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COMMITTEE REPORT

April 6, 2011

**H. 3488**

Introduced by Reps. Bingham and Harrell

S. Printed 4/6/11--H. [SEC 4/7/11 3:30 PM]

Read the first time January 27, 2011.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 3488) to amend Act 99 of 2007, relating to the addition of a sales tax exemption for durable medical equipment and the phase in of that exemption, so as to delete the phase in, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

DANIEL T. COOPER for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT 1/**

Section 1 of this bill is expected to reduce sales and use tax revenue by an estimated $2,249,324 in FY2011-12. Section 2 of this bill is expected to increase sales and use tax revenue by an estimated $500,000 in FY2011-12. On net, this bill is expected to reduce sales and use tax revenue by an estimated $1,749,324 in FY2011-12. Of this amount, general fund sales and use tax revenue would be reduced by $1,166,216, Education Improvement Act funds would be reduced by $291,544, and the Homestead Exemption Fund would be reduced by $291,544 in FY2011-12.

## Explanation

**Section 1.** This section would amend Act 99 of 2007 by repealing Section 1B and 1C which states that the sales tax rate for durable medical equipment paid directly by funds under the Medicare and Medicaid programs is five and one-half percent subject to further reduction based on General Fund revenue growth. The repeal of these sections would fully exempt durable medical equipment paid directly by funds under the Medicare and Medicaid programs from sales tax. Currently, the sales tax rate for durable medical equipment is five and one-half percent. Further incremental reduction of this rate has not occurred because forecasted general fund revenues have not grown at the required five percent rates. This section of the bill would take effect July 1, 2011. Based upon collections of the five and one-half percent sales tax on durable medical equipment in FY09-10, we estimate that fully exempting the sales tax from sales of durable medical equipment is expected to reduce general fund sales tax revenue by $2,249,324 in FY2011-12.

**Section 2.** A warranty is given to the purchaser of a product by a manufacturer or provider of a service with the understanding that the manufacturer or provider will replace or repair a defective product or make good an ineffective service within a predetermined span of time. An extended warranty is similar to insurance for the purchased product and can be offered by the product’s manufacturer, the retailer, or a third-party warranty provider. The most common products covered by extended warranties are automobiles, electronics, appliances, and homes. Currently, sales and use tax is charged on the sale of a warranty or extended warranty on a product sold at the time a product is purchased and also if an extended warranty is purchased at a later date after the product is first purchased. If a problem develops with the product and the product is sent back to the manufacturer for repair, the parts withdrawn from inventory and used to fix the defective product would not be subject to a sales tax. Under this bill, sales and use tax would still be charged on the sale of a warranty or extended warranty on a product at the time of purchase, however, there would be no sales tax charged on the warranty or extended warranty if it is purchased at a later date after the product is first sold. If a product becomes defective during the warranty period and is sent back to the manufacturer for repair, the parts withdrawn from inventory and used to fix the defective product would be subject to a sales tax.

This bill would amend Section 12-36-90(1)(c)(iii) – definition of gross proceeds of sales, Section 12-36-90(2)(l) – definition of gross proceeds of sales, Section 12-36-910(B) – sales tax, Section 12-36-1310(B) – use tax, and Section 12-36-2120(69) – sales and use tax exemption, to amend language to not levy sales tax on a warranty or extended warranty if the warranty is sold after the sale of the product. According to the latest data from the Federal Trade Commission and Warranty Week, a national trade newsletter for warranty management professionals, manufacturer’s usually set aside funds to cover the costs to repair defective manufactured products each year. Based upon these data, we estimate that there will be net increase of sales and use tax revenue of an estimated $500,000 in FY2011-12.

*Approved By:*

William C. Gillespie

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND ACT 99 OF 2007, RELATING TO THE ADDITION OF A SALES TAX EXEMPTION FOR DURABLE MEDICAL EQUIPMENT AND THE PHASE IN OF THAT EXEMPTION, SO AS TO DELETE THE PHASE IN REQUIREMENTS; AND TO AMEND SECTIONS 12‑36‑90, 12‑36‑910, 12‑36‑1310, AND 12‑36‑2120, ALL AS AMENDED, RELATING TO THE IMPOSITION OF AND EXEMPTIONS FROM THE SALES AND USE TAX, SO AS 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.

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

SECTION 1. A. Section 1, Act 99 of 2007 is amended by deleting subsections B and C, which read:

“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 five and one‑half percent for such sales from July 1, 2007.

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.”

B. Notwithstanding the general effective date of this act, the amendment to Act 99 of 2007 made by subsection A of this section takes effect July 1, 2011.

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 under written 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. This act takes effect upon approval by the Governor.

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