

## **ORDINANCE 23-13**

### **AN ORDINANCE**

#### **AUTHORIZING AND DIRECTING THE TOWN OF YEMASSEE TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT RELATING TO SOUTH CAROLINA LOCAL REVENUE SERVICES; TO PARTICIPATE IN ONE OR MORE LOCAL REVENUE SERVICE PROGRAMS; TO EXECUTE AND DELIVER ONE OR MORE PARTICIPANT PROGRAM SUPPLEMENTS; AND OTHER MATTERS RELATING THERETO.**

**WHEREAS**, the Town of Yemassee (the "Municipality") is authorized by S.C. Code Section 5-7-30 and Title 6, Chapter 1, Article 3 to impose a business license tax on gross income;

**WHEREAS**, under State law, certain business license taxes are applicable in a manner or at a rate that applies throughout the State ("Statewide Business License Taxes");

**WHEREAS**, such Statewide Business License Taxes include without limitation the business license taxes applicable to insurers under Title 38, Chapter 7 of the S.C. Code; to brokers under Title 38, Chapter 45 of the S.C. Code; and to telecommunications companies under Title 58, Chapter 9, Article 20 of the S.C. Code;

**WHEREAS**, the Municipal Association of South Carolina (the "Association") has previously established local revenue service programs in which the Association administers Statewide Business License Taxes on behalf of and for the benefit of participating municipalities;

**WHEREAS**, such local revenue service programs include a program known as the Insurance Tax Program ("ITP") that administers business license taxes applicable to insurers under Title 38, Chapter 7 of the S.C. Code; a program known as the Brokers Tax Program ("BTP") that administers business license taxes applicable to brokers under Title 38, Chapter 45 of the S.C. Code; and a program known as the Telecommunications Tax Program ("TTP") that administers business license taxes applicable to telecommunications companies under Title 58, Chapter 9, Article 20 of the S.C. Code;

**WHEREAS**, the Municipality currently participates in ITP, BTP, and TTP;

**WHEREAS**, by Act No. 176 of 2020, known as the South Carolina Business License Tax Standardization Act and codified at S.C. Code Sections 6-1-400 to -420 (the "Standardization Act"), the South Carolina General Assembly imposed additional requirements and conditions on the administration of business license taxes;

**WHEREAS**, following the enactment of the Standardization Act, the Municipality enacted Ordinance No. 21-10 on December 20, 2021, in order to comply with the requirements of the Standardization Act (the "Current Business License Ordinance");

**WHEREAS**, in connection with the enactment of the Standardization Act and the adoption of locally compliant business license ordinances, the municipalities of the State have determined that it would be advisable and prudent to update the existing local revenue service programs;

**WHEREAS**, in particular, the municipalities of the State have determined to establish and join South Carolina Local Revenue Services (“LRS”) by intergovernmental agreement, which among other things will administer Statewide Business License Taxes on behalf of its participants, including but not limited to by continuing to offer the services provided by the ITP, BTP, and TTP;

**WHEREAS**, Article VIII, Section 13(A) of the South Carolina Constitution provides that “(a)ny county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof;”

**WHEREAS**, the Town of Yemassee Council of the Municipality (the “Council”) now wishes to authorize and direct the Municipality to join LRS and to participate in one or more local revenue service programs;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Town of Yemassee as follows:

**SECTION 1. Direction to Apply to and Join LRS.** The form of the Local Revenue Services Agreement (the “Agreement”) pursuant to which a municipality may request to participate in LRS and, if approved, become a participant is attached hereto as Exhibit A. The Mayor (the “Executive Officer”) is hereby authorized and directed to apply to participate in LRS. If the Municipality’s application is approved by LRS, then the Executive Officer shall execute and deliver a counterpart to the Agreement in substantially the form attached hereto. The Council hereby approves the terms and conditions of and agrees to comply with the Agreement upon the execution and delivery thereof by the Executive Officer.

**SECTION 2. Participation in Local Revenue Service Programs.** The Council determines that, if admitted to LRS, the Municipality will participate in the ITP, the BTP, and the TTP. The Executive Officer is hereby authorized and directed to execute and deliver any required Participant Program Supplements (as such term is defined in the Agreement) as may be necessary to participate in such local revenue service programs.

**SECTION 3. Business License Taxes Applicable to Insurance Companies.** Notwithstanding anything in the Current Business License Ordinance to the contrary, the following provisions shall apply to insurance companies subject to Title 38, Chapter 7 of the S.C. Code.

- a) Except as set forth below, “gross premiums” for insurance companies means gross premiums written for policies for property or a risk located within the municipality. In addition, “gross premiums” shall include premiums written for policies that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by (1) the insurance company’s office located in the municipality, (2) the insurance company’s employee conducting business within the municipality, or (3) the office of the insurance company’s licensed or appointed producer (agent) conducting business within the municipality, regardless of where the property or risk is located, provided no tax has been paid to another municipality in which the property or risk is

located based on the same premium.

- b) As to fire insurance, “gross premiums” means gross premiums (1) collected in the municipality, and/or (2) realized from risks located within the limits of the municipality.
- c) As to bail bonds, “gross premiums” shall exclude any amounts retained by a licensed bail bondsman as defined in Title 38, Chapter 53 of the S.C. Code for authorized commissions, fees, and expenses.
- d) Gross premiums shall include all business conducted in the prior calendar year. Gross premiums shall include new and renewal business without deductions for any dividend, credit, return premiums, or deposit.
- e) Solicitation for insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute conducting business within the municipality, regardless of whether or not an office is maintained in the municipality.
- f) The business license tax for insurance companies under Title 38, Chapter 7 of the S.C. Code shall be established at the rates set forth below. Declining rates shall not apply.

**NAICS Code**

524113      **Life, Health, and Accident.** 0.75% of Gross Premiums.

524126      **Fire and Casualty.** 2% of Gross Premiums.

524127      **Title Insurance.** 2% of Gross Premiums.

- g) License taxes for insurance companies shall be payable on or before May 31 in each year without penalty. The penalty for delinquent payments shall be 5% of the tax due per month, or portion thereof, after the due date until paid.

**SECTION 4. Business License Tax Applicable to Brokers.** Title 38, Chapter 45 of the S.C. Code (the “Brokers Act”) establishes a blended premium tax rate applicable to brokers of 6 percent, comprising a 4 percent State premium tax and a 2 percent municipal premium tax, each to be collected by the South Carolina Department of Insurance. Pursuant to §§ 38-45-10 and 38-45-60 of the Brokers Act, the Municipal Association of South Carolina is designated the municipal agent for purposes of administration of the municipal broker’s premium tax.

**SECTION 5. Business License Taxes Applicable to Telecommunication Companies.**

- a) Notwithstanding any other provisions of the Current Business License Ordinance, the business license tax for “retail telecommunications services,” as defined in S. C. Code Section 58-9-2200, shall be at the maximum rate authorized by S. C. Code Section 58-9-2220, as it now provides or as provided by its amendment. Declining rates shall not apply.

- b) The business license tax year for retail telecommunications services shall begin on January 1 of each year. The business license tax for retail telecommunications services shall be due on January 1 of each year and payable by January 31 of that year, without penalty. The delinquent penalty shall be five percent (5%) of the tax due for each month, or portion thereof, after the due date until paid.
- c) In conformity with S.C. Code Section 58-9-2220, the business license tax for “retail telecommunications services” shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one year, the amount of business license tax shall be computed on a twelve-month projected income.
- d) Nothing in this Ordinance shall be interpreted to interfere with continuing obligations of any franchise agreement or contractual agreement. All fees collected under such a franchise or contractual agreement shall be in lieu of fees or taxes which might otherwise be authorized by this Ordinance.

**SECTION 6. No Exemption for Interstate Commerce.** Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

**SECTION 7. LRS to Appoint Business License Official and to Designate Appeals Board.** Pursuant to the Agreement, LRS is hereby authorized to appoint one or more individuals (each, an “LRS Business License Official”) to act as the Municipality’s business license official for purposes of administering Statewide Business License Taxes. In addition, LRS is hereby authorized pursuant to the Agreement to designate an appeals board (the “Appeals Board”) for purposes of appeals arising with respect to such taxes. The LRS Business License Official so appointed and the Appeals Board so designated shall have all of the powers granted to the Municipality’s business license official and appeals board under the Current Business License Ordinance, except as may be modified by this ordinance.

**SECTION 8. Appeals Process.** With respect to the calculation, assessment, and collection of Statewide Business License Taxes, in lieu of the appeals process described in the Current Business License Ordinance, the following appeals process required by S.C. Code Section 6-1-410 shall apply:

- a) If a taxpayer fails or refuses to pay a Statewide Business License Tax by the date on which it is due, the LRS Business License Official may serve notice of assessment of the Statewide

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 LRS 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 LRS 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 a completed appeal form with the LRS Business License Official, by mail or personal service, and by paying to LRS 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 Appeals Board. The Appeals Board shall provide the taxpayer with written notice of the hearing and with any rules of evidence or procedure prescribed by the Appeals Board. 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 Appeals Board must be held at a regular or specially called meeting of the Appeals Board. At the appeals hearing, the taxpayer and LRS 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 Appeals Board shall decide the assessment by majority vote. The Appeals Board 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 LRS Business License Official and served on the taxpayer by mail or personal service. The decision is the final decision of LRS on the assessment.
- c) Within thirty days after the date of postmark or personal service of LRS'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.

**SECTION 9. Repealer, Effective Date.** All ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be effective on the date of final reading.

ENACTED IN REGULAR MEETING, this 9<sup>th</sup> day of May, 2023.



Mayor

ATTEST:



Clerk

First reading: 4/11/23

Final reading: 5/9/23