**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 6‑1‑340 SO AS TO ENACT THE “SOUTH CAROLINA BUSINESS LICENSE TAX STANDARDIZATION ACT”, TO PROVIDE THE SOLE MANNER IN WHICH A COUNTY OR MUNICIPAL BUSINESS LICENSE TAX MAY BE IMPOSED, INCLUDING DURATION, CALCULATION, AND PAYMENT, TO PROVIDE CERTAIN REQUIREMENTS FOR ISSUING A CERTIFICATE OF OCCUPANCY, TO PROVIDE FOR CERTAIN REFUNDS, TO PROVIDE THAT CERTAIN SPECIAL ORDINANCES OR FORMAL OR INFORMAL AGREEMENTS ENTERED INTO BEFORE THE EFFECTIVE DATE OF THIS ACT ARE CONSIDERED VALID, TO PROVIDE THAT A SINGLE ISOLATED ACT DOES NOT AUTOMATICALLY CONSTITUTE DOING BUSINESS, AND TO PROVIDE THAT A COUNTY OR MUNICIPALITY MAY NOT IMPOSE A HIGHER BUSINESS LICENSE TAX ON CERTAIN BUSINESSES; BY ADDING SECTION 6‑1‑350 SO AS TO CREATE THE BUSINESS LICENSE CLASS SCHEDULE BOARD, TO RESTRICT COLLECTIONS IN THE 2019 LICENSE YEAR; BY ADDING SECTION 6‑1‑360 SO AS TO PROVIDE FOR A NOTICE OF ASSESSMENT AND TO PROVIDE FOR AN APPEALS PROCESS; TO AMEND SECTION 4‑9‑30, AS AMENDED, RELATING TO THE POWERS OF THE COUNTY GOVERNMENT, SO AS TO PROVIDE THAT A WHOLESALER DELIVERING GOODS TO RETAILERS IN A COUNTY IS NOT SUBJECTED TO THE BUSINESS LICENSE TAX UNLESS HE MAINTAINS A CERTAIN WAREHOUSE OR MERCANTILE ESTABLISHMENT; TO AMEND SECTION 5‑7‑30, AS AMENDED, RELATING TO THE POWERS CONFERRED UPON MUNICIPALITIES, SO AS TO PROVIDE THAT A WHOLESALER DELIVERING GOODS TO RETAILERS IN A COUNTY IS NOT SUBJECTED TO THE BUSINESS LICENSE TAX UNLESS HE MAINTAINS A CERTAIN WAREHOUSE OR MERCANTILE ESTABLISHMENT, AND TO PROVIDE FOR CERTAIN EXEMPTIONS; TO AMEND SECTION 6‑1‑120, AS AMENDED, RELATING TO THE CONFIDENTIALITY OF CERTAIN INFORMATION, SO AS TO AUTHORIZE THE SHARING OF BUSINESS LICENSE INFORMATION AMONG LOCAL GOVERNMENTS; TO AMEND SECTION 12‑4‑310, AS AMENDED, RELATING TO POWERS OF THE DEPARTMENT OF REVENUE, SO AS TO ALLOW THE DEPARTMENT TO SHARE MUNICIPAL BUSINESS LICENSE INFORMATION AMONG OTHER LOCAL GOVERNMENTS; AND TO AMEND SECTION 38‑7‑160, RELATING TO MUNICIPAL LICENSE FEES AND TAXES IN INSURANCE LAW, SO AS TO DISTINGUISH BETWEEN LICENSE FEES AND TAXES MUNICIPALITIES MAY LEVY AND COLLECT FOR RISKS LOCATED WITHIN AND OUTSIDE THE MUNICIPALITY.

Whereas, in the interest of uniformity and to simplify the business license process, the Secretary of State should adopt seven uniform rate classes for use in all counties and municipalities; and

Whereas, many counties and municipalities currently utilize seven basic rate classes based upon the North American Industry Classification System and Internal Revenue Service nationwide business profitability statistics, but others have more than seven rate classes. Many counties and municipalities have adopted special rate classes for certain businesses based upon particularized considerations as needed for economic stimulus or the enhanced or disproportionate demands by specific businesses on county or municipal services or infrastructure; and

Whereas, many counties and municipalities have informally entered into agreements with businesses regarding how income is sourced or taxes calculated; and

Whereas, the purpose of this act is to establish a uniform application and rate classes and to validate existing special rate classes and formal or informal arrangements regarding business licenses. Now, therefore,

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

SECTION 1. This act may be cited as the ‘South Carolina Business License Tax Standardization Act’.

SECTION 2. Article 3, Chapter 1, Title 6 of the 1976 Code is amended by adding:

“Section 6‑1‑340. (A) Notwithstanding Section 4‑9‑30, 5‑7‑30, or any other provision of law, a business license tax levied by a county or municipality must comply with the provisions of this section.

(B)(1) A business license issued expires April thirtieth, or if issued on a construction contract, the taxpayer may elect to have the business license expire at the completion of either the entire construction project or a phase of the construction project. The business license must be renewed before May first of the year in which it expires. If the tax is not paid before June first, a county or municipality may impose penalties.

(2) The business license tax must be computed based on the adjusted gross income for the calendar year preceding the due date or the business’ twelve‑month fiscal year preceding the due date. The tax for a business that has engaged in business for less than one year must be computed based on the adjusted gross income for the calendar year preceding the due date or the business’ twelve‑month fiscal year preceding the due date. Use of calendar year or twelve‑month fiscal year must be determined by the basis used by the business in its most recently filed federal income tax return. A business license related to construction contract projects may be issued on an individual project basis at the option of the taxpayer. A county or municipality may charge a one‑time filing fee for a new business license not to exceed one hundred dollars. If a filing fee is charged, the amount paid must be deducted from the business license tax owed at the end of the business license tax year.

(3) For purposes of this section, ‘adjusted gross income’ means gross receipts, if reported on a cash basis, or gross revenues, if reported on an accrual basis, from the performance of services and from the sale, lease, or rental of goods or other property in the ordinary course of business, and with no reduction for the cost of goods sold or other business expenses. Adjusted gross income for commission agents is gross commissions received or retained. Adjusted gross income for manufacturers of goods or materials with a location in a taxing jurisdiction is the lesser of gross receipts or gross revenues collected from business done at the location, the amount of income allocated and apportioned to that location for purposes of the business’ state income tax return, or the amount of expenses attributable to the location as a cost center of the business. Adjusted gross income of the owner of intellectual property is considered attributable to the jurisdiction of the owner.

(4) ‘Adjusted gross income’ does not include:

(a) returns or refunds of goods or services;

(b) taxes, funds, or fees collected for and remitted to a governmental entity;

(c) escrow or trust funds or other funds that are the property of a third party;

(d) sales tax paid by a contractor on building materials or supplies;

(e) sales tax paid on the purchase of materials or supplies which become a component of a product manufactured, produced, or constructed for sale;

(f) revenue received from reimbursements from clients or customers in which the business charges no fee or interest for providing funds upfront to a client or customer;

(g) the amount paid to a subcontractor by a general contractor on a governmental contract;

(h) revenue earned from engaging in business in another county or municipality where an additional business license tax is paid;

(i) the trade in value of a vehicle, equipment, or merchandise;

(j) fifty percent of revenue collected outside of the county or municipality where the business maintains its principal business license; or

(k) twenty‑five percent of revenue collected from the South Carolina Child Development Program or the South Carolina Department of Social Services SC Voucher Program.

(5) The adjusted gross income for business license purposes may be verified by the county or municipality by its inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, or other governmental agency. A business license application and tax return is not subject to Chapter 4, Title 30, the Freedom of Information Act. A business license application and tax return, as well as the right of inspection, may not be shared, transferred, assigned, or contracted to any other entity, agency, department, or other organization.

(C) A county or municipality that requires a business license tax shall accept a standard business license application as established and provided by the Secretary of State.

(D)(1) A county or municipality shall establish a 2019 Business License Tax Rate Schedule using business license tax revenue collected for a twelve‑month period in the 2016 business license year so that the aggregate county or municipal business license tax calculated for 2019 does not exceed the aggregate county or municipal business license tax collected in 2016 from the same businesses.

(2) If the rate for a NAICS sector, subsector, or industry is unchanged from 2018 to 2019, then the business license tax collections may be excluded from the calculation provided for in item (1).

(E) A county or municipality may not refuse to issue a certificate of occupancy for a building due to nonpayment of the business license tax by subcontractors. An ongoing highway construction operation must not be impeded by a county or municipality for nonpayment of the business license tax by a contractor or subcontractor.

(F) A business is entitled to a refund if it submits a business license tax payment that is greater than the amount owed. The refund must be requested by the business within sixty days of submitting the business license tax payment. The refund must be issued to the business within thirty days of receipt of the business license tax payment.

(G)(1) Any special ordinance or formal or informal agreement entered into between a county or municipality and a business regarding rate classes or the calculation of business license taxes which was adopted by ordinance or agreed to before January 1, 2019, is considered valid upon the approval of the business. A business may be required to provide proof of an agreement. A county or municipality which wishes to repeal, alter, or amend any special ordinance or formal or informal agreement may do so by passage of an ordinance before July 1, 2018.

(2) This section does not impair or affect any special business license ordinance passed for economic stimulus or any formal or informal agreement between a county or a municipality and a specific business regarding the calculation of taxes entered into before January 1, 2019.

(H) For the purposes of levying a business license tax, a business performing a single act of a limited or isolated nature does not, in itself, constitute doing business in that county or municipality.

(I) A county or municipality may not impose a higher business license tax rate on a nonresident domestic business compared to businesses located within the county or municipality.

(J) A nonprofit organization exempt from tax pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code is exempt from the business license tax. If a nonprofit organization reports income from for-profit activities or unrelated business income for federal income tax purposes to the Internal Revenue Service, then it is considered a business subject to the business license tax on the part of its gross income from the for-profit activities or unrelated business income.

Section 6‑1‑350. (A) There is created a ‘Business License Class Schedule Board’ within the Office of the Secretary of State. The board consists of the following members:

(1) two members appointed by the President Pro Tempore of the Senate, one of which must be either a current or former owner or officer of a small business and the other being either a current or former owner or officer of a large business;

(2) two members appointed by the Speaker of the House, one of which must be either a current or former owner or officer of a small business and the other being either a current or former owner or officer of a large business;

(3) the Chairman of the Senate Labor, Commerce and Industry Committee or his designee;

(4) the Chairman of the House Labor, Commerce and Industry Committee or his designee;

(5) the Secretary of State or his designee;

(6) a representative of the Municipal Association of South Carolina; and

(7) a representative of the South Carolina Association of Counties.

The members of the board may not receive salary, per diem, subsistence, mileage, or compensation.

(B)(1) By December thirty‑first of every even year, a county or municipality shall adopt, by ordinance, the latest Standardized Business License Class Schedule as provided by the Secretary of State.

(2) The Secretary, in consultation with the board, shall determine and revise the Standardized Business License Class Schedule every odd year using the latest available nationwide Internal Revenue Service statistics for the calculation of profitability of businesses and using the business classification codes of the latest North American Industry Classification System. The Class Schedule must be determined further by use of an index of profitability derived by ratios based on division of net profit as the numerator and gross profit as the denominator. This index must be determined for each active and pertinent classification and subclassification, ranked from lowest ratio to highest ratio, and divided into seven classes.

(3) A county or municipality, upon a finding of a rational basis as explained in its ordinance and by a positive majority vote of the county or municipal council, may provide for additional reasonable subclassifications based upon particularized considerations as needed for economic stimulus or the enhanced or disproportionate demands by specific business subclassifications on county or municipal services or infrastructure. The county or municipal council may review proposed additional subclassifications while in executive session but must adopt any new subclassifications on the record in a meeting open to the public. The details of proposed subclassifications discussed during executive session are exempt from Chapter 4, Title 30, the Freedom of Information Act, providing an exemption for efforts to attract business or industry to invest within South Carolina. Any subclassifications adopted by a county or municipality expires upon the Secretary of State establishing a revised Standard Business License Class Schedule every odd year unless the county or municipality agree upon a different length of time, in which case the length of time agreed upon by the county or municipality and the business is controlling.

(4) A county or municipality shall provide seven days’ notice to the public before holding a public meeting to adopt a business license subclassification or rate class.

(C) A county or municipality shall provide access to businesses for the reporting, calculation, and payment of business license taxes through the Business License Tax Portal managed by the Office of the Secretary of State, subject to the availability and capability of the portal. Limitations in portal availability or capability do not relieve businesses from existing business license or business license tax obligations. Any audit of income or assessment of tax reported through the Business License Tax Portal must be undertaken by the county or municipality. Data obtained through the Business License Tax Portal may not be used by the Secretary, the Municipal Association of South Carolina (MASC), or any other party for statewide analytics or any other purpose not specified in this section. The Secretary and the MASC are prohibited from auditing a business using the Business License Tax Portal. In addition to allowing a payment through the Business License Tax Portal, a county or municipality also shall allow a business to file and pay its business license tax in person at a location within the county or municipality by telephone or by mail.

(D) The Secretary of State is authorized to contract with software providers and payment processors for the purposes of implementing the provisions of this section. The Secretary may promulgate regulations to carry out the provisions of this section.

(E) The Secretary of State may retain an amount not more than one quarter of one percent of the revenue collected, as approved by the Business License Class Schedule Board, to defray the administrative costs of administering the business license tax program, but the Secretary of State may not retain more than its actual administrative costs.

Section 6‑1‑360. (A) The county or municipal business license official shall serve notice of assessment of business license tax due on the taxpayer by mail or personal service. Within thirty days after the date of postmark or personal service, a taxpayer may request, in writing with reasons stated, an adjustment of the assessment. An informal conference between the county or municipal business license official and taxpayer must be held within fifteen days of the receipt of the request, at which the taxpayer may present any information or documents in support of the requested adjustment. Within five days after the conference, the county or municipal business license official shall issue a notice of final assessment and serve the taxpayer by mail or personal service with the notice and provide a form for any further appeal of the assessment by the taxpayer.

(B) Within thirty days after the date of postmark or personal service, the taxpayer may appeal from the notice of final assessment by filing the completed appeal form with the county or municipal business license official by mail or personal service, and by paying to the county or municipality in protest at least eighty percent of the business license tax based on the final assessment. The appeal must be heard and determined by the county or municipal council or its designated appeals officer or appeals board. The county or municipal council or its designee shall provide the taxpayer with written notice of the hearing and with any rules of evidence or procedure prescribed by the county or municipal council or its designee. The hearing must be held within thirty days after receipt of the appeal form unless continued to another date by agreement of the parties. A hearing by the county or municipal council, or its designee, or appeals board must be held at a regular or special meeting of the county or municipal council or appeals board. At the appeals hearing, the taxpayer and the county or municipality have the right to be represented by counsel, to present testimony and evidence, and to cross‑examine witnesses. The hearing must be recorded and must be transcribed at the expense of the party so requesting. The county or municipal council, or its designee, or appeals board shall decide the assessment by majority vote. The county or municipal council, or its designee, appeals board, or designated appeals officer shall issue a written decision explaining the basis for the decision with findings of fact and conclusions and shall inform the taxpayer of the right to request a contested case hearing before the Administrative Law Court. The written decision must be filed with the county or municipal business license official and served on the taxpayer by mail or personal service. The decision is the final decision of the county or municipality on the assessment.

(C) Within thirty days after the date of postmark or personal service of the county’s or municipality’s written decision on the assessment, a taxpayer may appeal the decision to the Administrative Law Court in accordance with the rules of the Administrative Law Court. The court may affirm, reverse, or remand the decision on assessment.”

SECTION 3. Section 4‑9‑30(12) of the 1976 Code, as last amended by Act 405 of 1994, is further amended to read:

“(12) to levy uniform license taxes upon persons and businesses engaged in or intending to engage in a business, occupation, or profession, in whole or in part, within the county but outside the corporate limits of a municipality except those persons who are engaged in the profession of teaching or who are ministers of the gospel and rabbis, except persons and businesses acting in the capacity of telephone, telegraph, gas and electric utilities, suppliers, or other utility regulated by the Public Service Commission, and except an entity which is exempt from license tax under another law or a subsidiary or affiliate of ~~any such~~ an exempt entity. No county license fee or tax may be levied on insurance companies. The license tax must be graduated according to the adjusted gross income of the person or business taxed. A wholesaler delivering goods to retailers in a county is not subject to the business license tax unless he maintains within the corporate limits of the county a warehouse or mercantile establishment for the distribution of wholesale goods. A business engaged in making loans secured by real estate is subject to the license tax only if it has premises located in the county but outside the corporate limits of a municipality. For the purpose of assessing the business license tax, ‘adjusted gross income’ has the same meaning as provided in Section 6‑1‑340(B)(3). If the person or business taxed pays a license tax to another county or to a municipality, the adjusted gross income for the purpose of computing the tax must be reduced by the amount of adjusted gross income taxed in the other county or municipality.”

SECTION 4. Section 5‑7‑30 of the 1976 Code, as last amended by Act 412 of 2008, is further amended to read:

“Section 5‑7‑30. (A) Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them; the authority to abate nuisances; the authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of ~~such~~ a contiguous municipality or the county, including agreement as to the boundaries of ~~such~~ the police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers’ compensation law, which they have in the municipality, including the authority to make arrests, and to execute criminal process within the extended jurisdictional area; provided, however, that this ~~shall~~ may not extend the effect of the laws of the municipality beyond its corporate boundaries; grant franchises for the use of public streets and make charges for them; grant franchises and make charges for the use of public beaches; engage in the recreation function; levy a business license tax ~~on gross income, but a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; and a business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality and no entity which is exempt from the license tax under another law nor a subsidiary or affiliate of an exempt entity is subject to the business license tax~~; borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note and conduct advisory referenda. The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the adjusted gross income for the purpose of computing the tax must be reduced by the amount of adjusted gross income taxed in the other county or municipality.

(B) A wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods. A business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality. An entity which is exempt from the license tax under another law or a subsidiary or affiliate of an exempt entity is not subject to the business license tax. For the purpose of assessing the business license tax, ‘adjusted gross income’ has the same meaning as provided in Section 6‑1‑340(B)(3).

(C) For the purpose of providing and maintaining parking for the benefit of a downtown commercial area, a municipality may levy a surtax upon the business license of a person doing business in a designated area in an amount not to exceed fifty percent of the current yearly business license tax upon terms and conditions fixed by ordinance of the municipal council. The area must be designated by council only after a petition is submitted by not less than two‑thirds of the persons paying a business license tax in the area and who paid not less than one‑half of the total business license tax collected for the preceding calendar year requesting the designation of the area. The business within the designated area which is providing twenty‑five or more parking spaces for customer use is required to pay not more than twenty‑five percent of a surtax levied pursuant to the provisions of this paragraph.”

SECTION 5. Section 6‑1‑120(B) of the 1976 Code, as last amended by Act 261 of 2014, is further amended to read:

“(B) Nothing in this section prohibits the:

(1) publication of statistics classified to prevent the identification of particular reports, returns, or applications and the information on them;

(2) inspection of reports, returns, or applications and the information included on them by an officer or employee of the county or municipality, or an agent retained by an officer or employee, in connection with audits of the taxpayer, appeals by the taxpayer, and collection efforts in connection with the tax or fee which is the subject of the return, report, or application;

(3) sharing of data between public officials or employees, or their agents, in the performance of their duties, including the specific sharing of data as provided in Article 8 of this chapter, the Fairness in Lodging Act, and Section 4‑1‑190, Section 5‑7‑320, and Sections 6‑1‑340, 6‑1‑350, and 6‑1‑360, the South Carolina Business License Tax Standardization Act;

(4) business license tax authorized pursuant to the provisions of Section 4‑9‑30(12), Section 5‑7‑30, or Sections 6‑1‑340, 6‑1‑350, and 6‑1‑360.”

SECTION 6. Section 12‑4‑310(10) and (11) of the 1976 Code, as added by Act 261 of 2014, is amended to read:

“(10) make available to the authorities of a municipality or county in this State levying a tax based on adjusted gross receipts or net taxable sales, any records indicating the amount of adjusted gross receipts or net taxable sales reported to the department; ~~provided, however, that income tax records may be made available only if the department first has satisfied itself that the gross receipts reported to the municipality or county were less than the gross receipts as indicated by the records of the department;~~ and

(11) provide data and assistance to municipalities and counties, or their agents, in which Article 8, Chapter 1, Title 6, the Fairness in Lodging Act, and Section 4‑1‑190, Section 5‑7‑320, and Sections 6‑1‑340, 6‑1‑350, and 6‑1‑360, the South Carolina Business License Tax Standardization Act, is implemented.”

SECTION 7. Section 38‑7‑160 of the 1976 Code is amended to read:

“Section 38‑7‑160. This title may not be construed as preventing any municipality from levying and collecting license fees or taxes in accordance with its ordinances on risks located within the limits of that municipality. However, for surplus lines insurance no municipality may charge an additional license fee or tax based upon a percentage of premiums. A municipality may not charge a license fee to fire insurers or their agents licensed by the director or his designee in any other manner than on a percentage of the premiums collected ~~in the~~ on risks located within the limits of that municipality or realized from risks located within the limits of the municipality, or both~~,~~. The license fee may not ~~to~~ exceed two percent of the premiums collected in the municipality and realized from risks located in the municipality, except in cities of fifty thousand inhabitants or more, ~~where not exceeding~~ in which case not more than five percent may be charged. Preference must be given ~~hereunder~~ to the municipality ~~wherein~~ in which the insured property is located, ~~and,~~ but if a license fee or tax is levied against the insuring company on ~~such~~ this basis, ~~that~~ the company may not be subject to a similar license from a municipality wherein it may collect the premium for ~~such transaction~~ an insurance risk located outside the limits of the municipality.”

SECTION 8. This act takes effect January 1, 2019.

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