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

SC INFORMATION LETTER #97-17

SUBJECT: Tax Legislative Update for 1997

DATE: August 14, 1997

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1996)
SC Revenue Procedure #97-8

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 are **official advisory opinions** of the Department.

Attached is a brief summary of most of the significant changes in laws administered by the Department of Revenue (“Revenue”) 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.

CATEGORY OF LEGISLATION	PAGE #
I. Income Taxes and Corporate License Fees.....	3
II. Property Taxes and Fees in Lieu	
Property Taxes.....	12
Fees in Lieu of Property Taxes.....	20
Summary of Fees	24

CATEGORY OF LEGISLATION	PAGE #
III. Sales and Use Taxes	43
IV. Miscellaneous	
Administrative and Procedural Matters	46
Alcoholic Beverage Licensing and Regulation	52
Deed Recording Fee	55
Grantor Trusts	68
Limited Liability Companies	68
Local Taxes.....	69
Video Game Machine Licensing and Regulation.....	78
Withholding	83
Other Items	84

INCOME TAXES AND CORPORATE LICENSE FEES

Senate Bill 458, Section 5, (Act No. 70)

Health Insurance Costs of Self-Employed Individuals

Code Section 12-6-1140 has been amended to add an income tax deduction for the portion of premiums not deductible under Internal Revenue Code Section 162(l) for health insurance costs of self-employed individuals. Internal Revenue Code Section 162(l) allows a self-employed insurance deduction of 40% for tax years beginning in 1997, 45% in years 1998 through 2002, 50% in 2003, 60% in 2004, 70% in 2005, and 80% in 2006 and thereafter.

Effective Date: Tax years beginning after 1997.

House Bill 3400, Section 2, (Act No. 155)

Deduction for Taxpayers 65 and Older

Code Section 12-6-1140 has been amended to add an income tax deduction of up to \$11,500 against any South Carolina taxable income of a resident individual who is 65 or older by the end of the tax year.

Two limitations apply to this deduction:

1. A taxpayer claiming an annual deduction of \$3,000 or \$10,000 for retirement income as provided in Code Section 12-6-1170 must reduce this \$11,500 deduction by the amount claimed as a retirement income deduction.
2. A married taxpayer filing a joint return must allocate any joint income in a manner the Department will provide to determine the deduction amount if one spouse is under 65 years of age or is not otherwise eligible for the deduction.

Effective Date: Tax years beginning after 1996.

House Bill 3400, Sections 4 and 5, (Act No. 155)

South Carolina Tuition Prepayment Program

The South Carolina Tuition Prepayment Act has been added in Chapter 4 of Title 59 to establish The South Carolina Tuition Prepayment Program. This program allows South Carolina residents to pay tuition in advance at a fixed and guaranteed level for an individual to attend a South Carolina public or independent college or university. The program is under the direction of the Budget and Control Board. Contracts may begin to be offered on July 1, 1998. Code Section 59-4-100 provides that contributions to the fund do not allow the contributor a deduction for income tax purposes; the contributions are not taxable to the beneficiary or anyone required to support the beneficiary; and earnings on the account, tuition waivers, credits or payments for tuition are not included in South Carolina gross income to the extent payments are used for tuition during the same calendar year in which received.

Section 5 amends Code Section 12-6-1120 to provide that South Carolina gross income does not include amounts excluded by Section 59-4-100 of the South Carolina Tuition Prepayment Program.

Effective Date: Section 4 is effective July 1, 1997. Section 5 is effective June 14, 1997.

House Bill 3400, Section 10, (Act No. 155)

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, 1996. In addition, this section adopts the longstanding administrative policy of the Department by clarifying that the effective date provisions contained in the Internal Revenue Code are also adopted.

Effective Date: Tax years beginning after 1996.

House Bill 3400, Section 64, (Act No. 155)

Drug Awareness Resistance Education Fund Check Off

Code Section 12-6-5080 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 Drug Awareness Resistance Education Fund ("DARE"). DARE, created by Section 44-53-820, was established to promote and encourage the Drug Awareness and Resistance Education Program in South Carolina.

Effective Date: June 14, 1997

House Bill 3400, Section 68, (Act No. 155)

Nexus - Contracting with a Commercial Printer

Code Section 12-6-555 has been added to provide that certain activities of a person contracting with a commercial printer for printing do not create nexus for income tax purposes. Any other activity by the person that exceeds the protection of 15 U.S.C. Section 381 (Public Law 86-272) will, however, create nexus with South Carolina.

The statute provides that the following activities of a person will not by themselves create income tax nexus with South Carolina:

1. The ownership or leasing of tangible or intangible property used in printing contracts at the printer's South Carolina location;
2. The sale of property printed at and shipped or distributed from the printer's South Carolina location; or,
3. The activities performed pursuant to or incident to a printing contract by the commercial printer in South Carolina or by or on behalf of that person at the printer's South Carolina location.

Effective Date: June 14, 1997

House Bill 3637, (Act No. 143)

Job Tax Credit - Changes

Section 1. Code Section 12-6-3360(F)(2), relating to the job tax credit, has been added to provide that a taxpayer investing at least \$50 million at a “single site” (i.e. a stand-alone building whether or not several stand-alone buildings are located in one geographical location) within a 3 year period may elect to determine the number of new jobs created by using the monthly average number of jobs created at that one site. As a result, the number of new jobs created at the single site does not have to be reduced by the loss of jobs at another site of the taxpayer in that same county.

Section 2. Code Section 12-6-3360(M)(3), which defines the term “new job,” has been amended as follows:

1. To clarify that a new job does not include a job created when an employee is shifted from an existing location in South Carolina to a new or expanded facility whether the transferred job is from, or to, a facility of the taxpayer or a related person. A related person includes any entity or person that bears a relationship to the taxpayer as set forth in Internal Revenue Code Section 267.
2. To expand the definition of new job to provide that a job transferred from one facility of the taxpayer in South Carolina to another facility located in a county in which an applicable federal facility, as defined in Code Section 12-6-3450(A)(1)(b), is located qualifies as a new job. Currently, South Carolina’s only “applicable federal facility” is located in Aiken.

Effective Date: Tax years beginning with 1997.

House Bill 3650, Section 2, (Act No. 133) and
House Bill 3626, Section 2, (Act No. 109)

Credit for Hiring Family Independence Payment Recipient - Changes

Code Section 12-6-3470 provides a tax credit to employers who hire persons who received family independence payments (formally known as AFDC benefits) for 3 months before becoming employed. The credit is equal to 20% of wages paid to such employees for the first 12 months of hire; 15% of wages paid for the second 12 months of

hire; and 10% of wages paid for the third 12 months of hire. An additional credit is available to employers in a least developed county who hire former family independence payment recipients. Code Section 12-6-3470 has been amended as follows.

1. The term "family independence" has replaced the term "AFDC" to be consistent with changes in federal welfare law. The term "family independence payments" is defined as financial assistance provided under Title IV, Part A of the Social Security Act.
2. A person must have been receiving family independence payments for the 3 months immediately preceding employment.
3. The time period for requesting information from the Department of Social Services concerning verification of the newly hired employees eligibility for the credit has been extended. The employer now has until 15 days after the end of its tax year in which the recipient is hired to request verification. Previously, the statute provided that an employer should request this information within 5 days from the date of hiring the recipient. Further, the time period the Department of Social Services has to respond to the employers request for verification has been decreased. The Department of Social Services now has 30 days from the date the employer submits the employee release and request in which to approve or deny in writing certification of Family Independence eligibility. Previously, there was a 60 day response time.
4. The health care coverage requirements have been amended by House Bill 3626 to require an employer to make health insurance available to the family independence payment recipient. All conditions, including employer contributions and employer imposed waiting periods, must be on the same basis and under the same conditions as that of any other employee. The employer is not required to pay for all or part of any health insurance coverage for family independence payment recipients hired in order to claim the credit if an employer does not pay for all or part of health insurance coverage for any other employee. Previously, an employer had to make available "full individual or participating family" health care coverage in order to be eligible for the credit. Further, the amendment provides that an employer may claim the credit from the date of hire for each full month of employment even if there is an employer mandated insurance waiting period not to exceed 12 months.

Effective Date: The provisions of House Bill 3650 amending Code Sections 12-6-3470(A), (B), (D), (E), (F), and (G) are effective June 11, 1997. The provisions of House Bill 3626 amending Code Section 12-6-3470(C) are effective July 3, 1997, twenty days following approval by the Governor.

House Bill 3919, Section 6, (Act No. 151)

(See also House Bill 3819, Section 10, (Act No. 149))

Job Tax Credit - County Designation Changes

Code Section 12-6-3360(L) has been amended to provide that a county with a population under 25,000 as determined by the most recent United States census will receive the next increased job tax credit designation. Previously, the population figure was 20,000. As a result of this amendment, Abbeville and Fairfield counties are now ranked as least developed counties effective for tax years beginning after December 31, 1996.

Effective Date: Tax years beginning after December 31, 1996. This amendment is identical to that enacted by House Bill 3819 that was effective June 24, 1997.

House Bill 3919, Section 7, (Act No. 151)

Job Development and Job Retraining Credits - Changes

Job development credits (formally job development fees) are incentives contained in Code Sections 12-10-10 through 12-10-110 that are designed to provide benefits to companies that invest in South Carolina by allowing them to use a portion of South Carolina employee withholding for approved business uses provided in the statute.

To qualify for the job development credit benefits provided in Chapter 10 of Title 12, a company must meet certain criteria and enter into a revitalization agreement with the Advisory Coordinating Council for Economic Development of the Department of Commerce ("Coordinating Council"). Code Sections 12-10-80(A), (B), and (C) have been amended to revise how a company qualifying for job development credits will obtain the amounts from employee withholding for qualifying expenditures. This amendment eliminates the current method of using escrow accounts in FDIC insured banks for purposes of depositing job development benefits after a qualifying company obtained approval from the Coordinating Council. Instead, all South Carolina employee withholding will be remitted by the company to the Department as required under the withholding laws in Chapter 8 of Title 12. The qualifying company will claim a credit for the amount of allowable job development benefits when it files the quarterly South Carolina withholding tax return, Form WH-1605 for the first, second, and third

quarters, and Form WH-1606 for the fourth quarter. Any withholding overpayment resulting from the job development credit will be refunded to the company.

To claim a job development credit, the company must be current with respect to all South Carolina taxes and must have maintained for the entire quarter the minimum level of employment set forth in the revitalization agreement approved by the Coordinating Council. The initial job development credit may be claimed only after the Department receives verification from the Coordinating Council that the company has met the required minimum employment and capital investment levels that were negotiated with the Coordinating Council and established in the revitalization agreement.

Further, a qualifying company may negotiate with the Coordinating Council to claim a job retraining credit for retraining expenses in an amount equal to \$500 a year for each production employee being retrained. Code Section 12-10-80(D) has been similarly amended to revise how a company qualifying for job retraining credits will receive the amounts from employee withholding for retraining production employees. This amendment eliminates the current method of retaining retraining benefits at the time of employee withholding. Instead, all South Carolina employee withholding will be remitted by the company to the Department as required under the withholding laws in Chapter 8 of Title 12. The qualifying company will claim a credit for the amount of allowable job retraining benefits when it files the quarterly South Carolina withholding tax return, Form WH-1605 for the first, second, and third quarters, and Form WH-1606 for the fourth quarter. Any withholding overpayment resulting from the job retraining credit will be refunded to the company.

An audited report prepared by an independent certified public accountant is still required for a business claiming job development or job retraining credits of more than \$10,000 in any calendar year. The company must furnish the audited report to the Department no later than June 30 following the calendar year in which the credits are claimed. See Code Section 12-10-80(A).

Note: A business approved by the Coordinating Council after the effective date of this Act is required to use the new credit method for allowable job development and job retraining benefits. However, a business which had an escrow account in place prior to the effective date of this Act may convert to this method.

Further, Code Section 12-10-80(B) provides that a qualifying business may retain employee withholding based on a percentage of the gross wages of each new employee. The maximum job development credit a qualifying business may claim for new

employees is calculated as a percentage of the gross wages for each new employee. The hourly gross wage figures are adjusted annually for inflation by the State Budget and Control Board. The gross wage figures for 1997, as amended, are as follows.

Gross Wage Per New Employee	Percentage to Claim
\$ 6.34 to \$ 8.44	2%
\$ 8.45 to \$10.56	3%
\$10.57 to \$15.84	4%
\$15.85 and more	5%

Effective Date: Tax years beginning after 1996.

House Bill 3919, Section 8, (Act No. 151)

Economic Impact Zone Investment Tax Credit Carryforward

Code Section 12-14-60, the Economic Impact Zone investment tax credit, has been amended to provide for a 10 year carryforward. Prior to this, no carryforward was available.

The credit is equal to 5% of the total basis of qualified manufacturing and productive equipment properties which are placed in service during the taxable year in the economic impact zone. The statute provides a definition of “economic impact zone qualified manufacturing and productive equipment property” and “economic impact zone.”

Effective Date: Tax years beginning after 1996.

License Tax Credit for Infrastructure Improvements - Changes

Code Section 12-6-3490, allowing certain transportation providers, utilities, and electric cooperatives a credit against license fees, has been repealed and replaced by a similar credit in Code Section 12-20-105. Section 12-20-105 provides that:

1. A company may claim a credit against its license tax liability for amounts paid in cash to provide infrastructure for an eligible project. In order to be considered an eligible project, the project must qualify for income tax credits under Chapter 6 of Title 12, withholding tax credits under Chapter 10 of Title 12, income tax credits under Chapter 14 of Title 12, or fees in lieu of property tax under Chapter 12 of Title 4. However, a project consisting of an office, business, commercial, or industrial park which is constructed by a county or a political subdivision of the State qualifies whether or not it qualifies for any other tax benefit.
2. The taxpayer cannot own, operate, lease, or manage the infrastructure.
3. The maximum credit that may be claimed in any tax year is \$300,000.
4. A taxpayer that claims this credit may not claim the infrastructure credit provided by Code Section 12-6-3420.

Effective Date: Tax years beginning after 1996.

PROPERTY TAXES AND FEES IN LIEU

PROPERTY TAXES

Senate Bill 135, (Act No. 36)

4% Assessment Ratio for Legal Residences and Veterans Affairs Contracts

Code Section 12-43-221 has been added to provide that property in which the occupant-domiciliary has an interest pursuant to an installment contract for sale with the United States Department of Veterans Affairs is eligible for the 4% assessment ratio for a legal residence provided in Section 12-43-220(c), the property tax exemptions provided in Section 12-37-220, the homestead exemption for taxpayers 65 and over or those totally and permanently disabled or legally blind provided in Section 12-37-250, and the general homestead exemption provided in Section 12-37-290, as long as the additional requirements of those sections, other than the ownership requirement, are met.

This amendment also provides for refunds to qualifying persons for tax years beginning after 1995 for the difference between the amount of tax actually paid and the amount of tax due if the property had been assessed pursuant to Sections 12-37-220, 12-37-250, 12-37-290, and 12-43-220(c), as appropriate.

Effective Date: May 21, 1997

Senate Bill 343, Section 1, (Act No. 146)

Delinquent Tax Sales

Code Section 12-51-50, relating to the sale of property for delinquent taxes, has been amended to provide that the property may be sold at any convenient place within the county if designated and advertised. Previously, the sale had to be held at the courthouse. Further, this amendment provides that the method of payment for the property may be in cash, cashier's check, certified check, or money order.

Effective Date: January 1, 1998

Senate Bill 343, Section 2, (Act No. 146)

Reassessment of Property Damaged by Fire

Code Section 12-39-250(B) has been added to provide that the county auditor must make appropriate adjustments in the valuation and assessment of any real property and improvements which have sustained damage as a result of fire provided that the application for correction of the assessment is made prior to the payment of the tax.

Effective Date: June 24, 1997

Senate Bill 510, (Act No. 125)

Motor Carrier Changes

This Act made a substantial number of changes to the property tax laws affecting motor carriers. The changes are as follows.

1. Code Sections 12-37-2820, 12-37-2830, 12-37-2840, 12-37-2850, 12-37-2860, 12-37-2870, and 12-37-2880 have been amended to transfer the valuation and property taxation of certain motor carriers from the Department of Public Safety to the Department of Revenue.
2. Code Section 12-37-2845 has been added to provide that if a motor carrier that is required to file a property tax return, but is not required to register motor vehicles in this State, fails to file a return and remit property taxes, the Department may issue a demand for payment. If the motor carrier does not file the return and pay the tax within 30 days of receipt of the notice, the Department will issue a warrant for the estimated amount of tax due, plus a 25% penalty.
3. Code Section 12-37-2840, pertaining to the annual property tax returns and tax payments of motor carriers, has been amended to provide that motor carriers must file an annual report with the Department by June 30 for the preceding calendar year and remit 50% or 100% of the tax due. The remaining tax due must be paid by December 31. If the tax is not paid within 30 days of receipt of the notice demanding payment, the Department will notify the Department of Public Safety who will not renew the registration of the motor vehicles required to be on the property tax return. A 25% penalty will be added to the tax due.
4. Code Section 12-37-2860 has been amended to provide that instead of the property taxes and registration requirements contained in Sections 56-3-110 and 56-3-700 on

semitrailers and trailers, a one-time fee of \$87 payable to the Department of Public Safety is due on all currently registered semitrailers and trailers and subsequently on each semitrailer and trailer before being placed in service.

5. Code Section 12-37-2880 has been amended to clarify that the fee in lieu of property taxes and registration requirements are in lieu of all other ad valorem taxes upon trailers and semitrailers of motor carriers.

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

Senate Bill 575, (Act No. 126)

Exemption Expanded for Property Acquired for Sale to Disadvantaged Persons

Code Section 12-37-220(B)(16)(b), relating to the property tax exemption allowed on property acquired by any religious, charitable, or eleemosynary society, corporation, or other association for the purpose of building or renovating residential structures on it for not-for-profit sale to economically disadvantaged persons, has been amended to delete the limitation that the exemption may not be claimed for more than 5 years on a single property.

Effective Date: Property tax years beginning after 1996.

House Bill 3059, (Act No. 128)

Dockside Facility Considered Agricultural Use Property

Code Section 12-43-220(d) has been added to provide that a dockside facility whose primary use is the landing and processing of seafood is considered agricultural real property. Agricultural real property is taxed on an assessment equal to its fair market value for agricultural purposes. The real property assessment ratio is reduced to 4% for non-corporate owners and certain corporations with no more than 10 shareholders, and 6% for all other corporate owners.

Effective Date: Tax years beginning after 1996.

House Bill 3400, Section 57, (Act No. 155)

Air Carrier Hub Terminal Facility Definition Expanded

Code Section 55-11-500(a)(2) has been amended to expand the definition of air carrier hub terminal facility to include a facility from which an air carrier operates at least 25 common carrier departing flights a week on an annual basis for the purposes of transporting cargo and air freight. Previously, the statute required at least 5 common carrier departing flights a day for the purposes of transporting cargo and air freight at least 5 days each week.

Effective Date: Tax years after 1994.

House Bill 3400, Section 67, (Act No. 155)

Collection Proceedings for Returned Check

Code Section 12-45-115 has been added to provide that if an uncertified check is accepted by a county treasurer as payment for taxes or fees and the check is returned to the county treasurer unpaid for any cause, the county treasurer may institute proceedings pursuant to Section 34-11-70 to collect on the check, including all applicable service charges. Code Section 34-11-70 is a procedure to demand payment; the failure to pay may result in criminal prosecution.

Effective Date: June 14, 1997

House Bill 3400, Section 69, (Act No. 155)

Dwellings Eligible for 4% Assessment Ratio

Code Section 12-43-220(c)(1), concerning the 4% assessment ratio for a legal residence and not more than 5 acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, has been amended to provide that additional dwellings located on the same property and occupied by immediate family members of the owner of the interest are also taxed at a 4% assessment ratio.

Effective Date: Property tax years beginning after 1997.

House Bill 3400, Part III, Section 3, (Act No. 155)

Uniform Property Tax Bill

Code Section 12-43-350, providing standard information that must be contained on a tax bill for real property, has been amended to provide that the tax bill have the following information: tax year; tax map number; property location; appraised value, taxable; tax amount; state homestead tax exemption, if applicable; state property tax relief, if applicable; local option sales tax credit, if applicable; any applicable fees; total tax due; tax due with penalties and applicable dates; and prior year amount paid-only required to be shown if assessment is unchanged from prior year, except during reassessment years, in which case all properties must show the prior year tax amount.

Effective Date: Real property tax bills for property tax year 1998.

House Bill 3551, Section 1, (Act No. 106)

The State Property Tax Relief Fund Calculation

Beginning in 1995, South Carolina homeowners received an additional exemption from property taxes for school operating costs. The exemption is a maximum amount of \$100,000 of the residence's fair market value. Code Section 12-37-251(A) has been amended to provide that the revenue necessary to fund the \$100,000 property tax exemption is based on the fair market value of property classified pursuant to Section 12-43-220(c) calculated on the lower of the school operating millage imposed for tax year 1995 or the current school operating millage, excluding taxes levied for bonded indebtedness and payments pursuant to lease purchase agreements for capital construction. The lower of the 1995 tax year's or the current year's school operating millage is the base year millage for purposes of calculating the amount necessary to fund the State Property Tax Relief Fund. The base year millage will be adjusted to an equivalent millage rate in a manner prescribed by the Department in years in which the values resulting from a county-wide reassessment program are implemented.

Effective Date: June 13, 1997

House Bill 3551, Section 2, (Act No. 106)

Business Personal Property Subject to Assessment and Collection

Code Section 12-37-750, relating to the failure to file a return or the filing of a false return, has been amended to allow an auditor to proceed to assess business personal property tax returns filed with the Department and bring suit for collection of the taxes.

Effective Date: June 13, 1997

House Bill 3551, Section 3, (Act No. 106)

Agricultural Real Property Fair Market Value

Code Section 12-43-220(d)(2)(B)(i), concerning the calculation of the fair market value of agricultural real property, has been amended to provide that the fair market value for agricultural real property as determined for the 1991 tax year is effective for all subsequent years.

Effective Date: June 13, 1997

House Bill 3551, Section 4, (Act No. 106)

Setoff Debt Collection Act Available in Collection of Delinquent Taxes

Code Section 12-51-40(e) has been added to provide that a county, with the approval of the county governing body, may use the Setoff Debt Collection Act provided in Chapter 56, Title 12 as the initial step in the collection of delinquent taxes on real and personal property.

Effective Date: June 13, 1997

House Bill 3551, Section 5, (Act No. 106)

Local Governing Board May Request Administrative Law Judge Hearing

Code Section 12-60-2150(H) has been amended to provide that a property taxpayer, or the local governing body, who disagrees with the Department's determination may request a hearing before the Administrative Law Judge Division within 30 days of the date of the Department's determination. Prior to this amendment, only the taxpayer or the county assessor was authorized to request a hearing. The county assessor is no longer authorized to request a hearing before the Administrative Law Judge Division.

Effective Date: June 13, 1997

House Bill 3551, Section 7, (Act No. 106)

Penalty Waived if Current Owner Fails to Get Timely Tax Notice

Code Section 12-45-180(B) has been added to provide that if title to real property is transferred during a tax year and the records of the county indicate that the tax notice is mailed or otherwise forwarded to the prior owner and the current owner received no timely notice of the tax due, the treasurer shall waive the penalties imposed pursuant to Code Section 12-45-180(A).

Effective Date: June 13, 1997

House Bill 3553, Section 1, (Act No. 107)

Exemption Changes for Dwellings Held in Trust

Code Section 12-37-266(1), providing a homestead exemption for a dwelling to which a trustee holds legal title that is used by a beneficiary 65 years or older, or totally and permanently disabled or blind, has been amended to provide:

1. The trustee may apply for the exemption in person or by mail to the county auditor.
2. No further application is necessary while the property continues to meet the eligibility requirements.

3. The trustee must notify the county auditor of any change in classification of the property within 6 months. Failure to do so will result in the imposition of a penalty equal to 100% of the tax paid, plus interest at ½ of 1% a month, but the penalty may not be less than \$30 or more than the current year's taxes.

Effective Date: January 1, 1998

House Bill 3553, Section 2, (Act No. 107)

Exemption Expanded for Dwellings Held in Trust for a Paraplegic or Hemiplegic

Code Section 12-37-220(B)(2), providing an exemption from property tax on the dwelling house (i.e. the permanent home and legal residence) in which a paraplegic or hemiplegic person resides and a lot not to exceed one acre owned in fee or for life or jointly with a spouse, has been amended. The exemption has been extended to a dwelling and lot which is held in trust for the paraplegic's or hemiplegic's benefit.

Effective Date: January 1, 1998

House Bill 3553, Section 3, (Act No. 107)

Homestead Exemption for Life Estates

Code Section 12-37-250, providing for the homestead exemption for taxpayers 65 and older or those totally and permanently disabled or legally blind, has been amended to provide that the exemption applies to life estates created by will and also to life estates otherwise created. Prior to this amendment, this provision applied only to life estates created by will and other life estates which were in effect on or before December 31, 1979.

Effective Date: June 13, 1997

FEES IN LIEU OF PROPERTY TAXES

Prior to 1997, there were two fee-in-lieu of property tax statutes. These statutes are commonly referred to as the “Little Fee” and the “Big Fee.” The “Fee in Lieu of Tax Simplification Act of 1997” (see House Bill 3819, Section 1), created a third type of Fee, referred to as the “Simplified Fee.” It primarily simplified the fee in lieu by eliminating the need for property to be transferred to the county and leased back. Other amendments were enacted in House Bill 3819 and House Bill 3919 to the current Little and Big Fees. Below is a brief topical summary of the major amendments made by House Bills 3819 and 3919 to the fee in lieu provisions. A summary of the Little and Big Fee provisions, as amended by House Bill 3819 and House Bill 3919, and a summary of the new Simplified Fee, as provided in the Fee in Lieu Tax Simplification Act of 1997, follows.

House Bill 3819, Section 2, (Act No. 149)

Economic Development Property Exempt from Property Taxes

Code Section 12-37-220(B), providing an ad valorem property tax exemption for certain property, has been amended to exempt economic development property from property taxes during the period that it is subject to a fee in lieu of property taxes. Economic development property is property that qualifies for the Simplified Fee. It is defined in Code Section 12-44-30(7) to mean each item of real and tangible personal property comprising a project which satisfies the requirements of Chapter 44 of Title 12, including that it become subject to a fee agreement. See the summary of the Simplified Fee below.

Effective Date: June 24, 1997

House Bill 3819, Section 3, (Act No. 149)

Transitional Rules for Projects Covered Under Existing Fee

Transitional rules are provided for projects that may be covered by pre-existing fee in lieu of property tax agreements. These rules allow a company and the county to agree to transfer property from an existing arrangement and have the property covered by the “Fee in Lieu of Tax Simplification Act of 1997” (explained below) provided there is a

continuation of the same fee payments for any time remaining for the fee. Any new fee agreement reflecting the transaction must continue any minimum investment and employment requirements of the prior agreement. The county must agree to the transfer to the new fee agreement and appropriate documents must be executed.

Effective Date: June 24, 1997

House Bill 3819, Sections 5 and 6, (Act No. 149)

Filing of Copies of Fee in Lieu Agreements

Code Sections 4-12-30(Q) and 4-29-67(W), pertaining to the Little Fee and Big Fee, respectively, have been amended to require the filing of the inducement agreement and lease agreements with the Department and with the county auditors and the county assessors for the county or counties in which the project is located. If the project is located in a multi county industrial park, the agreements must be filed with the auditors and assessors for all counties participating in the multi county industrial park. Previously, copies of these agreements were not required to be filed with any party.

Effective Date: June 24, 1997

House Bill 3819, Section 7, (Act No. 149)

Special Source Revenue Bonds - Penalty Provision

The Little and Big Fee provisions allow a county to issue special source revenue bonds to help provide infrastructure to an eligible project and to use the fee to pay off the bonds. This amendment now provides that if the fee in lieu of tax is insufficient to completely service the interest and principal due under the special source revenue bond, a penalty is imposed on the company in the amount necessary to pay all interest and principal amounts which are not paid by the pledged fee revenue. This penalty does not apply if the entity obligated to make the fee payment or a member of the control group associated with the entity owns the entire bond issue one year before any such default of payment.

Effective Date: June 24, 1997

House Bill 3819, Section 8, (Act No. 149)

No Rollback Taxes on Economic Development Property

Code Section 12-43-220(d) has been amended to provide that any property which becomes exempt from property taxes under Section 12-37-220(A)(1) or any economic development property which becomes exempt under Section 12-37-220(B) is not subject to agricultural rollback taxes.

Code Section 12-37-220(A)(1) exempts from property taxes all property of the State, counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions, if the property is used exclusively for public purposes. Economic development property exempt under Code Section 12-37-220(B) is explained in House Bill 3819, Section 2, above and described in the summary of the Simplified Fee below.

Effective Date: June 24, 1997

House Bill 3919, Section 2, (Act No. 151)

Municipality Millage Rate

Under the Little Fee, a taxpayer is required to have a set millage rate or a millage rate adjusted every 5 years. If a set millage rate is used, the millage rate cannot be lower than the cumulative property tax millage rate legally levied on behalf of all taxing entities within which the property is located that is the rate in effect on June 30 of the preceding calendar year in which the millage rate agreement, or the lease agreement in certain cases, is executed.

Code Section 4-12-30(G)(3) has been added to provide that a municipality's millage rate will not be included in the millage rate calculation under 4-12-30(G) if the taxing entity has agreed to and does de-annex the property before execution of an initial lease agreement.

Effective Date: Millage rate agreements executed after July 1, 1996.

House Bill 3919, Section 4, (Act No. 151)

Controlled Partnership May Qualify for Fee

The Big Fee provision requires a \$45 million investment to be made by a single entity. An exception is provided for investments made by a controlled group of corporations. Code Section 4-29-67(B)(4)(a) has been amended to allow a corporation and a partnership to be treated as single entity provided that the partnership is a controlled partnership of the corporation under Internal Revenue Code Section 707(b)(1) and both the corporation and the controlled partnership will construct their projects on the same site qualifying for the fee.

Effective Date: Tax years beginning after 1996.

House Bill 3919, Section 5, (Act No. 151)

\$600 Million Investment Qualifies for Super Fee

Code Section 4-29-67(D)(4)(a) has been amended to allow a business investing \$600 million or more in South Carolina to qualify for a “Super Fee” in lieu of property taxes. The Super Fee allows a 4% assessment ratio, a 30 year fee, and additional time to make the investment for the fee applied to the property.

Effective Date: Tax years beginning after 1996.

House Bill 3919, Section 12, (Act No. 151)

Index of Taxpaying Ability

Code Section 59-20-20(3) has been added to provide that for purposes of disbursing Education Finance Act funding and for purposes of the index of taxpaying ability, the value of a fee in lieu of property tax shall be computed by the Department by basing the computation on the net fee received and retained by the school district. The value computed cannot be inflated by any portion of the fee shared with or used by any other local taxing authority. However, the revenue received from the fee must be considered

taxable property for purposes of bonded indebtedness and for purposes of computing the index of taxpaying ability.

Effective Date: Tax years beginning after 1996.

THE FOLLOWING IS A SUMMARY OF THE LITTLE FEE, BIG FEE, SIMPLIFIED FEE, SUPER AND ENHANCED INVESTMENT FEE, AND SPECIAL SOURCE REVENUE BONDS. SEE HOUSE BILL 3819 (ACT NO. 149) AND HOUSE BILL 3919 (ACT NO. 151).

INTRODUCTION

General Information. Under Article X of the South Carolina Constitution, manufacturing real or personal property is assessed at 10.5% of its fair market value. 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 three fee in lieu of property tax statutes (referred to as “Fee in lieu” or “Fee”).

The first Fee in lieu statute was enacted in South Carolina Code §4-29-67 and is commonly referred to as the “Big Fee.” The second statute is contained in Chapter 12 of Title 4 and is commonly referred to as the “Little Fee.” The third statute was enacted in the “Fee in Lieu of Tax Simplification Act of 1997” and is referred to as the “Simplified Fee.” Special Fee in lieu provisions exist for very large investments. These provisions are known as the “Super Fee” with respect to the Little and Big Fee and as the “Enhanced Investment Fee” with respect to the Simplified Fee.

Property subject to the Fee usually consists of land, improvements to land, and machinery and equipment located at a 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 or Enhanced Investment 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 rate 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 10% 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 the Super and Enhanced Investment Fee) with an overall limit of

27 years (37 years for the Super and Enhanced Investment 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 (or 30) years 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 five year exemptions from county property taxes allowed for manufacturing property, corporate headquarters property, and research and development facilities provided for by Section 3(g) of Article X of the South Carolina Constitution, and SC Code §12-37-220(B)(32) and (34), respectively. SC Code 4-12-30(E), 4-29-67(E), and 12-44-50(A)(2).

Example. The following example shows the savings from reducing the assessment ratio from 10.5% to 6%. Savings are also available from freezing the millage rate and the value of real property.

	Normal Calculation	Fee-in-lieu Calculation
Total Investment in Equipment	\$100,000,000	\$100,000,000
Total Investment Less Depreciation	\$89,000,000	\$89,000,000
Assessment Ratio	x 10.5%	x 6%
Assessed Value	\$9,345,000	\$5,340,000
Average Millage	x .250	x .250
Tax Due	\$2,336,250	\$1,335,000
Savings		<u>\$1,001,250</u>

This synopsis begins with a general summary of the Little Fee, and is followed by a summary of the Big Fee, the Simplified Fee, the Super and Enhanced Investment Fee, and special source revenue bonds. Since this summary is necessarily a simplification, interested taxpayers and their representatives should review the statutes. For example, many transition rules applicable to some projects that are already paying the fee in lieu of property taxes under prior statutes are not included.

LITTLE FEE

Steps in the Little Fee Process. In connection with the Little Fee, 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 resolution 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 leases the property from the county back to the company and usually provides 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 SC Code 4-29-68. (See the discussion of special source revenue bonds in this section.)

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

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. SC Code 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 not otherwise provided locally.
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, the inducement of the location or expansion of the project in the State is of paramount importance, and the benefits of the project are greater than the cost. This last finding is determined with the assistance and advice from the Board of Economic Advisors or the Department of Revenue. SC Code 4-12-30(B)(5).

Required Investment and Timing of Investment. To qualify for the Little Fee, a company must complete its \$5 million investment 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. The company must provide to the county the total amount invested in the project for each year during the 5 year investment period. SC Code 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 together, but any controlled group member which is claiming the Fee must invest at least \$5 million in the project. "Controlled group" or "controlled group of corporations" has 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. 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. Another exception is made to the single entity rule for certain groups subject to the Super Fee discussed below. SC Code 4-12-30(B)(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 and,
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. SC Code 4-12-30(J).

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.

The inducement agreement may also provide that any property which is placed in service as a replacement for property that 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. SC Code 4-12-30(F).

Rollback Taxes. Any property subject to the Fee is not subject to agricultural rollback taxes. SC Code 12-43-220(d).

Timing Investment Expenditures and Purchases. Property acquired up to sixty days prior to when the county council identifies the project may be subject to the Fee if the inducement agreement is executed within the time period described below. 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 or 10 years for the Super Fee) to qualify for the Fee. SC Code 4-12-30(I).

The Inducement Agreement — Timing. Once the project 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. SC Code 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. The company and county may negotiate to use different yearly assessment ratios. Thus, a company may be subject to a Fee equivalent to the use of a 7% assessment ratio in its first year, but may be subject to a Fee equivalent to the use of a 6% 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. SC Code 4-12-30(D)(5).

Millage Rate Agreement. The millage rate agreement may either fix the millage rate for the entire lease term or increase or decrease the millage rate 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 initial 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. Additionally, under the Little Fee, a municipality's millage rate will not be included in the millage rate calculation if the taxing entity has agreed to, and does, de-annex the property before execution of an initial lease agreement. SC Code 4-12-30(D)(2)(b) and (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 before the property is placed in service. Once the company and county have entered into an inducement agreement, they have 5 years from the end of the property tax year in which the inducement agreement is entered into to enter into an initial lease agreement. SC Code 4-12-30(C).

Valuation for Fee Purposes. For real property, fair market value is used for valuation. This is generally deemed to be 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. SC Code 4-12-30(D)(2)(a).

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

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. SC Code 4-12-30(M).

Amendment of 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. SC Code 4-12-30(H).

Transfers of Fee Agreements or Property Subject to the Fee. 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. SC Code 4-12-30(M)(4).

Record Keeping Requirements. Any company who engages in a Fee transaction must file all returns, contracts or other information the Department may require. Also, a copy of all agreements must be filed with the Department and appropriate county auditors and assessors within 30 days of execution. 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. SC Code 4-12-30(Q).

Termination of Fee and Lease Agreement. If a company subject to the Fee fails to make the Fee lease payments, upon 90 days of notice, the county may terminate the Fee and lease agreement and sell the property to which the county has title, free from any claims by the company. SC Code 4-12-30(Q)(6).

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. SC Code 4-12-30(D)(2) and (O).

BIG FEE

Steps in the Big Fee Process. The series of steps and/or agreements which must be completed in connection with the Big Fee are the same as those provided for in the Little Fee. The Big Fee, however, must include a financing agreement for economic development projects under Chapter 29 of Title 4.

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. SC Code 4-29-67(B).

Required Investment and Timing of Investment. To qualify for the Big Fee, a company must invest \$45 million in the project. There are no job creation requirements. SC Code 4-29-67(B)(3).

From the end of the property tax year in which the initial lease agreement is executed, a company has 5 years to complete its \$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. The company must provide to the county the total amount invested in the project for each year during the 5 year investment period. SC Code 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. Additionally, a corporation and a controlled partnership of the corporation, as defined in Internal Revenue Code Section 707(b)(1), will be considered a single entity and qualify for the Fee if they construct their projects on the same site. Another exception is made to the single entity rule for certain groups subject to the Super Fee. SC Code 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 and 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. SC Code 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. SC Code 4-29-67(F)(1).

Rollback Taxes. Any property subject to the Fee is not subject to agricultural rollback taxes. SC Code 12-43-220(d).

Timing Investment Expenditures and Purchases. The rules regarding the timing of investment expenditures and purchases are substantially the same for both the Little and Big Fee, except that 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. To have property that is transferred in this manner qualify for the Big Fee, the county must agree to its inclusion. SC Code 4-29-67(I) and (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. SC Code 4-29-67(I).

Millage Rate Agreement. The rules regarding millage rate agreements are substantially the same for both the Little and Big Fee, except that the Big Fee does not contain a provision relating to the de-annexation of a municipality. SC Code 4-29-67(G).

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

Valuation for Fee Purposes. The rules regarding valuation and the Fee are substantially the same for both the Little and Big Fee. SC Code 4-29-67(D)(2).

Additional Method of Calculating Fee. The Little and Big Fee allow the company and the county to agree to freeze the millage rate at the current rate or adjust the millage rate every five years for the period the Fee is in effect. Unlike the Little Fee, the Big Fee also allows the use of a present value method of calculating 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. SC Code 4-29-67(D)(2)(b).

Financing Agreements. The rules for financing agreements are substantially identical for both the Little and Big Fee. SC Code 4-29-67(O).

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

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

Record Keeping Requirements. The rules regarding record keeping are substantially the same for both the Little and Big Fee. SC Code 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. SC Code 4-29-67(D)(3).

If the investment by a company (or a controlled group or a former member of a controlled group) 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. SC Code 4-29-67(B)(4)(b)(iii) and (U).

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's investment (without regard to depreciation) falls below the \$45 million investment, it may elect to use the provisions of the Little Fee instead. SC Code 4-29-67(U).

There is another difference between the Little and Big Fee. 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. SC Code 4-29-67(X).

Special Rules for Qualified Recycling Facilities. "Qualified recycling facilities," as defined in SC Code 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, the Fee is available for a maximum of 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 qualified recycling facility during the year in which the assets are placed in service. SC Code 4-29-67(AA).

SIMPLIFIED FEE

Steps in the Simplified Fee Process. In connection with the Simplified Fee in lieu transaction, there are fewer steps and agreements which must be completed than those described above for the Little and Big Fee. They are:

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 resolution — The county council passes an inducement resolution if it was not done when the project was identified. This resolution sets forth the commitment of the county to enter into a fee agreement concerning the project.
3. The Fee Agreement — The county and the company must enter into a fee agreement setting forth the terms of the Fee.
4. Financing agreements — There may be one or more financing agreements executed in connection with the transaction.

Location of the 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. SC Code 12-44-40(G).

County Must Make Findings of Public Purpose and Evaluate Project. The county council must make the same findings described under the Little Fee, except for the finding that requires the county to include in the lease payment the cost of upkeep and insurance on the project or to require the project to cover insurance and upkeep expenses.

However, prior to agreeing to the Simplified Fee, the county must evaluate the project based on additional criteria that include, but are not limited to:

1. The anticipated dollar amount and nature of the investment to be made.
2. The anticipated costs and benefits to the county. SC Code 12-44-40(H).

Required Investment and Timing of the Investment. The rules regarding the required investment are substantially the same for both the Little and Simplified Fee, except for the timing of the investment. For the Simplified Fee, the time period begins 60 days before the county council takes action or identifies the project and ends 5 years after the last day of the property tax year in which the first property covered by the Fee is placed in service. The first piece of property must be placed in service by the last day of the property tax year that is 3 years from the year in which the county and the company enter into the Fee Agreement. Although there is no requirement that the company report the amount invested in the project for each year as required under the Little and Big Fee, the parties may agree to do so in the fee agreement. SC Code 12-44-30, 12-44-40, 12-44-50, and 12-44-140.

The statute allows a “safety net” to a company who commits to an investment above \$5 million. Even if the company fails to make the level of investment agreed to in the fee agreement, the fee agreement may allow property at the project to continue the benefits of the Fee provided that the \$5 million investment requirement is met. However, the assessment ratio and exemption period for property must be consistent with those available to a company making a \$5 million investment. Additionally, a county may deny the company the ability to have replacement property covered by the Fee if the level of investment in the fee agreement is not met. The fee agreement may also allow for different yearly assessment ratios with limitations on the lowest assessment ratio allowable. SC Code 12-44-100.

Property Eligible For the Fee. The rules regarding property that may be subject to the Fee are substantially identical to those contained in the Big Fee. SC Code 12-44-110.

Disposal of Property and Replacement Property. The Fee must be reduced by the amount of the Fee applicable to property scrapped or sold. The fee agreement may provide that any property which is placed in service as replacement for property that is subject to the Fee will become part of the Fee payment. The rules regarding replacement property are substantially the same for the Big and Simplified Fee, except that title to the property is not held by the county in Simplified Fee transactions. SC Code 12-44-50 and 12-44-60.

Rollback Taxes. Any property subject to the Fee is not subject to agricultural rollback taxes. SC Code 12-43-220(d).

Timing Investment Expenditures and Purchases. If the county adopts an inducement resolution within 2 years of the date the county takes action reflecting or identifying the project, then all expenses for property incurred up to 60 days before the date the county council took action reflecting or identifying the project may be subject to the Fee. If the inducement resolution is adopted after the 2 year period, then only those expenses incurred after the date of adoption of the inducement resolution qualify for the Fee. SC Code 12-44-40.

The Inducement, Millage Rate, and Lease Agreements. These documents, which are used for the Little and Big Fee, are replaced by the Fee Agreement in the Simplified Fee.

Inducement Resolution. The inducement resolution sets forth the commitment of the county to enter into a fee agreement.

The Fee Agreement. The fee agreement is the major document of the Simplified Fee transaction. It details the responsibility of each party and contains the negotiated assessment ratio and the millage rate. It is approved by the county through an ordinance and must be executed within 5 years of the inducement resolution in order to have property at the project become economic development property. Once executed, all property to be covered by the Fee is subject to the Fee for a period of approximately 20 years. The rules regarding the calculation of the millage rate are substantially the same as for the Little Fee. SC Code 12-44-30, 12-44-40, and 12-44-50.

Valuation for Fee Purposes. The rules regarding valuation are substantially the same as for the Little Fee. SC Code 12-44-50(A)(1)(c).

Additional Method of Calculating Fee. The Simplified Fee may allow the use of a present value calculation in determining the Fee if the proper investment level is met. A company investing more than \$45 million at the project and the county may agree that the Fee will be based on an "alternative payment method" which is the equivalent of the net present value method in the Big Fee. This method yields a net present value of the fee schedule as calculated using the principles of the Simplified Fee, however, the company must agree to use a fixed millage rate. SC Code 12-44-50.

Financing Agreements. The rules regarding financing agreements are substantially identical to those for the Little Fee, except that there is no requirement that there be an agreement obligating the company to effect completion of the project as required in the Little Fee. SC Code 12-44-120.

Amendment of Agreements. A fee agreement 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, discount rate, assessment ratio, and length of the fee agreement cannot be changed. Additionally, if the county council has by contractual agreement provided for a change in the Fee conditioned on a future legislative enactment, a new enactment will not bind the original parties to the fee agreement unless the change is ratified by the county council. SC Code 12-44-40.

Transfers of Fee Agreements or Property Subject to the Fee. The rules regarding the transfer of fee agreements or property subject to the Fee are substantially the same for both the Little and Simplified Fee. SC Code 12-44-40.

Record Keeping Requirements. A company who engages in a Fee transaction must file all returns, contracts, and other information the Department may require. Also, a copy of the Fee Agreement must be filed with the Department and all appropriate county auditors and assessors within 30 days of execution. 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 filing a required return. The provisions of Chapters 49, 51 and 53 of Title 12 are applicable to the fee agreement and for purposes of those chapters the Fee is considered a property tax. SC Code 12-44-90.

Termination of the Fee and Fee Agreement. The fee agreement may be voluntarily terminated by the company or the county at any time. If a company fails to make the \$5 million investment or any other investment or job requirements set forth in the fee agreement, within the applicable time period, the fee agreement will terminate. Once terminated, all property that was subject to the Fee will be retroactively subject to ad valorem property tax, subject to the provision described in the “Required Investment and Timing of Investment” section above which may allow a company that has committed to an investment exceeding \$5 million to obtain the benefits of a \$5 million Fee, even if it does not meet its original investment requirement. Special rules are applicable if the company used the “alternative payment method” in calculating its Fee. SC Code 12-44-140.

Infrastructure Fee Credit. A county can agree to allow the company an “Infrastructure Improvement Credit” against the Fee in an amount not to exceed the lesser of the improvement costs of the project or the amount of Fee that the county would otherwise receive. If the project is located in a multi-county industrial park, the credit cannot exceed the lesser of the improvement costs of the project or the county’s share of

Fees. A municipality or special purpose district may also consent to allow a credit against their portion of the Fee. SC Code 12-44-20 and 12-44-70.

Transitional Rules for Projects Under Existing Fee. Transitional rules are provided for projects that may be covered by pre-existing Fee arrangements. If the county approves, a company may transfer property from the existing arrangement and have the property covered by the Simplified Fee provided that there is a continuation of the same Fee payments for any time remaining for the Fee and the appropriate documents are executed. Any new Fee arrangement must continue the provisions and limitations of the prior arrangement.

SUPER AND ENHANCED INVESTMENT FEE

Both the Little and Big Fee contain a provision that allows certain entities to apply for a Super Fee. The Simplified Fee contains an equivalent provision, but calls it an Enhanced Investment Fee. The Super or Enhanced Investment Fee may be equal to what the property tax would have been if the property was assessed at 4%. In addition to a possible assessment ratio of 4%, if a company qualifies for the Super Fee, the company has 8 years from the end of the property tax year in which the lease agreement is executed to make the investment required by the statute and may obtain 10 years to complete the project. If the company is under the Enhanced Investment Fee, the company has from 60 days before the county takes action identifying the project until 8 years from the last day of the property tax year in which the first piece of economic development property is placed in service to make the required level of investment and may obtain up to 10 years to complete the project. The first piece of property must be placed in service no later than 3 years from the end of the property tax year in which the company and the county enter into a fee agreement.

If the property is subject to the Super or Enhanced Investment Fee, 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 for the Super Fee, and 40 years for the Enhanced Investment Fee. SC Code 4-12-30(C)(3) and (D)(4), 4-29-67(C)(3) and (D)(4), and 12-44-30(9), (13), and (20), and 12-44-40(D).

The following types of companies may qualify for the Super or Enhanced Investment 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.

Additionally, a company which invests at least \$600 million in South Carolina can qualify for the Super Fee if it is using the provisions of the Big Fee for its Fee transaction.

For purposes of the Little and Big Fee, the new full-time job requirements described in items 1-3 above do 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. For purposes of the Simplified Fee, if a company paid more than 50% of the property tax in the county for the 25 year period and invests \$400 million at the site (item 2 above), then it does not have to meet any new job requirement.

SPECIAL SOURCE REVENUE BONDS

In connection with a Little or Big Fee, 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 political subdivision to generate revenue for infrastructure projects usually at or surrounding the project that enhance its economic development, and then to pay back the bonds with money it receives from the Fee payments from the project. The rules regarding special source revenue bonds are contained in SC Code 4-29-68. Special source revenue bonds cannot be used with the Simplified Fee.

To issue special source revenue bonds, the governing body of the issuer (or county) 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 issuer's economic development. Bonds may 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, are not secured by the full faith and credit of the issuer, are not payable from any tax or license, and 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.

A county, municipality or special purpose district that receives and retains revenues from a Fee can also 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 the requirement of issuing special source revenue bonds.

If the special source revenue bonds are issued to a third party, and the project should fail to generate the necessary fee payments to pay off the bonds, the company that is subject to the Fee must make up any shortfall.

SALES AND USE TAXES

Senate Bill 619, (Act No. 46)

Veterinarian Purchases

Code Section 12-36-110(1), which defines the term “retail sale,” has been amended to add that sales of tangible personal property to veterinarians are retail sales. The veterinarians are deemed to be the users or consumers of the property whether used in the rendering of professional services or sold outright as part of the veterinarian practice and not furnished as part of professional services rendered. As a result of this amendment, the sales and use tax is due on the purchase of the items by the veterinarian and not on the sale of the items by the veterinarian.

Effective Date: Purchases made after 1996.

House Bill 3400, Section 68, (Act No. 155)

Nexus - Contracting with a Commercial Printer

Code Section 12-36-75 has been added to provide that certain activities of a person contracting with a commercial printer for printing do not require a person to register as a retailer with the Department or require a person to collect or remit South Carolina sales and use taxes.

The statute provides that the following activities of a person will not by themselves create sales and use tax nexus with South Carolina:

1. The ownership or leasing of tangible or intangible property used in printing contracts at the printer’s South Carolina location;
2. The sale by the person contracting with the printer of property printed at and shipped or distributed from the printer’s South Carolina location;
3. The activities performed pursuant or incident to a printing contract by or on behalf of that person at the South Carolina premises of the commercial printer; or,
4. The activities performed pursuant or incident to a printing contract by the commercial

printer in South Carolina for or on behalf of that person.

Further, this amendment provides that the commercial printer will not be treated as a representative, agent, salesman, canvasser, or solicitor for the person contracting with the printer by reason of a printing contract.

Effective Date: June 14, 1997

House Bill 3548, Section 4, (Act No. 83)
(See also House Bill 3919, Section 10, (Act No. 151))

Material Handling Systems and Equipment Exemption - Investment Reduced

Code Section 12-36-2120(51), providing an exemption from sales and use tax for material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility, has been amended. The amendment reduces to \$35 million the minimum investment a taxpayer is required to invest in any real or personal property in South Carolina over a 5 year period in order to qualify for the exemption. Previously, the statute required a \$40 million minimum investment.

Effective Date: June 10, 1997. This amendment is identical to that enacted by House Bill 3919 that was effective June 24, 1997.

House Bill 3554, (Act No. 85)

Federal Government Contracts

Code Section 12-36-2120(29), a sales and use tax exemption for federal government contracts, has been amended to clarify that the following purchases of property are exempt from sales and use tax: (1) property that becomes part of the real or personal property owned by the federal government or (2) property that will be transferred to the federal government, pursuant to a written contract. This exemption does not apply to purchases of tangible personal property used or consumed by the purchaser, such as a contractor.

Effective Date: June 10, 1997

House Bill 3819, Section 9, (Act No. 149) and
House Bill 3919, Section 1, (Act No. 151)

Research and Development Machinery Cap - Changes

Code Section 12-36-2110(D), relating to the \$300 maximum tax on each item of research and development machinery, has been amended to delete the reference to "each item." Also, the term machinery has been defined and includes machines and the parts of machines, attachments, and replacements used or manufactured for use on or in the operation of the machines, which are necessary to the operation of the machines, and are customarily so used.

Further, Code Section 4-10-20, relating to the local option tax, has been amended to provide that the 1% local option sales and use tax does not apply to sales of research and development machinery subject to the \$300 cap under Code Section 12-36-2110.

Effective Date: Sales or use made on or after December 1, 1992. This amendment is identical to that enacted by House Bill 3919 that was also effective for sales and use made on or after December 1, 1992.

House Bill 3850, Section 7, (Act No. 114)

Gasoline and Motor Fuel Exemption - Technical Correction

Code Section 12-36-2120(15), relating to the sales and use tax exemption of motor fuel, blended fuel and alternative fuel subject to tax under Chapter 28 of Title 12, has been amended to reflect updates in the code section references as a result of the motor fuel tax law that was enacted in 1995. In 1995, the motor fuel tax laws in Chapters 27 and 29 of Title 12 were replaced with Chapter 28.

Effective Date: June 13, 1997

MISCELLANEOUS

ADMINISTRATIVE AND PROCEDURAL MATTERS (Summarized by Subject Matter)

House Bill 3850, Section 5, (Act No. 114)

Signature Required on Returns

Code Section 12-2-75, identifying persons who are authorized to sign certain tax returns filed with the Department, has been amended to clarify that the provisions apply to returns filed by taxpayers with the Department and not only income tax returns filed under Section 12-6-4910.

Effective Date: June 13, 1997

House Bill 3556, (Act No. 86)

Statute of Limitations

Code Section 12-54-85, relating to the time limitation for assessment of taxes and fees, have been amended to clarify that this section applies to property taxes and to eliminate references to the term "fees." The definition of the term "tax" in Code Section 12-60-30(27) includes the term "fees" and property taxes, and is applicable to Chapter 54. Further, Code Section 12-54-85(F)(1) has been amended to clarify that the three year limitation period on claims for refund in this section applies to a timely filed return, including extensions.

Effective Date: June 10, 1997

House Bill 3850, Section 9, (Act No. 114)

Assessment Defined

Code Section 12-60-30(2), defining “assessment,” has been amended to clarify that “assessment” means the Department’s recording of the taxpayer’s liability after the taxpayer’s appeal is finally decided. The assessment cannot be made until 30 days after sending the proposed assessment as provided in Section 12-60-420, or, if the taxpayer files a timely written protest with the Department, until the taxpayer’s appeal is finally decided. The taxpayer’s appeal is finally decided after the Department’s determination, the decision of the Administrative Law Judge Division, or the decision of a higher court becomes final. See also Section 12-60-440.

Effective Date: June 13, 1997

House Bill 3850, Section 8, (Act No. 114)

Penalty Cross References Updated

Code Section 12-54-40(b)(2)(c)(1) through (b)(2)(d)(3), relating to the imposition of penalties, has been amended to update code section cross references.

Effective Date: June 13, 1997

House Bill 3850, Section 1, (Act No. 114)

Adoption of IRS Regulations and Rulings

Code Section 1-23-120(G)(3), concerning regulations not required for review by the General Assembly, has been amended to update the reference to the Internal Revenue Code to provide that the General Assembly does not have to review regulations promulgated by the Department to adopt regulations and rulings of the Internal Revenue Service as defined in Section 12-6-40. Previously, the statute referred to the Internal Revenue Code of 1954.

Effective Date: June 13, 1997

House Bill 3400, Part I, Section 63.12, (Act No. 155)

Credit Card Payment of Delinquent Taxes

Section 63.12 provides that the Department has the authority to accept payment of delinquent taxes by credit cards. The terms and conditions of this procedure will be established by the Department in regulations and rulings.

Effective Date: June 14, 1997

House Bill 4048, (Joint Resolution)

Regulations Repealed

The General Assembly approved a joint resolution to repeal the following obsolete regulations:

<u>Regulation</u>	<u>Reason repealed</u>
117-34	Deals with stamps on cigarettes, cartridges and playing cards. State no longer has the stamp system on these items.
117-35	Deals with stamps on cigarettes, cartridges and playing cards. State no longer has the stamp system on these items.
117-39	Concerns stamps on soft drinks. State no longer requires stamps on soft drinks.
117-40	Concerns stamps on soft drinks. State no longer requires stamps on soft drinks.
117-41	Deals with soft drink manufacturers, which no longer applies.
117-42	Concerns stamps on soft drinks. State no longer requires stamps on soft drinks.
117-43	Concerns stamps on soft drinks. State no longer requires stamps on soft drinks.
117-45	Concerns documentary stamps mortgages which are no longer taxed.
117-48	Pertains to procedures for obtaining refunds on gasoline. Law now contains different procedures.
117-50	Regulation is based on admissions tax law and X-rated movies which has been declared unconstitutional.

- 117-51.1 Concerns tax on fuel used in attachments and refunds. Not in conformity with present law.
- 117-111 Deals with an appeal of property assessment. Reg. states appeal period is 20 days and appeals must be made to Tax Commission. Now in Chapter 60, Title 12. Time to appeal has changed.
- 117-118 Concerns appeals of property classifications. Now covered by Chapter 60, Title 12.
- 117-122 Defines legal residence for property tax purposes. Definition is now in Section 12-43-220.
- 117-123 Requires property tax auditors, assessors and appraisers to attend educational courses per the Tax Commission. The State now identifies what courses must be taken.
- 117-125 Provides procedure for appealing a denied exemption. The regulation allows 20 days to appeal. Now covered by Chapter 60, Title 12. Procedures have changed and time to appeal has changed.
- 117-129 Provides procedure for appealing vehicle and personal property valued by auditor. Provides for a 20 day period to appeal to the Tax Commission. Now in Chapter 60, Title 12, with new procedures and a change in time to appeal.
- 117-174.188 Concerns exemption from sales taxes for sales of religious publications, which has been ruled unconstitutional.

Effective Date: June 5, 1997

House Bill 3400, Section 43, (Act No. 155)

Tax Liabilities Reduced by the Director

Code Section 12-4-380 has been amended to require the Department to report to the Chairman of the Senate Finance Committee and to the Chairman of the House Ways and Means Committee the details of all tax liabilities reduced by order of the director within 30 days of final settlement.

In addition, Code Section 12-54-240(B) has been amended to allow the Department to release such information to these chairmen without violating the secrecy provisions of Title 12.

Effective Date: July 1, 1997

House Bill 3850, Section 3, (Act No. 114)

Improper Examination of Tax Returns

Code Section 8-13-725(B) has been added to provide that a public official, member, or employee may not willfully examine a tax return of a taxpayer if the purpose of the examination is improper or unlawful. A person convicted of this violation is subject to a fine not more than \$5,000 or imprisonment of not more than 5 years, or both, is required to reimburse the costs of prosecution, and is subject to immediate discharge.

Effective Date: June 13, 1997

Senate Bill 532, Section 41, (Act No. 71)

Disclosure of Information to Department of Social Services

Code Section 43-5-595 has been added to require the Department to disclose certain information contained in state tax records to the Department of Social Services' Child Support Enforcement Division or a child support agency of another State, upon request, for the purpose of establishing, modifying, or enforcing a child support obligation.

Effective Date: June 10, 1997

House Bill 3550, (Act No. 84)

Disclosure of Tax Information to Independent Contractors

Code Section 12-54-240(B), prohibiting the disclosure of information filed with the Department, has been amended to allow disclosure of information to persons retained on an independent contract basis by the Department to collect delinquent taxes.

Effective Date: June 10, 1997

House Bill 3802, (Act No. 89)

Disclosure of Reports and Returns

Code Section 12-54-240, relating to the prohibition against disclosure of information filed with the Department, has been amended to allow the following exceptions:

1. Code Section 12-54-240(B)(12) has been extended to allow disclosure of whether a resident or nonresident tax return was filed by a taxpayer to any state agency, county auditor, or county assessor. Previously, this information could be disclosed only to the South Carolina Department of Natural Resources.
2. Code Section 12-54-240(B)(18) has been added to allow disclosure of specific information in connection with a taxpayer's written inquiry for assistance to a United States Senator or Representative from South Carolina, a South Carolina Constitutional Officer, or a member of the South Carolina General Assembly who has referred the taxpayer to the Department for assistance.

Effective Date: June 10, 1997

House Bill 3557 (Act No. 87)

Accommodations Oversight Committee Duties Transferred to Department

Code Section 6-4-30 has been amended to eliminate the Accommodations Tax Oversight Committee. The Department will now perform some of the committee's former duties such as assisting county and municipality accommodations advisory committees, serving as the oversight authority for questionable expenditures, and investigating and researching facts on submitted complaints.

Effective Date: June 10, 1997

ALCOHOLIC BEVERAGE LICENSING

AND REGULATION

Senate Bill 33, (Act No. 13)

Hospitality Cabinets Allowed in Guest Rooms

Subarticle 8 has been added to Article 5, Chapter 6, Title 61 to provide for hospitality cabinets. The governing body of a county or municipality may, by ordinance, allow a hotel, inn, or motel to sell individual beverage portions in sealed containers to qualified guests by means of a hospitality cabinet located in the guest's room. The governing body of the county or municipality must notify the Department within 10 days of approval of the ordinance.

The Act defines several terms, including the following:

1. "Alcoholic beverages" means alcoholic liquors, as defined in Section 61-6-20, and beer and wine, as defined in Section 61-4-10.
2. "Hospitality cabinet" means a closed container, refrigerated in whole or in part or nonrefrigerated, where access to the interior portion where alcoholic beverages are contained is restricted by means of a locking device which requires the use of a key, magnetic card or similar device.

The Act establishes the following requirements:

1. Access to the hospitality cabinet must be provided by furnishing a key, magnetic card, or similar device to the qualified guest of legal drinking age registered to stay in the guest room.
2. The hospitality cabinet may contain no more than 30 individual portions of alcoholic beverages at one time.
3. When the room is unrented, the portion of the hospitality cabinet where alcoholic beverages are contained must remain locked except for taking inventory or restocking and replenishing the cabinet. The cabinet may only be restocked and replenished during those hours when the beverages may be sold on the premises.

4. Before providing the key, magnetic card or similar device to the guest, the licensee must verify that the guest is of legal drinking age.
5. The key, magnetic card or similar device to the hospitality cabinet may only be given to the guest if it is requested by the guest and only if the guest is not visibly or obviously intoxicated.
6. The type of alcoholic beverages contained in a hospitality cabinet is limited to those beverages for which the facility is licensed to sell on its premises.

Effective Date: April 24, 1997

House Bill 3207, (Act No. 98)

Shipping of Beer and Wine

Code Section 61-2-175 has been added to prohibit any person, partnership, or corporation located in another state or country from knowingly and intentionally shipping, causing to be shipped, or accepting for shipment any beer, wine, or alcoholic liquors directly to any resident of South Carolina who does not hold a valid producer's, manufacturer's, or wholesaler's license or producer representative's certificate of registration issued by the State of South Carolina. Persons found violating this provision will be issued a notice to cease and desist. A subsequent violation of this section is a misdemeanor and, upon conviction, carries a fine of up to \$10,000. This does not apply to any person who has registered brands for sale; however, violation of this section constitutes grounds for the Department to take appropriate administrative action including the suspension or cancellation of licenses and forfeiture of bonds.

Drinking Games and Contests Prohibited

Code Section 61-2-2230 has been added to prohibit a person licensed to sell alcoholic beverages from knowingly conducting, operating, organizing, promoting, advertising, running, or participating in a drinking game or drinking contest which includes any endeavor which encourages or promotes the consumption of alcoholic beverages by participants at extraordinary speed or in increased quantities or in a more potent form. It

does not include any endeavor in which alcoholic beverages are not used or consumed by participants as part of the endeavor but instead used solely as a reward or prize.

Effective Date: June 13, 1997

House Bill 3400, Section 63, (Act No. 155)

Certain Sunday Sales of Beer and Wine Allowed

Code Section 61-4-620 has been added to allow a person who sells beer and wine and is licensed under Code Sections 61-4-500, 61-4-520 and 61-4-540 who closes his business establishment or refrains from operating his business on Saturdays for religious reasons to open for business and sell beer and wine on Sundays in those counties which authorize Sunday beer sale permits. In order to operate on Sundays, the person must file an affidavit of closing on Saturdays for religious reasons and pay an additional fee of \$50 to the Department for administrative and enforcement costs. The opening of the business establishment on Saturday in contradiction of the affidavit is grounds for revocation of the permit issued under this section and Code Sections 61-4-500, 61-4-520 and 61-4-540.

Effective Date: July 1, 1997

DEED RECORDING FEE

Senate Bill 564, (Act No. 73)

The deed recording fee has been substantially revised effective June 10, 1997. The following outlines the application of the deed recording fee to realty transferred on or after December 1, 1996 and recorded on or after June 10, 1997. Transfers of realty prior to December 1, 1996 are subject to the provisions of the documentary stamp tax of Code Section 12-21-380 in effect at the time of the transfer.

IMPOSITION AND DETERMINATION OF VALUE

In General. 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. Except as otherwise provided in this section, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right.

The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration under the provisions of this section. Furthermore, taxpayers may elect to use the fair market value for property tax purposes in determining fair market value of realty under the provisions of this section.

Example. If John Smith transfers realty to John Doe for 1,000 shares of ABC Corporation stock that John Doe owns, then the fair market value of the stock (the "consideration paid in ... money's worth") must be used in calculating the consideration paid in money's worth. Therefore, if the stock was selling on the New York Stock Exchange for \$65 a share, the fair market value of that consideration would be \$65,000 (\$65 per share times 1,000 shares). However, the taxpayer may elect to use the realty's fair market value or the realty's fair market value for property tax purposes in determining the deed fee due. As such, if the realty transferred to John Doe by John Smith had a fair market value of \$64,000 and a fair market value for property tax purposes of \$62,500, the taxpayer could

use either \$64,000 or \$62,500 as the basis for determining the deed fee due.

In other words, when consideration is paid in money's worth (something other than money), the deed fee can be based on any one of the following:

- Fair Market Value of the Consideration Paid in Money's Worth
(\$65,000 in this example)
- Fair Market Value of the Realty Transferred
(\$64,000 in this example)
- Fair Market Value for Property Tax Purposes of the Realty Transferred
(\$62,500 in this example)

Exception. However, in the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. However, the taxpayer may elect to use the realty's fair market value for property tax purposes in determining the deed fee due.

Example. If XYZ Corporation, a stockholder in ABC Corporation, transfers realty to ABC Corporation, then the fair market value of the realty must be used in determining the deed fee due. If the realty transferred has a fair market value of \$100,000, then the deed fee is based on \$100,000. However, the taxpayer may elect to use the realty's fair market value for property tax purposes in determining the deed fee due. As such, if the realty transferred to ABC Corporation by XYZ Corporation had a fair market value for property tax purposes of \$98,000, the taxpayer could elect to use \$98,000 (instead of \$100,000) as the basis for determining the deed fee due.

In other words, when realty is transferred between two corporations, one of which is a stockholder in the other corporation, the deed fee can be based on any one of the following:

- Fair Market Value of the Realty Transferred
(\$100,000 in this example)
- Fair Market Value for Property Tax Purposes of the Realty Transferred
(\$98,000 in this example)

Deduction. A deduction from value is 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. Based on the above, the following are examples of the “value” used in determining the deed recording fee due:

TRANSACTION	VALUE
<p>Realty transferred from X to Y for \$1,000 and the assumption of a mortgage with a balance of \$81,000.</p>	<p>\$1,000. Since the mortgage existed on the realty before the transfer and remained on the realty after the transfer, the \$81,000 is deducted from the total consideration of \$82,000.</p>
<p>Realty transferred from X to Y for \$82,000. The grantor paid \$1,000 down and \$81,000 at closing by obtaining a mortgage at a local financial institution.</p>	<p>\$82,000. Since the mortgage did not exist on the realty before the transfer, the \$81,000 cannot be deducted from the total consideration of \$82,000.</p>
<p>Realty transferred from X to Y in lieu of foreclosure. The balance due on the mortgage, plus accumulated interest, is \$121,000.</p>	<p>\$121,000. By statute, consideration includes the forgiveness or cancellation of a debt. However, the value used may be less than \$121,000 if the fair market value of the realty is less than \$121,000 and the taxpayer elects to use the fair market value of the realty being transferred in determining fair market value of the consideration. In addition, the taxpayer may elect to use the fair market value for property tax purposes in determining fair market value.</p>
<p>Realty transferred from X to Y for the cancellation of a debt, not associated with the realty, of \$50,000.</p>	<p>\$50,000. By statute, consideration includes the forgiveness or cancellation of a debt. However, the value used may be less than \$50,000 if the fair market value of the realty is less than \$50,000 and the taxpayer elects to use the fair market value of the realty being transferred in determining fair market value of the consideration. In addition, the taxpayer may elect to use the fair market value for property tax purposes in determining fair market value.</p>
<p>Realty transferred from X Corporation to stockholder - Y. The fair market value of the realty for property tax purposes is \$90,000. No lien or encumbrance existed on the realty prior to the transfer.</p>	<p>\$90,000. By statute, the fair market value of the realty must be used in calculating the fee due in a transaction between a corporation and one of its stockholders. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the law.</p>

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 or a deed from the federal government, a state or any of a state's political subdivisions, or a qualified retirement plan exempt from income taxes under the Internal Revenue Code to another person, the fee is the liability of the grantee or the joint and several liability of the grantees and not the grantor. The grantor is the transferor of the realty (e.g. seller) and the grantee is the transferee of the realty (e.g. purchaser).

EXEMPTIONS

Exempted from the fee imposed by this article are:

1. Deeds transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars.

Therefore, the following are examples of transactions which are exempt from the deed recording fee under Code Section 12-40-40(1) when no consideration is paid or will be paid for the transfer:

- Realty given as a gift to a family member, a friend, or other person;
- Realty donated to the government, a church or other charity; and,
- Realty transferred to a legal heir or devisee pursuant to a will.

The following are examples of transactions which are subject to the fee based upon the fair market value of the realty, provided the fair market value is not equal to or less than \$100:

- Realty transferred from a parent corporation to a subsidiary corporation;
- Realty transferred from a subsidiary corporation to its parent corporation;
- Realty transferred from a trust to a beneficiary unless the trust is a family trust;
- Realty transferred from a trust to another trust (where one trust is a beneficiary in the other trust) unless both trusts qualify as family trusts;
- Realty transferred from a partnership to another partnership (where one partnership

is a partner in the other partnership) unless both partnerships qualify as family partnerships; and,

- Realty transferred from a partnership to a partner unless the partnership qualifies as a family partnership.

Many times realty may be transferred as a gift or for other reasons for “\$5 and no other consideration.” Code Section 12-24-40(1) exempts such transfers since the deed is “transferring realty in which the value of the realty ... is equal to or less than one hundred dollars.” Value is defined as the consideration paid or to be paid in money or money’s worth.

However, in the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, this exemption would only apply if the fair market value of the realty is equal to or less than one hundred dollars.

2. Deed transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts.

Federal Government. All transfers of realty to the federal government or any of its instrumentalities are exempt from the recording fee. All transfers of realty from the federal government or any of its instrumentalities to an individual, business or other entity are subject to the recording fee, unless otherwise exempted under the deed recording fee law since the liability for the fee would fall upon the grantee, and not the federal government.

In addition to federal agencies such as the Internal Revenue Service, the Department of Agriculture, and the Department of Defense, the following is a list of some federal instrumentalities: Government National Mortgage Association; Production Credit Association; Farm Credit Banks; Bank for Cooperatives; Federal Land Bank Associations; and, Federal Credit Unions.

This list is not all inclusive but includes several of the federal financial institutions that buy and sell realty in South Carolina.

State of South Carolina and its Political Subdivisions. All transfers of realty to the state of South Carolina and its political subdivisions are exempt from the recording fee. All transfers of realty from the state of South Carolina and its political subdivisions to an individual, business, or other entity are subject to the recording fee, unless otherwise exempted under the deed recording fee law. The liability for the fee will fall upon the grantee in accordance with the provisions of Code Section 12-24-20(b).

3. Deeds that are otherwise exempted under the laws and Constitution of this State or of the United States.

Both the Constitution or laws of the United States and the State of South Carolina provide exemptions for certain institutions and entities, many of which are chartered by the federal or state government. In order to qualify for this exemption, the person filing the deed for recording must prove to the clerk or RMC through the affidavit that the transfer is exempt. In other words, it must be determined whether the institution or entity is the grantor or grantee and whether the federal or state law exempts the institution from the fee.

For example, the Federal National Mortgage Association (“FNMA”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) are not federal instrumentalities but are federally chartered institutions that have been granted various tax exemptions by Congress.

Deeds which convey realty to federally chartered institutions that have been exempted from state and local taxation by Congress (e.g. FNMA, Freddie Mac), are subject to the deed recording fee (unless otherwise exempt under the law) since the liability for the fee will fall upon the grantor and not the federally chartered tax exempt institution.

Pursuant to 12 USCA Sections 1723a(c)(2) and 1452(e), deeds which convey realty from FNMA and Freddie Mac to an individual, business, or other entity are exempt from the deed recording fee since the legal incidence for the fee falls upon the grantor.

In addition to certain entities being exempt by the laws and Constitution of the United States or South Carolina, certain transactions are also exempt from the deed fee by virtue of the laws and Constitution of the United States or South Carolina.

The following are two examples of such transactions:

(1) Deeds transferring realty under Chapter 11 of the US Bankruptcy Code are exempt from the fee. Section 1146 of the Bankruptcy Code specifically exempts such transfers.

(2) Deeds transferring realty as a result of converting a partnership to a limited liability company are exempt from the fee. Code Section 33-44-903 states that “[a] partnership or limited partnership that has converted [to an LLC] ... is for all purposes the same entity that existed before the conversion” and all property owned by the converting partnership vests in the LLC. Therefore, for South Carolina purposes, the realty is still vested in the same partnership. No realty has been “transferred to another person” as required by Code Section 12-24-10. As such, if a partnership converting to an LLC conveys realty to the LLC, the recording fee imposed under Code Section 12-24-10 will not be due.

4. Deeds transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A).

This exemption will exempt transfers to a spouse and transfers that are the result of a divorce whether or not the transfer is made for a consideration.

5. Deeds transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty.
6. Deeds transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39.
7. Deeds that constitute a contract for the sale of timber to be cut.
8. Deeds transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust.

This exemption applies to individuals who transfer realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity.

Transfers of realty by a corporation, partnership, or trust to another corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity are subject to the deed recording fee (unless otherwise exempt under the law) since the statute specifically states that “the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust.”

9. Deeds transferring realty from a family partnership to a partner or from a family trust to a beneficiary, as long as no consideration is paid for the transfer other than a reduction in the grantee’s interest in the partnership or trust. A “family partnership” is a partnership whose partners are all members of the same family. A “family trust” is a trust, in which the beneficiaries are all members of the same family. “Family” means the grantor, the grantor’s spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of them, and the grantor’s and grantor’s spouse’s heir under a statute of descent and distribution. A “family partnership” or “family trust” also includes charitable entities, other family partnerships and family trusts of the grantor, and charitable remainder and charitable lead trusts, if all the beneficiaries are charitable entities or members of the grantor’s family. A “charitable entity” means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A).
10. Deeds transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation.
11. Deeds transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership.
12. Deeds that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

REMITTANCE OF FEE

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.

Remittance of Fee for Realty Located in More than One County. 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.

AFFIDAVIT OF VALUE

Generally, an affidavit showing the value of the realty is required to be filed with a deed. For deeds exempt under the law, the value will not be required to be stated on the affidavit. Such affidavits must state the reason why the deed is exempt from the fee. The affidavit required by this section must be signed by a responsible person connected with the transaction and the affidavit must state that connection. Secretaries, paralegals, runners, other administrative personnel do not qualify as a "responsible person connected with the transaction" and, therefore, may not sign the affidavit.

The clerk of court or register of mesne conveyances shall file these affidavits in his office.

The clerk of court or register of mesne conveyances may, at his discretion, waive the affidavit requirement.

A person required to furnish the affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

The Department has developed two affidavits. The use of these affidavits is not required. They are furnished in order to assist recording officials and taxpayers. In order to simplify the process of preparing an affidavit, recording officials and taxpayers are free to copy these sample affidavits or to incorporate them into a computer word processing program. Copies of these sample affidavits have been attached.

Effective Date: June 10, 1997

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.

2. The property being transferred is located at _____, bearing _____ County Tax Map Number _____, was transferred by _____ to _____ on _____.

3. The deed is exempt from the deed recording fee because (See Information section of affidavit):

4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:

_____ .
5. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Transaction _____ Responsible Person Connected with the

SWORN to before me this
_day of _____ 19_____

Print or Type Name Here

Notary Public for
My Commission Expires:

INFORMATION

Except as provided in this paragraph, the term “value” means “the consideration paid or to be paid in money or money’s worth for the realty.” Consideration paid or to be paid in money’s worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money’s worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, “value” means the realty’s fair market value. A deduction from value is 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. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee’s interest in the partnership or trust. A “family partnership” is a partnership whose partners are all members of the same family. A “family trust” is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. “Family” means the grantor and the grantor’s spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A “charitable entity” means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at _____, bearing _____ County Tax Map Number _____, was transferred by _____ to _____ on _____.
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here:
 - (b) Place the amount listed in item 5 above here:
(If no amount is listed, place zero here.)
 - (c) Subtract Line 6(b) from Line 6(a) and place result here:
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____.

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction

SWORN to before me this _____
day of _____ 19_____

Print or Type Name Here

Notary Public for
My Commission Expires:

INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is 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. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

GRANTOR TRUSTS

House Bill 3859, Section 1, (Act No. 91)

Grantor Trusts

Code Section 12-2-25, containing general definitions pertaining to Title 12, has been amended to clarify the tax treatment of grantor trusts. Subsection (B) has been added to clarify that grantor trusts, to the extent they are grantor trusts, will be ignored for all South Carolina tax purposes. This conforms South Carolina's treatment of grantor trusts to that of the Internal Revenue Service.

Effective Date: June 10, 1997

LIMITED LIABILITY COMPANIES

House Bill 3859, Section 1, (Act No. 91)

Single Member Limited Liability Companies

Code Section 12-2-25, containing general definitions pertaining to Title 12, including limited liability companies, has been amended to clarify the tax treatment of single member limited liability companies. Subsection (B) has been added to provide that single member limited liability companies which are not taxed for South Carolina income tax purposes as a corporation will be ignored for all South Carolina tax purposes.

For federal purposes, the single member limited liability company can elect to be taxed as a corporation. If no election is made, the limited liability company will be disregarded. Therefore, if an individual is the only member of a single member limited liability company and he does not elect to have the entity taxed as a corporation, then it will be treated as a sole proprietorship. If a corporation is the only member of a single member limited liability company, it can elect for federal purposes to have the entity taxed as its 100% owned subsidiary. If no election is made, the limited liability company will be treated as a division of the corporation. South Carolina will follow the entity classification effective for federal purposes.

Effective Date: June 10, 1997

LOCAL TAXES

Senate Bill 233, (Act No. 122)

Local Sales and Use Taxes for Transportation Facilities

Chapter 37 of Title 4, effective May 18, 1995, allows the governing body of a county to raise revenue for a transportation project by either imposing a 1% sales and use tax or by authorizing a transportation authority created by the county governing body to impose tolls. A transportation project may include the construction, maintenance, and repair of bridges, highways, roads, streets, and other transportation-related projects, such as drainage facilities related to the highways. The tax levied pursuant to this section must be administered by the Department in the same manner that other sales and use taxes are collected. This statute has been amended as follows:

1. The 1% sales and use tax may now be imposed for multiple projects. Previously, the 1% tax could be imposed only for a single project.
2. The types of projects for which the proceeds of the tax are to be used has been clarified. The projects for which the proceeds of the tax are to be used include:
 - a. highways, roads, streets, bridges, and other transportation-related projects facilities including, but not limited to drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects;
 - b. jointly-operated projects of the type specified in (a) of the county and South Carolina Department of Transportation; or
 - c. project of the type specified in (a) operated by the county or jointly-operated projects of the county and other governmental entities.
3. The timing of a referendum conducted by the county election commission upon receipt of the ordinance from the governing body has been changed. If the ordinance is received prior to January 1, 1998, a referendum to impose the 1% tax may be held on the Tuesday following the first Monday in November. If the ordinance is received on or after January 1, 1998, a referendum to impose the 1% tax must be held at the time of the general election.

4. The power of the transportation authority to exercise eminent domain has been deleted. Code Section 4-37-20 has been amended to provide that the board of the authority is not authorized to exercise the powers of eminent domain; however, it may recommend to the county governing body that property be acquired through eminent domain. The county governing body must determine if the property is to be acquired through eminent domain and, if so, to commence the eminent domain proceedings.

Effective Date: June 13, 1997

Senate Bill 409, Section 3, (Act No. 138)

Capital Project Sales Tax Act

Article 3, the "Capital Project Sales Tax Act," has been added to Chapter 10 of Title 4. The Act allows the governing body of a county to impose, by ordinance, a 1% sales and use tax, subject to referendum, for certain enumerated purposes and for a limited amount of time to collect a limited amount of money. The revenues collected pursuant to this article may be used to defray debt service on bonds issued to pay for authorized projects. However, at no time may any portion of the county area be subject to more than 1% sales tax levied pursuant to this article, under Chapter 37 of Title 4 (sales tax for transportation-related projects), or pursuant to any local law enacted by the General Assembly.

The purpose for which the proceeds of the tax are to be used include the following types of projects:

1. highways, roads, streets, and bridges;
2. courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, or any combination of these projects;
3. cultural, recreational, or historic facilities, or any combination of these facilities;
4. water, sewer, or water and sewer projects;
5. flood control projects and storm water management facilities;

6. jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in subitems (1) through (5) above;
7. any combination of the projects described in subitems (1) through (6) above.

The Act authorizes the governing body of a county to create a commission of 6 members, all of whom must be residents of the county. The governing body of the county must appoint 3 members of the commission and the municipalities in the county must appoint 3 members who must be residents of incorporated municipalities in the county. The commission created under this section must consider proposals for funding capital projects within the county area and formulate the referendum question that is to appear on the ballot.

Upon receipt of the ordinance, the county election commission must conduct a referendum on the question. If the ordinance is received prior to October 1, 1997, a referendum for this purpose may be held on November 4, 1997; however, if the ordinance is received on or after October 1, 1997, a referendum for this purpose must be held at the time of the general election. If the tax is approved in the referendum, it is imposed May 1 following the referendum date providing the election commission certifies the result no later than December 31 to the Department. If certification is not timely, the imposition of the tax is postponed for 12 months.

This tax must be administered and collected by the Department in the same manner that other sales and use taxes are collected. The 1% tax is in addition to all other local sales and use taxes. It applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36 of Title 12 and also applies to property subject to use tax. The gross proceeds of the sale of items subject to a \$300 maximum tax are exempt from this 1% tax. Code Section 4-10-350 contains specific reporting requirements for certain taxpayers, such as utilities, and taxpayers remitting use tax.

The revenue will be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund. The Department will furnish data to the State Treasurer and the county treasurers receiving revenues from the special purpose sales and use taxes for the purpose of calculating distributions and estimating revenues.

Effective Date: July 1, 1997

Authority to Assess Taxes and Fees

Article 3 of Title 6, Chapter 1, concerning a local governments authority to assess taxes and fees, has been added. The article provides that a local governing body:

1. May not impose a new tax after December 31, 1996, unless specifically authorized by the General Assembly.
2. May impose a business license tax or increase the rate of a business license tax, authorized by Sections 4-9-30(12) and 5-7-30, by ordinance adopted by a positive majority vote. This is a vote by the majority of the members of the entire governing body, whether present or not.
3. May only increase the millage rate imposed for general operating purposes above the rate imposed for such purposes for the prior year to the extent of the increase in the consumer price index for the preceding fiscal year, notwithstanding Section 12-37-251(E). However, in the year in which a reassessment program is implemented, the rollback millage, as calculated pursuant to Section 12-37-251(E), must be used in lieu of the previous year's millage rate. This millage rate limitation may be overridden and the millage rate further increased by a positive majority vote of the appropriate governing body. The restriction on millage rate increases in Code Section 6-1-320 does not affect millage that is levied to pay bonded indebtedness or payments for real property purchased using a lease-purchase agreement or used to maintain a reserve account.

Code Section 6-1-320(B) provides that the millage rate limitation may also be suspended and the millage rate increased for the following purposes:

- a. In response to a natural, environmental, or other disaster as declared by the Governor;
- b. To offset a prior year's deficit, as required by Section 7, Article X of the South Carolina Constitution;
- c. To raise revenue necessary to comply with judicial mandates requiring the use of county or municipal funds, personnel, facilities, or equipment;
- d. To meet the minimum required local Education Finance Act inflation factor as projected by the State Budget and Control Board, Division of Research and

Statistics, and the per pupil maintenance of effort requirement of Section 59-21-1030, if applicable.

Code Section 6-1-320(E) provides that Article 3 of Title 6, Chapter 1, does not and may not be construed to amend or repeal: (1) the rights of a legislative delegation to set or restrict school district millage, (2) any caps on school millage provided by current law or statute or limitation on the fiscal autonomy of a school district as currently in existing law.

4. May charge and collect a service or user fee by ordinance approved by a positive majority. The term “service or user fee” is defined to mean a charge required to be paid in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee. The term also includes “uniform service charges.”

The governing body must provide public notice of any new service or user fee being considered and is required to hold a public hearing prior to final adoption of the fee. A fee adopted or imposed prior to December 31, 1996, remains in force and effect until repealed by the local governing body.

The revenue derived from a service or user fee imposed to finance the provision of public services must be used to pay costs related to the provision of the service or program for which the fee was paid. If the revenue generated by the fee is 5% or more of the imposing entity’s prior fiscal year’s total budget, the proceeds of the fee must be kept in a separate and segregated fund from the general fund of the imposing governmental entity.

Effective Date: July 1, 1997

Senate Bill 409, Sections 8 and 10, (Act No. 138)

Local Accommodations Tax Act

Article 5, the “Local Accommodations Tax Act,” has been added to Chapter 1 of Title 6. The Act allows the governing body of a county or municipality to impose, by ordinance, a local accommodations tax, on the gross proceeds derived from the rental or charges for

accommodations furnished to transients as provided in Section 12-36-920(A), not to exceed 3%. An ordinance imposing this tax must be adopted by a positive majority vote. This term is defined as a vote for adoption by the majority of the members of the entire governing body, whether present or not. In addition, the governing body of a county may not impose a local accommodations tax in excess of 1½% within the boundaries of a municipality without the consent, by resolution, of the appropriate municipal governing body. This tax is collected by the county or municipality and not by the Department of Revenue.

The revenue generated by the local accommodations tax must be used exclusively for the following purposes listed in Code Section 6-1-530:

1. tourism-related buildings, including, but not limited to, civic centers, coliseums, and aquariums;
2. cultural, recreational, or historic facilities;
3. beach access and renourishment;
4. highways, roads, streets, and bridges providing access to tourist destinations;
5. advertisements and promotions related to tourism development; or
6. water and sewer infrastructure to serve tourism-related demand.

The cumulative rate of county and municipal local accommodations taxes for any portion of a county area may not exceed 3%, unless the cumulative total of such taxes was in excess of 3% prior to December 31, 1996, in which case the cumulative rate may not exceed the rate that was imposed as of December 31, 1996.

Code Section 6-1-550 provides that in an area of the county where the county has imposed a local accommodations tax that is annexed by a municipality, the municipality must receive only that portion of the revenue generated in excess of the county local accommodations tax revenue for the previous 12 months in the area annexed.

Code Section 6-1-560 provides that real estate agents, brokers, corporations, or listing services required to remit this tax must notify the appropriate local governmental entity if rental property, previously listed by them, is dropped from their listings.

Any ordinance enacted by a county or municipality prior to March 15, 1997, imposing an accommodations fee remains authorized and effective after July 1, 1997, the effective

date of this act, if it does not exceed the 3% maximum cumulative rate prescribed in Section 6-1-540 and is applied to the same base as that required under Section 12-36-920(C), and the revenue is used for a purpose listed above. Further, an enacting county or municipality is authorized to issue bonds, pursuant to Article X, Section 14 (10) of the State Constitution, to raise funds for the purposes listed above. The enacting county or municipality may use revenues from the accommodations fee and the pledge of such other non-tax revenues as may be available for those purposes.

Effective Date: July 1, 1997

Senate Bill 409, Section 9, (Act No. 138)

Local Hospitality Tax Act

Article 7, the “Local Hospitality Tax Act,” has been added to Chapter 1 of Title 6. The Act allows the governing body of a county or municipality to impose, by ordinance, a tax on the sales of prepared meals and beverages sold in establishments or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine.

The tax may not exceed 2% of the charges for food and beverages and must be adopted by a “positive majority” of the governing body of the county or municipality. This term is defined as a vote for adoption by the majority of the members of the entire governing body, whether present or not. In addition, the governing body of a county may not impose the tax in excess of 1% within a municipality without the consent, by resolution, of the appropriate municipal governing body. This tax is collected by the county or municipality and not by the Department of Revenue.

The cumulative rate of county and municipal hospitality taxes for any portion of a county area may not exceed 2%, unless the cumulative total of such taxes was in excess of 2% prior to December 31, 1996, in which case the cumulative rate may not exceed the rate that was imposed as of December 31, 1996.

The revenue from the local hospitality tax must be used exclusively for the following purposes listed in Code Section 6-1-730:

1. tourism-related buildings, including, but not limited to, civic centers, coliseums, and aquariums;
2. cultural, recreational, or historic facilities;
3. beach access and renourishment;
4. highways, roads, streets, and bridges providing access to tourist destinations;
5. advertisements and promotions related to tourism development; or
6. water and sewer infrastructure to serve tourism-related demand.

In a county in which at least \$900,000 in accommodations taxes is collected annually pursuant to Section 12-36-920, the revenue from this local hospitality tax may be used for the operation and maintenance of items (1) through (6) above including police, fire protection, emergency medical services, and emergency-preparedness operations directly attendant to those facilities.

Code Section 6-1-750 provides that in an area of the county where the county has imposed a local hospitality tax that is annexed by a municipality, the municipality must receive only that portion of the revenue generated in excess of the county local hospitality tax revenue for the previous 12 months in the area annexed.

Effective Date: July 1, 1997

House Bill 3400, Sections 71 and 72, (Act No. 155)
(See also Senate Bill 409, Section 5, (Act No. 138))

Real Estate Transfer Fees

Code Section 6-1-70(A) has been amended to provide that the governing body of each county, municipality, school district or special purpose district may not impose any fee or tax on the transfer of real property, unless the General Assembly has expressly authorized the imposition of the fee or tax. However, local governing bodies that enacted and collected fees on transfers of real estate pending resolution of their dispute over the requirement that the collected funds be remitted to the State Treasurer, are allowed to use those funds collected prior to July 1, 1997, for their originally intended specific local purpose, or to refund the fees.

Code Section 6-1-70(B) has been added to provide that a municipality that originally enacted a real estate transfer fee prior to July 1, 1991 may impose and collect the fee, by ordinance, regardless, of whether imposition of the fee was discontinued for a period after July 1, 1991.

Effective Date: July 1, 1997

VIDEO GAME MACHINE LICENSING AND REGULATION

Senate Bill 207, (Act No. 53)

(See also House Bill 3850, Section 6, (Act No. 114))

Video Game Machine - Changes

This Act made a number of changes to video game machine laws to decriminalize the violation for having Type III video game machines in the 12 counties that voted to prohibit such machines. The criminal penalties previously imposed were ruled unconstitutional in 1996. Effective November 1, 1997, cash payouts in Type III machines are prohibited in the following 12 counties: Abbeville, Aiken, Anderson, Cherokee, Chester, Chesterfield, Greenwood, Lancaster, Oconee, Pickens, Union, and York. The following is a section by section summary of the amendments.

Section 1. Code Section 16-19-60 has been amended to clarify that Type III video game machine cash payouts are restricted by the provisions of the Video Game Machines Act.

Section 2. Code Section 12-21-2791, establishing limits on cash payouts, has been amended to eliminate the phrase “authorized pursuant to Section 16-19-60.” Payouts now must meet all requirements in Code Sections 16-19-60, 12-21-2791, and all other provisions of the South Carolina law.

Section 3. Code Section 12-21-2804 has been amended to impose a civil penalty not to exceed \$5000 for having a Type III video game machine in a county that has voted to prohibit such machines. The criminal penalty previously imposed for this violation was ruled unconstitutional by the State Supreme Court. Further, this amendment also provides that the penalty imposed by this section may not be stayed by any administrative or judicial action. Appeal remedies are provided.

Section 4. Code Section 12-21-2808 has been amended to clarify the dates upon which cash payouts will be prohibited or allowed upon passage of a county referendum.

Section 5. Code Section 12-21-2809 has been amended to provide that a person who owns or possesses a machine in a county that prohibits cash payouts is subject to the civil penalties provided in Section 12-21-2804(G).

Section 6. This section provides that the prohibition on cash payouts originally voted by 12 counties will be reinstated on November 1, 1997. The Department is authorized to issue prorated refunds of the Type III license fee, but will not be able to issue a prorated refund of the owner/operator license.

Section 7. Code Section 12-21-2806 pertaining to the first referendum on allowing cash payouts that was held state-wide in 1994 has been repealed.

Section 8. Code Section 12-21-2738, providing a \$2,500 penalty for failing to license a machine, improperly licensing a machine, and failing to place an owner identification on the machine, has been amended to delete the phrase “no part of which may be suspended.” However, House Bill 3850, Section 6, (Act No. 114) (effective June 13, 1997), amended Code Section 12-21-2738 to insert the phrase “a part of which may not be suspended” and to provide that the penalty must be deposited into the general fund. The Code Commissioner has determined that these Acts will be read together in determining the legislative intent and will delete the phrase “no part of which may be suspended” and add the provision concerning depositing the penalty into the general fund. The Administrative Law Judge Division, however, has ruled in a decision dated July 3, 1997, Section 6 of Act 114 controls and that no part of the \$2,500 penalty may be suspended.

Effective Date: November 1, 1997, except for Section 8 which is effective on June 6, 1997.

House Bill 3400, Section 54, (Act No. 155)

Video Game Machine - Changes

This Act made a number of changes to video game machine license fees and technical standards. Several sections were vetoed in this bill since they contained language identical to that in Senate Bill 207. The following is a section by section summary of the pertinent amendments.

Section B. Code Section 12-21-2710, providing for types of unlawful machines, has been amended to provide that video games with a free play feature are now legal only if they meet the technical requirements provided in Sections 12-21-2782 and 12-21-2783. See Sections G and H below.

Section C. Code Section 12-21-2720, providing for the license for coin operated devices, has been amended to increase the license fee for all Type III coin-operated devices to \$4,000 for each biennial license. The biennial license was previously \$3,000. In

addition, this amendment provides that municipalities and counties may, by ordinance, impose a license fee on these devices in an amount not to exceed \$360 of the State license fee for the equivalent period.

Section D. Code Section 12-21-2772(9), has been amended to revise the definition of “contraband device/equipment” or “gray area machine” to mean any machine not meeting the requirements of Sections 12-21-2782 and 12-21-2783. See Sections G and H below.

Section E. Code Section 12-21-2774(3), has been amended to clarify the requirement that each machine licensed under Chapter 21 must have a metering device that keeps a record of certain information concerning cash inserted or deposited into the machine, credits played, credits won, and payments of winnings.

Section F. Code Section 12-21-2776, has been amended to establish that the quarterly video game machine report must be filed with the Department by the twentieth of the month following the end of the calendar quarter.

Section G. Code Section 12-21-2782 has been amended to require all video game machines licensed under Code Section 12-21-2720(A)(3) to meet certain requirements no later than December 31, 1998. This section requires that all video game machines must:

1. Have games that are random and have a minimum payback of at least eighty percent in which the theoretical payout percentage is determined using standard methods of probability theory;
2. Be secure and accountable;
3. Not operate in a misleading or deceptive manner; and
4. Be capable of interfacing with a computerized monitoring system to be selected by the Department.

Machines not meeting the standards of this code section or a regulation of the Department may not be licensed. The license of any machine failing to meet these standards must be revoked.

Section H. Code Section 12-21-2783 has been added to establish that each location operating video game machines must provide a location controller and modem meeting the standards established by this code section and the Department.

Each location controller must support at least 5 video game machines. Each controller must be capable of receiving, storing, and transmitting to the Department's central computer monitoring system all information received from, and required of, video game machines set forth in code section 12-21-2782. In addition, each location controller shall be able to perform the following functions:

1. Communicate with video game machines in an on-line environment.
2. When authorized parties open video game machine game door, store a log entry of this event.
3. When authorized parties open video game machine coin door, store a log entry of this event.
4. Authorize video game machine to be taken off-line from the location controller.
5. Disable the video game machine and store a log entry for any unauthorized game door open and any unauthorized coin door open.
6. Store a log entry if the video game machine is off-line from the location controller without prior authorization;
7. Store a log entry if video game machine tampering is detected. Detection of tampering would occur if the signal received from the video game machine is discontinuous or corrupted in such a manner as to constitute more than spurious noise in the system.
8. Re-enable a video game machine which has been disabled and store a log entry of this event.
9. Log entries shall include a unique identification number for each machine and date/time stamp.
10. Have capability for communicating to the central computer system the information which has been gathered from the video game machines and log any entries stored during the period.

11. Have sufficient storage capacity to maintain at least 5 days of data generated from the maximum playing sessions from the maximum number of associated video game machines linked to the location controller. The data must be stored immediately in a manner that allows on demand, real time access by the central system. Access to data stored in the location controller shall be restricted to authorized entry from the central system and other authorized inquiry only access that has been preapproved by the Department.
12. Have an internal clock.
13. The location controller, its associated communication device, cabling between the controller and the video game machines and communication devices shall be protected from unauthorized interference or tampering by any person or external device or force (i.e. storms) such as to corrupt or alter data or corrupt or suspend communication signals or transmitted data from the video game machines or to the central site.
14. Be capable of validating tickets printed by a video game machine.

Section J. Code Section 12-21-2797 has been added to impose a civil penalty of not more than \$10,000 per machine upon any person in possession of, or allowing the operation of, a contraband or gray area machine at any place in the State after December 31, 1998. In addition, such contraband or gray area machines may be seized and taken before any magistrate of the county in which the machine was seized for determination of whether it is a contraband or gray area machine. The magistrate will direct that a contraband or gray area machine be destroyed immediately.

Section O. Code Section 12-54-40(g) has been added to impose criminal penalties on a machine operator or distributor who allows or causes a video game machine to be operated without a metering device or who wilfully places a machine on location or wilfully allows or causes a video game machine to be operated with a metering device that does not accurately record the information required by law. Upon conviction, such person must be imprisoned for not less than 1 year nor more than 10 years, without the benefit of probation, parole, or suspension of sentence, and in addition may be fined not more than \$25,000.

Effective Date: July 1, 1997

WITHHOLDING

House Bill 3548, Section 2, (Act No. 83)

Quarterly Return - Change in Due Date

Code Section 12-8-1530(A) has been amended to provide that the fourth quarter South Carolina withholding return must be filed on or before the last day of February following the calendar year of the withholding. Previously, the fourth quarter South Carolina withholding return was due on January 31 and the annual reconciliation was due on the last day of February.

The first, second, and third quarter withholding will continue to be remitted on Form WH-1605. However, the fourth quarter withholding and the annual reconciliation are now combined on one return, Form WH-1606, "Quarterly/Annual Reconciliation," and will be due on or before the last day of February.

Effective Date: June 10, 1997

House Bill 3548, Section 3, (Act No. 83)

Wage and Tax Statements and 1099's - File by Magnetic Media

Code Section 12-8-1550 has been amended to provide that where information required under Section 12-8-1540 (W-2's and 1099's) is required to be submitted to the Internal Revenue Service on magnetic media, the information must also be submitted to the Department on magnetic media.

Effective Date: June 10, 1997

OTHER ITEMS

Senate Bill 397, (Act No. 54)

Municipality in Multi-County Industrial Park

Code Section 4-1-170 has been amended to provide that a county must obtain the consent of a municipality in order to include all or a portion of the municipality in a multi-county industrial park.

Effective Date: June 5, 1997

Senate Bill 479, Section 3, (Act No. 44)

Tax Statement Needed for Commercial Fishing License

Code Section 50-17-170 has been amended to provide that to be licensed by the South Carolina Department of Natural Resources as a resident, an applicant for a land and sell license, a trawl vessel license, or a crab trap (pot) license must present a statement from the Department indicating that the applicant filed a South Carolina income tax form as a resident for the previous calendar year. Any person who did not file a South Carolina individual income tax return for the previous year must show documentation acceptable to the Department of Natural Resources that he was a resident for 6 consecutive months immediately prior to the date of filing an application. Persons under age 17 are exempt from this requirement. It is unlawful to possess a currently valid South Carolina resident fishing license authorized under this chapter and any currently valid resident fishing license of another State. Previously, the applicant for a shrimp or crab boat license had to present a statement under oath to the Department of Natural Resources that he was a resident or nonresident.

Effective Date: Commercial fishing licenses issued one year or more after May 21, 1997.

Low-Level Radioactive Waste - Contingent Annual License Tax

Code Section 48-48-140, imposing a disposal tax of \$235 per cubic foot of low-level radioactive waste disposed of in South Carolina, has been amended to impose a contingent annual license tax on any company that operates a licensed disposal site in this State for the disposal of low-level radioactive waste.

The tax is determined as follows:

1. For the State fiscal year ending June 30, 1997, the shortfall, if any, in the amounts credited for the fiscal year to the Higher Education Scholarship Grants portion of the Children's Education Endowment Fund plus \$22,000,000.
2. For the State fiscal year ending June 30, 1998, the shortfall, if any, in the amounts credited for the fiscal year to the Higher Education Scholarship Grants portion of the Children's Education Endowment Fund plus \$23,000,000.
3. For the State fiscal years beginning after June 30, 1998, the shortfall, if any, in the amounts credited for the fiscal year to the Higher Education Scholarship Grants portion of the Children's Education Endowment Fund plus \$24,000,000.

This tax is due and payable at the same time as provided for the \$235 per cubic foot tax, calculated proportionately over the fiscal year. Underpayments and overpayments in a year must be reflected by an adjusted payment for the first quarter of the succeeding fiscal year. However, the entire contingent license tax due for Fiscal Year 1996-97 and the estimated contingent license tax due for the first quarter of Fiscal Year 1997-98 are due and payable before January 31, 1998.

Effective Date: Contingent license tax due for fiscal year 1996-97.

Tourism Infrastructure Changes

Code Section 12-21-2423, allowing a portion of the admissions tax collected at qualifying tourism or recreational facilities to be paid to the county where the facility is located and to a Special Tourism Infrastructure Development Fund, has been repealed and replaced by Article 27, Chapter 21 cited as the “Tourism Infrastructure Admissions Tax Act.” The following is a brief summary of the Act.

Tax Remitted to County. The Act provides that one-fourth of the admissions tax collected at any qualifying establishment must be remitted to the county in which it is located for a 15 year period (“benefit period”). To be a qualifying establishment, it must be:

1. A major tourism or recreational facility. This is a single tourism or recreational facility in which an investment exceeding \$20 million is made; or
2. One or more facilities subject to admissions tax that are located in a major tourism or recreation area. This is an area designated by the county that has one or more businesses that collect admissions tax where there is a combined investment of at least \$20 million.

The investments must be made within a consecutive 60 month period (“investment period”). All admissions tax remitted to the county must be used for additional infrastructure improvements, such as roads, water and sewer. Code Sections 12-21-6520 and 12-21-6530.

Tax Remitted to Infrastructure Fund. An additional one-fourth of the admissions tax collected at any qualifying establishment during the benefit period must be transferred to the Infrastructure Fund administered by the Coordinating Council for Economic Development at the Department of Commerce. The money must be separated into special accounts based on the establishment that generated the tax. Counties within 5 miles of the establishment may apply for grants from the Fund by submitting a grant application. Any remaining money after expiration of the benefit period may be used by the Coordinating Council, after coordination with the Department of Parks, Recreation, and Tourism, for any infrastructure that will benefit South Carolina tourism. Code Sections 12-21-6520 and 12-21-6540.

Qualification. The county or municipality in which an establishment is located must submit a certification application on behalf of the establishment to the Department for approval. The application must be filed within 1 year of the end of the investment period.

Creating a Designated Development Area. The Act provides that a designated development area must be determined by a county or municipality by ordinance. Additionally, certain rules apply to limit the amount of land that can be chosen as part of a designated development area. Its boundaries must be determined before the date that the certification application is approved. Code Sections 12-21-6520 and 12-21-6570.

New Facility or Expansion. Additionally, the establishment that is subject to admissions tax must file a request with the Coordinating Council asking for a determination as to whether the establishment will be considered a completely new facility or an expansion of an existing facility. If it is determined to be an expansion, then only admissions tax in excess of the average admissions tax collected at the facility for the 24 months immediately preceding the date the certification application is filed will be subject to the statute. Code Sections 12-21-6520, 12-21-6550 and 12-21-6580.

Effective Date: Projects with investment periods beginning after December 31, 1996.

House Bill 3819, Section 4, (Act No. 149)

Use of Fee in Multi-County Industrial Park

Section 13 of Article VIII of the South Carolina Constitution provides that owners or lessees of any property situated in a multi county industrial park are exempt from property taxes and must pay an amount equivalent to the property taxes or other fee in lieu payments that would have been due and payable except for this exemption.

Code Section 4-1-175 provides that a county or municipality receiving revenue from payments in lieu of taxes pursuant to Section 13 of Article VIII of the South Carolina Constitution may issue special source revenue bonds to help pay for infrastructure costs for a project locating within a multi-county industrial park. The county or municipality would then use the fee generated from that project to pay off the bonds.

Code Section 4-1-175 has been amended to allow a county or municipality to use the fee collected in a multi-county industrial park for the same purposes that it would use the special source revenue bonds (for providing infrastructure) without the need to issue the bonds.

Effective Date: June 24, 1997

House Bill 3819, Section 11, (Act No. 149)

Tax Study Commission Re-established

Chapter 41, Title 2 has been reenacted to re-establish the Tax Study Commission. The commission will study South Carolina's revenue laws and make recommendations to the General Assembly on how to improve the laws. Its existence will terminate after June 30, 1999, unless extended by affirmative act of the General Assembly.

Effective Date: June 25, 1997

House Bill 3850, Section 10, (Act No. 114)

Private Car Rental Surcharges

Code Section 56-31-50, requiring car rental companies to collect a 5% surcharge on rental contracts covering a period of 31 days or less, has been amended to add subsection (C) to require car rental companies to pay any excess surcharges collected (excess over property taxes paid) to the Department. Prior to this amendment, any excess amounts collected were paid to the State Treasurer's office.

Effective Date: June 13, 1997