

## **REPORT OF THE SALES AND INCOME TAX SUBCOMMITTEE**

(Crawford, Simrill, Stavrinakis, Erickson & Daning - Staff Contact: Emma Hall)

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### **HOUSE BILL 3726**

H. 3726 -- Reps. West, G.M. Smith, W. Cox, M.M. Smith, Pope, Simrill, Elliott, B. Cox, W. Newton, Thayer, Gagnon, Herbkersman, White, Wheeler, Rutherford, Ballentine and Ott: A BILL TO AMEND SECTION 12-36-90, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF "GROSS PROCEEDS OF SALES", SO AS TO EXCLUDE AMOUNTS RECEIVED FROM A BUYDOWN.

***Received by Ways and Means:*** January 27, 2021

***Summary of Bill:*** This bill revises the definition of "gross proceeds of sales" under sales and use tax provisions so as to exclude amounts received from a buydown. Under the legislation, a buydown is an agreement between a retailer and a manufacturer or wholesaler in which the retailer receives a payment from the manufacturer or wholesaler that requires the retailer to reduce the sales price of the manufacturer's or wholesaler's product to the retail purchaser. This would not apply to amounts received by a retailer from a retail sales transaction in which a retail purchaser uses a manufacturer's or wholesalers' coupon.

***Estimated Revenue Impact:*** Impact undetermined.

***Other Notes/Comments:*** Passed favorably out of subcommittee on 2/25.



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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<b>Bill Number:</b>	H. 3726	Introduced on January 27, 2021
<b>Author:</b>	West	
<b>Subject:</b>	Gross Proceeds of Sales	
<b>Requestor:</b>	House Ways and Means	
<b>RFA Analyst(s):</b>	Gallagher	
<b>Impact Date:</b>	February 23, 2021	

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**Fiscal Impact Summary**

This bill amends Section 12-36-90(2) to exclude amounts received from a buydown as part of gross proceeds from a sale, and therefore reduce the amount subject to sales taxes. A buydown is a contract between a retailer and manufacturer in which the retailer receives a payment from the manufacturer to lower the price of an item sold to the customer. This exclusion will not have an expenditure impact on the Department of Revenue (DOR). The department will implement the change in the definition of gross proceeds in the normal course of business.

DOR provided an advisory opinion effective January 1, 2020, stating that payments to retailers from tobacco companies, including those provided from buydowns and other promotional payments, are includible in the gross proceeds of a sale and are, therefore, subject to sales tax. RFA anticipates that excluding funds received from a buydown from sales tax will reduce General Fund, Homestead Exemption (HEX) Fund, and Education Investment Act (EIA) Fund sales tax revenue, likely beginning in FY 2021-22. However, the amount and timing of the impact are undetermined pending further discussion with DOR.

**Explanation of Fiscal Impact**

**Introduced on January 27, 2021**

**State Expenditure**

This bill amends Section 12-36-90(2) to exclude amounts received from a buydown as part of gross proceeds from a sale. A buydown is a contract between a retailer and manufacturer in which the retailer receives a payment from the manufacturer to lower the price of an item sold to the customer. This exclusion will not have an expenditure impact on DOR. The department will implement the change in the definition of gross proceeds in the normal course of business.

**State Revenue**

This bill amends Section 12-36-90(2) to exclude amounts received from a buydown as part of gross proceeds from a sale.

In SC Revenue Ruling 20-x [DRAFT – 1/23/2020], DOR provided an advisory opinion stating that payments to retailers from tobacco companies, including those provided from buydowns and other promotional payments, are includible in the gross proceeds of a sale as defined in Section 12-36-90 and are therefore subject to sales tax. This revenue ruling stemmed from audits by DOR that determined a need to specify that these payments are to be considered part of the gross proceeds of the sale.

As the effective date of this revenue ruling was January 1, 2020, DOR's current position is that payments relating to buydowns are subject to sales tax. Since audit activity is an active process that produces revenue for the State's General Fund and Other Funds accounts and because the bill will exclude funds received from a buydown from sales tax, the bill is expected to reduce General Fund, HEX Fund, and EIA Fund sales tax revenue, most likely beginning in FY 2021-22. However, the amount and timing of the impact are undetermined pending further discussion with DOR.

**Local Expenditure**

N/A

**Local Revenue**

N/A

A handwritten signature in black ink, appearing to read "Frank A. Rainwater". The signature is stylized with a large, looped "F" and a cursive "Rainwater".

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Frank A. Rainwater, Executive Director

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**A BILL**

TO AMEND SECTION 12-36-90, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF "GROSS PROCEEDS OF SALES", SO AS TO EXCLUDE AMOUNTS RECEIVED FROM A BUYDOWN.

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

SECTION 1. Section 12-36-90(2) of the 1976 Code is amended by adding an appropriately lettered subitem at the end to read:

"( ) amounts received from a buydown. For purposes of this subitem, 'buydown' means an agreement between a retailer and a manufacturer or wholesaler in which the retailer receives a payment from the manufacturer or wholesaler that requires the retailer to reduce the sales price of the manufacturer's or wholesaler's product to the retail purchaser. This subitem does not apply to amounts received by a retailer from a retail sales transaction in which a retail purchaser uses a manufacturer's or wholesalers' coupon."

SECTION 2. This act takes effect upon approval by the Governor.

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