

Proposed SC FairTax

Executive Summary

12-34-101 This Act will be The South Carolina FairTax Act

(12-34 not used at each paragraph here after)

-102 Purpose is to raise revenue by taxing all new goods and services once and only once, simplify the tax code, to reduce compliance costs, and provide taxpayer rights including the presumptions of compliance and innocence with the state bearing the burden of proof.

-103 Definitions

- A. Affiliated Firms- One entity owns or controls 50% or more of the other.
- B. Commercial Courier- A Delivery service over one year in business that maintains a database of package handling
- C. Director- Head of the Department of Revenue.
- D. Education and Training- Primary, secondary or post secondary level of education and job related training courses where costs are incurred for tuition, books, laboratory, and other class related fees. Excludes room and board, sports activities, recreational activities, hobbies, games, arts, crafts, and cultural activities.
- E. Gross Payment- Payment including taxes.
- F. Intangible Property- Copyrights, trademarks, patents, goodwill, financial instruments, securities, commercial paper, debts, notes, bonds and other items included under common law. Excluded are tangible personal property, leaseholds, real property, rent, and computer software.
- G. Net Payment- Total amount charged excluding taxes imposed by this law.
- H. Person- People, corporation, partnership, limited liability company, trust, estate, government, agency, organization, association, or other legal entity.
- I. Produce, provide, render, or sell taxable property or services-
 - 1. In General- A taxable property or service is used to make or sell a property or service when purchased by an entity in the business of using those to produce or sell them or other goods or services.
 - 2. Research, Experimentation, Testing, and Development(R&D)- Property and services used in R&D for entities that produce products for sale are the same as other goods purchased to make or provide taxable goods and services.
 - 3. Insurance Payments- If the premiums were taxable, goods and services used to settle a claim are considered used to produce a good or service.
 - 4. Education and training- Is producing
- J. Registered Seller- Anyone required to register with the Department of Revenue by this law.
- K. Taxable Employer-
 - 1. In general- a. Any household employing domestic help.
b. Government except government enterprises.

2. Exceptions- Excluded is any employer who is-
 - a. engaged in a trade or business
 - b. not for profit organizations
 - c. government enterprise (that provides taxable good or services to consumers or businesses)
 - d. engaged in education or training
 - e. federal government or federal agency

L. Taxable property or service-

1. General Rule-

- a. any property including rents except for ;
 - i. intangible property and
 - ii. used property
- b. Service means service by a paid employee except when paid in the normal course of business or trade, by a not for profit, by a government enterprise or by an educational or training entity.

M. Tax inclusive fair market value- market value including taxes imposed by this law.

N. Used property- Any property on which the tax under this law has been paid and property not held for resale as of December 31 of the year the law is enacted.

O. Wages and salary- All payments and fringe benefits paid to employees for employment service plus all statutory insurance and taxes paid as a result of that person's employment.

-201 Use and Consumption Tax imposed at 6%. The rate may be reduced by a majority vote of the legislature. The purchaser is liable unless the seller collects the tax and provides a receipt.

-202 Business, Export, Investment, and Government re-sale purchases exempt.

-203 Collection and payment of the tax is generally the responsibility of the seller, except for out of state purchases brought into the state, employers for taxable services, or businesses which converts property from business use to consumption or personal use. Barter transaction taxes must be paid in cash

-301 Credits will be allowed on taxes paid per the next six sections

-302 Conversion to business use of any taxed item

-303 Business use or export out of state of a taxed item

-304 Administrative credit of \$200 or $\frac{1}{4}$ of one percent, up to 20% of tax due, for collection and reporting costs.

-305 Bad debt loss where taxes reported and paid but proceeds subsequently not collected.

-306 Credits for insurance proceeds, net of premiums paid with tax.

-320 Refunds of overpayments must be made by DoR within 60 days of receipt of refund application.

-401 Family sales tax rebate of all taxes projected to the poverty level based on household size established

-402 Family is defined to be all legal US residents with social security number related by blood or law living in a household, along with students living away from home. Children of divorced parents to be included in the household of more than 50% residence or by written agreement between the parties. Annual registration identifying all members of the household is required to receive the allowance. Annual registration dates to be determined by the director.

-403 Monthly poverty level is determined by US Department of Health and Human Services, adjusted to eliminate the marriage penalty.

-410 Monthly payments to the directed household member(s) to be mailed or distributed electronically on the first of each month to the recipient(s) designated on the annual qualification form.

-420 Unless changed by filing of a revised family status form, the status will remain in effect for one year, but can be updated at any time there is a change in the number of persons constituting the household.

-501 Sales tax reports required by DoR on the 20th of the following month, or the next business day. Automatic 30 day extensions for filing reports will be granted, longer extensions on a reasonable needs basis. No extensions for payments. Taxes are due on the 20th of the month following collection.

-502 All sellers are required to register with the DoR, and to designate a single individual who is the tax matters person for that organization. Multi-location operations may register as one or individually.

-503 Accounting may be cash or accrual method. Once selected, accrual will be used thereafter.

-510 Penalties

Failure to Register:

Fine not to exceed \$500

Failure to collect

Civil not to exceed \$500

Criminal Not to exceed \$10,000 and up to 5 years in jail

Assertion of invalid exemption:

Civil \$500 or 20% of taxes not paid

Criminal Civil fine plus up to 1 year

Failure to remit taxes collected:

Civil \$1,000 or 50% of Tax not paid

Criminal Same as civil plus not more than 2 years in jail

Failure to pay taxes due:

\$500 or 20% of taxes not paid

Filing Late:

\$50 or .5% of payment due per month, doubled after notice of tax due from DoR,

12% max, Penalties waived due to reasonable cause, or once every other year

Willfully or Recklessly Accepting false exemption certificate

\$1,000 or 20% of tax not collected due to acceptance of false certificate

Late remittance:

1% per month, 24% max, Reasonable cause exception

Filing False rebate allowance claim

Civil \$500 or 50% of amount not actually due plus repayment of excess received

Criminal Civil plus up to 1 year in Jail

Bad Check:

Greater of \$25 or 2% of check amount

All fines are joint and several for the tax matters person and all officers and partners of the organization, and each can pursue the others to recover proportionate share. Civil and criminal recovery can be sought in each instance.

Violation of confidentiality clauses

\$10,000 or 1 year or both

-511 Burden of production is on the person deemed responsible for payment of taxes by the DoR. Burden of persuasion is on the DoR. If seller has exemption certificate that appears to be valid, burden of production is with the purchaser.

-512 Attorney and accounting fees will be reimbursed to the taxpayer unless the DoR substantially proves its position

--530 Sellers must keep records for 6 years after the tax was due. Purchasers exempt from taxes must keep records for 7 years.

-531 Sellers must state the amount for goods or services, amount of Tax, amount including tax, tax rate (exclusive basis), date of sale, name of seller and seller's registration number on each purchase receipt. Vending machines excepted. Financial Services firms must provide receipts when tax is imposed at least once per quarter.

-540 No penalties when the liable party is subject to terms of title 11 US Code

-550 Interest Rates

Short Term Rate- average yield of Treasury notes less than 3 years

Mid Term Rate- average yield of Treasuries 3 to 9 years

Long Term Rate- average yield of Treasuries over 9 years

-601 DoR shall collect the taxes imposed by this chapter

-610 Problem Resolution Office created to assist taxpayers with disputes with DoR. Head appointed by the Governor. Taxpayer Assistant Officers given the power to halt administrative and collection proceedings for a period of 8 weeks to six months to investigate further where there is reason to believe the taxpayer may prevail, and to order restitution when warranted. Orders by this officer can be rescinded or altered only by the issuing officer, the director of DoR or the general counsel of DoR based on a finding of clear and convincing evidence.

-630 In instances of an audit, investigation, final notice of amount due, administrative lien, levy or garnishment, other collection activities or legal action DoR must provide notice in plain English advising that person of their rights. These include the administrative appeals process, the authority of the Problem Resolution Office, the burdens of production and persuasion of the Taxpayer and the DoR, and the right to professional fees, as well as the right to record all meetings and discussions, along with all necessary contact information for each of the listed methods of appeal or protest. Taxpayer must be notified in clear language of the final finding 30 days before any collection actions are initiated. Taxpayer specific information is prohibited from disclosure except in limited instances for official use or to persons authorized by the taxpayer.

-640 Taxpayers may compromise and make agreements with the DoR to make remittance under the terms of an installment agreement.

-701 Hobby sales are taxable. If an enterprise has generated sales exceeding cost of goods, labor, and taxes for 2 of the last 3 years, it is deemed a for profit venture.

-702 Gaming activities are taxable, net of payouts and other taxes.

-703 Purchases by State and local governments are taxable unless purchased for resale.

-704 Government enterprises must collect and remit taxes on sales of their goods and services, unless purchases are for the production of goods or services for resale subject to tax under this Chapter. These entities must maintain separate books and accounts, and may not receive funds from other governmental organizations for goods purchased exempt from the tax imposed.

-705 Mixed use properties are taxed based on the proportionate use of the property in non business use.

-706 Dues, contributions, and similar payments to not-for-profit organizations are not taxed. Sales of taxable goods by non profit organizations are taxable.

-801 Fees for financial services when separately stated and billed are taxable. Imputed fees on leases are taxable to the extent that the interest rate exceeds the comparable Treasury Rate, i.e. the risk premium paid would be taxable.

-810 Taxes on Financial Services will be due and collected with the same frequency that statements are prepared, but at least quarterly.

-820 Financing leases will be taxed on the principal amount on the date of execution using rules set by the DoR. Interest charges shall be taxable in the interval in which they accrue.

-830 Basic interest rate for contracts with no specified interest rate reference nor a stated interest rate in the documents, the interest rates will be Federal Rates as set in section 12-34-81.

-840 Foreign financial service providers with South Carolina customers are taxed as if they were based in South Carolina for those customer's transactions. They must file with the DoR and appoint a tax representative for the DoR.

-901 Sale of a trademark or copyright is taxable if the transaction includes the services that produced the copyright material or the trademark. Incidental purchases of imported goods by non registered parties up to \$400 per year are exempt. Casual or isolated sales of up to \$1,200 per year are exempt. Financial services sales up to \$10,000 are exempt. These exempt limits are to be indexed for inflation annually based on CPI. If a registered seller provides a good or service as a prize, gift, reward, or as additional compensation then that transaction is taxable. Every transaction will be evaluated based on the substantive effect of the transaction irrespective of documentation purporting to structure the transaction as non-taxable. Employee discounts above 20% off retail price are taxed for the amount greater than 20% off. Filing or payment deadlines falling on a Saturday, Sunday or legal holiday are timely if completed on the next business day.

-910 Inventory held as of December 31 of the year prior to implementation of this tax will qualify for a tax credit if sold within the first calendar year of implementation. Credit will be based on the taxable value of the inventory as of December 31 of the year prior to implementation. This credit applies to work in progress. This credit applies only as such goods are sold at retail and the tax is collected, and may be transferred to a purchaser of the goods.

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-940 The legislature will annually approve funding for the Homestead exemption Fund, State Public School Building Fund, and the SC Education Improvement Act of 1984 Fund, as aid to municipalities and counties pursuant to Section 6-4-10 and to fund the Tourism Expenditure Review Committee

-960 For the first three years after enactment it will require a 2/3 vote of the House and Senate to change any part of this act except to reduce the tax rate set in 12-34-201(B) (2). Beginning in the 4th year, any changes will require state wide voter approval of a referendum in a general election.

SECTION 2

Chapters 6, 8, 11, 16, 36, 58, and 62 of Title 12 are repealed. This eliminates the SC Income Tax Act, Income Tax Withholding, Income Tax on Banks, Income Tax on Savings and Loan Associations, SC Estate Tax Act, SC Taxpayers Bill of Rights, SC Motion Picture Incentive Act respectively.

SECTION 3

The Act is effective January 1 of the year after it is enacted