

Sales/Use/Indirect:

South Carolina High Court Says Durable Medical Equipment Exemption is Unconstitutionally Discriminatory

Case No. 2023-000317, S.C. (6/26/24). In a case involving a South Carolina statutory sales tax exemption for the sale of durable medical equipment that is paid for directly by Medicaid or Medicare funds but only when the seller's principal place of business is located in South Carolina ("DME exemption"), the South Carolina Supreme Court (Court) held that the DME exemption unconstitutionally discriminates against interstate commerce in violation of the dormant Commerce Clause. Moreover, the Court held that because it was not shown that the South Carolina Legislature "would have passed the remainder of the DME exemption absent the unconstitutional language," the Court declined to "sever only the offending language" and instead declared the entire DME exemption "void going forward." In doing so, the Court acknowledged that its decision to invalidate the entire DME exemption "presents a close question, as it is based on a lack of evidence regarding legislative intent rather than affirmative evidence to that effect," but noted that the South Carolina Legislature "may, if it elects, reenact the exemption, save the unconstitutional limitation on a seller's principal place of business." Please contact us with any questions.

URL: <https://www.sccourts.org/opinions/HTMLFiles/SC/28211.pdf>

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