**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 4 TO CHAPTER 1, TITLE 6 SO AS TO PROVIDE BUSINESS LICENSE TAX REFORM, TO PROVIDE DEFINITIONS, TO PROVIDE FOR THE WAY IN WHICH A BUSINESS LICENSE TAX IS COMPUTED, TO PROVIDE FOR THE WAY IN WHICH TO PURCHASE A BUSINESS LICENSE, TO PROVIDE THAT A TAXING JURISDICTION SHALL ADOPT THE LATEST STANDARDIZED BUSINESS LICENSE CLASS SCHEDULE, TO PROVIDE THE WAY IN WHICH A BUSINESS LICENSE OFFICIAL SHALL SERVE NOTICE OF ASSESSMENT OF BUSINESS LICENSE TAX DUE; TO AMEND SECTIONS 4‑9‑30 AND 5‑7‑30, RELATING TO THE DESIGNATION OF POWERS IN COUNTY GOVERNMENT AND THE POWERS CONFERRED UPON MUNICIPALITIES, RESPECTIVELY, SO AS TO PROVIDE THAT A BUSINESS LICENSE TAX MUST BE GRADUATED ACCORDING TO THE BUSINESS TAXABLE INCOME AND THAT A WHOLESALER DELIVERING GOODS IN CERTAIN INSTANCES IS NOT SUBJECT TO THE BUSINESS LICENSE TAX; TO AMEND SECTION 6‑1‑120, RELATING TO THE CONFIDENTIALITY OF COUNTY OR MUNICIPAL TAXPAYER INFORMATION, SO AS TO ALLOW THE SHARING OF CERTAIN DATA AND CERTAIN BUSINESS LICENSE TAXES; TO AMEND SECTION 12‑4‑310, RELATING TO THE DEPARTMENT OF REVENUE’S POWERS AND DUTIES, SO AS TO PROVIDE THAT THE DEPARTMENT SHALL MAKE CERTAIN RECORDS AVAILABLE TO CERTAIN AUTHORITIES LEVYING A TAX BASED ON BUSINESS TAXABLE INCOME.

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 Reform Act”.

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

“Article 4

South Carolina Business License Tax Reform

Section 6‑1‑400. (A)(1) Unless specifically provided by state law, a county or municipality which levies a business license tax must comply with the provisions of this article.

(2) As used in this article:

(a) ‘Business license’ means a license issued to a taxpayer by a county or municipality for the privilege of doing business in that county or municipality.

(b) ‘Taxing jurisdiction’ means any county or municipality that levies a business license tax.

(c) ‘Taxpayer’ means any individual, firm, partnership, limited liability partnership, limited liability corporation, or corporation.

(B)(1) For purposes of this article, unless otherwise provided, ‘business taxable 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.

(2) ‘Business taxable income’ does not include:

(a) costs of goods sold or other business expenses;

(b) wages and cash compensation paid to employees;

(c) dividends or other distributions received by a corporation, or proceeds from borrowings, the sale of a capital asset, the repayment of the principal portion of a loan, the issuance of stock or other equity investments or capital contributions, or the undistributed earnings of subsidiary entities;

(d) royalties and revenue derived from intellectual property;

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

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

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

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

(i) 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;

(j) revenue earned from engaging in business in another taxing jurisdiction where an additional business license tax is paid; or

(k) the trade in value of a vehicle, equipment, or merchandise.

(3) Business taxable income for real estate brokers‑in‑charge is gross commissions retained.

(4) Business taxable 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 as determined in accordance with Section 12‑6‑2280(A) and (B) but applicable only to sales in a taxing jurisdiction or the amount of taxable income allocated and apportioned to that location for purposes of the business’s state income tax return as determined in accordance with Section 12‑6‑2280(A) and (B) but applicable only to sales in a taxing jurisdiction. Manufacturers include those taxpayers reporting a ‘manufacturing’ principal business activity code on their respective federal income tax return.

(C)(1) A business license must be issued to a taxpayer for a twelve‑month period beginning May first and ending April thirtieth. A business license tax must be paid by the taxpayer to the taxing jurisdiction. A taxing jurisdiction may impose penalties if the tax is not paid before June first. If a business license is 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.

(2) The business license tax must be computed based on the business taxable income for the calendar year preceding May first or the business’s twelve‑month fiscal year preceding May first. For a new business license, the business license tax must be computed based on the estimated business taxable income for the calendar year preceding May first or the business’s twelve‑month fiscal year preceding May first. The use of a calendar year or twelve‑month fiscal year must be determined by the basis used by the taxpayer 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.

(D) A taxing jurisdiction that requires a business license shall accept a standard business license application as established and provided by the Secretary of State.

(E)(1) A taxing jurisdiction shall establish a 2020 Business License Tax Rate Schedule using business license tax revenue collected for a twelve‑month period in the 2018 business license year so that the aggregate county or municipal business license tax calculated for 2020 does not exceed the aggregate county or municipal business license tax collected in 2018, adjusted for inflation, from the same businesses.

(2) If the rate for a North American Industry Classification System (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).

(3) Beginning January 1, 2022, the 2020 Business License Tax Rate Schedule may be adjusted by majority vote of the county or municipal council.

(F) A taxing jurisdiction 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 may not be impeded by a taxing jurisdiction for nonpayment of the business license tax by a contractor or subcontractor.

(G) A taxpayer 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 taxpayer before June first. The taxing jurisdiction shall issue the refund to the taxpayer within thirty days of the taxpayer’s request for the refund.

(H)(1) Any special ordinance or formal or informal agreement entered into between a taxing jurisdiction and a taxpayer regarding rate classes or the calculation of business license taxes which was adopted by ordinance or agreed to before January 1, 2020, is considered valid upon the approval of the taxpayer. A taxpayer may prove the existence and terms of an agreement through direct or circumstantial evidence, including evidence of prior payment accepted.

(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 taxpayer regarding the calculation of taxes entered into before January 1, 2020.

(I) For the purposes of levying a business license tax, a taxpayer performing a single act of a limited or isolated nature does not, in itself, constitute doing business in that taxing jurisdiction.

(J) Eleemosynary organizations are exempt from the business license tax. If an eleemosynary 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 taxpayer subject to the business license tax on the part of its business taxable income from the for‑profit activities or unrelated business income.

Section 6‑1‑420. (A) A taxing jurisdiction shall allow the purchase of a business license as provided by Section 6‑1‑400 or a delivery license by any taxpayer that has no other physical presence within the taxing jurisdiction for the privilege of delivering its merchandise therein. The amount of the delivery license may not exceed one hundred dollars. A taxing jurisdiction may require by ordinance the purchase of a decal by the taxpayer for each delivery vehicle making deliveries within the taxing jurisdiction. The charge for the decal may not exceed the taxing jurisdiction’s actual cost of the decal.

(B) As used in this section, ‘delivery license’ means a fixed rate business license issued by a taxing jurisdiction for the limited privilege of delivering and requisite set‑up and installation, by the taxpayer’s employees or agents, of the taxpayer’s own merchandise in that taxing jurisdiction, by means of delivery vehicles owned, leased, or contracted by the taxpayer; provided that the gross receipts derived from the sale and any requisite set‑up or installation of all merchandise so delivered into the taxing jurisdiction may not exceed seventy‑five thousand dollars during the delivery license year, and any set‑up or installation must relate only to that required by the contract between the taxpayer and the customer or as may be required by state or local law, and the merchandise so delivered. A common carrier, contract carrier, or similar delivery service making deliveries on behalf of others may not be entitled to purchase a delivery license.

(C) If at any time during the delivery license year the taxpayer fails to meet the criteria specified in this section, then within forty‑five days after any of the criteria have been violated or exceeded, the taxpayer shall purchase a delivery license or other appropriate license from the taxing jurisdiction and may be subject to a penalty not to exceed ten dollars.

Section 6‑1‑430. (A)(1) By December thirty‑first of every even year, a taxing jurisdiction shall adopt, by ordinance, the latest Standardized Business License Class Schedule as provided by the Secretary of State.

(2) The Secretary 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. Pursuant to Section 6‑1‑400(E), a taxing jurisdiction is authorized to establish the rate applicable to each license class in the Standardized Business License Class Schedule.

(3) A taxing jurisdiction, 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 municipal council expires upon the establishment by the Secretary of State of a revised Standard Business License Class Schedule every odd year unless the county or municipal council agree upon a different length of time, in which case the length of time agreed upon by the county or municipal council and the taxpayer is controlling.

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

(B) A taxing jurisdiction shall provide access to taxpayers 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. Any limitations in portal availability or capability do not relieve taxpayers 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 taxing jurisdiction. 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 of State and the MASC are prohibited from auditing a taxpayer using the business license tax portal. In addition to allowing a payment through the business license tax portal, a taxing jurisdiction shall allow a taxpayer to file and pay its business license tax in person at a location within the taxing jurisdiction, by telephone, or by mail.

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

(D) 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.

(E) The Secretary of State is authorized to expend any funds carried forward from previous fiscal years for the purpose of implementing the provisions of this section. Expenditures may not exceed the actual cost of implementing the provisions of this section.

Section 6‑1‑440. (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 the 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 is 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 ~~gross~~ business taxable 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, ‘business taxable income’ has the same meaning as provided in Section 6‑1‑400(B). If the person or business taxed pays a license tax to another county or to a municipality, the ~~gross~~ business taxable income for the purpose of computing the tax must be reduced by the amount of ~~gross~~ business taxable income taxed in the other county or municipality.”

SECTION 4. Section 5‑7‑30 of the 1976 Code is 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 ~~gross~~ business taxable income for the purpose of computing the tax must be reduced by the amount of ~~gross~~ business taxable 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, ‘business taxable income’ has the same meaning as provided in Section 6‑1‑400(B).

(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~~ subsection.”

SECTION 5. Section 6‑1‑120 of the 1976 Code is amended to read:

“Section 6‑1‑120. (A) Except in accordance with a proper judicial order or as otherwise provided by the Freedom of Information Act, it is unlawful for an officer or employee of a county or municipality~~, or the agent of such an officer or employee~~ to divulge or make known in any manner the financial information, or ~~other information indicative of units of goods or services sold, provided by a taxpayer included~~ any particulars set forth or disclosed in a report, tax return, or application required to be filed by the taxpayer with that county or municipality pursuant to a county or municipal ordinance imposing a:

(1) tax authorized under Article 5 or Article 7;

(2) business license tax authorized under Section 4‑9‑30(12) or Section 5‑7‑30;

(3) fee the measure of which is:

(a) gross proceeds of sales of goods or services; or

(b) paid admissions to a place of amusement.

(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 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.

(C) Notwithstanding any other provision of law, a city or county may not share or disclose any information relating to business license tax returns with any third party, specifically including a private sector auditor or auditing firm who is paid on a contingency fee or success basis and it is against the public policy of this state for a city or county to pay business license tax auditors on a contingency fee basis.

(D) 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.

(E) A person who knowingly violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both. In addition, if the person convicted is an officer or employee of the county or municipality, the offender must be dismissed from the office or position held and is disqualified from holding a public office in this State for five years following the conviction.”

SECTION 6. Section 12‑4‑310(10) and (11) of the 1976 Code is amended to read:

“(10) make available to the authorities of a municipality or county in this State levying a tax based on ~~gross receipts~~ business taxable income or net taxable sales, any records indicating the amount of ~~gross receipts~~ business taxable income 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 Article 4, Chapter 1, Title 6, the South Carolina Business License Tax Reform Act, ~~is~~ are implemented.”

SECTION 7. This act takes effect January 1, 2020.

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