State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC INFORMATION LETTER #96-18

SUBJECT: Tax Legislative Update for 1996

DATE: August 19, 1996

AUTHORITY: S. C. Code Ann. 12-4-320 (Supp. 1995)

SCOPE: An Information Letter is a document issued for the purpose of disseminating general information or information concerning an administrative pronouncement.

Information Letters issued to disseminate general information have no precedential value and do not represent the official position of the Department. Information Letters designated as administrative pronouncements represent the official advisory opinion of the Department.

Attached is a brief summary of most of the significant changes in laws administered by the Department of Revenue ("Department"), that were enacted by the General Assembly during the past legislative session.

This information letter is divided into four major categories of legislation and can be found as indicated below.

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IV. Miscellaneous

Other legislation enacted this year solely under the jurisdiction of the Department of Public Safety, the Department of Transportation, and the South Carolina Law Enforcement Division is not discussed in this information letter.

INCOME TAXES AND CORPORATE LICENSE FEES

Senate Bill 913, (Act No. 410)

Income Tax Conformity

Code Section 12-6-40 has been amended to update South Carolina's income tax laws to conform to the Internal Revenue Code of 1986 as amended through December 31, 1995.

Effective Date: June 4, 1996

House Bill 4351, (Act No. 262)

Gift of Life Trust Fund Check Off on Individual Income Tax Return

Code Section 12-6-5065 has been added to provide for a designation on South Carolina's individual income tax form enabling a taxpayer to make a contribution to the Gift of Life Trust Fund of South Carolina. The Gift of Life Trust Fund, created by Section 44-43-1310, was established to promote and encourage organ and tissue donation and education, and to assess and assist with the needs of transplant recipients in South Carolina.

Effective Date: Tax years beginning after 1995.

House Bill 4369, (Act No. 306)

Unemployment Compensation

Code Section 41-39-40 has been added to provide for the voluntary withholding of state and federal income taxes from unemployment compensation. Effective January 1, 1997, an individual filing an initial claim for unemployment compensation must be notified that the payment is subject to income taxation. The recipient may elect to have state income tax withheld from the payment at the rate of 7% and may also elect to have federal income tax withheld.

Effective Date: January 1, 1997

House Bill 4397, Sections 3, 4, and 5, (Act No. 231)

Use of Tax Credits

Section 3 of this Act added Code Section 12-6-3480, relating to the use of tax credits, to provide:

1. Any credits under Title 38, The Insurance Law, may be used against income taxes imposed under Chapter 6 or license fees imposed under Chapter 20 of Title 12. (See Section 5 of this Act allowing income tax credits to be used against insurance premium taxes by amending Code Section 38-7-190.)

2. Any income tax credit in Chapter 6 that is earned by one member of a controlled group may be used by that member and any other member of the group. As used in this section, the term "controlled group of corporations" has the same meaning as provided under Section 1563 of the Internal Revenue Code without regard to Section 1563(a)(4), (b)(2)(A), only with respect to corporations which are in existence for less than one-half the number of days in the tax year, and (b)(2)(C) and (D).

3. Any limitations on the total amount of liability for taxes or license fees that can be reduced by the use of a credit must be computed before applying any other credit.

4. The taxpayer may apply tax credits in Chapter 6 in any order.

5. All credits must be used to the extent possible first by the company that earned the credit, and second against the tax which generated them. No credit may be used more than once.

Further, Section 4 of this Act added Code Section 12-20-105 to provide that the license fee imposed under Chapter 20 may be offset by (1) the corporate headquarters credit in Code Section 12-6-3410, and (2) any credit under the insurance premium tax in Code Section 12-6-3480.

Effective Date: Tax years beginning after 1995.

House Bill 4397, Section 6, (Act No. 231)

Tire Manufacturers May Designate Enterprise Zones

Code Section 12-10-45 has been added to allow tire manufacturers with over $1 billion in capital investment in this State and with over 5000 employees in this State to designate up to two new areas in the State as enterprise zones provided that a capital investment of at least $100 million is made over a five year period at each of the designated sites.

Effective Date: February 12, 1996

House Bill 4397, Section 7, (Act No. 231)

Jobs Tax Credit - Carryover Increased

Code Section 12-6-3360(H) has been amended to increase the carryover of unused job tax credits to fifteen years. Previously, the statute allowed for a ten year carryover.

Effective Date: Tax years beginning after 1995.

House Bill 4397, Section 8, (Act No. 231)

Enterprise Zone Benefits - Changes for Tire Manufacturers

Code Section 12-10-70(1) has been amended to allow tire manufacturers that have a capital investment in this State which exceeds $1 billion to qualify for the enterprise zone jobs tax credit, provided it employs more than 5000 people in this State at all times for the tax year in which the credit is claimed.

Additionally, this amendment allows tire manufacturers to treat up to 90% of certain employees transferred from an existing project in this State to one of up to three new projects as “new jobs” for purposes of the enterprise zone benefits, even if the projects are not in an enterprise zone, if the business (1) meets the investment and employment requirements above, (2) makes a capital investment in excess of $500 million in this State over a five year period commencing on February 12, 1996, and (3) enters into a revitalization agreement, containing certain conditions including defining the three new projects.

NOTE: Code Section 12-10-70 was repealed in Section 25 of the Rural Development Act, but Section 9B of the Rural Development Act provides that the provisions of Code Section 12-10-70(1)(b), as amended by Act 231 of 1996, relating to the transferring of jobs, continue to apply for an affected project notwithstanding the repeal of Code Section 12-10-70.

Effective Date: February 12, 1996

House Bill 4397, Section 9, (Act No. 231)

Job Development Fee Changes

This Act amended several provisions in Code Section 12-10-80(A) and (B) dealing with job development fees but those subsections were replaced by subsections in the Rural Development Act.

See the discussion of the Rural Development Act, House Bill 4706, Section 17, (Act No. 462).

Effective Date: April 4, 1995

House Bill 4397, Section 10, (Act No. 231) and
House Bill 4706, Section 19, (Act No. 462)

Economic Impact Zone Community Development Act - Tax Incentives

Code Section 12-14-30 has been amended to expand the definition of an "economic impact zone" to include an "applicable federal facility." Applicable federal facility means a federal facility that has reduced its permanent employment by 3000 or more jobs after December 31, 1990.

Effective Date: April 4, 1995. House Bill 4397 also included certain closures and layoffs of manufacturing facilities in the definition of applicable federal facility, but House Bill 4706 deleted this portion of the definition effective July 2, 1996.

House Bill 4666, (Act No. 308)

South Carolina Research Authority - Establishment of Corporations

Code Section 13-17-180 has been added to authorize the South Carolina Research Authority to establish not-for-profit corporations to carry out its purpose. These corporations have the power to establish one or more for-profit or not-for-profit corporations. The for-profit corporations are subject to applicable federal and state taxes and may not compete with any for-profit corporations incorporated in South Carolina.

Effective Date: May 7, 1996

House Bill 4681, (Act No. 353)

South Carolina Business Development Corporations

Code Section 33-37-70 has been amended to provide that a South Carolina Business Development Corporation is not subject to any license fee imposed by Chapter 20 of Title 12. A South Carolina Business Development Corporation is a corporation of 25 or more persons, a majority of whom are South Carolina residents, who desire to create a corporation having the powers and privileges set forth in Chapter 37, Title 12, for the purpose of promoting, developing, and advancing the prosperity and economic welfare of South Carolina.

Effective Date: May 29, 1996

House Bill 4706, Section 3, (Act No. 462)

State Rural Infrastructure Fund

Code Section 12-10-85 establishes the State Rural Infrastructure Fund ("Fund"). This Fund is designed to aid "least developed" and "underdeveloped" counties in South Carolina in establishing new infrastructure in such counties. The Fund will be administered by the Advisory Coordinating Council for Economic Development ("Council"). Up to 25% of the funds annually available in excess of $5 million must be set aside for grants to areas of "moderately developed" and "developed" counties, however, the remainder of the monies in the Fund will be available for grants to counties classified as least developed and underdeveloped. County governing bodies located in

moderately developed and developed counties may apply to the Council for these set aside grants stating the reasons that certain areas of their counties qualify for these grants because they are comparable to those conditions qualifying a county as least developed or underdeveloped.

Grants must be used for training costs and facilities, improvements to regionally-planned public and private water and sewer systems, improvements to public or private utilities, or fixed transportation facilities.

Effective Date: July 2, 1996

House Bill 4706, Section 4, (Act No. 462)

Redevelopment Fees for Redevelopment Authorities

Code Section 12-10-88 has been added to allow redevelopment authorities that are vested with authority under Code Section 31-12-40(A) to oversee closed or realigned military installations ("Installations") to receive "redevelopment fees." Redevelopment fees are amounts equal to 5% of all South Carolina wages paid to employees of the federal government at such Installations. Redevelopment fees will be remitted to the redevelopment authority vested with jurisdiction to oversee the Installation. To receive these fees, the redevelopment authority must provide the Department with certain information on a timely basis. The redevelopment fees will be remitted beginning on the date the redevelopment authority first submits the required information to the Department and for fifteen years thereafter, or until January 1, 2015, whichever is earlier.

Neither the federal government employer or the applicable redevelopment authority will be required to meet the normal qualifications that employers must meet to collect and retain "job development fees." The redevelopment fees may be used for any purpose deemed necessary by the redevelopment authority.

Effective Date: Tax years beginning after 1996.

House Bill 4706, Section 5, (Act No. 462)

Electrical Utilities Not Affected by Rural Development Act

Code Section 58-27-240 has been added to clarify that no provision of the Rural Development Act may alter, amend or modify Chapters 27, 31, or 33 of Title 58, Chapter 23 of Title 6, or Chapters 7 and 31 of Title 5. These chapters govern the retail and wholesale distribution and sale of electrical energy.

Effective Date: July 2, 1996

House Bill 4706, Section 8, (Act No. 462)

Allocation and Apportionment - Alternative Method

Code Section 12-6-2320(B), which deals with adopting an alternative method of allocating or apportioning income if a taxpayer is establishing a major economic project in this State, has been amended. If the requirements listed below are met, a taxpayer may use a method other than the statutorily prescribed method for apportioning or allocating its South Carolina taxable income:

1. A taxpayer must be planning a new facility in this State or expanding an existing facility;

2. The Advisory Coordinating Council for Economic Development must certify that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs to the public; and,

3. The Department must agree by contract to the use of the new method.

Under the new statute, a "taxpayer" may now include one or more members of a controlled group of corporations authorized to file a consolidated return under Code Section 12-6-5020.

Effective Date: April 4, 1995

House Bill 4706, Section 9, (Act No. 462)

Job Tax Credit Changes

Code Section 12-6-3360, the job tax credit, has been substantially amended by this Act. Among the changes are the following:

1. The county rankings have been changed from three designations to four designations. A county may now be ranked as "least developed," "under developed," "moderately developed," or "developed."

2. The amount of credit for each new job has been substantially increased to:
   $4,500 per year for 5 years beginning in the taxable year following the creation of the job for each new job created in a least developed county,
   $3,500 per year for 5 years beginning in the taxable year following the creation of the job for each new job created in an under developed county,
   $2,500 per year for 5 years beginning in the taxable year following the creation of the job for each new job created in a moderately developed county, and
   $1,500 per year for 5 years beginning in the taxable year following the creation of the job for each new job created in a developed county.

3. A taxpayer located in a multi-county industrial park is allowed an additional $1,000 credit per year for 5 years for each new job created beginning in the taxable year following the creation of the job. Under the prior law, the credit was $500 and the county in the multi-county industrial park which qualified for the largest credit was deemed to be the county of job creation regardless of where the taxpayer was located.

4. A limitation provision was added to provide that the maximum credit amount that may be claimed for any tax year for a single employee under the job tax credit statute and the AFDC credit statute, Code Section 12-6-3470(A), is $5,500. However, there is an additional AFDC related credit which can bring the credit allowed to more than $5,500 if the employer is located in a least developed county. Code Section 12-6-3470(B).

5. The types of businesses that can qualify for the credit have been expanded. "Qualifying service-related facilities" now qualify for the job tax credit. A qualifying service-related facility is defined as (1) a facility that qualifies under Section 80 of the Federal Office of Management and Budget Standard Industrial Classification Manual, 1987 edition (which includes hospitals and other types of health related facilities); or, (2) a business which derives over 50% of its gross receipts from services and creates at least 250 jobs in a single location.

Retail facilities and service related industries located in least developed counties which create at least 10 jobs also now qualify for the job tax credit.

6. In general, a taxpayer must increase employment by 10 jobs to qualify for the credit, regardless of the county in which the employer is located. Exceptions include:

    1. Qualifying service related facilities must create 250 jobs to qualify for the credit unless they are located in a least developed county or are under Section 80 of the Standard Industrial Classification Manual, 1987 edition (health related facilities).

    2. Tourism facilities that consist solely of hotels and motels must create 20 jobs in order to qualify for the credit.

    Prior to this amendment, a qualifying business had to create 10 jobs in a least developed county, 18 jobs in a moderately developed county, or 50 jobs in a developed county.

7. Provisions have been added to qualify certain areas and counties for an increased credit designation, regardless of the county ranking.

    a. A county, any portion of which is located within twenty-five miles of an "applicable military installation" or "applicable federal facility" as defined in Code Section 12-6-3450(1), with the additional requirement that the military installation must have reduced employment on the installation of at least 3,000 employees, will qualify for the next increased credit designation. The increased credit designation is only good for five years beginning on the later of the date the facility qualified as an applicable military installation or applicable federal facility, or the effective date of the Rural Development Act (July 2, 1996).

    b. For a county in which is located an applicable military installation or applicable federal facility that meets the requirements above, the county will qualify for a designation which is two tiers higher than its assigned designation. The increased credit designation is only good for five years beginning on the date the installation or facility met the requirements or the effective date of the Rural Development Act (July 2, 1996).

    c. Cherokee, Laurens and Union counties qualify for the next increased credit designation.

d. If less than 5% of a county's work force is in manufacturing, the county will qualify for the next increased credit designation.

e. As under the prior law, a county with a population under twenty thousand as determined by the most recent United States Census will receive the next increased credit designation.

8. The definition of "distribution facility" has been changed. Establishments where retail sales of tangible personal property are made to retail customers on more than 12 days of the year do not qualify as distribution facilities under the statute. Previously, there was no 12 day provision.

9. A technical correction was provided to reflect that credits may be used against the tax imposed by Code Section 12-6-510 relating to individual income tax. Code Section 12-6-3360(A).

Effective Date: Amendments to Code Section 12-6-3360 made by the Act are effective for taxable years beginning after 1995, and in the case of qualifying jobs created after 1995 if these jobs are not subject to a pre-existing revitalization agreement.

For the purpose of Code Section 12-6-3360(B)(5), dealing with certain increased credit designations, the five year period begins on the later of the date the facility qualified as an applicable federal facility or applicable military installation or July 2, 1996.

The provisions of Code Section 12-10-70(1)(b), as amended by Act 231 of 1996, dealing with major tire manufacturers, continue to apply for an affected project notwithstanding the repeal of Code Section 12-10-70. (See discussion below of Sections 14-18, 22, and 25 of the Rural Development Act - House Bill 4706.)

House Bill 4706, Section 10, (Act No. 462)

Tax Credit for Hiring Persons Displaced By Base Closing or Federal Facility Closing

Code Section 12-6-3450, providing a credit for hiring persons terminated from employment as a result of the closing or realignment of a federal military installation, has been amended. The credit is an amount equal to 10% of the qualified wages of the employee for the taxable year. "Qualified wages" for a taxable year now includes up to $10,000 of the wages attributable to services rendered during the one year beginning with the day the individual first works for an employer after becoming a "terminated

employee." Previously, qualified wages only included $7,000 of wages paid to the employee.

The credit is now also available to employers who hire persons who were displaced as the result of the changes occurring at an "applicable federal facility." An applicable federal facility means a federal facility that has reduced its permanent employment by three thousand or more jobs after December 31, 1990.

The definition of "Economic Impact Region" was also amended to include any county or municipality located within 25 miles of an applicable federal military installation or applicable federal facility and any other area included as part of the economic impact region if the Department of Commerce determines the area to be adversely affected by the closing or realignment of an applicable military installation or applicable federal facility.

Effective Date: Tax years beginning after 1995.

House Bill 4706, Section 11, (Act No. 462)

AFDC Credit Changes

Code Section 12-6-3470, which provides a tax credit to employers who employ persons who were formerly Aid to Families with Dependent Children ("AFDC") recipients, has been amended as follows.

1. The statute now provides that if the employee received AFDC payments within this State for three months before becoming employed, the employer hiring such employee is eligible for the credit. Prior law required that a person have received AFDC payments within twelve months of being employed.

2. An employer receives a credit equal to:
   a. 20% of wages paid to such employee for the first 12 months of hire;
   b. 15% of wages paid to such employee for the second 12 months of hire; and,
   c. 10% of wages paid to such employee for the third 12 months of hire.

3. The credit is earned on a monthly basis.

4. The total amount claimed per employee under both the job tax credit (Code Section 12-6-3360) and the AFDC credit is limited to $5,500. However, if the employer is located in a least developed county, the employer is allowed an additional AFDC credit in an amount equal to $175 per employee for each full month during the first thirty-six months of employment, without regard to the $5,500 limitation.

5. The statute now provides for a carryover of 15 years from the date the credit is earned.

To qualify for the AFDC credit, the employer must make available to the employee full individual or participating family health care coverage. An employer must request documentation as to the AFDC eligibility of each of the newly hired employees from the South Carolina Employment Security Commission in writing within five days of employment.

Effective Date: Tax years beginning after 1995.

House Bill 4706, Section 12, (Act No. 462)

Credit Against License Fee for Infrastructure Projects

Code Section 12-6-3490 has been added to allow electric companies, electric cooperatives, gas companies, telephone companies, waterworks companies, and certain other companies a credit against license fees. A taxpayer subject to license fees under Code Section 12-20-100 can apply for a credit against its liability for amounts paid in cash to provide infrastructure for a project qualifying for income tax credits under Chapter 6 of Title 12, withholding tax credits for job development fees under Chapter 10 of Title 12, income tax credits under the Economic Impact Zone Community Development Act of 1995, Chapter 14 of Title 12, and fees in lieu of property taxes under Chapter 12 of Title 4.

The company is not allowed a credit for actual expenses it incurs in the construction and operation of electric system improvements or building electric facilities it owns, leases, manages, or operates. The maximum aggregate credit that may be claimed in any single year by a single company is $300,000. The credit, however, cannot reduce the license tax liability of the company below zero. Any unused credit may be carried forward into the succeeding taxable year.

Effective Date: July 2, 1996

House Bill 4706, Sections 14 - 18, 22, and 25, (Act No. 462)

Enterprise Zone Act Changes

The Act made a number of changes to the enterprise zone provisions contained in Code Sections 12-10-10 through 12-10-110. The changes are as follows.

Designation of enterprise zones. Section 15 of the Act amended Code Section 12-10-40 to eliminate all provisions relating to enterprise zones to provide that the amount of benefits available to a qualified business is determined by the county designation in which the business is located, as defined for job tax credit purposes in Code Section 12-6-3360(B), (i.e., least developed, underdeveloped, moderately developed, or developed.) This eliminates the necessity of determining whether a particular business is located within an enterprise zone. The statute now allows a business to be located anywhere in this State and still qualify for enterprise zone benefits.

Criteria to qualify for enterprise zone benefits. Section 16 of the Act amended Code Section 12-10-50 to provide that a business must be engaged in a business of the type identified in the job tax credit statute (Code Section 12-6-3360) to qualify for enterprise zone benefits. With the amendments made to Code Section 12-6-3360 this year, the types of businesses that can qualify for job development fees ("JDFs") have been expanded.

Additionally, Section 14 of the Act repealed Code Section 12-10-30(7) which contained the definition of "Services." The definition has been moved to the definition of "qualified service related facility" contained in Code Section 12-6-3360. (See discussion of House Bill 4706, Section 9.)

As provided under prior law, a business is still required to provide a benefits package that includes health care to full-time employees and enter into a revitalization agreement with the Advisory Coordinating Council for Economic Development ("Council") to receive enterprise zone benefits. A business does not have to enter into a revitalization agreement with the Council to use JDFs for retraining.

Job Development Fees ("JDFs"). Sections 17 and 22 of the Act amended Code Section 12-10-80 regarding JDFs. The changes made to the JDFs provisions are as follows.

1. Code Section 12-10-80(A) has been amended to allow a business to collect JDFs for up to 15 years if the business creates 10 new jobs and otherwise qualifies under Code Section 12-10-50. The business may collect JDFs by retaining from South Carolina employee withholding for the purposes designated in either subsection (C), (D) or both. Previously, a business could use withholding for the purposes permitted in subsection (C) or (D), but not both.

2. Code Section 12-10-80(A) has also been amended to provide that JDFs may not be retained with regard to any employee whose job was created in this State before the taxable year in which the business enters into a revitalization agreement. Prior to this amendment, a business could not retain JDFs from an employee whose job was created in this State before the business entered into a revitalization agreement. Also, the JDFs retained are the property of the qualifying business, subject to certain forfeiture rules if the business fails to meet the job and investment conditions it agreed to in the revitalization agreement.

3. Code Section 12-10-80(A) has been amended to provide that the due date of the audit report required when a business retains more than $10,000 per year in JDFs is June 30th. Previously, the due date of the report was April 15.

4. Code Section 12-10-80(B) has been amended to provide that the amount of JDFs that may be retained by a qualifying business will be limited by the amount listed in item 7 below and by the revitalization agreement.

5. Code Section 12-10-80(B) has been amended to allow the Council to waive 95% of the limits on JDFs contained in subsection (C)(6), item 7 below, for certain taxpayers.

6. Code Section 12-10-80(C) has been amended to provide what specific expenditures may be reimbursed from JDFs. Expenditures incurred by a qualifying business up to 60 days prior to the time a business enters into a revitalization agreement (including a preliminary revitalization agreement) qualify for reimbursement from JDFs. Prior to this amendment, only expenditures incurred after a revitalization agreement was signed qualified for reimbursement. Also, the statute has been amended to provide that lease expenses may be reimbursed from JDFs if the Council approves.

7. Subsection 12-10-80(C)(6) has been added to provide that a business may retain JDFs for its own use as follows:
   a. a business in a <u>least developed</u> county may retain 100% of the maximum allowable JDFs;
   b. a business in an <u>under developed</u> county may retain 85% of the maximum allowable JDFs;
   c. a business in a <u>moderately developed</u> county may retain 70% of the maximum allowable JDFs; and,
   d. a business in a <u>developed</u> county may retain 55% of the maximum allowable JDFs.

The difference between the maximum allowable JDF and the amount the business retains must be remitted by the Department of Revenue to the State Rural Infrastructure Fund described in Code Section 12-10-85.

8. Code Section 12-10-80(D) dealing with collecting JDFs for retraining has been amended to allow the technical colleges to provide the retraining directly or contract with other training entities to do the retraining. Prior to this amendment, only a technical college could provide the training.

9. Section 22 of the Act provides that notwithstanding any other provision of law, under Section 12-10-80(A), JDFs may be retained for employees hired after December 31, 1995, if the qualified business qualifies under Section 4-12-30(D)(4) or Section 4-29-67(D)(4) (the "super" fee in lieu of property tax provisions; see summary of House Bill 4706 in the Property Tax section below) and enters into a revitalization agreement applying to these employees before August 1, 1996.

Termination of Benefits. Section 18 of the Act amended Code Section 12-10-90 to provide that if a business fails to meet the level of capital investment or employment set forth in the revitalization agreement, the Council may terminate or suspend its incentives. Prior to this amendment, the Department of Revenue was given the authority to suspend or terminate benefits.

Repeal of Enterprise Zone Job Tax Credit. Section 25 of the Act repealed Code Section 12-10-70 (which had provided an additional tax credit to taxpayers in an enterprise zone) because Section 9 of the Act increased job tax credits, as discussed above. A transitional rule is provided for taxpayers who qualified under Code Section 12-10-70(1)(b) (dealing with major tire manufacturers) as amended by Act 231 of 1996.

Effective Date: July 2, 1996. However, taxpayers entering into revitalization agreements on or before December 31, 1996 may elect to use the provisions of the new Act or may elect to use the provisions of Code Sections 12-10-10 through 12-10-90 as they existed prior to amendment by the Act. Taxpayers entering into revitalization agreements on or after January 1, 1997 are governed by the provisions of this Act.

Regardless of the election made by the taxpayer under the transitional rule for taxpayers entering into revitalization agreements prior to December 31, 1996, all contracts with schools made pursuant to Code Section 12-10-80(D) after the effective date of this Act, will be governed by this Act.

House Bill 4706, Section 23, (Act No. 462)

Special Source Revenue Bonds - Expanded Use

Code Section 4-29-68(A)(2) has been amended to allow special source revenue bonds to be issued for the purpose of paying the cost of improved and unimproved real estate used in the operation of a manufacturing or commercial enterprise, and for designing, acquiring, constructing, improving or expanding the infrastructure serving the issuer.

Effective Date: July 2, 1996

House Bill 4822, (Joint Resolution)

Troops in Operation Joint Endeavor - Tax Relief

The General Assembly enacted a joint resolution that authorizes the Department to establish procedures and assistance programs for military personnel serving in Operation Joint Endeavor. The tax assistance available includes: (1) Extending the time for filing individual income tax returns of military personnel serving in Operation Joint Endeavor until at least 180 days after departing Bosnia, Herzegovina, Croatia, and Macedonia; (2) Waiving any penalties and interest due as a result of the authorized extension; and, (3) Suspending enforced collection of an assessed liability during the time the taxpayer is serving in Operation Joint Endeavor. See SC Revenue Procedure #96-2 for more information.

Effective Date: May 6, 1996

House Bill 4834, Sections 3 and 12, (Act No. 431)

Innocent Spouse Requirements

Code Section 12-6-50(14) has been amended to delete Internal Revenue Code Section 6013(e) from the list of code sections that are specifically not adopted by South Carolina. This amendment allows South Carolina to liberalize the innocent spouse requirements set forth in Internal Revenue Code Section 6013(e).

Code Section 12-54-35 has also been amended to liberalize the innocent spouse provisions set forth in Internal Revenue Code Section 6013(e). For South Carolina tax purposes, the innocent spouse provisions in 6013(e) apply in the determination of the liabilities of a spouse, but there is no requirement that the understatement exceed $500 or exceed a specified percentage of the spouse's income.

Effective Date: Tax years beginning after 1995.

SALES, USE, AND ACCOMMODATION TAXES

House Bill 3710, (Act No. 346)

Machines Used in Recycling Exempt

Code Section 12-36-2120(17) has been amended to exempt from sales and use taxes those machines used in recycling tangible personal property for sale. Recycling is defined as "any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused, or returned to use in the form of raw materials or products, including composting, for sale."

This exemption is being phased-in. For the period July 1, 1997 to June 30, 1998, 50% of the gross proceeds of sales, or sales price, of machines used in recycling are exempt from sales and use taxes. After June 30, 1998, 100% of the sales price is exempt.

Effective Date: July 1, 1997

House Bill 4600, Part II, Section 60, (Act No. 458)

Facilities with Less Than Six Sleeping Rooms

Code Sections 12-36-70(1)(b) and 12-36-920(A) have been amended to exclude from sales tax charges for accommodations at facilities which contain less than six sleeping rooms located on the same premises, which is the individual's place of abode. Prior to this change, the rooms had to be contained within the same building.

Effective Date: June 19, 1996

House Bill 4600, Part II, Section 62, (Act No. 458)

Motor Vehicle Extended Service and Warranty Contracts Exempt

Code Section 12-36-2120 has been amended to add an exemption for sales of motor vehicle extended service contracts and motor vehicle extended warranty contracts.

Effective Date: July 1, 1996, and applies with respect to sales occurring after June 30, 1993. No refund is due any taxpayer of sales and use tax paid on motor vehicle extended service contracts and extended warranty contracts before July 1, 1996.

House Bill 4706, Section 20, (Act No. 462)

Material Handling Systems and Equipment and Aircraft Parts and Supplies Exempt

Code Section 12-36-2120 has been amended by adding sales tax exemptions for the following:

1. Material handling systems and material handling equipment including, but not limited to, racks, whether or not the racks are used to support a facility structure or part, used in the operation of a distribution facility or manufacturing facility. A taxpayer must invest at least $40 million in any real or personal property in South Carolina over the 5 year period beginning on the date provided by the taxpayer to the Department.

2. Parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft owned by or leased to the federal government or commercial air carriers. This exemption does not include tools and other equipment not attached to or that do not become a part of the aircraft.

Effective Date: The first exemption is effective March 1, 1996. The second exemption is effective September 1, 1996.

House Bill 4834, Sections 5 and 10, (Act No. 431)

Contracts With the Federal Government

Code Section 12-36-2120(29) was added to exempt from the sales and use tax tangible personal property purchased by persons under written contract with the federal government when the contract necessitating the purchase provides that title and

possession of the property is to transfer from the contractor to the federal government at the time of purchase or subsequent to the time of purchase. This exemption also applies to purchases of tangible personal property used to fabricate, assemble, construct, or modify personal or real property when title and possession of the property fabricated, assembled, constructed, or modified is transferred to the federal government as required by a written contract necessitating the purchase.

Code Section 12-36-110(1)(f), which defined a retail sale to include sales to contractors purchasing property for use in performing construction contracts with the federal government, has been repealed.

Effective Date: June 19, 1996

House Bill 4834, Section 6, (Act No. 431)

Ingredients Used in Preparing Ready-to-Eat Foods and Drinks

Code Section 12-36-120(5), relating to wholesale sales, has been added to exclude from the sales tax food or drink products sold to licensed retail merchants for use as ingredients in preparing ready-to-eat food or drink sold at retail. These products include cooking oil used as an ingredient. However, items used or consumed by licensed retail merchants to prepare ready-to-eat food or drink, such as hickory chips, barbecue briquettes, gas, or electricity are subject to sales tax.

Effective Date: June 19, 1996

House Bill 4834, Section 8, (Act No. 431)

Written Lease - Maximum Tax

Code Section 12-36-2110(A), relating to the maximum tax on the sale or lease of certain items, such as motor vehicles, boats, and airplanes, has been amended to require that a lease must be in writing. The existing requirements that the lease specifically state the term of, and remain in force for, a period over 90 continuous days remain in effect.

Effective Date: June 19, 1996

House Bill 4834, Section 9, (Act No. 431)

Diabetic Supplies Exempt

Code Section 12-36-2120(28)(b) has been amended to clarify the Department's position that monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies sold to diabetics under the authorization and direction of a physician are exempt from sales tax.

Effective Date: June 19, 1996

House Bill 4834, Section 36, (Act No. 431)

Solid Waste Excise Tax Exempt from Sales Tax

Code Section 12-36-90(2) has been amended to provide that the solid waste fee imposed on motor oil, tires, lead-acid batteries and white goods is not part of the cost of the item sold and, therefore, not subject to sales tax. Also, this amendment provides that the $5 deposit on lead acid battery cores is not subject to sales tax.

Effective Date: July 1, 1996

PROPERTY TAXES AND FEE-IN-LIEU

Senate Bill 273, (Act No. 272)

Exemption for Surviving Spouse of Law Enforcement Officers Killed in Action

Code Section 12-37-220(B)(1) exempts from property tax a residence and a lot not to exceed one acre owned by a veteran who was permanently and totally disabled from a service-connected disability. This exemption is also allowed to the surviving spouse of the veteran and the surviving spouse of a serviceman killed in action in the line of duty, so long as the spouse does not remarry, resides in the dwelling, and obtains by devise the fee or a life estate in the dwelling. A surviving spouse who disposes of the exempt dwelling and acquires another residence in this State for use as a dwelling house with a value no greater than one and one half times the fair market value of the exempt dwelling may apply for and receive the exemption on the newly acquired dwelling, but no subsequent dwelling of a surviving spouse is eligible for exemption under this item.

This amendment extends this exemption to spouses of law enforcement officers killed in action in the line of duty.

Effective Date: May 6, 1996

Senate Bill 571, (Act No. 363)

Repeal of Property Tax and Documentary Stamp Statutes

Obsolete code sections in Chapters 21, 37, 43, 39, 49 and 41, Title 12, have been repealed.

The property tax sections repealed are: 12-37-20; 12-37-50; 12-37-80; 12-37-221; 12-37-225; 12-37-300; 12-37-310; 12-37-320; 12-37-330; 12-37-340; 12-37-350; 12-37-360; 12-37-370; 12-37-380; 12-37-390; 12-37-400; 12-37-410; 12-37-420; 12-37-430; 12-37-440; 12-37-860; 12-37-870; 12-37-910; 12-37-960; 12-37-1150; 12-37-1320; 12-37-1330; 12-37-1410; 12-37-1420; 12-37-1430; 12-37-1620; 12-37-1700; 12-37-1710; 12-37-1720; 12-37-1730; 12-37-1740; 12-37-1910; 12-37-2030; 12-37-2040; 12-37-2050; 12-37-2060; 12-37-2210; 12-37-2220; 12-37-2230; 12-37-2240; 12-37-2250; 12-37-2260; 12-37-2727; 12-39-100; 12-43-10; 12-43-20; 12-43-30; 12-43-40; 12-43-50; 12-43-60; 12-43-220(b); 12-43-235; 12-43-270; 12-49-230; and Chapter 41, Title 12 of the 1976 Code.

The documentary stamp tax sections repealed are: 12-21-400; 12-21-410; 12-21-420; 12-21-430; 12-21-640; 12-21-740; 12-21-2719; 12-21-3120; and 12-21-3130.

Effective Date: May 29, 1996

Senate Bill 699, (Act No. 332)

Delinquent Sales

Code Section 12-51-90 has been amended to require property taxpayers to pay 8% interest when property previously sold for failure to pay property taxes is redeemed during the first six months of the redemption period. During the last six months of the redemption period, property taxpayers are required to pay 12% interest when the property is bought back, unless the property qualified for the 4% assessment ratio for legal residences at the time of the sale. The redemption period is 12 months from the date of the delinquent tax sale. (Before this amendment, the interest rate was 8% for the entire redemption period.)

See also House Bill 4834, Section 30, (Act No. 431) regarding notification of defaulting taxpayers of excess amounts collected in a tax sale.

Effective Date: May 20, 1996

Senate Bill 1072, (Act No. 282)

Exemption for Non-Profit Housing Corporations

Code Section 12-37-220(B)(11) has been amended to add a property tax exemption for all property of non-profit housing corporations devoted exclusively to providing housing to elderly and handicapped persons or families of low or moderate income as authorized by Section 515 of Title V of the Housing Act of 1949.

Effective Date: Tax years beginning after 1995.

Senate Bill 1122, (Joint Resolution)

Agricultural Use Valuation Deadline Extended

This joint resolution extends the time to apply for the agricultural use valuation for the tax year 1995 through July 1, 1996.

Effective Date: May 20, 1996

Senate Bill 1162, Section 11, (Act No. 459)

Exemption for Motor Vehicles of Disabled Veterans, Medal of Honor Recipients, and Prisoners of War

See Discussion of House Bill 4834, Section 17, (Act No. 431).

House Bill 4397, Section 12, (Act No. 231)

Depreciation Allowances Changed

The following provisions in Code Section 12-37-930, relating to depreciation allowances for manufacturer's machinery and equipment, have been amended:

1. The depreciation allowance on rubber products has been increased from 9% to 15%, and,

2 . The maximum depreciation of equipment used in the manufacture of tires by manufacturers who employ more than 5,000 employees in this State and have over $1 billion in capital investment in South Carolina is 90% of original cost.

Effective Date: February 12, 1996

House Bill 4600, Part II, Section 8, (Act No. 458)

Manufacturers' Machinery and Equipment

Code Section 12-37-935 has been added to provide a phased-in increase in the maximum depreciation allowed for manufacturers' machinery and equipment for property tax purposes. The maximum depreciation allowed for each year is to be computed based on the following schedule:

Property Tax Year	Maximum Percentage Depreciation
Before 1997	80%
1997	83.3%
1998	86.6%
After 1998	90%

The State will reimburse the local governments in the same manner as provided by Code Section 12-37-270 for the reduction in revenue created by this amendment.

Effective Date: Property tax years beginning after 1996.

House Bill 4600, Part II, Section 33, (Act No. 458)

Exemption for School Operations - Reimbursements to School Districts

Code Section 11-11-330 has been amended to provide for a specific reimbursement to school districts for revenues lost because of the exemption in Code Section 12-37-251.

Code Section 12-37-251 provides an exemption for property taxes used to fund school operations to the extent funded by this section. The section has been amended to provide that the State Property Tax Relief Fund will have a sufficient amount to fund a property tax exemption of $100,000 based on the fair market value of property which qualifies for the 4% assessment ratio calculated on the school operating millage imposed for the 1995 tax year. Prior to this amendment, the exemption amount allowable was dependent upon the amount appropriated to the State Property Tax Relief Fund.

The amount necessary to reimburse the school districts is to be based on the school operating millage imposed for the 1995 tax year. In reassessment years, the base-year (1995) millage rate is to be adjusted as prescribed by the Department so that school districts will not receive a greater or lesser amount than they would have received if there had not been a reassessment.

Effective Date: Property tax years beginning after 1995.

House Bill 4699, (Act No. 401)

Rollback Millage Defined

Code Section 12-37-251(E) provides that the property tax millage rate in the year of reassessment may not exceed the "rollback millage." This amendment defines the term rollback millage as the prior year's property tax revenues divided by the adjusted total assessed value of property in the implementation year. Total assessed value of property in the implementation year is adjusted by subtracting assessments added for property or improvements not previously taxed, for new construction, and for renovation of existing structures.

Effective Date: Property tax years beginning after 1995.

House Bill 4706, Section 21, (Act No. 462)

Air Carrier Personal Property

Code Section 12-37-220(B)(33) has been amended to clarify that all personal property including aircraft of an air carrier which operates an air carrier hub terminal facility in South Carolina for 10 consecutive years from the date of qualification is exempt from personal property taxes.

Effective Date: July 2, 1996

House Bill 4774, (Act No. 403)

Homeowners' Associations - Special Valuation

This Act adds Code Section 12-43-227 to provide a method for valuing "homeowners' association property" for ad valorem tax purposes and also amends Code Section 12-43-220 to define homeowners' association property.

Code Section 12-43-227 provides that the fair market value of homeowners' association property is to be computed by dividing the association's nonqualified gross receipts by 20%. Nonqualified gross receipts do not include dues, fees, or assessments from the members; nor does it include amounts received from the developer of the association's property. This special valuation of homeowners' association property shall not be less than $500 an acre.

EXAMPLE #1: An association owns 1 acre of land and has nonqualified gross receipts (e.g. drinks and meals purchased by guests) of $3,000. The fair market value subject to property tax is $15,000 ($3,000/20%).

EXAMPLE #2: An association has zero nonqualified gross receipts, but owns 5 acres of land. The fair market value subject to property tax is $2,500 (5 acres x $500). This is assuming the 5 acres meets the definition of homeowners' association property.

Code Section 12-43-230 defines homeowners' association property as real and personal property owned by the homeowners' association that is held for the use, benefit, and enjoyment of members of the homeowners' association. Also, the members must have an irrevocable right to use the property equally. Homeowners' association property does not include a golf course.

Homeowner's association property does not come within these provisions unless the owners make a written application to the county assessor on or before the first penalty date for taxes due for the first tax year in which the special valuation is claimed. Failure to apply constitutes a waiver of the special valuation for that year. No additional application is required while the property remains homeowners' association property and the ownership remains the same, unless the nonqualified gross receipts for the most recent completed tax year, either

1. exceed the amount of nonqualified gross receipts with respect to the property reported on the most recently filed application by 10% or more; or

2. are less than 90% of the amount of nonqualified gross receipts with respect to the property reported on the most recently filed application.

Effective Date: Property tax years beginning after 1995.

House Bill 4796, Sections 1, 2 and 3, (Act No. 461)

Property Taxes on Motor Vehicles of Motor Carriers

Code Sections 12-37-2810 through 12-37-2880 have been added to the law. These sections require the Department of Public Safety to annually assess, equalize, and apportion the valuation of all motor vehicles of motor carriers. The first returns under this new law are to be filed by June 30, 1998 for the calendar year 1997 with one-half the tax due. The remainder of the taxes must be paid to the Department of Public Safety no later than December 31, 1998. Motor carriers will be exempt from all other property taxes on their motor vehicles.

The fair market value of a motor carrier's vehicles taxable in South Carolina is to be computed by multiplying the ratio of the carrier's total mileage operated within this State during the preceding calendar year to the carrier's total mileage within and without this State during the same preceding calendar year times the fair market value of all motor vehicles owned by the carrier.

The law provides for a decreasing percentage to be applied each year to the gross capitalized cost of each motor vehicle to arrive at each vehicle's fair market value. The resultant amount (fair market value of vehicles taxable in South Carolina) is then multiplied by 9.5% to arrive at the assessed value of motor vehicles taxable in South Carolina. To this amount is applied the average millage for all purposes statewide for the current year. The result is the amount of property tax due.

In lieu of paying a property tax on trailers and semitrailers, motor carriers are to pay a one-time fee of $87.

For taxes required to be paid under these provisions, a credit is allowed for taxes previously paid for the 1998 year.

Effective Date: Calendar years beginning after December 31, 1997.

House Bill 4833, Section 3, (Act No. 456)

Reassessment of Property

Code Section 12-43-300 has been amended to provide that the Department prescribe a standard reassessment form designed to contain the information required by the Revenue

Procedures Act in Code Section 12-60-2510(A)(1).

Effective Date: July 3, 1996

House Bill 4833, Section 14, (Act No. 456)

Nonprofit Building and Rehabilitating Residences - Exemption

Code Section 12-37-220(B)(16)(b), dealing with property tax exemptions for property purchased by certain charitable organizations for the purpose of building or renovating residences for a not-for-profit sale to disadvantaged persons, has been amended to allow a maximum of 50 acres per county to qualify for the exemption. Previously, the exemption claimed could not exceed 15 acres per county.

Effective Date: July 3, 1996

House Bill 4834, Section 11, (Act No. 431)

Methods To Record Real Estate Transactions

Code Section 12-39-260 requires county auditors to keep records of all sales and conveyances of real property made in their respective counties. This amendment now allows the Department to approve alternative means and methods for recording and accounting for real estate transactions.

Effective Date: June 19, 1996

House Bill 4834, Section 17, (Act No. 431) and
Senate Bill 1162, Section 11, (Act No. 459)

Disabled Veterans, Medal of Honor Recipients, and Prisoners of War

Code Section 12-37-220(B)(3) exempts from property taxes two private passenger vehicles owned or leased by any disabled veteran for which special license tags have been issued, or, in lieu of tags, if the veteran has a certificate signed by the county service officer or the Veterans Administration certifying the veteran's total and permanent disability filed with the Department of Public Safety.

Code Section 12-37-220(B)(26) exempts from property taxes two private passenger vehicles owned or leased by Medal of Honor recipients. This amendment eliminates the need for such vehicles to have a special license plate to come within the exemption.

Code Section 12-37-220(B)(29) exempts from property taxes two private passenger vehicles or trucks, not exceeding three-quarter tons, owned or leased by and licensed and registered in the name of any member or former member of the armed forces who was a prisoner of war in World War I, World War II, the Korean Conflict, or the Vietnam Conflict. Such prisoners of war must also be legal residents of South Carolina. This exemption also extends for life or until remarriage to the surviving spouse of a qualified prisoner of war. This amendment eliminates the need for these vehicles to have a special license plate to come within the exemption.

Effective Date: June 19, 1996 for Code Sections 12-37-220(B)(26) and 12-37-220(B)(29) and June 5, 1996 for Code Section 12-37-220(B)(3).

House Bill 4834, Sections 17 and 18, (Act No. 431)

Watercraft Trailers and Certain Watercraft Exempt

Code Section 12-37-220(B) has been amended by adding an exemption from the property tax for "watercraft trailers."

Code Section 12-37-220(B)(38) has been amended to exempt watercraft which have an assessment of not more than $50.

Effective Date: June 19, 1996

House Bill 4834, Section 19, (Act No. 431)

Homestead Exemption - Refunds

Code Section 12-37-250 provides the homestead exemption for certain real property. The exemption applies to the first $20,000 of the fair market value of the dwelling place of persons who are 65 or who are totally and permanently disabled. Code Section 12-37-252(A) provides that those properties which qualify for the homestead exemption under Code Section 12-37-250 are to be assessed property tax at 4% of the property's fair market value.

Code Section 12-37-252 has been amended to provide that when a person qualifies for a refund because the property taxes on his residence should have been assessed using the 4% ratio, as opposed to the 6% ratio, the person may also be certified for the homestead exemption for the preceding tax year thereby entitling the taxpayer to an additional refund. This refund does not extend beyond the immediate preceding year.

Effective Date: June 19, 1996

House Bill 4834, Section 20, (Act No. 431)

Reimbursements for Taxes Lost to Homestead Exemption

Code Section 12-37-270 provides for the Comptroller General to reimburse counties and municipalities for property taxes lost to the homestead exemption. To receive the reimbursement, Code Section 12-37-270 requires counties and municipalities to apply for reimbursement by April 1 of the year following the tax year for which reimbursement is sought. The Comptroller General may authorize up to a 60 day extension. Code Section 12-37-275 provides that applications for reimbursement cannot be made before January 1 of the year following the tax year for which reimbursement is sought.

EXAMPLE: For tax year 1996 (the year bills are sent out for property valued as of 12/31/95), requests for reimbursement may be submitted from 1/1/97 through 4/1/97. Note: The Comptroller General can extend the time for submitting requests by up to sixty days.

This amendment to Code Section 12-37-275 provides that counties and municipalities may include in their reimbursement requests those refunds under Code Section 12-37-252 (see House Bill 4834, Section 19, above), which have been approved as of January 16 of the year following the tax year for which reimbursement is sought. Those requests approved after January 16 must be included in the next year's reimbursement application.

EXAMPLE: For tax year 1996, homestead exemption refunds approved by 1/16/97 (per Section 12-27-252, as amended) may be included in reimbursement applications filed with the Comptroller General in 1997. Those approved after 1/16/97 must be included in applications filed in 1998.

Effective Date: June 19, 1996

House Bill 4834, Section 21, (Act No. 431)

Persons Liable for Taxes and Assessments on Real Estate

Code Section 12-37-610 has been amended to provide that every person is liable to pay taxes on real estate which he owns or has the care of as guardian, executor, trustee or committee. Previously, this section provided that persons must pay taxes on real estate of which they are seized in fee or for life, in dower, or as a husband in right of his wife.

Effective Date: June 19, 1996

House Bill 4834, Section 22, (Act No. 431)

Valuation of Aircraft and Watercraft

Code Section 12-37-930 has been amended to provide that the fair market value for motor vehicles, watercraft, and aircraft must be based on values derived from a nationally recognized publication of vehicle valuations, except that the value cannot exceed 95% of the prior year's value. Previously, this statute only pertained to motor vehicles.

Effective Date: Tax years beginning after 1996.

House Bill 4834, Section 23, (Act No. 431)

Reassessment

Code Section 12-43-217 concerning reassessment of property has been amended. The counties must complete their property valuation by the end of December of the fourth year and appraise and equalize those properties every fifth year. Previously, this had to be done once every fourth year.

Effective date: June 19, 1996

House Bill 4834, Section 24, (Act No. 431)

4% Assessment Ratio for Residences

Code Section 12-43-220(c) provides that the legal residence and not more than five contiguous acres, when owned in fee or by life estate and occupied by the owner, or in trust and occupied by the income beneficiary, is taxed on an assessment equal to 4% of the fair market value of the property.

This subsection has been amended to provide that a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant. The amendment also states that a taxpayer may receive the 4% assessment ratio on only one residence for a tax year.

Code Section 12-43-220(c) has also been amended by changing the requirements which must be met to qualify for the 4% assessment ratio for legal residences. The significant changes are as follows:

1. The applicant must have actually been domiciled at that address for some period during the applicable tax year and remain in that status at the time of filing the application required by this section.

2. The owner or his agent must include in the application a statement made under penalties of perjury that the residence is the applicant's legal residence and no other residence owned by the applicant or a member of the applicant's household is being assessed at 4%. A member of the applicant's household is the applicant's spouse, unless legally separated from the applicant, and any child of the applicant claimed or eligible to be claimed as a dependent on the applicant's federal income tax return.

3. The applicant must provide proof the assessor requires, e.g. tax returns and motor vehicle registrations.

4. Members of the armed forces whose permanent duty station is in South Carolina are considered legal residents and domiciled in South Carolina for purposes of this section.

5. On persons who receive the 4% assessment ratio but who are not entitled to it, or who lose eligibility and fail to notify the assessor within 6 months, a penalty is imposed equal to 100% of the tax paid, plus interest on that amount at the rate of one-half of one percent a month, but not less than $30 nor more than the current year's taxes. Under the previous law, the penalty was 10% and interest at one-half of one percent a month on the difference between the amount that was paid and the amount that should have been paid, but not less than $30 nor more than the current year's taxes.

6. The time for filing for the 4% assessment ratio may now be extended by the local taxing authority if the taxpayer can show reasonable cause for not filing before January 16.

NOTE: To receive the 4% assessment ratio, the taxpayer must apply before January 16 of the year following the tax year for which the ratio is being requested. For example, applications for the 1996 tax year must be filed no later than January 16, 1997, unless the time for applying has been extended by the local taxing authority. Failure to apply on time constitutes an abandonment of the owner's right for the current tax year. A taxpayer may apply for a refund pursuant to the Revenue Procedures Act. A county council may allow refunds for the county government portion of property taxes for such additional past years as it deems advisable.

Effective Date: Tax years beginning after 1996 and changes in ownership or classification after 1996.

House Bill 4834, Section 25, (Act No. 431)

Roll-back Taxes on Agricultural Use Real Property

Roll-back taxes are due when the use of real property changes from agricultural to a use other than agricultural. Code Section 12-43-220(d)(4)(A) is amended to exclude the value of standing timber in calculating the amount of roll-back taxes owed.

The amount of the roll-back taxes due is the difference between the taxes paid or payable treating the property as agricultural property and the amount that would have been paid or payable as non-agricultural property for the current year and the five previous years.

Effective Date: June 19, 1996

House Bill 4834, Section 26, (Act No. 431)

Delinquent Property Taxes

Code Section 12-51-40(b) has been amended to provide that a delinquent taxpayer must pay his taxes, assessments, penalties, and costs before the date set for sale of the property to prevent the sale. Previously, payment could be made on the date of the sale.

Effective Date: June 19, 1996

House Bill 4834, Section 27, (Act No. 431)

Contaminated Property Titled to the Forfeited Land Commission

The forfeited land commission in each county consists of the county treasurer, county auditor and clerk of court (or register of mesne conveyances). The purpose of the commission is to take title to property forfeited for non-payment of property taxes which the county has been unable to sell. If the commission later sells the property, any taxes, penalties and interest due will go to the county. (See Code Sections 12-59-10 through 12-59-130.)

Code Section 12-51-55 has been amended to require the forfeited land commission to notify the county tax collector of any property on which delinquent taxes are due that the commission has determined may be contaminated. The commission must annually notify the delinquent tax collector in writing before ordering a tax sale. The forfeited land commission is not required to submit a bid on this property.

Effective Date: June 19, 1996

House Bill 4834, Section 28, (Act No. 431)

Assessment Notices in Reassessment Years

Code Section 12-60-2510(A)(1) has been amended to require counties to mail out substantially all of their tax assessment notices by February first of the year for which reassessment values are applicable. If substantially all of the notices are not mailed by February first, then the prior year's assessment values must be used as the basis for the year's assessments.

Effective Date: June 19, 1996

House Bill 4834, Section 29, (Act No. 431)

Date for Appealing an Assessment or Denial of Exemption

Code Section 12-60-2910(A) is amended to allow property taxpayers to object to a personal property assessment or denial of a homestead exemption any time before the last day the tax can be timely paid. Previously, the taxpayer had to object within 30 days after the tax notice was mailed.

Effective Date: June 19, 1996

House Bill 4834, Section 30, (Act No. 431)
(See also Senate Bill 699, Section 2, (Act No. 332))

Delinquent Sales - Notification of Excess Amounts Due

Code Section 12-51-60, which pertains to delinquent property tax sales, has been amended to require that once a tax deed has been issued, taxing authorities notify defaulting taxpayers in writing of any excess due them after deducting all taxes, penalties, interest and costs of selling the property.

Effective Date: June 19, 1996. This amendment replaced an almost identical amendment enacted by Senate Bill 699, Section 2, (Act No. 332). Senate Bill 699 was effective May 20, 1996.

House Bill 4834, Section 32, (Act No. 431)

Greige Mill Machinery and Equipment

Code Section 12-37-220(A)(8) has been amended to exempt 20% of the cost of all machinery and equipment placed in service in a greige mill as internal air and noise pollution control property. The amendment defines greige mill as "all textile processes from opening through fabric formation before dyeing and finishing."

Effective Date: Applies for property tax years beginning after 1993.

House Bill 4706, Sections 6, 7, and 23, (Act No. 462)

Fee-in-Lieu

Introduction

General Information. Under the South Carolina Constitution, manufacturing real or personal property is assessed at 10.5%. Commercial personal property is assessed at 10.5%, while commercial real property is assessed at 6%. To promote the growth of manufacturing within this State, the legislature enacted two fee-in-lieu of property tax statutes (referred to as "Fee-in-lieu" or "Fee".)

The first Fee-in-lieu statute enacted is Code Section 4-29-67 and is commonly referred to as the "Big Fee." The second Fee-in-lieu statute is contained in Chapter 12 of Title 4 and is commonly referred to as the "Little Fee." Special Fee-in-lieu provisions for very large investments are in both the Big and Little Fee and are known as the "Super Fee."

The South Carolina Rural Development Act of 1996 ("Act") made a number of changes to both the Big Fee and the Little Fee. Below is a general summary of how the Little Fee works (since most companies use the Little Fee) along with a discussion of the changes made to it by the Act. A summary of the Big Fee follows along with a discussion of the changes made to it by the Act. Then the Super Fee is briefly discussed. Taxpayers and investors should refer to the statutes for further details.

Property subject to the Fee usually consists of land, improvements to land, and machinery and equipment located at the project. The Fee statutes permit a company to negotiate to pay a Fee instead of paying property taxes. The 10.5% assessment ratio can be, and often is, negotiated to 6% (4% for very large investments under the Super Fee.) In addition, the company and the county can agree to freeze the millage rate applicable to the property at the current millage rate, or adjust the millage every five years, for the period the Fee is in effect. During the period of the Fee, the value of personal property is deemed to

decrease each year by a statutory depreciation rate (subject to a statutory floor), while the value of real property remains constant and therefore is not subject to inflation. The period of the Fee is 20 years for each item of property (30 years for very large investments under the Super Fee) with an overall limit of 27 years (37 years for very large investments under the Super Fee.) The additional 7 years allows for a 7 year period to complete the project and have property at the project subject to the Fee and still obtain the maximum 20 years (or 30) for each item of property.

Calculations of the Fee must be made incorporating any property tax exemptions for which the property may be eligible, except for the 5 year exemption allowed for manufacturing property under Section 3(g) of Article X of the South Carolina Constitution and except for the exemptions allowed for corporate headquarters and research and development facilities by Code Sections 12-37-220(B)(32) and (34), respectively. Code Sections 4-12-30(E) and 4-29-67(E).

Steps in the Process. In connection with a Fee-in-lieu transaction, there are a series of steps and/or agreements which must be completed:

1. Project Identification. The county must identify the project or proposed project. This may be accomplished by the adoption of an inducement or similar resolution by county council.

2. The inducement agreement. The company and the county must enter into an inducement agreement. This agreement establishes that a company will receive the Fee as an inducement for locating in the county.

3. The millage rate agreement. The company and the county may enter into a millage rate agreement which fixes the millage rate for the entire Fee period or fixes it for the first five years and provides that it will be revised every five years.

4. The transfer of the property to the county. Title to the property must be transferred to the county.

5. The lease or lease purchase agreement. The company and the county may enter into one or more lease agreements. This agreement or these agreements lease the project from the county back to the company and usually provide for the sale of the property to the company at the end of the Fee period for a nominal sum. If there is a series of these agreements, the first one is called the initial lease agreement.

6. Financing Agreements. There may be one or more financing agreements, which may include special source revenue bonds issued pursuant to Code Section 4-29-68. (See, discussion of special source revenue bonds in this summary.)

Some of these steps are often combined and there may be a number of transfers and a number of lease agreements for one project.

Little Fee

Location of Project. The project must be located in a single county, in a multi-county industrial park, or, if certain agreements are made with the counties, the property may straddle contiguous counties. Code Section 4-12-30(B)(2).

County Must Make Findings of Public Purpose. Before a project may qualify for the Little Fee, the county council must make all of the following findings:

1. The project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits.

2. The project gives rise to no pecuniary liability of the county or any municipality or a charge against its general credit or taxing power.

3. The estimated cost of maintaining the project in good repair and keeping it properly insured must be in the lease payment, unless the terms of an agreement with the company provide that the company will maintain the project and carry all proper insurance.

4. The purposes to be accomplished by the project are proper governmental and public purposes and that the inducement of the location or expansion of the project in the State is of paramount importance and that the benefits of the project are greater than the cost. This last finding may be accomplished with the assistance and advice from the Board of Economic Advisors or the Department of Revenue. Prior to amendment by the Act, the Board of Economic Advisors had the exclusive privilege of making this determination. Code Section 4-12-30(B)(5).

Required Investment and Timing of Investment. To qualify for the Little Fee, a company must invest at least $5 million in the project within 5 years of the end of the property tax year in which the company and the county execute the initial lease agreement. If the company does not expect to complete the project within this 5 year period, it may apply to the county before the end of the 5 year period for an extension of up to 2 years to complete the project. If an extension to complete the project is granted, the first $5 million investment must be made before the end of the initial 5 year period. If the company does not make the $5 million investment within the required time period, all property covered by the Fee will be retroactively subject to a Fee equal to the general property tax. As a result of an amendment made by the Act, the company must provide to the county the total amount invested in the project on an annual basis. This information

must be provided for each year during the 5 year investment period. Code Section 4-12-30(C).

Generally, the $5 million investment must be made by a single entity. The members of the same controlled group of corporations can qualify for the Fee if the combined investment in the county by the members meets the minimum investment requirement. One change made by the Act was to define a "controlled group" or "controlled group of corporations" to have the same meaning as provided in Section 1563(a) of the Internal Revenue Code without regard to subsection (a)(4) or (b) of Section 1563 (prior to amendment by the Act, only subsection (b) of Section 1563 was disregarded.) Each member of the controlled group must be approved by the county and be bound by the agreements, or portions of agreements, which affect the county. Additionally, any controlled group member which is claiming the Fee must invest at least $5 million in the project. Another exception is made to the single entity rule for certain groups subject to the Super Fee discussed below. Code Section 4-12-30(D)(4).

Property Eligible for Fee. Property which has been previously subject to property taxes in South Carolina does not qualify for the Fee except for:

1. Land, excluding improvements on the land, on which the new project is to be located.

2. Property which has never been placed in service in South Carolina.

Repairs, alterations or modifications to real or personal property which are not subject to the Fee are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements which constitute an expansion of the improvements. Code Section 4-12-30(J).

Disposal of Property and Replacement Property. Prior to the enactment of the Act, one important difference between the Little Fee and the Big Fee was the treatment of replacement property. If a company used the Big Fee it could have replacement property qualify for the Fee if it was purchased to replace property already subject to the Fee. As a result of the passage of the Act, a company who uses the Little Fee provisions may also qualify replacement property for the Fee.

The inducement agreement may provide that when property is scrapped or sold in accordance with the lease agreement the Fee will be reduced by the amount of the Fee applicable to the property. If there is no provision in the inducement agreement dealing with the disposal of property, the Fee remains fixed.

The inducement agreement may also provide that any property which is placed in service as a replacement for property which is subject to the Fee will become part of the Fee payment. The following rules apply to replacement property:

1. Title to the property must be held by the county.

2. The replacement property does not have to serve the same function as the property it is replacing.

3. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property which is being disposed of in the same property tax year. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property which it is replacing, the excess is subject to Fee payments equal to regular property taxes.

4. More than one piece of property can replace a single piece of property.

5. Replacement property is entitled to the Fee payment for the period of time remaining on the Fee period for the property which it is replacing.

If there is no provision in the inducement agreement dealing with replacement property, any property placed in service after the period allowed for investment is subject to Fee payments equal to regular property taxes. Code Section 4-12-30(F).

Timing Investment Expenditures and Purchases. Prior to amendment by the Act, only expenditures incurred after the county council had taken action to identify the project could be subject to the Fee. Now, property acquired up to sixty days prior to when the county council identifies the project may be subject to the Fee. Unless the company has an agreement regarding replacement property, expenditures must also be incurred prior to the end of the applicable 5 or 7 year investment period (8 - 10 years for the Super Fee) to qualify for the Fee. Code Section 4-12-30(I).

The Inducement Agreement - Timing. Once the property has been identified, the county and company can enter into an inducement agreement. The company and the county have two years after the date on which the county takes action identifying the project to enter into an inducement agreement. If an agreement is not reached within this two year period, any of the property purchased between the time the county identifies the project and the time the inducement agreement is entered into will not be subject to the Fee. Code Section 4-12-30(I)(2).

The Inducement Agreement - Substance. The inducement agreement is the major document of the transaction. It details the responsibility of each party and contains the negotiated assessment ratio and the millage rate, unless a separate millage rate agreement is desired. Because of an amendment made by the Act, parties may negotiate to use differing assessment ratios for different years. Thus, a company may be subject to a Fee equivalent to the use of a 6% assessment ratio in its first year, but may be subject to a Fee equivalent to the use of a 4% assessment ratio in later years. However, the lowest assessment ratio allowed is the lowest assessment ratio for which the company may qualify under the statute. Code Section 4-12-30(D)(5).

Millage Rate Agreement. The millage rate agreement may either fix the millage rate for the entire lease term or may provide that the millage rate may change every five years in step with the average actual millage rate applicable in the district where the project is located based on the preceding 5 year period. The millage rate cannot be lower than the millage levied on the same location on June 30 of the calendar year preceding the calendar year in which the millage agreement is executed. The millage rate agreement must be executed on or after the date of the inducement agreement, up to and including the date of the initial lease agreement. Code Section 4-12-30(G).

Timing of the Initial Lease Agreement. Generally, property which has been placed in service must be transferred to the county and made subject to a lease agreement prior to the last day of the tax year of the company in which the property was placed in service. Once the company and county have entered into an inducement agreement, they have 5 years to enter into an initial lease agreement. Code Section 4-12-30(C).

Valuation for Fee Purposes. For real property, fair market value is generally the original income tax basis for South Carolina income tax purposes without regard to depreciation. For personal property, the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes is used for valuation without regard to any extraordinary obsolescence of that property. Code Section 4-12-30(D)(2)(A).

Financing Agreements. Every financing agreement entered into with respect to the project must have an agreement obligating the industry to effect the completion of the project, and obligating the industry to pay an amount under the terms of the lease agreement which may be sufficient to build and maintain a reserve in an amount considered advisable by the county council. Code Section 4-12-30(B)(6).

Prior to amendment by the Act, the Little Fee contained several restrictions on how financing agreements could be arranged. These restrictions have been eliminated. Now, a single entity or two or more entities which are members of a controlled group may enter into any lending or financing arrangement with any financing entity concerning all or part of the project, including a sale-leaseback transaction, an assignment, a sublease, or similar arrangement, regardless of the identity of the income tax owner of the property which is

subject to the Fee. There are still certain limited restrictions on these transactions, including the requirement that the Department be notified about these transactions and that the entity subject to the Fee guarantee the payment of the Fee. Code Section 4-12-30(M).

Amendment of Agreements. Except as noted below, once the parties have entered into the required agreements, the inducement agreement, the millage rate agreement, or both may be amended or terminated and replaced with regard to all matters, including, but not limited to, the addition or removal of controlled group members. However, the millage rate, assessment ratio and length of the agreement cannot be changed. Nevertheless, as a result of a change made by the Act, existing inducement agreements which have not yet been implemented by the execution and delivery of a millage rate agreement or a lease purchase agreement, may be amended up to the date of execution and delivery of these agreements at the discretion of the governing body of the county. Code Section 4-12-30(H).

Transfers of Fee Agreements or Property Subject to the Fee. Prior to amendment by the Act, there were severe restrictions on the transfer of the agreements that were part of the Fee transaction and on the transfer of entity interests if that entity had an interest in the Fee. As a result of the passage of the Act, these restrictions have been substantially reduced. The one remaining restriction: before a company may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement, it must obtain the approval of the county. However, county approval is not required in connection with financing related transactions. Code Section 4-12-30(M)(3).

Recordkeeping Requirements. Any company who engages in a Fee transaction must file all returns, contracts or other information the Department may require. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property were subject to property tax. Penalties and interest may apply if a company is late in making a Fee payment or in filing a required return. Code Section 4-12-30(Q).

Expiration of Fee Period. After the Fee period has expired, the real property that was originally subject to the Fee will be subject to property tax based on the fair market value of such property as of the latest reassessment date for similar taxable property. Personal property will be subject to property tax based on the then depreciated value applicable to such property under the Fee, and thereafter continuing with the South Carolina property tax depreciation schedule. If the company's investment in the property ever falls below $5 million (based on income tax basis without regard to depreciation) the Fee is no longer available and the company must pay a fee equivalent to property tax on such property. Code Sections 4-12-30(D)(2) and (O).

Big Fee

Location of Project. The project must be located in a single county, in a multi-county industrial park, or, if certain agreements are made with the counties, the project may straddle contiguous counties. Code Section 4-29-67(B).

Required Investment and Timing of Investment. Generally, under prior law a company had to invest at least $85 million in a project. In the alternative, a company could invest a lesser amount (as low as $20 million) and create a certain number of new jobs at the project and still qualify for the Fee. Under the Act, a company need only invest $45 million to qualify for the Big Fee. All job creation requirements have been eliminated. Code Section 4-29-67(B)(3).

From the date of the initial lease agreement, a company has 5 years to make the $45 million investment and 5 years to complete the project. If the company does not expect to complete the project within this 5 year period, it may apply to the county before the end of the 5 year period for an extension of up to 2 years to complete the project. If the company does not make the $45 million investment within the required 5 years, all property covered by the Fee will be retroactively subject to a Fee equal to the general property tax. As a result of an amendment made by the Act, the company must provide to the county the total amount invested in the project on an annual basis for each year during the 5 year investment period. Code Section 4-29-67(C).

Generally, the $45 million investment must be made by a single entity. The investment may also be made by a controlled group of corporations. The rules regarding investments by controlled groups are substantially similar to those in the Little Fee except that any controlled group member which is claiming the Fee must invest at least $10 million in the project. Another exception is made to the single entity rule for certain groups subject to the Super Fee. Code Section 4-29-67(B)(4).

Property Eligible for Fee. The rules regarding property eligible for the Fee are substantially identical for both the Little and Big Fee. For purposes of the Big Fee, however, property which has been placed in service in South Carolina and subject to South Carolina property taxes which is purchased in a transaction (other than a transaction between related taxpayers as determined under Section 267(b) of the Internal Revenue Code) may qualify for the Big Fee provided the Fee paying entity invests at least an additional $45 million in the project. Code Section 4-29-67(K).

Disposal of Property and Replacement Property. The inducement agreement may provide that when property is scrapped or sold in accordance with the lease agreement the Fee will be reduced by the amount of the Fee applicable to the property. If there is no provision in the inducement agreement dealing with the disposal of property, the Fee

remains fixed. Unlike the Little Fee, special rules are provided in the Big Fee for calculating the Fee due on the disposed property if the company uses either the present value method (as discussed below), or the variable millage rate (adjusted once every 5 years) in determining its Fee.

Under the Big Fee, replacement property has always been allowed to replace original property subject to the Fee provided that the inducement agreement included a provision allowing for replacement property. The rules regarding replacement property for the Big Fee are substantially identical to the rules provided for the Little Fee. Code Section 4-29-67(F)(1).

Timing Investment Expenditures and Purchases. The provisions in the Big Fee relating to the timing of investment expenditures and purchases are generally identical to the rules provided for the Little Fee. Code Section 4-29-67(I).

However, one additional provision is available for companies using the Big Fee. If the property is otherwise eligible for the Big Fee, investment expenditures incurred during the 5 or 7 year investment period (8 or 10 years for the Super Fee) by an entity whose investments are not being counted towards the minimum investment can qualify for the Fee if the expenditures are part of the original cost of the property and if the property is transferred to a controlled group member whose investments are being counted towards the minimum investment, as long as the property would have qualified for the Fee if it had been acquired by the controlled group member receiving the property. If the income tax basis after the transfer unintentionally exceeds the income tax basis before the transfer, the excess will be subject to property tax. For property that is transferred in this manner to qualify for the Big Fee, the inducement agreement must specifically provide for its qualification. Code Section 4-29-67(J).

The Inducement Agreement. The rules regarding the timing and substance of inducement agreements are substantially the same for both the Little and Big Fee. Code Section 4-29-67(I).

Millage Rate Agreement. The rules regarding millage rate agreements are substantially the same for both the Little and Big Fee. Code Section 4-29-67(G).

Timing of the Initial Lease Agreement. Generally, property which has been placed in service must be transferred to the county and made subject to a lease agreement prior to the last day of the tax year of the company in which the property was placed in service. Once the company and county have entered into an inducement agreement, they have 7 years (not 5 years as with the Little Fee) to enter into an initial lease agreement. Code Section 4-29-67(C).

Valuation for Fee Purposes. The rules regarding valuation and the Fee are substantially

the same for both the Little and the Big Fee. Code Section 4-29-67(D)(2).

Additional Method of Calculating Fee. In addition to the two methods used for calculating the Fee that are discussed in the introduction, one major difference that remains between the Big Fee and the Little Fee is that the Big Fee allows the use of a present value calculation in determining the Fee. The county and the company may provide for an annual payment based on an alternative arrangement yielding a net present value of the sum of the Fees for the life of the agreement that is not less than the present value of the Fee schedule calculated using the equivalent of a 6% assessment ratio and a fixed millage rate. Net present value calculations must use a discount rate equivalent to the yield in effect for new or existing Treasury bonds of similar maturity as published during the month in which the inducement agreement is executed. Special rules are provided if no yield or bonds of appropriate maturity are available for that month. Code Section 4-29-67(D)(2)(b).

Financing Agreements. Prior to amendment by the Act, the Big Fee contained complicated restrictions on how financing agreements could be arranged. These restrictions have been eliminated. As a result of the passage of the Act, the rules for financing arrangements are substantially identical for both the Little and Big Fee. Code Section 4-29-67(O).

Amendment of Agreements. The rules regarding amendments to agreements are substantially the same for both the Little and Big Fee. Code Section 4-29-67(H).

Transfers of Fee Agreements or Property Subject to the Fee. As a result of the Act, the rules regarding transfers of Fee agreements or property subject to the Fee are substantially the same for both the Little and Big Fee. Code Section 4-29-67(O).

Recordkeeping Requirements. The rules regarding record keeping are substantially the same for both the Little and Big Fee. Code Section 4-29-67(W).

Expiration of Fee Period. After the Fee period has expired, the real property that was originally subject to the Fee will be subject to property tax based on the fair market value of such property as of the latest reassessment date for similar taxable property. Personal property will be subject to property tax based on the then depreciated value applicable to such property under the Fee, and thereafter continuing with the South Carolina property tax depreciation schedule. Code Section 4-29-67(D)(3).

If the company's (or controlled group's or former member of a controlled group's) investment ever falls below $45 million, (based on income tax basis without regard to depreciation) the company, the controlled group, or the former member will no longer qualify for the Fee. Code Sections 4-29-67(B)(4)(b)(iii) and (U).

As a result of the Act, the company and the county may agree in the inducement agreement that if the company fails to make the required $45 million investment required for the Big Fee, the company may elect to use the provisions of the Little Fee, including the reduced investment requirement. Additionally, the inducement agreement may provide that if the company falls below the $45 million investment, it may elect to use the provisions of the Little Fee instead. Code Section 4-29-67(U).

Another interesting difference between the Little and Big Fee is that except for a failure to meet the minimum investment requirement, any loss of Big Fee benefits is prospective only from the date of noncompliance and only with respect to that portion of the project to which the Fee relates. Certain rules are provided relating to the Fees that can be collected. Code Section 4-29-67(X).

Special Rules for Qualified Recycling Facilities. "Qualified recycling facilities" as defined in Code Section 12-6-3460(A)(3), may qualify for a Fee equivalent to a 3% assessment ratio. The Fee is available for each item of property for 30 years (for projects placed in service in more than one year, some of the project can qualify for the Fee for 37 years). If the qualified recycling facility elects to use the net present value calculation, it must use the discount rate equivalent to the yield in effect for new or existing Treasury bonds of similar maturity as published on any day selected by the qualifying recycling facility during the year in which the assets are placed in service. Code Section 4-29-67(AA).

Super Fee

Among the important changes made by the Act to both the Little Fee and the Big Fee was the enactment of a provision that allows certain entities to apply for a Fee equal to what the property tax would have been if the property was assessed at 4% and to allow the Fee to be paid on each item of property for 30 years. The following types of companies may qualify for the Super Fee:

1. A company which invests at least $200 million, which when added to the previous investments, results in a total investment of at least $400 million, and which is creating at least 200 new full-time jobs at the site qualifying for the Fee.

2. A company which invests at least $400 million and creates at least 200 new full-time jobs at the site qualifying for the Fee.

3. A limited liability company in conjunction with one or more of its members which makes a $400 million investment in a least developed or under developed county and which creates at least 100 new jobs with an annual average compensation of $40,000 at the site subject to the Fee. (See, the job tax credit statute 12-6-3360.) The company has four years from the date of the millage rate agreement to hire the new employees.

The new full-time jobs requirement does not apply to any company which for more than 25 years ending on the date of the agreement paid more than 50% of all property taxes actually collected in the county where it is seeking the Fee.

In addition to a possible assessment ratio of 4%, if a company qualifies for the Super Fee the company has 8 years to make the investment required by the statute and 10 years to complete the project. Further, qualifying property may be subject to the Fee for 30 years. For those projects placed in service in more than one year, the Fee is available for a maximum of 37 years. Code Sections 4-12-30(D)(4) and 4-29-67(D)(4).

The Act also provides that if a company is subject to the Super Fee and the county has contractually provided for a change in the Fee conditioned on future legislative enactments, new enactments do not bind the original parties unless the change is ratified by the governing body of the county. Code Sections 4-12-30(D)(4) and 4-29-67(D)(4).

Special Source Revenue Bonds

In connection with a Fee transaction, a county (or municipality or special purpose district) where the project will be located may issue special source revenue bonds. These special source revenue bonds allow the county to generate revenues for infrastructure projects that enhance the economic development of the issuer (usually at or surrounding the project) and then pay back the bonds with monies it receives from the Fee payments covering the project. The rules regarding special source revenue bonds are contained in Code Section 4-29-68.

In order to issue special source revenue bonds, the governing body of the issuer (usually the county where the project will be located) must adopt an ordinance calling for the issuance of the special source revenue bonds, hold a public hearing, and then pass a resolution authorizing the issuance of the bonds. The bonds must be issued solely for the purpose of providing infrastructure that benefits the economic development of the issuer. As a result of the Act, bonds may also be issued for improved and unimproved real property on which the project will be located.

The face of the bonds must provide that they are payable solely from the proceeds of the Fee, and are not secured by the full faith and credit of the issuer, and they are not payable from any tax or license, and they are not a pecuniary liability of the issuer or a charge

against the issuer's general credit or taxing power. The bonds can be issued as a single issue or several issues. The bonds can be payable in installments. The bonds may be sold at public or private sale, and the expenses of the issuance of the bonds may be paid out of the bond proceeds.

The Act provides that a county, municipality or special purpose district that receives and retains revenues from a Fee can now use a portion of the revenue received from the Fee for the purposes of providing infrastructure or providing unimproved or improved real estate for the project without issuing special source revenue bonds.

Effective Date

Except as provided below, companies that entered into lease agreements prior to January 1, 1996 must use Code Section 4-29-67 (Big Fee) to structure their Fee transactions. Companies entering into lease agreements after December 31, 1995 are required to use the provisions of Code Sections 4-12-10 through 4-12-50 (Little Fee), inclusively. However, if a company is investing $45 million or more in the project and enters into a lease agreement after December 31, 1995, the company has the option of proceeding under either Code Section 4-29-67 or Code Sections 4-12-10 through 4-12-50.

The amendments to Code Sections 4-12-10 through 4-12-50 made by the Act are effective July 2, 1996. However, these amendments may be applied to inducement resolutions, inducement agreements, millage rate agreements, and lease agreements for projects for which lease agreements have been entered into before July 2, 1996, if the parties to each of the agreements agree to modify the agreements to provide for the application of the appropriate provisions. However, as a general rule, no amendment to any such agreement can reduce the millage rate or assessment ratio.

The amendments to Code Section 4-29-67 are generally effective for inducement resolutions, inducement agreements, millage rate agreements, and lease agreements with regard to projects for which lease agreements are entered into after December 31, 1995. However, the provisions listed below are effective for inducement resolutions, inducement agreements, millage rate agreements, and lease agreements with regard to projects for which lease agreements have been entered into on or before December 31, 1995 if the county and the company agree to modify the appropriate agreements to have these amendments apply. The provisions which may be applied by agreement of the parties are:

1. Code Section 4-29-67(B)(3) relating to the change to a $45 million investment.

2. Code Section 4-29-67(B)(4)(b)(iii) relating to control group members and the $45 million investment.

3. Code Section 4-29-67(H) relating to amendment of agreements.

4. Code Section 4-29-67(K)(1)(c) relating to qualifying property for the Fee if an additional $45 million investment by a Fee paying entity is made.

5. Code Section 4-29-67(O) relating to transfer of agreements.

6. Code Section 4-29-67(U) providing for the use of the Little Fee if a company fails to meet the $45 million investment requirement.

Again, as a general rule, no amendment to an inducement agreement or millage rate agreement can reduce the millage rate, discount rate, or assessment ratio.

MISCELLANEOUS

ADMINISTRATIVE AND PROCEDURAL MATTERS (Summarized by Subject Matter)

Senate Bill 296, Section 1, (Act No. 248)

Franchise Tax on Banks

Code Section 12-11-40 has been amended to provide that the allocation and apportionment provisions of South Carolina's Income Tax Act, contained in Chapter 6, apply to multistate banks for purposes of computing the bank franchise tax under Chapter 11.

Effective Date: April 1, 1996

Senate Bill 296, Sections 2 through 5, (Act No. 248)

Abandoned Property Changes

This Act amended several sections of the Uniform Unclaimed Property Act.

Section 2 of this Act amended Code Section 27-18-180 to increase the dollar value of unclaimed funds required to be reported as unclaimed property to $50. Items having a value of $50 or more must be reported in detail and items under $50 may be reported in the aggregate. Previously, the dollar value was $25. This amendment also established the due date of all reports to be November 1 for all holders. Previously, the law contained a May 1 deadline for life insurance companies to file reports.

Section 3 of this Act made various amendments to Code Section 27-18-190. First, it deleted the requirement that the administrator of the Uniform Unclaimed Property Act publish a notice of abandoned property reported by life insurance companies by September 1. All notices now must be published by March 1. Secondly, this Section revised the information required in the notices published and mailed by the administrator.

Section 4 of this Act amended Code Section 27-18-200, dealing with the payment or delivery of abandoned property to the administrator, by revising the reporting date to

November 1 for all holders. In addition, this section repealed Code Section 27-18-200 (B) that allowed a 6 month holding period for the holder to locate the apparent owner of property presumed abandoned and Code Section 27-18-200(C) that allowed a holder to remit items below $25 at the time of filing the report. These exceptions are no longer available.

Finally, Section 5 of this Act amended Code Section 34-19-50, relating to the removal of items from a decedent's safe-deposit box, to delete the requirement of notifying the Department before removal of the contents.

Effective Date: April 1, 1996

Senate Bill 1358, (Act No. 377)

Abandoned Property Administration Transferred

Code Section 27-18-20(1) has been amended to change the administrator of the Unclaimed Property Act from the Department of Revenue to the State Treasurer. Under an agreement of understanding between the Department and the Treasurer, the Department will continue to receive property and process claims as the agent of the Office of the State Treasurer for the remainder of 1996 (through the November reporting cycle.)

Effective Date: July 1, 1996

Senate Bill 296, Section 6, (Act No. 248)

Estate Tax - Repeal of Code Sections

Code Section 12-16-1520 relating to the 10 day notice required to be given to the Department prior to the transfer of assets in a decedent's estate has been repealed.

Also, Code Section 12-16-1530, relating to the Department's authority to examine certain assets of a decedent at the time of transfer or delivery has been repealed.

Effective Date: April 1, 1996

House Bill 4501, (Act No. 395)

Debt Collection and Setoff - Hospitals

Code Section 12-56-20(4) has been amended to delete from the definition of "delinquent debt" sums owed a county hospital when the hospital and the debtor have entered into a written payment agreement and the debtor is current in meeting the obligations of the agreement. This amendment also deleted the requirement that a delinquent debt be a "liquidated" sum.

Effective Date: Applies with respect to applicable offsets on and after June 4, 1996 regardless of the taxable year for which the refund is issued.

House Bill 4542, (Act No. 347)

Debt Collection and Setoff - Definition Revised

Code Section 12-56-20(1), relating to the Setoff Debt Collection Act, has been amended to revise the definition of "claimant agency." The term now includes municipal, county, and regional housing authorities established under Articles 5, 7, and 9 of Chapter 3 of Title 31 of the South Carolina Code.

Effective Date: May 29, 1996

House Bill 4600, Part II, Section 59, (Act No. 458)

Collection of Liabilities Owed to a Governmental Entity

Code Section 12-4-580 has been added to allow the Department and another governmental entity to contract to collect any outstanding liabilities owed the governmental entity. The Department may negotiate and charge a fee for collection efforts.

For purposes of this section:

1. A "liability owed the governmental entity" is a debt which is certified by the governmental entity to be owed it for which all rights of administrative or judicial appeal have been exhausted or all time limits for these appeals have expired.

2. "Governmental entities" are (1) the State and any state agency, board, committee, commission, department, or public institution of higher learning; (2) all political subdivisions of the State, including the Municipal Association of South Carolina and the South Carolina Association of Counties; and, (3) all federal agencies, boards, and commissions.

Effective Date: July 1, 1996

Senate Bill 921, (Act No. 411)

Regulations - Promulgation Procedures

The provisions for promulgating regulations under Chapter 23 of Title 1 have been amended. These amendments require a draft of the proposed regulation and a section by section discussion of the proposed regulation to be included in the notice filed in the State Register, and require the agency conduct a formal review of all regulations, with certain exceptions, by July 1, 1997, and every five years thereafter.

Effective Date: June 4, 1996 and apply to any regulations that have not yet been submitted to the General Assembly.

House Bill 4600, Part II, Section 88, (Act No. 458)

Department of Revenue - Official Name

The Department of Revenue and Taxation's name has officially been changed to the Department of Revenue. The Code Commissioner will change all references in the law as soon as practical.

Effective Date: June 19, 1996

House Bill 4600, Part II, Section 99, (Act No. 458)

Department to Issue Revenue Impact Report

Code Section 12-4-380 has been added to require the Department to report annually to the General Assembly the revenue impact of policy documents issued, amended, or revoked in the fiscal year. The report must also contain information on tax liabilities reduced by the Director's order.

Effective Date: Fiscal years beginning after June 30, 1994.

House Bill 4834, Section 2, (Act No. 431)

Department Employee Bond Requirement

Code Section 12-4-310(7) has been amended to revise the bond requirement for certain Department officers, agents, and employees for the honest performance of their duties.

Effective Date: June 19, 1996

House Bill 4833, Section 4, (Act. No. 456)

Interest Due on Late Taxes

Code Section 12-54-25(A), concerning interest due on unpaid tax, has been amended to provide that the Department may waive up to 30 days interest. Previously, the Department could waive up to 15 days interest.

Effective Date: July 3, 1996

House Bill 4833, Section 5, (Act No. 456)

Time for Filing a Claim for Credit or Refund

Code Section 12-54-85(F) has been amended to clarify the following aspects of refund claims.

1. Any return filed before the last day prescribed for filing will be considered to have been filed on the last day. The payment of any portion of the tax due before the last day prescribed for payment will be considered made on the last day for such payment. The last day for filing or for paying a tax must be determined without regard to any extension of time.

2. Any tax withheld at the source with respect to a recipient of income, such as nonresident withholding, is considered to have been paid by the recipient on the last day prescribed for filing his return for the taxable year, determined without regard to any extension of time.

3. Any amount paid as estimated income tax for any taxable year is considered to have been paid on the last day prescribed for filing the return for the taxable year determined without regard to any extension of time.

Effective Date: July 3, 1996

House Bill 4833, Sections 6 through 11, (Act No. 456)

Revenue Procedures Act Changes

This Act made a number of changes to Chapter 60, Title 12, The Revenue Procedures Act. The changes are as follows.

1. Code Section 12-60-30, the definition section, was amended to include abandoned property in the definition of "State tax" and "Tax or Taxes."

2. Code Section 12-60-40, dealing with taxpayer's rights, has been amended to allow the Department to extend any time limits provided for in Title 12 and for any other taxes it administers.

3. Code Section 12-60-50(A) has been amended to provide that for the purposes of Title 12 or for any other taxes, when the last day of any specified time period is a Saturday, Sunday or legal holiday, the end of the period is extended to the next business day.

   Furthermore, Code Section 12-60-50(B) has been added to provide that, except where payment of taxes is required to be made in funds which are immediately available to the State by electronic funds transfer or otherwise, the provisions of Internal Revenue Code Section 7502 relating to timely mailing as timely filing and paying are applicable to returns, other documents, or payment of taxes imposed by Title 12, or subject to assessment and collection by the Department.

4. Code Section 12-60-410 has been amended to provide that except in the case of fraud, an order abating a jeopardy assessment, or additional assessments resulting from adjustments made by the Internal Revenue Service, the Department cannot assess new taxes for any tax period for which a final order has been issued by the Administrative Law Judge Division or a court.

5. Code Section 12-60-440, addressing the Department's ability to assess deficiencies, has been amended to provide that the Department's restriction on assessment does not apply to penalties for failure to file or failure to pay, or to penalties that are determined as a percentage of interest.

   Also, this section was amended to provide that if a proposed assessment was not issued, the taxpayer may request an abatement of the assessment within thirty days if the assessment is due to a penalty described above.

6. Code Section 12-60-2130 has been amended to clarify that if a local governing body disagrees with a decision of the Department in a property tax matter, it may request a contested case hearing.

Effective Date: July 3, 1996

House Bill 4833, Section 13, (Act No. 456)

Repeal of Code Sections

The following Code Sections have been repealed. They are no longer necessary because of the Revenue Procedures Act.

1. Code Section 12-4-760 relating to appeals to the Tax Board of Review.

2. Code Section 12-47-75 relating to the proper credit of taxes erroneously credited.

3. Code Section 12-54-60 relating to the Department's authority to estimate taxes due when a required report or return is not filed.

Effective Date: July 3, 1996

House Bill 4834, Section 13, (Act No. 431)

Penalty for Electronic Payments Returned

Code Section 12-54-50 has been amended to impose a $15 penalty on electronic payments where payment is refused due to insufficient funds. This penalty is in addition to any other penalty imposed by the Department.

Effective Date: June 19, 1996

House Bill 4834, Section 33, (Act No. 431)

Electronic Funds Transfer - Alternative Documentation

Code Section 12-54-250, relating to payment with immediately available funds, has been amended to provide that the Department may prescribe means other than paper to file returns and supporting documentation.

Effective Date: June 19, 1996

House Bill 4834, Section 15, (Act No. 431)

Book and Recordkeeping Requirements

Code Section 12-54-210 has been amended to extend the book and recordkeeping requirements to a person liable for a license, fee, or surcharge administered by the Department. This amendment also provides when microfilm records may be retained in lieu of actual documents if the taxpayer: (1) retains the microfilm copies as long as the contents may become material in the administration of any law administered by the Department; (2) provides appropriate facilities for preservation of the films and for the ready inspection and location of the particular record, including a projector; and (3) is ready to make transcripts of the information contained on microfilm.

Effective Date: June 19, 1996

House Bill 4834, Sections 1 and 16, (Act No. 431)

Signature Required on Return

Code Section 12-2-75 has been added to require that taxpayers sign returns, to specify the method of signing, and to allow the Department to authorize taxpayers to sign returns by other means, including electronically. Code Section 12-6-5040, relating to who must sign income tax returns, is repealed since it is no longer necessary.

Effective Date: Tax years beginning after 1995.

ADMISSIONS TAXES

House Bill 4397, Section 11, (Act. No. 231)

Infrastructure Improvements - Major Tourism or Recreation Facilities

Code Section 12-21-2423, relating to the funding of infrastructure improvements from a portion of the admissions tax collected by major tourism and recreation facilities, has been amended. The amendment clarifies that the provision of this code section applies to admissions tax collected after (1) the opening of the facility or (2) the approval of the application qualifying the facility for benefits, whichever is later. Also, this amendment states that the application qualifying the facility for benefits may be filed at any time during the five year investment period provided in the statute.

Further, the Act clarifies that for admissions tax collected at facilities opening before January 1, 1996 to be subject to the provisions of Code Section 12-21-2423, a "designated development area" and its boundaries must be determined within three years of the opening of the new or expanded facility. For those facilities opening after December 31, 1996, a designated development area and its boundaries must be determined within one year of the opening of the new or expanded facility.

Effective Date: February 12, 1996

House Bill 4600, Part II, Section 75, (Act No. 458)

Admissions Tax - New Exemption

Code Section 12-21-2420 has been amended to exempt from the admissions tax the presentation of a performing artist by an accredited college or university.

Effective Date: June 19, 1996

ALCOHOLIC BEVERAGE LICENSING & REGULATION

Senate Bill 1084, (Act No. 415)

Recodification of Alcoholic Liquor, Beer, and Wine Laws

South Carolina's alcoholic liquor, beer, and wine laws have been rewritten and moved from Chapters 1, 3, 5, 7, 9, 11, and 13 of Title 61 to Chapters 2, 4, 6, 8, 10, and 12 of Title 61. The law has been simplified by updating language, and reorganizing and combining sections in a more logical manner.

The Act contains a cross-reference chart of the former law and the recodified law.

Effective Date: January 1, 1997

House Bill 4600, Part II, Section 58, (Act No. 458)

Temporary Permits

Code Sections 61-3-605 and 61-5-86 have been added to the alcoholic liquor statutes to authorize the issuance of a temporary retail liquor license or temporary minibottle license to the purchaser of a business currently licensed, if certain criteria are met. However, a temporary permit cannot be issued for a location that is considered a public nuisance.

The Department is in the process of promulgating a regulation to define what constitutes a public nuisance.

Effective Date: June 19, 1996

House Bill 4600, Part II, Section 100, (Act No. 458)

Distance Requirements from Church, School, or Playground

Code Section 61-3-440 states that locations that sell alcoholic beverages cannot be within 300 feet of any church, school, or playground located in a municipality, or within 500 feet of any church, school, or playground located outside of a municipality.

This section was amended to exempt from the distance requirements new applications for existing locations that are licensed at the time the new application is filed with the Department. The applicant for a license renewal or a new license at an existing location must pay a $5 certification fee to determine if this exemption is applicable.

Effective Date: June 19, 1996

House Bill 4706, Section 24, (Act No. 462)

Proceeds from Sale of Certain Permits

This Section amends Code Section 61-9-312 which deals with the retention and use of fees received from the sale of special off premises beer and wine permits. These permits allow the sale of beer and wine for off premises consumption without regard to statutory restrictions on the days and hours of sale. Fees received from the sale of such permits in a county where a federal military base or installation has been closed, or is designated to be closed where the federal facility has reduced its civilian employment by 750 jobs after December 31, 1990, must be credited to a special fund for support of the redevelopment authority for that installation. Prior to amendment, the installation had to reduce employment by 3,000.

Once the redevelopment authority is dissolved any remaining fees that are left and have not been used by the redevelopment authority must be distributed to the county in which the installation is located. These funds must be used only for the purposes specified in the statute which include, but are not limited to, the purchase of buildings of historical significance, capital improvements to tourism related buildings, or for festivals which have a demonstrated and significant effect on tourism.

Code Section 61-5-180 concerning temporary mini-bottle permits was also changed to

provide that fees for such permits will no longer be credited to the general fund, but instead will be distributed to the municipality or county in which the retailer that paid the fee is located. However, the county may only use such funds for the purposes specified in the statute including, but not limited to, the purchase of buildings of historical significance, capital improvements to tourism related buildings, or for festivals which have a demonstrated and significant effect on tourism.

Effective Date: January 1, 1997

BINGO

House Bill 4557, (Act No. 449)

Bingo Act of 1996

Effective October 1, 1997, this Act (The Bingo Act of 1996) adds Article 24, Chapter 21, Title 12 and repeals Article 23, Chapter 21, Title 12. The Bingo Act of 1996 implements a wide variety of substantial changes to the bingo laws. The main changes include:

1. All bingo operators will be required to obtain their bingo cards/paper by first paying the tax to the Department. Upon payment of the tax, the Department will authorize a qualified distributor to sell cards/paper to the bingo operator. However, the cards may be obtained in advance so long as the fee is paid by certified check within 15 days of obtaining the cards. No more cards can be sold until the fees have been paid on the prior purchase of cards.

2. The Department must collect 16.5 cents per dollar face value of the bingo cards (except for Class C nonprofit organizations.) Twenty-six percent of this revenue will be distributed to the sponsoring charities, with the remainder distributed in accordance with the statute for governmental purposes.

3. The Department will make distributions to the sponsoring charities from the tax received by the last day of the month following the month the revenue was collected.

4. A promoter is limited to five licenses. Prior law allowed the promoter to have ten licenses.

5. At least fifty percent of the gross proceeds from the sale of bingo cards must be returned to the players in the form of prizes.

6. A bingo operation may take in only two times more in gross proceeds than the prize

money for that session. Any excess over that amount is subject to a tax, equal to the amount of the excess. The excess must be remitted with the quarterly financial report filed with the Department. The Bingo tax, including this "excess portion" tax is distributable in accordance with Code Section 12-21-4190.

7. In addition to the price of the cards, a bingo operation must charge an entrance fee as follows: Class AA -$18; Class B - $5; Class C - no entrance fee. Class D and Class E may impose a fee at their option as follows: Class D - $5 and Class E - $5.

8. No more than one nonprofit organization may operate bingo in a building.

9. Bingo cards cannot be sold or transferred among other bingo organizations, distributors, or manufacturers.

10. Manufacturers and distributors of bingo cards must be licensed. The manufacturer's license will be $5,000 per year and the distributor's license will be $2,000 per year. Manufacturers and distributors will be required to file a quarterly report with the Department.

11. Manufacturers, distributors, organizations, and promoters may only be licensed in one capacity. For example, promoters cannot be distributors and manufacturers cannot be distributors.

12. All bingo licenses, regardless of the date of issue, will expire after September 30, 1997. A new application must be submitted for each organization. The new license will become effective October 1, 1997.

Effective Date: October 1, 1997

House Bill 4676, (Act No. 339)

Nonprofit Organization Defined

Article 23, Chapter 21, Title 12 has been amended to revise the definition of a nonprofit organization for purposes of sponsoring a bingo game in South Carolina. A nonprofit organization must be organized and operated for charitable, religious, or fraternal purposes and must be exempt from federal income taxes as a 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) organization.

The statute has been amended to state that a person who has been convicted within the last twenty years of a crime that has a sentence of two or more years may not manage or conduct a game or assist in any manner with a bingo operation.

Effective Date: May 20, 1996. On October 1, 1997, the provisions of Article 23, Chapter 21, Title 12 will be repealed.

The same provisions have been incorporated in the Bingo Act of 1996 (House Bill 4557) and House Bill 4834. The provisions are in Article 24, Chapter 21, Title 12 and are effective October 1, 1997.

House Bill 4834, Section 34, (Act No. 431)

Amendments to the Bingo Act of 1996

The provisions of this section amend the Bingo Act of 1996 which becomes effective October 1, 1997. The Act specifically states that "[i]t is the intent of the General Assembly that the provisions of Sections 12-21-3920, 12-21-3940, 12-21-3950, and 12-21-4060 of the 1976 Code, as added by this section, supersede the provisions of those sections of the 1976 Code as they may be added by any other enactment in the 1996 session of the General Assembly." As such, they supersede the provisions added by House Bill 4557.

Under this amendment, the definition of a nonprofit organization for purposes of sponsoring a bingo game in South Carolina has been changed. A nonprofit organization must be organized and operated for charitable, religious, or fraternal purposes and must be exempt from federal income taxes as either a 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) organization. Nonprofit organizations not meeting these criteria may not conduct bingo in South Carolina.

The statute has been amended to state that a person who has been convicted within the last twenty years of a crime that has a sentence of two or more years may not manage or conduct a game or assist in any manner with a bingo operation.

The hours of operation have been changed. Effective October 1, 1997, bingo games may only occur between the twelve hour period of one o'clock p.m. and one o'clock a.m..

The definition of the term "house" has been clarified so that it includes both the nonprofit organization and the promoter. Also, definitions for "manufacturer" and "distributor" have been added for purposes of the new method of collecting and remitting bingo taxes enacted under House Bill 4557, as discussed above.

The application provisions have also been modified so as to require the nonprofit organization to notify the Department of a change in the time and place of the bingo game at least thirty days prior to the change.

Effective Date: October 1, 1997

DOCUMENTARY TAXES/RECORDING FEES

House Bill 4600, Part II, Section 57, (Act No. 458)

Documentary Taxes/Recording Fees - New System

The state and county documentary taxes on deeds and other conveyances of realty contained in Article 3, Chapter 21, Title 12 and Chapter 25, Title 12 have been repealed, effective December 1, 1996, and replaced by a recording fee of deeds and other conveyances of realty now contained in Chapter 24 of Title 12. The new recording fee will no longer require tax stamps. It will be replaced by a reporting system in which the clerks of court and registers of mesne conveyances will collect the fee at the time of filing, remit the state portion of the fee to the Department of Revenue on a monthly basis, and retain the county portion of the fee for the county general fund.

Imposition and Determination of Value

A recording fee will be imposed by the clerk of court or register of mesne conveyances of each county for the privilege of recording a deed, with respect to any deed whereby any lands, tenements or other realty is transferred to another person. The fee is one dollar and eighty-five cents for each five hundred dollars, or fractional part thereof, of the realty's value. The term "value" means "the realty's fair market value." In arm's length real property transactions, this value is the sales price paid or to be paid in money or money's worth. A deduction, however, will be allowed for the amount of any lien or encumbrance existing on the land, tenement or realty before the transfer and remaining on the land, tenement or realty after the transfer.

Liability

The fee is the liability of the grantor or the joint or several liability of the grantors. The grantee is secondarily liable for the fee. However, in the case of a master-in-equity deed, the liability falls upon the grantee or grantees.

Exemptions

All deeds and conveyances are subject to the new recording fee; however, the new statute authorizes several exemptions from the fee. Exempted from the fee imposed by this article are deeds:

1. Transferring realty to the federal government.

2. Transferring realty to the State, its agencies and departments, and its political subdivisions, including school districts.

3. That are otherwise exempted under the laws and Constitution of the United States or the laws or Constitution of South Carolina.

4. Transferring realty whereby no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A) of the South Carolina Code of Laws. This exemption will exempt transfers to a spouse and most transfers that are the result of a divorce.

5. Transferring realty from an agent to the agent's principal if the realty was purchased with the funds of the principal.

6. Transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39 of the South Carolina Code of Laws.

7. Transferring realty to a member of the family or to a family trust or to a family partnership. "Family" means spouse, parents, sisters, brothers, grandparents, grandchildren and lineal descendants. A "family trust" is a trust whose beneficiaries are all members of the family of the transferror. A "family partnership" is a partnership whose partners are all members of the family of the transferror.

8. Transferring realty to a legal heir or devisee.

9. That constitute a contract for the sale of timber to be cut.

10. Transferring realty from an individual to a partnership, limited liability company, or corporation upon the formation of the entity if the individual is transferring the realty in order to become a partner, member, or shareholder in the entity. All other transfers of realty to or from the partnership, limited liability company, or corporation, not otherwise exempt, are subject to the fee. <u>Note that this is a significant change from current law</u>.

11. Transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation.

12. Transferring realty between a parent corporation and its subsidiary corporation, provided that no consideration of any kind is paid or to be paid for the transfer.

13. Transferring realty to a nonprofit corporation organized and operated exclusively for either a religious, scientific, charitable, or educational purpose, and provided no consideration of any kind is paid or to be paid for the transfer.

14. That constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided no consideration of any kind is paid or to be paid for the corrective or quitclaim deed.

15. Transferring realty from an individual to a partnership or limited liability company of which the individual is a partner or a member, provided that the transfer is subject to the fee to the extent that the transfer is a transfer of an undivided interest in the realty to partners or members other than the transferor. The determination as to the portion of the realty's value upon which the fee must be paid must be based on the percentage interest in the partnership or limited liability company of the partners or members other than the transferor.

Remittance of Fee in the County in which the Realty is Located

The fee must be remitted to the clerk of court or the register of mesne conveyances in the county in which the realty is located and recorded. If the realty is located in more than one county, the person having the deed recorded in a county must state by affidavit what portion of the value of the realty is in that county and payment of the fee must be made based on the proportionate value of the realty located in that county.

Notation on the Instrument

Prior to recording a deed subject to the fee, the county must collect the fee and place a notation on the deed containing the following: (1) the date the deed was filed; (2) the fee collected; and, (3) any other information required by the county. If the deed qualifies for an exemption, the word "EXEMPT" should be placed in the notation.

Affidavit of Value

An affidavit must accompany every deed presented for recording and must set forth the true, full and complete value of the realty. The county may require any other information deemed necessary or may, at the discretion of the clerk or register of mesne conveyances, not require the affidavit.

If the deed is exempt, the affidavit must (1) state that the deed is exempt, (2) state the reason or reasons why the deed qualifies for an exemption, and (3) be signed by a responsible person connected with the transaction and state that connection.

Components of the Fee

The fee is composed of two fees as follows:

1. a State fee equal to one dollar and thirty cents for each five hundred dollars, or fractional part thereof, of the realty's value, and

2. a county fee equal to fifty-five cents for each five hundred dollars, or fractional part thereof, of the realty's value.

The State fee must be paid as follows: ten cents of each one dollar and thirty cents into Heritage Land Trust Fund; twenty cents of each one dollar and thirty cents into South Carolina Housing Trust Fund; and one dollar of each one dollar and thirty cents into the State general fund. The county fee must be paid into the general fund of the county.

Monthly Reports

The fees are due and payable to the Department of Revenue in monthly installments with a report filed by the clerk or Register of Mesne Conveyances on or before the twentieth day of the month following the month in which the fees were collected. The Department of Revenue may, at its discretion, allow a county to file its report on a basis other than monthly.

The county must remit with each report only that portion of the fee that represents the State portion. The county portion of the fee will be retained by the county.

Effective Date: Applies with respect to deeds recorded on or after December 1, 1996.

LIMITED LIABILITY COMPANIES

House Bill 4830, (Act No. 343)

South Carolina Uniform Limited Liability Company Act of 1996

This legislation added Chapter 44 of Title 33 to enact the South Carolina Uniform Limited Liability Company Act of 1996. South Carolina's first Limited Liability Company Act was written in 1992 and enacted in 1994, but because of Internal Revenue Service rulings which were very favorable to taxpayers in 1994 and 1995,

South Carolina's act became unnecessarily restrictive. South Carolina decided to combine the best of the recent developments in tax rulings, modern practice, and other states' acts and enact a more flexible "second generation act" - the South Carolina Uniform Limited Liability Company Act of 1996. This Act is effective for South Carolina Limited Liability Companies (LLCs) formed after June 1, 1996. LLCs formed before that date are subject to transition rules discussed below. Effective January 1, 2001, the original act, the South Carolina Limited Liability Company Act, contained in Chapter 43 of Title 33 is repealed, and all LLCs will be governed by this Act.

Limited Liability Company (LLC)

An LLC is an unincorporated business association that provides its owners (members) limited liability and flexible management and financial alternatives. It has become a popular form of business entity since a properly formed LLC provides the favorable pass-through tax treatment of partnerships and the limited personal liability of corporations.

Formation of an LLC

An LLC can be formed for any lawful purpose. It can be used by not-for-profit organizations, professional service businesses and businesses organized in foreign countries. Further, an LLC may be organized and operated with only one member.

Forming an LLC in South Carolina is a simple process. Any person may organize an LLC simply by signing and filing the articles of organization with the Secretary of State. This person does not have to be a member of the LLC.

The articles of organization must state: (1) the name of the LLC; (2) the address of the initial designated office; (3) the name and street address of the initial agent for service of process; (4) the name and address of each organizer; (5) whether it is a term LLC, and, if so, the term specified; (6) whether the LLC is to be manager-managed, and, if so, the name and address of each initial manager; and (7) whether one or more members of the LLC are to be liable for its debts and obligations under Section 33-44-303(c). The name of an LLC must contain the words limited liability company, limited company or the abbreviation L.L.C., L.C., LLC or LC.

A $110 fee is due upon filing the articles of organization with the Secretary of State.

Member Acts, Limited Liability, and Suits Against an LLC

Agency Powers. Each member of a member-managed LLC and each manager of a manager-managed LLC are agents of the LLC for the purpose of its business, including the signing of an instrument in the LLC's name. As agents, the members of a member-managed LLC and managers of a manager-managed LLC have authority to bind the LLC to third parties, unless the member or manager had no authority to act for the LLC in the matter and the third party had notice of the lack of authority. Members of a manager-managed LLC are not agents and do not have the apparent authority to bind an LLC.

Any member of a member-managed LLC or a manager of a manager-managed LLC may sign a deed for real estate, unless otherwise limited in the articles of organization. The instrument is binding upon the LLC when filed, regardless of whether the member had authority to perform the act, and is binding if the third party did not know of the member's or manager's lack of authority. It is, therefore, advisable to search the records of the Secretary of State when determining title to property which has been owned by an LLC.

Dissociation. A dissociated member or an LLC may file a statement of dissociation with the Secretary of State. This will state the name of the LLC and the dissociated member. This notifies third parties that the dissociated member does not have authority to bind the LLC. If no statement is filed, a dissociated member's apparent authority terminates two years after dissociation, even to persons without knowledge of the dissociation.

Suits. An LLC is a legal entity distinct from its members. It is an entity amenable to suit. Unless a member is a personal wrongdoer (or has personally agreed to be liable for the debts of the LLC), the member is not a proper defendant in a claim against the LLC.

Liability. A member is not liable for the liabilities of an LLC in his capacity as a member. A member is, however, liable for any torts he commits while acting on behalf of an LLC, for any contractual obligation he guarantees, and for any unlawful distribution from the LLC for which the member votes, assents or receives.

Right to Reimbursement. Under the Act, a member has a right to payments and reimbursement for payments incurred in the ordinary course of the business of the LLC.

Operations

Operating agreement. Members of an LLC can enter into an operating agreement to govern the LLC. An operating agreement may be oral or written. An operating

agreement is any agreement originally adopted by all the members of the LLC to regulate the affairs of the LLC and the conduct of its business, and to govern relations among the members.

This Act permits almost all of its provisions to be modified by the members in an operating agreement. The provisions that cannot be changed by the operating agreement are specified in one subsection. In general, the operating agreement may not: (1) unreasonably restrict a member's right to information or access to records, (2) eliminate the duty of loyalty, care, good faith and fair dealing, (3) vary the right to expel a member for certain reasons, (4) vary the requirement to wind up the LLC for certain reasons, or (5) restrict the rights of third parties. The Act contains default rules so that when there is no operating agreement the statute controls.

The operating agreement can control such issues as voting, indemnification, evidence of contributions, allocations of profits and losses, remuneration, sharing of interim losses, distributions in the event of dissociation, distributions in kind, restrictions on distributions, events of dissociation, timing and causes of dissolution, distribution of assets upon dissolution and mergers with other LLCs. Since the operating agreement is binding on all members, amendments must be approved by all members unless otherwise provided in the agreement.

Contributions to capital. There are no minimum capital requirements. Any type of consideration may be contributed, including property, money, promissory notes or services. The statute does not mandate how capital accounts are to be maintained.

Voting. Unless the operating agreement provides otherwise, each member is allocated one vote. Almost all matters relating to the business of an LLC may be decided by a majority, unless otherwise agreed.

Fiduciary duties. Members of an LLC owe one another statutorily imposed duties of loyalty, care, good faith and fair dealing. In general, these duties can be modified to some extent, but cannot be eliminated by the operating agreement.

Profits and losses. The Act does not contain a default rule for allocating profits and losses. The operating agreement will only control the tax consequences of the allocation of profits and losses to the extent it is not inconsistent with the Internal Revenue Code.

Distributions. The default rules provide for the sharing of and right to distributions as follows: (1) any interim distribution made must be in equal shares and must be approved by all members, (2) each members capital is returned upon dissolution, (3) liquidating distributions are made to members in equal shares, and (4) a member may not be required to accept a distribution in kind. If an LLC cannot pay its bills or its debts exceed its assets, it is prohibited from making distributions to members.

Existence. The Act provides for "term" LLCs and "at will" LLCs. An "at will" LLC generally ends when one member leaves. If a member leaves a "term" LLC, this will not necessarily cause the LLC to end. The Act contains events which cause the dissolution and winding up of an LLC, most of which may be modified by an operating agreement. An LLC, for example, can include in the operating agreement a provision which states the LLC automatically continues even though one of the members has dissociated. The members can even agree to continue a "term" LLC as an "at will" LLC after the "term" has expired.

State dissolution of LLC. The Secretary of State may administratively dissolve an LLC which does not pay any fees, taxes or penalties imposed by law or deliver its annual report to the Secretary of State within 60 days after the due date. Once administratively dissolved, an LLC may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application fee for reinstatement after administrative dissolution is $25.

Annual Report. The Act now requires an annual report be filed between January 1 and April 1. It must include the name of the LLC, the address of its designated office and its principal office, and the names and business addresses of any managers. The information in the annual report must be current as of the date the annual report is signed. There is a $10 fee for filing the annual report.

Filings with the Secretary of State. Articles of organization and other documents required to be filed with the Secretary of State may be in any medium permitted by the

Secretary of State. For example, if the Secretary of State approves, documents may be filed by facsimile or electronically.

Merger of entities. The Act provides for cross-entity mergers of LLCs with both domestic and foreign corporations, general and limited partnerships, and other LLCs. Mergers are not necessarily tax free. The tax effects of mergers are determined by federal and state tax law.

Foreign LLC

A foreign LLC may register and qualify to do business in South Carolina by signing and delivering an application for a certificate of authority to the Secretary of State. The filing fee is $110. The Act provides for the revocation of the certificate of authority for certain reasons, including the failure of the foreign LLC to pay any fees, taxes and penalties owed to South Carolina. The Act provides for activities which do not constitute transacting business in South Carolina. The Attorney

General may maintain an action to restrain a foreign LLC from transacting business in this State if it is not registered. A foreign LLC authorized to do business in this State must file an annual report with the Secretary of State. Also, the Act provides that the laws of the State or other jurisdiction under which a foreign LLC is organized will govern its organization and internal affairs, and the liability of its managers, members and their transferees.

State Taxation of LLCs - Income Tax

The enactment of the South Carolina Uniform Limited Liability Act of 1996 does not change the tax affects of LLCs in South Carolina as established under the original act. Accordingly, if an LLC is a corporation for federal income tax purposes, it is a corporation for South Carolina income tax purposes. Likewise, if an LLC is a partnership for federal income tax purposes, it is a partnership for South Carolina income tax purposes.

South Carolina has adopted all of the partnership provisions (subchapter K) of the Internal Revenue Code and Internal Revenue Code Section 7701 which defines "partnership" and "corporation."

Recently, the US Department of the Treasury issued proposed regulations for determining the classification of an unincorporated business organization as either a partnership or a corporation for federal income tax purposes. When final, these regulations will replace the existing four factor test of: (1) continuity of life,

(2) centralized management, (3) limited liability, and (4) free transferability of interests. This will allow an unincorporated entity to choose to be taxed as a partnership (a sole proprietorship for a one member LLC) or as a corporation. This new classification process is being referred to as "check the box." For South Carolina income tax purposes, the Department intends to follow these proposed classification rules as soon as they are effective for federal income tax purposes. Until the "check the box" regulations become effective, an entity should exercise care in writing an operating agreement so as not to create an LLC that will inadvertently be taxed as a corporation.

State Taxation of LLCs - Taxes Other Than Income Taxes

Code Section 12-2-25 was added when the first South Carolina Limited Liability Company Act was passed in 1994. The definitions provided in Code Section 12-2-25 remain in effect and provide the following:

(A) As used in this title and unless otherwise required by the context:

(1) 'Partnership' includes a limited liability company taxed for South Carolina income tax purposes as a partnership.

(2) 'Partner' includes any member of a limited liability company taxed for South Carolina income tax purposes as a partnership.

(3) 'Corporation' includes a limited liability company or professional or other association taxed for South Carolina income tax purposes as a corporation.

(4) 'Shareholder' includes any member of a limited liability company taxed for South Carolina income tax purposes as a corporation.

Therefore, an LLC classified as a partnership for South Carolina income tax purposes will be deemed a partnership for all other tax purposes in South Carolina, such as paying withholding tax that may be required on nonresident partners. An LLC classified as a corporation for South Carolina income tax purposes will be deemed a corporation for all other tax purposes in South Carolina, such as paying a corporate license fee.

Effective Date and Transition Rules

Effective Date. The South Carolina Uniform Limited Liability Company Act of 1996 became effective on June 1, 1996.

Domestic LLC Transition Rule. The South Carolina Uniform Limited Liability Act of 1996 governs a domestic LLC that is organized after June 1, 1996. Also, it governs a domestic LLC organized before June 1, 1996, that elects (by amending its operating agreement) to be governed by the new Act.

Foreign LLC Transition Rule. The South Carolina Uniform Limited Liability Act of 1996 governs a foreign LLC that first transacts business in South Carolina after June 1, 1996. Also, it governs a foreign LLC which applies for a certificate of authority or amended certificate to transact business in South Carolina after June 1, 1996.

The Act will govern all LLCs on and after January 1, 2001.

Effective Date: January 1, 2001 (See Transition Rules above)

MOTOR FUEL TAXES

House Bill 4796, Section 4, (Act No. 461)

Technical Corrections

The provisions of this Section corrected several code section references and made several other minor technical corrections to the motor fuel tax laws in Chapter 28 of Title 12, which was enacted last year.

Effective Date: May 1, 1996

House Bill 4796, Section 4, (Act No. 461) and
House Bill 4833, Sections 1 and 2, (Act. No. 456)

Interest on Motor Fuel Tax Refunds and Refunds of Motor Fuel Tax and Inspection Fee on Petroleum Products

Code Section 12-28-795 has been amended to provide that interest on motor fuel tax refunds must be paid at the rate and in the manner provided in Code Section 12-54-25.

Also, Code Section 12-28-2360 has been amended to provide that claims for refunds of inspection fees must be filed within the time provided in Code Section 12-54-85.

Effective Date: May 1, 1996. This amendment is identical to an amendment enacted by House Bill 4833, Sections 1 and 2, (Act No. 456). House Bill 4833 was effective July 3, 1996.

House Bill 4833, Section 15, (Act No. 456)

Gasoline Used in Aircraft

Code Section 12-28-710 has been amended to add an exemption from the motor fuel tax for gasoline used in aircraft.

Effective Date: July 3, 1996

MOTOR VEHICLE LICENSING, REGISTRATION & TITLING

Senate Bill 1162, (Act No. 459)

Motor Vehicle License, Title, and Registration

This Act transferred the Division of Motor Vehicles from the Department of Revenue to the Department of Public Safety. The Department of Revenue is no longer responsible for driver licenses, motor vehicle titles, or registrations.

Changes which affect counties include:

1. A county official collecting property taxes on vehicles will send a list of the institutions collecting the taxes to the Department of Public Safety. Each institution will certify to the Department of Public Safety that the taxes have been paid. (See Sections 12 and 18).

2. An auditor receiving a request to cancel an issued and unassigned license plate or registration certificate that is lost must forward the request to the Department of Public Safety. Upon receipt, the license plate and registration will be cancelled by the Department of Public Safety. (See Section 15.)

Effective Date: June 5, 1996

OTHER ITEMS

Senate Bill 774, (Act No. 333)

Rental Surcharge on Vehicle Rentals - Changes

Code Section 56-31-50, relating to the collection of a 5% surcharge on the rental of private passenger motor vehicles for periods of thirty-one days or less, has been amended as follows: (1) To clarify that a vehicle is rented in South Carolina if it is picked up by the renter in this State; (2) To require that the surcharges collected must be placed in a segregated account by the vehicle owner or rental company; (3) To declare that the surcharges are not included in gross receipts subject to sales taxes, and the sales taxes imposed on the rental are not subject to the surcharge; and, (4) To provide that a person or entity may not impose a fee, penalty, or expense on a vehicle owner or rental company for complying with the rental vehicle surcharge provisions.

Finally, this Act provides that for purposes of audits conducted by the Department, a rental company engaged in the business of renting private passenger motor vehicles for periods of 31 days or less is not liable for monies paid, relating to surcharges, to an airport or other authority, between June 30, 1993 and May 20, 1996.

Effective Date: May 20, 1996

Senate Bill 996, (Act No. 253)

Redevelopment Projects - Definition of Vacant Land

The Tax Increment Financing Law provides a method for financing redevelopment of areas within a municipality which are, or threaten to become, blighted. Obligations are issued for redevelopment costs and the debt service is provided from the added increase of tax revenues resulting from the project. Code Section 31-6-30(10), relating to tax increment financing for redevelopment projects within municipalities, has been amended to revise the definition of vacant land. The term means "any parcel or combination of parcels of real property without industrial, commercial, and residential buildings." Previously, vacant land had to be unused for commercial or agricultural purposes for five years. This amendment makes it easier for municipalities to redevelop areas with tax increment financing.

Effective Date: April 1, 1996

Senate Bill 3201, (Act No. 445)

Department to Enforce Unlawful Distribution of Tobacco Samples

Code Section 16-17-503 has been added to provide that the Department will provide for the enforcement of distributions of tobacco product samples to persons under 18 and will annually conduct random, unannounced inspections at locations selling tobacco products.

Effective Date: When funds are appropriated by the General Assembly; they were not appropriated this year.

House Bill 4478, (Act No. 239)

Tobacco Product Changes

Article 5, Chapter 21, Title 12 has been amended to change the tax rates with respect to various tobacco products. This amendment taxes all tobacco products, except cigarettes, at a rate of five percent of the manufacturer's price. Cigarettes are still taxed a rate of

three and one-half mills per cigarette. Prior to the change, smoking tobacco was taxed at a rate of thirty-six percent of the manufacturer's price, chewing tobacco and snuff were taxed at a rate of five percent of the manufacturer's price, and cigars were taxed depending on the number of cigars sold.

The Department may now also require returns and payments of this tax for other than monthly periods.

Effective Date: March 1, 1996

House Bill 4600, Part IB, Section 63.4, (Act No. 458)

SLED Enforcement of Video Game Machines

This non-codified provision of the Appropriations Bill authorizes the Department of Revenue and the State Law Enforcement Division to coordinate the enforcement of video game machines.

Effective Date: June 19, 1996

ADDENDUM

House Bill 4706, Section 11, (Act No. 462)

AFDC Credit Changes

As summarized on pages 13 and 14, this act provided that an employer must request documentation as to the AFDC eligibility of each of the newly hired employees from the South Carolina Employment Security Commission in writing within five days of employment.

It is likely that this function will be transferred to the Department of Social Services ("DSS") in the near future. When this occurs the Department of Revenue will issue an information letter instructing employers to request AFDC eligibility information from DSS and not from the South Carolina Employment Security Commission.