

South Carolina General Assembly
123rd Session, 2019-2020

A176, R180, H4431

STATUS INFORMATION

General Bill

Sponsors: Reps. Jordan, Fry, Rose, Forrest, Anderson, Hyde, B. Cox, Elliott, Morgan, B. Newton, Rutherford, Long, Magnuson, Clemmons, Davis, Taylor, Hewitt, Pope, Ligon, Tallon, D.C. Moss, Blackwell, Kirby, Sandifer, Jefferson, R. Williams, Kimmons, Murphy, Chellis and Daning

Document Path: l:\council\bill\rt\17613sa19.docx

Introduced in the House on April 9, 2019

Introduced in the Senate on February 27, 2020

Last Amended on September 23, 2020

Passed by the General Assembly on September 23, 2020

Governor's Action: September 30, 2020, Signed

Summary: SC Business License Tax Reform

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
4/9/2019	House	Introduced and read first time (House Journal-page 27)
4/9/2019	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 27)
4/11/2019	House	Member(s) request name added as sponsor: Anderson, Hyde
4/23/2019	House	Member(s) request name removed as sponsor: Daning
4/24/2019	House	Member(s) request name added as sponsor: B.Cox, Elliott, Morgan
4/25/2019	House	Member(s) request name added as sponsor: B.Newton
5/7/2019	House	Member(s) request name added as sponsor: Rutherford
5/20/2019	House	Member(s) request name added as sponsor: Long, Magnuson, Clemmons, Davis, Taylor
5/21/2019	House	Member(s) request name added as sponsor: Hewitt, Pope
1/15/2020	House	Member(s) request name removed as sponsor: Atkinson
1/15/2020	House	Member(s) request name added as sponsor: Ligon, Tallon, D.C.Moss
1/22/2020	House	Member(s) request name added as sponsor: Blackwell
2/19/2020	House	Member(s) request name added as sponsor: Kirby, Sandifer
2/19/2020	House	Committee report: Favorable with amendment Labor, Commerce and Industry (House Journal-page 4)
2/20/2020	House	24 hour point of order
2/20/2020	House	Member(s) request name added as sponsor: Jefferson, R.Williams
2/20/2020		Scrivener's error corrected
2/25/2020	House	Member(s) request name added as sponsor: Daning
2/26/2020	House	Member(s) request name added as sponsor: Kimmons, Murphy, Chellis
2/26/2020	House	Amended (House Journal-page 9)
2/26/2020	House	Read second time (House Journal-page 9)
2/26/2020	House	Roll call Yeas-104 Nays-0 (House Journal-page 18)
2/27/2020		Scrivener's error corrected
2/27/2020	House	Read third time and sent to Senate (House Journal-page 26)
2/27/2020	House	Roll call Yeas-96 Nays-0 (House Journal-page 27)
2/27/2020	Senate	Introduced and read first time (Senate Journal-page 9)

2/27/2020 Senate Referred to Committee on **Finance** ([Senate Journal-page 9](#))
 9/15/2020 Senate Committee report: Favorable with amendment **Finance** ([Senate Journal-page 10](#))
 9/16/2020 Scrivener's error corrected
 9/22/2020 Senate Committee Amendment Adopted ([Senate Journal-page 16](#))
 9/22/2020 Senate Amended ([Senate Journal-page 16](#))
 9/22/2020 Senate Read second time ([Senate Journal-page 16](#))
 9/22/2020 Senate Roll call Ayes-40 Nays-0 ([Senate Journal-page 16](#))
 9/22/2020 Senate Unanimous consent for third reading on next legislative day ([Senate Journal-page 16](#))
 9/23/2020 Senate Read third time and returned to House with amendments ([Senate Journal-page 145](#))
 9/23/2020 House Non-concurrence in Senate amendment ([House Journal-page 9](#))
 9/23/2020 Senate Senate insists upon amendment and conference committee appointed Cromer, Sheheen, Corbin ([Senate Journal-page 147](#))
 9/23/2020 House Conference committee appointed Reps. Sandifer, Jordan, Mack ([House Journal-page 67](#))
 9/23/2020 House Free conference powers granted ([House Journal-page 123](#))
 9/23/2020 House Roll call Yeas-98 Nays-1 ([House Journal-page 123](#))
 9/23/2020 House Free conference committee appointed Sandifer, Jordan, and Mack ([House Journal-page 123](#))
 9/23/2020 House Free conference report adopted ([House Journal-page 123](#))
 9/23/2020 House Roll call Yeas-102 Nays-1 ([House Journal-page 123](#))
 9/23/2020 Senate Free conference powers granted ([Senate Journal-page 149](#))
 9/23/2020 Senate Free conference committee appointed Cromer, Sheheen, Corbin ([Senate Journal-page 149](#))
 9/23/2020 Senate Free conference report received and adopted ([Senate Journal-page 151](#))
 9/23/2020 Senate Roll call Ayes-35 Nays-1 ([Senate Journal-page 151](#))
 9/24/2020 House Ordered enrolled for ratification
 9/25/2020 Ratified R 180
 9/30/2020 Signed By Governor
 10/7/2020 Effective date See Act for Effective Date
 10/7/2020 Act No. 176

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VERSIONS OF THIS BILL

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(A176, R180, H4431)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 6-1-400 SO AS TO, AMONG OTHER THINGS, PROVIDE BUSINESS LICENSE TAX STANDARDIZATION, TO PROVIDE DEFINITIONS, TO PROVIDE FOR THE MANNER IN WHICH A BUSINESS LICENSE TAX IS COMPUTED, TO PRESCRIBE THE MANNER IN WHICH BUSINESS LICENSES ARE PURCHASED, TO PROVIDE THAT A TAXING JURISDICTION SHALL ADOPT THE LATEST STANDARDIZED BUSINESS LICENSE CLASS SCHEDULE; BY ADDING SECTION 6-1-410 SO AS TO, AMONG OTHER THINGS, DEFINE THE PROCEDURES BY WHICH THE TAXING JURISDICTION MAY SERVE NOTICE OF ASSESSMENT OF THE BUSINESS LICENSE TAX DUE WHEN A TAXPAYER FAILS OR REFUSES TO PAY A BUSINESS LICENSE TAX AND THE PROCEDURES BY WHICH A TAXPAYER MAY REQUEST AN ADJUSTMENT OF THE ASSESSMENT OR APPEAL THE NOTICE OF FINAL ASSESSMENT; AND BY ADDING SECTION 6-1-420 SO AS TO, AMONG OTHER THINGS, PROVIDE THAT A TAXING JURISDICTION, UNDER CERTAIN CONDITIONS AND LIMITATIONS, MAY CONTRACT BY ORDINANCE WITH AN INDIVIDUAL, FIRM, OR ORGANIZATION TO ASSIST WITH COLLECTING PROPERTY OR BUSINESS LICENSE TAXES, AND TO ESTABLISH A PRIVATE RIGHT OF ACTION FOR PERSONS OR ENTITIES BASED ON VIOLATIONS OF THIS ACT OR ANY REGULATIONS PRESCRIBED PURSUANT TO THIS ACT.

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

Citation

SECTION 1. This act may be cited as the “South Carolina Business License Tax Standardization Act”.

South Carolina Business License Tax Standardization Act

SECTION 2. Article 3, Chapter 1, Title 6 of the 1976 Code is amended by adding:

“Section 6-1-400. (A)(1) Unless otherwise specifically provided for by state law, a county or municipality that 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 a county or municipality levying a business license tax.

(c) ‘Taxpayer’ means an individual, firm, partnership, limited liability partnership, limited liability corporation, corporation, trust, estate, association, or company.

(B)(1) A business license must be issued to a taxpayer for a twelve-month period beginning May first and ending April thirtieth. Each business license issued must expire April thirtieth or, if issued on a construction contract, at the completion of the construction project. The business license must be renewed before May first of the year in which it expires. If the tax is not paid before May first, then a taxing jurisdiction may impose penalties, except that an admitted insurance company may pay before June first without penalty.

(2) The business license tax must be computed based on the gross income for the calendar year preceding the due date, for the business’s twelve-month fiscal year preceding the due date, or on a twelve-month projected income based on the monthly average for a business in operation for less than one year. The tax for a new business must be computed on the estimated probable gross income for the balance of the license year. A business license related to construction contract projects may be issued on a per project basis, at the option of the taxpayer.

(3) A taxpayer is entitled to a refund if he 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.

(C) Wholesalers are exempt from business license taxes unless they maintain warehouses or distribution establishments within the taxing jurisdiction. A wholesale transaction involves a sale to an individual who will resell the goods and includes delivery of the goods to the reseller. It does not include a sale of goods to a user or consumer. The provisions of this article do not amend or repeal Section 12-21-1085 or 12-33-20.

(D)(1) For the purposes of this article:

(a) ‘Charitable organization’ means an organization that is determined by the Internal Revenue Service to be exempt from federal

income taxes under 26 U.S.C. Section 501 (c)(3), (4), (6), (7), (8), (10), or (19).

(b) 'Charitable purpose' means a benevolent, philanthropic, patriotic, or eleemosynary purpose that does not result in personal gain to a sponsor, organizer, officer, director, trustee, or person with ultimate control of a charitable organization.

(2) A charitable organization shall be exempt from the business license tax on its gross income unless it is deemed a business subject to a business license tax on all or part of its gross income as provided in this section. A charitable organization, or any for-profit affiliate of a charitable organization, that reports income from for-profit activities, or unrelated business income, for federal income tax purposes to the Internal Revenue Service shall be deemed a business subject to a business license tax on the part of its gross income from such for-profit activities or unrelated business income.

(3)(a) A charitable organization shall be deemed a business subject to a business license tax on its total gross income if:

(i) any net proceeds of operation, after necessary expenses of operation, inure to the benefit of any individual or any entity that is not itself a charitable organization as defined in this section; or

(ii) any net proceeds of operation, after necessary expenses of operation, are used for a purpose other than a charitable purpose as defined in this section.

(b) Excess benefits or compensation in any form beyond fair market value to a sponsor, organizer, officer, director, trustee, or person with ultimate control of a charitable organization shall not be deemed a necessary expense of operation.

(E)(1) For the purposes of this article:

(a) 'Gross income' means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within a taxing jurisdiction. For taxing jurisdictions in which the person or business has a domicile, business done within that taxing jurisdiction shall include all gross receipts or revenue received or accrued by such person or business, excepting income earned outside of the taxing jurisdiction on which a license tax is paid by the person or business to some other taxing jurisdiction and fully reported to the taxing jurisdiction. For taxing jurisdictions in which the person or business does not have a domicile, business done within that taxing jurisdiction shall include only gross receipts or revenue received or accrued within such taxing jurisdiction. In all cases, if the taxpayer pays a business license tax to another county or municipality, then the taxpayer's gross income for the purpose of

computing the tax within the taxing jurisdiction must be reduced by the amount of gross income taxed in the other county or municipality.

(b) 'Gross income for agents' means gross commissions received or retained. If commissions are divided with other brokers or agents, then only the amount retained by the broker or agent is considered gross income.

(c) 'Gross income for insurance companies' means gross premiums written.

(d) 'Gross income for manufacturers of goods or materials with a location in a taxing jurisdiction' is the lesser of gross income collected from business done at the location, the amount of income allocated and apportioned to that location by the business for purposes of the business's state income tax return, or the amount of expenses attributable to the location as a cost center of the business. Manufacturers include those taxpayers reporting a manufacturing principal business activity code on their federal income tax returns.

(e) Gross income for telecommunications providers is subject to the provisions of Article 20, Chapter 9, Title 58.

(2) Gross income for business license tax purposes may not include taxes collected for a governmental entity, escrow funds, or funds that are the property of a third party. The value of bartered goods or trade in merchandise may be included in gross income.

(3) The gross receipts or gross revenues for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other governmental agencies.

(F) Each taxing jurisdiction shall accept a standard business license application as established and provided by the Director of the Revenue and Fiscal Affairs Office.

(G)(1) By December thirty-first of every odd year, a taxing jurisdiction levying a business license tax shall adopt, by ordinance, the latest Standardized Business License Class Schedule as recommended by the Municipal Association of South Carolina and adopted by the Director of the Revenue and Fiscal Affairs Office. The Municipal Association of South Carolina shall determine and revise the Standardized Business License Class Schedule every even year using the latest available nationwide Internal Revenue Service statistics for the calculation of profitability of businesses and using the latest business classification codes of the latest North American Industry Classification System (NAICS).

(2) A taxing jurisdiction, upon a finding of a rational basis as explained in its ordinance and by a positive majority vote of county or

municipal council, may provide for additional reasonable subclassifications, described by an NAICS sector, subsector, or industry, based upon particularized considerations as needed for economic stimulus or the enhanced or disproportionate demands by specific business subclassifications on taxing jurisdiction services or infrastructure.

(H)(1) Any special ordinance, formal agreement, or informal agreement entered into between a taxing jurisdiction and a taxpayer regarding rate classes, an annual flat fee, or the calculation of business license taxes that was adopted by ordinance or agreed to before enactment of this subsection 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 future special business license ordinance passed for economic stimulus, an annual flat fee, or any future formal or informal agreement between a taxing jurisdiction and a taxpayer regarding the calculation of business license taxes.

(I)(1) A taxing jurisdiction must establish its 2022 Business License Tax Rate Schedule using the gross income reported by businesses for a twelve-month period in the 2020 business license year so that the aggregate taxing jurisdiction business license tax calculated for 2022 does not exceed the aggregate taxing jurisdiction business license tax collected in 2020 from the same businesses.

(2) If the rate for an NAICS sector, subsector, or industry is unchanged from 2020 to 2022, then the business license tax collections may be excluded from the calculation set forth in item (1).

(J)(1) A taxing jurisdiction shall provide access to taxpayers for the reporting, calculation, and payment of business license taxes through the business license tax portal hosted and managed by the Revenue and Fiscal Affairs Office, 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 parties other than the taxing jurisdictions for statewide analytics or any other purpose not specified in this section. Parties other than the taxing jurisdictions are prohibited from auditing a taxpayer using the business license tax portal. A taxing jurisdiction shall receive the entirety of the business license tax paid to it by a taxpayer through 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, by mail, or through an online payment system in existence on January 1, 2018, or prior, that is owned and operated by the taxing jurisdiction.

(2) The Revenue and Fiscal Affairs Office is authorized to contract with software providers and payment processors for the purposes of implementing the provisions of this section. The Revenue and Fiscal Affairs Office may promulgate regulations to carry out the provisions of this section. The software provider may not retain any portion of the business license tax paid by the taxpayer to a taxing jurisdiction through the business license tax portal.

(3) The Revenue and Fiscal Affairs Office 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 6-1-410. (A) If a taxpayer fails or refuses to pay a business license tax by May first or, for business license taxes collected pursuant to Article 20, Chapter 9, Title 58 and Chapters 7 and 45, Title 38, the date on which the business license tax is due, the taxing jurisdiction business license official may serve notice of assessment of the 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 taxing jurisdiction business license official and the taxpayer must be held within fifteen days of the receipt of the request, at which time the taxpayer may present any information or documents in support of the requested adjustment. Within five days after the conference, the taxing jurisdiction 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 the notice of final assessment by filing the completed appeal form with the taxing jurisdiction business license official, by mail or personal service, and by paying to the taxing jurisdiction 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 taxing jurisdiction council or its designated appeals officer or appeals board. The taxing jurisdiction 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 taxing jurisdiction 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 taxing jurisdiction council, its designee, or the appeals board must be held at a regular or special meeting of the taxing jurisdiction council or appeals board. At the appeals hearing, the taxpayer and the taxing jurisdiction 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 taxing jurisdiction council, its designee, or the appeals board shall decide the assessment by majority vote. The taxing jurisdiction council, its designee, the appeals board, or the 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 taxing jurisdiction business license official and served on the taxpayer by mail or personal service. The decision is the final decision of the taxing jurisdiction on the assessment.

(C) Within thirty days after the date of postmark or personal service of the taxing jurisdiction'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.

(D) For the purposes of this section, 'business license official' means the officer, employee, or agent designated by the taxing jurisdiction as having primary responsibility for business licensing within the taxing jurisdiction.

Section 6-1-420. (A) Notwithstanding Section 5-7-300, a taxing jurisdiction may contract by ordinance with an individual, firm, or organization to assist the taxing jurisdiction in collecting property or business license taxes. A private third-party entity is prohibited from assessing business license taxes or requiring a business entity to remit confidential business license tax data to that private third party on behalf of a taxing jurisdiction. This section may not prohibit a taxing jurisdiction from contracting with a third-party entity in assisting in the collection of business license taxes. For the purposes of this section, assisting in the collection of business license taxes is limited to a contractual agreement with a taxing jurisdiction for a third party to identify, through publicly available records, businesses that are operating within the contracting taxing jurisdiction without a business license, to provide that identification to a taxing jurisdiction, to communicate with those businesses identified to determine whether any business license taxes are due and owing, and to assist those businesses that owe a

business license tax with paying the relevant taxing jurisdiction. The third party may also assist the contracting taxing jurisdiction with providing, by United States official mail or electronic mail, the taxing jurisdiction's business license form, along with a self-addressed envelope containing the taxing jurisdiction address, to identified businesses on behalf of the taxing jurisdiction. If a business requests in writing that the third party cease communication with the business, then the third party is strictly prohibited from any further contact. A third party assisting in the collection of business license taxes as defined in this section is prohibited from retaining personal or proprietary information from the identified business.

(B) It is unlawful for any individual, firm, or organization to contact a business in this State regarding noncompliance with a business license ordinance unless the contact is made pursuant to a contract with a taxing jurisdiction in accordance with this section.

(C) This section may not prohibit a taxing jurisdiction from contracting with a third party for the purpose of providing payment processing services for the acceptance of business license tax payments.

(D) A taxing jurisdiction may enter into a contract with a third party to assist the taxing jurisdiction in collecting delinquent business license taxes which includes a contingency fee based on a percentage of taxes collected or otherwise depends on the specific result obtained provided the third party may not be paid on a contingency or success basis until the taxing jurisdiction issues a proposed assessment of business license taxes and the business fails to appeal the proposed assessment in a timely manner or the appeal is adjudicated. This section does not apply to the collection of business license taxes pursuant to Article 20, Chapter 9, Title 58 and Chapters 7 and 45, Title 38.

(E) Except as needed for a third party to assess and collect business license taxes collected pursuant to Article 20, Chapter 9, Title 58 and Chapters 7 and 45, Title 38, a taxing jurisdiction may not share or disclose any information relating to business license tax applications with any third party other than to acknowledge whether or not a business has paid the taxing jurisdiction's business license tax for a relevant year. Nothing in this section should be construed as prohibiting a person or entity that gathers and disseminates news, as defined in Section 19-11-100, from obtaining the information not protected by Section 6-1-120 found on the business license tax application from the taxing jurisdiction.

(F) A third-party entity contracting with a taxing jurisdiction to assist in identifying and collecting outstanding business license taxes may not engage in any conduct in which the natural consequence is to harass a business including, but not limited to, the following:

(1) contacting a business in any capacity after the business informs the third-party entity in writing to cease communication;

(2) stating that a business is required to provide any information to the third-party entity; or

(3) contacting the business in a manner that the third-party entity knows or should know creates any meaningful business interruption.

(G) The provisions of subsection (A) do not apply to business license taxes collected pursuant to Article 20, Chapter 9, Title 58 and Chapters 7 and 45, Title 38.

(H)(1) A person or entity may bring a private right of action:

(a) based on a violation of this section or any regulations prescribed pursuant to this section to enjoin such violation;

(b) to recover for actual monetary loss from such a violation, or to receive five hundred dollars in damages for each violation, whichever is greater; or

(c) for both actions described in subitems (a) and (b).

(2) If the court finds that a defendant wilfully or knowingly violated this section or any regulations prescribed pursuant to this section, then the court may, in its discretion, increase the amount of the award to an amount equal to no more than three times the actual monetary loss resulting from such violation.”

Time effective

SECTION 3. Section 6-1-420 of this act takes effect upon approval by the Governor. The remaining sections of this act take effect January 1, 2022.

Ratified the 25th day of September, 2020.

Approved the 30th day of September, 2020.