

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

(B. Newton, Hosey, Stavrinakis, Taylor & Crawford - Staff Contact: Mills Carlton)

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## **HOUSE BILL 3800**

### **Durable Medical Equipment Sales Tax Exemption**

#### **Summary of Bill:**

This bill amends Section 12-36-2120(74), which exempts durable medical equipment (DME) and related supplies from sales tax. To qualify for the exemption, the DME must be purchased directly by funds of South Carolina or the United States under the Medicaid or Medicare programs, and the programs must prohibit the payment of sales or use tax. Further, the items must be sold by a provider who holds a South Carolina retail sales license.

#### **Estimated Fiscal Impact:**

This bill will reduce state sales and use tax revenue by approximately \$18,949,000 beginning in FY 2025-26 by exempting DME and related supplies.

#### **Subcommittee Action/Explanation:**

Received **FAVORABLE REPORT** on March 26, 2025.

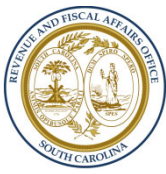
#### **Full Committee Action/Explanation:**

N/A

#### **Other Notes/Comments:**

This bill removes the current requirement that the principal place of business of the seller must be located in this state. This sales and use tax exemption was enacted in FY 2007-08 but was ruled unconstitutional by the South Carolina Supreme Court on June 26, 2024, due to the phrase "whose principal place of business is located in this state." This bill amends the existing exemption to remove the phrase that was ruled unconstitutional.

Based on testimony during the subcommittee meeting, Rep. B. Newton noted the possibility of proposing an amendment during full committee, striking the word "and" between "Medicaid" and "Medicare" and adding "or".



# SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE

## STATEMENT OF ESTIMATED FISCAL IMPACT

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*This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.*

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<b>Bill Number:</b>	H. 3800	Introduced on January 28, 2025
<b>Subject:</b>	Sales Tax Exemption	
<b>Requestor:</b>	House Ways and Means	
<b>RFA Analyst(s):</b>	Daigle	
<b>Impact Date:</b>	February 24, 2025	

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### Fiscal Impact Summary

This bill amends Section 12-36-2120(74), which exempts durable medical equipment (DME) and related supplies from sales tax. To qualify for the exemption, the DME must be purchased directly by funds of South Carolina or the United States under the Medicaid or Medicare programs, and the programs must prohibit the payment of sales or use tax. Further, the items must be sold by a provider who holds a South Carolina retail sales license. This bill removes the current requirement that the principal place of business of the seller must be located in this state. This sales and use tax exemption was enacted in FY 2007-08 but ruled unconstitutional by the South Carolina Supreme Court on June 26, 2024, due to the phrase “whose principal place of business is located in this state.” Therefore, this bill amends the existing exemption to remove the phrase that was ruled unconstitutional. This bill takes effect upon approval by the Governor.

The Department of Revenue (DOR) anticipates that this bill will have a minimal impact on expenses as the department can administer the changes with existing resources.

Revenue and Fiscal Affairs (RFA) estimates that this bill will reduce state sales and use tax revenue by approximately \$18,949,000 beginning in FY 2025-26 by exempting DME and related supplies. Of this total, General Fund revenue would be reduced by \$12,633,000, the Education Improvement Act Fund (EIA) would be reduced by \$3,158,000, and the Homestead Exemption Fund (HEX) would be reduced by \$3,158,000.

Local sales tax revenue will be reduced by approximately \$5,021,000 beginning in FY 2025-26 due to the exemption. This estimate is based on applying an average local tax rate of 1.59 percent. The impact on each local jurisdiction will depend on local option sales taxes in effect for the various entities.

### Explanation of Fiscal Impact

#### Introduced on January 28, 2025

##### State Expenditure

This bill amends Section 12-36-2120(74), which exempts DME and related supplies from sales tax. This bill removes the requirement that the principal place of business of licensed retail sales providers who sell DME and related supplies must be located in this state. This sales and use tax exemption was enacted in FY 2007-08 but ruled unconstitutional by the South Carolina Supreme

Court on June 26, 2024, due to the phrase “whose principal place of business is located in this state.” Therefore, this bill amends the existing to remove the phrase which was ruled unconstitutional.

Because of the Supreme Court ruling, currently all sellers are required to pay sales tax on their sales of DME and related supplies in the state regardless of if the equipment is paid directly by the funds of South Carolina or the United States under the Medicaid or Medicare programs. Medicare and Medicaid transactions are subject to the state’s sales tax, and therefore, sellers of DME within this state who are paid partially or fully by Medicaid or Medicare must remit sales taxes on the sales of DME, regardless of whether Medicaid or Medicare will reimburse the tax.

DOR anticipates that this bill will have a minimal impact on expenses as the department can administer the changes with existing resources.

### **State Revenue**

This bill states that in order for the purchase of durable medical equipment and related supplies to be exempt, the following conditions must be met:

- 1) The purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs,
- 2) State or federal law or regulation authorizing the payment must prohibit the payments of the sales or use tax, and
- 3) The durable medical equipment and related supplies must be sold by a provider who holds a South Carolina retail sales license.<sup>1, 2</sup>

Currently, pursuant to Section 12-36-110(j), retail sales subject to sales tax include only the net amount reimbursed by Medicare and Medicaid if the vendor is prohibited by law from charging the purchaser the difference between the retail sale and the amount reimbursed. For information, providers and suppliers who accept payments directly from Medicare agree to accept the payment amount approved by Medicare and to not bill patients for any amount in excess of deductible or coinsurance amounts.<sup>3</sup> Furthermore, once a provider has accepted a beneficiary as a Medicaid patient, the provider must accept the amount established and paid by the Medicaid program as payment in full and is not allowed to bill the beneficiary, beneficiary’s family, guardian, or legal representative for any difference between the Medicaid allowable amount and the provider’s charge.<sup>4</sup> Therefore, the net amount reimbursed by Medicare and Medicaid for DME and related supplies is currently subject to sales tax and would be exempt by this bill.

<sup>1</sup> Medicare does not reimburse separately for sales tax. Source: Nordin Medicare Health Care Solutions, *Sales Tax*, September 23, 2022, <https://med.nordinmedicare.com/web/jddme/claims-appeals/claim-submission/sales-tax>

<sup>2</sup> Medicaid does not reimburse sales tax. Source: South Carolina Department of Health and Human Services, *Healthy Connections Medicaid: Durable Medical Equipment Services Provider Manual*, page 44, July 1, 2024, <https://provider.scdhhs.gov/internet/pdf/manuals/dme/Manual.pdf>

<sup>3</sup> Medicare.gov, *Durable Medical Equipment (DME) Coverage*, Retrieved February 20, 2025, <https://www.medicare.gov/coverage/durable-medical-equipment-dme-coverage>

<sup>4</sup> South Carolina Department of Health and Human Services, *Healthy Connections Medicaid Provider Administrative and Billing Manual*, page 29, Retrieved February 20, 2025, <https://www.scdhhs.gov/internet/pdf/manuals/Provider%20Administrative%20and%20Billing%20Guide.pdf>

RFA estimates that this bill will reduce state sales tax revenue by approximately \$18,949,000 beginning in FY 2025-26. Of this amount, General Fund revenue will be reduced by \$12,633,000, EIA revenue will be reduced by \$3,158,000, and HEX revenue will be reduced by \$3,158,000. The revenue impact was determined as follows.

Based on Centers for Medicare and Medicaid Services (CMS) data for South Carolina, in 2022 the total Medicare allowed amount for DME and related supplies was approximately \$174,804,000 in the state.<sup>5,6</sup> DME and related supplies include diabetic supplies and prosthetic devices that are already exempt from sales tax pursuant to Section 12-36-2120(28). In South Carolina in 2022, the total Medicare allowed amount for diabetic supplies and prosthetic devices was approximately \$23,922,000, and therefore, the total amount paid by Medicare for DME and related supplies not currently exempt from sales tax was approximately \$150,882,000. Based on United States total Medicare and Medicaid payments for DME, approximately 40.6 percent of the total was from Medicaid in 2022.<sup>7</sup> Therefore, we estimate the amount paid by Medicaid for DME and related supplies, excluding diabetic supplies and prosthetic devices, in South Carolina for 2022 as approximately \$103,258,000. Thus, we estimate the total amount of DME and related supplies paid for by Medicare and Medicaid as \$254,140,000 in South Carolina in 2022. Utilizing annual projections for United States Medicare and Medicaid payments for DME from the Office of the Actuary in the Centers for Medicare and Medicaid Services, we estimate that the total Medicare and Medicaid payments for DME and related supplies in South Carolina, excluding diabetic supplies and prosthetic devices, will be approximately \$304,538,000 and \$327,096,000 in 2025 and 2026, respectively, and therefore, \$315,817,000 in FY 2025-26.<sup>8,9</sup> Applying the 6 percent sales tax rate to the fiscal year total yields approximately \$18,949,000 in exempt state sales tax revenue in FY 2025-26. Of the exempt state sales tax revenue, General Fund revenue will be reduced by \$12,633,000, the EIA will be reduced by \$3,158,000, and the HEX will be reduced by \$3,158,000.

<sup>5</sup> Centers for Medicare & Medicaid Services: Data.CMS.gov, *Medicare Durable Medical Equipment, Devices & Supplies – by Geography and Service*, Retrieved February 19, 2025, <https://data.cms.gov/provider-summary-by-type-of-service/medicare-durable-medical-equipment-devices-supplies/medicare-durable-medical-equipment-devices-supplies-by-geography-and-service>

<sup>6</sup> Total Medicare allowed amount is the total amount paid by Medicare and includes the amount that Medicare pays, the deductible and coinsurance amounts. Source: Centers for Medicare and Medicaid Services: Data.CMS.gov, *Medicare Durable Medical Equipment, Devices & Supplies – by Geography and Service Data Dictionary 2022*, January 15, 2025, <https://data.cms.gov/resources/medicare-durable-medical-equipment-devices-supplies-by-geography-and-service-data-dictionary-2022>

<sup>7</sup> Centers for Medicare & Medicaid Services: CMS.gov, *National Health Expenditure Data, NHE Projections Tables: National Health Expenditures by Type of Service and Source of Funds: Calendar Years 1960 to 2032*, Retrieved February 19, 2025, <https://www.cms.gov/data-research/statistics-trends-and-reports/national-health-expenditure-data/projected>

<sup>8</sup> Centers for Medicare & Medicaid Services: CMS.gov, *National Health Expenditure Data, NHE Projections Tables: National Health Expenditures by Type of Service and Source of Funds: Calendar Years 1960 to 2032*, Retrieved February 19, 2025, <https://www.cms.gov/data-research/statistics-trends-and-reports/national-health-expenditure-data/projected>

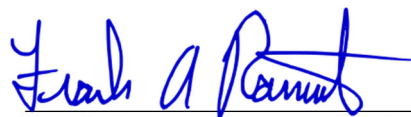
<sup>9</sup> The fiscal year estimate is determined by averaging the total amounts from each calendar year.

## **Local Expenditure**

N/A

## **Local Revenue**

This bill would also reduce local sales tax revenue because of the exemption. Based upon the analysis included under the State Revenue section and applying an average local tax rate of 1.59 percent, local sales tax revenue would be reduced by approximately \$5,021,000 in FY 2025-26. The impact on each local jurisdiction will depend on the local option sales taxes in effect for the various entities.



Frank A. Rainwater, Executive Director

**South Carolina General Assembly**  
126th Session, 2025-2026

**H. 3800**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. W. Newton, Bannister, Herbkersman, White, Kilmartin and Frank

Companion/Similar bill(s): 3382

Document Path: LC-0111DG25.docx

Introduced in the House on January 28, 2025

Currently residing in the House

Summary: Sales tax exemption

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
1/28/2025	House	Introduced and read first time (House Journal-page 23)
1/28/2025	House	Referred to Committee on <b>Ways and Means</b> (House Journal-page 23)
2/4/2025	House	Member(s) request name added as sponsor: White
2/5/2025	House	Member(s) request name added as sponsor: Kilmartin
2/6/2025	House	Member(s) request name added as sponsor: Frank

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**VERSIONS OF THIS BILL**

01/28/2025

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## **A BILL**

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 12-36-2120, RELATING TO THE SALES TAX EXEMPTION ON DURABLE MEDICAL EQUIPMENT, SO AS TO DELETE AN ELIGIBILITY REQUIREMENT THAT THE SELLER HAVE A PRINCIPAL PLACE OF BUSINESS IN THIS STATE.

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

SECTION 1. Section 12-36-2120(74) of the S.C. Code is amended to read:

(74) durable medical equipment and related supplies:

(a) as defined under federal and state Medicaid and Medicare laws;

(b) which is paid directly by funds of this State or the United States under the Medicaid or Medicare programs, where state or federal law or regulation authorizing the payment prohibits the payment of the sale or use tax; and

(c) sold by a provider who holds a South Carolina retail sales license ~~and whose principal place of business is located in this State;~~

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

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