COMMITTEE REPORT

March 17, 2021

**S. 154**

Introduced by Senator Martin

S. Printed 3/17/21--S.

Read the first time January 12, 2021.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 154) 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, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, by striking SECTION 1 and inserting:

/ 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 reasonable attorneys’ fees and costs associated with the action or proceeding if:

(1) the individual prevails in the action or proceeding; or

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

(B) 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.” /

Renumber sections to conform.

Amend title to conform.

HUGH K. LEATHERMAN, SR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill amends Chapter 54 of Title 12, which governs the enforcement and collection of taxes imposed by DOR. The bill entitles a taxpayer, who is the prevailing party in an action or proceeding instituted by DOR or AG pursuant to Chapter 54, to reasonable attorneys’ fees and costs associated with defending the action or proceeding.

DOR anticipates payments made pursuant to this legislation would likely be provided through the department’s general fund appropriations. DOR anticipates there will be a fiscal impact as a result of this bill, however they are unable to estimate the amount. DOR is uncertain based on the current language of the bill as to which legal proceedings involving the department would qualify as being instituted by the department or AG. According to DOR, the legal proceedings they are typically involved with regarding tax collection and enforcement are a result of taxpayers appealing an assessment issued by DOR, and DOR does not typically bring legal actions against taxpayers. Additionally, DOR is unable to estimate an amount for the legal expenses incurred by individual taxpayers in legal proceedings involving the department, but indicates due to the complexity and longevity of some cases, the expenses could be substantial. Therefore, it is anticipated this bill will have an undetermined impact on the general fund expenditures of DOR, contingent upon the number of eligible proceedings, and the amount incurred for legal expenses by individual taxpayers.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**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.

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 taxpayer that is the prevailing party in an action or proceeding instituted by the department or the Attorney General to recover a tax or a penalty imposed by this chapter is entitled to reasonable attorneys’ fees and costs associated with defending the action or proceeding.”

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

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