**South Carolina General Assembly**

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**H. 3472**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Sandifer

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Introduced in the House on January 27, 2011

Currently residing in the House Committee on **Ways and Means**

Summary: Business license tax assessment

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/27/2011 House Introduced and read first time ([House Journal‑page 8](file:///h:\hj%20archive\2011\01-27-11.docx))

1/27/2011 House Referred to Committee on **Ways and Means** ([House Journal‑page 8](file:///h:\hj%20archive\2011\01-27-11.docx))

**VERSIONS OF THIS BILL**

[1/27/2011](file:///p:\pprever\2011-12\3472_20110127.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 14, TO CHAPTER 60, TITLE 12 SO AS TO DEFINE NECESSARY TERMS, TO PROVIDE THE PROCESS BY WHICH A TAXPAYER MAY OBJECT TO A BUSINESS LICENSE TAX ASSESSMENT, TO PROVIDE THE PROCESS BY WHICH THE ASSESSMENT MAY BE APPEALED, AND TO PROVIDE THE PROCESS BY WHICH AN ASSESSMENT MAY BE REFUNDED; AND TO AMEND SECTION 12‑60‑20, AS AMENDED, RELATING TO THE INTENT OF THE SOUTH CAROLINA REVENUE PROCEDURES ACT, SO AS TO PROVIDE THAT THE SOUTH CAROLINA REVENUE PROCEDURES ACT ALSO IS INTENDED TO RESOLVE DISPUTES CONCERNING BUSINESS LICENSE TAX ASSESSMENTS.

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

SECTION 1. Chapter 60, Title 12 of the 1976 Code is amended by adding:

“Article 14

Appeals, Protests, and Refunds for Municipal or

County Business Licenses

Section 12‑60‑3400. As used in this article:

(1) ‘County board of business license tax appeals’ or ‘county board’ means the board of business license tax appeals which considers appeals of business license tax assessments issued by the county business license official for the county.

(2) ‘County business license official’ means a county officer or official who issues an official business license assessment pursuant to Section 4‑9‑30.

(3) ‘Municipal board of business license tax appeals’ or ‘municipal board’ means the board of business license tax appeals which considers appeals of business license tax assessments issued by the municipal business license tax official for the municipality.

(4) ‘Municipal business license official’ means a municipal officer or official who issues an official business license tax assessment pursuant to Section 5‑7‑30.

Section 12‑60‑3410. (A) A taxpayer may object to a business license tax assessment issued by either a municipal or county business license tax official by requesting, in writing, to meet with the business license tax official at any time on or before the later of:

(1) thirty days after the business license tax notice is mailed; or

(2) the last day the business license tax may be timely paid.

(B) If, upon examination of the business license taxpayer’s written objection, the municipal or county business license official agrees with the taxpayer, the municipal or county business license official must correct the error. If, upon the examination, the municipal or county official does not agree with the taxpayer, the official shall schedule a conference with the business license taxpayer within thirty days of the date of the request for a meeting or as soon after that as practical. If the matter is not resolved at the conference, the official shall advise the business license taxpayer of the right to protest and provide the taxpayer a form on which to file the protest. The business license taxpayer has thirty days after the date of the conference to file a written protest with the official. The protest must contain:

(1) the name, address, and telephone number of the business license;

(2) a description of the gross income in issue;

(3) a statement of facts supporting the taxpayer’s position;

(4) a statement outlining the reasons for the appeal, including any law or other authority, upon which the taxpayer relies; and

(5) the gross income which the taxpayer considers to be the amount subject to taxation.

The taxpayer may use the form prepared by the department, but use of the form is not mandatory.

(C) The business license official shall respond to the written protest and the response must:

(1) be in writing;

(2) be mailed to the taxpayer by first class mail within thirty days of the date of receipt of the taxpayer’s protest or as soon thereafter as practical;

(3) include a statement of the initial business license tax assessment and the redetermined business license tax assessment;

(4) state that the redetermined business license tax assessment will become final if the taxpayer does not appeal the business license tax assessment to the municipal or county board of business license appeals; and

(5) inform the taxpayer of procedures for all further appeals.

(D) The official may amend, modify, or rescind any business license tax assessment.

Section 12‑60‑3420. (A) Within thirty days after the date of the municipal or county business license official’s response pursuant to Section 12‑60‑3410, a taxpayer may appeal a real property tax assessment to the municipal or county board of business license tax appeals. The board may rule on any timely appeal relating to the correctness of any of the elements of the business license tax assessment, and any other relevant claims of a legal or factual nature. A conference held by the board is subject to any rules prescribed for the municipal or county boards of business license appeals by the Administrative Law Judge Division. The official may extend the time period for filing a taxpayer’s appeal if the request for an extension is received by the official within thirty days of the date of the municipal or county business license’s response pursuant to Section 12‑60‑3410.

(B) An appeal to the board begins by giving written notice of intent to appeal to the business license official.

(C) A conference on the appeal must be conducted by the board within thirty days after the date of receiving a notice of appeal, or as soon thereafter as practical. The board shall:

(1) set the place, date, and time for the conference;

(2) give the official and the property taxpayer at least thirty days’ written notice of the conference;

(3) advise the taxpayer that all evidence must be presented at the conference; and

(4) have the authority and jurisdiction to enter a default decision if either the taxpayer or the official fails to appear at the conference, if proper notice of the conference was given. If a default decision is entered against the taxpayer for failure to appear at the conference, the business license tax assessment becomes a final business license tax assessment. A default order entered against the official for failure to appear at the conference results in a final business license tax assessment based on the value stated in the taxpayer’s written protest. However, the board may grant a continuance and refrain from entering a default order upon good cause shown by any party.

(E) Each appeal must be considered by all board members present at a meeting. The lesser of a majority of the members or three members of the board constitutes a quorum, unless the parties agree to a lesser number.

(F) At least fifteen days before the date of the conference, the official shall file with the board:

(1) a copy of the original business license tax assessment for the taxpayer;

(2) the written protest of the taxpayer;

(3) a written response to the taxpayer’s protest; and

(4) copies of documents and a brief description of other evidence to be presented by him. Copies of the documents filed with the board must be mailed or delivered to the property taxpayer at the same time.

(G) At least fifteen days before the date of the conference, the taxpayer shall file with the board copies of documents and a brief description of other evidence to be presented. Copies of the documents and lists must be mailed or delivered to the business official at the same time. The requirement that the taxpayer file the material with the board and mail or deliver it to the official may be waived by the board.

(H) At least seven days before the date of the conference, the parties may file with the board any response each may have to the information filed by the other. This material must be mailed or delivered to the other party at the same time.

(I) The conference must be held as follows:

(1) A conference must be open to the public.

(2) The board may meet in closed session to consider evidence, including gross income presented at the conference.

(3) The official shall explain the business license tax assessment and his response to the taxpayer’s written protest.

(4) The official may provide the board with evidence to support the business license tax assessment.

(5) The taxpayer shall state his reasons for protesting the business license tax assessment.

(6) The taxpayer may provide the board with evidence to support amending, modifying, or rescinding the business license tax assessment.

(7) The official may rebut information and arguments presented by the taxpayer.

(8) The taxpayer may rebut information and arguments presented by the official.

(9) Any member of the board may question the taxpayer, the official, and anyone else providing information at the conference. Any member of the board may request additional information.

(J) After the conference, the board shall issue a decision based upon the evidence before it as follows:

(1) The decision must be made by a majority vote of the board members present at the conference. In case of a tie, the official’s determination is upheld.

(2) At the conclusion of the conference, the decision may be announced orally or it may be reserved for consideration. In either event, the board shall mail a written decision to the parties within fifteen days after the date of the conference, or as soon thereafter as practical.

(3) The written decision of the board shall:

(a) explain the basis for the decision;

(b) state that if the decision is not appealed, it will be certified to the official; and

(c) inform the parties of their right to request a contested case hearing before the Administrative Law Judge Division.

Section 12‑60‑3430. (A) Within thirty days after the date of the board’s written decision, a taxpayer or municipal or county official may appeal a business license tax assessment made by the board by requesting a contested case hearing before the Administrative Law Judge Division in accordance with the rules of the Administrative Law Judge Division.

(B) If a taxpayer requests a contested case hearing before the Administrative Law Judge Division without exhausting his prehearing remedy because he failed to file a protest or attend the conference with the municipal or county board of business license tax appeals, the Administrative Law Judge shall dismiss the action without prejudice. If the taxpayer failed to provide the municipal or county board with the facts, law, and other authority supporting his position, he shall provide the representative of the municipality or county at the hearing with the facts, law, and other authority he failed to present to the municipal or county board earlier. The administrative law judge shall then remand the case to the municipal or county board for reconsideration in light of the new facts or issues unless the representative of the municipality or county at the hearing elects to forego the remand.

(C) Upon remand, the municipal or county board has thirty days, or a longer period ordered by the administrative law judge, to consider the new facts and issues and amend its decision. The municipal or county board shall issue its amended decision in the same manner as the original. The taxpayer has thirty days after the date the municipal or county board’s decision was mailed or delivered to the taxpayer to again request a contested case hearing. A request for a hearing before the administrative law judge Division must be made in accordance with its rules. If the municipal or county board fails to issue its amended decision within thirty days of the date of the remand, or a longer period ordered by the administrative law judge, the taxpayer can again request a contested case hearing. At the new hearing, the facts, law, and other authority presented at the original hearing must be deemed to have been presented in a timely manner for purposes of exhausting the taxpayer’s prehearing remedy. The statute of limitations remains suspended by Section 12‑54‑85(G) during this process.

Section 12‑60‑3440. (A) After final review of the protest or appeal, if the business license tax assessment is greater than the adjusted business license tax assessment, a corrected business license tax assessment must be made and entered. Interest determined in accordance with Section 12‑54‑25 must be collected in the same manner as the tax.

(B) After final review of the protest or appeal, if the business license tax assessment is less than the adjusted business license tax assessment, a corrected business license tax assessment must be made and entered. The overpayment of tax must be refunded together with interest determined in accordance with Section 12‑54‑25.

(C) For purposes of this section the ‘final review of the protest or appeal’ includes the final decision of the Administrative Law Judge Division or court with respect to the business license tax assessment if the business license tax assessment was heard by the Administrative Law Judge Division or appealed to a court as provided in this article.

Section 12‑60‑3450. (A) Subject to the limitations in Section 12‑60‑1750, and within the time limitation of Section 12‑54‑85(F), a taxpayer may seek a refund of business license taxes assessed by the municipal or county official and paid by filing a claim for refund with the municipal or county official who made the business license tax assessment for which the tax refund is sought.

(B) Within thirty days after the decision is mailed to the taxpayer on the claim for refund, a taxpayer may appeal the decision to the municipal or county board of assessment appeals. The board may rule on any timely refund appeal relating to the correctness of the business license tax assessment. A conference conducted by the board is subject to the same rules and procedures as provided in Section 12‑60‑2530 except that a taxpayer’s denied claim for refund is considered the official’s response to a protest of business license tax assessment.

(C) Within thirty days after the board’s decision is mailed to the taxpayer, a taxpayer or municipal or county official may appeal the decision issued by the board by requesting a contested case hearing before the Administrative Law Judge Division. Requests for a hearing before the Administrative Law Judge Division must be made in accordance with its rules.

If a taxpayer requests a contested case hearing before the Administrative Law Judge Division without exhausting his prehearing remedy because he failed to file a claim for refund or attend the conference with the county board of business license tax appeals, the administrative law judge shall dismiss the action without prejudice. If the taxpayer failed to provide the municipal or county board with the facts, law, and other authority supporting his position, he shall provide the representative of the municipality or county at the hearing with the facts, law, and other authority he failed to present to the municipal or county board earlier. The administrative law judge shall then remand the case to the municipal or county board for reconsideration in light of the new facts or issues unless the representative of the municipality or county at the hearing elects to forego the remand.

(D) Upon remand the municipal or county board has thirty days, or a longer period ordered by the administrative law judge, to consider the new facts and issues and amend its decision. The municipal or county board shall issue its amended decision in the same manner as the original. The taxpayer has thirty days after the date the county board’s decision was mailed or delivered to the taxpayer to again request a contested case hearing. A request for a hearing before the Administrative Law Judge Division must be made in accordance with its rules. If the municipal or county board fails to issue its amended decision within thirty days of the date of the remand, or a longer period ordered by the administrative law judge, the taxpayer can again request a contested case hearing. At the new hearing the facts, law, and other authority presented at the original hearing must be deemed to have been presented in a timely manner for purposes of exhausting the taxpayer’s prehearing remedy. The statute of limitations remains suspended by Section 12‑54‑85(G) during this process.”

SECTION 2. Section 12‑60‑20 of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

“Section 12‑60‑20. It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue, ~~and~~ a dispute concerning property taxes, and a dispute concerning business license assessments. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.”

SECTION 3. This act takes effect upon approval by the Governor and applies to a business license assessment made after July 1, 2011.

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