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**S. 171**

**STATUS INFORMATION**

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Summary: Municipal Tax Relief Act

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12/12/2018 Senate Referred to Committee on **Finance**

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**VERSIONS OF THIS BILL**

[12/12/2018](file:///p:\pprever\2019-20\171_20181212.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 41 TO TITLE 5 SO AS TO ENACT THE “MUNICIPAL TAX RELIEF ACT”, TO ALLOW A MUNICIPALITY TO IMPOSE A SALES AND USE TAX NOT TO EXCEED ONE PERCENT, SUBJECT TO A REFERENDUM, FOR MUNICIPAL TAX RELIEF OR TO DEFRAY DEBT SERVICE FOR CERTAIN AUTHORIZED PROJECTS, AND TO SPECIFY THE MANNER IN WHICH THE TAX IS IMPOSED, COLLECTED, AND EXPENDED; TO AMEND SECTION 4‑10‑320, RELATING TO THE CAPITAL PROJECT SALES TAX ACT, SO AS TO ALLOW A MUNICIPALITY TO CREATE A COMMISSION; AND TO AMEND SECTION 4‑10‑970, AS AMENDED, RELATING TO THE USE OF REVENUES FROM THE LOCAL OPTION TOURISM DEVELOPMENT FEE, SO AS TO PROVIDE THAT IF THE FEE IS IMPOSED IN A MUNICIPALITY THAT IS IMPOSING THE SALES AND USE TAX AUTHORIZED BY CHAPTER 41, TITLE 5, THEN AT LEAST TWENTY PERCENT OF THE REVENUES MUST BE USED TO PROVIDE A PROPERTY TAX CREDIT.

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

SECTION 1. Title 5 of the 1976 Code is amended by adding:

“CHAPTER 41

Municipal Tax Relief Act

Section 5‑41‑110. For purposes of this chapter:

(1) ‘Department’ means the South Carolina Department of Revenue.

(2) ‘General election’ means the Tuesday following the first Monday in November in any year.

(3) ‘Municipality’ means a municipal corporation created pursuant to Chapter 1, or a municipal government as the use of the term dictates.

(4) ‘Tax’ means the municipal tax relief sales and use tax allowed to be imposed pursuant to this chapter.

Section 5‑41‑120. (A) Subject to the requirements of this chapter, a municipal governing body may impose a sales and use tax not to exceed one percent by ordinance, subject to a referendum to be held at the next general election, within the municipality for a specific purpose or purposes and for a limited amount of time.

(B) The revenues collected pursuant to this chapter may be used to provide a credit against a taxpayer’s municipal ad valorem tax liability pursuant to Section 5‑41‑170, or to defray the cost associated with projects authorized in this chapter, including but not limited to, debt service on bonds issued to pay for such projects. The municipal governing body may select the classes of property to which credit is applied.

(C) To impose the tax, the governing body of the municipality shall enact an ordinance which contains the ballot question formulated by the municipality. The ordinance must specify:

(1) the purpose for which the proceeds of the tax are to be used. If any of the proceeds are to be used for purposes other than a tax credit, the proceeds may be used for 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, bridges, and public parking garages and related facilities;

(b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, or any combination of these projects;

(c) cultural, recreational, or historic facilities, or any combination of these facilities;

(d) water, sewer, or water and sewer projects;

(e) flood control projects and storm water management facilities;

(f) beach access and beach renourishment;

(g) dredging, dewatering, and constructing spoil sites, disposing of spoil materials, and other matters directly related to the act of dredging;

(h) jointly operated projects of the municipality, a county, special purpose district, and school district, or any combination of these entities, for the projects delineated in subitems (a) through (g) or;

(i) any combination of the projects described in this item;

(2) the maximum time, in two‑year increments not to exceed eight years from the date of imposition, or in the case of a reimposed tax, a period ending on April thirtieth, not to exceed seven years, for which the tax may be imposed;

(3) at least twenty percent of the amount collected must be used to provide a nonrefundable credit against existing municipal ad valorem tax liability in accordance with Section 5‑41‑170, and the classes of property to which the credit is applied; and

(4)(a) if the municipality proposes to issue bonds to provide for the payment of any costs of the projects, the maximum amount of bonds to be issued, whether the tax proceeds are to be pledged to the payment of the bonds and, if other sources of funds are to be used for the projects, specifying the other sources;

(b) if any of the proceeds are to be used for purposes other than a tax credit, the maximum cost of the project or facilities or a portion of the project or facilities, to be funded from proceeds of the tax or bonds issued as provided in this chapter and the maximum amount of net proceeds expected to be used to pay the cost or debt service on the bonds, as the case may be.

(D)(1) Upon receipt of the ordinance, the municipality must conduct a referendum on the question of imposing the sales and use tax in the municipality that is to be subject to the tax. The referendum for imposition of the tax must be held at the time of the general election. Two weeks before the referendum the election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and the cost of the projects. If the proposed question includes the use of sales taxes to defray debt service on bonds issued to pay the costs of any project, the notice must include a statement indicating that principal amount of the bonds proposed to be issued for the purpose and, if the issuance of the bonds is to be approved as part of the referendum, stating that the referendum includes the authorization of the issuance of bonds in that amount. This notice is in lieu of any other notice otherwise required by law.

(2) If the referendum on the question of imposing the tax is conducted in an odd‑numbered year, and it is the only matter being considered at the general election, then six weeks before the referendum, the election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and the cost of the projects, and the principal amount of bonds to be used, if applicable.

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

‘Must a \_\_\_\_\_ percent sales and use tax be levied in (municipality) for not more than (time) for the purpose of allowing a credit against certain municipal ad valorem tax liability and for the purpose of raising the amounts specified for the following purposes?

(1) $\_\_\_\_\_\_\_\_ for \_\_\_\_\_\_\_\_\_\_

(2) $\_\_\_\_\_\_\_\_ for \_\_\_\_\_\_\_\_\_\_

(3) etc.

Yes 

No ’

If the referendum includes the issuance of bonds, the question must be revised to include the principal amount of bonds proposed to be authorized by the referendum and the sources of payment of the bonds if the sales tax approved in the referendum is inadequate for the payment of the bonds. If the entirety of the revenues collected pursuant to this chapter are used for existing municipal ad valorem tax liability, or if the entirety of the revenues collected pursuant to this chapter are used for projects, the question must be revised appropriately.

(F) 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 as provided in this chapter and the enacting ordinance. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result to the municipal governing body and to the Department of Revenue no later than thirty days after the election. Expenses of the referendum must be paid by the municipality.

(G) Upon receipt of the returns of the referendum, the municipal governing body must, by resolution, declare the results. In such event, 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.

(H) Once a certified copy of the ordinance is filed with the department, for the period of imposition provided in that ordinance, the department may not accept as filed any additional ordinance from the municipality that in any way relates to the tax allowed to be imposed pursuant to this chapter except an ordinance reducing or repealing the existing tax. The department shall accept for filing a certified copy of an ordinance reducing or repealing the tax and that reduction or repeal applies in the manner provided in subsection (D) for imposition.

(I) When the tax authorized by this chapter is imposed for more than one purpose, the enacting ordinance must set forth the priority in which the net proceeds are to be expended for the purposes stated. The enacting ordinance may set forth a formula or system by which multiple projects are funded simultaneously.

Section 5‑41‑130. (A) If the sales and use tax is approved in the referendum, the tax is imposed on the first of May following the date of the referendum. If the reimposition of an existing sales and use tax imposed pursuant to this article is approved in the referendum reimposing the tax, the new tax is imposed immediately following the termination of the earlier imposed tax and the reimposed tax terminates on the applicable thirtieth of April, not to exceed seven years from the date of reimposition. If the certification is not timely made to the Department of Revenue, the imposition is postponed for twelve months.

(B) The tax terminates the final day of the maximum time period specified for the imposition.

(C)(1) Amounts collected in excess of the required net proceeds must first be applied, if necessary, to complete a project for which the tax was imposed, if applicable.

(2) If funds still remain after first using the funds as described in item (1) and the tax is reimposed, the remaining funds must be used to fund any projects approved by the voters in the referendum to reimpose the tax, in priority order as the projects appeared on the enacting ordinance.

(3) If funds still remain after first using the funds as described in item (1) and the tax is not reimposed, the remaining funds must be used for the purposes set forth in Section 5‑41‑120(C)(1). These remaining funds only may be expended for the purposes set forth in Section 5‑41‑120(C)(1) following an ordinance specifying the authorized purpose or purposes for which the funds will be used.

Section 5‑41‑140. (A) The tax allowed by this chapter is an amount not to exceed one percent of the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12.

(B) The tax imposed pursuant to this chapter must be administered and collected by the department in the same manner that sales and use taxes are collected. The department may prescribe amounts that may be added to the sales price because of the tax.

(C) The tax authorized by this chapter 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 by 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, and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons are exempt from the tax imposed by this chapter. The tax imposed by this chapter also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

(D) A taxpayer required to remit taxes pursuant to 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.

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

(F) 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.

(G) 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.

(H) Notwithstanding the imposition date of the sales and use tax authorized pursuant to this chapter, 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 5‑41‑150. The revenues of the tax imposed pursuant to this chapter must be remitted to the department 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 administering the tax not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues and interest quarterly based on point of collection to the treasurer of the municipality in which the tax is imposed and the revenues must be used only for the purposes provided in Section 5‑41‑120. 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 municipal code errors must be corrected prospectively.

Section 5‑41‑160. The department 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 5‑41‑170. (A)(1) If the property tax credit resulting from the proceeds of the tax is applied to all classes of property, then the amount of any credit is determined by multiplying the property tax value of the property, before the exemption provided in Section 12‑37‑250, by a fraction in which the numerator is the total estimated revenue allotted to the credit during the applicable fiscal year of the municipality, and the denominator is the total of all property tax value in the municipality, including the value exempted in Section 12‑37‑250.

(2) If the property tax credit resulting from the proceeds of tax is only applied to certain classes of property, then the amount of any credit is determined by multiplying the property tax value of the property by a fraction in which the numerator is the total estimated revenue allotted to the credit during the applicable fiscal year of the municipality, and the denominator is the total of all property tax value in the municipality among the classes of property to which the credit is applied. If the credit is applied to real property, the credit must be calculated similar to the manner provided in item (1).

(3) For purposes of this subsection, ‘property tax value’ means the fair market value as it may be adjusted downward to reflect the limits imposed pursuant to Sections 12‑37‑3135 and 12‑37‑3140, in the municipality as of January first of the applicable property tax year.

(B) For motor vehicles subject to the payment of property taxes pursuant to Article 21, Chapter 37, Title 12, the credit provided pursuant to this section applies against the tax liability for motor vehicle tax years beginning after December thirty‑first of the year in which the credit is calculated.

(C) If there is any unused credit, then the unused funds must be used to provide a credit in the same manner as provided in subsection (A) over the next three property tax years.

Section 5‑41‑180. Notwithstanding any other provision of law, the cumulative rate of state and local sales and use taxes in any portion of a county area may not exceed nine percent.

Section 5‑41‑190. (A) Notwithstanding any other provision of this chapter, the tax authorized by this chapter only may be imposed if:

(1) the governing body of the municipality created a commission pursuant to Section 4‑10‑320; and

(2) the resulting county‑wide referendum failed.

The referendum for the tax authorized by this chapter must be held at the second general election following the general election in which the county‑wide referendum failed.

(B) The provisions of subsection (A)(2) and the resulting timing of referendum do not apply if the local governing body of the county, by ordinance, states that the county does not object to imposition.

Section 5‑41‑200. Nothing in this section may be construed so as to prohibit the imposition of the tax allowed by this chapter solely because the county concurrently imposes the Capital Project Sales Tax Act pursuant to Article 3, Chapter 10, Title 4.”

SECTION 2. A. Section 4‑10‑320(A), before the first item, of the 1976 Code, is amended to read:

“(A) The governing body of any county or municipality is authorized to create a commission subject to the provisions of this section. The commission consists of six members, all of whom must be residents of the county, appointed as follows:”

B. Section 4‑10‑320(B) of the 1976 Code is amended to read:

“(B) When the governing body of any county or municipality creates a commission, it must be created in accordance with the procedures specified in subsection (A) and only upon the request of the governing body of the county or municipality. If within the thirty‑day period following the adoption of a resolution to create the commission, one or more of the municipalities fails or refuses to appoint their proportionate number of members to the commission, the county governing body must appoint an additional number of members equal to the number that any such municipality is entitled to appoint. A vacancy on the commission must be filled in the manner of the original appointment.”

SECTION 3. Section 4‑10‑970 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) Notwithstanding subsection (A), if the fee allowed pursuant to this article is imposed or reimposed in a municipality that, at the time immediately before the imposition, also imposes the tax pursuant to Chapter 41, Title 5, then, during each year of the imposition, the municipality shall retain twenty percent of revenues and interest to provide a property tax credit in the manner set forth in subsection (A)(2)(a) and (c). If the imposition is subject to referendum, the referendum question must be adjusted to reflect the provisions of this subsection. If the provisions of this subsection apply, then the remainder of the revenues and interest of the fee must be used as provided in subsection (A)(1).”

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

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