

# Statement of Estimated State Revenue Impact

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**Date:** April 20, 2011 (As amended April 19, 2011 by the Senate Finance Committee)  
**Bill Number:** S.B. 808  
**Authors:** Setzler, Leatherman, Knotts, and Cromer

## **Committee Requesting Impact: Senate**

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### **Bill Summary**

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.

### **REVENUE IMPACT <sup>1/</sup>**

This bill, as amended, is not expected to impact state General Fund revenue in FY2011-12.

### **Explanation of Amendment (April 19, 2011) – By the Senate Finance Committee**

This amendment would add an unnumbered section to add Section 12-6-61 to define the treatment of nexus for distribution facilities in the state. This bill would reenact the provisions of Section 12-6-60, which expired January 1, 2011, for another five taxable years until January 1, 2016. Nexus is considered to be a situation in which a business has a presence in a state where the selling of goods and services takes place and is responsible for remitting taxes for the privilege of doing business in the state. This amendment would not allow a distribution facility to be considered a fixed place of business in South Carolina for the purposes of nexus. A distribution facility is defined in Section 12-6-3360 as an establishment where shipments of tangible personal property are processed for delivery to customers. The term does not include an establishment where retail sales of tangible personal property are made to retail customers on more than twelve days a year except for a facility which processes customer sales orders by mail, telephone, or electronic means, if the facility also processes shipments of tangible personal property to customers and if at least seventy-five percent of the dollar amount of goods sold through the facility are sold to customers outside of South Carolina. Because a distribution facility meeting these criteria would not have nexus in the state, there would be no basis for collecting sales tax. This section also exempts the taxpayer who owns or leases the establishment from corporate income taxes and corporate license fees. Since this bill would be a continuation of existing legislation and would not change the revenue forecast of the Board of Economic Advisors, this bill, therefore, is not expected to affect General Fund revenue in FY2011-12. This unnumbered section takes effect January 1, 2011.

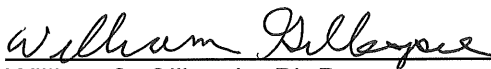
### **Explanation of Bill filed April 13, 2011**

Nexus is considered to be a situation in which a business has a presence in a state where the selling of goods and services takes place and is responsible for remitting taxes for the privilege of doing business in the state. This bill would add Section 12-36-2691 to state that owning or utilizing a distribution facility within South Carolina is not considered in determining whether a taxpayer has physical presence in South Carolina sufficient to establish nexus with South Carolina for sales and use tax purposes. As provided in this section, a "distribution facility" means an establishment where only shipments of tangible personal property are processed for delivery to customers and no retail sales are made. This section only applies to a taxpayer that meets the following criterion: places a distribution facility in service after December 31, 2010 and before July 1, 2012; makes a capital investment of at least \$90,000,000 after December 31, 2010 and before July 1, 2012; and creates at least 1,249 full-time jobs, including a comprehensive health plan, after December 31, 2010 and before

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January 1, 2013. There is currently no facility within this State that meets this criterion. This provision would expire on January 1, 2016, or if the company fails to meet the minimum capital investment requirement and the full-time job threshold. A company meeting these requirements would be eligible for a jobs tax credit for each new, full-time job and also be able to withhold a percentage of each new job's individual income tax withholdings through job development fees. These income tax credits and fees would be greater than the income tax the state would receive for each job. Also, because a distribution facility meeting these criteria would not have nexus in the state under this section, there would be no basis for the collection of sales taxes on the purchases of goods sold through the establishment. Since the enactment of this bill would not change the collection of revenues, it is not expected to impact General Fund revenue in FY2011-12. This act takes effect upon approval by the Governor.



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**Analyst:** Martin

<sup>1/</sup> 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 of Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.