**South Carolina General Assembly**

119th Session, 2011-2012

**S. 1041**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Cleary

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Introduced in the Senate on January 10, 2012

Currently residing in the Senate Committee on **Finance**

Summary: Accommodation tax imposed by local governing body allowed to collect by means of jeopardy assessment

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/5/2011 Senate Prefiled

12/5/2011 Senate Referred to Committee on **Finance**

1/10/2012 Senate Introduced and read first time ([Senate Journal‑page 26](file:///h:\sj%20archive\2012\01-10-12.docx))

1/10/2012 Senate Referred to Committee on **Finance** ([Senate Journal‑page 26](file:///h:\sj%20archive\2012\01-10-12.docx))

**VERSIONS OF THIS BILL**

[12/5/2011](file:///p:\pprever\2011-12\1041_20111205.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 6‑1‑580 SO AS TO ALLOW A LOCAL GOVERNING BODY WHICH IMPOSES THE LOCAL ACCOMMODATIONS TAX BY ORDINANCE TO PROVIDE FOR THE COLLECTION OF THE TAX BY MEANS OF A JEOPARDY ASSESSMENT, TO PROVIDE THOSE CIRCUMSTANCES IN WHICH A JEOPARDY ASSESSMENT MAY BE ISSUED, AND TO PROVIDE FOR THE MEANS OF WHICH THE JEOPARDY ASSESSMENT MAY BE CANCELED, STAYED, AND APPEALED.

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

SECTION 1. Article 5, Chapter 1, Title 6 of the 1976 Code is amended by adding:

“Section 6‑1‑580. (A) As used in this section:

(1) ‘Assessment’ means the jeopardy assessment allowed pursuant to this section, but only if the local governing body by ordinance authorizes the tax official to make such assessments. The authorizing ordinance may impose restrictions on the use of the assessment. However, the assessment allowed pursuant to this section is in addition to and not in lieu of the other enforcement provisions in the ordinance imposing the tax or in any other applicable provision of law.

(2) ‘Tax’ means the local accommodations tax imposed by ordinance of the local governing body.

(3) ‘Tax official’ means the individual charged by the local governing body with the collection and enforcement of the tax.

(B)(1) If a tax official finds that the collection of the tax or a deficiency for a tax period is jeopardized in whole or in part by delay, the tax official may terminate the taxpayer’s current tax period and immediately assess the tax for the current period and prior periods. There also may be included in the assessment penalties and interest on the tax assessed for prior periods as may be provided for in the ordinance imposing the tax. An action by the tax official made pursuant to this subsection is a ‘jeopardy assessment’. An assessment must not be made unless the tax official finds that reasonable grounds exist to believe that delay endangers the timely payment of the tax. That finding and the grounds giving rise to the finding with respect to the specific rental property involved must be attached to the notice required pursuant to subsection (C) of this section. A jeopardy assessment is not valid unless it contains the tax official’s finding and the grounds for the finding.

(2) An assessment made pursuant to this section may not include tax attributable to a tax period ending before the current owner’s acquisition of an ownership interest in the rental property.

(C)(1) If a jeopardy assessment is made pursuant to subsection (A), notice of the jeopardy assessment must be provided to the taxpayer by one of the following means:

(a) personal delivery of the assessment to the taxpayer; or

(b) mailing a copy of the assessment to the last known address of the taxpayer by first class mail.

(2) A copy of the notice must be provided to the South Carolina Department of Revenue.

(D) A jeopardy assessment is immediately due and payable, and proceedings for collection may begin as soon as the jeopardy assessment is made.

(E) A taxpayer may obtain a stay of the collection for all or part of the jeopardy assessment by:

(1) posting a bond with the tax official equal to the amount of the assessment that will be stayed; or

(2) providing security in an amount the tax official considers necessary to secure all or part of the amount of the jeopardy assessment. The security required cannot exceed twice the assessed amount for which the taxpayer seeks a stay.

(F) The tax official may stay collection jeopardy of the assessment at any time he finds that the collection of the tax in whole or in part is no longer in jeopardy and the tax official may cancel the jeopardy assessment at any time he determines the assessment to have been issued in error.

(G) The taxpayer at any time may waive part or all of the stay of collection.

(H) The bond or security must be reduced if:

(1) the taxpayer pays part of the tax covered by the bond or security and the taxpayer requests the reduction. The reduction must be proportionate to the amount paid; or

(2) the tax official abates all or a portion of the jeopardy assessment. The reduction in the bond or security must be proportionate to the amount abated.

(I) Within thirty days after the day on which the taxpayer is furnished the notice described in subsection (C), the taxpayer may request a contested case hearing before the Administrative Law Court by filing a request with the tax official.

(J) Within ten days after a request for a contested case hearing is received by the tax official, the tax official shall file his response with the Administrative Law Court. Within twenty days after a request for a contested case hearing is received by the tax official, or as soon thereafter as practicable, the Administrative Law Court shall hold the contested case hearing and determine whether or not the making of the jeopardy assessment is reasonable under the circumstances, and whether the amount assessed is appropriate under the circumstances.

(K) If the Administrative Law Court determines that the making of the jeopardy assessment is unreasonable or that the amount assessed or demanded is inappropriate, it may order the tax official to abate the assessment, to redetermine, in whole or in part, the amount, or to take other action the court finds appropriate, including cancelling the assessment.

(L) The decision made by the Administrative Law Court is final and conclusive and may not be reviewed by a court.

(M)(1) In a contested case hearing pursuant to subsection (J), the tax official has the burden of proof showing the making of the jeopardy assessment was reasonable under the circumstances.

(2) In a contested case hearing pursuant to subsection (J), the taxpayer has the burden of proof of showing the tax assessed is not appropriate.

(N)(1) If the Administrative Law Court determines that the collection of the tax assessed is in jeopardy, the Administrative Law Court shall remand the case to the tax official to issue a determination for the period or period in issue within the time period determined by the court. This determination is not limited by the Administrative Law Court’s finding of the appropriate amount to collect as a jeopardy assessment. The taxpayer may appeal this determination as provided in the imposition ordinance.

(2) If the Administrative Law Court determines that the collection of the tax assessed is not in jeopardy, the tax official shall cancel the jeopardy assessment.”

SECTION 2. This act takes effect upon approval by the Governor.

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