

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

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 *AMICI CURIAE* BRIEF OF  
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,  
BUSINESS ROUNDTABLE, INTERNET ASSOCIATION,  
SOUTH CAROLINA CHAMBER OF COMMERCE, AND  
GREATER COLUMBIA CHAMBER OF COMMERCE  
IN SUPPORT OF APPELLANT AMAZON SERVICES LLC**

The Chamber of Commerce of the United States of America (the “U.S. Chamber”), Business Roundtable (“BRT”), Internet Association, South Carolina Chamber of Commerce (the “State Chamber”), and Greater Columbia Chamber of Commerce (the “Columbia Chamber”) respectfully seek leave of the Court to appear jointly as *amici curiae* pursuant to Rule 213, SCACR, and in that capacity to file their brief in support of appellant Amazon Services, LLC. As permitted by Rule 213, SCACR, *amici* conditionally file their proposed brief with this Motion as EXHIBIT A hereto.

In support of this motion, *amici* would respectfully show the Court the following.

## INTEREST OF AMICI CURIAE

*Amici curiae* have a substantial, legitimate interest in the manner in which a state applies its tax laws to *amici*'s members and to the nation's business community as a whole. They and their members have, in particular, a keen interest in the predictability that comes when rules for taxation are clear and announced in advance, rather than promulgated in hindsight through the course of an audit. Without such predictability, the planning that is critical to business success and to the employment (and tax revenues) dependent upon business success is rendered impossible. The Administrative Law Court expanded the scope of the phrases "business of selling" and "seller making retail sales" under South Carolina law (S.C. Code Ann. 12-36-910(A) (2014) and S.C. Code Ann. 12-36-1340 (2014)) to hold an entity responsible for sales tax on past transactions to which that entity was not a party, involving goods in which the entity never had an interest. This expansion, and the retroactive penalties it endorses, may significantly affect *amici*'s members, their business interests, and the nation's business community.

*Amici*'s brief demonstrates the far-reaching effects of the agency's interpretation, which would result in a shift in South Carolina's tax law that is contrary to the State's legislatively-established public policy. Such policy changes should be made by the General Assembly with public notice in advance of their applicability—as, in fact, the tax law was changed for periods after April 26, 2019. See Act No. 21, 2019 S.C. Acts \_\_\_\_, codified at S.C. Code Ann. 12-36-70, -71, -1340, (Supp. 2019), and in related provisions.

The U.S. Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents more than 3 million companies and professional organizations of every size, in every industry sector, and from

every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community, including matters of taxation. The U.S. Chamber has previously appeared in the courts of Louisiana regarding the same issue, under Louisiana law, that is presented here under the laws of South Carolina: whether the provider of on-line marketplace services has, where the statute is silent, a responsibility to collect and remit sales or use taxes on transactions between two parties (a seller and a buyer) unrelated to it that occur through its on-line platform.<sup>1</sup>

The BRT is an association of chief executive officers who collectively manage more than 16 million employees and \$7 trillion in annual revenues. BRT was founded on the belief that businesses should play an active and effective role in the formation of public policy that affects business and commerce. It participates in litigation as *amicus curiae* in a variety of contexts where important business interests are at stake.

The Internet Association is the only trade association that exclusively represents leading global internet companies on matters of public policy. The Internet Association's mission is to foster innovation, promote economic growth, and empower people through the free and open internet.

The State Chamber is a leading advocacy organization for economic growth and development in the State, including advocacy for a balanced and predictable tax and

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<sup>1</sup> The Supreme Court of Louisiana agreed with the position advocated by the U.S. Chamber and held that the existing sales tax collection law did not require an on-line marketplace to collect sales tax on transactions by unrelated third-party retailers. Normand v. Wal-Mart.com USA, LLC, \_\_\_ So.3<sup>rd</sup> \_\_\_, 2020 WL 499760 (La., January 29, 2020).

spending system. The non-profit and non-partisan State Chamber identifies and addresses issues impeding economic growth and development at both the State and federal level, often by filing *amicus curiae* briefs in appellate cases that involve important common interests of South Carolina businesses. The State Chamber joins in submitting this brief to stress the overall importance of this case and to aid the court in understanding how the decision of the Administrative Law Court – allowing Respondent South Carolina Department of Revenue to impose, after-the-fact, a statutory interpretation that does not appear in the language of the statute, that is contrary to prior understanding, that leap-frogs General Assembly action on the issue, and that is contrary to interpretations of similar laws in other states against which South Carolina competes for business – is contrary to the established public policy of South Carolina that promotes economic growth and development.

The Columbia Chamber has, since 1902, been a trusted resource for businesses and their employees. Its members rely on the Columbia Chamber’s assistance in navigating complex issues facing the business community. Through public policy and advocacy, the Columbia Chamber provides a unified voice for the regional business community, in order to create and promote a stronger community for businesses and for residents and an environment where businesses can flourish.

Respectfully submitted,

s/Steve A. Matthews  
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