

Senator McConnell prepared the following informational papers to provide an overview and background for each issue under consideration by the Fiscally Fit subcommittee. Senate Judiciary Committee staff assisted in providing research and preparation of these papers; however, these informational papers reflect the opinions of Senator McConnell and not necessarily the opinions of all members of the Fiscally Fit subcommittee, the Senate Judiciary Committee, or the South Carolina Senate.

LET'S MAKE SOUTH CAROLINA "FISCALLY FIT"

By Senator Glenn McConnell

Taxpayer Fairness Act

In recent years, the Department of Revenue (DOR) has been on a hunt across the State of South Carolina for what are claimed to be overdue tax payments in an effort to provide additional revenue for spending. There are provisos in the budget each year that provide DOR with money for extra enforcement and that also spend this "increased enforcement" money gathered by DOR. Some small business owners have begun questioning DOR's tactics when gathering this money and whether increased enforcement is really a bounty on small business.

For example, one advertising business was audited and charged for failure to collect sales tax on services, shipping, and handling. The company was told by DOR that the shipping part of the tax penalty would be forgiven, but the service charges would not be forgiven. The business owner never collected sales tax from the service fees, as she was initially advised by a DOR representative at the Revenue Service Call Center that it was not required. Now, the business owner has to go into debt to pay this demand. When this citizen attempted to explain that she called DOR for advice and followed that advice, the auditor replied that the

contact center personnel “aren’t particularly qualified” to answer questions and give instructions about completing the sales tax return. Another manager described the auditor that first reviewed the case as “inexperienced.”

Another example of this hunt for money is a situation that has arisen with an orthotics supplier. In that case, DOR gave the supplier an opinion in 2003 stating that methods the supplier used to exclude sales to federal payers from tax liabilities were correct. Then, in 2009, DOR audited the supplier again and stated that the supplier’s deductions were disallowed and that DOR was seeking back payments of deducted taxes totaling \$100,000. The supplier responded that it had relied upon the 2003 opinion from DOR, but DOR has continued with the case against the supplier for back taxes. This situation remains ongoing.

DOR’s job, like every other executive agency, is to execute the laws that are written by the legislature. Their job does not include making laws. That is the job of the legislature. When DOR, by interpretation or issuance of a regulation, expands the application of a tax law, the public has placed on it taxation without representation. S. 11, sponsored by Sen. McConnell, and H. 3419, both named the “Taxpayer Fairness Act,” are identical bills and were introduced in 2011. S. 11 would add Section 12-4-397 to the South Carolina Code. This new section would forbid DOR from expanding the application of a tax by interpretation or regulation. The bill provides that the DOR would have to interpret all tax statutes based solely

upon the plain meaning of the statute's text and the legislative intent that gave rise to the statute. The new section would also provide that any ambiguity must be resolved in favor of the taxpayer. Sen. McConnell pre-filed this bill in December of 2010, and the bill was referred to the Senate Finance Committee. H. 3419, which, again, is identical to S. 11, was filed in the House of Representatives on January 25, 2011. The bill received a favorable vote of 110-0 in the House on March 9, 2011, and it was sent to the Senate on March 10, 2011. This bill was also referred to the Senate Finance Committee.

The Board of Economic Advisors reviewed H. 3419 and determined that the bill would inhibit the collection of tax revenue by an estimated \$350 million, meaning that the general fund of South Carolina would lose \$350 million if this bill were to pass and be implemented. How is it that a bill that simply states that tax statutes must be interpreted based on their plain meanings could have an impact that great? Does that mean that businesses are being charged \$350 million more than what is provided by the tax statutes? If so, it certainly does not seem that DOR is doing its job properly, and it also seems that South Carolina businesses are being taxed in a manner that was not intended by the legislature. Agency executives should not be allowed to interpret tax laws as the executives see fit simply to put more money into the state coffers. If we want to limit government, we must stop this behavior, and we must, instead, limit state spending. We must

have a government that spends only what it has and does not grow by broadening tax laws.