JOHN J. TECKLENBURG
MAYOR

City of Charleston
South Carolina
Clerk of Council Department

VANESSA TURNER MAYBANK
CLERK OF COUNCIL

AGENDA
LICENSE COMMITTEE
FEBRUARY 25, 2020

Place: **80 Broad Street, First Floor Conference Room**

Time: **3:30 pm**

1. Invocation
2. Approval of minutes:
   October 7, 2019
3. Old Business
4. New Business:
   Review of legislation regarding SC Business License Tax Reform Act H4431
5. Adjournment

cc: Councilmember William Dudley Gregorie, Chair
Councilmember Robert Mitchell, Vice Chair
Councilmember Harry Griffin
Councilmember Kevin Shealy
Councilmember Keith Waring
Mayor John Tecklenburg
Amy Wharton, CFO
Joleen Deames, ACFO
Joshua Richards, Director of Revenue Collections
Janie Borden, Assistant Corporation Counsel

STRIKE ALL AFTER THE ENACTING WORDS AND INSERT:

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

SECTION 2. Chapter 7, Title 5 of the 1976 Code is amended by adding:

"Section 5-7-320. (A) Notwithstanding Section 5-7-30 or any other provision of law, any business license tax levied by a taxing jurisdiction must comply with the provisions of this section. For purpose of this section, "taxing jurisdiction" means a county or municipality levying a business license tax.

(B)(1) 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, 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, the business' 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 stated in the license application 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. A general contractor may choose to be issued a business license on the total value of his project's contract and that of his subcontractors or allow a taxing jurisdiction to withhold the certificate of occupancy on the project until each of his subcontractors obtain a business license for the project. If the general contractor is issued a business license on the total value of his project's contract and that of his subcontractors, he may request a refund in accordance with Section 5-7-320 (D) for the amounts of the business license tax paid by his subcontractors on the project.Wholesalers are exempt from municipal license taxes unless they maintain warehouses or distribution establishments within the municipality. A wholesale transaction involves a sale to someone who will resell the property and includes delivery to the reseller. It does not include a sale to a user or consumer.

(3) For purposes of this subsection, '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 the taxing jurisdiction in which it is domiciled. If the person or business does business within a municipality or county where it is not domiciled, it shall pay the business license tax on the gross income earned within that municipality or county. If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality. Gross income for agents means gross commissions received or retained, unless otherwise specified. If commissions are divided with other brokers or agents, only the amount retained by the broker or agent is considered gross income. Gross income for insurance companies means gross premiums written. Adjusted 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' 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 respective federal income tax return. The adjusted gross income for business license purposes may be verified by a taxing jurisdiction's officials by its inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, or other governmental agency. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade in merchandise shall be included in gross income. 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 government agencies.

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

(D) A taxpayer is entitled to a refund if it 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.

(E)(1) By December thirty first of every odd year, a taxing jurisdiction levying a business license tax must adopt, by ordinance, the latest Standardized Business License Class Schedule as ~~updated~~ recommended by the Municipal Association of SC and ~~certified~~ adopted by the Director of the Revenue and Fiscal Affairs Office. The Municipal Association of SC 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.

(2) A taxing jurisdiction, upon a finding of a rational basis as explained in its ordinance and by a positive majority vote of council, may provide for additional reasonable subclassifications, described by 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.

(F)(1) Any special ordinance, formal agreement, or informal agreement entered into between a taxing jurisdiction and a taxpayer regarding rate classes, annual flat fee, or the calculation of business license taxes which was adopted by ordinance or agreed to prior to 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, annual flat fee, or any future formal or informal agreement between a taxing jurisdiction and a taxpayer regarding the calculation of business license taxes.

(G)(1) A taxing jurisdiction must establish its 2021 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

2021 does not exceed the aggregate taxing jurisdiction business license tax collected in 2020 from the same businesses.

(2) If the rate for a NAICS sector, subsector, or industry is unchanged from 2020 to 2021, then the business license tax collections may be excluded from the calculation set forth in item (1).

(H)(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, or by mail.

(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.

(I)(1) If a taxpayer fails or refuses to pay the business license tax by May first, the taxing jurisdiction business license official shall 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 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.

(2) Within thirty days after the date of postmark or personal service, the taxpayer may appeal from 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, or its designee, or 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, or its designee, or appeals board shall decide the assessment by majority vote. The taxing jurisdiction council, or its designee, appeals board, or 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.

(3) 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. The court may affirm, reverse, or remand the decision on assessment."

(J)(1) 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. Except for business license taxes collected pursuant to Article 20, Chapter 9, of Title 58, and Chapters 7 and 45 of Title 38, of the 1976 Code, a private, third party entity is prohibited from assessing or collecting 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 subsection shall not prohibit a taxing jurisdiction from contracting with a third party entity in assisting in the collection of business license taxes. For purposes of this subsection, 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, and providing that identification to a taxing jurisdiction. The third pay may also assist the contracting taxing jurisdiction with providing, by United States official 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 and the third party is strictly prohibited from any further contact with the business other than sending the letter to the identified business on behalf of the jurisdiction . A third party assisting in the collection of business license taxes as defined in this section is prohibited from collecting personal or propriety information from the identified business and is prohibited from any further contact with the business.

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

(3) This subsection shall not prohibit a taxing jurisdiction from contracting with a third party entity solely for the purpose of providing payment processing services for the acceptance of business license tax payments.

(4) A taxing jurisdiction is prohibited from entering into a contract with a third party to assist the taxing jurisdiction in collecting property or business license taxes which includes a fee based on a percentage of taxes collected or otherwise depends on the specific result obtained. This subsection

does not apply to a taxing jurisdiction that enters into a contract with a third party solely for the collection of delinquent taxes for which a liability has been established by the issuance of a proposed assessment of property or business license taxes by a governmental entity to a business and the failure of the business to timely appeal the proposed assessment.
(5) Except for business license taxes collected pursuant to Article 20, Chapter 9, of Title 58, and Chapters 7 and 45 of Title 38, of the 1976 Code, a taxing jurisdiction may not share or disclose any information relating to business license tax applications with any third party, specifically including a private sector auditor or auditing firm who is paid on a contingency fee or success basis.
(6) Enforcement of this section shall be under the South Carolina Department of Consumer Affairs. Upon the finding of the South Carolina Department of Consumer Affairs of a violation of subsection (J) by an individual, firm, or organization, the South Carolina Department of Consumer Affairs shall award to the taxpayer bringing such an action under (J) a civil penalty equal to actual damages plus interest and reasonable attorney's fees and costs. A person or entity may, bring a private right of action:

(A) an action based on a violation of this subsection or any regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or any regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than three times the amount available under subparagraph (B) of this paragraph.

SECTION 3. This act takes effect January 1, 2021.