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REPORT OF THE SALES AND INCOME TAX SUBCOMMITTEE

(Huggins, Limehouse, Simrill, G.M. Smith, & Hosey - Staff Contact: Katie Owen)

HOUSE BILL 3010

H. 3010 -- Rep. Ballentine: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "SOUTH CAROLINA MARKETPLACE AND INFRASTRUCTURE IMPROVEMENT ACT" BY ADDING SECTION 12-36-960 SO AS TO REQUIRE THE DEPARTMENT OF REVENUE TO TAKE CERTAIN NECESSARY ADMINISTRATIVE ACTIONS IN THE EVENT THE CONGRESS OF THE UNITED STATES ENACTS LEGISLATION REQUIRING STATES TO COLLECT SALES AND USE TAX FROM REMOTE SELLERS, TO PROVIDE THAT IF THE CONGRESS OF THE UNITED STATES ENACTS LEGISLATION THAT PERMITS STATES TO COLLECT SALES AND USE TAX FROM REMOTE SELLERS, THE DEPARTMENT SHALL REQUIRE THE COLLECTION OF SALES AND USE TAX FROM REMOTE SELLERS, AND TO PROVIDE THAT SALES AND USE TAX REVENUE COLLECTED PURSUANT TO THIS ACT MUST BE CREDITED TO THE STATE HIGHWAY FUND FOR THE CONSTRUCTION AND IMPROVEMENT OF ROADS AND BRIDGES.

Summary of Bill:

Requires the Department of Revenue to take all actions necessary, should Congress take action to require remote sellers to collect and remit sales and use tax, to collect that sales tax. The bill further provides that revenue generated from these actions would be dedicated to the State Highway Fund for the construction and improvement of roads and bridges.

Estimated Revenue Impact:

The Department of Revenue expects that this bill would have no expenditure impact on the General Fund, Other Funds, or Federal Funds.

Subcommittee Recommendation:

Favorable

Full Committee Recommendation:

Pending



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number: H. 3010
Author: Ballentine
Requestor: House Ways and Means
Date: April 15, 2015
Subject: S.C. Marketplace and Infrastructure Improvement Act
RFA Analyst(s): Shuford

Estimate of Fiscal Impact

	FY 2015-16	FY 2016-17
State Expenditure		
General Fund	\$0	N/A
Other and Federal	\$0	N/A
Full-Time Equivalent Position(s)	0.00	0.00
State Revenue		
General Fund	\$0	N/A
Other and Federal	\$0	N/A
Local Expenditure	N/A	N/A
Local Revenue	\$0	N/A

Fiscal Impact Summary

Due to the requirement that the Congress of the United States enact legislation that permits South Carolina to require the collection of sales and use tax by any remote retailer, we do not anticipate that South Carolina will realize any appreciable increase in sales and use tax revenue from the enactment of this bill in FY 2015-16.

Explanation of Fiscal Impact

State Expenditure

The Department of Revenue (DOR) expects that this bill would have no expenditure impact on the General Fund, Other Funds, or Federal Funds.

State Revenue

This bill allows DOR to require remote sellers to collect South Carolina sales and use tax if the Congress of the United States enacts legislation that requires states to simplify the administration of their sales and use taxes as a condition to requiring remote sellers to collect and remit state and local sales and use taxes. DOR must comply with any minimum requirements placed on states as a condition to require remote sellers to collect and remit state and local sales and use taxes. Minimum requirements may include: providing software and services to remote sellers to identify the various state and local tax rates, ensuring that no more than one audit be performed or required for all state and local taxing jurisdictions, and require no more than one sales and use tax return per month be filed by any remote seller. Any sales and use tax revenue collected pursuant to this bill that the remote seller would not otherwise be required to remit shall be credited to the State Highway Fund for the construction and improvement of roads and bridges.

The potential amount of sales tax revenue from remote sellers is significant. Staff of the Revenue and Fiscal Affairs Office recently updated our estimated revenue gains for FY 2015-16 on legislation requiring remote sellers to collect sales and use tax on sales sourced in South Carolina if the Congress of the United States enacts legislation granting this authority. We estimate, after accounting for items exempted from South Carolina sales tax, that total taxable E-Commerce retail and wholesale sales in South Carolina for FY 2015-16 will total \$5.8 billion. These sales would potentially produce \$415.1 million in sales tax revenue at the combined average state and local rate of 7.2%. The average tax rate estimate is due to the optional aspect of the local sales taxes and is based on the amount of sales taxes collected by ZIP codes weighted by population. Of the total \$415.1 million, we estimate that retailers, businesses, and individuals will remit \$315.2 million in sales and use tax revenue to South Carolina on E-commerce retail and wholesale transactions in FY 2015-16. The remaining uncollected sales and use taxes are expected to total \$99.9 million statewide in FY 2015-16. Please note that collecting this potential sales tax revenue is predicated on the passage of federal law obligating remote retailers to collect the tax from consumers at the time of the retail sale.

Legislation establishing state nexus on all remote sellers has been introduced in the U.S. Senate. Passage of this, or a similar bill, would overcome a major hurdle that South Carolina faces in imposing sales and use tax on out-of-state retailers with no physical presence in the state. However, this legislation has not received a vote. Given the lack of federal legislation developments, we do not anticipate that South Carolina will realize any appreciable increase in sales and use tax revenue from the enactment of this bill in FY 2015-16.

Local Expenditure

N/A

Local Revenue

We do not anticipate that South Carolina local governments will realize any appreciable increase in sales and use tax revenue from the enactment of this bill in FY 2015-16.



Frank A. Rainwater, Executive Director

**FY 2015-16 E-Commerce Retail and Wholesale Trade
Sales Tax Estimates for South Carolina
(Dollar Amounts in Millions)**

Line				
	E-Commerce Retail Trade Estimate			
1	U.S. retail E-Commerce trade estimate for FY 2015-16 (millions)		\$387,991.3	
2	Estimated South Carolina share of U.S. total E-Commerce retail trade (millions)	1.386%	\$5,377.5	
3	S.C. total E-Commerce retail trade estimate after exclusion of motor vehicles, food, prescription drugs, musical instruments, optical goods, hearing aids, and nonstore retailers [Line 2 less 33.81%]	33.81%	\$3,559.3	
	Household Purchases			
4	Taxable South Carolina household purchases estimate [Line 3 times 79.9%]	79.90%	\$2,843.9	
5	Total Tax Due (All Statewide and Local Sales Taxes) <i>This estimate includes the expected \$5.3 Million in use tax remitted on untaxed purchases on 2015 S.C. individual income tax returns.</i>	7.2%	\$204.8	
6	General Fund	4.0%		\$113.8
7	EIA	1.0%		\$28.4
8	HEF	1.0%		\$28.4
9	Local	1.2%		\$34.1
10	Estimated Total Tax Paid (64.5%)	7.2%	\$137.4	
11	General Fund	4.0%		\$76.3
12	EIA	1.0%		\$19.1
13	HEF	1.0%		\$19.1
14	Local	1.2%		\$22.9
15	Estimated Uncollected Taxes (35.5%)	7.2%	\$67.4	
16	General Fund	4.0%		\$37.4
17	EIA	1.0%		\$9.4
18	HEF	1.0%		\$9.4
19	Local	1.2%		\$11.2

**FY 2015-16 E-Commerce Retail and Wholesale Trade
Sales Tax Estimates for South Carolina
(Dollar Amounts in Millions)**

Business Purchases				
20	Taxable South Carolina business purchases estimate [Line 3 times 13.9%]	13.90%	\$494.75	
21	Total Tax Due (All Statewide and Local Sales Taxes)	7.2%	\$35.6	
22	General Fund	4.0%		\$19.8
23	EIA	1.0%		\$4.9
24	HEF	1.0%		\$4.9
25	Local	1.2%		\$5.9
26	Estimated Total Tax Paid (85%)	7.2%	\$30.3	
27	General Fund	4.0%		\$16.8
28	EIA	1.0%		\$4.2
29	HEF	1.0%		\$4.2
30	Local	1.2%		\$5.0
31	Estimated Uncollected Taxes (15%)	7.2%	\$5.3	
32	General Fund	4.0%		\$3.0
33	EIA	1.0%		\$0.7
34	HEF	1.0%		\$0.7
35	Local	1.2%		\$0.9

**FY 2015-16 E-Commerce Retail and Wholesale Trade
Sales Tax Estimates for South Carolina
(Dollar Amounts in Millions)**

E-Commerce Wholesale Trade Estimate			
36	U.S. wholesale E-Commerce trade estimate for FY 2015-16 (millions)		\$2,370,544.0
37	Estimated South Carolina share of U.S. total E-Commerce retail trade (millions)	0.846%	\$20,054.8
38	Estimated S.C. total E-Commerce wholesale trade after exclusion of motor vehicles, food, and prescription drugs [Line 37 less 45.5%]	45.5%	\$10,929.9
Household Purchases			
39	Taxable South Carolina household purchases [Line 38 times 0.6%]	0.60%	\$65.6
40	Total Tax Due (All Statewide and Local Sales Taxes)	7.2%	\$4.7
41	General Fund	4.0%	\$2.6
42	EIA	1.0%	\$0.7
43	HEF	1.0%	\$0.7
44	Local	1.2%	\$0.8
45	Estimated Total Tax Paid (64.5%)	7.2%	\$3.0
46	General Fund	4.0%	\$1.7
47	EIA	1.0%	\$0.4
48	HEF	1.0%	\$0.4
49	Local	1.2%	\$0.5
50	Estimated Uncollected Taxes (35.5%)	7.2%	\$1.7
51	General Fund	4.0%	\$0.9
52	EIA	1.0%	\$0.2
53	HEF	1.0%	\$0.2
54	Local	1.2%	\$0.3
Business Purchases			
55	Taxable South Carolina business purchases [Line 38 times 21.6%]	21.60%	\$2,360.85
56	Total Tax Due (All Statewide and Local Sales Taxes)	7.2%	\$170.0
57	General Fund	4.0%	\$94.4
58	EIA	1.0%	\$23.6
59	HEF	1.0%	\$23.6
60	Local	1.2%	\$28.3
61	Estimated Total Tax Paid (85%)	7.2%	\$144.5
62	General Fund	4.0%	\$80.3
63	EIA	1.0%	\$20.1
64	HEF	1.0%	\$20.1
65	Local	1.2%	\$24.1
66	Estimated Uncollected Taxes (15%)	7.2%	\$25.5
67	General Fund	4.0%	\$14.2
68	EIA	1.0%	\$3.5
69	HEF	1.0%	\$3.5
70	Local	1.2%	\$4.2

**FY 2015-16 E-Commerce Retail and Wholesale Trade
Sales Tax Estimates for South Carolina
(Dollar Amounts in Millions)**

Summary				
	Estimated Total S.C. E-Commerce Retail and Wholesale Trade Sales Tax Due (Household and Business). <i>This estimate includes the expected \$5.3 Million in use tax remitted on untaxed purchases on 2015 S.C. individual income tax returns.</i>			
71	[Total of lines 5, 21, 39 and 56]	7.2%	\$415.1	
72	General Fund	4.0%		\$230.6
73	EIA	1.0%		\$57.7
74	HEF	1.0%		\$57.7
75	Local	1.2%		\$69.2
	Estimated Total S.C. Taxes Paid on E-Commerce Retail and Wholesale Sales (Household and Business)			
76	[Total of lines 10, 27, 45, and 61]	7.2%	\$315.2	
77	General Fund	4.0%		\$175.1
78	EIA	1.0%		\$43.8
79	HEF	1.0%		\$43.8
80	Local	1.2%		\$52.5
	Estimated Total S.C. Uncollected Taxes on E-Commerce Retail and Wholesale Sales (Household and Business)			
81		7.2%	\$99.9	
82	General Fund	4.0%		\$55.5
83	EIA	1.0%		\$13.9
84	HEF	1.0%		\$13.9
85	Local	1.2%		\$16.7

**FY 2015-16 E-Commerce Retail and Wholesale Trade
Sales Tax Estimates for South Carolina
(Dollar Amounts in Millions)**

Line Notes

1	Source: U.S. Census Bureau, Annual Retail and Wholesale Trade Surveys. E-commerce retail trade growth averaged 17.5% per year from 1998. We used the most recent ten-year growth rate of 16.5% to inflate 2013 data to FY 2015-16.
2	South Carolina's estimated 1.386% share of U.S. retail trade is based on data from the U.S. Bureau of the Census, 2007 Economic Census. For comparison, S.C.'s personal income as a percentage of the U.S. is approximately 1.21%, and population share is approximately 1.5%. S.C.'s share of U.S. gross domestic product is around 1.13% annually.
3	Source: U.S. Census Bureau, 2012 Annual Retail Trade Survey, quarterly retail trade data for 2013, and 2007 Economic Census, Retail Trade Product Line Statistics for Electronic Shopping and Mail-Order Houses (NAICS 4541) by Kind of Business for the United States. We expect that the motor vehicle licensing requirements and property tax collections result in little or no loss of tax collections on these vehicle sales. All other items listed are exempt from sales and use tax in South Carolina or are subject to the \$300 maximum cap. We exclude nonstore retailers (NAICS 454) as these retailers make direct sales at the customers' locations in South Carolina. We expect that sales tax nexus is already established, and S.C. sales tax is currently collected on these sales.
4	Source: U.S. Census Bureau, 2007 Economic Census, Retail Trade: Subject Series - Misc Subjects: Sales by Class of Customer for the United States: 2007. This data allows us to determine the amount of retail sales attributable to individuals or businesses. The amount of E-Commerce retail sales subject to S.C. tax depends greatly upon which type of consumer purchases the products. Based on the Census data, we estimate that households account for 79.9% of all E-Commerce retail sales.
5	Total sales tax rate is based on a statewide average calculated by the Sales Tax Clearinghouse, see http://thestic.com/strates.stm . This average tax rate includes state and local taxes and is based on the amount of sales taxes collected by ZIP codes weighted by population.
6 to 9	These lines provide estimates for the various allocations of S.C. sales tax collections. Allocations include: 4% allocated to the General Fund, 1% allocated to the Education Improvement Act Fund, 1% allocated to the Homestead Exemption Fund, and local taxes that we estimate average 1.2% statewide. Local Option, Capital Project, Transportation, School Bond, and Tourism taxes are examples of the potential local taxes.
10	The 64.5% retail internet vendor compliance rate is estimated in "State and Local Government Sales Tax Revenue Losses from Electronic Commerce," by Donald Bruce, William F. Fox, and LeAnn Luna, University of Tennessee, April 13, 2009. The authors estimated the 64.5% compliance rate for South Carolina by examining the top 50 internet retail firms and a random sample of 50 more firms from Internet Retailer's "Top 500 Guide, 2007 Edition." Each firm's website was examined to determine the states for which the firm collects and remits sales tax.

**FY 2015-16 E-Commerce Retail and Wholesale Trade
Sales Tax Estimates for South Carolina
(Dollar Amounts in Millions)**

20	Source: U.S. Census Bureau, 2007 Economic Census, Retail Trade: Subject Series - Misc Subjects: Sales by Class of Customer for the United States: 2007. This data allows us to determine the amount of retail sales attributable to individuals or businesses. The amount of E-Commerce retail sales subject to S.C. tax depends greatly upon which type of consumer purchases the products. Based on the Census data, we estimate that businesses account for a total of 20.1% of retail sales, of which 13.9% is subject to S.C. sales tax and 6.2% are nontaxable sales for resale.
26	Research suggests that the use tax compliance rate for businesses in most states is between 85% and 100%. See, Peter A. Johnson, "Setting the Record Straight: The Modest Effect of E-Commerce on State and Local Sales Tax Collections," Direct Marketing Association, January 2008. We rely on the 85% estimate for this analysis given the revenue collected in recent years from the increased enforced collection activities of the South Carolina Department of Revenue.
36	Source: U.S. Census Bureau, Annual Retail and Wholesale Trade Surveys. E-commerce wholesale trade growth averaged 7.5% per year from 2002 to 2013. We used the ten-year annual average growth rate of 7.3% to inflate 2013 data to FY 2015-16.
37	South Carolina's estimated 0.846% share of U.S. wholesale trade is based on data from the U.S. Bureau of the Census, 2007 Economic Census.
38	Source: U.S. Census Bureau, 2013 Annual Wholesale Trade Survey and 2007 Economic Census, Wholesale Trade Product Line Statistics by Kind of Business for the United States.
39	Source: U.S. Census Bureau, 2007 Economic Census, Wholesale Trade: Subject Series - Misc Subjects: Sales by Class of Customer for the United States: 2007. This data allows us to determine the amount of wholesale sales attributable to individuals or businesses. The amount of E-Commerce wholesale sales subject to S.C. tax depends greatly upon which type of consumer purchases the products. Based on the Census data, we estimate that households account for a very small amount of wholesale purchases, 0.6%, of all E-Commerce wholesale sales.
45	See Line Note 10.
55	Source: U.S. Census Bureau, 2007 Economic Census, Wholesale Trade: Subject Series - Misc Subjects: Sales by Class of Customer for the United States: 2007. This data allows us to determine the amount of wholesale sales attributable to individuals or businesses. The amount of E-Commerce wholesale sales subject to S.C. tax depends greatly upon which type of consumer purchases the products. Based on the Census data, we estimate that businesses account for 99.4% of all E-Commerce wholesale sales, of which 21.6% is subject to S.C. sales tax and 77.9% are nontaxable sales for resale.
61	See Line Note 26.

South Carolina General Assembly
121st Session, 2015-2016

H. 3010

STATUS INFORMATION

General Bill

Sponsors: Reps. Ballentine, Henderson, Felder, Huggins, G.R. Smith, Bedingfield and Hamilton

Document Path: I:\council\bills\bh\26170dg15.docx

Introduced in the House on January 13, 2015

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

Summary: S.C. Marketplace and Infrastructure Improvement Act

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
12/11/2014	House	Prefiled
12/11/2014	House	Referred to Committee on Ways and Means
1/13/2015	House	Introduced and read first time (House Journal-page 62)
1/13/2015	House	Referred to Committee on Ways and Means (House Journal-page 62)
1/15/2015	House	Member(s) request name added as sponsor: Felder
2/24/2015	House	Member(s) request name added as sponsor: Huggins, G.R.Smith, Bedingfield, Hamilton

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VERSIONS OF THIS BILL

12/11/2014

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A BILL

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
12 1976, TO ENACT THE "SOUTH CAROLINA MARKETPLACE
13 AND INFRASTRUCTURE IMPROVEMENT ACT" BY
14 ADDING SECTION 12-36-960 SO AS TO REQUIRE THE
15 DEPARTMENT OF REVENUE TO TAKE CERTAIN
16 NECESSARY ADMINISTRATIVE ACTIONS IN THE EVENT
17 THE CONGRESS OF THE UNITED STATES ENACTS
18 LEGISLATION REQUIRING STATES TO COLLECT SALES
19 AND USE TAX FROM REMOTE SELLERS, TO PROVIDE
20 THAT IF THE CONGRESS OF THE UNITED STATES ENACTS
21 LEGISLATION THAT PERMITS STATES TO COLLECT
22 SALES AND USE TAX FROM REMOTE SELLERS, THE
23 DEPARTMENT SHALL REQUIRE THE COLLECTION OF
24 SALES AND USE TAX FROM REMOTE SELLERS, AND TO
25 PROVIDE THAT SALES AND USE TAX REVENUE
26 COLLECTED PURSUANT TO THIS ACT MUST BE
27 CREDITED TO THE STATE HIGHWAY FUND FOR THE
28 CONSTRUCTION AND IMPROVEMENT OF ROADS AND
29 BRIDGES.

30
31 Be it enacted by the General Assembly of the State of South
32 Carolina:

33
34 SECTION 1. This act may be cited as the "South Carolina
35 Marketplace and Infrastructure Improvement Act".

36
37 SECTION 2. Article 9, Chapter 36, Title 12 of the 1976 Code is
38 amended by adding:

39
40 "Section 12-36-960. (A) If the Congress of the United States
41 enacts legislation that requires states to simplify the administration
42 of their sales and use taxes as a condition to require remote sellers

1 to collect and remit their state and local sales taxes, the department
2 shall take all administrative actions necessary to facilitate the state's
3 compliance with the minimum simplification requirements,
4 including, but not limited to:

5 (1) providing adequate software and services to remote sellers
6 and single and consolidated providers that identify the applicable
7 destination rate, including the state and local sales tax rate, to be
8 applied on sales on which the State imposes sales and use tax;

9 (2) providing certification procedures for both single
10 providers and consolidated providers to make software and services
11 available to remote sellers;

12 (3) ensuring that no more than one audit be performed or
13 required for all state and local taxing jurisdictions within the State;
14 and

15 (4) requiring that no more than one sales and use tax return
16 per month be filed with the department by any remote seller or any
17 single or consolidated provider on behalf of such remote seller.

18 (B)(1) If the Congress of the United States enacts legislation that
19 permits states to require remote sellers to collect sales and use tax,
20 the department shall, as permitted by such federal legislation,
21 require collection of sales and use tax by any remote seller, or a
22 single or consolidated provider acting on behalf of a remote seller.
23 If the federal legislation has an exemption for sellers whose sales
24 are less than a minimum amount, then in determining such amount,
25 the sales made by all persons related within the meanings of
26 subsections (b) and (c) of Section 267 or Section 707(b)(1) of the
27 Internal Revenue Code of 1986 shall be aggregated.

28 (2) Upon the imposition of the tax pursuant to this subsection,
29 the department also must meet the requirements of subsection (A).

30 (C) Notwithstanding any other provision of law, any state sales
31 and use tax revenue collected pursuant to this section, for which the
32 remote seller would not otherwise be required to remit sales tax,
33 shall be credited to the State Highway Fund for the construction and
34 improvement of roads and bridges. For purposes of this subsection,
35 the term 'state sales and use tax' does not include locally imposed
36 sales taxes administered by the Department of Revenue."
37

38 SECTION 3. This act takes effect upon approval by the Governor.

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