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Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

May 11, 2016

**H. 3891**

Introduced by Reps. Toole, Long, Bedingfield, J.E. Smith, Anderson, Forrester, Rutherford and Sandifer

S. Printed 5/11/16--S. [SEC 5/12/16 12:55 PM]

Read the first time May 4, 2015.

**A** **BILL**

TO AMEND SECTION 56‑31‑50, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SURCHARGES ON RENTAL OR PRIVATE PASSENGER MOTOR VEHICLES FOR THIRTY‑ONE DAYS OR LESS, SO AS TO DEFINE NECESSARY TERMS, TO DELETE EXISTING SURCHARGE PROVISIONS, TO INSTEAD PROVIDE RENTAL COMPANIES ENGAGED IN THE BUSINESS OF RENTING VEHICLES FOR PERIODS OF NINETY DAYS OR LESS MAY CHARGE SEPARATELY STATED FEES WHICH MAY INCLUDE CERTAIN FEES AND TAXES, TO PROVIDE THE AMOUNT OF THE CHARGE MUST REPRESENT THE GOOD FAITH ESTIMATE BY THE MOTOR VEHICLE RENTAL COMPANY OF ITS DAILY CHARGE CALCULATED TO RECOVER ITS ACTUAL TOTAL ANNUAL RECOVERABLE COSTS, TO PROVIDE REQUIREMENTS FOR WHEN THE TOTAL AMOUNT OF THE VEHICLE LICENSE FEES COLLECTED BY A MOTOR VEHICLE RENTAL COMPANY IN ANY CALENDAR YEAR EXCEEDS THE ACTUAL COSTS OF THE CAR RENTAL COMPANY DURING THAT PERIOD, TO REQUIRE A CERTAIN DESCRIPTION OF VEHICLE LICENSE FEES IN THE VEHICLE RENTAL AGREEMENTS, AND TO PROVIDE THAT VEHICLE LICENSE FEES ARE SUBJECT TO CERTAIN SALES AND USE TAXES.

Amend Title To Conform

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

SECTION 1. Section 56-31-50 of the 1976 Code is amended to read:

“Section 56‑31‑50. (A) As used in this section:

(1) ‘Motor vehicle rental company’ means an individual or business entity whose business activity is renting motor vehicles to consumers under rental agreements for periods of ninety days or less.

(2) ‘Vehicle license fee’ means a charge that may be separately stated and charged on the rental contract in a vehicle rental transaction originating in this State to recover the motor vehicle rental company’s costs incurred for:

(a) licensing, titling, registering, plating, and inspecting of its rental vehicles; and

(b) taxes paid in connection with registering its rental vehicles.

~~(A)~~(B) Rental companies engaged in the business of renting ~~private passenger motor vehicles~~ ~~or rental~~ vehicles for periods of ~~thirty‑one~~ ninety days or less ~~shall collect~~ may charge, at the time the vehicle or rental vehicle is rented in South Carolina, ~~a five percent surcharge in each rental contract~~ separately stated fees which may include, but must not be limited to, vehicle license fees, airport access fees, airport concession fees, and all applicable taxes. For purposes of this section, a vehicle or rental vehicle is rented in South Carolina if it is picked up by the renter in South Carolina. ~~The surcharge is a sales tax subject to the provisions of this chapter and must be computed on the total amount stated in the rental agreement, except that taxes imposed by Chapter 36 of Title 12 must not be used in computing the surcharge, and the surcharge is not subject to the taxes imposed by Chapter 36 of Title 12.~~

~~(B)~~ ~~The surcharge must be noted in the rental contract and collected in accordance with the terms of the contract. The surcharges must be retained by the vehicle owner, rental vehicle owner, or the rental company engaged in the business of renting private passenger motor vehicles or rental vehicles. The surcharges must be placed in a segregated account by the vehicle owner, rental vehicle owner, or rental company once they are collected. Surcharges collected belong to the State and are not subject to creditor liens of the vehicle owner, rental vehicle owner, or rental company. Surcharges collected pursuant to this section may be used only by the vehicle owner, rental vehicle owner, or the rental company for reimbursement of the amount of personal property taxes imposed and paid upon these vehicles by the vehicle owner, rental vehicle owner, or rental company as provided by law. The collection and use of the surcharges are not gross receipts or revenue to the vehicle owner, rental vehicle owner, or rental company. A person or entity may not impose a fee, penalty, or expense on a vehicle owner, rental vehicle owner, or rental company for complying with the provisions contained in this chapter.~~

~~(C)~~ ~~On February fifteenth of each year all rental companies engaged in the business of renting private passenger motor vehicles or rental vehicles which collect surcharges pursuant to this section shall file a report with the Department of Revenue stating the total amount of South Carolina personal property taxes on private passenger motor vehicles or rental vehicles paid in the previous calendar year, the total amount of private passenger motor vehicle rental or rental vehicle revenues earned on rentals in South Carolina for the previous calendar year, and the amount by which the total amount of the surcharges for the previous year exceeds the total amount of personal property taxes on private passenger motor vehicles or rental vehicles paid for the previous calendar year. All surcharge revenues collected in excess of the total amount of personal property taxes on private passenger motor vehicles or rental vehicles must be remitted to the Department of Revenue’s office for deposit in the state general fund.~~

~~(D)~~ ~~Any rental company which makes a false report to the Department of Revenue with the intent to misrepresent the amount of personal property taxes on private passenger motor vehicles or rental vehicles paid or the amount of surcharges collected is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding one thousand dollars or by a term of imprisonment not exceeding one year, or both. Each violation constitutes a separate offense.~~

(C) If a motor vehicle rental company includes a vehicle license fee for a rental transaction disclosed on the rental agreement, the amount of the charge must represent the good faith estimate by the motor vehicle rental company of its daily charge calculated to recover its actual total annual recoverable costs, pursuant to subsection (A)(2), on its rental motor vehicle fleet for the corresponding calendar year.

(D)(1) If the total amount of the vehicle license fees collected by a motor vehicle rental company pursuant to this section in any calendar year exceeds the actual costs of the car rental company, as allowed under subsection (A)(2), for that calendar year, the car rental company shall:

(a) retain the excess amount; and

(b) adjust the estimated average per vehicle charge for the following calendar year by a corresponding amount.

(2) Nothing in this section may prevent a motor vehicle rental company from making adjustments to a vehicle license fee per vehicle charge during the calendar year to reflect interim developments affecting the motor vehicle rental company’s prior estimated per vehicle fee for that calendar year.

(E)(1) If a motor vehicle rental company charges a vehicle license fee, the amount of the fee must be:

(a) disclosed at the time of reservation and as part of any estimated pricing provided to the renter; and

(b) shown as a separately itemized charge on the rental agreement.

(2) The vehicle license fee must be described in the terms and conditions of the rental agreement as the estimated average per day portion of the motor vehicle company’s costs incurred for:

(a) licensing, titling, registering, plating, and inspecting its rental vehicles; and

(b) taxes paid in connection with registering its rental vehicles.

(F) The vehicle license fee authorized by this section is subject to state and local sales and use tax in the manner and to the same extent as the fee charged for the lease or rental of the rental vehicle.”

SECTION 2. Chapter 31, Title 56 of the 1976 Code is amended by adding:

“Section 56‑31‑60. (A) As used in this section:

(1) ‘Qualified heavy equipment property’ means any construction, earthmoving, or industrial equipment that is mobile and rented by a qualified renter, including attachments for the equipment or other ancillary equipment or tools. Qualified heavy equipment property is mobile if it is not permanently affixed to real property and is moved amongst worksites.

(2) ‘Qualified renter’ means a renter:

(i) whose primary business is renting out qualified heavy equipment property. Primary business means over 51 percent of the annual revenue of the business in any given year; and

(ii) that is engaged in a line of business described in Code 532412 or 532310 of the North American Industry Classification System published by the U.S. Census Bureau, 2012 edition.

(3) ‘Qualified rental’ means qualified heavy equipment property rented for three hundred sixty‑five days or less, qualified heavy equipment property rented pursuant to an open‑ended contract, or qualified heavy equipment property rented via a contract without a specified time period.

(4) ‘Rental price’ means the amount of the charge for renting the qualified heavy equipment, excluding any separately stated charges that are not rental charges, including, but not limited to, separately stated charges for delivery and pickup fees, damage waivers, environmental fees, sales tax, or any other ancillary charge.

(B)(1) Except as provided in subsection (2), a person or company in the business of renting qualified heavy equipment property located in this State shall include on the rental invoice a two and one‑half percent heavy equipment rental fee on the rental price for any item of qualified heavy equipment property rented to a customer by a qualified renter. The total amount of the heavy equipment rental fee collected shall be remitted to the state Department of Revenue on a quarterly basis. The Department of Revenue shall distribute the remitted fee to the local jurisdiction where the qualified heavy equipment was rented. The local jurisdiction shall distribute the received funds in the same manner as the personal property tax is distributed.

(2) Notwithstanding subsection (1), the heavy equipment rental fee shall not apply to the rental of heavy equipment property directly rented to the federal government, the State, or any political subdivision of the State. There are no other exemptions from this fee.

(3) The heavy equipment rental fee shall be levied on all qualified rentals.

(4) Qualified heavy equipment property subject to the heavy equipment rental fee is exempt from personal property tax.

(5) The Department of Revenue may promulgate regulations relating to the administration and enforcement of this section.

(C) The heavy equipment rental fee applies to all qualified rentals made from a rental location in South Carolina where the customer picks up the equipment, or all qualified rentals from a rental location in the State where the qualified heavy equipment property is delivered in the State. The heavy equipment rental fee does not apply to rentals made from a rental location in the State and delivered outside the State.

(D) The heavy equipment rental fee is not subject to state or local sales tax.”

SECTION 3. Section 12‑37‑717 of the 1976 Code is repealed.

SECTION 4. This act takes effect on January 1, 2017.

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