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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

Supreme Court Appellate Case No. 2024-000625
Court of Appeals Appellate Case No. 2019-001706
Trial Court Case No. 17-ALJ-17-0238-CC

Amazon Services, LLC Petitioner-Appellant,

v.

South Carolina Department of Revenue Respondent.

COUNCIL ON STATE TAXATION
MOTION IN SUPPORT OF WRIT OF CERTIORARI
AND FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF

Pursuant to Rule 213 of the South Carolina Appellate Court Rules, the Council On State Taxation (“COST”) respectfully submits this Motion in Support of Petitioner-Appellant’s Petition for a Writ of Certiorari and for leave to file an *Amicus Curiae* Brief if the Petition is granted.

I. INTEREST OF AMICUS CURIAE

COST is a nonprofit trade association based in Washington, D.C. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce. Today, COST has an independent membership of approximately five hundred multistate corporations engaged in interstate and international commerce, many of which conduct substantial business in South Carolina and employ a significant number of South Carolina citizens and taxpayers. COST’s mission is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities, a mission it has pursued since its inception.

The decision below is gravely concerning to COST and its members. The Court of Appeals affirmed the Administrative Law Court's holding that the South Carolina Department of Revenue ("Department") is not only authorized to shift the sales tax collection and remittance responsibility to Amazon Services LLC ("Amazon Services") for sales made by others in the absence of legislative authority, but that it may do so well after those sales have been consummated by third-party sellers on the Amazon.com marketplace. Effectively, the decision below sanctions the ability of the Department to create new "taxpayers" and new reporting and payment obligations from whole cloth.

The Department's extension of the tax collection and remittance responsibility to include Amazon Services directly contradicts the language and intent of the State's recent statutory amendments specifically authorizing the expansion of the sales tax obligation to include marketplace facilitators such as Amazon Services on a prospective basis only. Significantly, South Carolina now has the dubious distinction of being the **only** state to impose a collection and remittance obligation on marketplace facilitators in the absence of express legislation. In contrast to South Carolina, all other states that have adopted such an expansion have done so appropriately through clear and prospective legislation. The Department usurps the South Carolina Legislature's prerogative, violating core principles of fair tax administration and notice and fundamentally infringing on taxpayers' due process rights to be informed of their tax obligations. The Department's expansion also renders the recent marketplace facilitator legislation unnecessary—a result contrary to established canons of statutory construction. For these reasons, COST urges the Court to review and reverse the decision below.

II. DESIRABILITY OF REVIEW AND AN *AMICUS CURIAE* BRIEF

An improper expansion of South Carolina's sales tax collection and remittance obligations without legislative authority will harm COST's members and establish a negative precedent. COST is actively involved in state tax matters that affect the business community nationwide. Of particular importance to COST and its members are the cornerstones of good tax policy and administration: fair play and notice. By granting review and permitting COST to file an *Amicus Curiae* brief, the Court will benefit from the insight of COST and its members who will be directly affected by the Court's decision in this extremely significant case.

Over the past fifty years, COST, as amicus, has participated in numerous cases before the United States Supreme Court and state courts. In South Carolina, COST has filed *amicus* briefs in *Rent-A-Center West, Inc. v. South Carolina Department of Revenue*, 418 S.C. 320, 792 S.E.2d 260 (Ct. App. 2016); *CarMax Superstores West Coast, Inc. v. South Carolina Department of Revenue*, 411 S.C. 79, 767 S.E.2d 195 (2014); *Bodman v. State*, 403 S.C. 60, 742 S.E.2d 363 (2013); and the Court of Appeals in this case.

THEREFORE, COST respectfully moves the Court to grant review and for an order permitting it to file an *Amicus Curiae* brief in support of Petitioner-Appellant. Pursuant to Rule 213 of the South Carolina Appellate Court Rules, the brief is conditionally filed with this motion.

Respectfully submitted,



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