



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE

STATEMENT OF ESTIMATED FISCAL IMPACT

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Bill Number:	H. 3726	Introduced on January 27, 2021
Author:	West	
Subject:	Gross Proceeds of Sales	
Requestor:	House Ways and Means	
RFA Analyst(s):	Gallagher and Jolliff	
Impact Date:	March 3, 2021	Updated for Revised Analysis and Fiscal Impact

Fiscal Impact Summary

This bill amends Section 12-36-90(2) to exclude payments 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 updated advisory opinion effective July 1, 2021, stating that payments to retailers from companies, including those provided from buydowns and other promotional incentives, are includible in the gross proceeds of a sale and are, therefore, subject to sales tax. While taxes on these payments are not currently collected, growth in revenues from audits and compliance enforcement by DOR are part of the growth in tax revenues. Absent this legislation, General Fund revenue would increase in FY 2021-22 with this compliance effort of the tax law on buydowns. Since this bill exempts these buydowns from tax, the bill will reduce General Fund, Homestead Exemption (HEX) Fund, and Education Investment Act (EIA) Fund sales tax revenue beginning in FY 2021-22. While the exact amount of the impact is currently undetermined, our expectation is that the potential scope of the impact associated with these buydowns on revenue growth is small but notable. We will continue to examine this issue, and the Board of Economic Advisors may adjust the anticipated growth in the revenue forecast to reflect this legislation if enacted.

This impact statement has been updated to provide additional information and analysis and to reflect the change in the effective date of DOR's advisory opinion from January 1, 2021 to July 1, 2021.

Explanation of Fiscal Impact

Updated for Revised Analysis and Fiscal Impact on March 3, 2021

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 #20-3, DOR provided an advisory opinion stating that payments to retailers from 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.

According to DOR, taxes on buydowns are not currently collected, but they are taxable under current law. In DOR's revenue ruling as revised in SC Information Letter #20-35, these payments will be taxable effective July 1, 2021. Growth in revenues from audits and compliance enforcement by DOR are part of the growth in tax revenues. Absent this legislation, sales tax revenue would increase in FY 2021-22 with this compliance effort of tax law on buydowns. Since this bill exempts these buydowns from tax, the bill is expected to reduce General Fund, HEX Fund, and EIA Fund sales tax revenue beginning in FY 2021-22. While the exact amount of the impact is currently undetermined, our expectation is that the potential scope of the impact associated with these buydowns on revenue growth is small but notable. We will continue to examine this issue, and the Board of Economic Advisors may adjust the anticipated growth in the revenue forecast to reflect this legislation if enacted.

This section has been updated to provide additional information and analysis and to reflect the change in the effective date of DOR's advisory opinion from January 1, 2021 to July 1, 2021.

Local Expenditure

N/A

Local Revenue

N/A

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



Frank A. Rainwater, Executive Director