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Summary: Fair Tax Collection Act

**HISTORY OF LEGISLATIVE ACTIONS**

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12/18/2014 House Referred to Committee on **Ways and Means**

1/13/2015 House Introduced and read first time ([House Journal‑page 149](file:///h:\HJ%20Archive\2015\01-13-15.docx))

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**VERSIONS OF THIS BILL**

[12/18/2014](file:///p:\pprever\2015-16\3210_20141218.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA FAIR TAX COLLECTION ACT” BY ADDING SECTION 12‑54‑140 SO AS TO ALLOW THE SOUTH CAROLINA DEPARTMENT OF REVENUE, UPON THE WRITTEN REQUEST OF A TAXPAYER, TO PLACE A DELINQUENT TAX LIABILITY IN A “CURRENTLY NONCOLLECTIBLE STATUS” (NCS) IF THE DEPARTMENT DETERMINES THAT ITS FORBEARANCE FROM COLLECTION MAY IMPROVE THE PROSPECTS OF COLLECTING THE TAX DUE AND PROVIDE THE REQUIREMENTS FOR OBTAINING AND MAINTAINING NCS; TO AMEND SECTION 8‑21‑310, AS AMENDED, RELATING TO THE SCHEDULE OF RECORDING FEES AND COSTS, SO AS TO PROVIDE A TEN DOLLAR FEE FOR RECORDING A SATISFACTION OF AN EXPIRED TAX LIEN; TO AMEND SECTION 12‑54‑85, RELATING TO THE TIME LIMIT FOR ASSESSMENT OF TAXES AND FEES, SO AS TO PROVIDE THAT TAXES AND FEES ARE UNCOLLECTIBLE BY ANY MEANS COMMENCING MORE THAN TEN YEARS AFTER ASSESSMENT AND FURTHER DEFINE “THE ASSESSMENT OF THE TAX”; TO AMEND SECTION 12‑54‑120, RELATING TO TAX LIENS, SO AS TO PROVIDE THAT THE TEN YEAR DURATION OF A TAX LIEN BEGINS ON THE DATE OF THE ASSESSMENT OF THE TAX RATHER THAN THE FILING OF THE LIEN AND PROVIDE FOR THE SATISFACTION OF AN EXPIRED TAX LIEN BY THE DEPARTMENT OF REVENUE WHEN REQUESTED BY THE APPROPRIATE PARTY AND THAT PARTY’S PAYING TO THE DEPARTMENT THE TEN DOLLAR RECORDING FEE AND COSTS NOT EXCEEDING FIVE DOLLARS; TO AMEND SECTION 12‑58‑185, RELATING TO INSTALLMENT PAYMENTS OF DELINQUENT TAXES OWED THE DEPARTMENT OF REVENUE, SO AS TO PROVIDE THOSE CIRCUMSTANCES WHEN THE DEPARTMENT MAY ALLOW A TAXPAYER TO ENTER INTO AN INSTALLMENT PAYMENT AGREEMENT AND THOSE CIRCUMSTANCES THE DEPARTMENT MUST ALLOW A TAXPAYER TO ENTER INTO SUCH AN AGREEMENT AND TO PROVIDE THE ELIGIBILITY REQUIREMENTS FOR INSTALLMENT PAYMENT AGREEMENTS AND REQUIREMENTS ON THE TAXPAYER TO MAINTAIN SUCH AGREEMENTS, TO DIRECT THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO PRESCRIBE A POLICY DOCUMENT DETAILING THE CIRCUMSTANCES UNDER WHICH IT SHALL CONSIDER AN OFFER IN COMPROMISE MADE BY A TAXPAYER AND TO PRESCRIBE APPROPRIATE FORMS AND SCHEDULES FOR A TAXPAYER’S APPLICATION FOR AN OFFER IN COMPROMISE, AND TO PROVIDE THAT THE PROVISIONS OF THIS ACT FIRST APPLY FOR TAX LIABILITIES FOR TAXABLE PERIODS ENDING ON OR AFTER THIS ACT’S EFFECTIVE DATE.

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

SECTION 1. This act may be cited as the “South Carolina Fair Tax Collection Act”.

SECTION 2. Chapter 54, Title 12 of the 1976 Code is amended by adding:

“Section 12‑54‑140. In those instances where the department determines that it’s forbearance from collection with respect to a delinquent tax liability may improve the prospect of collecting the tax due, the department, upon the written request of the taxpayer, may place the liability in ‘currently noncollectible status’ (CNS). The taxpayer’s request must be made on forms prescribed by the department requiring the taxpayer to provide the information necessary for the department’s decision to grant CNS. To remain in CNS, the taxpayer must remain current with all current filing and payment requirements and must provide follow‑up information required by the department necessary for it to determine whether to continue or terminate CNS.”

SECTION 3. Section 8‑21‑310(20) of the 1976 Code, as last amended by Act 329 of 2002, is further amended to read:

“(20)(a) for filing and enrolling and satisfaction of South Carolina and United States Government tax liens:

~~(a)~~(i) for filing and enrolling and satisfying executions or warrants for distraint for the South Carolina Department of Employment and Workforce, the South Carolina Department of Revenue, or any other state agency, where costs of the executions or warrants for distraint are chargeable to the persons against whom such executions or warrants for distraint are issued, ten dollars;

~~(b)~~(ii) for filing and enrolling and satisfying any tax lien of any agency of the United States Government, where the costs of the executions are chargeable to the persons against whom such executions are issued, ten dollars;

The clerk shall mark ‘satisfied’ upon receipt of the fees provided in this ~~item~~ subitem for any tax lien or warrant for distraint issued by any agency of this State or of the United States upon receipt of a certificate duly signed by an authorized officer of any agency of this State or the United States to the effect that the execution or warrant for distraint has been paid and satisfied.

(b) for satisfying a tax lien filed by the South Carolina Department of Revenue as allowed pursuant to Section 12‑54‑120(D), ten dollars;”

SECTION 4. A. Section 12‑54‑85(A) of the 1976 Code is amended to read:

“(A)(1) Except as otherwise provided in this section, taxes must be determined and assessed within thirty‑six months from the date the return or document was filed or due to be filed, whichever is later.

(2) Except as provided in subsection (E)(2)(a), applicable to property tax, all other taxes and fees administered by the Department of Revenue are considered assessed on the later of:

(a) the date a return or document reporting a tax or fee filed by a taxpayer with the department is accepted by the department; or

(b) the date the taxpayer’s administrative remedies with respect to the applicable tax or fee liability are exhausted, whether prehearing or by a decision in a contested case by the Administrative Law Court.”

B. Section 12‑54‑85(E) of the 1976 Code is amended to read:

“(E)(1) A tax may not be collected by ~~levy, warrant for distraint, or proceedings in court, unless the~~ any means:

~~(1)~~(a) ~~levy, warrant for distraint, or proceedings in court were begun within ten years after the assessment of the tax;~~ after expiration of the tax lien established pursuant to Section 12-54-120 unless the:

~~(2)~~(i) taxpayer has agreed to extend this period; or

~~(3)~~(ii) running of this period is suspended in accordance with this section.

(2)(a) For property tax purposes, the ‘assessment of the tax’ occurs on the later of the last day the tax may be paid without penalty or the date of the tax notice.

(b) For all other taxes, not including those imposed and administered pursuant to county or municipal ordinance, ‘the assessment of the tax’ means the assessment defined pursuant to Section 12‑60‑30(2).”

SECTION 5. Section 12‑54‑120 of the 1976 Code is amended to read:

“Section 12‑54‑120. (A)(1) If a person liable to pay a tax neglects or refuses to pay it after demand, the amount of the tax, including interest, additional tax, addition to tax, or assessable penalty, plus accrued costs, is a lien in favor of the Department of Revenue on all property and rights to property, real or personal, tangible or intangible, belonging to the person.

(2) This lien:

(a) is referred to as a ‘tax lien’;

(b) is effective on the date of the assessment of the tax as defined in Section 12‑54‑85(E)(2)(b);

(c) allows an authorized agent of the department to seize, levy on, and sell the property of the person for the payment of the amount due, with added penalties, interest, and costs of executing on the lien, and to pay the money collected to the department;

(d) extends to bank deposits, choses in action, and all other property incapable of manual levy or delivery; and

(e) continues for ten years from the date of ~~filing~~ the assessment of the tax described in subitem (b).

(3) ‘Demand’, as used in this section, means ~~an~~ the assessment made by the department as described in item (2)(b) by the department.

(B) This tax lien and the limitations in Section 12‑54‑122 are in addition to all other liens or remedies in favor of the department and does not affect any other lien or remedy.

(C) The department, in addition to other remedies for enforcement of its tax lien, retains all remedies available to a judgment creditor.

(D) If a lien filed pursuant to this section has not been otherwise satisfied or expunged and the lien has expired, the taxpayer, successor in interest of the taxpayer, or authorized representative of either, in writing may request the Department of Revenue to record a satisfaction of the expired lien. The required written request must be on a form prescribed by the department containing the information necessary for the department to identify the lien and the form must be accompanied by the filing fee required pursuant to Section 8‑21‑310(20)(b) plus costs incurred by the department for this service, not to exceed five dollars.”

SECTION 6. Section 12‑58‑185 of the 1976 Code is amended to read:

“Section 12‑58‑185. (A) The department~~, in its discretion, may accept installment payments for amounts due it for a period not to exceed one year from the date the payment was due. Interest accrues during the installment period, pursuant to Section 12‑54‑25. In addition, the department may extend the time for payment beyond one year if it is shown to the satisfaction of the department that the payment of the amount due it upon the date originally fixed for the payment will result in undue hardship to the taxpayer~~ may enter into written agreements with a taxpayer under which the taxpayer is allowed to satisfy liability for payment of any tax imposed or administered by the department in installment payments if the department determines that the agreement will facilitate collection of the liability.

(B) ~~An extension may not be granted under this section for an amount due the department if the taxpayer acted negligently, disregarded rules or regulations intentionally, or committed fraud with intent to evade tax~~ (1) Except as otherwise provided in this subsection, an agreement entered into by the department pursuant to subsection (A) remains in effect for the term of the agreement.

(2) The department may terminate an agreement entered pursuant to subsection (A) if:

(a) information which the taxpayer provided to the department before the date the agreement was entered into was inaccurate or incomplete; or

(b) the department believes that collection of the tax to which an agreement pursuant to this section relates is in jeopardy.

(3) If the department determines that the financial condition of a taxpayer with whom the department has entered into an agreement pursuant to subsection (A) has significantly changed, the department may alter, modify, or terminate the agreement.

(4) The department may alter, modify, or terminate an agreement entered into by it pursuant to subsection (A) in the case of the failure of the taxpayer to:

(a) pay an installment at the time the installment payment is due under the agreement;

(b) pay any other tax liability arising from a tax imposed or administered by the department at the time the liability is due; or

(c) provide a financial condition update as requested by the department.

(5) The department may not take any action under items (2), (3), or (4) unless:

(a) a notice of the action is provided to the taxpayer not later than the day thirty days before the date of the action; and

(b) the notice includes an explanation why the department intends to take the action. The preceding sentence does not apply in a case in which the department believes that collection of the tax to which an agreement pursuant to this section relates is in jeopardy.

(C) In the case of a liability for a tax administered by and paid to the Department of Revenue, the department shall enter into an agreement to accept the payment of the tax in installments if, as of the date the individual offers to enter into the agreement:

(1) the aggregate amount of the liability, determined without regard to interest, penalties, additions to the tax, and additional amounts, does not exceed twenty‑five thousand dollars;

(2) the taxpayer has filed all tax returns due to be filed and is not currently entered into an installment agreement pursuant to this section for payment of a tax imposed or administered by the department;

(3) except as provided in subsection (G), the department determines that the taxpayer is financially unable to pay the liability in full when due, and the taxpayer submits the information the department may require to make that determination;

(4) the agreement requires full payment of the liability within five years; and

(5) the taxpayer agrees to comply with the provisions of this title and other applicable provisions of law relating to the impending taxes and fees paid for the period the agreement is in effect.

(D) Interest and penalties continue to accrue on the liability that is the subject of the agreement until the balance is paid in full.

(E) The department shall establish procedures for an independent administrative review of terminations of installment agreements pursuant to this section for taxpayers who request such a review.

(F)(1) The department may not require a taxpayer to agree to an extension of the collection period provided pursuant to Section 12‑54‑85(E) as a condition precedent to the department offering a taxpayer an installment payment agreement pursuant to subsection (A).

(2) An installment agreement offered to or allowed a taxpayer pursuant to this section may not extend for period ending after the collection period provided pursuant to Section 12‑54‑85(E).

(G) The department may impose an installment agreement fee which must be added to the amount due pursuant to the agreement and the department may reduce the stated fee based on the financial circumstances of the taxpayer. A tax lien for the liability that is the subject of the agreement entered into pursuant to subsection (C) may not be filed by the department while a taxpayer is meeting the requirements of that agreement.

(H) Notwithstanding the requirement of subsection (C)(3) to submit financial information necessary for the department’s determination of the taxpayer’s inability to pay, the department shall grant an installment agreement if the tax due pursuant to the agreement is not more than ten thousand dollars, the term of the agreement is not more than three years, and the taxpayer meets the other requirements of this section.”

SECTION 7. The South Carolina Department of Revenue shall prescribe a comprehensive policy document detailing the circumstances in which the department must consider an offer in compromise made by a taxpayer with respect a tax or fee liability. In addition, the department shall prescribe a form and accompanying schedules which may be used by a taxpayer to request an officer in compromise.

SECTION 8. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 9. This act takes effect upon approval by the Governor and applies for tax liabilities accrued for taxable periods ending on or after that date.

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