

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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

Jan 07 2021

SC Court of Appeals

Appellate Case No. 2019-001706

Trial Court Case No. 17-ALJ-17-0238-CC

Amazon Services, LLC Appellant,

v.

South Carolina Department of Revenue Respondent.

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF
APPELLANT ON BEHALF OF TAX EXECUTIVES INSTITUTE**

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Pursuant to Rule 213 of the South Carolina Appellate Court Rules, Tax Executives Institute, by and through its undersigned counsel, respectfully requests leave to file an *amicus curiae* brief in support of Appellant, Amazon Services, LLC. The proposed brief accompanies the motion.

INTEREST OF AMICUS CURIAE

Tax Executives Institute, Inc. (“TEI”) is the largest organization representing taxpayers’ interests on issues associated with tax administration. TEI is a voluntary, nonprofit association of corporate and other business executives, managers, and administrators responsible for the tax affairs of their employers. Organized in 1944 under the laws of the State of New York, TEI is exempt from taxation under section 501(c)(6) of the Internal Revenue Code. TEI is dedicated to the development of sound tax policy, the uniform and equitable enforcement of tax laws, the minimization of administrative and compliance costs for governments and taxpayers, and the vindication of taxpayers’ rights.

TEI’s members are employed by a broad cross-section of the business community. As in-house tax professionals, TEI’s members evaluate tax laws, advise their companies regarding the tax consequences of various transactions and business decisions, and make practical judgments regarding their tax compliance obligations, including determinations regarding which states and localities they must register with for the collection and remittance of sales and use tax.

The Administrative Law Court’s (“ALC”) decision is alarming. The South Carolina Department of Revenue (“Department”) is attempting to hold Amazon Services, LLC (“Amazon Services”) liable for the tax on sales taking place over Amazon Services’ online marketplace. This is a blatant ploy to recover tax revenues that South Carolina consumers should have remitted. The Department’s attempt to do this – long after the transactions occurred, and without advance notice or guidance – contradicts basic principles of fair tax administration and is particularly egregious

because Amazon Services could have collected 100 percent of that tax if it had been provided prior notice.

DESIRABILITY OF BRIEF OF AMICUS CURIAE

Members of TEI have a vital interest in ensuring they are provided with adequate notice of their registration, collection, and remittance responsibilities so they can structure their business activities and processes accordingly. Approximately 43 states to date – including South Carolina, in 2019, plus the District of Columbia – have enacted marketplace facilitator laws. Nationwide, taxing authorities have put a comprehensive regime in place that involves providing advance notice and guidance to marketplace facilitators before imposing collection and remittance requirements. South Carolina’s pre-2019 statute at issue in this case, however, does not address the rights, responsibilities, or liabilities of such third-party retailers and marketplace facilitators, nor does it inform marketplace facilitators of the Department’s intent to hold them responsible for tax on transactions taking place over their platforms. Further, South Carolina would likely be collecting tax twice on many sales at issue in this case if the Department is permitted to assess Amazon Services for taxes because consumers may have remitted use tax to the state. Therefore, it is unfair that the Department now be allowed to impose liability on these marketplace facilitators.

TEI’s members, as in-house tax professionals advising their companies regarding tax responsibilities, are concerned with the essential traits of a sound tax system – fairness, certainty, and notice. TEI routinely files amicus briefs with state and federal courts in cases addressing such issues. Indeed, TEI filed an amicus brief in *Normand v. Wal-Mart.com USA, LLC*, No. 2019-C-00263, 2020 BL 34018 (La. Jan. 29, 2020), the only other case in which a taxing jurisdiction sought to extend collection and remittance responsibilities to marketplace facilitators

without amending the law. The Louisiana Supreme Court accepted TEI's filing and agreed with TEI's reasoning, holding "there is no indication the legislature intended to tax intermediaries that are only tangentially involved in sales transaction, such as a marketplace facilitator relative to sales by third party retailers." Id. at *10.

CONCLUSION

For these reasons, this Court should grant Tax Executives Institute's motion for leave to file the accompanying *amicus curiae* brief in support of the Appellant in this case.

Respectfully submitted,

s/E. Raymond Moore, III

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PROOF OF SERVICE

I, the undersigned employee of the law offices of Murphy & Grantland, P.A., attorneys for *amicus* Tax Executives Institute, do hereby certify that I have served all counsel of record in this action with a copy of the pleading(s) hereinbelow specified by e-mailing a PDF copy of the same to the following email addresses pursuant to SC Supreme Court COVID Order 2020-05-29-02:

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