AS PASSED BY THE SENATE

March 31, 2021

**S. 154**

Introduced by Senator Martin

S. Printed 3/31/21--S.

Read the first time January 12, 2021.

**A** **BILL**

TO AMEND CHAPTER 54, TITLE 12 OF THE 1976 CODE, RELATING TO THE UNIFORM METHOD OF COLLECTION AND ENFORCEMENT OF TAXES LEVIED AND ASSESSED BY THE SOUTH CAROLINA DEPARTMENT OF REVENUE, BY ADDING SECTION 12-54-20, TO PROVIDE THAT A TAXPAYER THAT PREVAILS IN AN ACTION OR PROCEEDING TO RECOVER A TAX OR PENALTY IS ENTITLED TO REASONABLE ATTORNEYS’ FEES AND COSTS ASSOCIATED WITH DEFENDING THE ACTION OR PROCEEDING.

Amend Title To Conform

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

SECTION 1. Chapter 54, Title 12 of the 1976 Code is amended by adding:

“Section 12‑54‑20. (A) An individual that is a party in any action or proceeding with, or on behalf of, the department regarding any tax imposed by this title and administered by the department, is entitled to an equitable award by the court, at the conclusion of the action, of reasonable attorneys’ fees and costs associated with the action or proceeding if the court finds:

(a) the individual is the substantially prevailing party in the action or proceeding; or

(b) the department does not meet the timeliness requirements set forth in law. For purposes of this subsection, reasonable attorneys’ fees and costs means the fees and costs incurred by the individual due to the department’s delay.

(B) The department is entitled to an equitable award of reasonable attorneys’ fees and costs associated with an action commenced against it by an individual regarding any tax imposed by this title and administered by the department if the court finds that the action commenced by the individual is frivolous, unreasonable, without foundation, or in bad faith.

(C) In determining an award made pursuant to subsections (A) and (B), the court shall consider the following:

(1) the nature, extent, and difficulty of the legal services rendered;

(2) the time and labor necessarily devoted to the case;

(3) the professional standing of counsel; and

(4) the beneficial results obtained.

(D) For purposes of this section, an individual also includes sole proprietorships, partnerships, and ‘S’ corporations, including limited liability companies taxed as sole proprietorships, partnerships, or ‘S’ corporations.”

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

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