

REPORT OF THE REVENUE POLICY SUBCOMMITTEE

(G.M. Smith, Simrill, Herbkersman, Whitmire & Stavrinakis - Staff Contact: Alyssa G. Weeks)

SENATE BILL 214

S. 214 -- Senators Kimpson, Sheheen, Gregory, Campsen and Scott: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-36-71 SO AS TO DEFINE "MARKETPLACE FACILITATOR"; TO AMEND SECTIONS 12-36-70, 12-36-90, AND 12-36-130, ALL RELATING TO SALES TAX DEFINITIONS, SO AS TO FURTHER INFORM MARKETPLACE FACILITATORS OF THEIR REQUIREMENTS; AND TO AMEND SECTION 12-36-1340, RELATING TO THE COLLECTION OF SALES TAX BY RETAILERS, SO AS TO FURTHER INFORM MARKETPLACE FACILITATORS OF THEIR REQUIREMENTS.

Received by Ways and Means: March 19, 2019

Summary of Bill: This bill reinforces current sales tax terminology for retailers, sellers, and gross proceeds of sale and coincides with South Carolina longstanding sales tax policy that requires retailers including marketplace facilitators to remit sale and use tax on all retail sales of tangible personal property not otherwise excluded or exempted.

Estimated Revenue Impact: The fiscal impact of this bill is undeterminable because an estimate would depend on knowing the amount noncompliance with state sales tax law by retailers, which is not easily known or measured. The Department of Revenue (DOR) indicates this bill is a tool to help bring some retailers into compliance with state law, and adoption could aid the in collection of state and local taxes due to DOR.

Subcommittee Recommendation: Favorable

Full Committee Recommendation:

Other Notes/Comments: [CLICK HERE](#) to Enter Notes/Comments

2nd Reading:

Amendments:

2nd Reading Vote:

"THE BELOW CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SOUTH CAROLINA HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFIT OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT".

Referred to Senate Finance:

[CLICK HERE to Enter Date](#)

Finance Subcomm. Hearing Date:

[CLICK HERE to Enter Date](#)

Subcommittee Recommendations:

Full Committee Recommendations:

Other Notes/Comments:

[CLICK HERE to Enter Notes/Comments](#)



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number:	S. 0214	Introduced on January 8, 2019
Author:	Kimpson	
Subject:	Marketplace Facilitators	
Requestor:	Senate Finance	
RFA Analyst(s):	Shuford	
Impact Date:	January 29, 2019 Updated for Additional Agency Response	

Fiscal Impact Summary

The fiscal impact of this bill is undeterminable because an estimate would depend on knowing the amount noncompliance with state sales tax law by retailers which is not easily known or measured. As noted herein, one case under litigation provides some insight as to the magnitude of non-compliance and potential enforcement results. The Department of Revenue (DOR) indicates this bill is a tool to prospectively help bring some retailers into compliance with state law, and adoption could aid the in collection of state and local taxes due to DOR. Longstanding South Carolina sales tax policy requires retailers, including marketplace facilitators, to remit sale and use tax on all retail sales of tangible personal property not otherwise excluded or exempted and DOR has initiated major litigation with one retailer based on noncompliance with this policy. Depending on the final court decision, this bill may serve to reinforce current state policy or clarify any perceived difference. This fiscal impact statement has been updated based on additional information provided by DOR.

Explanation of Fiscal Impact

Updated for Additional Agency Response

Introduced on January 8, 2019

State Expenditure

N/A

State Revenue

This bill reinforces current sales tax terminology for retailers, sellers, and gross proceeds of sale and coincides with South Carolina longstanding sales tax policy that requires retailers including marketplace facilitators to remit sale and use tax on all retail sales of tangible personal property not otherwise excluded or exempted. Since this language does not represent a change in South Carolina's longstanding sales tax policy, we do not anticipate that enactment of this bill will result in any revenue that is not currently due to the state. However, at least one retailer has a different interpretation and is not remitting sales and use tax in compliance with state law.

At the present time, DOR has initiated litigation due to significant audit findings over non-compliance with this longstanding practice. If, as anticipated, DOR prevails in the litigation, the retailer not currently in compliance with state law, is expected to remit uncollected taxes from prior years and comply prospectively, assuming no other issues are raised. It is assumed that any other such retailer would also comply with state law and the court opinion. On the other hand, if DOR's position is not upheld by the courts, then this legislation could replace an adverse finding,

clarify the state's policy going forward, and result in collecting the same revenue supported by the current expectation.

The amount of this disputed revenue is undetermined. Any estimate would depend on knowing the exact amount of sales and noncompliance by one or more retailers and since these details are not publicly known, an estimate cannot be easily determined. As a point of reference, the current litigation is based on an audit finding by DOR, which estimated uncollected state and local sales taxes for one three-month period be to approximately \$12,000,000. Extrapolating this finding for a full year would result in annual amount of \$48,000,000. Although a more precise estimate depends upon data not publicly available, other data such as the number of and sales by other retailers who are also not complying with the longstanding tax policy, and conversely, sales by those retailers who may have started otherwise complying with state law before the adoption of this act are unknown. This fiscal impact statement has been updated based on additional information provided by DOR.

Local Expenditure

N/A

Local Revenue

A portion of any revenue collected by DOR, for example local option, capital projects, and local transportation sales taxes, would be attributable to local governments.

Introduced on January 8, 2019

State Expenditure

N/A

State Revenue

This bill reinforces current sales tax terminology for retailers, sellers, and gross proceeds of sale and coincides with South Carolina longstanding sales tax policy that requires retailers including marketplace facilitators to remit sale and use tax on all retail sales of tangible personal property not otherwise excluded or exempted. Since this language does not represent a change in South Carolina's longstanding sales tax policy, we do not anticipate that the State will realize any appreciable increase in sales and use tax revenue from the enactment of this bill.

Local Expenditure

N/A

Local Revenue

N/A



Frank A. Rainwater, Executive Director

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 AS PASSED BY THE SENATE

5 March 13, 2019

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S. 214

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9 Introduced by Senators Kimpson, Sheheen, Gregory and Scott

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11 S. Printed 3/13/19--S.

12 Read the first time January 8, 2019.

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A BILL

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
12 1976, BY ADDING SECTION 12-36-71 SO AS TO DEFINE
13 "MARKETPLACE FACILITATOR"; TO AMEND SECTIONS
14 12-36-70, 12-36-90, AND 12-36-130, ALL RELATING TO
15 SALES TAX DEFINITIONS, SO AS TO FURTHER INFORM
16 MARKETPLACE FACILITATORS OF THEIR
17 REQUIREMENTS; AND TO AMEND SECTION 12-36-1340,
18 RELATING TO THE COLLECTION OF SALES TAX BY
19 RETAILERS, SO AS TO FURTHER INFORM MARKETPLACE
20 FACILITATORS OF THEIR REQUIREMENTS.

21 Amend Title To Conform

22

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

25

26 SECTION 1. The General Assembly finds:

27 (1) the South Carolina Sales and Use Tax Act requires any
28 person engaged in business as a retailer to remit the sales and use
29 tax on all retail sales of tangible personal property not otherwise
30 excluded or exempted from the tax. This requirement applies to all
31 retail sales of tangible personal property by the retailer, whether the
32 tangible personal property is owned by the retailer or another
33 person. Retailers selling tangible personal property at retail on
34 consignment, by auction, or in any other manner must remit the sales
35 and use tax on such retail sales;

36 (2) the Internet marketplaces where a person sells tangible
37 personal property at retail by listing or advertising, or allowing the
38 listing or advertising of, another person's products on an online
39 marketplace and collects or processes the payment from the
40 customer are retailers required to remit the sales and use tax on such
41 retail sales under the provisions of South Carolina sales and use tax
42 law;

1 (3) with the changing economy and ever expanding role of the
2 Internet in the retail market, the longstanding requirement in the
3 sales and use tax law that a retailer remit the tax on retail sales of
4 tangible personal property owned by another person must apply to
5 all retailers, including both Internet retailers and brick and mortar
6 retailers;

7 (4) retailers selling another person's tangible personal
8 property on the Internet must clearly understand and be informed of
9 their requirements to remit the sales and use tax in the same manner
10 as retailers selling another person's tangible personal property in a
11 brick and mortar store; and

12 (5) this act shall not be construed as a statement concerning
13 the applicability of the South Carolina Sales and Use Tax Act to any
14 sales and use tax liability in matters currently in litigation or being
15 audited.

16
17 SECTION 2. Article 1, Chapter 36, Title 12 of the 1976 Code is
18 amended by adding:

19
20 "Section 12-36-71. (A)(1) 'Marketplace facilitator' means any
21 person engaged in the business of facilitating a retail sale of tangible
22 personal property by:

23 (a) listing or advertising, or allowing the listing or
24 advertising of, the products of another person in any marketplace
25 where sales at retail occur; and

26 (b) collecting or processing payments from the purchaser,
27 either directly or indirectly through an agreement or arrangement
28 with a third party.

29 (2) If a person meets the criteria set forth in item (1), then that
30 person is a marketplace facilitator regardless of whether the person
31 receives compensation or other consideration in exchange for his
32 services.

33 (B) A marketplace may be physical or electronic and includes,
34 but is not limited to, any space, store, booth, catalog, website,
35 television or radio broadcast, or similar place, medium, or forum.

36 (C) For purposes of subsection (A), a marketplace facilitator
37 includes any related entities assisting the marketplace facilitator in
38 sales, storage, distribution, payment collection, or in any other
39 manner, with respect to the marketplace.

40 (D) When a marketplace facilitator is comprised of multiple
41 entities, the entity that lists or advertises, or allows the listing or
42 advertising of, the products sold at retail in the marketplace is the
43 entity responsible for remitting the sales and use tax to the State."

1 SECTION 3. Section 12-36-70 of the 1976 Code is amended by
2 adding a new item before the last undesignated paragraph to read:

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4 “(3) operating as a marketplace facilitator, as defined in Section
5 12-36-71.”

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7 SECTION 4. Section 12-36-90(1)(a) of the 1976 Code is amended
8 to read:

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10 “(a) the proceeds from the sale of property sold on consignment
11 by the taxpayer, including property sold through a marketplace by a
12 marketplace facilitator;”

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14 SECTION 5. Section 12-36-130(1) of the 1976 Code is amended
15 by adding a new subitem to read:

16
17 “(c) the proceeds from the sale of property sold on consignment
18 by the taxpayer, including property sold through a marketplace by a
19 marketplace facilitator.”

20
21 SECTION 6. Section 12-36-1340 of the 1976 Code is amended to
22 read:

23
24 “Section 12-36-1340. Each seller making retail sales of tangible
25 personal property for storage, use, or other consumption in this State
26 shall collect and remit the tax in accordance with this chapter and
27 shall obtain from the department a retail license as provided in this
28 chapter, if the retail seller:

- 29 (1) maintains a place of business;
30 (2) qualifies to do business;
31 (3) solicits and receives purchases or orders by an agent, ~~or~~
32 ~~salesman~~ an independent contractor, a representative, an Internet
33 website, or any other means; ~~or~~
34 (4) distributes catalogs, or other advertising matter, and by
35 reason of that distribution receives and accepts orders from residents
36 within the State;
37 (5) operates as a marketplace facilitator; ~~or~~
38 (6) meets constitutional standards for economic nexus with
39 South Carolina for purposes of the sales and use tax.”

40
41 SECTION 7. This act takes effect upon approval by the Governor.

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