**A** **BILL**

TO AMEND CHAPTER 36, TITLE 12 OF THE 1976 CODE, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, BY ADDING SECTION 12‑36‑71, TO PROVIDE THAT A RETAILER IS PRESUMED TO BE LIABLE FOR THE SALES TAX OR RESPONSIBLE FOR COLLECTING AND REMITTING THE USE TAX IF THE RETAILER ENTERS INTO AN AGREEMENT WITH A RESIDENT OF THIS STATE UNDER WHICH THE RESIDENT, FOR CONSIDERATION, REFERS POTENTIAL CUSTOMERS, WHETHER BY AN INTERNET LINK OR OTHERWISE, TO REQUIRE SUCH RETAILERS TO OBTAIN A RETAIL LICENSE AND REMIT SALES AND USE TAX ON ALL TAXABLE RETAIL SALES, AND TO PROVIDE EXCEPTIONS.

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

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

“Section 12‑36‑71. (A) Notwithstanding any other provision of law, a retailer is presumed to be liable for the sales tax or responsible for collecting and remitting the use tax if the retailer enters into an agreement with a resident of this State under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet website or otherwise, to the retailer.

(B) The presumption set forth in subsection (A) applies only if the retailer’s gross proceeds of sales attributable to purchasers in this State who were referred to the retailer pursuant to such agreements in the aggregate exceed ten thousand dollars in the preceding twelve calendar months. The presumption may be rebutted by proof that the resident with whom the retailer has an agreement did not engage in any solicitation in the State on behalf of the retailer that would satisfy the nexus requirement of the United States Constitution during the twelve calendar months in question.

(C) A retailer liable for the sales tax or responsible for collecting and remitting the use tax under the provisions of this section must obtain a retail license and remit sales and use taxes in accordance with the provisions of this chapter on all retail sales of tangible personal property not otherwise exempt.

(D) The provisions of this section do not apply to a retailer that owns, leases, or utilizes a distribution facility in this State for which the provisions of Section 12‑36‑2691 apply.”

SECTION 2. This act takes effect upon approval by the Governor.

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