**South Carolina General Assembly**

119th Session, 2011-2012

**H. 4091**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Bingham, Toole, Huggins, Ballentine, Spires, Atwater, Quinn, Frye, Cooper and Harrell

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Companion/Similar bill(s): 808

Introduced in the House on April 13, 2011

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

Summary: Requirement for creating a nexus with S.C. for sales and use tax purposes

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/13/2011 House Introduced and read first time ([House Journal‑page 50](file:///h:\hj%20archive\2011\04-13-11.docx))

4/13/2011 House Referred to Committee on **Ways and Means** ([House Journal‑page 50](file:///h:\hj%20archive\2011\04-13-11.docx))

**VERSIONS OF THIS BILL**

[4/13/2011](file:///p:\pprever\2011-12\4091_20110413.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12‑36‑2691 SO AS TO PROVIDE THAT 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 NEXUS WITH SOUTH CAROLINA FOR SALES AND USE TAX PURPOSES, AND TO PROVIDE THE APPLICABLE REQUIREMENTS AND DURATION.

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

SECTION 1. 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 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 nexus with South Carolina for sales and use tax purposes.

(B)(1) For purposes of this section, ‘distribution facility’ means an establishment where only shipments of tangible personal property are processed for delivery to customers and no retail sales are made. The definition of ‘distribution facility’ provided in Section 12‑6‑3360(M)(8) for purposes of the targeted jobs tax credit and its provisions 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.

(C) This section only applies to a taxpayer that:

(1) places a distribution facility in service after December 31, 2010, and before July 1, 2012;

(2) makes, or causes to be made through a third party, a capital investment of at least ninety million dollars after December 31, 2010, and before July 1, 2012;

(3) creates at least one thousand two hundred forty‑nine full‑time jobs which include a comprehensive health plan for those employees, after December 31, 2010, and before January 1, 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 jobs until January 1, 2016.

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

(1) January 1, 2016;

(2) when the company 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.”

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

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