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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

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Supreme Court Appellate Case No. 2024-000625

Appellate Case No. 2019-001706

Trial Court Case No. 17-ALJ-17-0238-CC  
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Amazon Services, LLC, ..... Appellant,

v.

South Carolina Department of Revenue, ..... Respondent.  
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**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

Pursuant to Rule 213, South Carolina Appellate Court Rules, the National Retail Federation (“NRF”) hereby moves for leave to file an *amicus curiae* brief in this action. The above matter addresses issues of substantial concern to the NRF, a trade association representing retailers located in and selling into South Carolina and subject to South Carolina’s taxing jurisdiction. As more fully explained in the brief being filed with this motion, the NRF and its members have a significant and direct interest in the questions presented in this case, including the question regarding when a new and novel statutory interpretation can be applied by the Department of Revenue retroactively, reversing years of common practice and understanding.

For the foregoing reasons, the NRF respectfully requests this Honorable Court grant leave to present an *amicus curiae* brief. A copy of the NRF’s proposed *amicus curiae* brief is attached hereto, and is being conditionally filed with this motion in accordance with Rule 213, South Carolina Appellate Court Rules.

“*Amicus curiae* is a Latin phrase for ‘friend of the court’ as distinguished from an advocate before the court. *Allen v. County School Board of Prince Edward County*, 28 F.R.D.

358 (E.D.Va.1961); *Clark v. Sandusky*, 205 F.2d 915 (7th Cir. 1953). It serves only for the benefit of the court . . . by making suggestions to the court, *Clark v. Sandusky, supra*; *City of Winter Haven, Fla. v. Gillespie*, 84 F.2d 285 (5th Cir. 1936), *cert. denied sub nom, Hartridge Cannon Co. v. Gillespie*, 299 U.S. 606, 57 S.Ct. 232, 81 L.Ed. 447 (1936) . . . and by insuring a Jan 29 2021 complete and plenary presentation of difficult issues so that the court may reach a proper decision, *Robinson v. Lee*, 122 F. 1010 (C.C.D.S.C.1903), *affirmed*, 196 U.S. 64, 25 S.Ct. 180, 49 L.Ed. 388 (1904); *Banco Nacional de Cuba v. Sabbatino*, 307 F.2d 845 (2d Cir. 1962), *rev'd on other grounds*, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964).” *Alexander v. Hall*, 64 F.R.D. 152, 155 (D.S.C. 1974).

“[A] friend of the court interested in a particular outcome can contribute in clear and distinct ways, by, for example: . . .

- Highlighting factual, historical, or legal nuance . . . ;
- Explaining the broader regulatory or commercial context in which a question comes to the court;
- Providing practical perspectives on the consequences of potential outcomes . . . .”

*Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 976 F.3d 761, 763 (7th Cir. 2020).

The NRF seeks to demonstrate to this Court that the Court of Appeals’ ruling below is wrong on the law and creates substantial uncertainty for all retailers doing business in South Carolina.

As an organization dedicated to helping the retail industry, the NRF offers this Court a unique perspective on the impact of the Court of Appeals decision on retailers and consumers alike, a perspective not provided by the parties to this case. *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 976 F.3d 761 (7th Cir. 2020); *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062 (7th Cir. 1997). The proposed brief does not merely paraphrase the Appellant’s legal issues but instead seeks to place the retroactivity issue in the context of the greater retail industry. *See Prairie Rivers*, 976 F.3d at 763. The brief provides this Court with an account as to what accepting the retroactive application of any tax imposition or collection rule means to retailers burdened with such collection obligations. *See Id.* (amicus briefs are appropriate to explain “the broader . . . commercial context in which a question comes to the court”). Furthermore, the brief does not rely simply on Appellant’s business model nor the proper interpretation of the specific tax laws applied to that model. The brief offers “practical

perspectives” on what this Court’s ruling on the Department’s ability to reinterpret tax law without legislative action will mean to all retailers that do business in South Carolina – virtual and brick-and-mortar alike. *Id.* (amicus briefs appropriate to provide practical perspectives on the consequences of potential outcomes). The NRF has also reviewed other amicus briefs offered for submission to this Court and has concluded this Court would benefit from it providing a description of the impact of the Court of Appeals’ ruling on retailers. The NRF has limited resources to expend on filing amicus briefs, and it only spends it in forums in which it has determined it can make a difference and offer ideas or analysis not already provided by others. The proposed amicus brief provides a unique perspective on the impact of the Court of Appeals’ ruling on retailers and the danger of accepting the broad authority it grants the Department.

For the foregoing reasons, the NRF respectfully requests this Honorable Court grant leave to present an *amicus curiae* brief. A copy of the NRF’s proposed *amicus curiae* brief is attached hereto, and is being conditionally filed with this motion in accordance with Rule 213, South Carolina Appellate Court Rules.

Respectfully Submitted,



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