



ALAN WILSON  
ATTORNEY GENERAL

October 14, 2020

The Honorable Wallace H. "Jay" Jordan, Jr.  
Member  
South Carolina House of Representatives  
626 W. Evans Street  
Florence, South Carolina 29501

Dear Representative Jordan:

We received your letter addressed to Attorney General Alan Wilson requesting an opinion regarding the South Carolina Business License Tax Standardization Act. Specifically, you ask "[p]ursuant to Section 6-1-420, may a taxing jurisdiction engage a third party for services other than the collection of delinquent taxes on a contingency fee basis?"

#### Law/Analysis

As you noted in your letter, the General Assembly recently enrolled H.443, the South Carolina Business License Tax Standardization Act (the "Act"), for ratification. 2020 S.C. Acts 176. Included in the Act is the adoption of section 6-1-420 of the South Carolina Code. Id. This provision provides in relevant part:

(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.

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S.C. Code Ann. 6-1-420.

As you noted in your letter, section 6-1-420(A) allows taxing jurisdictions to enter into agreements with third parties to assist in identifying businesses operating without a business license. Id. Section 6-1-420(D) allows taxing jurisdictions to enter into contracts with third parties for the collection of delinquent taxes. Id. Section 6-1-420(D) specifically allows for the use of contingency fees to pay third parties. Id. Your question to us is whether services provided under section 6-1-420(A) allow the third party to be employed on a contingency fee basis.

In construing and interpreting a statute, the intent of the General Assembly is the primary consideration. Ackerman v. Travelers Indem. Co., 318 S.C. 137, 142, 456 S.E.2d 408, 411 (Ct. App. 1995). "All rules of statutory construction are subservient to the one that the legislative intent

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must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). Furthermore, "[t]he canon of construction 'expressio unius est exclusio alterius' or 'inclusio unius est exclusio alterius' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (quoting Black's Law Dictionary 602 (7th ed. 1999)).

By expressly allowing for the use of contingency fees in section 6-1-420(D) and by not expressly allowing for the use of contingency fees in section 6-1-420(A), we believe the General Assembly intended for contingency fees to be used only in regard to the services provided for under section 6-1-420(D). Furthermore, it is our understanding from your letter that you, the bill's sponsor, did not intend for third parties to be compensated on a contingency fee basis for services provided under section 6-1-420(A). Accordingly, we believe contingency fees can only be used to compensate third parties for assisting in the collection of delinquent taxes.

#### Conclusion

Based on our understanding of the General Assembly's intent regarding the adoption of section 6-1-420 of the South Carolina Code, taxing jurisdictions may only engage third parties providing debt collection services for unpaid business license taxes on a contingency fee basis. Therefore, we believe taxing jurisdictions cannot engage third parties to provide services other than the collection of delinquent taxes on a contingency fee basis.

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General