

SCDOR Law Recommendation #7 – Marketplace Facilitator Amended 9/6/2018

SECTION 1

The General Assembly finds that the South Carolina Sales and Use Tax Act requires any person engaged in business as a retailer to remit the sales and use tax on all retail sales of tangible personal property not otherwise excluded or exempted from the tax. This requirement applies to all retail sales of tangible personal property by the retailer, whether the tangible personal property is owned by the retailer or another person. Retailers selling tangible personal property at retail on consignment, by auction, or in any other manner must remit the sales and use tax on such retail sales.

The General Assembly further finds that Internet marketplaces where a person sells tangible personal property at retail by listing or advertising, or allowing the listing or advertising of another person's products on an online marketplace, and collects or processes the payment from the customer are retailers required to remit the sales and use tax on such retail sales under the provisions of the South Carolina sales and use tax law.

The General Assembly also finds, with the changing economy and ever expanding role of the Internet in the retail market, that the longstanding requirement in the sales and use tax law that a retailer remit the tax on retail sales of tangible personal property owned by another person must apply to all retailers, including both Internet retailers and brick and mortar retailers.

Therefore, to ensure retailers selling another person's tangible personal property on the Internet clearly understand, and are complying with, the sales and use tax law in the same manner as retailers selling another person's tangible personal property in a brick and mortar store, the following provisions, which do not represent a change in policy, are enacted to further set forth South Carolina's longstanding position:

SECTION 2

AMEND CODE SECTION 12-36-70 TO ADD ITEM (3) AS FOLLOWS:

SECTION 12-36-70. "Retailer" and "seller".

"Retailer" and "seller" include every person:

- (1)(a) selling or auctioning tangible personal property whether owned by the person or others;
- (b) furnishing accommodations to transients for a consideration, except an individual furnishing accommodations of less than six sleeping rooms on the same premises, which is the individual's place of abode;
- (c) renting, leasing, or otherwise furnishing tangible personal property for a consideration;
- (d) operating a laundry, cleaning, dyeing, or pressing establishment for a consideration;
- (e) selling electric power or energy;

(f) selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration. A person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or messages as used in this subitem (f) is not considered a processor or manufacturer;

(2)(a) maintaining a place of business or qualifying to do business in this State; ~~or~~

(b) not maintaining an office or location in this State but soliciting business by direct or indirect representatives, manufacturers agents, distribution of catalogs, or other advertising matter or by any other means, and by reason thereof receives orders for tangible personal property or for storage, use, consumption, or distribution in this State; or

(3) operating as a marketplace facilitator, as defined in Code Section 12-36-71.

The department, when necessary for the efficient administration of this chapter, may treat any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom they operate or from whom they obtain the tangible personal property sold by them, regardless of whether they are making sales on their own behalf or on behalf of the dealer, distributor, supervisor, employer, or other person. The department may also treat the dealer, distributor, supervisor, employer, or other person as a retailer for purposes of this chapter.

ADD NEW CODE SECTION 12-36-71 TO READ:

SECTION 12-36-71: Marketplace facilitator

(A) "Marketplace facilitator" means any person engaged in the business of facilitating a retail sale of tangible personal property by:

(1) listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur; and

(2) collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party;

regardless of whether the marketplace facilitator receives compensation or other consideration in exchange for its services.

(B) A marketplace may be physical or electronic and includes, but is not limited to, any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum.

(C) For purposes of subsection (A), a marketplace facilitator includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection, or in any other manner with respect to the marketplace.

(D) When a marketplace facilitator is comprised of multiple entities, the entity that lists or advertises, or allows the listing or advertising of, the products sold at retail in the marketplace is the entity responsible for remitting the sales and use tax to the State.

AMEND CODE SECTION 12-36-90(1)(a) TO READ:

SECTION 12-36-90. "Gross proceeds of sales".

Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

(a) the proceeds from the sale ~~of property sold on consignment~~ by the taxpayer of property of another person, including proceeds from property sold on consignment and property sold through a marketplace by a marketplace facilitator.

AMEND CODE SECTION 12-36-130(1) TO READ:

SECTION 12-36-130. "Sales price".

"Sales price" means the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

(1) The term includes:

(a) any services or transportation costs that are a part of the sale, whether paid in money or otherwise; ~~and~~

(b) any manufacturers or importers excise tax imposed by the United States; and,

(c) the proceeds from the sale of property sold on consignment by the taxpayer of property of another person, including proceeds from property sold on consignment and property sold through a marketplace by a marketplace facilitator.

AMEND CODE SECTION 12-36-1340 AS FOLLOWS:

Each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax in accordance with this chapter and shall obtain from the department a retail license as provided in this chapter, if the retail seller:

(1) maintains a place of business;

(2) qualifies to do business;

(3) solicits and receives purchases or orders by an agent, independent contractor, representative, Internet website, or any other means, ~~or salesman; or~~

(4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State; ~~or~~

(5) operates as a marketplace facilitator; or

(6) meets constitutional standards for economic nexus with South Carolina for purposes of the sales and use tax.

SECTION 3

This Act takes effect on July 1, 2019