

Statement of Estimated State Revenue Impact

Date: February 26, 2014

Bill Number: S.B. 985

Author: Cleary

Committee Requesting Impact: Senate Finance Committee

Bill Summary

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.

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

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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

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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.



Frank A. Rainwater
Chief Economist

Analyst: Martin

¹¹ 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.