~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 15, 2017

**H. 3651**

Introduced by Reps. Sandifer and Finlay

S. Printed 2/15/17--H.

Read the first time February 2, 2017.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 3651) to amend the Code of Laws of South Carolina, 1976, by adding Section 6‑1‑180 so as to prohibit the Municipal Association of South Carolina, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

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

“Section 6‑1‑180. Notwithstanding any other provision of law, the Municipal Association of South Carolina or any other nongovernmental entity may not collect business license taxes on behalf of a municipality or any other political subdivision. Notwithstanding any other provision of law, the Municipal Association of South Carolina or other nongovernmental entity may not collect a business license tax levied by a municipality on the sale of telecommunication services. Notwithstanding any other provision of law, the Municipal Association of South Carolina or any other nongovernmental entity may not collect an insurance premium tax or broker’s premium tax pursuant to Chapter 45, Title 38.”

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

“Section 6‑1‑340. (A) The Secretary of State shall collect and administer the retail telecommunications services business license taxes imposed by any county or municipality pursuant to Sections 58‑9‑2200 through 58‑9‑2270. Such taxes must be paid annually to the Office of the Secretary of State and are due by January first of the calendar year. Payments received after January thirty‑first are subject to a ten percent penalty each month. The Secretary of State shall remit all tax received from the retail telecommunications services business license tax to each municipality by March first of the calendar year. The Secretary of State is prohibited from auditing a taxpayer’s retail telecommunications services business license tax report. Notwithstanding the foregoing, a county or municipality also shall allow a business to elect to file and pay its business license tax in person at a location within the county or municipality, by telephone, or by mail.

(B) A municipality that requires a retail telecommunications service business license tax pursuant to Sections 58‑9‑2200 through 58‑9‑2270 shall accept a standard business license application as established and provided by the Secretary of State.

(C) The Secretary of State is authorized to contract with software providers and payment processors for the purposes of implementing the provisions of this section.

(D)(1) 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.

(2) 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.

(3) 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.

(E) In addition to subsection (D), any audit of income or assessment of a retail telecommunications services business license tax must be undertaken by the county or municipality and is subject to the provisions of Section 6‑1‑120. A county or municipality may not engage a third party to conduct an audit on a contingent fee basis.

(F) The Secretary of State shall retain an amount of not more than one quarter of one percent of the revenue collected, 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.

(G) The Secretary of State may promulgate regulations to carry out the provisions of this section.

(H) The Secretary of State shall establish procedures to collect and remit the retail telecommunication services business license tax in accordance with Sections 58‑9‑2200 through 58‑9‑2270.”

SECTION 3. 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. Notwithstanding anything in this section to the contrary, a municipal business license tax or fee may not be levied on life and accident and health insurers that are entities subject to the insurance premium taxes levied pursuant to Section 38‑7‑20.”

SECTION 4. Section 38‑45‑10(9) of the 1976 Code is amended to read:

“(9) ~~‘Municipal agent’ means the Municipal Association of South Carolina or other designated agent of the municipality for the purpose set forth in this chapter.~~ Reserved”

SECTION 5. Section 38‑45‑60(B) of the 1976 Code is amended to read:

“(B) As soon as practical after December thirty‑first, but no later than July first of each year, the department shall distribute from the special earmarked fund, distinct from the general fund, the municipal portion of the broker’s premium tax rate payment collected for the prior tax year in accordance with the requirements of Sections 38‑45‑20(5) and 38‑45‑30(6). This amount must be paid directly to the ~~municipal agent~~ municipality with a full accounting, provided by the department, including, but not limited to, the name and address of the broker, and amount of the broker’s premium tax rate payment collected from each broker, and showing the counties in which the risk covered by the insurance is located. The ~~municipal agent~~ municipality shall distribute the funds annually to each municipality with which it contracts based on the data submitted by the department.”

SECTION 6. This act takes effect upon approval by the Governor, except Sections 1 and 4 take effect December 31, 2018, and Section 2 takes effect January 1, 2019. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 6‑1‑180 SO AS TO PROHIBIT THE MUNICIPAL ASSOCIATION OF SOUTH CAROLINA OR ANY OTHER POLITICAL SUBDIVISION FROM COLLECTING CERTAIN BUSINESS LICENSE TAXES AND INSURANCE TAXES; TO AMEND SECTION 38‑45‑10, AS AMENDED, RELATING TO DEFINITIONS OF THE INSURANCE BROKERS AND SURPLUS LINES INSURANCE, SO AS TO DELETE THE DEFINITION OF “MUNICIPAL AGENT”; AND TO AMEND SECTION 38‑45‑60, AS AMENDED, RELATING TO THE ACCOUNTING OF THE STATE PORTION OF BROKER’S PREMIUM TAX RATE PAYMENT COLLECTED AND THE DISTRIBUTION FROM EARMARKED FUNDS, SO AS TO PROVIDE THAT THE AMOUNT MUST BE PAID TO THE MUNICIPALITY INSTEAD OF THE MUNICIPAL AGENT.

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

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

“Section 6‑1‑180. Notwithstanding any other provision of law, the Municipal Association of South Carolina or any other nongovernmental entity may not collect business license taxes on behalf of a municipality or any other political subdivision. Notwithstanding any other provision of law, the Municipal Association of South Carolina or other nongovernmental entity may not collect a business license tax levied by a municipality on the sale of telecommunication services. Notwithstanding any other provision of law, the Municipal Association of South Carolina or any other nongovernmental entity may not collect an insurance premium tax or broker’s premium tax pursuant to Chapter 45, Title 38.”

SECTION 2. Section 38‑45‑10(9) of the 1976 Code is amended to read:

“(9) ~~‘Municipal agent’ means the Municipal Association of South Carolina or other designated agent of the municipality for the purpose set forth in this chapter.~~ Reserved”

SECTION 3. Section 38‑45‑60(B) of the 1976 Code is amended to read:

“(B) As soon as practical after December thirty‑first, but no later than July first of each year, the department shall distribute from the special earmarked fund, distinct from the general fund, the municipal portion of the broker’s premium tax rate payment collected for the prior tax year in accordance with the requirements of Sections 38‑45‑20(5) and 38‑45‑30(6). This amount must be paid directly to the ~~municipal agent~~ municipality with a full accounting, provided by the department, including, but not limited to, the name and address of the broker, and amount of the broker’s premium tax rate payment collected from each broker, and showing the counties in which the risk covered by the insurance is located. The ~~municipal agent~~ municipality shall distribute the funds annually to each municipality with which it contracts based on the data submitted by the department.”

SECTION 4. This act takes effect upon approval by the Governor.

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