



STATE OF SOUTH CAROLINA  
**DEPARTMENT OF REVENUE**

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 125, Columbia, South Carolina 29214-0575

SC PRIVATE LETTER RULING #20-2

**SUBJECT:** Peer-to-Peer Motor Vehicle Rentals Through a Marketplace Facilitator  
(Sales Tax)

**REFERENCES:** S.C. Code Ann. Section 12-36-70 (2014; Supp. 2019)  
S.C. Code Ann. Section 12-36-71 (Supp. 2019)  
S.C. Code Ann. Section 12-36-90 (2014; Supp. 2019)  
S.C. Code Ann. Section 12-36-100 (2014)  
S.C. Code Ann. Section 12-36-910 (2014)

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3

**SCOPE:** A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

**QUESTION**

Are charges by ABC, for peer-to-peer, short-term vehicle rentals, as described in the facts, subject to sales tax?

**CONCLUSION**

Charges by ABC, for peer-to-peer, short-term vehicle rentals, as described in the facts, are subject to sales tax. ABC, as a marketplace facilitator, is a retailer and, therefore, responsible for remitting the sales tax on all peer-to-peer, short-term motor vehicle rentals in South Carolina.

For further information regarding charges by a motor vehicle rental company includable in the “gross proceeds of sales,” such as fuel, insurance, and damage waivers, see SC Revenue Ruling #93-1, “Charges by Automobile Rental Operation.”

## **FACTS**

ABC, a motor vehicle rental company, acting through itself and through its various affiliates, plans to operate an online peer-to-peer, short-term motor vehicle rental program (30 days or less) in South Carolina.

In ABC’s peer-to-peer rental program, third party owners and lessors of motor vehicles provide listing information to ABC and set the base rental fee for their vehicles. Prospective renters view available vehicles on ABC’s website or mobile application. Once a renter selects a vehicle, ABC approves the transaction and collects rental fees and any other charges (e.g., taxes, insurance, protection plans, and other optional services) from the renter. ABC remits the total receipts to the third party vehicle owner or lessor, less charges for taxes and additional services provided by ABC.

## **LAW AND DISCUSSION**

Code Section 12-36-910 imposes the sales tax and reads, in part:

(A) A sales tax, equal to [six]<sup>1</sup> percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-90 defines “gross proceeds of sales,” in part, as follows:

Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

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

(b) the proceeds from the sale of tangible personal property without any deduction for:

(i) the cost of goods sold;

(ii) the cost of materials, labor, or service;

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<sup>1</sup> See Code Section 12-36-1110 which increased the sales tax rate to 6% from 5%.

- (iii) interest paid;
- (iv) losses;
- (v) transportation costs;
- (vi) manufacturers or importers excise taxes imposed by the United States; or
- (vii) any other expenses;

Code Section 12-36-100 defines “sale”:

“Sale” and “purchase” mean any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

\* \* \*

- (2) a rental, lease, or other form of agreement.

Code Section 12-36-70 defines “retailer” and “seller”:

“Retailer” and “seller” include every person:

- (1)(a) selling or auctioning tangible personal property whether owned by the person or others;

\* \* \*

- (2)(a) maintaining a place of business or qualifying to do business in this State; or

\* \* \*

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

Code Section 12-36-71 defines “marketplace facilitator” as follows:

(A)(1) ‘Marketplace facilitator’ means any person engaged in the business of facilitating a retail sale of tangible personal property by:

- (a) listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur; and
- (b) collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party.

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

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

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

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

Based on the above, ABC, as a marketplace facilitator, is a retailer and, therefore, responsible for remitting the sales tax on all peer-to-peer, short-term motor vehicle rentals in South Carolina. Charges by ABC, for peer-to-peer, short-term vehicle rentals, as described in the facts, are subject to sales tax. For additional guidance concerning the tax obligations of a marketplace facilitator, see SC Revenue Ruling #19-6, “Marketplace Facilitators and Third Parties Whose Products are Sold Via a Marketplace – Guidance and Tax Obligations.”

For further information regarding charges by a motor vehicle rental company includable in the “gross proceeds of sales,” such as fuel, insurance, and damage waivers, see SC Revenue Ruling #93-1, “Charges by Automobile Rental Operation.”

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell  
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W. Hartley Powell, Director

March 31 \_\_\_\_\_, 2020  
Columbia, South Carolina

**CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.**