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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 Case No. 2019-001706
Trial Court Case No. 17-SLJ-17-0238-CC

Amazon Services, LLC……..Appellant,

v.

South Carolina Department of Revenue…….Respondent.

BRIEF OF *AMICUS CURIAE* INSTITUTE FOR PROFESSIONALS IN TAXATION IN SUPPORT OF APPELLANT AMAZON SERVICES, LLC

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INTEREST OF AMICUS CURIAE

The Institute for Professionals in Taxation ("**IPT**") is a non-profit educational organization founded in 1976 under the laws of the District of Columbia. IPT's organizational purposes include the promotion of uniform and equitable administration of taxes. It is also the only professional organization that educates, certifies, and establishes strict codes of conduct for state and local income, property, and sales and use tax professionals who represent taxpayers.

IPT has more than 4,100 members representing more than 1,400 corporations, firms, and taxpayers throughout the United States and Canada. Most of the Fortune 500 companies and numerous small businesses are represented within IPT's membership. Member representation spans the industry spectrum, including aerospace, agriculture, manufacturing, wholesale and retail, communications, healthcare, financial, oil and gas, hospitality, transportation, and other sectors. IPT's members are liable for sales and use taxes in various jurisdictions, including South Carolina.

IPT has an interest in this matter because its members have an interest in the fair, predictable, and efficient administration of sales and use taxes—the foundation upon which our voluntary compliance system is built. IPT is extremely concerned that if this Court does not reverse the decision below, taxpayers in South Carolina will be left subject to unpredictable, arbitrary, and selective enforcement by the South Carolina Department of Revenue (the "**Department**"). Such enforcement would undermine core tenets of the voluntary compliance system.

QUESTIONS PRESENTED FOR REVIEW AND STATEMENT OF THE CASE

IPT adopts the Questions Presented for Review and the Statement of the Case in the Opening Brief of Appellant Amazon Services, LLC ("**Amazon Services**" or "**Appellant**"). Appellant's Opening Brief at 4-5 (12 November 2024).

INTRODUCTION

"Certainty… is one of the cornerstones of a good tax system," (ACCA, *Certainty in Tax*) and "a fundamental goal that ensures [tax] stability and predictability." (ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *Tax certainty and policy implementation*, accessed 14, November 2024, https://www.oecd.org/en/topics/tax-certainty-and-policy-implementation.html). It is paramount for our voluntary compliance system. Nowhere is clarity more important than in sales tax collection and remittance.

To be compliant with tax laws, a taxpayer must have a clear understanding of those applicable laws. With respect to sales taxes, taxpayers must understand their collection obligations *in advance* to put in place the systems necessary to properly collect and remit such taxes. Where a business lacks a clear understanding or makes a mistake regarding its sales tax collection and remittance obligations, the business will suffer a significant economic burden—shifting the imposition of the tax from the customers, who should bear the tax liability, to the business. Statutory ambiguity in this area is a trap for the unwary. Accordingly, South Carolina has guardrails in place to protect businesses faced with ambiguous taxing provisions.

But the Court of Appeals misapplied South Carolina law concerning ambiguous tax statutes and blessed the Department's ability to engage in arbitrary, discriminatory, and retroactive enforcement of an ambiguous statute, putting taxpayers across the board at risk of similar treatment. If sustained, it will provide the Department carte blanche authority to shift

policy positions on a retroactive basis, where it sees a revenue opportunity. And, without this Court's reversal of the Court of Appeals' decision, all taxpayers will be in a precarious position. The failure to have a backstop to this type of targeting flies in the face of the fair, predictable, and efficient administration of tax, including sales tax, where taxpayers depend upon unambiguous law and fair warning about tax requirements. Inconsistency and ambiguity concerning tax obligations are fundamentally unfair to all taxpayers.

Considering the incredible uncertainty that the Court of Appeals' decision created here, IPT urges the Court to reverse the Court of Appeals' decision.

ARGUMENT

I. The Court of Appeals' Misapplication of the Law Creates Significant Uncertainty for All Taxpayers—Undermining South Carolina's Voluntary Compliance System.

This case implicates fundamental principles of statutory interpretation and fairness, which the Court of Appeals turned on their head. Although the Court of Appeals acknowledged the proper structure for analyzing the relevant sales tax provision, its application of that structure was significantly flawed. Unless the Court of Appeals' decision is reversed, all taxpayers will be at risk of the Department picking and choosing its application of any law without any potential backstop by the courts, creating significant uncertainty for taxpayers.

a. The Court of Appeals failed to properly apply the *Alltel* decision and misread *Travelscape*.

Below, the Court of Appeals properly acknowledged that, "where the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor." *Amazon Servs., LLC v. S.C. Dep't of Revenue*, 442 S.C. 313, 328, 898 S.E.2d 194, 200-202 (S.C. Ct. App. 2024) (quoting *Alltel Commc'ns, Inc. v. S.C. Dep't*

of Revenue, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012) (internal quotations removed)). This has been the longstanding law in South Carolina, and the rule is clear—where a law is ambiguous, the taxpayer is entitled to the benefit of the doubt. *See, e.g., S.C. Nat'l Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989) and *Cooper River Bridge, Inc. v. S.C. Tax Comm'n*, 182 S.C. 72, 188 S.E. 508 (1936)). This rule is reasonable and fair and provides taxpayers a level of certainty when determining the taxability and collection obligations.

But the Court of Appeals eschewed the required analysis when it incorrectly concluded that the statute in question was not ambiguous because it determined the provision contained *some* definitions and that those provisions should be broadly interpreted pursuant to *Travelscape, LLC v. S.C. Dep't of Revenue.*[1] *Amazon Servs., LLC* 442 S.C. at 328, 898 S.E.2d at 202.

The prior statute, however, did not contain any definitions *relevant* to the statute's application to Appellant because the statute did not address marketplace facilitators. Additionally, the Court of Appeals misread *Travelscape*. Rather than analyzing the relevant facts at issue, the Court of Appeals concluded that the importance of *Travelscape* was that it interpreted the statute at issue "broadly." *Amazon Servs., LLC*, 442 S.C. at 332, 898 S.E.2d at 204. It was this unfounded determination that led the Court of Appeals to determine that the relevant statutes, when broadly interpreted, were not ambiguous.

But the statute was subject to two divergent readings (Amazon Services' and the Department's); therefore, the Court of Appeals should have concluded that it was ambiguous and applied the rule in *Alltel*. Pursuant to *Alltel*, the Court of Appeals should have resolved any substantial doubt as to the application of the rule in Amazon Services' favor.

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[1] 391 S.C. 89, 97, 705 S.E.2d 28, 32 (2011).

Alltel remains good law, and taxpayers should be able to rely on the principle that if a tax law is reasonably susceptible to multiple interpretations (*i.e.,* it is ambiguous), then any substantial doubt will be resolved in the taxpayer's favor. The proper application of *Alltel* is necessary for taxpayer predictability and certainty.

b. Changes in Tax Law Must Have Meaning.

Furthermore, if the Court of Appeals' decision is correct, the General Assembly's enactment of its marketplace facilitator legislation in 2019 would be rendered moot. Legislative action must have meaning and must not be deemed to be futile. *Key Corp. Capital, Inc. v. Cty. Of Beaufort*, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007).[2]

As pointed out by Appellant, the General Assembly enacted Act No. 21, which took effect April 26, 2019. It is particularly noteworthy that the General Assembly acted at the behest of the Director of the Department (the "**Director**"), who recommended that new legislation was necessary to require online marketplaces like Amazon Services to collect sales tax on third-party sales. Not only does the General Assembly's enactment of Act No. 21 undermine the Department's position in this case, but if it is correct and the Court of Appeals decision is left to stand, then Act No. 21 would be rendered meaningless.

As this Court has recognized, "[t]here is a presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects." *State v. McKnight*, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003). Considering this, why would the General Assembly

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[2] *See also, Trs. of the Corcoran Gallery of Art v. District of Columbia*, 2014 D.C. Super. LEXIS 17, *45 (D.C. Super. Ct. 2014); *Casanova v. Tri-County Cmty. Corr.*, 2019 Minn. Dist. LEXIS 459, *83 (Minn. Dist. Ct. 2019); *Chattooga Cty. Bd. of Tax Assessors v. Connelly*, 370 Ga. App. 598, 602 (2024).

need to act if the existing law unambiguously captured online marketplaces? An act of the legislature is no small feat, and its actions must have meaning.

c. The Court of Appeals' errors create uncertainty for all taxpayers.

The Court of Appeals' flawed decision creates widespread uncertainty for all taxpayers. As discussed above and in Appellant's Brief, the Court of Appeals' ultimate decision is based on several errors and misapplications of South Carolina law. This decision opens the door to the Department's ability to shift its positions retroactively, allowing it to discriminate against and target specific taxpayers. Further, the Court of Appeals' complete disregard for Act No. 21 erodes taxpayers' confidence in the legislative process and undermines the notion of fair notice. All of these things create uncertainty and are detrimental to all taxpayers, undermining confidence in South Carolina's overall tax system, which will negatively impact voluntary compliance.

Sales taxes are trust taxes, imposed on consumers but collected by sellers as an administrative matter to ensure compliance (by the consumer). Businesses, which are required to collect and remit sales taxes, stand in the shoes of the state as tax collectors. And while there are some guardrails in place, if a business was obligated to collect sales tax but did not, that business—itself—will be liable for those uncollected taxes. Considering the draconian consequences of not properly collecting sales tax, businesses must have certainty regarding their collection obligations, and it is important that businesses have some protection when their interpretations are reasonable. This is the basis for the *Alltel* rule, and it is imperative that this Court uphold that protection for all taxpayers.

Additionally, taxpayers must be able to rely on the policy positions of taxing authorities for purposes of understanding their tax compliance obligations and arranging their business relationships and affairs. Here, based on the Department's longstanding policy, Amazon

Services did not collect and remit sales tax for third-party sales. If taxing authorities are unconstrained in their ability to shift policy positions retroactively, the system breaks down. Taxpayers will no longer be able to rely on policy positions since the taxing authority could change at any time.

Shifting policy positions on a retroactive basis is particularly egregious in the sales tax collection context. Again, businesses act as agents of the state, standing in the tax collector's shoes. And a business is expected to get it 100% right, with exposure for either under-collection or over-collection. In other words, where a taxpayer is required to collect, over-collection or under-collection may result in exposure to refunds due to third-party sellers or additional taxes due to the Department. If businesses cannot rely on the longstanding positions of a taxing authority, how can they ever know what their collection obligations are?

Along these same lines, the U.S. state and local tax system is dependent on voluntary compliance, which requires that taxpayers have certainty and predictability. To voluntarily comply, businesses must be able to read the law and understand whether the law imposes a duty to collect or not (*i.e.*, laws must be unambiguous). Otherwise, taxpayers will either not know of their obligations or they may simply wait and see what happens to other taxpayers. In either case, the state suffers from the loss of revenue or need to expend resources in the pursuit of businesses that would have complied had the laws been clear or the Department's position been known.

The Court of Appeals' decision creates significant uncertainty for all taxpayers as they can no longer rely on the Department's longstanding positions or their reasonable interpretation of statutes. Uncertainty is fundamentally unfair, bad policy, harmful to businesses, and a

violation of the U.S. (U.S. Const. amend. XIV, § 1[3]) and South Carolina Constitutions (S.C. Const. amend. I, § 3). The U.S. Constitution requires fair notice and warning for taxpayers regarding their tax obligations. The Court of Appeals' decision creates uncertainty for taxpayers. Without predictability and certainty, taxpayers will be harmed and voluntary compliance will suffer.

II. Taxpayers Must be Protected from Targeted Tax Assessments by the Department in South Carolina.

The Court of Appeals upheld an assessment where the Department changed course regarding a long-standing position without any statutory modification. In fact, the Department's change in position flies in the face of its own sworn testimony before the General Assembly. This Court should not support the Department's ability to change positions retroactively without fair notice. This will allow the Department to use its authority to easily target businesses and otherwise engage in activist tax enforcement. Instead of uniformly interpreting the law and applying it, the Department could choose to target certain taxpayers or industries for non-tax reasons.

The Court of Appeals' decision is likely to embolden the Department to similarly change its position and engage in selective enforcement, which will create a hostile environment for businesses. If that decision is not reversed, the Department will be left unrestrained with nothing to stop the Department from using its unbridled authority to target other taxpayers. This is of

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[3] Under the U.S. Supreme Court's commerce clause jurisprudence, a state tax collection scheme cannot impose an undue burden on interstate commerce. *Pike v. Bruce Church Inc.*, 397 U.S. 137 (1970). In *Pike*, the U.S. Supreme Court set forth a balancing test. *Id*. at 142. The test first asks whether a state statute enacted in furtherance of a legitimate state interest operates evenhandedly regarding interstate commerce. If the statute passes this test, the law will be upheld unless the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits. Here, while the sales tax collection statute under prior law may pass the first part of the test, it does not pass the second. Specifically, the Department's application of the law to marketplace facilitators creates uncertainty for taxpayers, fails to give deference to taxpayers' reasonable interpretation of an ambiguous statute and imposes an impossible burden of sales tax collection after a sale has closed.

great concern to IPT and its members, and we urge the Court to ensure all taxpayers are protected from these tactics.

III. The Court of Appeals' Decision Makes South Carolina an Outlier Following the *Wayfair* Decision and Is Contrary to Every Other Court Decision That Has Addressed This Issue.

The Court of Appeals' determination that Amazon Services was a "seller" is not only incorrect but flies in the face of what was done by every other state with a sales tax, as well as every court that has addressed this issue, following the U.S. Supreme Court's decision in *South Dakota v. Wayfair, Inc*., 585 U.S. 162 (2018).

First, no other state has required collection of sales tax by marketplace facilitators before the enactment of a specific marketplace facilitator law. Following the Supreme Court's decision in *Wayfair*, the states were quick to adopt economic nexus laws.[4] Almost simultaneously, the

[4] Alabama (Ala. Admin. Code § 810-6-2-.90.03); Arizona (Ariz. Rev. Stat. Ann. § 42-5044(A)(1)); Arkansas (Ark. Code Ann. § 26-52-111(a)); California (Cal. Rev. & Tax. Code § 6203(c)(4)(a)); Colorado (Colo. Rev. Stat. § 39-26-102(3)(c)(I)); Connecticut (Conn. Gen. Stat. § 12-407(a)(12)(G)); District of Columbia (D.C. Code Ann. § 47-2001(w)); Florida (Fla. Stat. § 212.06(2)); Georgia (Ga. Code Ann. § 48-8-2(8)(M.1)); Hawaii (Haw. Rev. Stat. § 237-2.5); Idaho (Idaho Code § 63-3611(3)(h)); Illinois (35 ILCS 105/2(9) and 35 ILCS 110/2(9); Indiana (Ind. Code Ann. § 6-2.5-2-1(d)); Iowa (Iowa Code Ann. § 423.14A(2)-(3)); Kansas (Kan. Stat. Ann. § 79-3702(h)(1)(G)); Kentucky (Ky. Rev. Stat. Ann. § 139.340(2)(g)); Louisiana (La. Rev. Stat. Ann. § 47:301(4)(m)(i)); Maine (Me. Rev. Stat. Ann. tit. 36, § 1754-B(1-B)(B)); Maryland (Md. Regs. Code § 03.06.01.33); Massachusetts (Mass. Gen. L. ch. 64H, § 34(a)); Michigan (Mich. Comp. Laws § 205.52c(1)); Minnesota (Minn. Stat. § 297A.66(1)(c)); Mississippi (Miss. Code Ann. § 27-67-3(j)); Missouri (Mo. Rev. Stat. § 144.605(2)(e)); Nebraska (Neb. Rev. Stat. § 77-2701.13(2)); Nevada (Nevada L.C.B. File No. R189-18); New Jersey (N.J. Rev. Stat. § 54:32B-3.5); New Mexico (N.M. Stat. Ann. § 7-9-3.3); New York (N.Y. Tax Law § 1101(b)(8)(i)(E) & N.Y. Tax Law § 1101(b)(8)(iv)); North Carolina (N.C. Gen. Stat. § 105-164.8(b)(9)); North Dakota (N.D. Cent. Code § 57-39.2-02.2); Ohio (Ohio Rev. Code Ann. § 5741.01(I)(2)(g-h)); Oklahoma (Okla. Stat. Ann. tit. 68, § 1392(G)); Pennsylvania (72 Pa. Stat. § 7201(b)(3.5)); Rhode Island (R.I. Gen. Laws § 44-18-15.2(a)(1) & R.I. Gen. Laws § 44-18.2-3(E)); South Carolina (S.C. Code Ann. § 12-36-1340(6)); South Dakota (S.D. Codified Laws Ann. § 10-64-2); Tennessee (Tenn. Code Ann. § 67-6-543); Texas (Tex. Admin. Code tit. 34, § 3.286(a)(4)); Utah (Utah Code Ann. § 59-12-107(2)(c)); Vermont (Vt. Stat. Ann. tit. 32, § 9701(9)(F)(ii)); Virginia (Va. Code Ann. § 58.1-612(C)(10-11)); Washington (Wash. Rev. Code § 82.08.052(1)); West Virginia (W. Va. Code § 11-15A-6b); Wisconsin (Wis. Stat. § 77.51(13gm)); Wyoming (Wyo. Stat. § 39-15-501); *See*, 110 TAX NOTES STATE 587 (Nov. 20, 2023)

states also enacted laws requiring marketplace facilitators to become responsible for tax collection.[5] During the post-*Wayfair* period, when the states were working to implement and enact economic nexus and marketplace facilitator collection laws, the states were generally consistent in their approach and did not attempt to impose their laws retroactively. This is not surprising, considering that the U.S. Supreme Court explicitly recognized that South Dakota's law in the *Wayfair* case was not retroactive. *Wayfair*, 585 U.S. at 170. Following the Court's decision in *Wayfair*, state guidance across the board also made it clear that marketplace facilitator collection laws (as well as economic nexus laws) should not be applied before the court's decision in *Wayfair* and not without an explicit legislative change.[6]

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[5] Alabama (Ala. Code § 40-23-199.2(b)); Arizona (Ariz. Rev. Stat. Ann. § 42-5044(A)(2)); Arkansas (Ark. Code Ann. § 26-52-111(a)); California (Cal. Rev. & Tax. Code § 6042 and Cal. Rev. & Tax. Code § 6043); Colorado (Colo. Rev. Stat. § 39-26-105(1.5)(a)); Connecticut (Conn. Gen. Stat. § 12-407(a)(12)(M)); District of Columbia (D.C. Code Ann. § 47-2002.01a); Florida (Fla. Stat. § 212.06(2)); Georgia (Ga. Code Ann. § 48-8-2(8)(M.3)); Hawaii (Haw. Rev. Stat. § 237-4.5); Idaho (Idaho Code § 63-3620E); Illinois (35 ILCS 105/2d(b) and 35 ILCS 110/2d(b)); Indiana (Ind. Code Ann. § 6-2.5-4-18); Iowa (Iowa Code Ann. § 423.14A(2)-(3)); Kansas (Kan. Stat. Ann. § 79-5602(a)); Kentucky (Ky. Rev. Stat. Ann. § 139.450(2)); Louisiana (La. Rev. Stat. Ann. § 47:340.1(C)); Maine (Me. Rev. Stat. Ann. tit. 36, § 1951-C, and Me. Rev. Stat. Ann. tit. 36, § 1754-B(1-B)(K)); Maryland (Md. Code Ann. Tax-Gen. § 11-403.1(A)(1)); Massachusetts (Mass. Gen. L. ch. 64H, § 34(b), (c)); Michigan (Mich. Comp. Laws § 205.52d(1)); Minnesota (Minn. Stat. § 297A.66(2)(b)); Mississippi (Miss. Code Ann. § 27-65-7 and Miss. Code Ann. § 27-67-3(j)); Missouri (Mo. Rev. Stat. § 144.752.2); Nebraska (Neb. Rev. Stat. § 77-2701.32(2)(f)); Nevada (Nev. Rev. Stat. tit. 32, § 372.751); New Jersey (N.J. Rev. Stat. § 54:32B-3.6(b)); New Mexico (N.M. Stat. Ann. § 7-9-3.5); New York (N.Y. Tax Law § 1101(e)(1)); North Carolina (N.C. Gen. Stat. § 105-164.4J(b)); North Dakota (N.D. Cent. Code § 57-39.2-02.3); Ohio (Ohio Rev. Code Ann. § 5741.01(E)); Oklahoma (Okla. Stat. Ann. tit. 68, § 1392(A)); Pennsylvania (72 Pa. Stat. § 7201(b)(3.5) and 72 Pa. Stat. § 7237(b.1)); Rhode Island (R.I. Gen. Laws § 44-18.2-3(E)); South Dakota (S.D. Codified Laws Ann. § 10-65-5 and S.D. Codified Laws Ann. § 10-65-8); Tennessee (Tenn. Code Ann. § 67-6-501(f)); Texas (Tex. Tax Code Ann. § 151.0242(b)); Utah (Utah Code Ann. § 59-12-107.6(2)(a)); Vermont (Vt. Stat. Ann. tit. 32, § 9701(9)(J)); Virginia (Va. Code Ann. § 58.1-612.1); Washington (Wash. Rev. Code § 82.08.0531(2)); West Virginia (W. Va. Code § 11-15A-6b); Wisconsin (Wis. Stat. § 77.51(13)); Wyoming (Wyo. Stat. § 39-15-502(b)); *See*, 109 TAX NOTES STATE 127 (July 10, 2023).

[6] *See, e.g.*, *Grosz v. California Dep't of Tax and Fee Admin*., 87 Cal. App. 5th 428 (2023); *Normand v. Wal-Mart.com USA, LLC*, 340 So. 3d 615 (La. 2020); *Orthotic Shop, Inc. v. Dep't of Revenue*, 544 P.3d 1072 (Wash. Ct. App. 2024); Hawaii Tax Information Release No. 2019-03 (Oct. 17, 2019); Illinois Admin. Code, tit. 86, § 150.804(b)(1), Ex. 1; Michigan Notice Regarding 2019 Pas 143-146 Marketplace Facilitators and Economic Nexus (Dec. 23, 2019).

Furthermore, in every state where a similar challenge has arisen, the state courts have unanimously rejected the notion that marketplace collection obligations existed before their states' enabling law.[7] Specifically, this is the case in Louisiana and California.[8]

Conversely, unlike ***all*** other states, South Carolina is now the only state in the country where a court has determined that a marketplace facilitator is required to collect sales tax before the enactment of a specific marketplace collection law. South Carolina is an outlier on this issue, and the Court of Appeals' decision is completely out of step with every other state's post-*Wayfair* actions.

CONCLUSION

The Court of Appeals' decision creates significant uncertainty for all taxpayers, which will have a negative impact on South Carolina's voluntary compliance system. Without this

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[7] The first state court system to address this issue was Louisiana where one of the parishes assessed a sales tax obligation on Wal-Mart.com, the operator of an online marketplace that facilitated sales for third-party sellers, asserting it was required to collect and remit sales tax on its online sales made by third-party sellers through its marketplace before the enactment of Louisiana's marketplace collection law. *Normand* at 617. The Supreme Court of Louisiana, however, disagreed and concluded that marketplace facilitators were not required to collect on third-party sales under the state's general statutory tax regime before the enactment of the state's marketplace collection law. *Id*. at 633. Specifically, the Supreme Court of Louisiana concluded that "as [a] nonparty to the underlying sale[s] transaction, a marketplace facilitator is not a 'dealer'" for products sold by third-party sellers on its marketplace. *Id.* The Court went on to determine that explicit legislation was required to make a marketplace facilitator responsible for the collection and remittance of tax, which was not enacted until 2020. *Id.* at 630; *see also,* 2020 La. S.B. 138. Similarly, California dismissed an action contending that a marketplace facilitator had an obligation to collect sales and use tax on products sold through a fulfillment program prior to California's adoption of marketplace facilitator legislation, which was effective in 2019. *Grosz*, 87 Cal. App. 5th 428. And most recently, the Washington Court of Appeals rejected a challenge that a marketplace facilitator was responsible for sales tax collection before the enactment of Washington's marketplace collection law. *Orthotic Shop*, 544 P.3d 1072. There, third-party sellers argued that the marketplace facilitator should have collected and remitted sales tax as the consignee of the goods under the sales tax law in existence prior to the enactment of Washington's marketplace collection law. *Id.* at 1075. The Court disagreed and held that "the Washington legislature enacted [the marketplace collection law], which explicitly requires most marketplace facilitators to collect and remit sales taxes to Washington starting on January 1, 2020." *Id*. at 1079. The court reasoned that "[w]e presume the legislature does not engage in vain and useless acts" and "[i]f the legislature thought that the law before [the marketplace collection law] required marketplace facilitators . . . to collect taxes, it would have faced no need to enact the new provisions." *Id*.

[8] *Normand* at 615ff (rejecting a sales tax collection and remittance obligation for a non-party sales platform prior to the enactment of Louisiana's marketplace collection law); *Grosz*, at 428ff. (rejecting the notion that a marketplace facilitator had an obligation to collect sales and use tax on products sold through a fulfillment program prior to California's adoption of marketplace facilitator legislation).

Court's intervention, taxpayers will be left without adequate guardrails where a statute is ambiguous, and the Department will be left unchecked. For all of the reasons discussed above, IPT respectfully urges this Court to reverse the Court of Appeals' decision.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211, SCACR, I, Samantha K. Trencs, an attorney, certify that the foregoing complies with the length and formatting requirements of Rules 211 and 267, SCACR.

Dated: November 22, 2024

s/ Samantha K. Trencs
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