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COMMITTEE REPORT

March 5, 2014

**S. 985**

Introduced by Senator Cleary

S. Printed 3/5/14--S.

Read the first time February 4, 2014.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 985) to amend the Code of Laws of South Carolina, 1976, by adding Article 6 to Chapter 1, Title 6, to enact the “Fairness in Lodging Act”, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

HUGH K. LEATHERMAN, SR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT 1/**

Because the decision to implement and enforce local taxing policies is left to the implementing jurisdiction, we don’t expect that this bill will result in the collection of any state or local revenue in FY2014-15. In future fiscal years, the amount of revenue collected would be dependent upon the number of ordinances adopted by municipalities and counties, the number of taxpayers that conform to the legislation, and the degree of compliance with and enforcement of the ordinance.

**Explanation**

This bill would add Article 6 to Title 6 and may be cited as the Fairness in Lodging Act. This bill would allow municipalities and counties the option to exercise additional enforcement authority of individuals who rent residential accommodations to tourists, but fail to obtain the county or municipal business licenses and fail to collect and remit local and state accommodations taxes.

Currently, taxpayers that rent their private residences for less than fifteen days during a taxable year are not required to remit a seven percent state accommodations tax on the gross proceeds to the state. This bill would not apply to any residential real property when the gross proceeds from the rental are wholly excluded from the gross income of the taxpayer pursuant to Internal Revenue Code Section 280A(g). Specifically, IRC Section 280A(g)(2) is a special rule for certain rental use of real property, and states that if a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, then the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer. Because South Carolina conforms to the federal tax code pursuant to Section 12-6-40, this special rule would apply under state tax law. This bill, therefore, would apply a state accommodations tax of seven percent to be levied on the gross rental income of those taxpayers that account for this rental income on their federal taxes. The following is a section-by-section analysis of the bill.

**Section 1.** The section would permit the governing body of a municipality or county by ordinance to implement the provisions of the Fairness in Lodging Act if it imposes a business license tax on the income of renting residential accommodations to tourists and the local accommodations tax. This act would become effective when a copy of the implementing ordinance is provided to the Director of the Department of Revenue. The Department of Revenue and the implementing jurisdiction would then share detailed information and data required to be submitted by persons renting residential real property to tourists in the implementing jurisdiction to enforce these requirements. If any violations are found, the implementing jurisdiction may impose a one-time civil penalty for noncompliance and failure to obtain a required business license for each seven days the property was rented. This penalty is in addition to all other penalties and interest by the ordinance. In addition, the Department of Revenue shall identify websites containing “rent by owner” vacation rental opportunities and request them to post a statement on the website that the owner of South Carolina rental properties is required to be licensed and to collect applicable local and state fees and taxes.

Because the decision to implement and enforce local taxing policies is left to the implementing jurisdiction, we are not able to accurately forecast the number of local taxing jurisdictions that may or may not implement the additional enforcement authority devolved upon them. As an example, however, based on the latest data from the U.S. Department of Commerce, Bureau of the Census, an estimated four percent of all housing units are available for seasonal, recreational, or occasional use in South Carolina. If an estimated 86,268 units are rented at an average rental price of $1,000 per week for one week per year, and applying a state accommodations tax rate of seven percent yields an increase in state accommodations tax revenue of an estimated $6,038,760 annually. Also, in a recent survey of vacation rental owners by a leading online solicitor of vacation rentals, HomeAway, found that sixty percent of all vacation home owners rent out their homes during the year. Multiplying $6,038,760 by sixty percent of rentable vacation homes yields an adjusted increase in state accommodations tax revenue of an estimated $3,623,256 annually.

There are several obstacles that must be resolved. The municipality or county must pass an ordinance enforcing home owners that rent their properties to obtain a business license tax and set up an account with the Department of Revenue to receive accommodations tax revenue. The implementing jurisdiction would need to inform the Department of Revenue that an ordinance was adopted and that a system of sharing data must be established. Every home owner in an implementing jurisdiction would need to be notified as to a change in taxing policy and potential civil penalties for noncompliance. If the compliance and enforcement costs of the provision are perceived as too high, the number of taxpayers that may undertake the decision to rent out their homes may be reduced, thereby reducing the amount of total revenue collected. The implementation of this process will take time; therefore, we don’t expect that this bill will result in the collection of any revenue in FY2014-15. In future years, the amount of revenue collected would be dependent upon the number of ordinances adopted by municipalities and counties, the number of taxpayers that conform to the legislation, and the degree of compliance with and enforcement of the ordinance.

**Section 2.** This section would amend Section 6-1-120(B)(3) to add the phrase “including the specific sharing of data as provided in Article 5 of this Chapter, the Fairness in Lodging Act.” This section is not expected to affect general fund revenue in FY2014-15.

**Section 3.** This section would amend Section 12-54-240 to add subsection (13) to include disclosure and data sharing as provided in the Fairness in Lodging Act. This section is not expected to affect general fund revenue in FY2014-15.

**Section 4.** This section adds an additional duty to the Department of Revenue to provide data and assistance to municipalities and counties in which the Fairness in Lodging Act is implemented. This section is not expected to affect general fund revenue in FY2014-15.

**Section 5.** This act takes effect upon approval by the Governor.

*Approved By:*

Frank A. Rainwater

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 6 TO CHAPTER 1, TITLE 6, TO ENACT THE “FAIRNESS IN LODGING ACT” SO AS TO ALLOW MUNICIPALITIES AND COUNTIES BY ORDINANCE TO IMPLEMENT ADDITIONAL ENFORCEMENT PROVISIONS FOR THE BUSINESS LICENSE TAX AND THE LOCAL ACCOMMODATIONS TAX AS THOSE PROVISIONS APPLY TO THE OWNERS OF RESIDENTIAL REAL PROPERTY WHO RENT THE PROPERTY TO TOURISTS, INCLUDING DATA SHARING WITH THE SOUTH CAROLINA DEPARTMENT OF REVENUE, SPECIFIC NOTICE TO PROPERTY OWNERS INCLUDED IN PROPERTY TAX BILLS, AN ADDITIONAL PENALTY THAT MAY BE IMPOSED FOR NONCOMPLIANCE AFTER THE RECEIPT OF SUCH A NOTICE, AND DIRECTIONS TO THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO IDENTIFY “RENTAL BY OWNER” WEBSITES ADVERTISING TOURISTS RENTALS AND REQUEST THEM TO POST ON THE WEBSITES A STATEMENT REGARDING THE LEGAL OBLIGATIONS OF THE OWNERS OF PROPERTY IN THIS STATE LISTED ON THE WEBSITE, TO PAY ALL APPLICABLE LOCAL AND STATE TAXES AND FEES WITH RESPECT TO SUCH RENTALS; AND TO AMEND SECTIONS 6‑1‑120, 12‑54‑240, AS AMENDED, AND 12‑4‑310, RELATING RESPECTIVELY TO THE CONFIDENTIALITY OF LOCAL AND STATE TAX DATA AND EXCEPTIONS THERETO, AND THE DUTIES OF THE SOUTH CAROLINA DEPARTMENT OF REVENUE, SO AS TO CONFORM THEM TO THE PROVISIONS OF THIS ACT.

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

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

“Article 6

Fairness in Lodging Act

Section 6‑1‑610. (A) This article may be cited as the ‘Fairness in Lodging Act’.

(B) The General Assembly finds that:

(1) providing lodging accommodations for tourists is a major business in this State;

(2) there are instances where individuals who rent residential accommodations to tourists are failing to obtain the county or municipal business licenses required for engaging in such rentals and similarly failing to collect and remit the local accommodations tax imposed pursuant to Article 5 of this chapter and the state sales tax on accommodations imposed pursuant to Section 12‑36‑920;

(3) those who fail to acquire required municipal or county business licenses and remit business license taxes and local and state taxes on providing accommodations to transients are competing unfairly against those who dutifully meet these legal obligations;

(4) by the enactment of the Fairness in Lodging Act, municipalities and counties are provided the option to exercise additional enforcement authority with respect to these taxes and to engage in active cooperation with the South Carolina Department of Revenue in data sharing, to provide comprehensive enforcement of the applicable license tax and accommodations tax laws so as to promote a more equal competitive playing field for those engaged in this State in the business of renting accommodations to tourists.

Section 6‑1‑615. (A) The governing body of a municipality or county by ordinance may implement the provisions of this article if it imposes a business license tax as provided pursuant to Section 4‑9‑30(12) or Section 5‑7‑30 applicable to income of renting residential accommodations to tourists and the local accommodations tax provided pursuant to Article 5 of this title. This article applies in the applicable jurisdiction when a certified copy of the implementation ordinance is provided to the Director of the South Carolina Department of Revenue.

(B) The provisions of this article do not apply to any residential real property lawfully assessed for property tax purposes pursuant to Section 12‑43‑220(c) when all rental income on the property is not included in gross income for federal income tax purposes pursuant to Internal Revenue Code Section 280A(g).

Section 6‑1‑620. (A) When the provisions of this article apply in an implementing jurisdiction, the South Carolina Department of Revenue, and the implementing jurisdiction using returns and copies of returns and other documents filed with or otherwise available to them shall share data helpful to both the department and the implementing jurisdiction in determining possible instances of noncompliance. The Director of the Department of Revenue may designate employees of the implementing jurisdiction on whom, by such designation, is devolved the authority granted agents of the Department of Revenue to insure the proper collection and payment of state tax underpayments.

(B) Implementing jurisdictions shall include or cause to be included notices in annual property tax notices for parcels of residential real property assessed for property tax purposes pursuant to Section 12‑43‑220(e) as the implementing jurisdiction determines appropriate. These notices must provide details of business license taxes, local accommodations tax, and state sales tax on accommodations required to be paid by persons renting residential real property to tourists in the implementing jurisdiction and the intention of the implementing jurisdiction to vigorously enforce these requirements. Details must include specific information on obtaining additional information with respect to these requirements and the names, addresses, and telephone numbers of officials of implementing jurisdictions that are able to answer questions, provide forms, and assist in compliance. Counties must be reimbursed by implementing municipalities for extra expenses incurred by a county in providing these notices.

(C) In addition to other penalties and interest imposed by the ordinance of an implementing jurisdiction for failure to comply with the business license ordinance required of owners in the business of renting residential accommodations to tourists, the jurisdiction may impose, with respect to a single rental property, a one‑time civil penalty for noncompliance for failure to obtain a required business license of not less than five hundred dollars nor more than two thousand dollars for each seven days the property was rented. This additional penalty may not be imposed unless the owner has received the notice provided pursuant to subsection (B). For purposes of enforcement and collection, this penalty is deemed property tax on the rental property.

Section 6‑1‑625. The South Carolina Department of Revenue shall identify websites containing ‘rent by owner’ vacation rental opportunities and request them to post a statement on the website that the owner of South Carolina rental properties is required to be licensed and to collect applicable local and state fees and taxes.”

SECTION 2. Section 6‑1‑120(B)(3) of the 1976 Code is amended to read:

“(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 6 of this chapter, the Fairness in Lodging Act.”

SECTION 3. Section 12‑54‑240(B)(13) of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

“(13) ~~Reserved~~ disclosure and data sharing as provided pursuant to Article 6, Chapter 1, Title 6, the Fairness in Lodging Act;”

SECTION 4. Section 12‑4‑310 of the 1976 Code is amended to read:

“Section 12‑4‑310. The department shall:

(1) hold meetings, as considered necessary. The department may hold meetings, transact business, or conduct investigations at any place necessary; however, its primary office is in Columbia;

(2) formulate and recommend legislation to enhance uniformity, enforcement, and administration of the tax laws, and secure just taxation and improvements in the system of taxation;

(3) consult and confer with the Governor upon the subject of taxation, the administration of the laws, and the progress of the work of the department, and furnish the Governor reports, assistance, and information he may require;

(4) prepare and publish, annually, statistics reasonably available with respect to the operation of the department, including amounts collected, and other facts it considers pertinent and valuable;

(5) make available to the authorities of a political subdivision information reported to the department pursuant to the requirements of Chapter 36 of this title of businesses licensed under Section 12‑36‑510 in the requesting political subdivision;

(6) hire all necessary personnel, including officers, agents, deputies, experts, and assistants, and assign to them duties and powers as the department prescribes;

(7) require those of its officers, agents, and employees it designates to give bond for the honest performance of their duties in the sum and with the sureties it determines; and all premiums on the bonds must be paid by the department;

(8) pay travel expenses, purchase, or lease all necessary facilities, equipment, books, periodicals, and supplies for the performance of its duties;

(9) exercise and perform other powers and duties as granted to it or imposed upon it by law; ~~and.~~

(10) make available to the authorities of a municipality or county in this State levying a tax based on gross receipts or net taxable sales, any records indicating the amount of gross receipts 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 in which Article 6, Chapter 1, Title 6, the Fairness in Lodging Act, is implemented.”

SECTION 5. This act takes effect upon approval by the Governor.

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