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.

AMICUS CURIAE BRIEF OF TAX EXECUTIVES INSTITUTE IN SUPPORT OF APPELLANT, AMAZON SERVICES, LLC

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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. TEI's members 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 to meet these requirements.

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.

STATEMENTS AND STANDARD OF REVIEW

TEI adopts the Statement of the Issues on Appeal, the Statement of the Case, the Statement of the Facts, and the Standard of Review set forth by Amazon Services in the Final Opening Brief of Appellant Amazon Services ("Plaintiff-Appellant's Brief"). Plaintiff-Appellant's Brief at 3-21.

SUMMARY OF THE ARGUMENT

The ALC erred by upholding the Department's determination that Amazon Services is the retail seller with respect to sales between third-party sellers and South Carolina customers. The ALC's decision cannot be reconciled with the Department's own statements or the South Carolina Legislature's subsequent amendment to the taxing statutes in 2019 to hold marketplace facilitators responsible for collecting and remitting sales tax on such sales.

The ALC's decision also cannot be reconciled with principles of sound tax policy. The Department did not provide marketplace facilitators notice of its intent to hold them responsible for this purported liability, nor did it provide guidance to marketplace facilitators and third-party sellers concerning how the Department would administer the sales and use tax if marketplace facilitators were to undertake such responsibilities.

Had South Carolina wished to impose tax collection and remittance responsibilities upon marketplace facilitators in 2016, its Legislature should have enacted the appropriate laws imposing these duties, and the Department should have enacted regulations addressing how the tax would be administered. The South Carolina Legislature and the Department did not take such actions until 2019 and chose to enact such legislation prospectively.

Legislative action and deliberate policy decisions provide critical advance notice and guidance to taxpayers. They enable marketplace facilitators and third-party sellers to structure their business arrangements and processes to meet compliance requirements before any tax is due. Moreover, they enable responsible parties to mitigate 100 percent of their liability for these taxes

by collecting them from consumers. Permitting taxing authorities to hold marketplace facilitators liable for tax, long after the transaction took place, offends principles of sound tax policy when a taxing authority fails to undertake these fundamental tax administration responsibilities.

TEI urges the Court to reverse the decision of the ALC. The Department has an obligation to administer South Carolina's tax system in a just and equitable manner.

ARGUMENT

I. The ALC Erred in Determining that Pre-2019 Law Unambiguously Required Amazon Services to Collect and Remit Tax on Sales Made by Third Parties.

The ALC erred when it determined that South Carolina's pre-2019 Sales and Use Tax Act unambiguously required Amazon Services to collect and remit sales tax on sales that third-party retailers made over its online platform. (Op. at 17.) Amazon Services' responsibilities under the pre-2019 law were far from clear, and South Carolina law mandates that this dispute be resolved in favor of the taxpayer.

"Questions of statutory interpretation are questions of law, which [the appellate c]ourt is free to decide without any deference to the [ALC]." *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355 (2016). "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. If the statute is ambiguous, however, courts must construe the terms of the statute." *Hock RH, LLC v. South Carolina Department of Revenue,* 423 S.C. 208, 215 (Ct. App. 2018), *citing Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342 (2011). "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." *Hock,* 423 S.C. at 215, *citing TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 620 (1998).

"When the Legislature adopts an amendment to a statute, this Court recognizes a presumption that the Legislature intended to change the existing law." *Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 46, (2008); *see also Key Corp. Capital, Inc. v. Cty. of Beaufort*, 373 S.C. 55, 60 (2007); *N. River Ins. Co. v. Gibson*, 244 S.C. 393, 398 (1964). Further, "any substantial doubt in the application of a tax statute must be resolved in favor of the taxpayer." *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 318 (2012). Thus, "where the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor." *Cooper River Bridge, Inc. v. S.C. Tax Comm'n*, 182 S.C. 72, 76 (1936).

These principles of statutory interpretation merit a finding in favor of Amazon Services. The Department assessed tax on sales taking place in the first quarter of 2016, years before the state Legislature amended South Carolina's Sales and Use Tax Act in 2019 to define "marketplace facilitators" and specifically to include marketplace facilitators within the definition of "retailers" and "sellers." S.C. Code Ann. §§ 12-36-70(3), 12-36-71. The 2019 amendments expressly require marketplace facilitators to collect and remit tax on sales third-party retailers made over its online platform, and the South Carolina Legislature specified the amendments were prospective only. S.C. Code Ann. § 12-36-1340(5); 2019 S.C. Acts, Act No. 21 (SB 214), s. 7, eff. April 26, 2019.

The 2019 amendments would have been unnecessary if the 2016 version of South Carolina's Sales and Use Tax Act unambiguously imposed this responsibility upon marketplace facilitators. Indeed, the Department urged the South Carolina Legislature to pass the 2019 amendments, testifying the amendments were necessary to "close[] the gap" so that "nobody has

to guess" about which party was liable for sales tax on sales made by third parties over online marketplaces. (Ex. 194, R.1263 at 6:13-15, 8:40-50.)

The need for clarity is demonstrated by the business community's practices as well. Amazon Services offered third-party retailers tax collection services on sales those retailers made over the Amazon Services platform. Amazon Services remitted any collected tax to participating retailers, who reported and remitted the tax directly to the Department, and the Department accepted those revenues. (Plaintiff-Appellant's Brief at 20, 40-41; Tr., R.382-86; Ex. 23, R.904-07.) Thus, the Department's own statements and actions confirm it was reasonable to assume third-party sellers bore responsibility for remitting tax on sales made to South Carolina consumers.

In sum, South Carolina precedent thus requires this Court to resolve any doubt regarding the proper interpretation and application of South Carolina's Sales and Use Tax Act in favor of Amazon Services.

II. South Carolina's Sales and Use Tax Act Must Be Interpreted and Understood in the Full Context of this Nation's Nexus Evolution.

The Department's attempt to hold Amazon Services responsible for tax imposed on transactions between third-party sellers and consumers must be examined in the full context of this country's decades-long nexus debate.

Sales and use taxes, such as South Carolina's, are generally regarded as consumption taxes — taxes not imposed on retailers' activities but on their consumers' use or consumption of products and services within a jurisdiction. While the economic incidence of the tax falls on consumers, retailers nevertheless play a critical role in administering such taxes: retailers collect the tax from consumers and remit the tax to the taxing jurisdiction. *See, e.g.*, Hellerstein,

Hellerstein & Swain, *State Taxation* ¶ 12.01 (Thomson Reuters/Tax & Accounting, 3rd ed. 2001, with updates through Nov. 2020).[1]

The U.S. Constitution, however, forbids states from compelling out-of-state retailers to undertake this obligation or to hold them liable for failing to do so unless a retailer has substantial nexus with the state. *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2099 (2018). If a retailer lacks substantial nexus with a state and does not collect the tax from consumers, it is the consumers who have a legal obligation to remit the corresponding use tax to the state. *Id*. at 2088. However, in practice, not all consumers remit their use tax, and states lack an efficient mechanism to measure or track consumers' use tax liabilities. *Id*.

Because consumers typically do not self-remit, states and business taxpayers have long debated whether a retailer has "substantial nexus" with the state. The U.S. Supreme Court first answered this question in *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967), when it addressed whether Illinois could compel a Missouri-based mail-order seller to collect sales tax on goods sold to Illinois customers if the seller had no physical presence in the state. The Court held the Due Process Clause and Commerce Clause of the U.S. Constitution require "some definite link, some minimum connection between a state and the person, property or transaction it seeks to tax," and declined to allow states to impose tax on mail-order sellers "who do no more than communicate with customers in the State by mail or common carrier as part of a general interstate business." *Id*. at 756, 758.

"[T]he remarkable growth of the mail-order business 'from a relatively inconsequential market niche' in 1967 to a 'goliath . . .,'" *Quill Corp. v. North Dakota*, 504 U.S. 298, 303 (1992), caused states to become increasingly frustrated with the physical presence rule during the years

[1] Online version accessed on Checkpoint (www.checkpoint.riag.com) on Dec. 14, 2020.

following *Bellas Hess.* Thus, several states mounted a challenge to reverse the *Bellas Hess* decision by enacting statutes imposing sales tax collection and remittance responsibilities upon persons who engage in "regular or systematic solicitation" of a consumer market in the jurisdiction, envisioning this standard would satisfy the "substantial nexus" standard even if a mail-order seller was not physically present in the state. *See, e.g.,* Bloomberg Tax, Tax Management Portfolio 1420-2nd: *Limitations on States' Jurisdiction to Impose Sales and Use Taxes,* Detailed Analysis, E. State Legislation. However, the states' hopes were dashed again in 1992 when the U.S. Supreme Court decided *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). *Quill* held North Dakota's statute was unconstitutional and reaffirmed physical presence was a prerequisite for states to impose sales tax collection and remittance responsibilities on out-of-state sellers.

The *Quill* court invited Congress to exercise its authority under the Commerce Clause and to enact federal legislation addressing "whether, when, and to what extent the States may burden interstate mail-order concerns with a duty to collect use taxes." *Quill*, 504 U.S. at 318. Following years of Congressional inaction, state governments, with input from state legislatures, tax administrators, and private sector representatives, formed the Streamlined Sales Tax Governing Board in 2000 to "find solutions for the complexity in state sales tax systems that resulted in the U.S. Supreme Court holding (*Bellas Hess v. Illinois* and *Quill Corp. v. North Dakota*) that a state may not require a seller that does not have physical presence in the state to collect tax on sales into the state." [2] This effort culminated in the development of the Streamlined Sales and Use Tax Agreement, which is designed to simplify sales and use tax administration systems and address the concerns raised by the U.S. Supreme Court in *Quill*. *Id.*

[2] Streamlined Sales Tax Governing Board, Inc., About Us, available at https://www.streamlinedsalestax.org/about-us/about-sstgb.

States also began to legislate innovative, alternative theories to impose sales tax collection responsibilities on out-of-state sellers. Some states enacted click-through nexus statutes, which purport to confer nexus on out-of-state retailers when in-state referrers post links to the retailers' websites in exchange for a commission on sales. *See* Hellerstein, Hellerstein & Swain, *State Taxation* at ¶ 19.03. Other states enacted affiliate nexus statutes, which purport to confer nexus on out-of-state retailers when retailers' in-state affiliates perform certain services for the retailers, such as in-store returns or offering joint customer loyalty programs. *Id*. States also attempted to coerce out-of-state retailers to voluntarily collect and remit sales tax by enacting statutes mandating certain information reporting and requiring out-of-state retailers to report details of transactions with their customers located in the state. *Id*.

The National Conference of State Legislatures ("NCSL") adopted a model legislative proposal[3] in 2016 to help states advance their nexus challenges in the courts. NCSL's model legislation comprised three parts:

(1) a statute expanding nexus-creating activities by including, among other things, an economic nexus provision determining sellers with a certain dollar amount of sales in the state were engaged in business in the state and were subject to sales tax collection and remittance responsibilities, even if they lacked a physical presence in the state (*Id*. at 3-6),

(2) a statute imposing sales tax collection and remittance responsibilities upon marketplace facilitators who list or advertise tangible personal property or taxable services on any

[3] Available at http://www.ncsl.org/Documents/fiscal/2016_Sales-Use_Tax%20Nexus_.pdf.

forum for marketplace sellers, and who collect and transmit receipts from such sales to marketplace sellers (*Id*. at 6-8), and

(3) a statute imposing reporting requirements on referrers who receive more than $10,000 in fees per year for listing sellers' tangible personal property or taxable services on any forum and who transfer customers to the sellers' websites to complete the purchases (*Id*. at 8-11).

NCSL's model legislation specified the "effective date should be fixed and in the future" as "[o]ne of the significant problems that arose during the *Quill* litigation that gave the justices concern was that the tax would be retroactive." (*Id*. at 1.)

South Dakota was the first of many states to enact economic nexus legislation directly challenging *Quill*'s physical presence requirement. The U.S. Supreme Court reversed *Quill* in 2018 and upheld South Dakota's economic nexus statute. *South Dakota v. Wayfair,* 138 S. Ct. at 2099. The Court noted South Dakota's law contained several features to "prevent discrimination against or undue burdens upon interstate commerce," including a safe harbor for those transacting a limited amount of business in the state, protection from retroactive liability, and adherence to the Streamlined Sales and Use Tax Agreement, which reduced administrative and compliance costs for taxpayers. *Id*. at 2099-2100.

The states began to consider marketplace facilitator laws, the second prong of the NCSL's model, in earnest after the *Wayfair* decision. The Multistate Tax Commission ("MTC") convened a workgroup in 2018 to identify issues arising when states impose collection and remittance responsibilities on marketplace facilitators, recommend best practices for addressing those issues,

and develop proposed statutory language. Multistate Tax Commission, Marketplace Facilitator Work Group, Final White Paper (issued Nov. 20, 2018, and updated Jul. 6, 2020).[4]

Questions discussed by the MTC workgroup included:

- Recommended definitions for marketplaces, marketplace facilitators, and marketplace sellers;
- Whether the marketplace facilitator and/or marketplace seller must register to collect tax, and the scope of sales for which each is responsible;
- Which entity should be subject to audit and potential alternatives for relief if the audited party relied upon information provided by the other party;
- The appropriate economic nexus threshold and whether to count the combined sales of the marketplace facilitator and its marketplace sellers in this determination;
- Which party must maintain exemption certificates; and
- Whether states should protect marketplace facilitators from class-action lawsuits.

The MTC finalized its report in 2018 and updated it once again in 2020. *Id.*

Approximately 43 states to date – including South Carolina, in 2019 – plus the District of Columbia, enacted marketplace facilitator laws.[5] These taxing authorities have made the deliberate

[4] Available at http://www.mtc.gov/Uniformity/Project-Teams/Wayfair-Implementation-Informational-Project.

[5] *See, e.g.*, Ala. Code § 40-23-199.2; Ariz. Rev. Stat. § 42-5001(8); Ark. Code Ann. § 26-52-111; Cal. Rev. & Tax Code § 6042; Colo. Rev. Stat. § 39-26-105(1.5); Conn. Gen. Stat. § 12-408e; D.C. Code Ann. § 47-2002.01a; Ga. Code Ann. § 48-8-30(c.2)(1); Haw. Rev. Stat. § 237-1; Idaho Code § 63-3620E; 35 ILCS 105/2d; Ind. Code § 6-9-29.5-2; Iowa Code § 423.14A; Ky. Rev. Stat. Ann. § 139.450; La. Rev. Stat. Ann. § 47:340.1; Me. Rev. Stat. Ann. Tit. 36, § 1951-C and Me. Rev. Stat. Ann. Tit. 36, § 1754-B(1-B)(K); Md. Code Ann. Tax-Gen. § 11-403.1; Mass. Gen. L. ch. 64H and 64H, § 1; Mich. Comp. Laws § 205.52(d); Minn. Stat. § 297A.66; Miss. Code Ann. § 27-67-3(j); Neb. Rev. Stat. § 77-2701.13; N.J.S.A. § 54:32B-3.6; N.M. Stat. Ann. § 7-9-3(J);

policy decision to put a comprehensive regime into place and to provide advanced notice and guidance to marketplace facilitators conducting business in their jurisdiction before imposing collection and remittance requirements.

III. South Carolina's Pre-2019 Law Leaves Many Open Questions Regarding the Respective Roles and Responsibilities of Marketplace Facilitators and Third-Party Sellers.

By relying upon the pre-2019 South Carolina Sales and Use Tax Act to impose liability rather than working with the State to enact a comprehensive legislative scheme, the Department skirted important policy questions that arise when shifting the burden for collecting and remitting tax on marketplace facilitators. South Carolina's pre-2019 Sales and Use Tax Act does not:

- Define marketplaces, marketplace facilitators, or marketplace sellers;
- Address which party must register with the jurisdiction and collect the tax on marketplace sellers' sales when the marketplace facilitator and marketplace seller both have substantial nexus with the jurisdiction;
- Address which party should be subject to audit;
- Address how that party can mitigate liability arising due to incorrect information received from the other party;
- Address when a marketplace facilitator has substantial nexus with the jurisdiction;
- Address which party must maintain exemption certificates; or,
- Protect marketplace facilitators from class-action lawsuits.

2019 Nev. A.B. 445; N.Y. Tax Law § 1132(l); N.C. Gen. Stat. § 105-164.4J(b); N.D. Cent. Code § 57-39.2-02.3; Ohio Rev. Code Ann. § 5741.01(E); Okla. Stat. § 1392; Pa. Stat. Ann. § 7213.1; R.I. Gen. Laws § 44-18.2-3(I); S.C. Code Ann. § 12-36-1340(5); S.D. Codified Laws § 10-65-5; Tenn. Code Ann. §67-6-501(f); Tex. Tax Code § 151.0242; Utah Code Ann. § 59-12-107.6; Va. Code Ann. § 58.1-612.1; Vt. Stat. Ann. § 9713; Wash. Rev. Code § 82.08.053; W. Va. Code § 11-15A-6b; Wis. Stat. § 77.52(3m); Wyo. Stat. § 39-15-502.

Carefully drafted statutes, not ad hoc litigation, are required to answer these questions. The South Carolina General Assembly did just this when it enacted the 2019 legislation defining marketplace facilitators and imposing sales tax collection responsibilities upon such persons. The Department should not be permitted to advance this case against Amazon Services before the General Assembly enacted a law to impose such liability upon all marketplace facilitators.

The only other attempt by a taxing jurisdiction to extend collection and remittance responsibilities to marketplace facilitators without amending the law was quashed by the Louisiana Supreme Court in *Normand v. Wal-Mart.com USA, LLC*, No. 2019-C-00263, 2020 BL 34018 (La. Jan. 29, 2020).[6] The Louisiana Court noted it could not consider the statutory provisions in isolation, and held "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. The Court stressed "the fact that an intermediary transmits the funds to sellers does not relieve the sellers of their tax-collection obligation or cause the intermediary to assume the sellers' legal obligation to collect taxes." *Id*. at *13. Failure to specify which party is ultimately responsible for collecting and remitting the tax creates confusion, and "[a]bsent similar legislation for an online marketplace, double taxation could result if both online

[6] Notably, the State of Louisiana did not join Jefferson Parish's attempt to impose such liability on Wal-Mart.com, even though the State's sales and use tax laws mirrored the Parish's laws. Rather, the State of Louisiana publicly acknowledged legislation should have been enacted to hold such parties liable for sales tax, stating: "[s]pecific definitions for marketplace facilitators, as well as collection, remittance, and administrative matters related to marketplace facilitators, will be considered by the Commission and submitted to the Legislature for consideration in the 2019 Regular Session." Louisiana Sales and Use Tax Commission for Remote Sellers, Remote Sellers Information Bulletin 18-002 (Dec. 18, 2018), available at http://revenue.louisiana.gov/Miscellaneous/RSIB%2018-002%20-%20Definition%20of%20Remote%20Seller%20-%20As%20Adopted.pdf. The Louisiana Legislature enacted such legislation in 2020. La. Acts 2020, No. 216, s. 1, eff. Jul 1, 2020.

marketplaces and third party retailers are obligated to collect sales tax on the same transaction. It is not in the province of the judiciary to create an exception (in the context of a retail sale) to the seller's obligation to collect sales tax for a marketplace facilitator…." *Id*. at *14.

The pre-2019 South Carolina law presents these same challenges, as discussed *infra*. It is clear third-party retailers with nexus to the state are liable for collecting and remitting tax before the 2019 amendment, but the pre-2019 statute does not address the rights, responsibilities, or liabilities of such third-party retailers and marketplace facilitators. The allocation of these rights and responsibilities can only be answered via marketplace facilitator legislation, which South Carolina did not enact until 2019.

IV. It Would Be Inherently Unfair and Inequitable to Impose Tax Collection and Remittance Responsibilities Upon Marketplace Facilitators Using the Pre-2019 Law.

Finally, it is fundamentally unfair to allow the Department to impose liability on marketplace facilitators when the Department failed to provide notice of its intent to hold marketplace facilitators responsible for tax on transactions taking place over their platforms. Sales and use taxes are imposed based on an ultimate or final consumers' use or consumption of products and services within a state. Sellers collect these taxes from consumers and remit them to the taxing jurisdiction. Had the Department alerted marketplace facilitators of its intention to treat them as "retailers" or "sellers" and hold them responsible for the collection of tax, Amazon Services could have mitigated 100 percent of its liability by collecting tax from consumers at the time of the sale. The Department's failure to provide such notice thus illegitimately shifts liability for this tax from consumers to marketplace facilitators, who were never a party to these sales.

South Carolina can require marketplace facilitators to collect tax on transactions taking place over their platforms, of course. But in our rule-based, constitutional republic, it must do so through legislative or regulatory action, not through an arbitrary decree whereby liability for the

tax is singularly imposed on a marketplace facilitator, and retroactively assessed after a transaction has occurred and beyond the time the tax can be collected from the rightful party from whom the tax is due.

Moreover, if the ALC's decision stands, South Carolina would receive a windfall. Some consumers — in particular, business consumers — do regularly remit use tax. The United States Government Accountability Office estimates that business consumers' compliance rates range from approximately 70 to 90 percent. *See, e.g.*, U.S. Government Accountability Office, GAO-18-114, Sales Tax — States Could Gain Revenue from Expanded Authority, but Businesses Are Likely to Experience Compliance Costs, 14 (Nov. 2017).[7] Thus, it is reasonable to assume some of the taxes in issue in this case have already been voluntarily remitted to the Department by the in-state purchasers of the goods. Moreover, the Department may have previously audited and assessed consumers who purchased products from third-party sellers over Amazon Services' online platform. Thus, the State will likely collect tax twice on many sales at issue in this case if the Department is permitted to assess Amazon Services for taxes.

Fairness, certainty, and notice are essential attributes of a sound tax system, particularly a system relying upon voluntary compliance. Taxing authorities have an obligation to tell taxpayers in advance what the laws are and how they apply, and to make them easy to administer. Springing an unsupported interpretation of a taxing statute retroactively on an unaware taxpayer violates every tenet of sound tax policy. While governments may change their laws and policies, fairness demands that governments provide taxpayers with notice of their obligations and responsibilities, especially when such notice will enable taxpayers to mitigate their tax and fulfill their compliance

[7] Available at: https://www.gao.gov/assets/690/688437.pdf.

burdens. Fairness, certainty, and notice are thus imperative when a party collects tax owed by the consumer on the State's behalf and is not a party to the sale.

CONCLUSION

The ALC's decision errs by reaching an incorrect and unsupportable legal conclusion that Amazon Services – a party providing an online platform over which a sale occurred – is responsible for collecting and remitting tax on sales made by third parties. There is no prior precedent for such an interpretation, for good reason, as it illegitimately shifts liability for sales tax to a person who was not a party to the sale and had no notice of the Department's intent to do so. Accordingly, this Court should reverse the ALC's decision.

Respectfully Submitted,

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