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Indicates New Matter

HOUSE AMENDMENTS AMENDED

May 26, 2011

**S. 36**

Introduced by Senators McConnell, McGill, Setzler and Ford

S. Printed 5/26/11--S. [SEC 5/31/11 1:05 PM]

Read the first time January 11, 2011.

**A** **BILL**

RELATING TO THE PAYMENT, COLLECTION, AND ADMINISTRATION OF THE SALES AND USE TAX, BY AMENDING ACT 99 OF 2007, RELATING TO THE SALES TAX EXEMPTION FOR DURABLE MEDICAL EQUIPMENT AND SUPPLIES, BY AMENDING SECTION 1B, TO PHASE OUT THE SALES AND USE TAX IMPOSED ON DURABLE MEDICAL EQUIPMENT AND RELATED SUPPLIES; BY AMENDING ACT 99 OF 2007, RELATING TO THE SALES TAX EXEMPTION FOR DURABLE MEDICAL EQUIPMENT AND SUPPLIES TO REPEAL SECTION 1C, RELATING TO FURTHER REDUCTIONS IN THE SALES AND USE TAX ON DURABLE MEDICAL EQUIPMENT AND RELATED SUPPLIES BASED ON GENERAL FUND REVENUE GROWTH; TO AMEND SECTIONS 12‑36‑90(1)(C)(III), 12‑36‑90(2)(l), 12‑36‑910(B)(6), 12‑36‑910(B)(7), 12‑36‑1310(B)(6), AND 12‑36‑2120(69), ALL AS AMENDED, TO PROVIDE FURTHER FOR THOSE INSTANCES WHERE SALES AND USE TAX APPLIES IN CONNECTION WITH WARRANTIES AND SERVICE MAINTENANCE CONTRACTS SOLD IN CONNECTION WITH THE SALE OF TANGIBLE PERSONAL PROPERTY; BY AMENDING ARTICLE 25, CHAPTER 36, TITLE 12, RELATING TO GENERAL PROVISIONS CONCERNING THE PAYMENT, COLLECTION, AND ADMINISTRATION OF THE SALES AND USE TAX, TO PROVIDE THE APPLICABLE REQUIREMENTS AND DURATION FOR WHICH OWNING OR UTILIZING A DISTRIBUTION FACILITY WITHIN SOUTH CAROLINA IS NOT CONSIDERED IN DETERMINING WHETHER THE PERSON HAS A PHYSICAL PRESENCE IN SOUTH CAROLINA SUFFICIENT TO ESTABLISH A NEXUS WITH SOUTH CAROLINA FOR SALES AND USE TAX PURPOSES.

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

B. Act 99 of 2007 is amended by repealing SECTION 1C which reads:

“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.”

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 underwritten 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. Article 25, Chapter 36, Title 12 of the 1976 Code is amended by adding:

“Section 12‑36‑2691. (A) Notwithstanding another provision of this chapter, owning, leasing, or utilizing a distribution facility, including a distribution facility of a third party or an affiliate, within South Carolina is not considered in determining whether the person has a physical presence in South Carolina sufficient to establish nexus with South Carolina for sales and use tax purposes.

(B) For purposes of this section:

(1) ‘distribution facility’ means an establishment where shipments of tangible personal property are stored and processed for delivery to customers and no retail sales of the property are made. The definition of ‘distribution facility’ provided in Section 12‑6‑3360(M)(8) allowing limited retail sales at such a facility specifically do not apply with respect to a ‘distribution facility’ as defined for purposes of this section;

(2) ‘affiliate’ means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person;

(3) a person controls another person if that person holds a fifty percent ownership interest in the other person.

(C) This section only applies to either a person who, or a person who has an affiliate who:

(1) places a distribution facility in service after December 31, 2010, and before January 1, 2013;

(2) makes, or causes to be made through a third party, a capital investment of at least one hundred twenty‑five million dollars after December 31, 2010, and before December 31, 2013;

(3) creates at least two thousand full‑time jobs and with a comprehensive health plan for those employees, after December 31, 2010, and before December 31, 2013. For purposes of this item, ‘full‑time’ and ‘new job’ have the same meaning as provided in Section 12‑6‑3360; and

(4) after meeting the requirements of item (3), maintains at least one thousand five hundred full‑time jobs and with a comprehensive health plan for those employees until January 1, 2016.

(D) This section no longer applies on the earlier of:

(1) January 1, 2016;

(2) when the person fails to meet the requirements provided in subsection (C) of this section; or

(3) the effective date of a law enacted by the United States Congress that allows a state to require that its sales tax be collected and remitted even if the taxpayer does not have substantial nexus with that state.

(E)(1) A person to whom this section applies who makes a sale through the person’s internet website shall notify a purchaser in a confirmation email that the purchaser may owe South Carolina use tax on the total sales price of the transaction and include in the email an Internet link to the Department of Revenue’s website that allows the purchaser to pay the use tax. The notice must include language that is substantially similar to the following:

YOU MAY OWE SOUTH CAROLINA USE TAX ON THIS PURCHASE BASED ON THE TOTAL SALES PRICE OF THE PURCHASE. YOU MAY VISIT WWW.SCTAX.ORG TO PAY THE USE TAX OR YOU MAY REPORT AND PAY THE TAX ON YOUR SOUTH CAROLINA INCOME TAX FORM.

(2) The Department of Revenue shall cooperate with any person to whom this section applies and provide the person with the information and assistance necessary to comply with the provisions of this subsection and the means to link to the applicable portion of the department’s website. The department shall develop the webpage required by item (1) and develop a means to allow the purchaser to pay any required tax through the webpage. The department shall include on the webpage a table of the various sales tax rates of the State by location that permits the person to calculate the tax based on the total sales price and delivery location.

(3)(a) A person to whom this section applies shall also by February first of each year provide to each purchaser to whom tangible goods were delivered in this State a statement of the total sales made to the purchaser during the preceding calendar year. The statement must contain language substantially similar to the following:

YOU MAY OWE SOUTH CAROLINA USE TAX ON PURCHASES YOU MADE FROM US DURING THE PREVIOUS TAX YEAR. THE AMOUNT OF TAX YOU MAY OWE IS BASED ON THE TOTAL SALES PRICE OF [INSERT TOTAL SALES PRICE] THAT MUST BE REPORTED AND PAID WHEN YOU FILE YOUR SOUTH CAROLINA INCOME TAX RETURN UNLESS YOU HAVE ALREADY PAID THE TAX.

The statement must not contain any other information that would indicate, imply, or identify the class, type, description, or name of the products purchased. Any information that would indicate, imply, or identify the class, type, description, or name of the products purchased is considered strictly confidential.

(b) The statement may be provided by first class mail or email.”

SECTION 4. Article 25, Chapter 36 of Title 12 of the 1976 Code is amended by adding:

“Section 12‑36‑2692. (A) Each person to whom Section 12‑36‑2691 applies shall provide to its customers readily visible notification on invoices or other similar documentation that use tax is imposed on its sales and must be paid by the purchaser, unless otherwise exempt, on the storage, use, or consumption of the tangible personal property in this State.

(B) A person complies with the notice requirement contained in subsection (A) if he provides a prominent linking notice on invoices or other similar documentation that directs its customers to information regarding the customer’s use tax payment responsibilities. A linking notice complies with the provisions contained in this subsection if the notice reads as follows: ‘See important sales tax information regarding the tax that you may owe directly to your state of residence.’

(C) A person that is required to provide a linking notice pursuant to subsection (B) must also provide this notification on its Internet website and catalog.”

SECTION 5. The General Assembly finds that the sections presented in this act constitute one subject as required by Article III, Section 17 of the South Carolina Constitution, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of the payment, collection, and administration of the sales and use tax as clearly enumerated in the title.

The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

SECTION 6. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 7. Except where otherwise provided, this act takes effect upon approval by the Governor.

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