

South Carolina General Assembly
123rd Session, 2019-2020

R33, S214

STATUS INFORMATION

General Bill

Sponsors: Senators Kimpson, Sheheen, Gregory, Campsen and Scott

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Introduced in the Senate on January 8, 2019

Introduced in the House on March 19, 2019

Last Amended on March 13, 2019

Passed by the General Assembly on April 5, 2019

Summary: Sales tax definitions

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
12/12/2018	Senate	Prefiled
12/12/2018	Senate	Referred to Committee on Finance
1/8/2019	Senate	Introduced and read first time (Senate Journal-page 137)
1/8/2019	Senate	Referred to Committee on Finance (Senate Journal-page 137)
1/16/2019	Senate	Committee report: Favorable Finance (Senate Journal-page 8)
1/17/2019		Scrivener's error corrected
1/23/2019	Senate	Read second time (Senate Journal-page 14)
1/29/2019	Senate	Amended (Senate Journal-page 16)
3/13/2019	Senate	Amended (Senate Journal-page 12)
3/13/2019	Senate	Roll call Ayes-38 Nays-0 (Senate Journal-page 12)
3/13/2019	Senate	Read third time and sent to House (Senate Journal-page 12)
3/13/2019	Senate	Roll call Ayes-42 Nays-3 (Senate Journal-page 12)
3/19/2019	House	Introduced and read first time (House Journal-page 3)
3/19/2019	House	Referred to Committee on Ways and Means (House Journal-page 3)
3/27/2019	House	Committee report: Favorable Ways and Means (House Journal-page 35)
4/2/2019	House	Debate adjourned until Wed., 4-3-19 (House Journal-page 45)
4/4/2019	House	Read second time (House Journal-page 69)
4/4/2019	House	Roll call Yeas-101 Nays-0 (House Journal-page 69)
4/4/2019	House	Unanimous consent for third reading on next legislative day (House Journal-page 70)
4/5/2019	House	Read third time and enrolled (House Journal-page 9)
4/25/2019		Ratified R 33 (Senate Journal-page 55)

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VERSIONS OF THIS BILL

[12/12/2018](#)

[1/16/2019](#)

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NOTE: THIS IS A TEMPORARY VERSION. THIS DOCUMENT WILL REMAIN IN THIS VERSION UNTIL FINAL APPROVAL BY THE LEGISLATIVE COUNCIL.

(R33, S214)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-36-71 SO AS TO DEFINE “MARKETPLACE FACILITATOR”; TO AMEND SECTIONS 12-36-70, 12-36-90, AND 12-36-130, ALL RELATING TO SALES TAX DEFINITIONS, SO AS TO FURTHER INFORM MARKETPLACE FACILITATORS OF THEIR REQUIREMENTS; AND TO AMEND SECTION 12-36-1340, RELATING TO THE COLLECTION OF SALES TAX BY RETAILERS, SO AS TO FURTHER INFORM MARKETPLACE FACILITATORS OF THEIR REQUIREMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

Findings

SECTION 1. The General Assembly finds:

(1) 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;

(2) the 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 South Carolina sales and use tax law;

(3) with the changing economy and ever expanding role of the Internet in the retail market, 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;

(4) retailers selling another person’s tangible personal property on the Internet must clearly understand and be informed of their

requirements to remit the sales and use tax in the same manner as retailers selling another person's tangible personal property in a brick and mortar store; and

(5) this act shall not be construed as a statement concerning the applicability of the South Carolina Sales and Use Tax Act to any sales and use tax liability in matters currently in litigation or being audited.

Definition

SECTION 2. Article 1, Chapter 36, Title 12 of the 1976 Code is amended by adding:

“Section 12-36-71. (A)(1) ‘Marketplace facilitator’ means any person engaged in the business of facilitating a retail sale of tangible personal property by:

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

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

(2) If a person meets the criteria set forth in item (1), then that person is a marketplace facilitator regardless of whether the person receives compensation or other consideration in exchange for his 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.”

Definition

SECTION 3. Section 12-36-70 of the 1976 Code is amended by adding a new item before the last undesignated paragraph to read:

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

Definition

SECTION 4. Section 12-36-90(1)(a) of the 1976 Code is amended to read:

“(a) the proceeds from the sale of property sold on consignment by the taxpayer, including property sold through a marketplace by a marketplace facilitator;”

Definition

SECTION 5. Section 12-36-130(1) of the 1976 Code is amended by adding a new subitem to read:

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

Collection of tax by sellers

SECTION 6. Section 12-36-1340 of the 1976 Code is amended to read:

“Section 12-36-1340. 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, an independent contractor, a representative, an Internet website, or any other means;
- (4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State;
- (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.”

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 25th day of April, 2019.

President of the Senate

Speaker of the House of Representatives

Approved the _____ day of _____ 2019.

Governor

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