**A** **BILL**

TO AMEND SECTION 12‑6‑2295(A) OF THE 1976 CODE, RELATING TO ITEMS INCLUDED AND EXCLUDED FROM TERMS “SALES” AND “GROSS RECEIPTS,” TO PROVIDE THAT RECEIPTS FROM THE PROVISION OF DIRECT BROADCAST SATELLITE SERVICE ARE ATTRIBUTABLE TO THIS STATE IN PRO RATA PROPORTION OF THE COSTS OF PERFORMING THE SERVICE.

Whereas, the provision of direct broadcast satellite service is a national business that produces income from activities undertaken both within and outside of this State;

Whereas, South Carolina law and the Constitution of the United States require that the income direct broadcast satellite service providers be fairly apportioned in relation to the benefits and advantages provided by each State;

Whereas, fair apportionment of business income, ease of income taxation compliance, and the predictability of income taxation promote commerce within this State;

Whereas, the Department of Revenue has apportioned the income of direct broadcast satellite service providers for income taxation purposes based upon the location of its customers, in a manner contrary to the General Assembly’s intent and existing law. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12-6-2295(A) of the 1976 Code is amended to read:

“(A) The terms ‘sales’ as used in Section 12‑6‑2280 and ‘gross receipts’ as used in Section 12‑6‑2290 include, but are not limited to, the following items if they have not been separately allocated:

(1) receipts from the sale or rental of property maintained for sale or rental to customers in the ordinary course of the taxpayer's trade or business including inventory;

(2) receipts from the sale of accounts receivable acquired in the ordinary course of trade or business for services rendered or from the sale or rental of property maintained for sale or rental to customers in the ordinary course of the taxpayer's trade or business if the accounts receivable were created by the taxpayer or a related party. For purposes of this item, a related person includes a person that bears a relationship to the taxpayer as described in Section 267 of the Internal Revenue Code;

(3) receipts from the use of intangible property in this State including, but not limited to, royalties from patents, copyrights, trademarks, and trade names;

(4) net gain from the sale of property used in the trade or business. For purposes of this subsection, property used in the trade or business means property subject to the allowance for depreciation, real property used in the trade or business, and intangible property used in the trade or business which is:

(a) not property of a kind that properly would be includible in inventory of the business if on hand at the close of the taxable year; or

(b) held by the business primarily for sale to customers in the ordinary course of the trade or business;

(5) receipts from services if the entire income‑producing activity is within this State. If the income‑producing activity is performed partly within and partly without this State, sales are attributable to this State to the extent the income‑producing activity is performed within this State;

(6) receipts from the sale of intangible property which are unable to be attributed to any particular state or states are excluded from the numerator and denominator of the factor~~.~~;

(7) receipts from the provision of direct broadcast satellite service that are attributable to this State in pro rata proportion of the costs of performing the service, including the costs of acquiring programming distribution rights and constructing and maintaining distribution infrastructure, that the service provider incurs within this State. As used in this subsection, the term ‘direct broadcast satellite service’ means the distribution or broadcasting of programming or services by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.”

SECTION 2. This act takes effect upon approval by the Governor and shall apply to all open tax periods and in tax assessments under administrative or judicial review.

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