

Ways and Means Committee Meeting
23 May 2012

Bill: S. 1167

Sponsor (s): Mr. Bingham

Amendment No. 2

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 11 TO CHAPTER 10, TITLE 4 SO AS TO ENACT THE "MUNICIPAL CAPITAL PROJECTS SALES TAX ACT" TO PROVIDE FOR THE IMPOSITION OF A SALES AND USE TAX NOT TO EXCEED ONE PERCENT BY REFERENDUM IN A MUNICIPALITY FOR A SPECIFIC PERIOD OF TIME AND FOR SPECIFIC PROJECTS, AND TO PROVIDE FOR THE METHOD OF IMPOSITION, PAYMENT AND COLLECTION OF THIS TAX.

AMEND THE BILL, AS AND IF AMENDED, BY ADDING APPROPRIATELY NUMBERED SECTIONS TO READ:

/ SECTION 1. Section 4-10-310 of the 1976 Code is amended by adding:

"(E) Where a county is prohibited from imposing a tax pursuant to this article because it is currently subject to a sales and use tax for school districts pursuant to a local law, a municipality within such county may impose a capital projects tax pursuant to Article 11 of this chapter."

SECTION 2. Chapter 10, Title 4 of the 1976 Code is amended by adding:

"Article 11

Municipal Capital Projects Sales Tax Act

Section 4-10-1110. This act may be cited as the 'Municipal Capital Projects Sales Tax Act'.

Section 4-10-1120. Subject to a referendum to be held in the municipality and the other requirements of this article, the municipal governing body may impose, or reimpose as applicable, a sales and use tax not exceeding one percent, for a specific purpose or purposes and for a limited amount of time. The revenues collected pursuant to this article may be pledged as security for, and used to defray debt service on, bonds issued to pay for projects authorized in this article if allowed by Section 4-10-310.

Section 4-10-1130. (A) A municipality that imposes a local hospitality tax, pursuant to Article 7, Chapter 1, Title 6, not including a municipality that consents to the county's imposition, may not impose a capital project sales tax under the provisions of this article.

(B) Notwithstanding the provisions of subsection (A), a municipal governing body, by ordinance, may elect to suspend the collection of its local hospitality tax and implement a capital project sales tax pursuant to this article at a rate that may not exceed one percent. A suspension must be effective upon the date set by the ordinance, but no later than the date the capital project sales tax is imposed pursuant to this article. The suspension shall continue until the capital project sales tax terminates. During the suspension, the entire local hospitality tax must be considered in place for purposes of Section 6-1-740.

(C) If the sales and use tax is not approved by referendum or is otherwise terminated pursuant to the provisions of this act, the suspension must be lifted and the local hospitality tax must be reinstated at its prior collection rate.

Section 4-10-1140. (A) The sales and use tax authorized pursuant to this article must be initially authorized by an ordinance of the municipal governing body. The ordinance must specify:

- (1) the rate of the sales and use tax, not to exceed one percent;
- (2) the terms of the referendum question, as formulated by the municipal governing body and in substantial conformance with subsection (D), that are to appear on the ballot;
- (3) the capital projects for which the proceeds of the tax are to be used, which may include projects located within or without, or both within and without, the boundaries of the municipality and may include the following types of projects:
 - (a) highways, roads, streets, and bridges;
 - (b) administration buildings, civic centers, museums, parks, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, parking facilities, and courthouses;
 - (c) cultural, recreational, and historic facilities;
 - (d) water and sewer projects;
 - (e) flood control projects and storm water management facilities;
 - (f) acquisition of land for active and passive recreational needs, preservation of historic sites, protection of natural resources, and public facilities;
 - (g) beach access and beach renourishment;
 - (h) jointly operated projects of the municipality, county, special purpose district, and school district, or a combination of those entities, for the projects delineated in subitems (a) through (g) of this subsection;

- (i) a combination of the projects described in subitems (a) through (h) of this item;
- (4) the maximum time, stated in terms of calendar or fiscal years or quarters, or a combination of those terms, not to exceed eight years from the date of imposition or seven years from the date of reimposition, for which the tax may be imposed;
- (5) the maximum cost of each project and the aggregate cost of all projects proposed;
- (6) the expected annual revenues to be derived from the levy of the sales and use tax; and
- (7) any other condition precedent, as determined by the commission, to the imposition of the sales and use tax authorized pursuant to this article or condition or restriction on the use of sales and use tax revenue collected pursuant to this article.

(B) When the tax authorized pursuant to this article is imposed for more than one purpose or project, the authorizing ordinance must identify each purpose or project and establish an order of priority in which the net proceeds are to be expended. Alternatively, the authorizing ordinance may set forth a formula or system by which multiple projects may be simultaneously funded.

(C) Upon receipt of the ordinance, the municipal election commission, as applicable, must conduct a referendum on the question of imposing or reimposing the sales and use tax in the municipality. The referendum for this purpose must be held at the time of a general election, as defined in Chapter 1, Title 7 and a referendum to reimpose an existing tax may be held only once. Two weeks before the referendum the election commission must publish, in a newspaper of general circulation in the municipality, the question that is to appear on the ballot, with the list of projects and the maximum cost of the projects. This notice is in lieu of any other notice otherwise required by law.

(D) The referendum question to be on the ballot must read substantially as follows:

'Must a special ____ percent sales and use tax be [imposed or reimposed] in (municipality) for not more than (time) to raise the amounts specified for the following purposes?

- (1) \$_____ for _____
- (2) \$_____ for _____
- (3) etc.

Yes ☐

No ☐

(E) All qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote 'yes' and all qualified electors opposed to levying the tax shall vote 'no'. If a majority of the votes cast are in favor of imposing the tax, then the tax is imposed pursuant to this article

and the authorizing ordinance. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and no later than November thirtieth immediately following the referendum, shall certify the result to the municipal governing body and to the Department of Revenue. Expenses of the referendum must be paid by the municipality.

(F) Upon receipt of the returns of the referendum, the municipal governing body, by resolution, shall declare the results of the referendum. The results of the referendum, as declared by resolution of the municipal governing body, are not open to question except by a suit or proceeding instituted within thirty days from the date the resolution is adopted.

Section 4-10-1150. (A) If the sales and use tax is approved in the referendum, the tax is imposed on the first of May next following the date of the referendum. If the reimposition of an existing sales and use tax is authorized by the referendum pursuant to the terms of this article, the reimposed tax must be imposed immediately following the termination of the earlier tax and the reimposed tax shall terminate on or before seven years from the date of its imposition.

(B) Upon the approval of the sales and use tax by referendum, the municipality, pursuant to Section 14(10), Article X of the Constitution of the State, is authorized to issue bonds and pledge the revenues derived from the collection of the sales and use tax as security for the bonds. Bonds may be issued by utilizing the procedures of Section 4-29-68, Chapter 17, Title 6, or Chapter 21, Title 6, and the proceeds of any bonds must be used for the purposes enumerated in the authorizing ordinance and the referendum. In no event shall the term of the bonds exceed the period that the sales and use tax is imposed or reimposed. Alternatively, and provided the proceeds are expended as provided in this article, the sales and use tax may be applied to pay debt service on general obligation bonds.

(C) The tax terminates on the final day of the maximum time period specified for its imposition or reimposition.

(D) Once the tax is terminated and all bonds secured by the tax or payable from the tax have matured, any excess funds must be applied toward a project for which the tax was imposed or reimposed, otherwise for a purpose authorized in Section 4-10-1140(A)(3).

Section 4-10-1160. (A) The tax levied pursuant to this article must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The department may prescribe amounts that may be added to the sales price because of the tax.

(B) The tax authorized in this article is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed pursuant to Chapter 36, Title 12 and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 are exempt from the tax imposed pursuant to this article. The gross proceeds of the sale of items of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons also are exempt from the tax imposed pursuant to this article. The tax imposed

pursuant to this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

(C) A taxpayer required to remit taxes under Article 13, Chapter 36, Title 12 must identify the municipality in which the personal property purchased at retail is stored, used, or consumed in this State.

(D) A utility is required to report sales in the municipality in which the consumption of the tangible personal property occurs.

(E) A taxpayer subject to the tax imposed by Section 12-36-920, who owns or manages rental units in more than one municipality, must report separately in his sales tax return the total gross proceeds from business done in each municipality.

(F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied pursuant to this article in a municipality, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the sales and use tax provided in this article if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition date of the sales and use tax provided for in this article.

(G) Notwithstanding the imposition date of the sales and use tax authorized pursuant to this article, with respect to services that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this article is imposed beginning on the first day of the billing period beginning on or after the imposition date.

Section 4-10-1170. The revenues of the tax collected pursuant to this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues quarterly to the municipal treasurer and the revenues must be used only for the purposes stated in the authorizing ordinance and approved in the referendum. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations. However, allocations made as a result of city or county code errors must be corrected prospectively.

Section 4-10-1180. The Department of Revenue shall furnish data to the State Treasurer and to the municipal treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to municipalities upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12-54-240. A person violating this section is subject to the penalties provided in Section 12-54-240.

Section 4-10-1190. Annually, and only in the month of June, funds collected by the department from the municipal capital project sales tax, which are not identified as to the governmental unit due the tax, must be transferred, after reasonable effort by the department to determine the appropriate governmental unit, to the Office of the State Treasurer. The State Treasurer shall distribute these funds to each participating municipality on a proportional basis, based upon each municipality's current fiscal year sales and use tax collections. Any such supplemental revenues received by a municipality must be used only for the purposes stated in the authorizing ordinance." /

Renumber sections to conform.

Amend title to conform.