



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: S. 0214 Signed by Governor on April 26, 2019
Author: Kimpson
Subject: Marketplace Facilitators
Requestor: Senate
RFA Analyst(s): Shuford
Impact Date: May 28, 2019

Fiscal Impact Summary

The fiscal impact of this bill is undetermined because an estimate would depend on knowing the amount of non-compliance 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 sales 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 non-compliance with this policy. Depending on the final court decision, this bill may serve to reinforce current state policy or clarify any perceived difference.

The fiscal impact of this bill on local revenue is undetermined. Any additional revenue from sales taxes imposed at the local level such as capital projects, local option, and local transportation would be attributable to local governments.

Explanation of Fiscal Impact

Signed by Governor on April 26, 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 sales 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 non-compliance 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 to be 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.

Local Expenditure

N/A

Local Revenue

The fiscal impact of this bill on local revenue is undetermined. Any additional revenue from sales taxes imposed at the local level such as capital projects, local option, and local transportation would be attributable to local governments.



Frank A. Rainwater, Executive Director