom call South Carolina home. The State Chamber aims to protect the interests of South Carolina's business community by identifying and addressing issues that may impair economic development and growth, and routinely participates in state and federal litigation as an amicus.

Amici have a strong interest in ensuring that the business community can predict its tax obligations in advance, and they regularly file amicus briefs to help courts ensure such predictability at the state and federal levels. *See, e.g.*, U.S. Chamber & S.C. Chamber Amici Br., *Amazon Servs. v. S.C. Dep't of Revenue*, No. 2024–000625 (S.C. S. Ct., filed Nov. 19, 2024); *see also* U.S. Chamber Amicus Br., *Schwarz v. Comm'r of Internal Revenue*, No. 12347–20 (U.S. Tax Ct., filed July 10, 2025); U.S. Chamber Amicus Br., *Coca-Cola Co. v. Comm'r of Internal Revenue*, No. 24–13470 (11th Cir., filed Mar. 18, 2025); U.S. Chamber Amicus Br., *3M Co. v. Comm'r of Internal Revenue*, No. 23–3772 (8th Cir., filed Feb. 14, 2024). The decision below undermines that interest by, among other things, weakening the established rule that doubts about the meaning of tax statutes are resolved in the taxpayer's favor. Ensuring that courts follow that rule and maintain the predictability of the tax laws has great importance for amici and their members, in South Carolina and nationally.

SUMMARY OF THE ARGUMENT

The predictability of the tax laws is essential to the business community and the economy as a whole. Businesses need their tax obligations to be predictable so that they can invest for the future and plan for compliance. Prospectively, when tax obligations are unpredictable, it is difficult for businesses to make the investments needed to spark economic growth and innovation. Retrospectively, a lack of predictability leads to unexpected tax bills that disrupt companies' operations and can even drive them out of business, especially when those companies are small. These harms to the business community produce downstream harms to everyone in the form of slower growth, higher prices, lower wages, and fewer jobs.

An important tool exists for avoiding these harms: the time-honored rule that doubts on the meaning of tax statutes are construed in favor of the taxpayer. For more than a century, this pro-taxpayer rule has helped businesses in South Carolina and beyond to predict their tax obligations with confidence.

The predictability of the tax laws is now under threat from the decision of the Administrative Law Court (ALC) in this case. That decision dilutes the rule that ambiguities in tax statutes are resolved in the taxpayer's favor. If left uncorrected, the ALC's decision would impair the certainty of the tax laws and inflict serious damage on South Carolina's business community and its overall economy.[1]

To prevent that damage, this Court should reverse the decision below.

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[1] To make matters worse, in another case that is pending before this Court, the ALC likewise violated the pro-taxpayer rule. *See* Am. Final Order, *CarMax Auto Superstores, Inc. v. S.C. Dep't of Revenue*, No. 21-ALJ-17-0182-CC (S.C. Admin. L.

ARGUMENT

I. The predictability of the tax laws is vital to the business community and to the South Carolina economy as a whole.

In tax law, "certainty is desirable." *United States v. Generes*, 405 U.S. 93, 105 (1972). A core principle of tax policy is that "[t]ax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction." Ass'n of Int'l Certified Pro. Accts., *Tax Policy Concept Statement 1, Guiding principles of good tax policy: A framework for evaluating tax proposals* 4 (2017), https://bit.ly/3Hqyla6.

This need for predictability in the tax laws is especially important for the business community. Businesses are always planning for the future. They must decide on a regular basis, for example, when to hire new workers, whether to expand their operations into new geographic areas, and how to invest their capital. When businesses make those decisions, they need to account for their future tax obligations. Thus, to adopt successful business strategies and make effective investments, businesses must be able to predict their tax obligations with accuracy.

A lack of predictability in the tax laws, in contrast, harms both the business community and the overall economy.

As a prospective matter, an erratic tax environment makes it difficult for businesses to plan and invest. "When businesses are uncertain about taxes," they "adopt a cautious stance" because "it is costly to make a hiring or investment

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Ct. Aug. 15, 2024), *appeal pending*, No. 2024-001558 (S.C. Ct. App.) [hereinafter *CarMax* Order].

mistake." Steven J. Davis et al., Am. Enter. Inst., *Business Class: Policy Uncertainty Is Choking Recovery* (Oct. 6, 2011), https://bit.ly/4bmfG8K. This caution inhibits investment and "undermine[s] longer-run growth." *Id.* As James Madison put the point long ago, "[w]hat prudent merchant will hazard his fortunes in any new branch of commerce, when he knows not but that his plans may be rendered unlawful before they can be executed?" THE FEDERALIST NO. 62, at 421 (James Madison) (Jacob E. Cooke ed., 1961).

Uncertainty also imposes retrospective harms. Unexpected tax bills disrupt businesses' operations and disturb existing investments. These unexpected costs can even drive small companies out of business altogether. The resulting disruptions hurt not just the taxpaying businesses, but the businesses they partner with, the consumers they serve, and the workers they employ.

Unpredictable tax liabilities also harm businesses and the economy by increasing the transaction costs of compliance. When tax obligations are unclear, businesses must hire lawyers and accountants to navigate the uncertainty, creating a deadweight economic loss. The size of this loss is significant: The nationwide costs of tax compliance are hundreds of billions of dollars each year, an amount that exceeds the combined profits of the country's 25 largest corporations. Jason J. Fichtner & Jacob M. Feldman, Mercatus Ctr., *The Hidden Costs of Tax Compliance* 9 (2013), https://bit.ly/4aXhtRT. These compliance costs "add[ ] to the price of every product, but they do nothing to make our factories more efficient, our computers faster or our cars more durable." U.S. Dep't of the Treasury, *Treasury Secretary*

Paul O'Neill Statement on Treasury's Plan to Combat Abusive Tax Avoidance Transactions (Mar. 20, 2002), https://bit.ly/4bnFW2P. As a result, compliance costs "raise prices and curtail innovation." Laura Alix, Am. Banker*, Rising Compliance Costs are Hurting Customers, Banks Say* (Apr. 12, 2018), https://bloom.bg/4b0xmHt.

When faced with uncertainty, businesses also might try to avoid audits and unexpected tax liabilities by paying more in taxes than they actually owe. *See* Leigh Osofsky, *The Case Against Strategic Tax Law Uncertainty*, 64 Tax L. Rev. 489, 499-501 (2011) (describing risk-aversion models that predict this type of over-reporting of tax burdens). These overpayments likewise prevent businesses from making beneficial investments and pursuing profitable endeavors.

In sum, unpredictability in the tax laws inflicts significant harms on the business community and the economy. Businesses cannot reliably plan and invest for the future, and they face unexpected tax bills and unnecessary compliance costs. Consumers and employees, in turn, suffer the downstream consequences: slower growth, higher prices, lower wages, and lost jobs. To avoid these harms, and to produce a vibrant business climate that fosters economic growth, it is important to ensure that businesses can confidently predict their tax obligations in advance. Legislatures entrust courts to serve as a critical bulwark against unfair and unpredictable behavior by tax collection agencies.

II. The established rule that statutory ambiguity must be resolved in the taxpayer's favor supports a predictable tax system.

Businesses depend on a bedrock rule of tax law to help provide the predictability that they need: Doubts on the meaning of tax statutes are resolved in favor of the taxpayer.

This rule has been woven into the fabric of tax law for well over a century. Riding the circuit in 1842, Justice Joseph Story held that "[i]n every case . . . of doubt, such statutes are construed most strongly against the government, and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import." *United States v. Wigglesworth*, 28 F. Cas. 595, 597 (C.C.D. Mass. 1842). In 1917, the U.S. Supreme Court reaffirmed that "[i]n case of doubt," tax statutes "are construed most strongly against the government, and in favor of the citizen." *Gould v. Gould*, 245 U.S. 151, 153 (1917).

Although this presumption has played less of a role in the federal courts since the 1940s, "the pro-taxpayer canon retains vigor in cases involving state and local taxation." Steve R. Johnson, *Pro-Taxpayer Interpretation of State-Local Tax Laws*, 51 St. Tax Notes 441, 441 (2009).[2] The courts of nearly every state have embraced

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[2] At the federal level, Congress has since intervened to provide additional protections for taxpayers, including the codification of a Taxpayer Bill of Rights, the establishment of a specialized Article I court—the U.S. Tax Court—and the creation of the Taxpayer Advocate Service, which has offices in every state to serve as an ombuds to protect taxpayers from abuse and overreach by the Internal Revenue Service. *See, e.g.*, Internal Revenue Service, *Taxpayer Bill of Rights*, https://www.irs.gov/taxpayer-bill-of-rights (last updated June 26, 2025); Congressional Research Service, *U.S. Tax Court: A Brief Introduction*

this pro-taxpayer rule. *See* 3A Shambie Singer, *Sutherland Statutes and Statutory Construction* § 66:1 n.2 (8th ed., Nov. 2024 update) (citing decisions from 47 states and the District of Columbia).

The South Carolina courts are no exception. In fact, the South Carolina Supreme Court helped to pioneer the rule that ambiguities in tax statutes are construed in the taxpayer's favor. In 1924, our Supreme Court recognized that it was already an "established rule" under South Carolina law that "substantial doubt" on the scope of a tax statute "must be resolved against the government." *Columbia Ry., Gas & Elec. Co. v. Carter*, 127 S.C. 473, 482, 121 S.E. 377, 380 (1924). In the century since, the Court has reaffirmed its commitment to this rule multiple times, including most recently in *Alltel Communications, Inc. v. South Carolina Department of Revenue*. *See* 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012); *see also S.C. Nat'l Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989); *Hadden v. S.C. Tax Comm'n*, 183 S.C. 38, 46-47, 190 S.E. 249, 253 (1937); *Cooper River Bridge, Inc. v. S.C. Tax Comm'n*, 182 S.C. 72, 188 S.E. 508, 509-11 (1936); *Fuller v. S.C. Tax Comm'n*, 128 S.C. 14, 21-22, 121 S.E. 478, 481 (1924).

The venerable rule that doubts on the meaning of tax statutes are construed to favor the taxpayer helps to provide the predictability that the business community needs. It does so in multiple ways.

(Dec. 2, 2015); Phyllis Horn Epstein, *National Taxpayer Advocate: A Champion for Fairness and Effectiveness*, Pa. Law., May–June 2019, at 42.

First, this rule allows businesses to interpret tax statutes with confidence, in order to effectively make investments and structure their operations. The pro-taxpayer rule means that if a tax statute "is ambiguous or is reasonably susceptible of an interpretation that will exclude" a person, "then the person will be excluded." *Alltel*, 399 S.C. at 321, 731 S.E.2d at 873 (quoting *Cooper River Bridge*, 182 S.C. at 76, 188 S.E. at 509-10). As a result, unless a tax statute unambiguously covers a particular business activity, businesses can predict with certainty that the statute will not apply to that activity.

Second, the pro-taxpayer rule encourages the legislature to speak clearly in tax statutes. The rule does so by warning the legislature that if it does not speak clearly, its statutes will be construed against the government, and tax revenues will decrease. *Cf.* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 301 (2012) ("The less the courts insist on precision, the less the legislatures will take the trouble to provide it."). When the legislature speaks clearly in tax statutes, those statutes provide the certainty that businesses need.

Third, the pro-taxpayer rule guards against attempts by the government to enforce new tax obligations in a retroactive, unfair way. When the government retroactively imposes unexpected tax obligations, it destroys the predictability that is so important to the business community. Construing ambiguities in tax statutes to favor the taxpayer helps to avoid that problem. It does so by limiting the ability of tax officials to read new obligations into old statutes in enforcement actions.

In sum, the South Carolina courts and other courts across the country have long helped to give the business community the predictability it needs by following the rule that doubts on the meaning of tax statutes are construed to favor the taxpayer.

III. The Administrative Law Court's decision undermines the rule that ambiguity is resolved in the taxpayer's favor and impairs the predictability of the tax laws.

The pro-taxpayer rule and the predictability of the tax laws in South Carolina now face a threat from the ALC's decision in this case.

This case involves South Carolina's alternative-apportionment statute, S.C. Code Ann. § 12-6-2320. South Carolina law requires interstate businesses to use certain statutory formulas to apportion a percentage of their income to South Carolina for taxation. *See CarMax Auto Superstores W. Coast, Inc. v. S.C. Dep't of Revenue*, 411 S.C. 79, 86, 767 S.E.2d 195, 198 (2014). The alternative-apportionment statute allows the Department of Revenue to deviate from those statutory formulas in some cases. *See* S.C. Code Ann. § 12-6-2320(A). To do so, however, the Department must satisfy two requirements.

First, the Department must prove that the applicable statutory formula does not fairly represent the taxpayer's business activity in South Carolina. *See id.*; *CarMax*, 411 S.C. at 89, 767 S.E.2d at 200.

Second, the Department must prove that its preferred apportionment method is a reasonable way to apportion the taxpayer's income. *See* S.C. Code Ann. § 12-6-2320(A), (A)(4); *CarMax*, 411 S.C. at 89, 767 S.E.2d at 200.

The ALC's decision in this case violates these statutory requirements.

The applicable statutory formula here is the "sales factor." S.C. Code Ann. §§ 12-6-2252(A), 12-6-2280(A); *see* Tractor Supply Br. 13-14. Thus, at the alternative-apportionment statute's first step, the Department needed to show that the sales factor did not fairly represent Tractor Supply's business activities in South Carolina.

The ALC, however, did not require the Department to make any showing about the sales factor. The ALC instead let the Department make a showing about "separate entity reporting," a method for filing tax returns. R. 95, 136, Order; *see* Tractor Supply Br. 16. Thus, the ALC erred at the statute's first step.[3]

The ALC then erred at the second step as well. That step called for the ALC to analyze whether the Department's preferred method, combined unitary reporting, was a reasonable way to apportion "the taxpayer's income." S.C. Code Ann. § 12-6-2320(A)(4). But the ALC did not analyze whether that method reasonably apportioned the income of the taxpayer here: Tractor Supply. The ALC instead analyzed whether the Department's method reasonably apportioned the *combined* income of *multiple* Tractor Supply companies. *See* Tractor Supply Br. 25. That approach violated the statutory text.

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[3] In the *CarMax* case that is separately pending before this Court, the ALC let the Department make a different showing still: a showing about "standard allocation and apportionment under separate reporting." *CarMax* Order at 63. The ALC thus interpreted the alternative-apportionment statute differently in *CarMax* than it did here. These conflicting interpretations will create additional confusion for taxpayers.

These statutory violations are reason enough to reverse the ALC's decision. But that decision also raises a deeper concern: The ALC's reasoning undermines the rule that statutory ambiguities are resolved in the taxpayer's favor and, if replicated in other cases, would erode the predictability of the tax laws that the business community needs. That is the case for six reasons.

1. The ALC did not even mention the pro-taxpayer rule in the decision below, let alone try to show that its decision complied with the rule. For the pro-taxpayer rule to have teeth, courts at least need to acknowledge its existence.

2. The ALC also did not grapple with the text of the alternative-apportionment statute or try to ground its decision in that text. Under the pro-taxpayer rule, the ALC needed to do that textual analysis so that it could decide whether the statute "is ambiguous or is reasonably susceptible of an interpretation that will exclude" Tractor Supply. *Alltel*, 399 S.C. at 321, 731 S.E.2d at 873 (quoting *Cooper River Bridge*, 182 S.C. at 76, 188 S.E. at 509-10). If courts can instead disregard the text of tax statutes, nothing will be left of the pro-taxpayer rule (or, for that matter, of rigorous statutory interpretation).

3. Under the pro-taxpayer rule, for the Department to prevail, it needed to show that Tractor Supply's interpretation was unreasonable. *See, e.g.*, *Alltel*, 399 S.C. at 321, 731 S.E.2d at 873. But the Department did not even show that Tractor Supply's interpretation was incorrect, much less show that Tractor Supply's interpretation was unreasonable. By not holding the Department to its burden, the ALC further weakened the pro-taxpayer rule.

4. The ALC also did not analyze whether its holdings about the statute's first and second steps were consistent with each other. As Tractor Supply has shown, those holdings conflict, so the decision below violates the rule that a statute should be construed as one harmonious whole. Tractor Supply Br. 19-21; *see, e.g.*, *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (discussing this rule). If the ALC had recognized the need to harmonize the entire statute, it would have been more likely to find a "substantial doubt" on the statute's meaning that "must be resolved against the government." *Columbia Ry., Gas & Elec. Co.*, 127 S.C. at 482, 121 S.E. at 380. In this way as well, the ALC short-circuited the pro-taxpayer rule.

5. The ALC's analysis also conflicts with the Supreme Court's decision in *CarMax*. There, the Supreme Court held that the statute's first requirement asks whether "the statutory formula" fairly represents the taxpayer's business activity in South Carolina. *CarMax*, 411 S.C. at 89, 767 S.E.2d at 200. Here, the ALC did not ask whether the statutory formula—the sales factor—fairly represents Tractor Supply's business activity in South Carolina. The ALC instead asked whether separate-entity reporting fairly represents that business activity. R. 95, 121, 136, Order. This clash between the decision below and the Supreme Court's *CarMax* decision shows that the statute does not unambiguously support the ALC's interpretation. By nonetheless construing the statute in the Department's favor, the ALC further diluted the pro-taxpayer rule.

6. The ALC also tried to support its decision by pointing to a 2015 revenue ruling from the Department. R. 119-21, 128 n.69, Order. But as Tractor Supply has shown, that revenue ruling provides no concrete guidance for taxpayers. Tractor Supply Br. 10, 49. "The less the courts insist on precision, the less [an agency] will take the trouble to provide it." Scalia & Garner, *supra*, at 301. Thus, the ALC's use of the 2015 revenue ruling will encourage the Department to be just as vague in other guidance documents, to the detriment of taxpayers who need to predict their tax obligations with certainty.

For these reasons, under the ALC's approach, the rule that ambiguities in tax statutes should be construed in the taxpayer's favor would be toothless, and businesses' tax obligations would become unpredictable. The ALC's decision would thus produce the many harms, discussed above, that flow from a lack of certainty in the tax laws. *See supra* pp. 4-6. Those harms would be felt not just by Tractor Supply, but by the entire South Carolina business community, including the many small businesses that operate here. Small and large businesses alike would need to think twice about making investments in South Carolina, and many might choose to move their operations to states that provide a more predictable tax environment. The brunt of these effects would ultimately be borne by the State's consumers and employees through higher prices, lower wages, and lost jobs.

To prevent those harms and to reaffirm this State's longstanding commitment to the predictable application of the tax laws, this Court should reverse the decision below.

CONCLUSION

Amici urge this Court to reverse the decision of the Administrative Law Court.

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