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ATTORNEY GENERAL

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Dear Mr. Neil:

We received your letter requesting an opinion concerning the application of the Infrastructure Maintenance Fee (“IMF”) to trailers. In your letter, you explain:

In 2021, via Act No. 70, the General Assembly amended the former “max tax” statute and created the Infrastructure Maintenance Fee (“IMF”). As part of that change in the law, the General Assembly applied the IMF to vehicles that had to be registered with the DMV, but the uncapped sales tax continued to apply to sales of certain items that were used on the public roads of the state but that did not have to be registered with the DMV.

You state you are specifically seeking our assistance with “how the sale of trailers should be taxed—whether IMF or sales tax.” Specifically, you pose the following three questions:

1. Is a trailer that is “for hire” limited to those trailers that are used to transport the property of a third-party for a fee, rather than a trailer that is used in the owner’s business?
2. Is a trailer that is “not for hire” excepted from the registration requirement in S.C. Code Ann. § 56-3-110, such that a purchase is subject to sales tax rather than the owner paying the Infrastructure Maintenance Fee at the time of registration?
3. If the trailer owner pays sales tax at the time the trailer is purchased, is that owner exempt from paying the Infrastructure Maintenance Fee if the trailer is later registered with the DMV?

Law/Analysis

As you mentioned in your letter, section 56-3-627 of the South Carolina Code (Supp. 2023) provides for how and when the IMF is charged. Subsection (A) of this provision states:

In order to account for the necessary road maintenance caused by each item traversing the roads of this State, in addition to the registration fees imposed by this chapter, the owner or lessee of each vehicle or other item that is required to be registered pursuant to this chapter must pay an infrastructure maintenance fee upon first titling or registering the vehicle or other item. Also, the owner or lessee of each trailer or semitrailer must pay the fee upon first titling or registering the trailer or semitrailer. The Department of Motor Vehicles may not issue a title or registration until the infrastructure maintenance fee has been collected. The infrastructure maintenance fee must be credited to the Infrastructure Maintenance Trust Fund.

(emphasis added). Thus, trailers required to be registered with the DMV are subject to the IMF. According to section 12-36-2120(83) (Supp. 2023), items subject to the IMF under section 56-3-627 are exempt from sales tax.

Section 56-3-110 of the South Carolina Code (2018) specifies which vehicles must be registered and licensed in South Carolina and states as follows: “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.” However, as you mention, section 56-3-130 of the South Carolina Code (2018) provides an exemption from registration for “[b]oat trailers under twenty-five hundred pounds, farm trailers and other utility trailers which are privately owned and not for hire . . .” (emphasis added).

We understand in the past, the Department of Revenue took the position in Information Letter 22-17 that the phrase “privately owned and not for hire” equated to personal use thereby concluding that trailers used in a business are subject to the IMF and thereby exempt from sales tax. However, as you mentioned, this led to

confusion among both consumers and trailer dealers. For example, trailer dealers were not accustomed to inquiring about the use of the trailer at the time of the sale. Also, it was unclear what should happen when an owner initially purchases the trailer for personal use but converts the trailer to business use at a later date.

You suggest that the term “for hire” is more limited than just a general business use. You state:

We are confident that “for hire” means that the trailer is used to transport the property of other for compensation, rather than business use more broadly. Consequently, a trailer “not for hire” is any trailer that is not used to transport people or property for a fee even if the owner uses the trailer for its own commercial purposes.”

Employing the rules of statutory interpretation, we find your revised interpretation is reasonable. In our review of the statute governing the IMF, we did not find a definition for the phrase “for hire.” Therefore, we believe the meaning of such a phrase must be determined using the rules of statutory construction, the primary of which is the ascertain the intent of the Legislature. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996).

Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. at 233, 509 S.E.2d at 262 (citing Paschal v. State Election Comm’n, 317 S.C. 434, 454 S.E.2d 890 (1995)). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992).

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

“When interpreting an undefined statutory term, the Court must look to its usual and customary meaning.” Perry v. Bullock, 409 S.C. 137, 140-41, 761 S.E.2d 251, 253 (2014). Webster’s Online Dictionary defines the term “for hire” as “available for use or service in return for payment.” <https://www.merriam-webster.com/dictionary/hire> (last visited September 16, 2024). This definition indicates a trailer “for hire” is a trailer available for use in return for payment. In your letter, you reference the definition of “for-hire motor carrier” in the federal transportation regulations, which provides “a person engaged in the transportation of goods or passengers for compensation.” 49 C.F.R. § 390.5T. We note a similar definition under state law defining a “for hire motor carrier” for purposes of the South Carolina Solid Waste Policy and Management Act as “a company operating a fleet of vehicles used exclusively in the transportation of freight for compensation.” S.C. Code Ann. § 44-96-40(14) (2018). While neither of these definitions apply to the IMF, they indicate, at least in regard to motor carriers for hire, that “for hire” involves transporting people or goods for payment, rather than just generally conducting business. Moreover, we note that other South Carolina statutes containing the phrase “for hire” also involve the transport of people or property. See eg., S.C. Code Ann. § 56-3-670 (2018) & § 56-5-225 (2018) (pertaining to farm trucks and describing them as “not used to transport persons or property for hire.”).

While we did not find any South Carolina caselaw interpreting the term “for hire,” we found other jurisdictions have considered the meaning of this phrase. For example, the Supreme Court of Alabama considered what “for hire” means in terms of imposing a license tax on trucks, truck-tractors, trailers, and semi-trailers “operated for hire.” Brown v. Nat’l Motor Fleets, Inc., 276 Ala. 493, 494, 164 So. 2d 489, 490 (1963). That court concluded:

The term ‘operate for hire’ has a well-known and definite meaning in the jurisprudence of this country. The term means in law, in commercial usage, and in ordinary parlance, the transportation of persons or property for compensation and could not possibly apply to a lessor, such as the appellee, which leases the vehicles to a lessee to carry his own goods or products.—Armstrong v. Denver Saunders System Co., 84 Colo. 138, 139, 268 P. 976 (1928); City of Sioux Falls v. Collins, 43 S.D. 311, 178 N.W. 950 (1920); People v. Heckman Trucking Co., Inc., 277 N.Y. 480, 14 N.E.2d 801 (1938); State v. L. P. Gas Transport Co., Inc., 260 Ala. 637, 71 So.2d 839 (1954); 80 A. L. R. 574.

Id. at 494, 164 So. 2d at 490.

The Supreme Court of Colorado had a similar interpretation of the phrase “for hire” as used in a Colorado statute imposing a registration fee motor vehicles used “in the transportation of passengers for hire.” Armstrong v. Denver Saunders Sys. Co., 84 Colo. 138, 139, 268 P. 976, 977 (1928) (quoting S. L. 1927, chapter 135). That court was asked whether the fee applied to those who lease motor vehicles to persons for their own use. The court determined:

. . . it seems clear that in the first clause the phrase ‘operated for hire’ could not include a truck or trailer rented to one who was to use it in his own work. The lessor of an automobile is not operating it any more than the lessor of a farm is cultivating it or the lessor of a horse is driving it. The whole statute thus becomes clear and consistent, and the result is that carriers of freight or passengers are taxed, but lessors of vehicles are not.

Id. at 141, 268 P. at 977.

While certainly a court could adopt a broader definition of “for hire” to include any kind of business use, we believe the plain meaning of the phrase in addition to similar interpretations in other jurisdictions support your interpretation that “for hire” for purposes of section 56-3-130 means the use of a trailer to transport property of another for compensation. Nonetheless, this Office typically defers to the interpretation of the administrative agency charged with the enforcement of the statute. Op. Att’y Gen., 2004 WL 736929 (S.C.A.G. Mar. 23, 2004). The “deference doctrine” as adopted by our courts instructs that “courts defer to an administrative agency’s interpretations with respect to the statutes entrusted to its administration or its own regulations ‘unless there is a compelling reason to differ.’” Kiawah Dev. Partners, II v. S.C. Dep’t

of Health & Env't Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) (quoting S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005)). In this case, the South Carolina Department of Motor Vehicles ("SCDMV") is the administrative agency entrusted to determine what vehicles must be registered and therefore, what vehicles are subject to the IMF. As such, while we believe your interpretation is sound and reasonable, we generally defer to the SCDMV and its interpretation of the meaning "for hire" as used in section 56-3-130. See Op. Att'y Gen., 2010 WL 2678687 (S.C.A.G. June 30, 2010) (indicating this Office defers to the SCDMV on the interpretation of its statutes). In our discussions with a representative from the SCDMV, we understand that they do not object to your interpretation of the phrase. As such, we are further convinced that your interpretation of the phrase "for hire" is likely one that a court would adopt.

Next, you ask whether a trailer that is determined to be "not for hire" is exempt from the registration requirements under section 56-3-110 such that they would be subject to sales tax rather than the IMF. Sales tax is imposed on "upon every person engaged or continuing within this State in the business of selling tangible personal property at retail." S.C. Code Ann. § 12-36-910 (2014). Thus, generally trailer dealers are subject to sales tax on the trailers they sell at retail. However, section 12-36-2120 (Supp. 2023) provides exemptions from the imposition of sales tax, including an exemption for "any item subject to the fee set forth in Section 56-3-627." Accordingly, any item subject to the IMF is exempt from the imposition of sales tax. As such, the converse must be true – a retailer who sells an item that is otherwise subject to sales tax and not specifically exempt, must remit the sales tax associated with that item. Therefore, if the IMF does not apply to a particular trailer, the sales tax exemption for items subject to the IMF would not apply. As long as the trailer is subject to sales tax and does not qualify for some other exemption, sales tax must be assessed at the time of sale.

Lastly, you inquire as to whether a trailer owner is exempt from paying the IMF if the owner pays sales tax at the time of purchase and later registers the trailer with the DMV. As we mentioned, section 12-36-2120(83) clearly exempts items subject to the IMF from sales tax. Moreover, in our review of section 56-3-627, we note subsection (C), pertaining to purchases from non-dealers, specifically excludes the imposition of the IMF for "items where a sales or use tax has been paid on the transaction necessitating the transfer." S.C. Code Ann. § 56-3-627(C)(2)(d). While we did not find a specific exemption for purchases from a dealer, we believe the Legislature did not intend to collect both sales tax and the IMF on the same item under the same ownership. As such, we are of the opinion that the Legislature likely did not intend for one owner to pay both sales tax to a dealer and the IMF upon registration. Additionally, it is our understanding that if an owner can show proof of payment of the sales tax, the SCDMV does not assess the IMF upon registration.

Conclusion

Based on our analysis as explained above, we find your narrowed interpretation of the phrase "for hire" reasonable and believe a court would find that a trailer that is not used for the transport of goods for hire is exempt from registration pursuant to section 56-3-130 of the South Carolina Code

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and therefore not subject to the IMF under section 56-3-627 of the South Carolina Code. While items subject to the IMF are specifically exempt from sales tax pursuant to section 12-36-2120(83), items not subject to the IMF which are sold by a dealer in a retail sale are likely subject to sales tax unless some other sales tax exemption applies. However, if an owner pays sales tax on a trailer and then later, for whatever reason, registers it with the SCDMV, we do not believe the Legislature intended for that owner to also pay the IMF.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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