

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LAUREN PORSCH, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

LLR, INC. d/b/a LuLaRoe, and LULAROE,
LLC

Defendants.

Case No. 1:18-cv-09312-DLC

Filed Electronically

JURY TRIAL DEMANDED

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiff Lauren Porsch (“Plaintiff”) brings this action on behalf of herself and all others similarly situated against Defendant LLR, Inc. (“LLR”) and LuLaRoe, LLC (“LLR LLC”) (hereinafter, collectively, “LuLaRoe” or “Defendants”), and states:

INTRODUCTION

1. Defendants unlawfully charged a “sales tax” to New York consumers in tax-free jurisdictions on their remote purchases of clothing from Defendants’ consultants located outside New York. LuLaRoe knew its collection of non-New York taxes in these New York jurisdictions was unlawful, but concealed this fact from consumers, affirmatively misleading them regarding the legality of its practice. This unlawful practice harmed Plaintiff and each class member in precisely the same manner.

2. Plaintiff brings this action on behalf of herself and all others similarly situated to challenge Defendants’ unlawful, unjust, deceptive and fraudulent practice, which damaged New York residents by making them pay more for their purchases than they were actually worth. As a result of this deception, Plaintiff seeks the following relief: (1) actual damages in the form of a complete and accurate disgorgement of all unlawfully collected charges; (2) an accounting to

ensure that the disgorgement is in fact complete and accurate; and (3) all available compensatory, statutory, and punitive damages, along with attorneys' fees and costs.

3. The class period is for all purchases made prior to or on February 16, 2017.

JURISDICTION AND VENUE

4. This Court has original jurisdiction of this action pursuant to the Class Action Fairness Act, 28 U.S.C §1332(d): the matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000; this case is a class action in which at least some members of the proposed class have a different citizenship from Defendants; and there are more than 100 putative class members.

5. The Southern District of New York has personal jurisdiction over the Defendants named in this action because Defendants conduct substantial business in this District.

6. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391(b) because Plaintiff purchased products from Defendants in this District, and a substantial part of the acts and omissions giving rise to her claims occurred here.

PARTIES

7. Plaintiff Lauren Porsch is and at all times relevant hereto has been a resident of New York City, New York.

8. LuLaRoe is a multilevel-marketing company that sells clothing through fashion consultants located in all fifty states to consumers across the United States.

9. Defendant LLR is incorporated in Wyoming and headquartered in California.

10. Defendant LLR LLC is organized in and headquartered in California.

11. Defendant LLR implemented the 2016 Tax Policy (defined *infra*) that is at issue in this Complaint and collected the non-New York "tax" at issue in this Complaint.

12. Defendant LLR LLC enforced the unlawful 2016 Tax Policy at issue in this Complaint and LLR LLC owned the point-of-sale (“POS”) system, Audrey, which was programmed to overcharge New York consumers as described in this Complaint.

13. According to LLR’s CEO, “there is not a clear distinction” between LLR and LLR LLC and the two companies convene an executive committee meeting every Monday that involves members of both companies and is not designated as an LLR or LLR LLC meeting.

14. Accordingly, both Defendants were involved in perpetrating the deceptive and fraudulent conduct, explained more fully below.

15. During the class period, LuLaRoe’s consultants sold clothing at Minimum Advertised Pricing between \$23-78 per item.

STATEMENT OF FACTS

A. Sales Tax Principles Relevant To This Litigation

16. Sales tax is a consumption tax on the purchase of goods or services assessed by some states and municipalities on purchases made within their jurisdiction.

17. When a buyer and seller reside in the same state, and the buyer takes possession of the purchased goods in that state, the sales tax laws of the buyer and seller’s state govern the transaction. In this instance, the state’s laws will apply regarding what local tax applies, in addition to any state sales tax because it affects only *intrastate* commerce.

18. On the other hand, when the buyer and seller reside in different states, and the seller delivers the purchased goods from its state to the buyer’s state, the sales tax of the buyer’s state govern the transaction—meaning, for remote or *interstate* sales, a retail transaction is only subject to tax in the jurisdiction where the goods are delivered.

19. New York State exempts clothing sold for less than \$110 from state sales tax. Similarly, many localities exempt clothing sold for less than \$110 from local tax. *See* Dept. of Taxation and Finance, Pub. 718-C (“Sales of eligible clothing and footwear costing less than \$110 in the [following jurisdictions] are fully exempt from all state and local sales and use tax (including the [Metropolitan Commuter Transportation District] tax)”: Chautauqua County, Chenango County (outside the city of Norwich), City of Norwich, Columbia County, Delaware County, Greene County, Hamilton County, Tioga County, Wayne County, New York City.), available at <https://www.tax.ny.gov/pdf/publications/sales/pub718c.pdf> (last accessed Jan. 7, 2019).

B. LuLaRoe’s Business Model

20. LuLaRoe is a multi-level marketing company (“MLM”) that sells clothing branded as “LuLaRoe” at wholesale price to independent consultants located in all fifty states. LuLaRoe’s consultants, in turn, resell this merchandise at retail to LuLaRoe’s end consumers.

21. LuLaRoe trains its consultants to sell outside their direct network so they’re not limited to friends and family. Unlike the traditional Tupperware party business model, half of LuLaRoe’s sales come from consultants using social media platforms like Facebook and Periscope. Richard Kestenbaum, *This Retailer Went From Zero To \$2 Billion in Four Years*, *Forbes* (Oct. 19, 2017), <https://www.forbes.com/sites/richardkestenbaum/2017/10/19/this-retailer-went-from-zero-to-2-billion-in-four-years/#7888afbb5fa3> (last accessed Jan 7, 2019). By leveraging social media in this manner, consultants reach consumers with whom they have no prior relationship, and who often reside in other states.

22. LuLaRoe generates a “frenzied excitement” around its products by creating a sense of scarcity. *See* Hayley Peterson, *Inside one of the fastest-growing clothing companies that’s making some millennial moms rich*, *Business Insider* (Sep. 2, 2016),

<https://www.businessinsider.com/lularoe-is-making-millennial-moms-rich-2016-9> (last accessed Jan. 7, 2019). The company's designers make hundreds of new patterns for its products each day, and limits the number of garments with each pattern in each size. *Id.* As a result, a consumer who passes on an available product may not have the opportunity to purchase it in the future.

23. By producing a limited number of garments in each print and size, LuLaRoe ensures that every consultant has different inventory. As a result, “[t]here’s a certain amount of treasure hunt required for customers to find products they like,” *see* Richard Kestenbaum, *supra*, because there is no guarantee a local consultant has the product a consumer wants.

24. As a consequence of this model, consumers commonly purchase LuLaRoe’s products without knowing the selling consultant’s location, including local municipality.

25. Indeed, it typically takes additional research on the part of the end consumer to determine where the consultant is located, if they can determine that information at all. For example, when purchasing through a Facebook group or multi-consultant “pop-up” group, users typically must click on the consultant’s Facebook profile to see whether the consultant’s location is publically available.

26. LuLaRoe collects and remits sales tax on behalf of its consultants.

27. This action is brought on behalf of consumers who purchased LuLaRoe clothing from consultants outside of New York, whose purchases were shipped into New York jurisdictions that exempt clothing purchases under \$110 from sales tax, and who LuLaRoe charged non-New York taxes on those purchases.

C. LuLaRoe’s Tax Practices Prior to April 2016

28. Beginning in 2014, taxing authorities began pressuring LuLaRoe to remit tax on its consultants’ sales.

29. As a result, LuLaRoe initiated a relationship with a POS vendor, ControlPad, to implement a POS system called “Audrey.”

30. LuLaRoe introduced Audrey to its consultants in or around May or June 2015. LuLaRoe’s policy and procedures, which consultants contractually agreed to follow, required that LuLaRoe consultants “must” use the Audrey POS.

31. Prior to April 2016, the Audrey system included a toggle-switch, which permitted LuLaRoe’s consultants to turn off tax charges when they made a sale into a tax-free jurisdiction, preventing overcharges to the putative class members.

D. LuLaRoe Discovers it is Overpaying Sales Tax

32. In January 2016, LuLaRoe’s Senior Tax Advisor undertook to reconcile LuLaRoe’s prior tax filings.

33. What he discovered was that, because of the way Audrey was programmed, LuLaRoe was remitting sales tax on *all* sales regardless of whether or not the end consumer was charged or paid sales tax on a transaction (*i.e.*, LuLaRoe was overpaying sales tax because it was paying tax on the transactions shipped to class members).

34. LuLaRoe manufactured a “solution” to address this dilemma: the 2016 Tax Policy (defined below), which shifted responsibility for the overpayments caused by LuLaRoe’s Audrey system from LuLaRoe to its end consumers, including Plaintiff and class members.

E. LuLaRoe’s Implementation of its 2016 Tax Policy

35. In April 2016,¹ LuLaRoe announced its new tax policy via webinar and conference call: henceforth Audrey would be charging and collecting tax from end consumers based upon its

¹ In early 2016, LLR LLC purchased Audrey from Control Pad and moved the Audrey point-of-sale system in house with LuLaRoe.

consultants' location, across the board, on every transaction, regardless of where the product was delivered (the "2016 Tax Policy").

36. The use of Audrey, as *well as compliance with the new policy*, was not an option for consultants. LuLaRoe sent the new 2016 Tax Policy to *all* LuLaRoe consultants by email.

37. Thereafter, LuLaRoe altered, or directed the alteration of, the Audrey POS to prevent consultants from turning off the sales tax toggle-switch when making sales delivered into other states with no sales tax, such as to class members' jurisdictions.

38. LuLaRoe instructed its consultants not to change the sales tax rate calculated by Audrey, even for remote sales delivered to jurisdictions where the purchases were not taxable.

39. As a result of LuLaRoe's new policy and the change in Audrey's functionality, when anyone from any jurisdiction, including jurisdictions without sales tax on clothing, purchased a LuLaRoe product, that consumer was automatically and systematically charged sales tax if the consultant was located in a jurisdiction which charged sales tax.

40. By way of example, if a consumer from New York, New York purchased a LuLaRoe product online from a consultant in a state with sales tax on clothes, such as Ohio, and had that product shipped to New York, New York, LuLaRoe overcharged the New York resident an amount equal to the *Ohio state and local sales tax* on that purchase.

41. LuLaRoe admits that it did not collect the "tax" at issue in this action for any New York state or municipal authority and did not collect the "tax" pursuant to the New York Tax Code.

42. LuLaRoe admits it did not remit the "tax" to any New York state or municipal authority.

43. Instead, LuLaRoe claims it collected and remitted the “tax” under its consultants’ states’ tax laws, although no states’ tax codes permit such assessment because such tax would be an unconstitutional restraint on interstate commerce.

F. LuLaRoe Lied to its Consultants & Consumers Regarding the Legality of the 2016 Tax Policy.

44. LuLaRoe’s consultants are the front line point of communication with LuLaRoe’s end consumers.

45. Immediately after it enacted the unlawful 2016 Tax Policy, LuLaRoe issued a sales tax memorandum and “white paper” memorandum to all of its consultants, which was authored by Terrel Transtrum, a “licensed tax attorney with law degrees from University of Idaho (J.D.) and University of Miami (LL.M. – Masters of Law in Taxation).” A copy of the sales tax memorandum is attached as **Exhibit A** and the “white paper” as **Exhibit B**.

46. In the sales tax memorandum and “white paper,” LuLaRoe told its consultants that the policy it implemented, requiring that tax be charged based upon the location of the consultant, was proper and legal.

47. The “white paper” fraudulently claimed it was proper to collect sales tax based on a consultant’s address, whether the customer is physically present or not, because it is as if the customer is purchasing from the consultant’s home in person (*i.e.* like a Tupperware party).

48. As repeatedly admitted by LuLaRoe’s own officers, this information was false. LuLaRoe’s “Ethics Specialist,” who was part of LuLaRoe’s management team, admitted that it was “not ethical” to collect tax from the class members when no tax should have been charged.

49. LuLaRoe expected that the false information set forth in the white paper would be disseminated to its consumers.² To this end, LuLaRoe included questions and answers in the sales tax memorandum in order to prepare consultants for challenges to the 2016 Tax Policy, including:

Q: What should I say to my customer who asks why they are being charge [sic] sales tax?

A: On this area, as the Idaho example above, most individuals are either not aware that their states have a “voluntary” declaration and payment requirement; or they are aware and they choose not to comply. It’s mostly about education and enforcement, however, and LuLaRoe is committed to being a welcome and responsible corporate citizen, inviting all Fashion Consultants to do the same.

See **Exhibit A** at 6 (emphasis in original).

50. LuLaRoe also knew and expected that, if questioned, consultants sent the sales tax memo and white paper to LuLaRoe’s end consumers. Indeed, the questions and answers in LuLaRoe’s sales tax memo also provide:

Q: *My CPA or lawyers say that LuLaRoe is illegally requiring the collection of sales tax. What Should I say?*

A: Some declare that the company is trying to pull something on them by collecting sales tax. LuLaRoe has prepared a white paper that explains the legal foundation for its position on sales tax. ...

See **Exhibit A** at 6 (emphasis in original).

51. Indeed, LuLaRoe itself would send the sales tax memo out to end consumers who contacted LuLaRoe directly to question the validity of the sales tax policy.

² The only information provided to LuLaRoe’s consultants about the 2016 Tax Policy was the announcement itself, the sales tax memorandum, and the white paper, and these were to be used by the consultants to explain the 2016 Tax Policy to LuLaRoe’s customers.

G. LuLaRoe Knew that its Sales Tax Procedures were Unlawful (and the White Paper, False) Yet Continued its Practices.

52. Within a month of LuLaRoe issuing the fraudulent advice in the sales tax memorandum and white paper to its consultants (and, therefore, its end consumers) the Attorney General of the Commonwealth of Pennsylvania transmitted a consumer complaint to LuLaRoe, dated May 16, 2016, challenging LuLaRoe's illegal sales tax practices.

53. On June 28, 2016, LuLaRoe responded to the Attorney General, *unequivocally admitting that LuLaRoe knew its sales tax policy overcharged consumers in jurisdictions that did not have a sales tax on the clothing that LuLaRoe sells.*

54. Despite this admission, LuLaRoe *did not* discontinue its improper sales tax policy or reinstitute the ability for consultants to remove sales tax charges on purchases sold outside of their state.

55. By May 31, 2016, LuLaRoe also received a notice from the State of Minnesota Office of the Attorney General requesting that LuLaRoe "review and correct its systems to be in compliance with Minnesota sales tax law" and "determine the number of other Minnesotans who need to be refunded for paying sales tax."

56. Yet again, LuLaRoe acknowledged its fault but did nothing to discontinue its systematic practice of overcharging consumers.

57. In its correspondence related to these Attorney General complaints, LuLaRoe explained its "policy" with an example, confirming, with respect to this case, *that LuLaRoe never collected a New York sales tax under the New York Tax Code* with respect to sales made to the class, nor remitted such amounts to New York's Tax Commissioner on their behalf:

For example, a Fashion Consultant living in Wisconsin sells LuLaRoe clothing to a customer in Minnesota. In Minnesota, clothing generally is not subject to sales tax. However, LuLaRoe's order system calculated and remitted sales tax based on

the *Fashion Consultant's Wisconsin address and Wisconsin sales tax laws*, when no sales tax should have been charged in this scenario.

A copy of LuLaRoe's correspondence related to the Attorney General complaints is attached hereto as **Exhibit C**. (emphasis added).

58. Indeed, when it enacted its 2016 Tax Policy, LuLaRoe was aware that it would result in customers being charged tax incorrectly. LuLaRoe's CEO, Mr. Stidham, admitted under oath in an unrelated Utah proceeding that LuLaRoe knew this class action was coming.

59. Despite acknowledging that its tax practices were unlawful, LuLaRoe continued to overcharge its consumers until June 1, 2017.³

60. LuLaRoe did nothing to retract its statements that the 2016 Tax Policy was lawful, concealing its knowledge from LuLaRoe's consultants and, by extension, its end consumers.

61. LuLaRoe continued to disseminate the false information in the sales tax memorandum and white paper well into 2017.

H. The Plaintiff's and Class Members' Experiences

62. Plaintiff resides in New York, New York, which exempts purchases of clothing items that cost less than \$110 from sales and use tax.

63. Plaintiff Porsch made purchases from LuLaRoe consultants outside of New York who used social media to sell LuLaRoe products, and had those purchases shipped to her home in New York, New York.

64. During the class period, Plaintiff Porsch made at least thirteen (13) purchases from LuLaRoe consultants located outside of New York. Upon each purchase, LuLaRoe's Audrey POS system sent Plaintiff a purchase receipt or invoice via email, which invoices all included a "Tax."

³ According to LuLaRoe, by June 1, 2017, its consultants were no longer operating on Audrey and the new POS system purportedly does not overcharge tax to the class members.

As a result of the “Tax” that LuLaRoe added on each invoice, Plaintiff paid \$50.63, or about 7%, more than these thirteen purchases were actually worth. Plaintiff Porsch’s purchase receipts are attached as **Exhibit D**. Below is a copy of one purchase receipt for immediate reference.

----- Forwarded message -----
 From: Stephanie Reid <receipts@mylularoe.com>
 Date: Mon, Dec 26, 2016 at 7:05 PM
 Subject: Purchase receipt from Stephanie Reid
 To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #29861754 CARD

Shipping

Lauren Porsch

[REDACTED]
 [REDACTED]

New York, NY
 10033

Billing

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Amount \$ 106.00
 Tax \$ 9.01

Total Paid \$ 115.01

Model
 Irma
 Amelia
 Priority Shipping and Handling

M	XL	na
1		
	1	
		1

Total Items In This Order 3

65. This was the first time Plaintiff had purchased clothing items through Facebook groups and was the first time she purchased from a multi-level marketing company.

66. The invoices that LuLaRoe provided Plaintiff did not identify the selling consultant's location or taxing authority.

67. While the 2016 Tax Policy was in effect, Plaintiff saw many Facebook pages and groups that LuLaRoe consultants used to sell products announce that sales tax is calculated based on the consultant's location. To this end, LuLaRoe's consultants explained that purchasing LuLaRoe through Facebook was no different than if Plaintiff were actually in a consultant's home, in which case the consultant's hometown tax rates would apply. While these consultants' assertions were consistent with LuLaRoe's "guidance" provided to them in the "white paper" and sales tax memorandum, the assertions were false.

68. In Plaintiff's experience, this discouraged her and other customers from asking consultants questions about the imposition of sales tax.

69. In the Spring of 2017, Plaintiff learned that LuLaRoe's 2016 Sales Tax Policy may be unlawful, at which time she contacted undersigned counsel to determine her legal rights. Around the same time, LuLaRoe announced its plan to release a new POS system, called Bless, that would charge sales tax based on a consumer's location. The Bless system, however, was not initially adopted by all consultants and many continued to use Audrey.

70. Once Plaintiff became aware of LuLaRoe's deceptive practices in Spring 2017, her purchasing behavior changed. For example, Plaintiff began:

- a. spending time in an effort to research and identify consultants' locations before purchasing, and trying to purchase more often from consultants in jurisdictions with no sales tax, if they had clothing in Plaintiff's preferred patterns and size;

b. requesting consultants to override Audrey's inclusion of sales tax at the time of her purchase;⁴

c. inquiring as to which consultants switched, or intended to switch, from the Audrey POS system to Bless, so that she could concentrate her purchasing decisions on those consultants who would not require Plaintiff to pay more than her purchases were worth—to the extent those consultants had clothing in Plaintiff's preferred patterns and size; and

d. searching for consultants who had promotions or free shipping, who also had clothing in Plaintiff's preferred patterns and size, so that her ultimate purchase price would not be affected by the premium she paid to shop from many non-New York consultants.

71. Had Plaintiff known LuLaRoe's 2016 Tax Policy caused her to pay more than LuLaRoe's items were worth, she would have changed her purchasing conduct sooner.

72. LuLaRoe remitted no portion of the \$50.63 in overcharges that Plaintiff paid on her thirteen purchases to the New York State Tax Commissioner, nor to any New York municipality. As evidenced by LuLaRoe's responses to multiple states' attorney generals, *see Exhibit C*, LuLaRoe claims it remitted Plaintiff's overcharge on each purchase to the taxing authority of the LuLaRoe consultant responsible for that sale.

73. LuLaRoe's conduct in wrongfully overcharging customers a non-New York "tax" was uniform to Plaintiff and all class members.

74. Like Plaintiff, the class members purchased LuLaRoe clothing from LuLaRoe consultants outside of New York and had them shipped into jurisdictions in New York where such purchases are exempt from sales and use tax.

⁴ While consultants were unable to override the sales tax, some consultants provided discounts on the purchases in the amount of the tax; because of LuLaRoe's practice, these discounts affected only the consultants' net profit, and not LuLaRoe's.

75. LuLaRoe's Audrey POS system generated and sent an invoice to Plaintiff and every class member for each purchase they made.

76. Every invoice represented that LuLaRoe collected a "tax" on the purchase.

77. Plaintiff and every class member paid the invoice that implicitly represented they were paying a proper sales/use tax when, in fact, no such tax was owed by the Plaintiff and class members—a fact readily known by LuLaRoe and misrepresented to its consultants and customers.

78. If a customer questioned LuLaRoe about the "tax," LuLaRoe perpetuated its deceptive practice by falsely advising the customer that the tax was proper and lawful or directing the inquiry to the consultants for them to perpetuate LuLaRoe's deceptive practice.

79. In turn, LuLaRoe trained its consultants to uniformly inform the customer of the 2016 Tax Policy—set forth in the "white paper" and sales tax memorandum—claiming that LuLaRoe's deceptive practice was lawful (*i.e.*, that the tax was calculated by consultant location).

80. LuLaRoe has identified the transactions for which it charged a non-New York "sales tax" to its New York consumers and ascertained the identity of the consumers for those transactions and the overcharges on those transactions. To this end, LuLaRoe charged a non-New York tax on about 104,144 sales transactions shipped into non-taxing jurisdictions in New York from April 2016 through June 1, 2017.

81. The harm to the class is consistent because of LuLaRoe's systematic misconduct.

I. LuLaRoe is Sued on February 17, 2017 on Behalf of, *Inter Alia*, the Class

82. On February 17, 2017, a lawsuit styled as *Webster v. LLR, Inc.*, was instituted in the Western District of Pennsylvania, alleging claims on behalf of class members in eleven states that have jurisdictions where there is no sales tax on the clothing LuLaRoe sells, but where those customers were charged the fraudulent tax. The class in *Webster* included Plaintiff and the putative

class members here. A motion for class certification was filed on December 6, 2017, on behalf of eleven subclasses representing eleven different states, including New York.

83. On August 20, 2018, the *Webster* Court denied certification based on the variations in state laws that would have to be addressed with the eleven subclasses.

84. The District Court in *Webster* made no findings on the merits. Nor did that decision preclude filing this action because the issues the *Webster* court found to preclude certification are no longer present because this action involves only one state's laws—New York.

J. LuLaRoe's Improper Attempt to "Pick Off" the Class

85. From April 2016 until the *Webster* Complaint was filed, LuLaRoe stood by its decision to overcharge customers in the guise of "tax," going so far as to publish a white paper alleging that its misconduct was lawful.

86. Only after its fraudulent practices became the subject of a class action (and media attention) did LuLaRoe change its tune.

87. In a statement published on February 27, 2017, (after *Webster* was filed) a LuLaRoe spokesperson told Forbes Magazine:

We have been aware of sporadic problems with our former payments vendor, which have increased over the past year with the fast growth of our company.

...

The issue involved 'our former payments vendor, which had a technology system failure that misidentified the accurate location of certain individuals.' Since that time, according to a company spokesperson, '[w]e have immediately reimbursed any individual whom we could identify as having been improperly charged sales tax.' Further, the company says '[w]e are proactively working to ensure that all affected individuals are refunded.'

See Kelly Phillips Erb, *Popular Fashion Line LuLaRoe Sued Over Sales Tax Charges* (Feb 27, 2017), <https://www.forbes.com/sites/kellyphillipserb/2017/02/27/popular-fashion-line-lularoe-sued-for-overcharging-customers-sales-tax/#5f4aeac7176d> (last accessed Jan. 7, 2019).

88. LuLaRoe’s statement was false. Prior to *Webster*, LuLaRoe did not immediately reimburse any individual that was improperly charged sales tax.

89. Prior to February 17, 2018, LuLaRoe refunded a mere 38 of the 2.5 million transactions nationwide that it improperly charged tax on, ***amounting to less than one-tenth of one percent (0.00152%) of the total deceptive transactions.***

90. For New York citizens, LuLaRoe refunded less than one-hundredth of one percent (0.00096%), ***or a single transaction of the 104,144 in which it overcharged its end customers.***

91. Only after the *Webster* lawsuit was filed and a demand made for compensatory damages including interest, statutory damages, and punitive damages did LuLaRoe engage in a confusing, ad hoc, refund scheme.

92. While LuLaRoe may frame these refund efforts as a belated effort to “do the right thing,” its misconduct does not save LuLaRoe from liability—it is a concession of fault.

93. LuLaRoe claims it had a “plan” to refund the overcharges at some unknown future point, but did not undertake to make refunds to the class members until after *Webster* was filed.

94. Shockingly, LuLaRoe takes the position that its refund “plan” was in place at the time it created and distributed the false white paper and sales tax memo to retailers, or April 2016.

95. The only logical conclusion is that LuLaRoe knew when it instituted its 2016 Tax Policy that it was not in compliance with the laws and that the operation and effect of the policy would cause harm to its end customers.

96. LuLaRoe affirmatively hid this knowledge until after it was sued in court. To this end, before *Webster* was filed, LuLaRoe (1) never announced its purported “plan” to reimburse consultants or end customers, and (2) continued to disseminate the false sales tax memorandum to retailers and customers, through and including February 2017.

97. Any suggestion that LuLaRoe’s attempt to “remedy” its own fraud somehow excuses its egregious conduct is disingenuous.

98. LuLaRoe’s “remedy” provided class members with no basis for ascertaining the amount of the overcharges they paid, or whether the entire amount of the overcharge was refunded. Nor did LuLaRoe compensate Plaintiff or the class members for the full amount of their damages under the class claims (*i.e.*, interest, statutory, and/or punitive damages).

99. LuLaRoe admits it refunded only the amounts it overcharged, without any interest or other damages (such as statutory damages), which the *Webster* suit sought.

100. Indeed, while LuLaRoe alleges it refunded \$329,922.83 in overcharges, LuLaRoe suffered no consequence for its intentional misconduct because, in LuLaRoe’s own words, its refund program made things a “zero-sum” game.

101. This scenario is the exact reason why states have consumer protection statutes. LuLaRoe’s belated refunds do nothing to defeat the class claims here.

K. LuLaRoe Benefited From the Use of Audrey and the Deceptive 2016 Tax Policy

102. While LuLaRoe has claimed it did not benefit from its bad acts because it placed any unlawful “tax” it collected into a sequestered account, and paid that money to the consultants’—*not the consumers*’—taxing authority, such position ignores that the causes of action alleged herein are intended to protect the party harmed, not focus on whether the bad actor benefitted from its deceptive conduct.

103. For its consultants' mandatory use of Audrey, LuLaRoe received incentive payments from its payment processing vendor, totaling approximately \$5.6 million in 2016 and \$1.9 million in the first two months of 2017. At the same time that LuLaRoe overcharged consumers nationwide in jurisdictions with no sales tax more than \$8 million, LuLaRoe garnered \$7.5 million in processing fees for its consumers' use of the Audrey POS system.

104. Prior to implementing its unlawful 2016 Tax Policy, LuLaRoe was overpaying its sales tax obligations to taxing authorities on *all* purchases made by class members (even when no tax was in fact charged because the toggle switch was used).

105. LuLaRoe was indiscriminately paying sales tax because the information obtained from LuLaRoe's POS system did not distinguish between retailers' in-state sales and out of state sales.

106. By implementing its 2016 Tax Policy, LuLaRoe passed the costs associated with the shortcomings of its POS system and its indiscriminate tax payments onto its end consumers, including the class members.

107. LuLaRoe's 2016 Tax Policy was implemented at the expense of the class and was patently designed to save LuLaRoe from paying both: (i) the immediate costs associated with fixing the systemic flaws of its POS System; and (ii) its sales tax overpayments to the taxing authorities caused by Audrey's failures.

108. Any suggestion by LuLaRoe that it did not receive a benefit from its deceptive acts is unsupportable.

CLASS ALLEGATIONS

109. Plaintiff bring this class action on behalf of herself and all other similarly situated class members under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and seeks to certify the following class:

All persons who were assessed tax on remote clothing purchases from LuLaRoe consultants located outside New York up to and including February 16, 2017, who purchased clothing items costing less than \$110, and who had the purchases delivered into a location in New York that does not assess a sales or use tax on such purchases.

110. Excluded from the class are Defendants, as well as their past and present officers, employees, agents or affiliates and any judge who presides over this action.

111. Also excluded from the class are any transactions where tax was collected from a class member and was actually remitted to a New York state or municipality authority, such as for an intrastate transaction where someone in a non-tax jurisdiction in New York purchased LuLaRoe clothing from a retailer in a New York jurisdiction that imposes local sales tax on such purchases.

112. Plaintiff reserves the right to expand, limit, modify or amend the class definitions, including the addition of one or more subclasses, in connection with her motion for class certification, or at any other time, based on, among other things, changing circumstances and new facts obtained.

113. Numerosity. The class described above is so numerous that joinder of all members is impracticable. The disposition of the individual claims of the respective class members will benefit the parties and the Court and will facilitate judicial economy.

114. Ascertainability. The class members are ascertainable through records kept by Defendants. Plaintiff and class members were required to input their personal and financial information into Audrey to purchase products from LuLaRoe. Defendants record this information

and the products the class members purchased in internal databases. Indeed, LuLaRoe has already identified the class members.

115. Typicality. Plaintiff's claims are typical of the claims of the members of the classes. The claims of each class member arise from the same course of conduct: LuLaRoe's requirement that class members pay for their purchases via an online point-of-sale payment platform that automatically assesses sales tax without consideration of the laws of the taxing authorities where the class members reside. The claims of Plaintiff and class members are based on the same legal theories and arise from the same unlawful conduct.

116. Existence and Predominance of Common Questions of Law and Fact. This action involves common questions of law and fact, which predominate over any questions affecting individual class members. These common questions include, but are not limited to, the following:

- a. Whether Defendant collected funds from Plaintiff and individual class members under a nonexistent tax;
- b. Whether the law authorizes these converted funds;
- c. Whether Defendant lacked authority under the law to collect funds under a nonexistent tax;
- d. Whether Defendant's conduct was deceptive and likely to mislead consumers;
- e. Whether Defendant converted funds that lawfully belonged to Plaintiff and the class members;
- f. Whether Defendants charged Plaintiffs and class members tax based upon the location of the consultant or retailer who shipped the goods sold;
- g. Whether Defendants knew that the 2016 Tax Policy and/or POS system overcharged Plaintiff and class members a tax they did not owe;
- h. Whether Defendants redesigned the POS system to force Plaintiff and class members to pay a tax they did not owe; and

- i. The proper method by which to measure damages to which the class is entitled.

117. Adequacy of Representation. Plaintiff is an adequate representative of the class because her interests do not conflict with the interests of the class members. Plaintiff will fairly, adequately, and vigorously represent and protect the interests of the class members and Plaintiff has no interests antagonistic to the class members. Plaintiff has retained counsel who are competent and experienced in class action litigation, and who possess specific expertise in consumer class actions.

118. Superiority. The nature of this action and the nature of laws available to Plaintiff and the class make the use of the class action format a particularly efficient and appropriate procedure to afford relief for themselves and the class for the wrongs alleged. The damages or other financial detriment suffered by individual class members is relatively modest compared to the burden and expense that individual litigation of their claims against Defendant would entail. It would thus be virtually impossible for Plaintiff and class members, on an individual basis, to obtain effective redress for the wrongs done to them. Absent class action litigation, class members, and the general public would not likely recover, or would not likely have the chance to recover damages, and Defendant will be permitted to retain the converted proceeds of its fraudulent and deceptive misdeeds and would suffer no consequences for the fraud it committed on consumers in this state.

119. Choice of Law. Plaintiff seeks to certify the class under the laws of New York.

COUNT I

New York General Business Law § 349

120. The allegations contained in the previous paragraphs are incorporated by reference.

121. Plaintiff brings this claim individually under the laws of New York, and on behalf of the Class.

122. LuLaRoe's conduct at issue and described above was consumer oriented.

123. New York General Business Law ("GBL") prohibits "deceptive acts and practices." N.Y. Gen. Bus. Law § 349.

124. LuLaRoe violated § 349 by engaging in the deceptive acts and practices described herein.

125. Specifically, Defendants unlawfully charged and collected a sales tax on its clothing sales and failed to disclose that it was not authorized to collect such taxes, and actively misled consumers that its tax collection practice was lawful when it was not.

126. LuLaRoe's representation that it was collecting a lawful tax was fraudulent and deceptive, because LuLaRoe had no authority to collect that tax and it was charged in violation of the law.

127. Plaintiff and all class members suffered ascertainable losses that necessarily flowed directly from Defendants' fraud or deceit in its scheme to systematically charge Plaintiff and the class members more than the products they purchased were worth.

128. Defendants intentionally violated § 349 by intentionally programming its online POS system to collect sales tax on clothing when such collection was unlawful and not authorized by the taxing authority of the buyer.

129. Plaintiff and class members were injured by Defendants' violations of § 349.

130. Defendants' conduct was intentional, wrongful, reckless, and outrageous.

131. Accordingly, Plaintiff and the class members seek actual damages, statutory damages, treble damages, punitive damages, and reasonable attorneys' fees.

COUNT II**Conversion and Misappropriation**

132. The allegations contained in the previous paragraphs are incorporated by reference.

133. Plaintiff brings this claim individually under the laws of New York and on behalf of the Class.

134. By its conduct, Defendants converted and/or misappropriated funds belonging to Plaintiff and individual class members.

135. Plaintiff and the class members had a possessory interest in the converted funds.

136. Defendants intentionally interfered with that possession when they willfully and knowingly overcharged Plaintiff and class members' purchases in the guise of a "tax."

137. In this case, Defendants unlawfully converted at least thirteen separate sums of money from Plaintiff. These sums are specifically described below.

LLR Order #	Order Date	Amount	Plaintiff's Account Information	LuLaRoe Account into which Plaintiff's Funds were Deposited
29861754	Dec. 26, 2016	\$9.01	1005 (AmEx)	LuLaRoe Field East 951-737-7875
31829034	Jan. 7, 2017	\$4.10	1005 (AmEx)	LuLaRoe Field East 951-737-7875
24798256	Nov. 22, 2016	\$3.14	1005 (AmEx)	LuLaRoe Field East 951-737-7875
31693731	Jan. 7, 2017	\$3.78	1005 (AmEx)	LuLaRoe Field East 951-737-7875
39050252	Feb. 9, 2017	\$2.94	1005 (AmEx)	LuLaRoe Field East 951-737-7875
26560241	Dec. 2, 2016	\$3.84	1005 (AmEx)	LuLaRoe Field East 951-737-7875
33495707	Jan. 16, 2017	\$4.90	1005 (AmEx)	LuLaRoe Field East 951-737-7875

29858435	Dec. 26, 2016	\$5.18	1005 (AmEx)	LuLaRoe Field East 951-737-7875
30171984	Dec. 29, 2016	\$1.96	1005 (AmEx)	LuLaRoe Field East 951-737-7875
29662531	Dec. 23, 2016	\$3.04	1005 (AmEx)	LuLaRoe Field East 951-737-7875
26518270	Dec. 2, 2016	\$2.33	1005 (AmEx)	LuLaRoe Field East 951-737-7875
25525367	Nov. 27, 2016	\$3.30	1005 (AmEx)	LuLaRoe Field East 951-737-7875
39174878	Feb. 10, 2017	\$3.11	1005 (AmEx)	LuLaRoe Field East 951-737-7875

138. Through LuLaRoe's records, Plaintiff will identify each and every specific overcharge, including the exact account into which LuLaRoe converted Plaintiff's money.

139. Defendants' overcharges converted and misappropriated the funds of Plaintiff and the members of the class without their consent or authorization.

140. Defendants' conduct in intentionally and knowingly programming Audrey to unlawfully overcharge Plaintiff and class members was the legal cause of the loss of their funds.

141. Defendants' conduct was intentional, wrongful, reckless, and outrageous

142. Alternatively, if the conversion and/or misappropriation were not deliberate, it is the result of Defendants' recklessness and gross neglect.

143. This conversion and misappropriation of funds benefitted Defendants, while acting to the severe pecuniary disadvantage of Plaintiff and class members.

144. Accordingly, Plaintiff and the individual class members and are entitled to recover damages, interest, and punitive damages.

PRAYER FOR RELIEF

145. Wherefore, Plaintiff, on behalf of herself and the other members of this class, requests this Court award relief against Defendants as follows:

- a. Certifying the class and designating the named Plaintiff as the Class Representative, and her counsel as Class Counsel;
- b. Declaring Defendants' conduct described herein unlawful;
- c. Awarding Plaintiff and the proposed class members actual, statutory, and punitive damages;
- d. Awarding attorneys' fees and costs; and
- e. For such other relief as the Court may deem necessary or appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: January 7, 2019

Respectfully Submitted,

By: /s/ R. Bruce Carlson

Admitted Pro Hac Vice:

R. Bruce Carlson, Esq.

bcarlson@carlsonlynch.com

Kelly K. Iverson, Esq.

kiverson@carlsonlynch.com

Kevin W. Tucker, Esq.

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E. David Hoskins, Esq., No. EH2235

THE LAW OFFICES OF

E. DAVID HOSKINS, LLC

16 East Lombard Street, Suite 400

Baltimore, Maryland 21202

(410) 662-6500 (Tel.)

davidhoskins@hoskinslaw.com

Exhibit A

Sales Tax Memo

LuLaRoe
Sales Tax Update
April 20, 2016
Terrel Transtrum terrel@lularoe.com 2080-520-3895

Thank you wonderful LuLaRoe consultants and prospective consultants who see the opportunities and goodness of the company you are helping to create. Along the way, we are learning together, and we have tested your patience with our learning curve!

We promise you that each challenge is a stepping stone on our shared journey to success. And, we continue to meet each challenge with vision, faith and full energy. Thank you for coming along with us and for those who are encouragers. Our goal is get better and better in providing you with the information you need for your business, your customers, and your peace of mind.

This communication is about sales tax.

The time has come for LuLaRoe to help consultants with updated sales tax responsibilities. The legal and tax professionals at LuLaRoe have determined that there are three options for LuLaRoe, and we explain here what we are doing, how it works for you and your customers, and what will be happening in the near future.

The guiding principles of the LuLaRoe sales tax policy are these:

1. LuLaRoe consultants are responsible for charging and collecting sales tax.
2. Sales tax is not an exact science, especially on a national scale.
3. Consultants that use Audrey correctly fulfill their sales tax responsibilities.
4. LuLaRoe deposits all tax payments into a segregated trust account.
5. All collected taxes are timely reported and disbursed.
6. "Nexus" is the legal term that means that there is "sufficient physical presence" for requiring a consultant or a company to collect and pay tax on sales in that state.

As a good corporate citizen, LuLaRoe has considered three options for complying most effectively with the collective sales tax requirements of the taxing states while balancing the interests of consultants:

Option 1 – Charge and collect sales on the suggested retail price of LuLaRoe products at the time they are purchased by consultants from LuLaRoe.

For example, a consultant purchases products for \$500 from LuLaRoe and the suggested retail value of the products is \$1,000; the tax rate of the consultant, based on their business / home address is applied to the \$1,000 and collected at the time of the consultant's purchase. The consultant, then, is expected to calculate the tax



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on each sale to a customer, and thereby receive back the tax that they originally paid with their order.

A significant number of direct selling companies choose this simple option; however, LuLaRoe recognizes that there are downsides to this approach, particularly where self-purchase, flexible pricing, promotions and free products are important in the strategies of LuLaRoe independent consultants.

Option 2 – Compute and collect tax based on the home / business address of the independent consultant.

This option is the current option LuLaRoe has chosen while we wait for option 3 (below) to become available through our technology. Option 2 recognizes that sufficient “nexus” exists between the consultant’s state, the consultant, and LuLaRoe so that a consultant’s customer is doing business with LuLaRoe through the consultant. Think of it as if a customer comes to your place of business and buys from you at your location. You are obliged (if your state requires sales tax on clothing purchases) to collect from customers who come to your place of business, and in this option, this applies whether they are physically present or not. This is because the nexus exists by virtue of your relationship with LuLaRoe.

One of the biggest hurdles with this option is the burden to explain to your customers how this works, and it can confuse them or it may appear to create unfair advantages for consultants who live in states that do not require sales / use taxes.

However, it is the option that LuLaRoe will continue to follow for a short time. We are so sorry for the surprise disappearance of the “check-box” that once permitted the override of tax rates on products shipped to customers. This feature and how it should be used has been widely misunderstood.

Option 3 – Compute and collect sales tax based on the physical address where the sale takes place (the point of sale) or where the products are shipped to a customer.

This option is the preferred option of LuLaRoe, and the only thing keeping us from fully implementing is the final development and testing of the software that supports this policy. In the near future, we will shift to this option and consultants will enjoy the convenience and precision of tax rates being applied to a customer sale based on (a) the point of sale (such as the consultant’s home pop-up boutique, or (b) the customer’s shipping address.

For example, a consultant residing in Texas who sells to a customer in Oregon will enter the Oregon shipping address. The Oregon sales tax rate for that specific address will determine the sales tax rate that will apply (in this case, 0%), which the customer from Oregon will gladly pay (or not pay).

As another example, a Texas consultant who sells products to customers at their Texas home pop-up boutique will collect tax based on the rate that applies to that address.

Conclusion

It's important to remember that LuLaRoe does not create sales tax laws. We realize that there are different options for dealing with sales and use taxes, and we choose the option that serves customers, consultants, states and communities, and LuLaRoe in the very best ways.

We commit to doing a better job of keeping you informed of policy refinements.

If you have additional questions, we have prepared a more detailed document called "Sales Taxes and the LuLaRoe Consultant." We invite you to share it with your tax advisers and friends who like the details. To access, [click here](#).

We must care for each other more, and tax each other less.

--William "Bill" Archer, Jr. (U.S. Congressman, Texas)

Sales Tax Questions & Answers

Q: *Am I required to collect tax on orders shipped out of state?*

A: In general, consumers who are required to pay sales tax should, well, pay sales tax. Most states (for example, Idaho) require that resellers and retailers collect tax on a transaction. If an Idaho resident purchases a product online from a state that does not charge sales tax (for example, Oregon), the Idaho resident is obliged to voluntarily report a use tax to the state. Idaho provides a line in the annual income tax return to declare the value of items purchased in such ways (a phone purchase, Internet purchase, or purchase in Oregon but shipped to Idaho, for example). More and more states are requiring that if an out-of-state transaction occurs, the vendor must (either mandatory or voluntarily) collect the tax and pay back to the state based on the address to which the product is shipped. There are various efforts by the states to come together to enact a uniform national Internet sales tax, but so far the attempts have failed. It's probably only a matter of time.

What this means to LuLaRoe consultants is that LuLaRoe is stepping up and creating a system for collecting, reporting and remitting sales tax on final customer transactions. The alternative is that approximately 20 states (and growing) request that a direct selling company collect sales tax (calculated at the time of the sale to a Fashion Consultant) and that it be computed on the retail value of the order. Those states take the position that as a Fashion Consultant, you can then charge the sales tax when you sell the item and recover most or all of what you paid up front. The problem we see with this is that you would otherwise pay full sales tax (on suggested retail) on items that you personally use, give away for promotions, and discounted items.

For example, if you order \$2,500 in products from LuLaRoe (with an estimated retail value of \$3,750) and the state charges a 5% sales tax, you would pay an additional \$187.50 (5% x 3,750) at the time of your LuLaRoe order. It's easier for LuLaRoe, but we think that the better practice is for you to collect sales tax from the customer, and that it be calculated on the actual sale, as proven by the transaction. This is where Audrey comes in, and in the near future the technology will support this.

In the meantime, the sales tax discussion is (and always will be) an important discussion. And, as you will find, with nearly 10,000 taxing jurisdictions in the United States (states, counties, cities, neighborhoods), a uniform system by LuLaRoe will help to alleviate much of the administration and concerns of LuLaRoe Fashion Consultants.

Q: *What if I want to manage my own sales taxes?*

A: Those who simply do not wish to use the option offered by LuLaRoe can apply directly to their state for the permit to manage their own sales tax. Our work orders include programming Audrey to allow an exemption override when we receive proof (including the annual update) of a reseller's permit issued to the Fashion Consultant by the state. As these features are added, we will continue to inform consultants.

Q: What should I say to my customer who asks why they are being charge sales tax?

A: On this area, as in the Idaho example above, most individuals are either not aware that their states have a "voluntary" declaration and payment requirement; or they are aware and they choose not to comply. It's mostly about education and enforcement, however, and LuLaRoe is committed to being a welcome and responsible corporate citizen, inviting all Fashion Consultants to do the same.

Q: *My CPA or lawyer says that LuLaRoe is illegally requiring the collection of sales tax. What should I say?*

A: Some declare that the company is trying to pull something on them by collecting sales tax. LuLaRoe has prepared a white paper that explains the legal foundation for its position on sales tax. LuLaRoe strives to always do the right thing, and we take our responsibilities seriously. We invite healthy scrutiny and meaningful input, always looking for refinements in our policies and positions in order to keep the company strong and viable. Therefore, if your advisor has opinions to share, please ask them to correspond with LuLaRoe's Tax or Legal Department. The address is 830 E. Parkridge Avenue, Corona, CA 92879.

Also, for any other questions, please correspond with us at the address provided above. We welcome the opportunity to update our Questions & Answers.

Exhibit B

Sales Tax White Paper

Sales Tax and the LuLaRoe Consultant

by Terrel Transtrum

One of the more perplexing questions facing LuLaRoe is the administration of state and local sales taxes.

Every direct selling company, whether new or established, must be aware of its responsibilities for sales taxes. This applies to LuLaRoe. The focus of this article is to provide answers to the most frequently asked questions about sales tax and LuLaRoe.

In recent years, state and local jurisdictions have become increasingly aggressive in the sales tax area through both legislative changes and enforcement. The likelihood of being audited has increased. Companies must know, understand and comply with the various state sales- and use-tax laws.

Currently, 45 states, the District of Columbia and more than 10,000 local jurisdictions (counties, cities, etc.) impose a sales tax. Additional states do not tax apparel or if they do, the tax is on apparel priced above a specified threshold.

The majority of local taxes are collected by the respective state. But approximately 300 are "self administered," and if a company will collect the tax it must register with the jurisdiction itself.

Sales tax rates are subject to constant change, and vary state by state and even within most states that have local jurisdictions imposing a sales tax.

Exemptions vary from state to state; currently there is no uniform definition of exempt products, services or entities among the states. Some of the more common exemptions among the states are for food products; dietary, food and nutritional supplements; vitamins; and clothing.

With the enormous number of taxing jurisdictions, determining the correct tax and the complexity of filing numerous returns and making payments, dealing with states and localities with inconsistent laws and administrative procedures, and handling audits is a substantial compliance burden.

Responsibility for Collecting Sales Tax

The general rule of law places the responsibility to collect and remit sales on the retailer if the retailer has nexus.

April 21, 2016



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But the majority of states have statutory authority to impose the responsibility for collection of sales tax on a seller, even if that seller is not a retailer, if the state deems it necessary for the protection and efficient collection of its revenue.

Nexus (Public Law 86-272)

In the sales- and use-tax field, nexus refers to the contacts that exist between a taxpayer and a jurisdiction that seeks to subject the taxpayer to an obligation to enforce the jurisdiction's sales and use tax laws. Nexus literally means "ties." Well-established principles of federal constitutional law prohibit a jurisdiction that lacks contact with a taxpayer from exercising jurisdiction over the taxpayer.

Constitutional Basis of Nexus

There are two constitutional doctrines involved in the determination of whether there are ties between a state and a taxpayer. These two are the Due Process Clause and the Commerce Clause.

The Due Process Clause essentially asks whether it is fair for a state to require a taxpayer to enforce its sales- and use-tax collection laws. To decide, the courts must determine whether the taxpayer's activities in the state benefit from the protection and services afforded by the taxing state. For years, the test for determining whether the taxpayer enjoyed such benefits had been thought to require a physical presence in the taxing state. But the United States Supreme Court has now repudiated the physical presence test. The current test under the Due Process Clause for deciding if it is fair to tax someone is whether the taxpayer has "purposefully directed sales efforts toward residents of that state." If so, the Due Process Clause, by itself, will not act to bar the imposition of tax on a company that has no physical presence.

The Commerce Clause prohibits state taxes that interfere with commerce between the states. A state may tax interstate activities so long as: 1) the tax applies to activities that have substantial ties to the taxing state; 2) the tax is fairly apportioned to reflect the level of activities in the taxing state; 3) the tax does not discriminate against interstate business in favor of purely intrastate business; 4) the tax is fairly related to services provided by the taxing state.

Activities That Constitute Nexus

- Presence of agents, employees or other representatives in the state
- Affiliate nexus
- Independent agents
- Property in a state
- Border sales
- Trade shows

- Performance of services including training in the state
- Advertising
- Economic benefit

States Asserting Nexus for the Collection of Sales Taxes

At this time, California, Kansas, Michigan, Missouri, New Mexico, South Dakota, Texas, Washington, Wisconsin and Wyoming are asserting nexus to direct selling companies for the collection of sales and use taxes.

Fourteen states have enacted “public contracting nexus laws” that prevent a seller from receiving public-procurement contracts unless the seller and all affiliated sellers collect and remit tax on sales to in-state customers.

Michigan, Texas and Washington have a full-time staff of auditors whose responsibility is to locate companies that are not registered and to assess them for all taxes that have not been paid. These states have zeroed in on this industry. Several companies have recently undergone assessments.

Lately, several states have enacted new nexus rules or are in the process of doing so. It is not known at this time if these recently enacted rules and those pending will be applied to direct selling companies.

The issue of nexus for sales/use tax purposes is a complex one and there is a tremendous degree of inconsistency among the states. The large number of court cases in this area highlights the fact that the Due Process and Commerce Clause analysis is largely dependent on the specific facts and circumstances of each case. Among the state court systems, emerging issues, such as representational nexus, affiliate nexus, and economic nexus, evolve in the ever-changing market place. In addition, the changing landscape of state taxes, including the move to non-traditional, non-income based taxes adds complexity.

Collection of Sales Taxes

Based on current law, a company with independent sellers in California, Kansas, Michigan, Missouri, New Mexico, South Dakota, Texas, Washington, Wisconsin or Wyoming is well-advised to obtain an Agreement or Letter of Understanding, register and collect sales taxes imposed by the state and their local jurisdictions. LuLaRoe has started down this path, but with a point-of-sale technology that computes sales tax based on physical location of where the products are received, it’s a sound precaution as opposed to strategic consideration.

LuLaRoe will continue to review its operations in all states to determine if it must register, collect and remit in other states.

In practice, some states and local jurisdictions have accepted the LuLaRoe letter of understanding on a prospective basis and have not required any information or payment of taxes before the date of the agreement.

LuLaRoe Letter of Understanding

LuLaRoe has initiated letters of understanding before receiving and processing sales tax payments. There is a high standard for fiduciary responsibility that LuLaRoe has adhered to, including segregated trust account management and disbursement from the trust account in conjunction with reporting.

LuLaRoe has found that a direct selling company that registered, collected and remitted Virginia state and local sales taxes without an agreement was assessed by the state for failure to comply and was required to pay additional taxes, penalties and interest. See State of Virginia Public Document 98-122.

A direct selling company that registered, collected and remitted New York state and local taxes for more than 10 years without an agreement was assessed \$1.1 million for failing to have and comply with the terms of the agreement required by the state for direct selling, multilevel and network marketing companies.

In light of these significant authorities, LuLaRoe will continue to take all measures it deems necessary to be in compliance with sales tax laws and regulations.

Benefits for Fashion Consultants

The benefits that LuLaRoe expects fashion consultants to derive from administering the sales taxes on their behalf include, but are not limited to, the following:

- Conformance with contractual responsibilities as independent contractors
- Adherence to state laws governing their home state
- Reduced administrative burden
- Accuracy in application of rates to actual sales (versus blanket retail value)

Benefits for LuLaRoe

The benefits that LuLaRoe expects to derive from administering the sales taxes on behalf of its consultants include, but are not limited to, the following:

- Conformance with the Sarbanes-Oxley Act
- Controlling the compliance of sales taxes
- Reducing the compliance burden on the fashion consultants
- Good standing with our fashion consultants, the states and local jurisdictions

Options for Collecting, Remitting and Reporting

The guiding principles of the LuLaRoe sales tax policy are these:

1. LuLaRoe consultants are responsible for charging and collecting sales tax.
2. Sales tax is not an exact science, especially on a national scale.
3. Consultants that use Audrey correctly fulfill their sales tax responsibilities.
4. LuLaRoe deposits all tax payments into a segregated trust account.
5. All collected taxes are timely reported and disbursed.
6. "Nexus" is the legal term that means that there is "sufficient physical presence" for requiring a consultant or a company to collect and pay tax on sales in that state.

As a good corporate citizen, LuLaRoe has considered three options for complying most effectively with the collective sales tax requirements of the taxing states while balancing the interests of consultants:

Option 1 – Charge and collect sales on the suggested retail price of LuLaRoe products at the time they are purchased by consultants from LuLaRoe.

For example, a consultant purchases products for \$500 from LuLaRoe and the suggested retail value of the products is \$1,000; the tax rate of the consultant, based on their business / home address is applied to the \$1,000 and collected at the time of the consultant's purchase. The consultant, then, is expected to calculate the tax on each sale to a customer, and thereby receive back the tax that they originally paid with their order.

A significant number of direct selling companies choose this simple option; however, LuLaRoe recognizes that there are downsides to this approach, particularly where self-purchase, flexible pricing, promotions and free products are important in the strategies of LuLaRoe independent consultants.

Option 2 – Compute and collect tax based on the home / business address of the independent consultant.

This option is the current option LuLaRoe has chosen while we wait for option 3 (below) to become available through our technology. Option 2 recognizes that sufficient "nexus" exists between the consultant's state, the consultant, and LuLaRoe so that a consultant's customer is doing business with LuLaRoe through the consultant. Think of it as if a customer comes to the consultant's place of business and buys from the consultant at the business location. The consultant is obliged (if her state requires sales tax on clothing purchases) to collect from customers who come to her place of business, and in this option, this applies whether the customer is physically present or not. This is because the nexus exists by virtue of the consultant's relationship with LuLaRoe.

One of the biggest hurdles with this option is the burden to explain to customers how this works, and it can confuse them or it may appear to create unfair advantages for consultants who live in states that do not require sales / use taxes.

However, it is the option that LuLaRoe will continue to follow for a short time, until Option 3 is available for announcement and launch.

Option 3 – Compute and collect sales tax based on the physical address where the sale takes place (the point of sale) or where the products are shipped to a customer.

This option is the preferred option of LuLaRoe, and the only thing keeping LuLaRoe from fully implementing is the final development and testing of the software that supports this policy. In the near future, LuLaRoe will shift to this option and consultants will enjoy the convenience and precision of tax rates being applied to a customer sale based on (a) the point of sale (such as the consultant's home pop-up boutique), or (b) the customer's shipping address.

For example, a consultant residing in Texas who sells to a customer in Oregon will enter the Oregon shipping address. The Oregon sales tax rate for that specific address will determine the sales tax rate that will apply (in this case, 0%), which the customer from Oregon will gladly pay (or not pay).

As another example, a Texas consultant who sells products to customers at their Texas home pop-up boutique will collect tax based on the rate that applies to that address.

Summary and Conclusion

State and local sales taxes will continue to be a hot topic in tax policy. Given the current deficit states and local jurisdictions face, companies should expect that states and local jurisdictions will become even more aggressive in this area as they seek to increase their revenue without increasing taxes.

Direct selling companies that do not seriously address the sales tax question but ignore the issue altogether may learn too late that they face a significant liability for failure to comply. In the event the company does not collect the tax, and its sellers did not collect and remit the tax, the company may find itself liable for the entire amount, plus interest and penalties.

Because of this, LuLaRoe seeks to be fully informed, compliant and proficient in the administration of sales tax responsibilities on behalf of fashion consultants.

Terrel Transtrum is a licensed tax attorney with law degrees from University of Idaho (J.D.) and University of Miami (LL.M. – Masters of Law in Taxation). This paper is meant

as a broad reference tool to be used to highlight those areas that may warrant more in-depth study, and to advance a dialogue with tax professionals and advisors who are interested in LuLaRoe tax policy.

April 21, 2016

Exhibit C

Attorney General Correspondences



STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

June 14, 2016

SUITE 1400
445 MINNESOTA STREET
ST. PAUL, MN 55101-2131
TELEPHONE: (651) 296-7575

Ms. DeAnne Stidham, CEO
LuLaRoe
830 East Parkridge Avenue
Corona, CA 92879

Re: Ms. Jessica Kingston
File No: CKM/2016/5281175/C

Dear Ms. Stidham:

This Office recently asked LuLaRoe to respond to concerns received from Ms. Jessica Kingston. To date, we have not yet received any response to our letter to LuLaRoe.

I enclose another copy of our initial correspondence to LuLaRoe and ask that you respond to this Office within seven (7) days.

I appreciate your attention to this matter. Please contact me at the telephone number listed below if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Colin Martin".

COLIN MARTIN
Citizen Assistance Analyst
(651) 355-0712 (Voice)
(651) 282-2155 (Fax)

Enclosure: Correspondence to LuLaRoe

cc: Ms. Jessica Kingston





COPY

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

May 31, 2016

102 STATE CAPITOL
ST. PAUL, MN 55155
TELEPHONE: (651) 296-6196

Ms. DeAnne Stidham, CEO
LuLaRoe
830 East Parkridge Avenue
Corona, CA 92879

Dear Ms. Stidham:

This Office was contacted by Ms. Jessica Kingston, whose address is 5801 Brookview Avenue, Edina, Minnesota 55424.

Ms. Kingston states that LuLaRoe charged her \$3.10, \$3.83, and \$7.88 sales tax on clothing for general use she recently purchased online. *See* Invoices, enclosed. Ms. Kingston was aware at the time of her purchases that clothing for general use is exempt from sales tax in Minnesota. Enclosed please find Minnesota Department of Revenue Fact Sheet 105, *Clothing*, which provides examples of nontaxable clothing for general use. Ms. Kingston would like your company to refund the sales tax it charged her. She has asked for any assistance that this Office can provide.

I ask that you review this matter as quickly as possible and address Ms. Kingston's concerns. In particular, I ask that LuLaRoe review and correct its systems to be in compliance with Minnesota sales tax law concerning clothing for general use. I also ask that LuLaRoe determine the number of other Minnesotans who need to be refunded for paying sales tax on clothing for general use and footwear, calculate the amount that needs to be refunded, and provide this information to this Office. I ask that you send a written response to this Office within ten (10) days of receiving this letter. Please provide a response to this Office at the following address:

Chuck Ferguson
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131
Fax: (651) 282-2155

Ms. DeAnne Stidham, CEO
LuLaRoe
May 31, 2016
Page 2

I thank you for your attention to this matter.

Sincerely,

LORI SWANSON
Attorney General

Enclosures: Invoices
Minnesota Department of Revenue Fact Sheet 105, *Clothing*

cc: Ms. Jessica Kingston
Mr. Chuck Ferguson, Manager of the Consumer Services Division

LLR000692

5/16/2016

Gmail - Purchase receipt from Mary Wierzbicki



Jessi Kingston <jakegetswinston@gmail.com>

Purchase receipt from Mary Wierzbicki

1 message

Mary Wierzbicki <receipts@mylularoe.com>
Reply-To: Mary Wierzbicki <lularoemarywierzbicki@gmail.com>
To: Jessi Kingston <jakegetswinston@gmail.com>

Fri, May 13, 2016 at 9:42 PM



Jessi Kingston

Order #5309694 CARD

Shipping

Jessi Kingston
5801 Brookview Ave
Edina, MN
55424

Billing

5801 Brookview Ave
Edina, MN
55424

5/16/2016

Gmail - Purchase receipt from Mary Wierzbicki

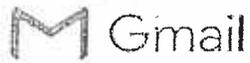
Amount \$ 51.00

Tax \$ 3.83

Total Paid \$ 54.83

	Model	XL	na
Nicole		1	
First Class Shipping			1
Total Items In This Order			2

Jay



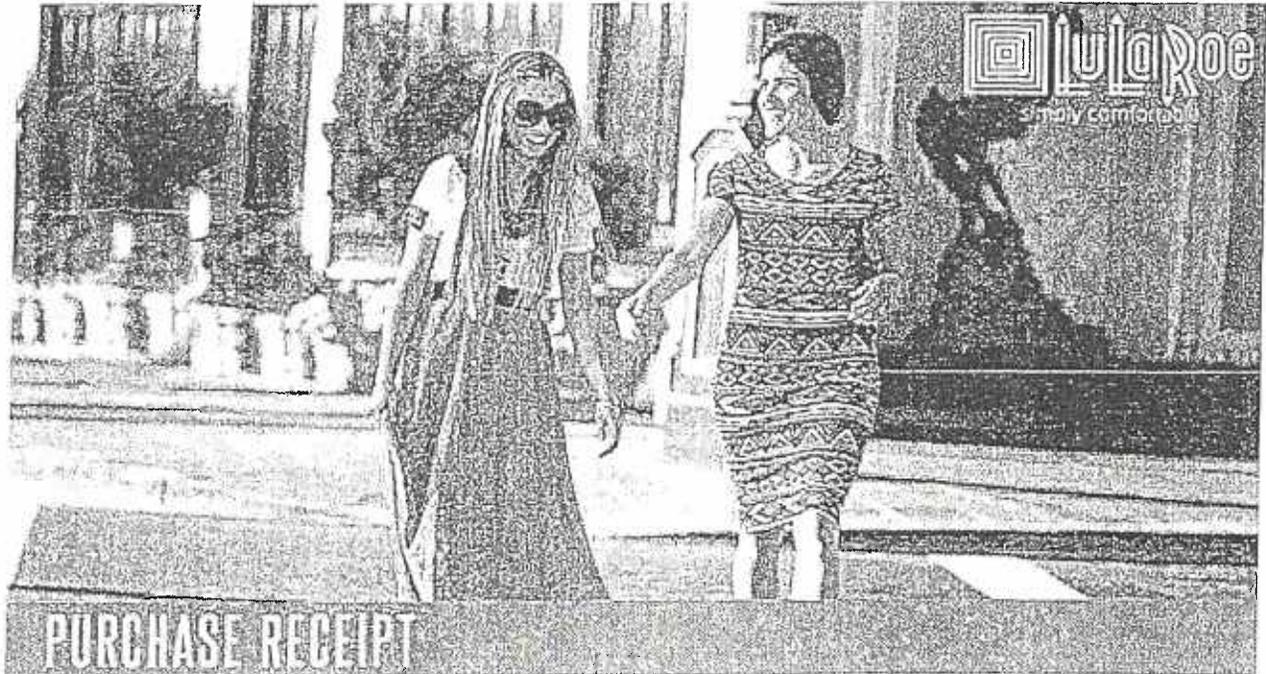
Jessi Kingston <jakegetswinston@gmail.com>

Invoice From: Brooke Stewart

1 message

Brooke Stewart <invoices@mylularoe.com>
Reply-To: Brooke Stewart <lularoebybrookestewart@ugfl.net>
To: Jessie Kingston <jakegetswinston@gmail.com>

Wed, May 11, 2016 at 9:30 PM



Jessie Kingston

Thank you for your order. Free Shipping over \$50 ;)

Balance Due

This invoice has a balance of \$112.88 Pay Here: <https://lularoeobsessionvip.mylularoe.com/pay-invoice/eyJpdil6ljdXWHNBbnZuSDRHb2lnU3dRT3plcVE9PSIsInZhbHVlljoiVitnVUdkYWNRQUNUNmdcL0U0ekZVWHc9PSIsIm1hYyI6ImU0NmIxM2RiNTMwMzNhMGM0MzUyZTBhNTIKN2E5NTM4NDA4MmFkZjcwMjUzOWE5NzIxMGU4MjU2YyOGU3N2YifQ==>

Tax \$7.88
Subtotal \$105.00
Total \$112.88
Balance \$112.88

Model

L

w12/2016

Gmail - Invoice From Brooke Stewart

Irma

3

Total Items In This Order

3

5/16/2016

Gmail - Invoice From: Elizabeth Margeson



Jessi Kingston <jakegetswinston@gmail.com>

Invoice From: Elizabeth Margeson

1 message

Elizabeth Margeson <invoices@mylularoe.com>
Reply-To: Elizabeth Margeson <lularoelizabeth@gmail.com>
To: Jessi Kingston <jakegetswinston@gmail.com>

Fri, May 13, 2016 at 11:07 PM



Jessi Kingston

Thank you Jessi! Enjoy :) Elizabeth

Balance Due

This invoice has a balance of \$41.10 Pay Here: <https://elizabethmargeson.mylularoe.com/pay-invoice/eyJpdil6ljRmZmgzaFR6KziILXC9iK2tzZiVxNzIRPT0iLCJ2YWx1ZSI6InNNZjMzQVRBTncxMFVhOWIZZWx0UEE9PSIsIm1hYyI6IjkyMzViY2Y0MGVmMDg4Y2NmZDBmMTc4ZDViOGY5NDIknWFmYmUxMzY0Y2I1MWRIYTEwNTImMmQ2ZTBhNjg1NjQifQ==>

Tax \$3.10
Subtotal \$38.00
Total \$41.10
Balance \$41.10

Model 2XL na

5/16/2016

Gmail - Invoice From: Elizabeth Margeson

Cassie

1

Priority Shipping

1

Total Items In This Order

2



STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

May 31, 2016

102 STATE CAPITOL
ST. PAUL, MN 55155
TELEPHONE: (651) 296-6196

Ms. DeAnne Stidham, CEO
LuLaRoe
830 East Parkridge Avenue
Corona, CA 92879

Dear Ms. Stidham:

This Office was contacted by Ms. Jessica Kingston, whose address is 5801 Brookview Avenue, Edina, Minnesota 55424.

Ms. Kingston states that LuLaRoe charged her \$3.10, \$3.83, and \$7.88 sales tax on clothing for general use she recently purchased online. *See* Invoices, enclosed. Ms. Kingston was aware at the time of her purchases that clothing for general use is exempt from sales tax in Minnesota. Enclosed please find Minnesota Department of Revenue Fact Sheet 105, *Clothing*, which provides examples of nontaxable clothing for general use. Ms. Kingston would like your company to refund the sales tax it charged her. She has asked for any assistance that this Office can provide.

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Ms. DeAnne Stidham, CEO
LuLaRoe
May 31, 2016
Page 2

I thank you for your attention to this matter.

Sincerely,

LORI SWANSON
Attorney General

Enclosures: Invoices
Minnesota Department of Revenue Fact Sheet 105, *Clothing*

cc: Ms. Jessica Kingston
Mr. Chuck Ferguson, Manager of the Consumer Services Division

LLR000700

MINNESOTA · REVENUE

www.revenue.state.mn.us

Clothing

105

Fact
Sheet**Sales Tax Fact Sheet 105**

Clothing is exempt from Minnesota sales and use tax. Clothing means all human wearing apparel suitable for general use. The exemption for clothing does not apply to fur clothing, clothing accessories or equipment, sports or recreational equipment, and protective equipment, which are taxable.

Examples of nontaxable clothing for general use

aprons (household and shop)	coveralls, work uniforms, work clothes, etc.	incontinent briefs and inserts	snowmobile suits and boots
athletic supporters	dancing costumes	insoles for shoes	slippers
baby receiving blankets	diaper inserts	jackets and coats	sneakers
bandanas	diapers (cloth and disposable, baby or adult)	karate uniforms	sun visors
bath robes	disposable clothing for general use	lab coats	sweat bands and arm bands
beach capes and coats	ear muffs	leotards and tights	sweat shirts and sweat suits
belts	footlets	mittens	socks and stockings
bibs	formal apparel	name patches or emblems sold attached to clothing	steel toe shoes and boots
blaze orange jackets and pants	garters and garter belts	neckties	suspenders
boots	girdles	overshoes	swim suits and caps
bowling shirts and shoes	gloves for general use (cloth, leather, canvas, latex, vinyl, etc.)	pantyhose	tennis shoes
bridal apparel	gym suits and shorts	rainwear (ponchos, jackets, shirts and pants)	T-shirts and jerseys
camouflage jackets and pants	hats	rubber pants	tuxedos
caps and hats (ski, hunting, fishing, golf, baseball)	hosiery	sandals	undergarments
costumes	hospital scrubs	scarves	uniforms (athletic and nonathletic)
	hunting jackets and pants	shoes and shoe laces	wedding apparel
		shower caps	

Examples of taxable clothing accessories or equipment

Clothing accessories or equipment means incidental items worn on the person or in conjunction with clothing.

Appliqués, patches or emblems sold separately	cell phone accessories	hair bows	sunglasses (nonprescription)
backpacks	chevrons (badges or insignias)	hairnets	tiaras
bags (overnight, beach, etc.)	cosmetics	handbags	umbrellas
barrettes	costume masks (sold separately from costume)	handkerchiefs	wallets
belt buckles (sold separately from belt)	crib blankets, sheets, mattress pads, rubber sheets, etc.	headbands	watchbands
billfolds	doll clothes	hip waders	watches
briefcases	hair clips	jewelry	wigs, hair extensions, or hair pieces
button covers		money belts and clips	
		perfume	
		pet clothing	
		purses	

Sales and Use Tax Division — Mail Station 6330 - St. Paul, MN 55146-6330
Phone: 651-296-6181 or 1-800-657-3777
Minnesota Relay (TTY) 711
Email: salesuse.tax@state.mn.us

This fact sheet is intended to help you become more familiar with Minnesota tax laws and your rights and responsibilities under the laws. Nothing in this fact sheet supersedes, alters, or otherwise changes any provisions of the tax law, administrative rules, court decisions, or revenue notices. Alternative formats available upon request.

Sports or recreational equipment

Sports or recreational equipment means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. Sports and recreational equipment is taxable.

Examples of taxable sports or recreational equipment:

ballet and tap shoes	masks or shields, protective,
cleated or spiked athletic shoes	such as baseball masks, chest protectors, mouth guards or shin guards
fishermen's wading vests and jackets	safety shields and visors, (detachable) for helmets if sold separately
fishing boots (hip boots and waders)	shell belts and vests
gloves for use only in a sporting or athletic activity (baseball, bowling, boxing, hockey, golf, etc.)	shoulder pads and padding
goggles (nonprescription)	skates (roller, ice)
hand, elbow, knee guards	ski boots
helmets (all types)	skin diving suits, goggles, nose plugs, ear plugs, fins, equipment, etc.
hunting or game pouches and carriers	sports shoes (cleated or spiked)
leather glove guards	waders
life preservers and vests	wet suits and fins

Protective equipment

Protective equipment means items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. Protective equipment is taxable.

Examples of taxable protective equipment

breathing masks	hard hats and liners
chaps	helmets (all types)
clean room apparel & equipment (reusable and disposable)	paint or dust respirators
disposable shoe coverings	reflective or safety vests, aprons, gloves, suits, etc.
ear and hearing protectors	safety belts
face masks for medical use	safety glasses and goggles (nonprescription)
face shields	tool belts
finger guards	welding gloves and masks
gloves designed for protection against injury that are not suitable for general use are taxable (e.g., welding, metal boning gloves)	

Fur clothing

Beginning July 1, 2008, clothing made of fur is subject to sales tax. Prior to July 1, 2008, fur clothing was subject to the gross receipts tax.

Fur clothing means human wearing apparel that is required to be labeled as a fur product and the fur is the component of main value (that is, the value of fur is more than three times the value of the next most valuable component.) Fur means any animal skin with the hair, fleece, or fur fibers attached, but does not include leather or suede or other animal skins where the fur fiber has been completely removed in the processing of the skins.

Sewing materials and equipment

Sewing materials are not considered clothing. However, there is a separate exemption for sewing materials that become part of clothing.

Sewing materials mean fabric, yarn, thread, zippers, interfacing, buttons, trim, and other items that are usually directly incorporated into the construction of clothing, regardless of whether it is actually used for making clothing.

The exemption does not apply to batting, foam, embroidery thread or fabric specifically manufactured for arts and crafts projects, or other materials for craft projects. These items are taxable.

Sewing equipment is taxable. Sewing equipment includes knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures and thimbles.

Alterations, repairing and storing clothing

Charges for repairing, altering and storing clothing are taxable. Charges for laundering, cleaning, pressing and dyeing clothing are also taxable.

Examples of taxable services

Repairing or patching clothing (replacing zippers, buttons, resewing seams, etc.)
Altering clothing (shortening or lengthening, fitting, restyling lapels or ties, etc.)
Embroidery or screen printing done on clothing provided by the customer
Hat blocking
Fur (natural and synthetic) cleaning, repairing and storing
Laundry, dry cleaning and pressing services
Dyeing clothing

Services purchased for resale: Taxable services may be purchased exempt for resale if the buyer gives the seller a fully completed exemption certificate, Form ST3. For example, a clothing retailer may contract with a tailor to provide alterations on sales of new clothing. The clothing retailer buys the alterations exempt for resale. If the clothing retailer includes the alteration charges in the sales price of the clothing, no sales tax is due. If the alteration charges are separately stated on the invoice to the customer, the alteration charges are taxable.

Examples of nontaxable services

Clothing alterations that are included in the purchase price of an item
Seamstress' or tailor's charges for designing and/or sewing new clothing
Custom-made shoes
Embroidery or screen printing done on clothing before the sale
Shoe repair, dyeing, stretching and shining

References

M. S. 297A.61, Subd. 46, Fur clothing
M. S. 297A.67, Subd. 8, Clothing
M. S. 297A.67, Subd. 9, Baby products
M. S. 297A.67, Subd. 27, Sewing materials

Other fact sheets that you may need:

Items for Business Use Outside Minnesota, #110
Laundry and Cleaning Services, #120
Local Sales and Use Taxes, #164
Sales to Governments, #142
Use Tax for Businesses, #146
Use Tax for Individuals, #156



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

BUREAU OF CONSUMER PROTECTION
Harrisburg Office
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
(717) 787-9707
May 16, 2016

LuLaRoe
830 W. Parkridge Avenue
Corona, CA 92879

Re: Stacey Chapman
BCP-16-05-007436

Dear Sir/Madam:

Enclosed please find a copy of a consumer complaint that was filed with the Bureau of Consumer Protection. Our office would like to assist you and this consumer in bringing this matter to a mutually satisfactory conclusion. To aid us in our mediation efforts, please provide a response to the consumer's complaint.

A complaint is sometimes caused by a mistake or misunderstanding that a business is eager to learn about and correct. In other instances, a complaint can often be addressed with an explanation of the circumstances behind the transaction or other information which responds to the consumer's concerns. In either case, by responding to a consumer complaint you can usually preserve "goodwill" for your business.

We request that you provide a prompt written reply so that we may amicably resolve this complaint. Please respond within twenty-one (21) days from the above date.

Very truly yours,

A handwritten signature in black ink that reads "Zachery Everidge".

Zachery Everidge
Agent

m1
Enclosure
21

LLR000672

ZF 130/215-176

1408

Arndt, Sharon E.

From: noreply@attorneygeneral.gov
Sent: Friday, April 29, 2016 6:55 AM
To: Complaint Forms PPD BCP Admin
Subject: Online Complaint Form Details

Your Consumer Complaint Form has been submitted to Pennsylvania Office of Attorney General. Here are the details you have submitted.

Please Note: As part of the complaint handling process, the Bureau may send a copy of this form to the individual or company against whom your complaint is filed. Failure to supply your complete and accurate contact information may result in delayed processing of your complaint.

*indicates required field

Do you have a contract or other documentation? Not selected

Age Group 35 - 59

Are you a Veteran? Not selected

Are you on active duty? Not selected

RECEIVED
MAY 01 2016
PA Office of Attorney General
Consumer Protection - Harrisburg

Your Information

Title Mrs
Your Name* Stacey Chapman
Address* 701 Liberty Road
City* Watsonstown
State* PA
County* NORTHUMBERLAND
Zip Code* 17777
Daytime Phone Number* 5703374480
Home Phone Number* 5703374480
Email staceymlewis@att.net

Are you filling out this form on behalf of someone else? Not selected

Not provided

What action was taken

Not provided

Complaint Information

Please explain your complaint:

Try to be brief, but be sure to tell WHAT happened, WHEN it happened and WHERE it happened. Be specific about any oral statements the business made to you, ESPECIALLY those that influenced you to deal with the company. Describe events in the order in which they happened.

Complaint Summary*

Pennsylvania is a sales tax free state, yet LuLaRoe is charging sales tax. They base it off of the consultants location, instead of where it's being shipped. Is this legal?

What would you like the business to do to settle your complaint?

I would like my sales tax back. I'd also like them to stop taxing customers in states with no clothing sales tax.

PLEASE READ CAREFULLY

The Attorney General cannot act as your private attorney. As a law enforcement agency, the primary function of the Office of Attorney General is to represent the public at large by enforcing laws prohibiting fraudulent or deceptive trade practices that impact the public interest.

The Attorney General, through the Bureau of Consumer Protection, provides a mediation service to consumers where an attempt may be made to mediate your individual consumer complaint if it falls within the jurisdiction of the office. Please be advised that the information you provide will be shared with the party against which you have filed a complaint. Additionally, your complaint may be shared with or referred to other Governmental Law Enforcement or Regulatory Agencies.

Your complaint will also be kept on file with our office and the information contained therein may be used to establish violations of Pennsylvania Law. Attached to this complaint form is an informational sheet which will help you in completion of the complaint form and also will explain in greater detail the mediation process.

By completing and submitting this complaint form, I am adopting this as my online signature and I authorize the Bureau of Consumer Protection to contact the party(ies) against which I have filed a complaint in an effort to reach an amicable resolution. I further authorize the party(ies) against which I have filed a complaint to communicate with and provide information related to my complaint to the Bureau of Consumer Protection. I verify that I have read and understand the informational sheet about this process; and, that the information provided is true and correct to the best of my knowledge, information and belief.

Date of Purchase 04/21/2016

Purchase Price 48.23

Legal Representation

Have you retained an attorney No

Attorney's Name Not provided

Address Not provided

City Not provided

State Not selected

County NONE SPECIFIED

Zip Code Not provided

Daytime Phone Number Not provided

Have you filed a legal action

No

If yes, please state when

Not provided

Where

Not provided

What decision was made

Not provided

Other Agencies

Have you contacted other agencies

No

Agencies Contacted

Age Group	Not Selected
Are they a Veteran?	Not selected
Are they on active duty?	Not selected
Title	Not selected
Their Name*	Not provided
Address*	Not provided
City*	Not provided
State*	PA
County	NONE SPECIFIED
Zip Code*	Not provided
Daytime Phone Number	Not provided
Home Phone Number	Not provided
Email	Not provided

Who is the complaint against?

Business Name*	LuLaRoe
Person to whom you spoke	None
Address	830 W Parkridge Avenuc
City	Corona
State*	CA
County	None Specified
Zip Code	92879
Phone Number	951-737-7875
Product or Service Purchased	Clothing



June 28, 2016

Mr. Chuck Ferguson
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131

Re: Minnesota Attorney General's Office Letter dated May 31, 2016

Dear Mr. Ferguson:

This letter is written in response to the Minnesota Attorney General's Office letter dated May 31, 2016 regarding Ms. Jessica Kingston's payment of sales tax on clothing.

LLR, Inc. (hereinafter "LuLaRoe" or "the Company") is a direct selling company headquartered in Corona, California. LuLaRoe sells a collection of women's clothing items to independent contractors who then sell to retail customers. The independent contractors to whom the Company sells are known as Independent Fashion Consultants (hereinafter "Independent Fashion Consultants"). Each Independent Fashion Consultant is an independent business owner who has an independent contractor relationship with the Company.

In general, Independent Fashion Consultants purchase inventory from the Company for resale to third-party retail customers. As a convenience to Independent Fashion Consultants, the Company offers the use of an online invoice generating system. At point of sale, the Independent Fashion Consultant will enter the customer's clothing purchase in the Company's online invoice generating system. An electronic invoice is created and emailed to the customer. This electronic invoice includes the quantity and description of the clothing sold along with the relevant sales tax (if any). Customers pay the electronic invoice by entering credit or debit card information online. Once paid, the Independent Fashion Consultant receives notification and delivers or ships the inventory to the customer.

In this past, the Company's invoicing system calculated sales tax based on the address of the Independent Fashion Consultant rather than the address of the ultimate retail customer. In the instant case, Ms. Kingston purchased clothing from an Independent Fashion Consultant living outside of Minnesota. Sales tax was incorrectly added to her invoice based on the Independent Fashion Consultant's address rather than Ms. Kingston's Edina, Minnesota address.

The Company is aware of this system limitation and its software development team is currently correcting the electronic invoicing system, which will calculate sales tax based on the address of the ultimate retail customer. Absent this address issue, the sales tax system has been in compliance with Minnesota's sales tax law concerning clothing for general use.



LuLaRoe has refunded \$33.27 to Ms. Kingston.

Generally, collecting and remitting sales tax is the responsibility of the Independent Fashion Consultants as independent business owners. However, as a further convenience to its Independent Fashion Consultants, the Company has voluntarily agreed to collect and remit Minnesota sales tax on behalf of its Independent Fashion Consultants. This agreement is evidenced by Minnesota Form ST80, "Direct Selling Company Affidavit," dated April 1, 2015 (enclosed).

Should you have any questions, please free to contact me by phone or email.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jamie Ellis', is written over a horizontal line.

Jamie Ellis
Senior Tax Analyst
LLR, Inc.
830 E. Parkridge Ave.
Corona, CA 92879
Phone: (909) 573-6694
Email: Jamie@lularoe.com

Enclosures: Minnesota Attorney General's Office dated May 31, 2016
Minnesota Form ST80, "Direct Selling Company Affidavit," dated April 1, 2015



June 28, 2016

Dear Ms. Kingston,

Thank you for your inquiry.

LuLaRoe's practice has been to set the sales tax charged on customer orders based on the address of the Fashion Consultant, where the pop-up boutique often takes place. In certain instances when the Fashion Consultant and customer live in different sales tax jurisdictions (e.g., different states), sales tax may be charged incorrectly.

For example, a Fashion Consultant living in Wisconsin sells LuLaRoe clothing to a customer in Minnesota. In Minnesota, clothing generally is not subject to sales tax. However, LuLaRoe's order system calculated and remitted sales tax based on the Fashion Consultant's Wisconsin address and Wisconsin sales tax laws, when no sales tax should have been charged in this scenario.

LuLaRoe's software development team is making the changes to calculate sales tax based on the address of the ultimate customer.

Since sales tax on your various orders purchased appears to have similarly been miscalculated, we are processing a credit for \$33.27 which will be will be mailed to you.

We're sorry for any inconvenience this has caused, and sincerely thank you for buying and enjoying our great LuLaRoe apparel!

Sincerely,



Jamie Ellis
Senior Tax Analyst
LLR, Inc.
830 E. Parkridge Ave.
Corona, CA 92879
Phone: (909) 573-6694
Email: Jamie@lularoe.com



June 28, 2016

Mr. Zachery Everidge
Bureau of Consumer Protection
Harrisburg Office
15th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

Re: Stacey Chapman, BCP-16-05-007436

Dear Mr. Everidge:

This letter is written in response to the Bureau of Consumer Protection letter dated May 16, 2016 regarding Ms. Stacey Chapman's payment of sales tax on clothing.

LLR, Inc. (hereinafter "LuLaRoe" or "the Company") is a direct selling company headquartered in Corona, California. LuLaRoe sells a collection of women's clothing items to independent contractors who then sell to retail customers. The independent contractors to whom the Company sells are known as Independent Fashion Consultants (hereinafter "Independent Fashion Consultants"). Each Independent Fashion Consultant is an independent business owner who has an independent contractor relationship with the Company.

In general, Independent Fashion Consultants purchase inventory from the Company for resale to third-party retail customers. As a convenience to Independent Fashion Consultants, the Company offers the use of an online invoice generating system. At point of sale, the Independent Fashion Consultant will enter the customer's clothing purchase in the Company's online invoice generating system. An electronic invoice is created and emailed to the customer. This electronic invoice includes the quantity and description of the clothing sold along with the relevant sales tax (if any). Customers pay the electronic invoice by entering credit or debit card information online. Once paid, the Independent Fashion Consultant receives notification and delivers or ships the inventory to the customer.

In this past, the Company's invoicing system calculated sales tax based on the address of the Independent Fashion Consultant rather than the address of the ultimate retail customer. In the instant case, Ms. Chapman purchased clothing from an Independent Fashion Consultant living outside of Pennsylvania. Sales tax was incorrectly added to her invoice based on the Independent Fashion Consultant's address rather than Ms. Chapman's Watsontown, Pennsylvania address.

The Company is aware of this system limitation and its software development team is currently correcting the electronic invoicing system, which will calculate sales tax based on



the address of the ultimate customer. Absent this address issue, the sales tax system has been in compliance with Pennsylvania's sales tax law concerning clothing for general use.

LuLaRoe has refunded the sales tax to Ms. Chapman.

Generally, collecting and remitting sales tax is the responsibility of the Independent Fashion Consultants. However, as a further convenience to its Independent Fashion Consultants, the Company has voluntarily agreed to collect and remit Pennsylvania sales tax on behalf of its Independent Fashion Consultants. This agreement is evidenced by the Pennsylvania Sales and Use Tax Precollection Agreement (enclosed).

Should you have any questions, please free to contact me by phone or email.

Sincerely,



Jamie Ellis
Senior Tax Analyst
LLR, Inc.
830 E. Parkridge Ave.
Corona, CA 92879
Phone: (909) 573-6694
Email: Jamie@lularoe.com

Enclosures: Pennsylvania Bureau of Consumer Protection Letter dated May 16, 2016
Pennsylvania Sales and Use Tax Precollection Agreement



June 28, 2016

Dear Stacey Chapman,

Thank you for your inquiry.

LuLaRoe's practice has been to set the sales tax charged on customer orders based on the address of the Fashion Consultant, where the pop-up boutique often takes place. In certain instances when the Fashion Consultant and customer live in different sales tax jurisdictions (e.g., different states), sales tax may be charged incorrectly.

For example, a Fashion Consultant living in Wisconsin sells LuLaRoe clothing to a customer in Minnesota. In Minnesota, clothing generally is not subject to sales tax. However, LuLaRoe's order system calculated and remitted sales tax based on the Fashion Consultant's Wisconsin address and Wisconsin sales tax laws, when no sales tax should have been charged in this scenario.

LuLaRoe's software development team is making the changes to calculate sales tax based on the address of the ultimate customer.

Since sales tax on your various orders purchased appears to have similarly been miscalculated, we are processing a credit for \$10.50 which will be mailed to you.

We're sorry for any inconvenience this has caused, and sincerely thank you for buying and enjoying our great LuLaRoe apparel!

Sincerely,



Jamie Ellis
Senior Tax Analyst
LLR, Inc.
830 E. Parkridge Ave.
Corona, CA 92879
Phone: (909) 573-6694
Email: Jamie@lularoe.com

Exhibit D

Plaintiff's Purchase Receipts with Tax

[REDACTED]

----- Forwarded message -----

From: **Stephanie Reid** <receipts@mylularoe.com>

Date: Mon, Dec 26, 2016 at 7:05 PM

Subject: Purchase receipt from Stephanie Reid

To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #29861754 CARD

Shipping

Lauren Porsch

[REDACTED]

[REDACTED]

New York, NY

10033

Billing

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Amount \$ 106.00

Tax \$ 9.01

Total Paid \$ 115.01

	Model	M	XL	na
Irma		1		
Amelia			1	
Priority Shipping and Handling				1
Total Items In This Order				3

[REDACTED]

----- Forwarded message -----

From: Allison Birdsong <receipts@mylularoe.com>

Date: Sat, Jan 7, 2017 at 10:50 PM

Subject: Purchase receipt from Allison Birdsong

To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #31829034 CARD

Shipping

Lauren Porsch

[REDACTED]

[REDACTED]

New York, NY

10033

Billing

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Amount \$ 58.50

Tax \$ 4.10

Total Paid \$ 62.60

	Model	L	na
Carly		1	
First Class Shipping and Handling			1
Total Items In This Order			2

[REDACTED]

----- Forwarded message -----

From: **April Levens** <receipts@mylularoe.com>

Date: Tue, Nov 22, 2016 at 10:35 PM

Subject: Purchase receipt from April Levens

To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #24798256 CARD

Shipping

Lauren Porsch

[REDACTED]

New York, NY

10033

Billing

[REDACTED]

[REDACTED]

Amount \$ 38.00
Tax \$ 3.14
Total Paid \$ 41.14

	Model	M	NA
Irma		1	
Shipping and Handling			1
Total Items In This Order			2



----- Forwarded message -----

From: **Brooke Butcher** <receipts@mylularoe.com>

Date: Sat, Jan 7, 2017 at 11:09 AM

Subject: Purchase receipt from Brooke Butcher

To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #31693731 CARD

Shipping

Lauren Porsch



New York, NY

10033

Billing



Amount \$ 54.00

Tax \$ 3.78

Total Paid \$ 57.78

	Model	NA	TC
Leggings Tall and Curvy			2
Shipping and Handling		1	
Total Items In This Order			3

[REDACTED]

----- Forwarded message -----

From: **Jennifer Biamonte** <receipts@mylularoe.com>

Date: Thu, Feb 9, 2017 at 2:12 PM

Subject: Purchase receipt from Jennifer Biamonte

To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #39050252 CARD

Shipping

Lauren Porsch

[REDACTED]

[REDACTED]

New York, NY

10033

Billing

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Amount \$ 63.50

Tax \$ 2.94

Total Paid \$ 66.44

	Model	M	Tall & Curvy	NA
Irma		1		
Leggings Tall and Curvy			1	
Shipping and Handling				1
Total Items In This Order				3

[REDACTED]

----- Forwarded message -----

From: **Jessica Pepka** <receipts@mylularoe.com>

Date: Fri, Dec 2, 2016 at 11:28 PM

Subject: Purchase receipt from Jessica Pepka

To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #26560241 CARD

Shipping

Lauren Porsch

[REDACTED]

New York, NY
10033

Billing

[REDACTED]

Amount \$ 48.00

Tax \$ 3.84

Total Paid \$ 51.84

	Model	XL	na
Elegant Randy		1	
Priority Shipping and Handling			1
Total Items In This Order			2

[REDACTED]

----- Forwarded message -----

From: **Jessica Van Fredenberg** <receipts@mylularoe.com>

Date: Mon, Jan 16, 2017 at 11:00 PM

Subject: Purchase receipt from Jessica Van Fredenberg

To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #33495707 CARD

Shipping

Lauren Porsch

[REDACTED]

[REDACTED]

New York, NY

10033

Billing

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Amount \$ 58.00

Tax \$ 4.90

Discount \$ 1.00
Total Paid \$ 61.90

	Model	M	NA
Carly		1	
Shipping and Handling			1
Total Items In This Order			2

[REDACTED]

----- Forwarded message -----

From: **Kathi Slatter** <receipts@mylularoe.com>

Date: Mon, Dec 26, 2016 at 6:10 PM

Subject: Purchase receipt from Kathi Slatter

To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #29858435 CARD

Shipping

Lauren Porsch

[REDACTED]

New York, NY

10033

Billing

[REDACTED]

[REDACTED]

Amount \$ 74.00
Tax \$ 5.18
Total Paid \$ 79.18

	Model	S	M	na
Irma		1	1	
First Class Shipping and Handling				1
Total Items In This Order				3



----- Forwarded message -----

From: **Kathi Slatter** <receipts@mylularoe.com>

Date: Thu, Dec 29, 2016 at 6:32 AM

Subject: Purchase receipt from Kathi Slatter

To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #30171984 CARD

Shipping

Lauren Porsch

[REDACTED]

[REDACTED]

New York, NY

10033

Billing

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Amount \$ 28.00

Tax \$ 1.96

Total Paid \$ 29.96

	Model	NA	TC
Leggings Tall and Curvy			1
Shipping and Handling		1	
Total Items In This Order			2

[REDACTED]

----- Forwarded message -----

From: **Kelli Delahousie** <receipts@mylularoe.com>

Date: Fri, Dec 23, 2016 at 1:05 PM

Subject: Purchase receipt from Kelli Delahousie

To: N/A [REDACTED]



N/A

Order #29662531 CARD

Shipping

Lauren Porsch

[REDACTED]

[REDACTED]

New York, NY

10033

Billing

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Amount \$ 38.00

Tax \$ 3.04

Total Paid \$ 41.04

	Model	M	na
Irma		1	
First Class Shipping and Handling			1
Total Items In This Order			2



----- Forwarded message -----

From: Leigh David-Mizak <receipts@mylularoe.com>

Date: Fri, Dec 2, 2016 at 9:14 PM

Subject: Purchase receipt from Leigh David-Mizak

To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #26518270 CARD

Shipping

Lauren Porsch



New York, NY

10033

Billing



Amount \$ 45.00

Tax \$ 2.33

Discount \$ 1.00
Total Paid \$ 46.33

	Model	M	NA
Elegant Irma		1	
Shipping and Handling			1
Total Items In This Order			2

[REDACTED]

----- Forwarded message -----

From: **Michelle Benedicto** <receipts@mylularoe.com>

Date: Sun, Nov 27, 2016 at 10:49 AM

Subject: Purchase receipt from Michelle Benedicto

To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #25525367 CARD

Shipping

Lauren Porsch

[REDACTED]

New York, NY

10033

Billing

[REDACTED]

[REDACTED]

Amount \$ 68.00
Tax \$ 3.30
Discount \$ 13.00
Total Paid \$ 58.30

	Model	XL	na
Amelia		1	
First Class Shipping and Handling			1
Total Items In This Order			2

[REDACTED]

----- Forwarded message -----

From: **Michelle Benedicto** <receipts@mylularoe.com>

Date: Fri, Feb 10, 2017 at 8:25 AM

Subject: Purchase receipt from Michelle Benedicto

To: Lauren Porsch [REDACTED]



Lauren Porsch

Order #39174878 CARD

Shipping

Lauren Porsch

[REDACTED]

[REDACTED]

New York, NY

10033

Billing

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Amount \$ 58.00

Tax \$ 3.11

Discount \$ 6.25

Total Paid \$ 54.86

	Model	M	na
Carly		1	
First Class Shipping and Handling			1
Total Items In This Order			2