

REPORT OF THE REVENUE POLICY SUBCOMMITTEE

(Cooper, J.R. Smith, White, Bingham & Herbkersman - Staff Contact: Rena Grant)

SENATE BILL 36

S. 36 -- Senators McConnell, McGill, Setzler and Ford: A BILL TO AMEND ACT 99 OF 2007, RELATING TO THE SALES TAX EXEMPTION FOR DURABLE MEDICAL EQUIPMENT AND SUPPLIES, BY REPEALING SECTIONS 1B AND 1C, WHICH STATE THAT THE SALES TAX RATE ON DURABLE MEDICAL EQUIPMENT IS FIVE AND ONE-HALF PERCENT SUBJECT TO FURTHER REDUCTION BASED ON GENERAL FUND REVENUE GROWTH.

Summary of Bill:

This bill amends Act 99 of 2007 which initially imposed a graduated, growth mechanism based repeal of the sales tax exemption on durable medical equipment and supplies. The bill removes the growth mechanism and establishes a graduated schedule for the exemption of the sales tax exemption. Effective 1 July 2011, the sales tax rate is reduced from 5.5% to 3.5%, 1 July 2012, from 3.5% to 1.75% and effective 1 July 2013 from 1.75% to 0% sales tax

Introduced:

12/1/2010

Received by Ways and Means:

3/31/2011

Estimated Fiscal Impact:

This bill is expected to reduce General Fund sales tax revenue by \$817,936 in FY 2011-12.

Subcommittee Recommendation:

Favorable as amended:

Amendment No. 1: Replaces current bill language with language from H. 3488 (as it passed the House on 27 April 2011)

Amendment No. 2: Revises the code to allow for a grace period when an entity fails to file on time electronically

Full Committee Recommendation:

Other Notes/Comments:

HOUSE
AMENDMENT

THIS AMENDMENT
ADOPTED

CONE/MELTON
MAY 4, 2011

CLERK OF THE HOUSE

Adopted by the Revenue Policy Subcommittee

REFERENCE IS TO PRINTER'S DATE 3/29/11-S.

AMEND THE BILL, AS AND IF AMENDED, BY STRIKING ALL AFTER THE ENACTING WORDS AND INSERTING:

/ A. SECTION 1, ACT 99 OF 2007 IS AMENDED BY DELETING SUBSECTIONS B AND C, WHICH READ:

“B. NOTWITHSTANDING THE SALES AND USE RATES IMPOSED PURSUANT TO CHAPTER 36, TITLE 12 OF THE 1976 CODE, THE RATE OF TAX IMPOSED PURSUANT TO THAT CHAPTER ON THE GROSS PROCEEDS OF SALES OF ITEMS DESCRIBED

IN SUBSECTION A OF THIS SECTION IS FIVE AND ONE-HALF PERCENT FOR SUCH SALES FROM JULY 1, 2007.

C. BEGINNING WITH THE FEBRUARY 15, 2008, FORECAST BY THE BOARD OF ECONOMIC ADVISORS OF ANNUAL GENERAL FUND REVENUE GROWTH FOR THE UPCOMING FISCAL YEAR, AND ANNUALLY THEREAFTER, IF THE FORECAST OF THAT GROWTH EQUALS AT LEAST FIVE PERCENT OF THE MOST RECENT ESTIMATE BY THE BOARD OF GENERAL FUND REVENUES FOR THE CURRENT FISCAL YEAR, THEN THE APPLICABLE STATE SALES AND USE TAX RATE IMPOSED ON ITEMS DESCRIBED IN SUBSECTION A. OF THIS SECTION IS REDUCED, EFFECTIVE THE FOLLOWING JULY FIRST, BY ONE AND ONE-HALF PERCENT IN THE FIRST YEAR AND BY ONE PERCENT EVERY YEAR THEREAFTER. THAT REDUCED RATE APPLIES UNTIL A SUBSEQUENT REDUCTION TAKES EFFECT. IF THE FEBRUARY FIFTEENTH FORECAST MEETS THE REQUIREMENT FOR A RATE REDUCTION, THE

BOARD PROMPTLY SHALL CERTIFY THIS RESULT IN WRITING TO THE DEPARTMENT OF REVENUE. ON THE JULY FIRST THAT THE RATE ATTAINS ZERO, THE PROVISIONS OF SUBSECTIONS B. AND C. OF THIS SECTION NO LONGER APPLY.”

B. NOTWITHSTANDING THE GENERAL EFFECTIVE DATE OF THIS ACT, THE AMENDMENT TO ACT 99 OF 2007 MADE BY SUBSECTION A OF THIS SECTION TAKES EFFECT JULY 1, 2011.

SECTION 2. A. 1. SECTION 12-36-90(1)(C)(III) OF THE 1976 CODE, AS LAST AMENDED BY ACT 161 OF 2005, IS FURTHER AMENDED TO READ:

“(III) TANGIBLE PERSONAL PROPERTY REPLACING DEFECTIVE PARTS UNDER WRITTEN WARRANTY CONTRACTS IF:

(A) THE WARRANTY, MAINTENANCE, SERVICE, OR SIMILAR CONTRACT IS GIVEN WITHOUT CHARGE, AT THE TIME OF ORIGINAL PURCHASE OF THE DEFECTIVE PROPERTY, OR THE TAX WAS PAID ON THE SALE OR RENEWAL OF WARRANTY, MAINTENANCE, OR SIMILAR SERVICE CONTRACT FOR TANGIBLE PERSONAL PROPERTY OF WHICH THE DEFECTIVE PART WAS A COMPONENT, WHETHER OR NOT SUCH

~~CONTRACT WAS PURCHASED IN CONJUNCTION WITH THE SALE OF TANGIBLE PERSONAL PROPERTY;~~

~~(B) IN THE CASE OF A WARRANTY, MAINTENANCE, SERVICE, OR SIMILAR CONTRACT THAT IS GIVEN WITHOUT CHARGE AT THE TIME OF ORIGINAL PURCHASE OF THE DEFECTIVE PROPERTY, THE TAX WAS PAID ON THE SALE OF THE DEFECTIVE PART OR ON THE SALE OF THE PROPERTY OF WHICH THE DEFECTIVE PART WAS A COMPONENT;~~ AND

~~(C) THE WARRANTEE IS NOT CHARGED FOR ANY LABOR OR MATERIALS;~~

2. SECTION 12-36-90(2) OF THE 1976 CODE, AS LAST AMENDED BY ACT 386 OF 2006, IS FURTHER AMENDED BY DELETING SUBITEM (L) WHICH READS:

~~“(L)TANGIBLE PERSONAL PROPERTY PURCHASED BY A PERSON ENGAGED IN THE BUSINESS OF SERVICING A WARRANTY, MAINTENANCE, OR SIMILAR SERVICE CONTRACT FOR USE IN REPLACING A DEFECTIVE PART UNDER THE CONTRACT IF TAX WAS PAID ON THE SALE OR THE RENEWAL OF THE CONTRACT AND THE CUSTOMER IS NOT CHARGED FOR LABOR OR MATERIAL WHEN THE PART IS REPLACED.”~~

B. SECTION 12-36-910(B) OF THE 1976 CODE, AS LAST AMENDED BY ACT 386 OF 2006, IS FURTHER AMENDED BY DELETING ITEMS (6) AND (7) WHICH READ:

~~“(6)GROSS PROCEEDS ACCRUING OR PROCEEDING FROM THE SALE OR RENEWAL OF WARRANTY, MAINTENANCE, OR SIMILAR SERVICE CONTRACTS FOR TANGIBLE PROPERTY, WHETHER OR NOT SUCH CONTRACTS ARE PURCHASED IN CONJUNCTION WITH THE SALE OF TANGIBLE PERSONAL PROPERTY.~~

~~(7) GROSS PROCEEDS ACCRUING OR PROCEEDING FROM THE SALE OR RENEWAL OF WARRANTY, MAINTENANCE, OR SIMILAR SERVICE~~

CONTRACTS FOR TANGIBLE PERSONAL PROPERTY, WHETHER OR NOT THE CONTRACTS ARE PURCHASED IN CONJUNCTION WITH THE SALE OF TANGIBLE PERSONAL PROPERTY.”

C. SECTION 12-36-1310(B) OF THE 1976 CODE, AS LAST AMENDED BY ACT 161 OF 2005, IS FURTHER AMENDED BY DELETING ITEM (6) WHICH READS:

“(6)GROSS PROCEEDS ACCRUING OR PROCEEDING FROM THE SALE OR RENEWAL OF WARRANTY, MAINTENANCE, OR SIMILAR SERVICE CONTRACTS FOR TANGIBLE PERSONAL PROPERTY, WHETHER OR NOT SUCH CONTRACTS ARE PURCHASED IN CONJUNCTION WITH THE SALE OF TANGIBLE PERSONAL PROPERTY.”

D. SECTION 12-36-2120 OF THE 1976 CODE, AS LAST AMENDED BY ACT 280 OF 2010, IS FURTHER AMENDED BY DELETING ITEM (69) WHICH READS:

“(69) THE SALE OR RENEWAL OF A WARRANTY, MAINTENANCE, OR SIMILAR SERVICE CONTRACT FOR TANGIBLE PERSONAL PROPERTY IF THE SALE OR PURCHASE OF THE TANGIBLE PERSONAL PROPERTY COVERED BY THE CONTRACT IS EXEMPT OR EXCLUDED FROM THE TAX IMPOSED BY THIS CHAPTER.”

E. NOTWITHSTANDING THE GENERAL EFFECTIVE DATE PROVIDED IN THIS ACT, THE PROVISIONS OF THIS SECTION TAKE EFFECT ON THE FIRST DAY OF THE THIRD MONTH BEGINNING AFTER THE DATE OF APPROVAL OF THIS ACT.

SECTION 3. THIS ACT TAKES EFFECT UPON APPROVAL BY THE GOVERNOR. /

HOUSE
AMENDMENT

THIS AMENDMENT
ADOPTED

CONE/MELTON
MAY 4, 2011

CLERK OF THE HOUSE

Adopted by the Revenue Policy Subcommittee

REFERENCE IS TO PRINTER'S DATE 4/6/11-H.

**AMEND THE BILL, AS AND IF AMENDED, BY
ADDING A PENULTIMATE SECTION
APPROPRIATELY NUMBERED TO READ:**

**/ SECTION __.A. CHAPTER 54, TITLE 12 IS
AMENDED BY ADDING:**

**“SECTION 12-54-165. IF A DISCOUNT IS
ALLOWED BY LAW FOR THE TIMELY FILING OF A
TAX RETURN AND PAYMENT OF THE TAXES DUE
ON THE RETURN WITH THE DEPARTMENT AND
THE RETURN AND PAYMENT ARE RECEIVED BY**

THE DEPARTMENT AFTER THE DATE REQUIRED TO RECEIVE THE DISCOUNT, THE TAXPAYER MAY APPLY TO THE DEPARTMENT IN WRITING FOR THE DISCOUNT TO BE ALLOWED IF THE LATE FILING AND PAYMENT WERE CAUSED BY CIRCUMSTANCES BEYOND THE TAXPAYER'S CONTROL. FOR GOOD CAUSE SHOWN IN THE APPLICATION, THE DEPARTMENT MAY ALLOW THE DISCOUNT.”

B. NOTWITHSTANDING ANY OTHER EFFECTIVE DATE PROVIDED IN THIS ACT, THIS SECTION TAKES EFFECT UPON APPROVAL OF THIS ACT BY THE GOVERNOR AND APPLIES FOR RETURNS DUE TO BE FILED FOR TAXABLE PERIODS BEGINNING AFTER JULY 31, 2010. /

**RENUMBER SECTIONS TO CONFORM.
AMEND TITLE TO CONFORM.**

Statement of Estimated State Revenue Impact

Date: May 11, 2011

(As amended on May 5, 2011 by the House Revenue Policy Legislative Subcommittee)

Bill Number: S.B. 36

Authors: McConnell and McGill

Committee Requesting Impact: House Ways & Means Committee

Bill Summary

To amend Act 99 of 2007, relating to the sales tax exemption for durable medical equipment and supplies, by repealing Sections 1B and 1C, which state that the sales tax rate on durable medical equipment is five and one-half percent subject to further reduction based on General Fund revenue growth.

REVENUE IMPACT ¹

Section 1 of this bill, as amended, is expected to reduce sales and use tax revenue by an estimated \$2,249,324 in FY2011-12. Section 2 of this bill, as amended, is expected to increase sales and use tax revenue by an estimated \$500,000 in FY2011-12. In total, this bill, as amended, is expected to reduce sales and use tax revenue by an estimated \$1,749,324 in FY2011-12. Of this amount, General Fund sales and use tax revenue would be reduced by \$1,166,216, Education Improvement Act funds would be reduced by \$291,554, and the Homestead Exemption Fund would be reduced by \$291,554 in FY2011-12.

Explanation of amendment (May 5, 2011) – by the House Revenue Policy Legislative Subcommittee

Section 1: This section would amend Act 99 of 2007 by repealing Section 1B and 1C which states that the sales tax rate for durable medical equipment paid directly by funds under the Medicare and Medicaid programs is five and one-half percent subject to further reduction based on General Fund revenue growth. The repeal of these sections would fully exempt durable medical equipment paid directly by funds under the Medicare and Medicaid programs from sales tax. Currently, the sales tax rate for durable medical equipment is five and one-half percent. Further incremental reduction of this rate has not occurred because forecasted General Fund revenues have not grown at the required five percent rate. This section of the bill would take effect July 1, 2011. Based upon collections of the five and one-half percent sales tax on durable medical equipment in FY09-10, we estimate that fully exempting the sales tax from sales of durable medical equipment is expected to reduce General Fund sales tax revenue by \$2,249,324 in FY2011-12.

Section 2: A warranty is given to the purchaser of a product by a manufacturer or provider of a service with the understanding that the manufacturer or provider will replace or repair a defective product or make good an ineffective service within a predetermined span of time. An extended warranty is similar to insurance for the purchased product and can be offered by the product's manufacturer, the retailer, or a third-party warranty provider. The most common products covered by extended warranties are automobiles, electronics, appliances, and homes. Currently, sales and use tax is charged on the sale of a warranty or extended warranty on a product sold at the time a product is purchased and also if an extended warranty is purchased at a later date after the product is first purchased. If a problem develops with the product and the product is sent back to the manufacturer for repair, the parts withdrawn from inventory and used to fix the defective

Statement of Estimated State Revenue Impact

product would not be subject to a sales tax. Under this bill, sales and use tax would still be charged on the sale of a warranty or extended warranty on a product at the time of purchase, however, there would be no sales tax charged on the warranty or extended warranty if it is purchased at a later date after the product is first sold. If a product becomes defective during the warranty period and is sent back to the manufacturer for repair, the parts withdrawn from inventory and used to fix the defective product would be subject to a sales tax.


This bill would amend Section 12-36-90(1)(c)(iii) – definition of gross proceeds of sales, Section 12-36-90(2)(l) – definition of gross proceeds of sales, Section 12-36-910(B) – sales tax, Section 12-36-1310(B) – use tax, and Section 12-36-2120(69) – sales and use tax exemption, to amend language not to levy sales tax on a warranty or extended warranty if the warranty is sold after the sale of the product. According to the latest data from the Federal Trade Commission and Warranty Week, a national trade newsletter for warranty management professionals, manufacturer's usually set aside funds to cover the costs to repair defective manufactured products each year. Based upon these data, we estimate that there will be net increase of sales and use tax revenue of an estimated \$500,000 in FY2011-12.

Explanation of amendment (March 2, 2011) – by the Senate Finance Sales and Income Taxation Subcommittee

This amendment would reduce the sales and use tax on the sale of durable medical equipment (DME) paid directly by funds under the Medicare and Medicaid programs from five and one-half percent to three and one-half percent starting on July 1, 2011. The sales tax would be reduced from three and one-half percent to one percent effective July 1, 2012. DME paid directly by funds under the Medicare and Medicaid programs would then be fully exempt from the sales and use tax starting on July 1, 2013. This amendment would also repeal Section 1C which triggers the incremental reduction in the sales tax rate on DME based on General Fund revenue growth. Based upon collections of the five and one-half percent sales tax on DME in FY09-10, we estimate that this amendment will reduce General Fund sales tax revenue by \$817,936 in FY2011-12.

Explanation

This bill will amend Act 99 of 2007 by repealing Section 1B and 1C which states that the sales tax rate for durable medical equipment paid directly by funds under the Medicare and Medicaid programs is five and one-half percent subject to further reduction based on General Fund revenue growth. The repeal of these sections would fully exempt durable medical equipment paid directly by funds under the Medicare and Medicaid programs from sales tax. Currently, the sales tax rate for durable medical equipment is five and one-half percent. Further incremental reduction of this rate has not occurred because forecasted General Fund revenues have not grown at the required five percent rate. Based upon collections of the five and one-half percent sales tax on durable medical equipment in FY09-10, we estimate that fully exempting the sales tax from sales of durable medical equipment is expected to reduce General Fund sales tax revenue by \$2,249,324 in FY2011-12.


William C. Gillespie, Ph.D.
Chief Economist

Analyst: Ball

¹¹ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

South Carolina General Assembly
119th Session, 2011-2012

S. 36

STATUS INFORMATION

General Bill

Sponsors: Senators McConnell, McGill, Setzler and Ford
Document Path: I:\s-jud\bills\mccconnell\jud0006.kw.docx

Introduced in the Senate on January 11, 2011

Introduced in the House on March 31, 2011

Last Amended on March 29, 2011

Currently residing in the House Committee on **Ways and Means**

Summary: Sales tax exemptions

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
12/1/2010	Senate	Prefiled
12/1/2010	Senate	Referred to Committee on Finance
1/11/2011	Senate	Introduced and read first time (<u>Senate Journal-page 22</u>)
1/11/2011	Senate	Referred to Committee on Finance (<u>Senate Journal-page 22</u>)
3/9/2011	Senate	Committee report: Favorable with amendment Finance (<u>Senate Journal-page 12</u>)
3/10/2011		Scrivener's error corrected
3/29/2011	Senate	Committee Amendment Adopted (<u>Senate Journal-page 8</u>)
3/29/2011	Senate	Read second time (<u>Senate Journal-page 8</u>)
3/29/2011	Senate	Roll call Ayes-33 Nays-2 (<u>Senate Journal-page 8</u>)
3/30/2011		Scrivener's error corrected
3/30/2011	Senate	Read third time and sent to House (<u>Senate Journal-page 34</u>)
3/31/2011	House	Introduced and read first time (<u>House Journal-page 14</u>)
3/31/2011	House	Referred to Committee on Ways and Means (<u>House Journal-page 14</u>)

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VERSIONS OF THIS BILL

[12/1/2010](#)

[3/9/2011](#)

[3/10/2011](#)

[3/29/2011](#)

[3/30/2011](#)

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 COMMITTEE AMENDMENT ADOPTED

5 March 29, 2011

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S. 36

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9 Introduced by Senators McConnell, McGill, Setzler and Ford

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11 S. Printed 3/29/11--S.

[SEC 3/30/11 12:11 PM]

12 Read the first time January 11, 2011.

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A BILL

TO AMEND ACT 99 OF 2007, RELATING TO THE SALES TAX EXEMPTION FOR DURABLE MEDICAL EQUIPMENT AND SUPPLIES, BY REPEALING SECTIONS 1B AND 1C, WHICH STATE THAT THE SALES TAX RATE ON DURABLE MEDICAL EQUIPMENT IS FIVE AND ONE-HALF PERCENT SUBJECT TO FURTHER REDUCTION BASED ON GENERAL FUND REVENUE GROWTH.

Amend Title To Conform

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

SECTION 1. A. SECTION 1B of Act 99 of 2007 is amended to read:

“B. (A) Notwithstanding the sales and use rates imposed pursuant to Chapter 36, Title 12 of the 1976 Code, the rate of tax imposed pursuant to that chapter on the gross proceeds of sales of items described in subsection A of this section is five and one-half percent for such sales from July 1, 2007.

(B) Notwithstanding the sales and use rates imposed pursuant to Chapter 36, Title 12 of the 1976 Code, the rate of tax imposed pursuant to that chapter on the gross proceeds of sales of items described in subsection A of this section is three and one-half percent for such sales from July 1, 2011.

(C) Notwithstanding the sales and use rates imposed pursuant to Chapter 36, Title 12 of the 1976 Code, the rate of tax imposed pursuant to that chapter on the gross proceeds of sales of items described in subsection A of this section is one and three-quarters percent for such sales from July 1, 2012.

(D) Effective January 1, 2013, the sales tax exemption on the gross proceeds of sales of items described in subsection A is fully

1 implemented and no sales and use tax may be imposed on the
2 items described in subsection A.”

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4 SECTION 2. Act 99 of 2007 is amended by repealing SECTION
5 1C which reads:

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7 “C. Beginning with the February 15, 2008, forecast by the
8 Board of Economic Advisors of annual general fund revenue
9 growth for the upcoming fiscal year, and annually thereafter, if the
10 forecast of that growth equals at least five percent of the most
11 recent estimate by the board of general fund revenues for the
12 current fiscal year, then the applicable state sales and use tax rate
13 imposed on items described in subsection A of this section is
14 reduced, effective the following July first, by one and one-half
15 percent in the first year and by one percent every year thereafter.
16 That reduced rate applies until a subsequent reduction takes effect.
17 If the February fifteenth forecast meets the requirement for a rate
18 reduction, the board promptly shall certify this result in writing to
19 the Department of Revenue. On the July first that the rate attains
20 zero, the provisions of subsections B and C of this section no
21 longer apply.”

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23 SECTION 3. This act takes effect upon approval of the Governor.

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