SOUTH CAROLINA TAX INCENTIVES FOR ECONOMIC DEVELOPMENT

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SOUTH CAROLINA DEPARTMENT OF REVENUE

TAX POLICY SERVICES

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REFERENCES

Department Website. This publication cites many South Carolina code sections, regulations, attorney general opinions, and Department advisory opinions (Revenue Procedures, Revenue Rulings, etc.) The full text of these references is available through the Department's website at: dor.sc.gov/policy**.**

Advisory Opinions by E-Mail. The Department has an "Advisory Opinion E-Mail Subscription Service." Persons who sign up for this free service will automatically receive draft, temporary, and final Revenue Rulings and Revenue Procedures, and final Private Letter Rulings and Information Letters by e-mail. These statements provide guidance concerning the application of laws administered by the Department. To sign up, go to the Department's website and click on "Policy and Publications," then "Law & Policy," and then "Sign up to receive Policy emails."

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1. OVERVIEW OF STATE TAXATION

The taxing scheme of a state is often an important factor when a company is deciding where to locate or expand its business. Often, a business is unaware of available tax incentives that may reduce or eliminate many of the taxes that would otherwise be due. This publication provides a general discussion of South Carolina's income, property, and sales and use taxes and incentives. Many of the tax incentives, credits, and exemptions are explained in detail on the following pages. Below is a brief overview of South Carolina taxation.

1. INCOME AND LICENSE TAXES

The starting point of South Carolina taxation for corporations, partnerships, limited liability companies, individuals, estates, and trusts is federal taxable income. South Carolina law provides for modifications to be made from federal taxable income in determining South Carolina taxable income. South Carolina's corporate income tax rate of 5% is among the lowest income tax rates in the Southeast. South Carolina's individual income tax rates range from 3% to 7%.

South Carolina's license fee, or franchise tax, is imposed on the privilege of doing business, as a corporation in South Carolina. The measure of the license fee is based on (1) the capital stock and paid-in or capital surplus of the corporation or (2) South Carolina gross receipts and property. The license fee a taxpayer pays depends upon the taxpayer's type of business. Most corporations pay an annual license fee based on capital (.001 of the corporation's capital stock, and paid-in surplus, plus $15). Only specifically enumerated companies, such as waterworks companies, power companies, and telephone companies, pay the license fee based on South Carolina gross receipts and property. The minimum license fee is $25.

County and city governments may impose a business license tax on businesses operating within the corporate limits of the county or city. Information about county or city business license taxes can be found in the "South Carolina Business License Standardization Act," S.C. Code Ann. §§ 6-1-400 through 6-1-420.

2. PROPERTY TAX

Most real and personal property located in South Carolina is subject to property taxes. Although property tax is generally collected locally, the Department oversees property tax assessments and collections to ensure equitable and uniform assessment throughout the State. There is no state or local tax on intangibles or inventories. The calculation of property taxes involves three elements:

1. Valuation: Real property (other than agricultural use property and most property subject to a negotiated fee in lieu of taxes) is generally appraised to determine fair market value. Personal property of manufacturers is valued at cost from which a fixed statutory

depreciation percentage, based on industry, is deducted each year until a residual value is reached. Personal property of merchants is valued at cost from which income tax depreciation is deducted each year until a residual value is reached. In certain instances, property may be valued as part of a greater unit under the unit valuation method. Personal property of individuals is either exempt from property taxes or the valuation method differs depending on the type of property.

2. Assessment Ratio: The assessment ratio, established in the State Constitution to ensure stability, is 10.5% for manufacturing property, whether real or personal, and 6% for commercial real property. Commercial personal property is assessed at 10.5%. The value of the property is multiplied by this ratio to produce the "assessed value" of a particular piece of property. Taxes are levied based upon this assessed value. New and expanding businesses, which invest $2.5 million or more can enter into a fee in lieu of property taxes, which can reduce a 10.5% assessment ratio to 6% for up to 40 years for qualifying property and eliminate inflationary increases in the value of real property for that period. Very large investments can qualify for a 4% assessment ratio for up to 50 years for qualifying property with no increase in the value of real property for that period.

3. Millage: Each taxing jurisdiction determines on an annual basis the number of mills required to apply to the total assessed value of property subject to taxation within its jurisdiction in order to raise the money it needs to operate for the next year. (Each jurisdiction also takes other sources of revenue into account in making this determination.) The most recently available average millage rate for South Carolina is 346.2 mills.

For example, if a manufacturer owned a piece of property used in its business with a value of $100 and an assessment ratio of 10.5% (the ratio for manufacturing property in the absence of a fee in lieu of property taxes agreement), the assessed value of that property equals $10.50 ($100 x 10.5%). If the taxing jurisdiction decides in a particular year to levy a tax of 297 mills, then the property tax liability of the owner would be $3.12 ($10.50 x .297) before the special exemption for manufacturing property mentioned in Chapter 4.

3. SALES AND USE TAX

South Carolina imposes a state sales and use tax of 6%. The state tax is also imposed on sales of accommodations at a rate of 7%. The proceeds are used to fund the public school system and to provide property tax relief. Additionally, local governments in South Carolina may also levy other local taxes such as sales and use taxes, local accommodations taxes, or local hospitality taxes on sales of prepared meals.

The sales tax applies to the retail sale, lease, or rental of tangible personal property. The use tax applies to the first storage, use, or consumption of tangible personal property in South Carolina purchased at retail in another state. A credit is given against the use tax due in South Carolina for any state and local sales or use tax due and paid in another state.

4. MISCELLANEOUS TAXES

In addition to the primary three taxes relating to income, sales and property, South Carolina imposes additional taxes or in some cases, alternative taxes to the three mentioned above. For example, South Carolina imposes an admissions tax on places of amusement, a bank tax on banks engaging in business in this State, and a deed recording fee on the privilege of recording a deed when realty is transferred. These taxes may be imposed in addition to, or in lieu of, the income, sales and use or property tax. Taxpayers should check with their tax advisor to determine if they will be subject to any of these miscellaneous taxes.

2. BUSINESS INCOME TAX

PART A: GENERAL TAX PROVISIONS AND ADMINISTRATION OF CREDITS

1. FEDERAL TAX CONFORMITY

South Carolina income tax laws conform substantially to the federal income tax laws. Generally each year, South Carolina's income tax laws have been amended to conform to the Internal Revenue Code of 1986, as amended through the immediately preceding December 31st, with the exception of Internal Revenue Code Section provisions listed in S.C. Code Ann. § 12-6-50 that are specifically not adopted by South Carolina.[1] As of the date this publication was edited, S.C. Code Ann. § 12-6-40 provides that South Carolina's income tax laws conform to the Internal Revenue Code of 1986, as amended through December 31, 2021, subject to the exceptions listed in S.C. Code Ann. § 12-6-50. The effective date provisions contained in the Internal Revenue Code are also generally adopted. Therefore, except as otherwise provided, when the annual South Carolina conformity amendment becomes effective, Internal Revenue Code provisions that went into effect during the preceding year are retroactively adopted and considered to have the same effective date as they had for federal income tax purposes. S.C. Code Ann. § 12-6-40(A)(1)(c). S.C. Code Ann. §§ 12-6-40 and 12-6-50 should be reviewed annually by taxpayers to determine if federal changes to Internal Revenue Code provisions or other uncodified federal tax provisions have been adopted or limited by South Carolina. See also, *South Carolina's Guide to IRC Conformity from 2018-2020*, available at www.dor.sc.gov/policy/index/policy-manuals.

This conformity simplifies the filing of returns by adopting federal taxable income as a starting point for South Carolina income tax purposes. With some exceptions, South Carolina income tax liability is determined in accordance with the same set of statutes and rules used in determining federal income tax liability. Subject to certain modifications, the South Carolina gross income and taxable income of a business is the business's gross income and taxable income as determined under the Internal Revenue Code.

2. CORPORATE INCOME TAX RATES

South Carolina corporate income tax is imposed upon the South Carolina taxable income of domestic and foreign corporations. Once a business has determined its South Carolina taxable income, it must apply the South Carolina corporate income tax rate to determine the amount of South Carolina corporate income tax due. South Carolina has a 5% corporate income tax rate.

[1] Among the Internal Revenue Code sections that are specifically not adopted by South Carolina are the bonus depreciation provisions of I.R.C. § 168(k) and the interest limitation rules of I.R.C. § 163(j).

3. TAXATION OF OTHER ENTITIES

S.C. Code Ann. § 12-6-550 exempts a number of corporations from South Carolina income tax. Exempt corporations include insurance companies, certain nonprofit corporations organized for the purpose of providing water supply and/or sewer disposal, banks, building and loan associations, and certain electric cooperatives. Some of these entities may be subject to other types of South Carolina tax. Also, South Carolina does not generally tax the income of a tax exempt organization qualifying under I.R.C. §§ 501 through 528, although the unrelated business income of such an entity is taxed. The taxation of pass-through entities and limited liability companies generally conforms to the federal income tax laws. The South Carolina taxation of pass-through entities and withholding requirements are discussed below.

a. S Corporations

South Carolina recognizes a valid federal Subchapter S election. S.C. Code Ann. § 12-6-590 provides that a corporation having a valid election under Subchapter S of the Internal Revenue Code is not subject to South Carolina income tax to the extent it is exempt from federal corporate income tax. Further, a termination or revocation of an "S" election for federal purposes automatically terminates or revokes the election for South Carolina income tax purposes.

A corporation subject to the corporate income tax under Title 12, Chapter 6 of the South Carolina Code that has a valid qualified Subchapter S subsidiary (QSub) election for federal income tax purposes is deemed to have a valid QSub election for South Carolina income tax purposes. Therefore, for South Carolina income tax, license fee, and annual report purposes, including the determination of nexus, the parent and each QSub are treated as one entity. S.C. Code Ann. § 12-2-25(B)(2). See also SC Revenue Ruling #05-11 for information on the license fee computation for a QSub.

b. Partnerships

Partnerships are not subject to South Carolina income tax under S.C. Code Ann. § 12-6-600. The gross income, adjusted gross income, and taxable income of a partnership and its partners are determined in accordance with applicable provisions of the Internal Revenue Code. Partners include in their South Carolina taxable incomes their proportionate share of the partnership's South Carolina taxable income. See SC Revenue Ruling #97-7 for information on a resident partner reporting personal service income received from South Carolina and one or more states. Note, partnerships and other qualifying pass-through entities may now elect to pay income tax at the entity level. See S.C. Code Ann. § 12-6-545(G) and SC Revenue Ruling #21-15.

c. Limited Liability Companies

South Carolina follows the federal tax treatment of limited liability companies. If a limited liability company is treated as a corporation for federal income tax purposes it is treated as a corporation for South Carolina income tax purposes and is subject to a corporate license fee. S.C. Code Ann. § 12-2-25 provides that a partnership includes a limited liability company taxed for all South Carolina income tax purposes as a partnership. Accordingly, a limited liability company that is treated as a partnership for federal income tax purposes is not subject to South Carolina income tax or the corporate license fee.

S.C. Code Ann. § 12-2-25 further provides that a single member limited liability company that is not taxed as a corporation for South Carolina income tax purposes is not regarded as an entity separate from its owner. Accordingly, if the single member limited liability company does not make a federal election to be taxed as a corporation, it will not be treated as a separate entity. Instead, it will be treated as a sole proprietorship if owned by an individual, a division of the corporation if owned by a corporation, or a division of the partnership if owned by a partnership. For example, if a corporation owns a single member limited liability company that is disregarded for South Carolina tax purposes, the limited liability company does not owe a corporate license fee. The limited liability company is treated as part of the corporation which owns it. If the single member limited liability company has elected to be taxed as a corporation, then it is treated as a 100% owned subsidiary and is subject to a separate corporate license fee.

Note, with respect to the preferential assessment ratio allowed to owner-occupied residential property, the South Carolina Supreme Court has ruled that a single member limited liability company is disregarded in determining whether the single member of the limited liability company can qualify for the 4% owner-occupied residential assessment ratio for such property under S.C. Code Ann. § 12-43-220. See, *CFRE, LLC v. Greenville County Assessor,* 395 S.C. 67, 716 S.E.2d 877 (2011).

See SC Revenue Ruling #98-11 for information on income tax, license fee, and deed recording fee implications of a single member limited liability company. Questions concerning the taxation of limited liability companies, other than single member limited liability companies, are addressed in SC Information Letter #96-25. Questions concerning conversion of a partnership to a limited liability company are discussed in SC Revenue Ruling #95-9. See also South Carolina Limited Liability Companies and Limited Liability Partnerships, published by the South Carolina Bar.

d. Withholding for Pass-through Entities

South Carolina requires the withholding of tax on the pass through of income to nonresident shareholders and partners at the rate of 5%. SC Revenue Procedure #17-2 addresses withholding on distributed or undistributed South Carolina income of shareholders and partners, and exceptions to the withholding requirements.

There are several exceptions to the withholding requirements in S.C. Code Ann. § 12-8-590. The exceptions are:

1. An S corporation or partnership is not required to withhold income taxes with respect to any shareholder or partner who submits an affidavit stating the nonresident shareholder or partner is subject to the personal jurisdiction of South Carolina. The Department has a preprinted affidavit, Form I-309, "Nonresident Shareholder or Partner Affidavit and Agreement Income Tax Withholding," available for use by shareholders and partners.

2. An S corporation or partnership is not required to withhold income taxes with respect to any shareholder or partner for which the S corporation or partnership reports the nonresident shareholder's or partner's income on a composite tax return. See Section 8 below for information on composite returns.

3. An S corporation or partnership is not required to withhold income taxes under S.C. Code Ann. § 12-8-590 on income attributable to the sale of real property which is subject to withholding under S.C. Code Ann. § 12-8-580, "Withholding by buyer of real property or associated tangible personal property from nonresident seller." See SC Revenue Ruling #09-13 for more information on withholding on sales of property by nonresidents.

4. An S corporation or partnership is not required to withhold income taxes with respect to any nonresident shareholder or partner that provides a statement that the shareholder or partner is an organization exempt from income taxes under I.R.C. § 501(a).

4. NEXUS

a. Public Law 86-272

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution, 15 U.S.C. § 381 (Public Law 86-272), and other federal statutes provide limitations on states' powers to tax out-of-state corporations.

Public Law 86-272 prohibits a state from taxing the income of a taxpayer if the taxpayer's only business activities within the state consist of the solicitation of orders for sales of tangible personal property that are sent outside the state for approval and are filled and shipped from outside the state.

The Department published guidelines in SC Revenue Ruling #97-15, similar to those published by the Multistate Tax Commission in 1994, to assist in determining whether Public Law 86-272 protects certain activities from South Carolina taxation. Only the solicitation to sell tangible personal property is afforded immunity under Public Law 86-272. The leasing, renting, licensing or other disposition of tangible personal property or transactions involving real property or

intangibles, such as franchises, patents, copyrights, trademarks, service marks and the like are not protected activities under Public Law 86-272. The selling or providing of services is also not protected.

The sale or delivery, and the solicitation for the sale or delivery, of any type of service that is not either (1) ancillary to solicitation or (2) otherwise set forth as a protected activity in SC Revenue Ruling #97-15 is also not protected under Public Law 86-272.

b. Geoffrey

Over the years, the courts have provided limitations and guidelines in determining whether certain activities create nexus with a state. For example, see, *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.,* 505 U.S. 214 (1992), *Burger King Corp. v. Rudzewicz,* 471 U.S. 462 (1985), *Helicopteros Nacionales de Columbia, S.A. v. Hall,* 466 U.S. 408 (1984), *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274 (1977), and *Geoffrey, Inc. v. South Carolina Tax Commission,* 437 S.E. 2d 13 (S.C. 1993) *cert. denied* 114 S. Ct. 550 (1993).

In *Geoffrey,* the South Carolina Supreme Court determined that the licensing of trademarks and symbols to a South Carolina retailer and the maintaining of accounts receivable in South Carolina by a nonresident taxpayer created nexus for South Carolina income tax purposes even though the taxpayer lacked physical presence in South Carolina. The Court determined that Geoffrey purposely directed its activities toward South Carolina, and that Geoffrey owned and used business intangible property in South Carolina. Each of these activities was held to be sufficient to satisfy the nexus requirements of the Due Process Clause and the Commerce Clause.

In SC Revenue Ruling #08-1, the Department addressed some of the common questions that have arisen relating to taxpayers concerned about the implications of *Geoffrey*. Specifically, this document provides examples that show activities or relationships, which will not, by themselves, create income tax nexus with South Carolina.

c. Income Tax Nexus Creating Activities

SC Revenue Ruling #16-11 provides guidance concerning corporate income tax nexus creating activities. It addresses types of business activities or relationships that, by themselves, may or may not create corporate income tax nexus. This document does not address the imposition of any license fee, filing requirements, withholding responsibilities, or the consequences of unity and foreign commerce.

The following categories of nexus creating activities are discussed:

1. General Activities

2. Registration with State Agencies/Departments

3. Ownership/Leasing In-state Property

4. Ownership Interest of In-state Pass-through Entities

5. Licensing Intangibles

6. Employee Activities – Sales Related

7. Employee Activities – Non-sales Related

8. Activities of Unrelated Parties

9. Distribution and Delivery

10. Financial Activities/Transactions

11. Transactions with South Carolina Printers

12. Cloud Computing or Software as a Service (SAAS) Transactions

13. Internet-Based Activities

See Appendix I for a summary of the Department's responses to corporate income tax nexus creating questions contained in SC Revenue Ruling #16-11.

Since developments in this area are constantly taking place, any response is subject to change due to a future statute, regulation, court decision, or advisory opinion.

5. ALLOCATION AND APPORTIONMENT OF INCOME

a. General Provisions

SC Code Ann. § 12-6-2210 provides for the determination of whether taxable income of a business will be apportioned. A taxpayer whose entire business is transacted or conducted in South Carolina is subject to income tax based on the entire taxable income of the business for the taxable year. A taxpayer that transacts or conducts its business partly within and partly outside of South Carolina is subject to income tax based on the portion of its business carried on in South Carolina. This portion is determined through allocation and apportionment of income. The sum of these amounts is South Carolina taxable income.

S.C. Code Ann. §§ 12-6-2220 and 12-6-2230 provide that certain classes of income, less related expenses, are allocated. Items directly allocated include nonbusiness interest, nonbusiness dividends, nonbusiness rents and royalties from the lease or rental of real estate or tangible

personal property, gains and losses from the sale of real property, and nonbusiness gains and losses from sales of intangible property.

The income remaining after allocation is apportioned in accordance with S.C. Code Ann. § 12-6-2240. South Carolina generally requires the use of one of the following apportionment methods:

1. A single factor apportionment method (based on sales) for taxpayers whose principal business in South Carolina is dealing in tangible personal property. This method is typically used by businesses that manufacture, sell, or rent tangible personal property. See, S.C. Code Ann. §§ 12-6-2252, 12-6-2280, and 12-6-2295.

2. A "gross receipts" apportionment method for taxpayers not dealing in tangible personal property. This method is typically used by financial businesses and service businesses, including businesses that install or repair tangible personal property, and contractors. See S.C. Code Ann. §§ 12-6-2290 and 12-6-2295.

3. A "special" apportionment method provided in S.C. Code Ann. § 12-6-2310 for certain companies, such as railroad companies, telephone companies, pipeline companies, airline companies, and shipping lines.

4. An individualized apportionment method tailored to a particular taxpayer (a) because the standard method for that taxpayer does not fairly represent the extent of the taxpayer's business in South Carolina, or (b) as an economic incentive allowed the taxpayer. See subsections (b) and (c) below for more information on alternative apportionment provisions.

◆ Apportionment Methods

Single Sales Factor Apportionment Method. S.C. Code Ann. § 12-6-2252 (*i.e.,* the single sales factor apportionment method) provides that a taxpayer whose principal business in South Carolina is manufacturing or any form of collecting, buying, assembling, or processing goods and materials in this state or whose principal business in South Carolina is selling, distributing or dealing in tangible personal property within South Carolina shall apportion income to South Carolina by multiplying the net income remaining after allocation under S.C. Code Ann. §§ 12-6-2220 and 12-6-2230 by the sales factor defined in S.C. Code Ann. § 12-6-2280. However, if a sales factor does not exist, the remaining net income is apportioned to the business's principal place of business. The single sales factor apportionment method is typically used by manufacturers and retailers having income in South Carolina, as well as other businesses that make or deal with tangible personal property.

"Principal place of business" means "the domicile of a corporation. However, when none of the business of the corporation is conducted in the state of domicile, the department shall

determine the principal place of business of the corporation based upon the available evidence."

Gross Receipts Apportionment Method. S.C. Code Ann. § 12-6-2290 provides for the "gross receipts" formula and states:

> If the principal profits or income of a taxpayer are derived from sources other than those described in S.C. Code Ann. §§ 2-6-2252 or 12-6-2310, the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. For purposes of this section, items included in gross receipts are as provided in S.C. Code Ann. § 12-6-2295.

The "gross receipts" ratio is most commonly used by service businesses. The sourcing of gross receipts was reviewed in *Lockwood Greene Engineers v. South Carolina Tax Commission,* 361 S.E.2d 346 (1987). The court held that in sourcing income of a multistate engineering firm, "gross receipts from within this State" were to be determined according to where the services were performed rather than according to where the customers were located. See also, *Geoffrey, Inc. v. South Carolina Tax Commission,* 313 S.C. 15 ,437 S.E.2d 13 (1993), *cert. denied* 114 S. Ct. 550 (1993), SC Private Letter Ruling #13-3, and *DIRECTV, Inc. & Subsidiaries v. South Carolina Department of Revenue,* 421 S.C. 59, 804 S.E.2d 633 (Ct. App. 2017), and *Dish DBS Corporation, f/k/a Echostar, DBS Corp. and Affiliates v. South Carolina Department of Revenue,* (Unpublished Opinion No. 2018-UP-404) (Ct. App. October 31, 2018), concerning sourcing of receipts of subscription network/broadcasting/programming and advertising services associated with television providers. See also, S.C. Code Ann. § 12-6-2295(A)(7) (overruling the holding in *DIRECTV* to establish sourcing of receipts from the provision of direct broadcast satellite service and also addressing receipts from the operation of a cable system (as defined in S.C. Code Ann. § 58-12-300) and video service (as defined in S.C. Code Ann. § 58-12-300).

b. Fairness Based Alternative Apportionment Provisions

S.C. Code Ann. § 12-6-2320 provides for alternative methods to fairly apportion income for companies who do business in more than one state. Any taxpayer who believes that the statutory apportionment formula does not fairly represent the extent of the taxpayer's business within this State may apply to the Department for approval of an alternative method. On the other hand, if the Department does not believe the statutory apportionment formula fairly represents the extent of the taxpayer's business in this State, the Department may require an alternative method.

Under S.C. Code Ann. § 12-6-2320(A), a taxpayer may petition for, or the Department may require, with respect to all or any part of the taxpayer's business activity, one of the following alternatives for reporting:

1. Separate accounting;

2. The exclusion of one or more factors;

3. The inclusion of one or more factors; or

4. The use of another allocation and apportionment method.

The procedure to apply for the use of an alternative method is explained in detail in SC Revenue Procedure #15-2. Written approval of the new method must be received prior to using it to determine income allocated, or apportioned to South Carolina. The new method will also be used to determine the taxpayer's corporate license fee.

In *Media General Communications, Inc. v. South Carolina Department of Revenue*, 388 S.C. 138, 694 S.E.2d 525 (2010), the South Carolina Supreme Court was asked to consider whether the Department of Revenue had the power under S.C. Code Ann. § 12-6-2320(A) to allow Media General to use combined entity apportionment as a method of allocating and apportioning its income.[2] In particular, the question was whether item (4) of the statute which allows the use of "any other method to effectuate an equitable allocation and apportionment of the taxpayer's income" provided for combined apportionment. The South Carolina Supreme Court held that combined entity apportionment was a method that could be used to provide equitable allocation and apportionment of the taxpayer's income. See also, *CarMax Auto Superstores West Coast, Inc. v. South Carolina Department of Revenue*, 411 S.C. 79, 767 S.E. 2d 195 (2014) modifying 397 S.C. 604, 725 S.E. 2d 711 (Ct. App. 2012) addressing who bears the burden of proving that the standard apportionment formula does not fairly represent a taxpayer's business activity in the State and that an alternative method is reasonable, and *Rent-A-Center West, Inc. v. South Carolina Department of Revenue*, 418 S.C. 320, 792 S.E. 2d 260 (Ct. App. 2016) adopting the same line of reasoning as the *CarMax* case.

c. Economic Development Based Alternative Apportionment Provisions

S.C. Code Ann. § 12-6-2320 also provides for alternative methods to apportion income of multistate companies who are planning new facilities or expansions in South Carolina. The procedure to request approval of an economic development based alternative allocation or apportionment method is provided in SC Revenue Procedure #15-3. The new method will also be used to determine the taxpayer's corporate license fee, if any. The three incentive based methods are:

◆ New Facility or Expansion – 5 Year Formula

S.C. Code Ann. § 12-6-2320(B)(1) provides that the Department may enter into an agreement not to exceed five years that allows a business to use a method other than the standard

[2] Under the combined entity apportionment method, all income and loss of all entities that form part of the unitary business are combined.

apportionment method in determining its South Carolina taxable income. In order to use an alternative method for five years, the following requirements must be met:

1. The business must be planning a new facility or an expansion of an existing facility in South Carolina.

2. The business must ask the Department to enter into a contract reciting an allocation and apportionment method.

3. The Coordinating Council for Economic Development at the Department of Commerce ("Council") must certify that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs.

◆ New Facility or Expansion – 10 Year Formula

S.C. Code Ann. § 12-6-2320(B)(3) provides that the Department may enter into an agreement not to exceed ten years that allows a taxpayer to use a method other than the standard apportionment method in determining its South Carolina taxable income. In order to use an alternative method for ten years, the following requirements must be met:

1. The taxpayer must be planning a new facility or an expansion of an existing facility in South Carolina that results in (1) a total investment of $10 million or more and (2) the creation of at least 200 new, full-time jobs with an average cash compensation level of more than three times the per capita income of the state at the time the jobs are filled. (The job requirement must be met within 5 years of the Council's certification.)

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

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

◆ Special Industry Formulas

1. Certain Recycling Facilities

   S.C. Code Ann. § 12-6-2320(C) provides special rules that allow a taxpayer constructing or operating a qualified recycling facility to request an alternative allocation or apportionment method. In order to qualify as a qualified recycling facility, the facility must invest at least $300 million and meet certain other requirements.

2. Life Sciences Facilities and Renewable Energy Manufacturing Facilities

   S.C. Code Ann. § 12-15-40 provides special rules that allow a taxpayer establishing a life sciences facility or a renewable energy manufacturing facility to request the Department enter into an agreement for up to 15 years to establish an alternative allocation or apportionment method pursuant to S.C. Code Ann. § 12-6-2320.

   S.C. Code Ann. § 12-15-20(A) defines a "life sciences facility" as a business engaged in pharmaceutical, medicine, and related laboratory instrument manufacturing, processing, or research and development, including a business under North American Industry Classification System Manual Code 3254 (Pharmaceutical and Medical Manufacturing) or 334516 (Analytical Laboratory Instrument Manufacturing.)

   S.C. Code Ann. § 12-15-20(B) defines a "renewable energy manufacturing facility" as a business which manufactures qualifying machinery and equipment for use by solar and wind turbine energy producers. It also includes a facility manufacturing qualifying advanced lithium ion, or other batteries for alternative energy motor vehicles as described in S.C. Code Ann. § 12-6-3377 or for other vehicles certified by the South Carolina Energy Office.

d. Corporate License Fees

S.C. Code Ann. § 12-20-50 imposes an annual license fee on the capital and paid-in surplus of a corporation. The license fee is $15 plus $1 for each $1,000, or fraction, of capital stock and paid-in or capital surplus shown on the corporate records on the first day of the tax year. The minimum license fee is $25. The license fee is computed in advance of the taxpayer's income tax year.

If a "consolidated" return is filed, then the license fee is measured by the capital stock and paid-in or capital surplus of each corporation considered separately without offset for investment of one corporation in the capital or surplus of another corporation in the consolidated group. The minimum license fee applies to each corporation in the consolidated group.

S.C. Code Ann. § 12-20-60 provides that the license fee imposed by S.C. Code Ann. § 12-20-50 must be apportioned in accordance with the ratio prescribed for income tax purposes. The $25 minimum license fee; however, may not be apportioned. A business using an alternative method to apportion income (see above discussion) will generally use that alternative method to compute the South Carolina corporate license fee.

S.C. Code Ann. § 12-20-50(A) defines "paid-in or capital surplus" and "earned surplus." Subsection (C) provides an economic development incentive allowing a reduction in the base amount used to compute the license fee for certain capital contributions used for substantial expansions. This incentive allows a holding company to reduce its paid-in or capital surplus by the portion of contributions to capital received from its parent corporation used to finance a subsidiary's expansion. To qualify, the expansion must be: (1) located in an economic impact

zone (**NOTE:** effective June 23, 2010, the definition of "economic impact zone" contained in S.C. Code Ann. § 12-14-30(1) has been eliminated and there are no longer any economic impact zones in South Carolina), (2) cost over $100 million, and (3) completed within 3 years of the first contribution to capital received by the holding company. The 3-year limitation may be extended for good cause by the Department. If the expansion is not timely completed; however, the amounts previously excluded from the license fee base for the contributions must be included in the capital amount in the year following the completion deadline.

See SC Revenue Ruling #05-11 for a detailed question and answer document on computing and prorating the license fee based on capital stock and paid in or capital surplus as provided in S.C. Code Ann. § 12-20-50.

NOTE: S.C. Code Ann. § 12-20-100 imposes a license fee on every express company, street railway company, navigation company, waterworks company, power company, electric cooperative company, light company, gas company, telegraph company, or telephone company in lieu of the license fee imposed by S.C. Code Ann. § 12-20-50. This license fee is based on gross receipts from services rendered from regulated business in South Carolina and South Carolina property used in the conduct of business. The fee is $1 for each $1,000, or fraction, of fair market value of property owned and used within South Carolina in the conduct of business as determined for property tax purposes for the preceding tax year and $3 for each $1,000, or fraction, of gross receipts from services rendered from regulated business within South Carolina during the preceding tax year. The minimum license fee is $25.[3]

6. USE OF CREDITS

Most of South Carolina's income tax credits may be earned by C corporations, S corporations, partnerships, sole proprietors, and limited liability companies (regardless of how they are taxed). The types of taxes a credit may offset include corporate income tax, corporate license fee, individual income tax, wage withholding, bank tax, insurance premium tax, and sales and use taxes. S.C. Code Ann. §§ 12-6-3310 and 12-6-3480, as well as each specific credit statute, should be reviewed to determine credit eligibility and use. A brief overview of the general credit rules and some exceptions to these rules are discussed below:

a. General Use of Credit Rules

S.C. Code Ann. §§ 12-2-100, 12-6-3310 and 12-6-3480 provide rules relating to the use of tax credits. These rules include:

- A credit must be used to the extent possible in the year it is generated and cannot be refunded, unless otherwise provided by law. The job development credit (S.C. Code Ann.

[3] In *Alltel Communications, Inc. v. South Carolina Department of Revenue, et al*., 399 S.C. 313, 731 S.E.2d 869 (2012), the South Carolina Supreme Court determined that a cellular telephone service provider was not a telephone company for purposes of the license tax imposed under S.C. Code Ann. § 12-20-100.

§ 12-10-80) and the job retraining credit (S.C. Code Ann. § 12-10-95) (both of which are credits against withholding tax) are refundable to the extent of withholding actually paid. There are certain other credits (e.g. port volume credit, increase in purchase of SC grown products) that may be applied against withholding tax that are also refundable to the extent of withholding actually paid. The milk producer credit (S.C. Code Ann. § 12-6-3590) and the agricultural use of anhydrous ammonia credit (S.C. Code Ann. § 12-6-3582) (both of which are credits against income tax) are refundable.

- Unless otherwise provided in the particular credit statute, the taxpayer may apply tax credits in Chapter 6 (The Income Tax Act) or Chapter 14 (Economic Impact Zone Community Development Act) in any order.

- The taxpayer may apply a credit that is allowed for use against both income taxes and corporate license fees in any order, unless otherwise specifically provided, and against either the income tax, the license tax, or both, in any given year, subject to specific limitations in the applicable credit statute and S.C. Code Ann. § 12-6-3480(3).

- No credit may be used more than once.

- Any limitations on the total amount of liability for taxes or license fees that can be reduced by the use of a credit must be computed one credit at a time before another credit is used to reduce any remaining tax liability in Chapter 6 or license fee liability in Chapter 20. Accordingly, a taxpayer may choose to use a credit that does not have an income tax liability limitation before or after any credit with an income tax liability limitation, unless otherwise provided in either of the credit provisions.

  NOTE: Some particular credit provisions, such as the research and development credit in S.C. Code Ann. § 12-6-3415 limit the application of the credit to the applicable remaining tax liability after all other credits have been applied.

The following example illustrates how these general rules regarding the use of credits operate.

Example 1 – Income Limitation Credit by Credit Computation. Assume a taxpayer has a $10,000 income tax liability and has generated two tax credits in Chapter 6 that are limited to 50% of its tax liability - a $6,000 jobs tax credit and a $6,000 child care credit. The amount of credits that can be claimed could be computed as follows:

Step 1		Step 2	
Tax Liability	$10,000	Limited Liability	$5,000
1st Limitation %	50%	2nd Limitation %	50%
Limited Liability	$ 5,000	Limited Liability	$2,500

Only $7,500 ($5,000 + 2,500) of the liability may be offset by the credits. The first limitation amount of $5,000 applies to either credit the taxpayer chooses. The second limitation amount of $2,500 applies to the remaining credit.

Example 2 – Choice of Credit Ordering. Assume the same facts as Example 1 and further assume that the taxpayer has a conservation credit (a credit with no specific income limitation) equal to $8,000. Based on Example 1, the taxpayer has the option to:

1. Use the $8,000 conservation credit first since it does not have a tax liability limitation percentage and then apply the limitation percentages of the job tax credit and the child care credit to the $2,000 remaining tax liability (resulting in the ability to use $1,500 of the combined jobs tax and child care credits), or

2. Apply the limitation percentages to the jobs tax credit and the child care credit first (using $7,500 combined jobs tax and child care credits) and then reduce the $2,500 remaining tax liability to $0 with the conservation credit.

- Any credits under Title 38 (Insurance – including the taxation of insurance companies) may be used against income taxes imposed under Chapter 6 or license fees imposed under Chapter 20.

b. Special Use of Credit Rules

Except as otherwise provided, a credit must be used by the taxpayer who earns it. Exceptions to these rules exist for the following: (1) taxpayers participating in a consolidated corporate income tax return, (2) pass-through entities eligible to earn and use a credit, (3) certain limited liability companies not expressly eligible to earn a credit, and (4) transfers of permitted credits, such as the conservation credit. Exceptions 1 - 3 are briefly discussed below. Exception 4 is discussed throughout this chapter in the particular credit summary, as applicable.

◆ Consolidated Corporate Income Tax Participants

S.C. Code Ann. § 12-6-3480 provides that any income tax credit in Chapter 6 or Chapter 14 that is earned by a corporation included in a consolidated corporate income tax return under S.C. Code Ann. § 12-6-5020 must be used and applied against the consolidated tax (*i.e.,* the aggregate pre-credit tax liability of the participating taxpayers), unless otherwise specifically provided. (See Section 7 below for a discussion of credits used on a consolidated corporate tax return.)

◆ Pass-through Entity Specifically Qualifying for Credit

S.C. Code Ann. § 12-6-3310(B) contains special provisions concerning the use of income tax credits by pass-through entities. These rules include:

1. Unless specifically prohibited, an S corporation, limited liability company taxed as a partnership, or partnership that qualifies for a credit pursuant to Article 25 of Chapter 6, Title 12 may pass through the credit earned to each shareholder of the S corporation, member of the limited liability company, or partner of the partnership.

   NOTE: The statutory language of a particular tax credit controls whether a credit generated by an entity may be used by a partner, shareholder, or member. See, *Centex International, Inc. v. South Carolina Dept. of Revenue*, 406 S.C. 132, 750 S.E. 2d 65 (2013), wherein the South Carolina Supreme Court held that under the infrastructure credit statute (S.C. Code Ann. § 12-6-3420) which provides that a corporation could claim a credit for construction or improvement of an infrastructure project against corporate income taxes for expenses paid or accrued by the taxpayer, the legislature intended that a corporation had to be the entity that incurred the expenses to generate the tax credit and thus, a partnership was precluded from earning the infrastructure credit.

2. Any credit earned by an S corporation owing corporate level income tax must first be used at the entity level. Only the remaining credit passes through to the shareholders of the S corporation.

   NOTE: Generally, a credit that is passed through is not affected by the generating entity's income and is not limited to a percentage of the generating entity's income tax. For example, an S corporation may pass through the job tax credit to its shareholders even if it has a South Carolina loss. Once a credit is passed through, however, it may not be later used by the entity generating the credit. See, SC Revenue Ruling #21-15, which among other things, addresses the use of credits when a pass-through entity elects to pay tax at the entity level.

3. The credit is allowed against the type of tax or taxes specifically provided for by the applicable credit.

4. Unless otherwise provided in the credit provision, the amount of the credit allowed a shareholder, partner, or member is equal to the percentage of the shareholder's stock ownership, partner's interest in the partnership, or member's interest in the limited liability company for the taxable year multiplied by the amount of the credit earned by the entity and available for pass through. Limitations upon reduction of income tax liability by use of a credit are computed based on the shareholder's, partners, or member's tax liability.

   NOTE: Exceptions to this rule apply for certain credits. Under S.C. Code Ann. § 12-2-100(B), to the extent a partnership or limited liability company taxed as a partnership earns the certified historic structure credit in S.C. Code Ann. § 12-6-3535, the textile facility revitalization credit in S.C. Code Chapter 65, Title 12, or the credit for residential low-income housing in S.C. Code Ann. § 12-6-3795, the credit, including any unused credit amount carried forward, may be passed through to the partners or members and may be allocated among any of its partners or members on an annual basis. This includes, without

limitation, an allocation of the entire credit or unused credit carryforward to any partner or member who was a partner or member at any time in the year in which the credit or unused credit was allocated. The allocation must be allowed without regard to any provision of the Internal Revenue Code, or regulation promulgated pursuant thereto, that may be interpreted as contrary to the allocation, including and without limitation, the treatment of the allocation as a disguised sale.

The abandoned buildings revitalization credit in S.C. Code Chapter 67, Title 12, contains a similar provision relating to the pass through of the credit.

S.C. Code Ann. § 12-2-100(B) applies to a qualified project placed in service after January 1, 2020, but before December 31, 2030, provided the qualified project is issued an eligibility statement after May 14, 2020.

◆ Limited Liability Company Not Specifically Qualifying For Credit

S.C. Code Ann. § 12-6-3310(C) contains special provisions concerning the qualification and use of credits by limited liability companies that are not organized as a legal entity that expressly qualifies for a credit in Article 25 of Chapter 6, Title 12.

NOTE: These special provisions do not apply to credits in other articles or titles of the South Carolina Code, such as Chapter 14 of Title 12 containing the economic impact zone credit, Chapter 65 of Title 12 containing the textile revitalization credit, or Chapter 67 of Title 12 containing the abandoned building rehabilitation credit. The rules include:

1. Limited Liability Company Taxed as a Partnership.

   Individual Member. The limited liability company may earn and pass through any credits allowed by Article 25 of Chapter 6, Title 12. The individual member will use any credits against individual income taxes imposed under S.C. Code Ann. § 12-6-510.

   Corporate Member. The limited liability company may earn and pass through any credits allowed by Article 25 of Chapter 6, Title 12. The corporate member will use any credits against corporate income taxes imposed under S.C. Code Ann. § 12-6-530.

   NOTE: S.C. Code Ann. § 12-6-3310(C) controls over the statutory language of a particular tax credit. For example, the infrastructure credit in S.C. Code Ann. § 12-6-3420 specifically states that the credit is claimed by a corporation against corporate income taxes imposed under S.C. Code Ann. § 12-6-530 or bank taxes imposed under S.C. Code Ann. § 12-11-20.

2. Limited Liability Company Taxed as a Corporation. The limited liability company taxed as a corporation is entitled to any credits applicable to corporations.

3. Disregarded Single Member Limited Liability Company.

   Individual Member. The individual member may claim any credit against individual income taxes.

   Corporate Member. The corporate member may claim any credit against corporate income taxes.

4. Limited Liability Companies Owned By Limited Liability Companies or Other Pass-through Entities. Items 1, 2, and 3 above are applied at each stage of ownership until the credit is applied against individual income taxes under S.C. Code Ann. § 12-6-510 or corporate income taxes under S.C. Code Ann. § 12-6-530.

7. CONSOLIDATED CORPORATE TAX RETURN

South Carolina uses an unusual method to compute the tax on a "consolidated" corporate income tax return, Form SC1120, which may be filed by certain affiliated corporations. South Carolina has not adopted the federal consolidation rules in I.R.C. §§ 1501 through 1505 or the regulations thereunder. There are no elimination adjustments for intercompany transactions such as those for federal consolidated income tax purposes. South Carolina's "consolidated" rules treat each corporation in an affiliated group as a separate taxpayer.

Generally, corporate taxpayers file separate returns and report their income separately. However, S.C. Code Ann. § 12-6-5020 provides that a consolidated return may be filed for the following controlled corporations:

1. A parent and substantially controlled subsidiary or subsidiaries.

2. Two or more corporations under substantially the entire control of the same interest.

The terms "substantially controlled" and "substantially the entire control" mean the ownership of at least 80% of the total combined voting power of all classes of stock of all corporations that are a party to a consolidated return.

Either a consolidated or a separate South Carolina income tax return can be filed even if a taxpayer files a consolidated return for federal purposes. Other South Carolina consolidated return requirements include:

1. The election to file a consolidated return or separate returns must be made on an original and timely filed return and may not be changed after the return is filed.

2. Once a consolidated return is filed, permission must be granted by the Department to file separate returns.

3. All corporations included in a consolidated return must use the same accounting year.

4. All corporations included in a consolidated return must be subject to South Carolina corporate income tax. In other words, each corporation must have nexus with South Carolina. Since banks and savings and loans are not subject to corporate income tax, they may not be included in a South Carolina consolidated return.

5. A corporation doing business entirely within South Carolina may file a consolidated return with a corporation doing a multistate business. Two or more corporations doing a multistate business may file a consolidated return.

6. A corporation using the gross receipts method of apportionment may file a consolidated return with a corporation using the single sales factor method, or a special method of allocation and apportionment.

NOTE: A corporation that has elected to be taxed under Subchapter S of the Internal Revenue Code may not join in the filing of a South Carolina consolidated return.

South Carolina's consolidated return is a single corporate income tax return for two or more corporations in which income or loss is determined as follows:

1. South Carolina taxable income or loss is computed separately for each corporation.

2. Allocable income or loss is allocated separately for each corporation.

3. Apportionable income or loss is computed utilizing separate apportionment factors (*e.g.,* gross receipts or the single sales factor method for each corporation).

4. Income or loss computed above is added together and reported on one return for the group.

5. Use of income tax credits, including the carryover of unused credits, must be determined on a combined basis. Limitations on credits which refer to the income or the income tax liability of a corporation are deemed to refer to the income or income tax liability of the consolidated group. Credits reduce the consolidated group's tax liability regardless of whether or not the corporation entitled to the credit contributed to the tax liability. (See Section 6 above for a discussion of credits used by a corporation included in a consolidated corporate income tax return.)

8. COMPOSITE RETURNS FOR NONRESIDENT PARTNERS AND SHAREHOLDERS

S.C. Code Ann. § 12-6-5030 allows S corporations or partnerships (including limited liability companies taxed as partnerships or S corporations) to separately compute South Carolina income and tax attributable to each participating nonresident shareholder or partner and report the total tax due on a single tax return, referred to as a "composite" return. S corporations and partnerships are not required to withhold income tax pursuant to S.C. Code

Ann. § 12-8-590 on behalf of any nonresident shareholder or partner whose income is reported on the composite return. See Section 3.d. above for a discussion of S.C. Code Ann. § 12-8-590.

Composite return requirements include:

1. Nonresident fiduciary and individual shareholders and partners may participate in filing a composite return.

2. All participating shareholders and partners must have the same tax year.

3. A composite return may be filed even if some of the nonresident fiduciary and individual shareholders and partners eligible to participate in filing a composite return choose not to participate.

4. Corporate partners may not be included on the composite return since they are required to file an annual report and pay a license fee.

5. Shareholders or partners having income within South Carolina from sources other than the partnership or S Corporation may be included on the composite return.

Form SC1040, "South Carolina Individual Income Tax Return," is used to file a composite return on behalf of participating shareholders and partners and is signed by an authorized partner, S corporation officer, or member of a limited liability company. The S corporation, limited liability company or partnership may elect to determine each participant's tax due by one of the following methods:

Method 1: <u>For a participant who provides an affidavit to the Department through the entity stating that he has no income other than the income from the entity.</u> Compute the participant's South Carolina income tax as follows: (1) using the pro rata share of the standard deduction or itemized deduction and personal exemptions for each participant pursuant to S.C. Code Ann. § 12-6-1720(2) in the same manner as if it was being separately reported, or (2) without regard to any deductions or exemptions in the same manner as if it was being separately reported.

Method 2: <u>For a participant who does not provide an affidavit to the Department through the entity stating that he has no income other than the income from the entity.</u> Compute each participant's share of South Carolina income tax without regard to deductions or exemptions by using the active trade or business income rate provided in S.C. Code Ann. § 12-6-545 on his active trade or business income (3%), and using the highest marginal rate in S.C. Code Ann. § 12-6-510 for other income (*i.e.,* 7%).

The Department has a preprinted affidavit, Form I-338, "Composite Return Affidavit," available for use in complying with the composite return requirements. See also, the I-348 "Composite Filing Instructions."

PART B: JOB OR EMPLOYEE CREDITS AND INCENTIVES

9. JOB TAX CREDIT AND COMPARISON CHART

South Carolina Code Title 12, Chapter 6 contains three job tax credit provisions. The provisions are contained in S.C. Code Ann. § 12-6-3360(C)(1), the "traditional" annual job tax credit, S.C. Code Ann. § 12-6-3360(C)(2), the "annual" small business job tax credit, and S.C. Code Ann. § 12-6-3362, the "accelerated" small business job tax credit. Since the qualifying requirements, the credit amount and computation, and the time in which the credit may first be claimed may differ depending on the specific credit provision, the applicable South Carolina job tax credit statute should be carefully reviewed. Careful consideration should be given to which specific credit the taxpayer will claim since a taxpayer may meet the requirements of all three of the credit provisions, but only one credit provision may be used for each credit period.

The job tax credit statute rules and requirements can be complex. An overview of the three job tax credit provisions is provided below. Also, a general comparison of the three job tax credits is provided for use as a quick reference tool; it is a simplification and may be misleading if not used in conjunction with researching the law.

For additional guidance on more complex principles and exceptions to the general rules discussed below, see S.C. Code Ann. §§ 12-6-3360 and 12-6-3362, the job tax credit statutes, SC Revenue Ruling #07-2, a comprehensive question and answer advisory opinion addressing the small business job tax credits, SC Revenue Ruling #99-5, a comprehensive question and answer advisory opinion regarding the traditional job tax credit, and SC Revenue Ruling #19-11 which addresses changes to the job tax credit statute made in 2018. Taxpayers should also consult their tax advisors.

COMPARISON OF JOB TAX CREDIT OPTIONS

CAVEAT: This comparison is written in general terms. It may not be relied on as a substitute for researching original sources of authority.

	"Traditional" Annual Job Tax Credit	**"Annual" Small Business Job Tax Credit**	**"Accelerated" Small Business Job Tax Credit**
Code Section	12-6-3360(C)(1)	12-6-3360(C)(2)	12-6-3362
Form	TC-4	TC-4SB	TC-4SA
Qualifying Type Business	Manufacturing, tourism, processing, warehousing, distribution, research & development, corporate office, technology intensive, banking, qualifying service-related facility, agribusiness operations, agricultural packaging, professional sports team, qualifying health care related facilities, and air transportation support. Also, retail facilities and service related industries in Tier IV Counties. See S.C. Code Ann. §§ 12-6-3360(A) and (M)(5) through (17).	same	same
Size Requirement	None	99 or fewer employees worldwide	99 or fewer employees worldwide
Taxes Credit Used Against	Corporate or individual income tax, bank franchise tax; or insurance premium tax	same	same
Entities Qualifying	C corporation, S corporation, LLC, Partnership, or Sole Proprietorship	same	same
Credit Amount – Basic	$1,500 - $25,000 per year for each new, full time job created, depending on county designation.	$1,500 - $25,000 (100% credit amount) or $750 - $12,500 (50% credit amount) for each new, full-time job created depending on county designation and annualized compensation amount.	$1,500 - $25,000 (100% credit amount) or $750 - $12,500 (50% credit amount) for each new, full-time job created, depending on county designation and annualized compensation amount.
Credit Amount – Additional	$1,000 multicounty park $1,000 Brownfields Voluntary Cleanup Site	same	same
Monthly Average Increase for Tax Year Requirement	10* (*Exceptions: 20 for new hotels/motels, 25-175 for qualifying service-related facilities and 150 for professional sports teams) A cumulative total of qualifying employees in each county for each month divided by 12 months or actual number of months in operation during current tax year.	2* (Subject to same exceptions as "traditional".) A cumulative total of qualifying employees in each county for each month divided by 12 months or actual number of months in operation during current tax year for each wage threshold, then combined.	2 * – (Subject to same exceptions as "traditional".) A cumulative total of qualifying employees in each county for each month divided by 12 months or actual number of months in operation during current tax year for each wage threshold, then combined.
Compensation/Gross Wage Requirement	Generally, no. Qualifying service-related facilities are an exception unless 175 jobs are created at one location or 150 jobs are created at a vacant building meeting certain requirements.	Yes (determines if jobs qualify for 100% or 50% credit amount) Based on ≥ 120% or < 120% per capita income for state or county (whichever per capita is lower). Annualize pay for year.	Yes (determines whether jobs qualify for 100% or 50% credit amount) Based on ≥ 120% or <120% per capita income for state or county, (whichever per capita is lower). Annualize pay for year.
Tax Limitation	50% of tax liability	same	same
Carry Forward	15 years	same	same
Period Credit Duration	5 years	same	same
Period to Claim	Years 2 – 6 after job creation in Year 1, if jobs are maintained**	Years 2 – 6 after job creation in Year 1, if jobs are maintained**	Years 1 – 5, with job creation in Year 1 if jobs are maintained**
Base Year	Year preceding first year a taxpayer creates the number of new jobs to qualify, regardless of whether it is the first year of operation	Same (jobs classified by wage category)	Same (jobs classified by wage category)

**See Section 9.B.a. below for an explanation of the use of the term "maintained" in this credit summary.

9.A. "TRADITIONAL" ANNUAL JOB TAX CREDIT – Applicable to Any Size Taxpayer

a. General Provisions

S.C. Code Ann. § 12-6-3360(C)(1) provides a tax credit against South Carolina income tax, bank tax, or insurance premium tax for a qualifying business creating new jobs in this State.

Corporations, sole proprietorships, partnerships, S corporations, and limited liability companies are eligible for the credit. To qualify for the job tax credit, a business must: (1) be a certain type of business, and (2) create and maintain a required minimum number of new, full-time jobs at the time a new facility or expansion is initially staffed. The "basic" credit amount for each new job is $1,500 to $25,000 per year depending, in part, on where a taxpayer's facility is located. A taxpayer can receive an "additional" $1,000 credit per year for each new qualifying job, subject to certain dollar limitations if: (1) the taxpayer's qualifying facility is located in a multicounty industrial park, or (2) the taxpayer is creating qualifying new, full-time jobs on property where a response action has been completed pursuant to a nonresponsible party voluntary cleanup contract under Title 44, Chapter 56, Article 7, the Brownfields Voluntary Cleanup Program ("Brownfields Site"). The traditional annual job tax credit is available for 5 years and is first claimed on the taxpayer's tax return for the year following the creation of the new jobs, provided the jobs are maintained.

The credit is adjusted for job increases or decreases each year. During the 5-year credit period, a credit is also allowed for additional new, full-time jobs created. Any unused credit may be carried forward for 15 years. The credit is claimed on Form TC-4, "New Jobs Credit."

NOTE: The "traditional" annual job tax credit provisions are discussed in more detail below and an example is provided. For additional guidance on more complex principles and exceptions to the general rules discussed below, see S.C. Code Ann. § 12-6-3360; SC Revenue Ruling #99-5, a comprehensive question and answer advisory opinion addressing credit issues; SC Revenue Ruling # 19-11 which discusses matters related to the new increased credit amounts for Tier III and Tier IV counties; and consult your tax advisor.

b. Types of Qualifying Businesses

A business must be engaged in manufacturing, processing, tourism, warehousing, banking, distribution, research and development, agribusiness operations, agricultural packaging, or must be a qualifying service-related facility, a corporate office facility, a technology intensive facility, a professional sports team, or an extraordinary retail establishment to qualify for the job tax credit. A retail facility or service-related industry located in a Tier IV county may also qualify for the credit. The statute contains definitions of "manufacturing facility," "processing facility," "warehousing facility," "distribution facility," "research and development facility,"

"corporate office facility," "qualifying service-related facility," "tourism facility," "technology intensive facility," "agricultural packaging," "professional sports team," and "extraordinary retail establishment."

S.C. Code Ann. Regs. 117-750.1 defines the term "facility" as follows:

> A facility is generally a single physical location where a taxpayer's business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the number of employees, their wages and salaries, sales, or receipts and expenses; and (3) employment and output are significant as to the activity. For purposes of item (2), it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

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

1. Tourism facilities that consist of new hotels and motels must create 20 new, full-time jobs in order to qualify for the credit. Other tourism facilities defined in S.C. Code Ann. § 12-6-3360(M)(12) are only required to increase employment by 10 new, full-time jobs. See the definition of "tourism facility" for requirements regarding the types of qualifying jobs.

2. A qualifying service-related facility must either (a) create 25 to 175 new, full-time jobs at a single location based upon average cash compensation listed below, or (b) be a facility classified under North American Industry Classification System Manual ("NAICS") Section 62, subsectors 621 (ambulatory health care services), 622 (hospitals), or 623 (residential care facilities) or (c) be an establishment engaged in activities in support of air transportation (Section 4881, subsector 488190 of the NAICS). A taxpayer who is qualifying under (a) above must create:

   - 175 jobs at a single location; or
   - 100 jobs at a single location where the average cash compensation for those jobs is 1.5 times the county or state average (whichever is lower); or
   - 50 jobs at a single location where the average cash compensation for those jobs is 2 times the county or state average (whichever is lower); or
   - 25 jobs at a single location where the average cash compensation for those jobs is 2.5 times the county or state average (whichever is lower); or

- 150 jobs at a single location comprised of a building or portion of a building that has been vacant for at least 12 consecutive months prior to the taxpayer's investment in the facility.

NOTE: For purposes of the jobs tax credit, a qualifying service-related facility may not be engaged in legal, accounting, banking, investment services, or retail sales. See exceptions for job development purposes discussed in item 10.a. of this chapter.

3. A "professional sports team" must have an annual payroll for federal tax purposes of at least $190 million and at least 150 full-time employees in South Carolina. In order to claim the credit, a professional sports team must create the jobs by July 1, 2022. However, a team that has entered into a revitalization agreement with the Coordinating Council before that date is not subject to this deadline.

The per capita income for each county is received annually from the South Carolina Revenue and Fiscal Affairs Office. The most recent data available as of November 2022 is listed below.

COUNTY	PER CAPITA INCOME	COUNTY	PER CAPITA INCOME	COUNTY	PER CAPITA INCOME
Abbeville	$40,596	Dillon	$39,567	Marion	$41,519
Aiken	$51,057	Dorchester	$46,857	Marlboro	$37,933
Allendale	$41,814	Edgefield	$45,299	McCormick	$44,391
Anderson	$46,894	Fairfield	$48,634	Newberry	$46,917
Bamberg	$41,081	Florence	$51,554	Oconee	$52,336
Barnwell	$41,828	Georgetown	$57,656	Orangeburg	$42,376
Beaufort	$70,166	Greenville	$55,442	Pickens	$43,842
Berkeley	$48,919	Greenwood	$44,723	Richland	$52,980
Calhoun	$50,375	Hampton	$41,689	Saluda	$44,503
Charleston	$73,032	Horry	$46,817	Spartanburg	$50,596
Cherokee	$40,230	Jasper	$41,531	Sumter	$47,046
Chester	$43,169	Kershaw	$50,635	Union	$40,821

COUNTY	PER CAPITA INCOME	COUNTY	PER CAPITA INCOME	COUNTY	PER CAPITA INCOME
Chesterfield	$39,538	Lancaster	$55,033	Williamsburg	$40,746
Clarendon	$44,874	Laurens	$41,245	York	$56,566
Colleton	$42,481	Lee	$41,364		
Darlington	$47,845	Lexington	$55,034		

The per capita income for the state is generally published twice a year. The most recent state per capita income as of April 2023 is $ 53,320.

c. Definition of "Full-Time" and "New Job"

The terms "full-time" and "new job" are defined in the statute. A "full-time" job is one requiring a minimum of 35 hours of an employee's time each week for the entire normal year of company operations. Two half-time jobs requiring a minimum of 20 hours of each employee's time a week qualify as one "full-time" job. Additionally, seasonal workers in agricultural packaging and agribusiness operations may be considered full-time. However, a seasonal employee only counts as a fraction of a full-time worker, with the numerator being the number of hours worked a week multiplied by the number of weeks worked and the denominator being 1,820.

A "new job" is a job created in the state at the time a new facility or an expansion is initially staffed (See SC Revenue Ruling #05-5 for the meaning of "expansion.") A "new job" also includes existing jobs which are reinstated after the employer has rebuilt a facility (1) because of its destruction (more than 50% of the facility) by accidental fire, natural disaster, or act of God, or (2) due to involuntary conversion as a result of condemnation or exercise of eminent domain (as determined under the statute) by the state, political subdivisions of the state, or the federal government.

The term "new job" does not include a job created when an employee is shifted from an existing South Carolina location to a new or expanded facility whether the transferred job is from, or to, a facility of the taxpayer or a related person. However, a "new job" includes a job shifted from an existing facility of the taxpayer in South Carolina to a new or expanded facility located in a county that has an "applicable federal facility" as that term is defined in S.C. Code Ann. § 12-6-3450(A)(1)(b).

NOTE: S.C. Code Ann. § 12-6-3450 has been repealed and there is no longer a definition of "applicable federal facility" as referenced in the definition of "new job". Therefore, this special exception contained in the definition of "new job" is no longer operative.

d. County Rankings

The amount of credit that a business may receive for each job created is determined by the county where the business's facility is located. There are 4 categories of counties; Tier I, Tier II, Tier III and Tier IV. The rankings are now done with equal weight given to unemployment rate and per capita income for the counties.

The county rankings are updated once a year, usually in December and are effective as of January 1st of the following year. For 2023, the county rankings are as follows:

TIER IV	TIER III	TIER II	TIER I
Allendale	Abbeville	Anderson	Aiken
Bamberg	Chesterfield	Calhoun	Beaufort
Barnwell	Clarendon	Dorchester	Berkeley
Cherokee	Colleton	Edgefield	Charleston
Chester	Darlington	Florence	Greenville
Dillon	Fairfield	Georgetown	Kershaw
Lee	Greenwood	Hampton	Lexington
Marion	Horry	Lancaster	Newberry
Marlboro	Jasper	Pickens	Oconee
Orangeburg	Laurens	Saluda	Richland
Union	McCormick	Spartanburg	York
Williamsburg	Sumter		

Companies planning significant expansions may lock-in the current county designation without regard to whether the ranking of the particular county in which the company is planning its project changes by filing a Form SC616. In order to ensure qualification for a planned expansion of jobs, companies should file Form SC616 before the initial staffing of the new facility or expansion begins. This will ensure the company that the Department is aware of the planned expansion and that the company will be entitled to the designated credits in future years without regard to whether a particular county's designation changes in a later year.

e. Credit Amount

The "basic" job tax credit amounts under the traditional annual job tax credit are listed below:

- $25,000 per year for each new, full-time job created in a Tier IV county
- $20,250 per year for each new, full-time job created in a Tier III county
- $2,750 per year for each new, full-time job created in a Tier II county
- $1,500 per year for each new, full-time job created in a Tier I county.

A company may be entitled to an "additional" $1,000 job tax credit amount for each new, full-time job created by a company in the following locations:

1. At a facility that is located in a multicounty park. Two or more counties determine if an area in the county is designated as a multicounty park by entering into an agreement. This determination is not made by the Department.

2. At a facility that is located on a property where a response action has been completed pursuant to a nonresponsible party voluntary cleanup contract under Title 44, Chapter 56, Article 7, the Brownfields Voluntary Cleanup Program ("Brownfields Site"). Qualifying taxpayers must have a certification of completion from the South Carolina Department of Health and Environmental Control.

NOTE: The maximum credit amount that may be claimed for any tax year for a single employee under the job tax credit statute and the "basic" part of the family independence credit under S.C. Code Ann. § 12-6-3470(A), is $5,500. The $5,500 limitation is not applicable to a taxpayer qualifying for the job tax credit in a Tier IV county. A taxpayer may choose not to claim the family independence credit to maximize the job tax credit. See the discussion in Section 13 below regarding the family independence credit.

The job tax credit taken in one tax year may not exceed 50% of the taxpayer's income tax, bank tax, or insurance premium tax liability. If the credit is passed through, the 50% limitation is determined at the shareholder, partner, or member level. An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders. The amount of credit allowed a shareholder, partner, or member of a limited liability company is equal to the shareholder's percentage of stock ownership, partner's interest in the partnership, or member's interest in the limited liability company for the taxable year multiplied by the amount of the credit the entity would have been entitled to if it was taxed as a corporation.

Any unused credit may be carried forward for 15 years.

f. Calculating the Credit

The job tax credit is claimed on the taxpayer's tax return for 5 years provided those jobs are maintained in the year in which the credit is claimed. The credit is <u>not</u> claimed in the year the new jobs are created. The number of new and additional new full-time jobs is determined by comparing the monthly average number of full-time employees subject to South Carolina income tax withholding in the applicable county for the taxable year with the monthly average for the prior taxable year.

A taxpayer investing at least $50 million at a "single site" within a 3-year period may elect to determine the number of new, full-time jobs created by using the monthly average number of

full-time jobs created at that one site. The statute defines “single site” as a stand-alone building whether or not several stand-alone buildings are located in one geographical location.

The credit is adjusted for job increases or job decreases and is allowed for the job level maintained in the taxable year that the credit is claimed. No credit is allowed for the year or any subsequent year in which the net increase in employment falls below the minimum level of 10. If the job level for which a credit was claimed decreases, the 5-year period for eligibility for the credit continues to run. A decrease of jobs that does not fall below the minimum 10 jobs required to be maintained will result in the credit being allowed in Years 2 through 6 only for those jobs that are maintained. Additional credits are allowed for increases in full-time jobs, if the company already qualifies for the credit. This additional credit is earned for jobs created in Years 2 through 6 of a qualified credit period and runs for 5 years beginning the year after the jobs are created.

g. Frequently Asked Questions and Helpful Tips

SC Revenue Ruling #99-5 provides numerous questions and answers regarding the “traditional” annual job tax credit as does SC Revenue Ruling #19-11. In addition, the instructions to the job tax credit form, Form TC4, provide helpful examples regarding the computation of the job tax credit.

Helpful tips to remember concerning the job tax credit include:

- To qualify for the credit, a business must be a certain type of business and must create a required minimum number of new, full-time jobs at the time a new facility or expansion is initially staffed.

- In general, the job tax credit amount is based on the county designation during the year the new jobs are actually created. However, if Form SC616 is filed, the credit is based on (1) the county designation at the time the SC616 is filed or (2) the county designation at the time the new jobs are created, whichever county designation results in the largest credit.

- Form SC616 is not required to be filed; it is a planning tool that can prove to be beneficial if the county ranking where the jobs are to be created changes prior to creation of the jobs. The filing of Form SC616 “locks in” a county designation; it cannot be detrimental to a taxpayer. Form SC616 is valid for all new jobs created during the original credit period. Additionally, any increases in new jobs occurring during this original credit period are automatically included in the “lock-in” period. Form SC616 is required to be sent to the Department before the initial staffing of the new facility.

- Whether or not Form SC616 is filed, the credit generated in any applicable year and claimed for 5 subsequent years is not affected by any future re-designation of the county in subsequent years.

- The year a job is created is not the year in which the credit may be claimed. The credit for that job creation may first be claimed in the tax year after the job was created.

- The statute requires a monthly average increase of new, full-time jobs (ranging from 10 to 175 jobs) to be created in the tax year and be maintained for a taxpayer to qualify for the credit. When computing the increase in new, full-time jobs each year, the taxpayer must round down to the lowest whole number of jobs. The credit is not earned when a total of 10 jobs are created by the end of a tax year or when a total of 10 jobs are created over several years.

- The months to reflect on Form TC-4 are the months of the business' tax year. Further, an appropriate and justifiable day in the month to determine the monthly number of new, full-time employees, such as the last day of each month, must be used. Once a day of the month is chosen, it must be used for all future months and years.

- Generally, the credit is computed on a county-by-county basis. The credit is not computed on a facility-by-facility basis or on a statewide basis. A taxpayer may not transfer employees from one county to another county to create a qualifying job increase.

- A computer designed form or spreadsheet is acceptable in lieu of Form TC-4 provided all information on Form TC-4 is reflected on the substitute form.

- Form TC-4 should be completed for each taxable year, even if there is no South Carolina taxable income. This allows the taxpayer to claim the credit and establish a credit carryforward. Any unused credit can be carried forward 15 years from the taxable year in which it is earned.

- The credit generated by a pass-through entity is limited to 50% of the partner's, shareholder's, or member's income tax liability or married couple's income tax liability. Once the credit is passed through by the entity generating it, the credit may not later be used by the entity.

- During the original credit period, a business can take credit for additional new, full-time jobs added in subsequent eligible years even if fewer than 10 additional jobs are added. This additional credit is claimed for 5 years beginning in the year following the year in which the qualifying additional new, full-time jobs are created, provided the jobs are maintained for the year that the business is claiming the credit.

- The credit amount for any number of additional new, full-time jobs is based on the county designation at the time Form SC616 is filed or the county designation for the year the additional new, full-time jobs are created, whichever results in the largest credit.

  If Form SC616 is not filed, the credit amount for any additional new, full-time jobs created is based on the county designation for the year the additional new jobs are created.

- The merger, consolidation, or reorganization of a taxpayer where tax attributes survive does not create new eligibility in a succeeding taxpayer, but unused credits may be transferred to, and continued by, the succeeding taxpayer subject to the limitations in I.R.C. § 383. In addition, a taxpayer may assign its rights to the job tax credit to another taxpayer if it transfers all, or substantially all, of the assets of a business or operating division related to the generation of the credit to another taxpayer and the required number of new jobs is maintained.

- The job tax credit cannot be sold and is nonrefundable.

h. Example

An example is provided below to explain the "traditional" annual job tax credit calculation.

NOTE: This example assumes that the jobs are created in 2022 and that no Form SC616 was filed in connection with this new facility.

The job tax credit calculation is a 3 step process:

Step 1 - Compute the monthly average increase in full-time employees

Step 2 - Compute the employees eligible for the credit

Step 3 - Compute the eligible credit amount

This example is based on the following facts. The taxpayer, a calendar year taxpayer, has one manufacturing facility located in a Tier IV county that is not located in a multicounty park or on a Brownfields Site. The taxpayer initially staffed the new facility by hiring 12 new full-time employees on January 1, 2022.

NOTE: For simplicity, the example shows the credit computation for Years 2 through 6 (2023-2027) only. The example does not show the entire 5-year credit period for additional jobs created in 2023 through 2027.

STEP 1: COMPUTATION OF AVERAGE INCREASE IN FULL TIME EMPLOYEES							
	Prior Year (2021)	**Year 1 (2022)**	**Year 2 (2023)**	**Year 3 (2024)**	**Year 4 (2025)**	**Year 5 (2026)**	**Year 6 (2027)**
1. Cumulative Total of Full Time Employees in Each County for Each Month. (*e.g.*, Year 1 has 12 employees working 12 months)	0	144	168	156	192	276	288
2. Divided by Number of Months in Operation	0	12	12	12	12	12	12
3. Monthly Average of Full-time Employees	0	12	14	13	16	23	24
4. Less: Previous Year Monthly Average		0	12	14	13	16	23
5. Average Increase in Full Time Employees (Line 3 minus Line 4)		12	2	(1)*	3	7	1

STEP 2: COMPUTATION OF EMPLOYEES ELIGIBLE FOR CREDIT					
	Year 2	**Year 3**	**Year 4**	**Year 5**	**Year 6**
Year 1 Increase	12	12	12	12	12
Year 2 Increase		1**	1	1	1
Year 3 Increase			0	0	0
Year 4 Increase				3	3
Year 5 Increase					7
Number of New Jobs	12	13	13	16	23

***NOTE**: The Year 3 decrease of 1 job (see Step 1) affects the computation of employees eligible for the credit in Step 2 as follows:

1. **The Year 2 increase is reduced by 1 job (2 job increase in Year 2 minus 1 job decrease in Year 3) in Years 3 through 7 since the credit may be claimed in Year 3 only for those jobs created in Year 2 and maintained in subsequent years.

2. The Year 3 increase is 0 in Years 4 through 8 since there was an average decrease of jobs.

STEP 3: COMPUTATION OF ELIGIBLE CREDIT AMOUNT					
	Year 2 (2023)	**Year 3 (2024)**	**Year 4 (2025)**	**Year 5 (2026)**	**Year 6 (2027)**
Number of New Jobs	12	13	13	16	23
Multiply by Credit Amount for a Tier IV County	$25,000	$25,000	$25,000	$25,000	$25,000
Job Tax Credit (Limited to 50% of tax liability)	$300,000	$325,000	$325,000	$400,000	$575,000

NOTE: This example only shows the entire credit period for the initial 12 jobs created in 2022. The credit is first claimed in the year following the creation of the new jobs; it is not claimed in the year the new jobs are created. For example, qualifying new jobs created in this example in the 2022 tax year generate a credit available for first use on the 2023 tax return, filed April 15, 2024. Additional credits are created for any job increases in 2023, 2024, 2025, and 2026. The credit for the 2023 increase is claimed on the 2024 through 2028 tax returns; the credit for the 2024 increase is claimed for 5 years beginning with the 2025 tax return, and so on, providing the jobs are maintained.

9.B. SMALL BUSINESS JOB TAX CREDIT – Applicable To Qualifying Taxpayers with 99 or Fewer Employees Worldwide

a. General Provisions

General Provisions. S.C. Code Ann. §§ 12-6-3360(C)(2) and 12-6-3362 provide a job tax credit against South Carolina income tax, bank tax, or insurance premium tax for most types of small businesses (*i.e.,* a business with 99 or fewer employees worldwide) creating and maintaining new jobs in South Carolina. Corporations, sole proprietorships, partnerships, S corporations, and limited liability companies are eligible for the credit. To be eligible for this new job tax credit, the qualifying small business must generally create and maintain a monthly average increase of 2 new, full-time jobs.

The credit amount is determined by the South Carolina county where the taxpayer's facility is located and the amount of gross wages paid to each employee. The "basic" credit amount for each new job for the small business job tax credit ranges from $750 to $25,000 per year. Further, "additional" credit amounts for each new qualifying job, subject to certain dollar limitations, may be available to businesses in particular locations, (*e.g.,* in a multicounty park or on a Brownfields Site.)

"Annual" Small Business Job Tax Credit (Claimed in Years 2 – 6). S.C. Code Ann. § 12-6-3360(C)(2) provides the credit is first claimed on the taxpayer's tax return for the year following the creation of the new jobs (For example, jobs created in Year 1 are claimed in Year 2), provided the jobs are maintained. The credit is adjusted for job increases or decreases. No credit is allowed for the year or any subsequent year in which the net increase in employment falls below the minimum level. During the original 5-year credit period, a credit is also allowed for additional new, full-time jobs created during that period. Any unused credit may be carried forward for 15 years. The credit is claimed on Form TC-4SB, "Small Business Job Tax Credit."

"Accelerated" Small Business Job Tax Credit (Claimed in Years 1 – 5). S.C. Code Ann. § 12-6-3362 provides the credit is first claimed on the taxpayer's tax return beginning with the year the new jobs are created (Year 1). The credit is adjusted for job increases or decreases. No credit is allowed for the year or any subsequent year in which the net employment falls below the minimum level. During the original 5-year credit period, a credit is also allowed for additional new, full-time jobs created beginning in the year the qualifying additional new jobs are created. Any unused credit may be carried forward for 15 years. The credit is claimed on Form TC-4SA, "Alternative Small Business Job Tax Credit."

Comparison of "Annual" and "Accelerated" Small Business Job Tax Credits. This simplified example is provided to illustrate the differences between the annual and the accelerated small business job tax credit. The differences are: (1) the effect that the following year(s) have on the number of jobs eligible for the current year credit (*i.e.,* referred to as "maintained" throughout this summary) and (2) what year the 5-year period for claiming the credit starts.

This example assumes the corporate taxpayer is a manufacturing facility, the facility is not located in a multicounty park or on a Brownfields Site, and taxpayer initially staffed the new facility on January 1, 2022 with 5 new full-time jobs.

Year of Job Creation:	**Prior Year**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 6**
Monthly Average Number of Jobs	0	5	3	2	1	2	2
Number of Jobs "Maintained" During Tax Year		5	Lost 2 of 5 jobs = 3 maintained	Lost 1 job = 2 jobs maintained	Lost 1 job – 1 job maintained	Hired 1 job = 2 jobs maintained	Hired 0 jobs = 2 jobs maintained

Year Credit is Claimed:	**Year 1 (2022)**	**Year 2 (2023)**	**Year 3 (2024)**	**Year 4 (2025)**	**Year 5 (2026)**	**Year 6 (2027)**
Annual Credit – Number of Jobs Qualifying		3	2	0	0	2
Accelerated Credit – Number of Qualifying Jobs	5	3	2	0	2	

Annual Small Business Credit Method. This example illustrates the following:

- The credit is first claimed in Year 2 for jobs created in Year 1 and continues for a 5-year period through Year 6. For example, the credit for the jobs created in 2022 is claimed in 2023 – 2027.

- The number of jobs maintained in the following year affects the amount of credit that can be claimed. For example, the taxpayer created 5 jobs in Year 1, but only "maintained" 3 jobs in Year 2. As a result, credit for jobs created in Year 1 which is first claimed in Year 2 is allowed for only the 3 jobs maintained in year 2.

- No credit is allowed for any year that the increase in jobs fall below 2. See Year 4 and its effect on the annual credit claimed in Year 4 (2025) and Year 5 (2026).

Accelerated Small Business Credit Method. This example illustrates the following:

- The credit is first claimed in Year 1 for jobs created in Year 1 and continues for a 5-year period through Year 5. For example, the credit for the jobs created in 2022 is claimed in 2022 – 2026.

- The number of jobs maintained in the following year does not affect the current year credit. As a result, the credit first claimed in Year 1 is allowed for all 5 jobs, the credit in Year 2 is allowed for 3 jobs, etc. (Note: The credit is not allowed for 5 years for the 5 original jobs since they were not maintained.)

- No credit is allowed for any year that the minimum increase in jobs falls below 2. See Year 4 and its effect on the accelerated credit claimed in Year 4 (2025).

NOTE: The basic "annual" job tax credit principles for small businesses are discussed in more detail below. Be aware that the credit statute rules, requirements, and computations can be complex. For additional guidance on more complex principles and exceptions to the general rules discussed below, see S.C. Code Ann. § 12-6-3360; SC Revenue Ruling #07-2, a detailed question and answer advisory opinion on computing the job tax credit for small businesses with 99 or fewer employees worldwide; SC Revenue Ruling #99-5, a comprehensive question and answer advisory opinion addressing credit issues after a substantial amendment in 1996; SC Revenue Ruling #19-11 which discusses matters related to the new increased credit amounts for Tier III and Tier IV counties; and consult your tax advisor.

b. Types of Qualifying Businesses

The following chart summarizes the types of small businesses that may be eligible to qualify for the small business job tax credit and the number of new, full-time jobs that must be created by the business in a particular South Carolina county.

Qualifying Facility	**County Ranking**				**Monthly Average Job Creation Requirement**
	Tier IV	**Tier III**	**Tier II**	**Tier I**	
1. Manufacturing	Yes	Yes	Yes	Yes	2
2. Processing	Yes	Yes	Yes	Yes	2
3. Warehousing	Yes	Yes	Yes	Yes	2
4. Distribution	Yes	Yes	Yes	Yes	2
5. Research & Development	Yes	Yes	Yes	Yes	2
6. Corporate Office	Yes	Yes	Yes	Yes	2
7. Technology Intensive	Yes	Yes	Yes	Yes	2
8. Banking	Yes	Yes	Yes	Yes	2
9. Tourism	Yes	Yes	Yes	Yes	2, except 20 for a new hotel or motel
10. Agribusiness operations	Yes	Yes	Yes	Yes	2
11. Agricultural Packaging	Yes	Yes	Yes	Yes	2
12. Extraordinary Retail Establishment	Yes	Yes	Yes	Yes	2
13. Retail Facility (*e.g.,* a convenience store, restaurant, florist, photographer, machine shop, interior design, repair shop selling tangible personal property)	Yes	No	No	No	2
14. Service Related Industry (*e.g.,* seamstress, hair stylist, lawn care, childcare, construction contractor, painter, repair services, trucking or hauling, roofer, janitorial services, courier services, security services, accounting, legal, investment services, accounting, investment services, call centers, mortgage processing)	Yes	No	No	No	2

Qualifying Facility	County Ranking				Monthly Average Job Creation Requirement
	Tier IV	Tier III	Tier II	Tier I	
15.a.Qualifying Service-Related Facility – health care (*e.g.,* hospital, health related services) and air transportation support	Yes	Yes	Yes	Yes	2
15.b. Qualifying Service-Related Facility – other (*e.g.,* call centers, mortgage processing centers, but not legal, accounting, investment services, or retail sales)	Yes	Yes	Yes	Yes	25- 175 at a single location based on certain average cash compensation amounts or other criteria. See S.C. Code Ann. § 12-6-3360(M)(13)(b).
16. Professional Sports Team (if jobs are created by, or revitalization agreement entered into, before July 1, 2022)	Yes	Yes	Yes	Yes	150 and annual federal payroll of $190 million

The statute contains definitions of "manufacturing facility," "processing facility," "warehousing facility," "distribution facility," "research and development facility," "corporate office facility," "qualifying service-related facility," "tourism facility," "extraordinary retail establishment," "agricultural packaging," "technology intensive facility," and "professional sports team." Further, S.C. Code Ann. Regs. 117-750.1 defines the term "facility."

In general, a small business taxpayer must increase employment by a monthly average of 2 new, full-time jobs to qualify for this credit.

NOTE: For illustrative purposes, the number of new, full-time jobs required to be created is referred to as "2" throughout the summary of this incentive. Be aware that exceptions to this general rule exist for certain "tourism" facilities," "qualifying service-related facilities," and "professional sports teams."

The per capita income for each county is received annually from the South Carolina Revenue and Fiscal Affairs Office, usually in November or December. Upon receipt, the Department publishes an Information Letter listing the most recent per capita income data for each county and the state. This information can be obtained from the Department's website at www.dor.sc.gov. See Section 9.A.b. for a listing of the per capita income data for each county as of November 2022 and for the State as of April 2023.

c. Definition of "Full-Time" and "New Job"

The terms "full-time" and "new job" are defined in the statute. A "full-time" job is one requiring a minimum of 35 hours of an employee's time each week for the entire normal year of company operations. Two half-time jobs requiring a minimum of 20 hours of each employee's time a week qualify as one "full-time" job. Additionally, seasonal workers in agricultural packaging and agribusiness operations may be considered full-time. However, a seasonal

employee counts as a fraction of a full-time worker, with the numerator being the number of hours worked a week multiplied by the number of weeks worked and the denominator being 1,820.

A "new job" is a job created in the state at the time a new facility or an expansion is initially staffed (See SC Revenue Ruling #05-5 for the meaning of "expansion.") The term "new job" does not include a job created when an employee is shifted from an existing South Carolina location to a new or expanded facility whether the transferred job is from, or to, a facility of the taxpayer or a related person.

d. County Rankings

The amount of credit that a small business qualifying for the small business job tax credit may receive for each job created is determined, in part, by the county where the business's facility is located. Rankings are done with equal weight given to unemployment rate and per capita income and the counties are ranked as either Tier I, Tier II, Tier III or Tier IV. These rankings will be based solely on the unemployment rate and the per capita income for each county.
The county rankings are updated once a year, usually in December and are effective as of January 1st of the following year. For 2023, the county rankings are as follows:

TIER IV	TIER III	TIER II	TIER I
Allendale	Abbeville	Anderson	Aiken
Bamberg	Chesterfield	Calhoun	Beaufort
Barnwell	Clarendon	Dorchester	Berkeley
Cherokee	Colleton	Edgefield	Charleston
Chester	Darlington	Florence	Greenville
Dillon	Fairfield	Georgetown	Kershaw
Lee	Greenwood	Hampton	Lexington
Marion	Horry	Lancaster	Newberry
Marlboro	Jasper	Pickens	Oconee
Orangeburg	Laurens	Saluda	Richland
Union	McCormick	Spartanburg	York
Williamsburg	Sumter		

In order to ensure qualification for a planned expansion of jobs, companies should file Form SC616 before the initial staffing of the new facility or expansion begins. This will ensure the company that the Department is aware of the planned expansion and that the company will be entitled to the designated credits in future years without regard to whether a particular county's designation changes in a later year.

e. Credit Amounts

Basic Credit Amounts:

In general, the "basic" job tax credit amount for each new, full-time job created under the small business job tax credit and maintained by a small business is substantial and can be either the "100% credit amount" or the "50% credit amount." The credit amount depends on: (1) the county where the taxpayer is located and (2) the amount of gross wages paid to each new, full-time employee. The "basic" job tax credit amounts available to a small business creating a monthly average of 2 or more new, full-time jobs are the:

- "50% credit amount" – This amount ranges from $750 to $12,500 per year per job for a taxpayer who pays gross wages per job below 120% of the county or state average per capita income (whichever is less). The amount depends upon the location of the business.

- "100% credit amount" – This amount ranges from $1,500 to $25,000 per year per job for a taxpayer who pays gross wages per job at or above 120% of the county or state average per capita income (whichever is less). The amount depends upon the location of the business. The "100% credit amount" and the "50% credit amount" are dependent, in part, on the "wage category" of the minimum number of required jobs and the "wage category" of each additional job. The following rules apply in determining the credit amount.

- For a small business taxpayer to qualify for the "100% credit amount," the minimum 2 new, full-time jobs must be created paying gross wages at or above the 120% wage threshold "wage category." The credit amount for each additional job created over the minimum during the original credit period is determined separately based upon the wage category of each additional job (*i.e.,* some additional jobs may qualify for the "50% credit amount" and other additional jobs may qualify for the "100% credit amount").

- If a small business taxpayer creates the minimum 2 new, full-time jobs with one job paying at or above the 120% wage threshold and the other job paying below the 120% wage threshold, then the taxpayer would be eligible only for the "50% credit amount" for these 2 jobs. The credit amount for any additional jobs created over the minimum is determined separately and will be eligible for either the "50% credit amount" or the "100% credit amount," depending on the wage category of each additional new job.

In general, the credit is also based on the county ranking at the time the new jobs are created in Year 1. The credit amount during the credit period for the jobs created in Year 1 is not affected by any future re-ranking of the county in which the taxpayer is located in a subsequent year.

Where new, full-time jobs are created during years 2-6, each additional qualifying job may be eligible for the "50% credit amount" or the "100% credit amount," depending on the wage category of each additional job. The credit amount for additional new jobs in years 2-6 is based

on the county designation for the year the additional new, full-time jobs are created; it is not affected by any future re-ranking of the county in which the taxpayer is located.

The "basic" credit amounts by county ranking and wage category per qualifying job are listed below, subject to statutory rules and computations discussed in this summary.
The credit amounts are as follows:

County Designation (Location of Taxpayer)	**"100% Credit Amount" *i.e.,* Gross Wages Per Job Greater Than or Equal To 120% County or State Average Per Capita Income, Whichever is Less**	**"50% Credit Amount" *i.e.,* Gross Wages Per Job Less Than 120% County or State Average Per Capita Income, Whichever is Less**
Tier IV	$25,000	$12,500
Tier III	$20,250	$10,125
Tier II	$2,750	$1,375
Tier I	$1,500	$ 750

Additional Credit Amounts:

Further, a small business qualifying for the "basic" job tax credit may be entitled to an "additional" $1,000 job tax credit for each new, full-time job created and maintained, if the facility is located in:

1. A multicounty park. Two or more counties determine if an area in the county is designated as a multicounty park by entering into an agreement. This determination is not made by the Department.

2. On property where a response action has been completed pursuant to a nonresponsible party voluntary cleanup contract under Title 44, Chapter 56, Article 7, the Brownfields Voluntary Cleanup Program ("Brownfields Site"). The company must receive a certification of completion from the South Carolina Department of Health and Environmental Control.

If a taxpayer qualifies for one of the "additional" credit amounts, the additional credit is the full $1,000 even for jobs receiving the 50% credit amount.

Maximum Credit Amounts:

The maximum "basic" and "additional" credit amounts that may be claimed for any tax year for a single employee under the small business job tax credit and the "basic" part of the family independence credit under S.C. Code Ann. § 12-6-3470(A), is $5,500. The $5,500 limitation is not applicable to a taxpayer qualifying for the job tax credit in a Tier IV county. A taxpayer may choose not to claim the family independence credit to maximize the job tax credit. See the discussion in Section 13 below concerning the family independence credit.

Credit Use and Limitations:

The job tax credit taken in one tax year may not exceed 50% of the taxpayer's income tax, bank tax, or insurance premium tax liability. If the credit is passed through, the 50% limitation is determined at the shareholder, partner, or member level. An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders. The amount of credit allowed a shareholder, partner, or member is equal to the shareholder's percentage of stock ownership, partner's interest in the partnership, or member's interest in the limited liability company for the taxable year multiplied by the amount of the credit the entity would have been entitled to if it was taxed as a corporation. Once the credit is passed through by the entity generating it, the credit may not later be used by the entity.

f. Gross Wages – Definition and Calculation of 120% Wage Category

As discussed above, the "basic" job tax credit amount for each new, full-time job created and maintained by a small business depends, in part, on the amount of gross wages paid to each new, full-time employee. The 120% wage threshold is determined for each job at the end of the taxpayer's tax year in which the jobs are created. This computation can involve a series of steps depending on when the jobs are created, the amount of gross wages paid, and whether both half-time and full-time jobs are created. The steps involved in determining the gross wage amounts are briefly described below.

Step 1 – Determine "Gross Wage" Amount Per Job:

For purposes of calculating the 120% county or state average per capita income requirement, "gross wages" are wages subject to withholding (*i.e.,* "net" wages after pretax benefits, such as pretax medical, dental, disability, retirement, 401(k) contributions, pretax dependent care plan deduction, and pretax medical reimbursement plans deductions).

A simplified example illustrates how the "gross wage" amount per job is determined. A new employee hired on January 1st by a manufacturer in X County who is paid $25 per hour gross or $52,000 per year elects pretax family medical and dental coverage of $100 per week ($5,200 per year), a $5,000 annual pretax medical reimbursement, a $5,000 pretax dependent care plan deduction, and a $4,000 401(k) contribution. This employee has "gross wages" subject to withholding (*i.e.,* "net wages" after pretax benefits) of $32,800 for purposes of the per capita computation.

Assume that the figures published by the Department indicate that the average per capita income for X County is $40,230, and this amount is less than the state average per capita income; the $32,800 "gross wage" amount subject to withholding is not 120% or more of the county or state average per capita income, and the new job would be eligible for the 50% credit amount. (See Steps 3 – 5 below.)

Step 2 – Annualize Gross Wage Amounts:

Since most jobs are not created on the first day of the tax year, the gross wages paid for each job must be annualized to determine if the 120% wage threshold is met. The annualized "net" wage amount is computed for each new, full-time job created in the tax year. In addition, each new, half-time job, if any, must be converted to a "full-time equivalent" and the annualized "net" wage amount must be determined for each, new "full-time equivalent" (two half-time jobs) job created in the tax year.

- The following explains the computation to annualize wages for full-time jobs.

  The 120% wage threshold for each full-time job is computed using the following formula:

  $$\frac{\text{Gross hourly wages}}{\text{Months worked in tax year}} \times 12 \text{ months}$$

  For example, assume a new, full-time job created July 1, 2021 pays a "gross wage" (*i.e.,* "net" wages after pretax benefits) of $35,000 for the 6 month period July 1, 2022 through December 31, 2022. The annualized "net" salary is $70,000 (*i.e.,* $35,000 ÷ 6 x 12). Assume that the state average per capita income is $50,000, and is below the average per capita income for the county in which the jobs are created based on the data available as of the end of 2022. Since the annualized salary of $70,000 is greater than 120% of the state average per capita income of $60,000 (120% x $50,000), the new job meets the 120% wage threshold for the year. If eligible, it would qualify for the 100% credit amount.

- The following explains the computations to annualize wages for "full-time equivalent" jobs (*i.e.,* half-time jobs.)

  The 120% wage threshold for each half-time job converted into a "full-time equivalent" is determined using the following formula:

  $$\frac{\text{Gross hourly wages}}{\text{Months worked in tax year}} \times 12 \text{ months} \times \frac{40 \text{ hours per Full-time work week}}{\text{half-time hours worked per week}}$$

  The following example illustrates the computation of "full-time equivalents" for half-time jobs created and the computation of the annualized gross wages.

  Half-time Job 1. This job is created on March 1, 2022 to work 20 hours per week at "gross wages" (*i.e.,* "net" wages after pretax benefits) of $35,000 for the 10-month period March 1, 2022 through December 31, 2022. The gross wages of this half-time job is $84,000 annualized on a full-time basis (*i.e.,* $35,000 ÷ 10 x 12 x 40 ÷ 20.) (**Note**: Half-time job 1 meets the 120% wage threshold – see Step 3. If eligible, it would qualify for the 100% credit

amount.) Assume that the state average per capita income is $50,000, and is below the average per capita income for the county in which the jobs are created based on the data available as of the end of 2022. Since the annualized salary of $84,000 is greater than 120% of the state average per capita income of $60,000 (120% x $50,000), it meets the 120% wage threshold for the year. If eligible, it would qualify for the 100% credit amount.

Half-time Job 2. This job is created on June 1, 2022 to work 25 hours per week at "gross wages" (*i.e.,* "net" wages after pretax benefits) of $8,000 for the 7-month period June 1, 2022 through December 31, 2022. The gross wages of this half-time job is $49,371 annualized on a full-time basis (*i.e.,* $18,000 ÷ 7 x 12 x 40 ÷ 25 (rounded).) (**Note:** Half-time job 2 does not meet the 120% wage threshold of $60,000 (see per capita assumption above) – see Step 3. If eligible, it would qualify for the 50% credit amount.)

Step 3 - Calculate 120% Wage Threshold:

At the end of the tax year in which the jobs are created, the following calculations must be made to "categorize" each employee by wage threshold amount. The calculation to determine the 120% wage threshold "categories" are:

- Determine the number of full-time and "full-time equivalent" employees paid gross wages in the "at or above" 120% wage threshold category for each month during the tax year. **Note:** Due to rounding down to the lowest whole number, fractions of jobs remaining in the "at or above" 120% wage threshold category are moved down to the monthly average computation for the below 120% threshold.

- Determine the number of full-time and "full-time equivalent" employees paid gross wages in the "below" 120% wage threshold category for each month during the tax year.

In making this calculation, the most recent county and state per capita income figures published by the Department as of the end of the taxpayer's tax year in which the new jobs are created must be used. For example, a calendar year small business creating new jobs in 2023 will use the state and county per capita income published in the Fall/Winter of 2022 to determine if the 120% threshold is met for each job created in its 2023 tax year.

g. Monthly Average Increase and Credit Amount

Step 4 – Compute the Monthly Average Increase in New Jobs:

The small business job tax credits require that a monthly average increase of 2 jobs or more in the tax year be created and maintained in the applicable county for a small business to qualify for the credit. See SC Revenue Ruling #07-2, Questions 8 – 10 and Examples A1 and A2 for more information on the basic calculation of the monthly average of full-time employees and the "combined" monthly average increase for taxpayers paying wages in both wage threshold categories.

NOTE: A monthly average increase of 2 jobs is not the same as creating a total of 2 jobs by the end of a tax year or creating a total of 2 jobs over several years. This computation is briefly described below.

- Compute the monthly average increase for employees paid gross wages in the "at or above" 120% wage threshold category. Due to rounding down to the lowest whole number, fractions of jobs remaining in the "at or above" 120% wage category are moved down to the monthly average computation for the "below" 120% wage threshold category. For more information on rounding methods, see SC Revenue Ruling #07-2, Question 19.

- Compute the monthly average increase for employees paid gross wages in the "below" 120% wage threshold category. If applicable, include any fractions of jobs remaining from the "at or above" 120% wage category moved to the monthly average increase of jobs in the "below" 120% wage threshold category due to rounding fractions of jobs from above.

The following illustrates a portion of the basic concepts used in the monthly average computation for full-time and half-time jobs paying "gross wages" at or above the 120% threshold. See SC Revenue Ruling #07-2, Example D for a more complete example illustrating this calculation. Example D, however, does not illustrate more complex concepts such as "combined" total monthly average increase or decrease in jobs for both wage categories, the treatment of job decreases in one threshold category, etc.

Months of Tax Year (*e.g.,* 2022)	**Prior Year (*e.g.,* 2021)**	**Total Full - Time Jobs In Year 1**	**Total "Full-Time Equivalents" of Half-Time Jobs in Year 1**	**Year 1 Total Jobs**
January	0	0	1.5	1.5
February	0	6	1.5	7.5
March	0	6	1.5	7.5
April	0	6	2	8
May	0	6	2	8
June	0	6	2	8
July	0	6	2	8
August	0	6	2	8
September	0	6	2	8
October	0	6	2	8
November	0	6	2	8
December	0	6	2	8
Cumulative Total of Full Time Jobs ≥120% for Each Month		66	22.5	88.5
Divided by Months in Operation				12
Monthly Average of New Jobs ≥120%				7.375
Less: Prior Year Monthly Average				0
Monthly Average Increase – Rounded Down to Lowest Whole Number (Fraction moves down to below 120% computation, if any)				7

Step 5 – Compute Credit for New Jobs Created in the "100% Credit Amount" and the "50% Credit Amount" Based on County Ranking:

- Once the monthly average increase for all jobs paying gross wages in the "at or above" 120% wage threshold category has been determined, the dollar value of the credit per job based on the designation on the county in which the taxpayer is located is used to determine the "100% credit amount."

- Once the monthly average increase for all jobs paying gross wages in the "below" 120% wage threshold category has been determined, the dollar value of the credit per job based on the designation of the county in which the taxpayer is located is used to determine the "50% credit amount."

Step 6 – Compute Total Credit for All New Jobs Created:

The monthly average increase (rounded to the lowest whole number) for full- and half-time jobs paying gross wages in the "at or above" 120% threshold is determined and multiplied by the credit amount for the county in which the taxpayer's business is located. Likewise, the monthly average increase is determined for full- and half-time jobs paying gross wages in the "below" 120% threshold category is determined and multiplied by the credit amount for the county in which the business is located. The sum of these amounts is the total job tax credit that may be claimed in Year 2 under the annual method assuming the jobs are maintained or Year 1 under the accelerated method, Reminder: The job tax credit taken in one tax year may not exceed 50% of the taxpayer's income tax, bank tax, or insurance premium tax liability.

See SC Revenue Ruling #07-2, Questions 19 - 23 and Example D for more information on computing the annual small business credit amount per job.

h. Frequently Asked Questions and Helpful Tips

SC Revenue Ruling #07-2, SC Revenue Ruling #99-5, and SC Revenue Ruling #19-11 provide numerous questions and answers regarding the job tax credit. Helpful tips to remember concerning the "annual" and "accelerated" small business job tax credit include:

- A small business is one with 99 or fewer total employees at all locations worldwide on either the first day or the last day of its tax year for the first year in which qualifying jobs are created.

- To qualify for the credit, a small business must be a qualifying type of business and must create a required minimum number of "new, full-time jobs," at the time a new facility or expansion is initially staffed.

- The "basic" credit amount can be the "50% credit amount" or the "100% credit amount." In general, the amount depends on the county in which the taxpayer's facility is located and the amount of gross wages paid to each new, full-time employee.

- To qualify for the "100% credit amount," a minimum of 2 new, full-time jobs must be created in the same "wage category," *i.e.,* the business pays gross wages at or above 120% of the county or state average per capita income, whichever is less. For example, if a monthly average increase of 2 new jobs are created in different wage categories (one job pays at or above the 120% threshold and the second job pays below the 120% wage threshold,) the taxpayer is eligible only for the "50% credit amount" for jobs 1 and 2. The credit amount for any additional job created during the original credit period (*e.g.,* job 3), however, is determined separately.

- For purposes of calculating the 120% county or state average per capita income threshold, "gross wages" are wages subject to withholding (*i.e.,* "net" wages after pre tax benefits, such as pretax medical and 401(k) contributions.)

- The 120% wage threshold for each new job is determined at the end of the tax year in which the jobs are created based on the most recent figures published by the Department.

- Gross wages for each new job created in the tax year must be annualized.

- In general, the job tax credit amount is based, in part, on the county designation during the year the new jobs are actually created. However, if Form SC616 is filed, the credit is based on (1) the county designation at the time the Form SC616 is filed or (2) the county designation at the time the new jobs are created, whichever county designation results in the largest credit. Form SC616 is required to be sent to the Department before the initial staffing of the new facility or expansion.

- Whether or not Form SC616 is filed, the credit generated by a job created in Year 1 and claimed in Year 1 (for the "accelerated" method) or claimed in Year 2 (for the "annual" method) and subsequent years is not affected by any future re-designation of the county in which the taxpayer is located for jobs created in Year 1.

  Annual Method. Year 1 is the year of job creation that generates a job tax credit. The credit is not claimed in Year 1.

  Accelerated Method. Year 1 is the year of job creation that generates a job tax credit. The credit is claimed in Year 1.

- The credit is for a 5-year period and is taken each year for 5 years, if the jobs are maintained.

  Annual Method. The credit is claimed in Years 2 - 6 on Form TC-4SB and the tax return.

  Accelerated Method. The credit is claimed in Years 1 - 5 on Form TC-4SA and the tax return.

- A monthly average increase of new, full-time jobs (ranging from 2 to 175 jobs) must be created in the tax year and be maintained for a taxpayer to qualify for the credit. The credit is not earned when a total of 2 jobs are created by the end of a tax year or when a total of 2 jobs are created over several years.

- When computing the increase in new, full-time jobs each year, the taxpayer must use the rounding down rules set forth in SC Revenue Ruling #07-2. For example, when computing the monthly average increase for the employees paid gross wages in the "at or above" 120% threshold category, fractions of jobs remaining in that wage category due to rounding down to the lowest whole number are moved to the monthly average computation for the "below" 120% threshold category.

- Generally, the credit is computed on a county-by-county basis. The credit is not computed on a facility-by-facility basis or on a statewide basis. A taxpayer may not transfer employees from one county to another county to create a qualifying job increase.

- Form TC-4SA or Form TC-4SB should be completed and attached to each year's tax return, even if there is no South Carolina taxable income. This allows the taxpayer to claim the credit and establish a credit carryforward. Any unused credit can be carried forward 15 years from the taxable year in which it is earned.

- The months to reflect on Form TC-4SA or Form TC-4SB are the months of the business' tax year. Further, an appropriate and justifiable day in the month to determine the monthly number of new, full-time employees, such as the last day of each month, must be used. Once a day of the month is chosen, it must be used for all future months and years.

- A computer designed form or spreadsheet is acceptable in lieu of Form TC-4SA or Form TC-4SB providing all information on Form TC-4SA or Form TC-4SB is reflected on the substitute form.

- The credit generated by a pass-through entity is limited to 50% of the partner's, shareholder's, or member's income tax liability or married couple's income tax liability. Once the credit is passed through by the entity generating it, the credit may not later be used by the entity.

  Annual Method. During the original 5-year credit period (Years 2 – 6), a business can take credit for additional new full-time jobs added, even if only 1 additional job is added. This additional credit is claimed in the year following the year in which the qualifying additional new, full-time jobs are created, providing the jobs are maintained.

  Accelerated Method. During the original 5-year credit period (Years 1 - 5), a business can take credit for additional new, full-time jobs added and maintained, even if only 1 additional job is added. This additional credit is claimed in the year the qualifying additional new, full-time jobs are created, and each following year for the jobs maintained.

- The credit amount for any number of additional new, full-time jobs is based on the county designation at the time Form SC616 is filed or the county designation for the year the additional, new full-time jobs are created, whichever results in the largest credit.

  If Form SC616 is not filed, the credit amount for any additional new, full-time jobs created is based on the county designation for the year the additional new jobs are created.

- The merger, consolidation, or reorganization of a taxpayer where tax attributes survive does not create new eligibility in a succeeding taxpayer, but unused credits may be transferred to, and continued by, the succeeding taxpayer subject to the limitations in I.R.C. § 383. In addition, a taxpayer may assign its rights to the job tax credit to another taxpayer if it transfers all, or substantially all, of the assets of a business or operating division related to the generation of the credit to another taxpayer and the required number of new jobs is maintained.

- The job tax credit cannot be sold and is nonrefundable.

i. Example – "Annual" Small Business Job Tax Credit (Claimed in Years 2 – 6)

CAUTION: This is an oversimplified example. It is provided only to illustrate an overview of the incentive available to a small business over the entire 5-year credit period (*i.e.,* Years 2 - 6 or Years 2023 - 2027.) This example assumes that the corporate taxpayer is a retail facility with one store in a Tier IV county, has a calendar year, initially staffed the new facility in May 2022, and hired all full-time employees at gross wages over the 120% threshold.

STEP 1: COMPUTATION OF AVERAGE INCREASE IN FULL-TIME EMPLOYEES OF EMPLOYEES PAID GROSS WAGES ≥ 120% THRESHOLD							
	Prior Year (2021)	**Year 1 (2022)**	**Year 2 (2023)**	**Year 3 (2024)**	**Year 4 (2025)**	**Year 5 (2026)**	**Year 6 (2027)**
1. Cumulative Total of Full-Time Employees in the County for Each Month. (e.g., See SC Rev. Rul. #07-2, Example A1, Taxpayer 2 – the number of employees in January plus number in February, etc.)	0	29	60	60	58	72	74
2. Divided by Number of Months in Operation	0	8	12	12	12	12	12
3. Monthly Average of Full-Time Employees (rounded down to lowest whole number)	0	3	5	5	4	6	6

STEP 1: COMPUTATION OF AVERAGE INCREASE IN FULL-TIME EMPLOYEES OF EMPLOYEES PAID GROSS WAGES ≥ 120% THRESHOLD							
	Prior Year (2021)	**Year 1 (2022)**	**Year 2 (2023)**	**Year 3 (2024)**	**Year 4 (2025)**	**Year 5 (2026)**	**Year 6 (2027)**
4. Less: Previous Year Monthly Average		0	3	5	5	4	6
5. Average Increase in Full-Time Employees (Line 3 minus Line 4)		3	2*	0	(1)*	2	0

***NOTE**: See Step 2, Year 2 Increase, Year 4. The Year 2 increase of 2 jobs is reduced by the 1 job since the 2 job increase in Year 2 is not maintained.

STEP 2: COMPUTATION OF EMPLOYEES ELIGIBLE FOR CREDIT WITH GROSS WAGES ≥ 120% THRESHOLD					
	Year 2	**Year 3**	**Year 4**	**Year 5**	**Year 6**
Year 1 Increase	3	3	3	3	3
Year 2 Increase		2	1*	1	1
Year 3 Increase			0	0	0
Year 4 Increase				0	0
Year 5 Increase					2

STEP 3: COMPUTATION OF ELIGIBLE CREDIT AMOUNT FOR NEW JOBS CREATED WITH GROSS WAGES ≥ 120% THRESHOLD					
	Year 2 (2023)	**Year 3 (2024)**	**Year 4 (2025)**	**Year 5 (2026)**	**Year 6 (2027)**
Number of New Jobs – at or above 120% threshold	3	5	4	4	6
Credit amount for a Tier IV county where the employer pays all new employees greater than 120% of the county or state average per capita income for all years	$25,000	$25,000	$25,000	$25,000	$25,000
Job Tax Credit (Line 1 x Line 2) (Limited to 50% of tax liability)	$75,000	$125,000	$100,000	$100,000	$150,000

NOTE: This example only shows the entire credit period for the initial 3 jobs created in 2022. The credit is first claimed in the year following the creation of the new full-time jobs; it is not claimed in the year the new full-time jobs are created. For example, qualifying new full-time jobs created in this example in the 2022 tax year generate a credit available for first use on the 2023 tax return, filed April 15, 2024, provided the jobs are maintained. Additional credits are created for the 2 job increase in 2023; it is claimed on the 2024 through 2028 tax returns if those jobs are maintained.

j. Example – "Accelerated" Small Business Job Tax Credit (Claimed in Years 1 – 5) (Uses Same Number of Jobs as Shown in Example i for Annual Small Business Job Tax Credit)

CAUTION: This is an oversimplified example. It is provided only to illustrate an overview of the incentive available to a small business over the entire 5-year credit period (*i.e.,* Years 1 - 5 or Years 2022 - 2026.) This example assumes that the corporate taxpayer is a retail facility with one store in a Tier IV county, has a calendar year, initially staffed the new facility in May 2022, and hired all full-time employees at gross wages over the 120% threshold.

STEP 1: COMPUTATION OF AVERAGE INCREASE IN FULL TIME EMPLOYEES OF EMPLOYEES PAID GROSS WAGES ≥ 120% THRESHOLD						
	Prior Year (2021)	**Year 1 (2022)**	**Year 2 (2023)**	**Year 3 (2024)**	**Year 4 (2025)**	**Year 5 (2026)**
1. Cumulative Total of Full-Time Employees in the County for Each Month. (e.g., See SC Rev. Rul. #07-2, Example A1, Taxpayer 2 – the number of employees in January plus number in February, etc.)	0	29	60	60	58	72
2. Divided by Number of Months in Operation	0	8	12	12	12	12
3. Monthly Average of Full-Time Employees (rounded down to lowest whole number)	0	3	5	5	4	6
4. Less: Previous Year Monthly Average		0	3	5	5	4
5. Average Increase in Full-Time Employees (Line 3 minus Line 4)		3	2*	0	(1)*	2

***NOTE**: See Step 2, Year 2 Increase, Year 4. The Year 2 increase of 2 jobs is reduced by the 1 job since the 2 job increase in Year 2 is not maintained in Year 4.

STEP 2: COMPUTATION OF EMPLOYEES ELIGIBLE FOR CREDIT WITH GROSS WAGES ≥ 120% THRESHOLD					
	Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**
Year 1 Increase	3	3	3	3	3
Year 2 Increase		2	2	1*	1
Year 3 Increase			0	0	0
Year 4 Increase				0	0
Year 5 Increase					2
Number of New Jobs	3	5	5	4	6

STEP 3: COMPUTATION OF ELIGIBLE CREDIT AMOUNT FOR NEW JOBS CREATED WITH GROSS WAGES ≥ 120% THRESHOLD					
	Year 1 (2022)	**Year 2 (2023)**	**Year 3 (2024)**	**Year 4 (2025)**	**Year 5 (2026)**
Number of New Jobs – at or above 120% threshold	3	5	5	4	6
Credit amount for a Tier IV county where the employer pays all new employees greater than 120% of the county or state average per capita income for all years	$25,000	$25,000	$25,000	$25,000	$25,000
Job Tax Credit (Line 1 x Line 2) (Limited to 50% of tax liability)	$75,000	$125,000	$125,000	$100,000	$150,000

NOTE: This example only shows the entire credit period for the initial 3 jobs created in 2022. The credit is first claimed the year the new jobs are created. For example, qualifying new jobs created in this example in the 2022 tax year generate a credit available for first use on the 2022 tax return, filed April 15, 2023. Additional credits are created for the 2 job increase in 2023; it is claimed on the 2023 through 2027 tax returns if the jobs are maintained for those years.

10. JOB DEVELOPMENT AND JOB RETRAINING CREDITS

South Carolina Code Title 12, Chapter 10, contains an economic development incentive designed to promote the growth of manufacturing, processing, warehousing, distribution, research and development, technology intensive, and other targeted businesses in South Carolina.

This incentive is referred to as the "job development credit." It is a discretionary incentive that allows businesses approved by the South Carolina Coordinating Council for Economic Development ("Council") to obtain a refund of employee withholding to reimburse the cost of approved business expenditures. The job development credit, contained in S.C. Code Ann. §§ 12-10-80 (general provision) and 12-10-81 (provision for tire manufacturers), is available to approved new or expanding businesses making a new capital investment and creating a minimum number of net new jobs in South Carolina. Because the qualifying requirements and the approval process of this incentive can be complex, the applicable South Carolina law and current Council applications and agreements should be carefully reviewed. A general overview of the incentive is provided below.

NOTE: The Council administers the approval of the "job development credit". They have developed rules concerning a business qualifying for and claiming the job development credit and these rules are generally set forth in the applicable applications and agreements.

a. Qualifying for a Job Development Credit

To qualify for the job development credit a business must be located, or locating, in South Carolina and must meet the following criteria:

1. The business must be primarily the type of business that qualifies for the job tax credit, such as a manufacturing, tourism, processing, distribution, research and development, or technology intensive facility. (See S.C. Code Ann. § 12-6-3360, S.C. Code Ann. Regs. 117-750.1, and Section 9 the discussion of the job tax credit above for the types of facilities qualifying for the job tax credit.)

   Special rules for qualifying service-related facilities for job development credit purposes only.

   i. The number of jobs required to qualify as a qualifying service-related facility is reduced. Instead of 175 jobs, a business only has to create 125 jobs with no minimum compensation requirements. Alternatively, a business can qualify if it creates 100 jobs and those jobs have an average compensation of one and a half times the lower of the state or county per capita income or a business can qualify if it creates 75 jobs and those jobs have an average cash compensation of twice the lower of the state or county per capita income.

   ii. All jobs created within the 5-year period can count towards meeting the job requirements. A business does not have to use the monthly average provided in S.C. Code Ann. § 12-6-3360(M)(13) and does not have to create the jobs in a single taxable year.

   iii. At the discretion of the Council, businesses generally engaged in legal, accounting, banking, or investment services operating at a single facility may qualify as a qualifying service-related facility if they would otherwise meet the requirements of a qualifying service-related facility for job development credit purposes.

   iv. Businesses generally engaged in retail sales at a single facility may qualify if that single facility would otherwise qualify as a qualifying service-related facility for job development credit purposes and provided that no retail sales are conducted at that single facility.

2. The business must provide a benefits package that includes health care to full-time employees at the project site where the investment is made.

3. The business must enter into a revitalization agreement with the Council.

4. The Council must determine that the negotiated incentives are appropriate for the project, and the Council must determine that the total benefits of the proposed project exceed the total costs to the public, and that the qualifying business otherwise fulfills the requirements of Chapter 10, Title 12.

5. The business must agree to create at least 10 net, new full-time jobs (“full-time” and “new job” are defined in S.C. Code Ann. § 12-6-3360) at the project within a period of time. A new job does not include an employee whose job was created in South Carolina before

the taxable year of the business in which the qualifying business enters into a preliminary revitalization agreement and job development credits may not be claimed on those employees.

NOTE: Although, a business is required by law to create at least 10 net new full-time jobs, the Council generally requires a business to create significantly more than 10 jobs in order to qualify a business for job development credits.

Special rules for related persons and the job development credit

A qualifying business may designate up to two "related persons" whose jobs and investments may be included in determining whether the qualifying business has met and maintained its minimum job and capital investment requirements required to claim the job development credits. To qualify, the related person's jobs and capital investment must be located at the qualifying business's project. Qualifying expenditures incurred by a related person may be treated as though they were incurred by the qualifying business and each related person may claim the job development credit for jobs created by the related person and may include any qualifying expenditures of the qualifying business or another related person as if they had been created and made by the related person.

A single member limited liability company (LLC) that is disregarded or a qualified subchapter S subsidiary (QSSS) as defined in Section 1361(b)(3)(B) of the Internal Revenue Code is treated as the qualifying business for all purposes of Chapter 10, Title 12; however, the LLC or QSSS counts as a related person for purposes of the two entity or person limit discussed above. S.C. Code Ann. § 12-10-80(A)(14).

A "related person" includes any entity or person that bears a relationship to a business as provided in I.R.C. §§ 267 or 707(b). The related person must be a "qualifying business" as defined in S.C. Code Ann. § 12-10-30, except the related person does not have to be engaged in a business of the type identified in the job tax credit statute, S.C. Code Ann. § 12-6-3360. S.C. Code Ann. § 12-10-30(19).

b. Application, Agreement, Certification, and Renewal Process

In order to receive the job development credit, a business must complete an application, a revitalization agreement, and a certification process. Once a business begins receiving the credit, it must participate in an annual renewal process. The entire process is briefly described below.

Step 1: Application Process – An application to receive the job development credit, accompanied by a $4,000 application fee and financial statements of the business, should be submitted to the Council prior to official announcement by a business of its South Carolina location or expansion. The nonrefundable application fee is required at the time of application. The application must include the following information:

- The number of existing full-time jobs at the facility, if any, as of the beginning of the taxable year in which the application is approved ("the "base employment")

- The number of new jobs that will be created (the "minimum job requirement")

- The total capital investment that will be made (the "minimum capital investment requirement.")

Step 2: Revitalization Agreement Process – If approved by the Council, the application generally serves as the "preliminary revitalization agreement." In order to have an expenditure reimbursed by the job development credit, the expenditure must be incurred during the term of the agreement or within 60 days before the Council's receipt of an application for job development credit benefits. A business must enter into a "final" revitalization agreement with the Council within twelve months from the date the application is approved. A revitalization agreement describes the project and the negotiated terms and conditions, including the minimum capital investment and minimum job requirements, for a business to qualify for the job development credit. The minimum job requirement represents both the minimum number of jobs that must be created and the maximum number of jobs for which the job development credits may be claimed.

Step 3: Certification Process – Once a final revitalization agreement has been executed, the qualifying business certifies to the Council in writing that the minimum capital investment and minimum job requirements have been met. As a general rule, a qualifying business must certify within 5 years of the date of approval of its application. The Council then certifies the business to the Department and notifies the business of the certification date. After such notification, the Department will send the business the appropriate withholding forms to use to claim the credit. The business may begin claiming job development credits the quarter following the quarter in which they certify. Withholding may only be refunded for quarters that begin after the Council's certification.

If a qualifying business fails to achieve the minimum capital investment or minimum job requirement by the date provided in the final revitalization agreement (usually 5 years from the date of approval), the Council may terminate the revitalization agreement and reduce or suspend all, or any part of, the incentives granted.

Step 4: Renewal Process – Once a business' application has been approved, it must remit certain renewal fees to stay in the job development program. The Council imposes an annual $500 renewal fee that is due June 30 of each year. Further, S.C. Code Ann. § 12-10-105 provides that a business claiming more than $10,000 in job development credits for a project in one calendar year must remit an annual $1,000 fee to the Department. The fee is used to reimburse the Department for costs incurred in auditing the project's job development credits at least once every 3 years.

c. Claiming a Job Development Credit

The job development credit is a credit against employee withholding tax. A business remits all South Carolina withholding to the Department as required under the withholding laws in Chapter 8 of Title 12 and claims a credit for the amount of allowable job development credits when it files the quarterly South Carolina withholding tax return. The withholding overpayment resulting from the job development credit is refunded to the business and must be used to reimburse the cost of qualifying expenditures.

To claim a job development credit for any quarter, the following requirements must be met:

1. The business must be current with respect to all South Carolina state taxes.

2. The business must maintain the base employment, the minimum job requirement and the minimum capital investment set forth in the revitalization agreement for the entire withholding quarter.

A business may claim a job development credit for up to 15 years, although the Council generally limits a business to collecting a job development credit for 10 years. The amount that may be claimed is based on the designation of the county in which the project is located and the gross wages paid to the employees at the project. The designation of the county at the time the application is received by the Council is "locked-in" and the county designation for purposes of the job development credit does not change in future years unless there is a new application for a new project and a new revitalization agreement is approved.

The credit amounts are as follows:

- A business located or to be located in a Tier IV county at the time the application is received by the Council may retain 100% of the allowable job development credit as provided in the revitalization agreement.

- A business located or to be located in a Tier III county at the time the application is received by the Council may retain 85% of the allowable job development credit as provided in the revitalization agreement.

- A business located or to be located in a Tier II county at the time the application is received by the Council may retain 70% of the allowable job development credit as provided in the agreement.

- A business located or to be located in a Tier I county at the time the application is received by the Council may retain 55% of the allowable job development credit as provided in the revitalization agreement.

The Council may waive a portion of these limits and allow a qualifying business to retain up to 95% of the job development credits it collects if it qualifies as: (a) a significant business making a significant capital investment, as defined in S.C. Code Ann. § 12-44-30(7) (generally an investment of at least $150 million and the creation of at least 125 new full-time jobs or a $400 million investment is required); or (b) a related person, as defined in S.C. Code Ann. § 12-10-80(D)(2), to the significant business if the related person qualifies for the job development credit and is located at the project site of the significant business.

If the project is located in a multicounty park, the credit is based on the designation of the county in which the park is physically located. However, if the park is located on the geographical boundary of adjacent counties and the multicounty park agreement requires revenues from the park to be allocated to each county equally, the credit is based on the lowest development status of any of the counties that are included in the park.

The maximum allowable job development credit that may be claimed is calculated as a percentage of the gross wages of each new employee. Gross wages is defined in S.C. Code Ann. § 12-10-30(4) as wages subject to withholding. However, the Council generally limits the amount of job development credits to no more than $3,250 per employee per year. Special rules exist for a qualifying business that is a tire manufacturer meeting the substantial job and capital requirements of S.C. Code Ann. § 12-10-81. A business may never claim a job development credit that exceeds all withholding from all employees for the quarter.

The hourly gross wage figures are adjusted annually by an inflation factor determined by South Carolina's Revenue and Fiscal Affairs Office. See Appendix II for a list of the hourly gross wage figures for years 1995 through 2023. The gross wage amounts for 2023 and the percentages to claim are:

GROSS WAGES PER HOUR OF NEW EMPLOYEE FOR 2023	PERCENTAGE TO CLAIM
$11.67 to $15.55	2%
$15.56 to $19.44	3%
$19.45 to $29.18	4%
$29.19 and over	5%

In order to compute the hourly wages for new employees, the business may divide the amount of total wages subject to South Carolina quarterly withholding for each new employee by the sum of the hours worked by the employee, plus hours of paid leave (*i.e.*, vacation, illness, and other purposes). Alternatively, the qualifying business may elect to take the total amount of wages subject to South Carolina quarterly withholding for each new employee and divide it by the number of hours the employee is deemed to work. Each new full-time employee will be deemed to work 40 hours each week employed, or 500 hours if employed for the entire calendar quarter.

An example best explains this calculation. For purposes of this example it is assumed that: (1) the employer's total South Carolina withholding for all employees in all locations during the calendar quarter is $15,000, (2) the employer is located in a Tier IV county and therefore may claim 100% of the maximum allowable job development credit, and (3) the employer has certified that it is current with respect to all state taxes and has maintained its base employment, minimum job requirement, and minimum capital investment requirement for the entire quarter.

GROSS WAGES PER HOUR OF NEW EMPLOYEE	PERCENTAGE BASED ON WAGES	AMOUNT EARNED DURING CALENDAR QUARTER BY ELIGIBLE EMPLOYEES IN EACH PAY RANGE	TENTATIVE AMOUNT TO CLAIM (% BASED ON WAGES x GROSS WAGES x % BASED ON COUNTY)
$11.67 to $15.55	2%	$ 35,000	$ 700
$15.56 to $19.44	3%	$ 40,000	$1,200
$19.45 to $29.18	4%	$ 60,000	$2,400
$29.19 and over	5%	$100,000	$5,000
		$235,000	$9,300

In this example, the business may claim a $9,300 job development credit against the total South Carolina employee withholding because the total South Carolina withholding ($15,000) exceeds the amount that is calculated to be claimed ($9,300). In the example, the Department will refund $9,300 to the business to reimburse the cost of eligible expenditures.

S.C. Code Ann. § 12-10-82 provides that a qualifying business may make an irrevocable election to assign the job development credit to a "designated trustee" or "other designee." A "designated trustee" is the single financial institution designated by the Council to receive all assignments of payments. An "other designee" is a taxpayer that receives a minimum of 70% of the goods or services produced by the qualifying business at the project. The election must be made on a form provided by the Department and must include a waiver of confidentiality under S.C. Code Ann. § 12-54-240.

d. Use of Job Development Credit

To claim a job development credit, a business must incur qualified expenditures during the term of the revitalization agreement, including a preliminary revitalization agreement, or within 60 days prior to the Council's receipt of the application, and such expenditures must be authorized by the revitalization agreement and are restricted to the following purposes:

(A) Training costs and facilities;

(B) Acquiring and improving real estate and subject to Council approval, capital and operating leases for real estate if the lease has at least a 5-year term;

(C) Improvements to public and private utility systems, including water, sewer, electricity, natural gas, and telecommunications;

(D) Fixed transportation facilities, including highway, rail, water, and air;

(E) Construction or improvements of real property and fixtures for the purpose of complying with environmental laws and regulations;

(F) Employee relocation expenses but only for employees that are paid twice the per capita income of the state or the county where the project is located, whichever is lower;

(G) Financing costs associated with (A) – (F) above;

(H) South Carolina Quality Forum improvement programs;

(I) Training that increases a business's export capabilities;

(J) Apprenticeship programs.

Note, for a business qualifying for job development credits under S.C. Code Ann. § 12-10-81, only items (A) – (E) are considered eligible expenditures.

For purposes of the job development credit, an expenditure is incurred if it is accrued under the accrual method of accounting for income tax purposes, without regard to I.R.C. § 461(h). In general, under the accrual method of accounting, an expense or liability is incurred when all the events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy. To the extent any job development credit is not used for the approved purposes, it is treated as misappropriated employee withholding.

e. General Recordkeeping Requirements

Any business claiming a job development credit must satisfy the following recordkeeping requirements:

1. The business must timely provide the Council and the Department documentation regarding the job development credit and the use of any overpayments resulting from the claiming of the credits.

2. The business must provide access to all its payroll books and records any time the Council or Department requests them for inspection.

3. A business claiming a job development credit in any calendar year must furnish the Council and the Department with a report that summarizes the credit claimed. The business must file its report no later than June 30 following the calendar year the job development credit is claimed. An extension of time may be granted in writing by the Council for good cause.

   In addition, a business claiming a job development credit must file quarterly reports with the Council that are due within 30 days following the end of the 1st, 2nd and 3rd and 4th quarters. If a company fails to provide the quarterly report as required, the company will receive a notice and will be given an additional 30 day period to comply. If the company fails to provide the report within such additional 30 day period, the company's rights to claim job development credits will be suspended for the next quarter and will not be reinstated until all required reports have been submitted to the Council. A company may not retroactively claim any job development credits forgone during the period its rights were suspended.

f. Helpful Tips for the Job Development Credit

Helpful points to remember concerning the job development credit are listed below. Several of these points contain rules and stipulations that have been established by the Council most of which have been incorporated into the application and/or the revitalization agreement. The application and a sample revitalization agreement may be obtained by calling the Council staff at 803-737-2024.

Council Standards for the Job Development Credit. The Council Standards summarized below pertain to the job development credit.

- Application for job development credit benefits should be made prior to a qualifying business officially announcing its South Carolina location or expansion plan.

- The Council generally approves job development credit benefits for a maximum of 10 years.

- Generally, a business approved for benefits must commit in writing to locate or expand in South Carolina within 30 days of approval of the application.

- Leased employees used by the business do not qualify for benefits.

- A qualifying business may not claim benefits on half-time employees.

- A business must pay at least 50% of the employee's premium for a comprehensive health plan that includes benefits equivalent to the benefits provided under the Savings Plan of the State Health Plan made available to state employees. The qualifying business must offer the same health benefits to the spouses and dependents of employees but does not have to pay for any portion of their premiums.

- The Council generally requires that job development credits may only be claimed on new employees with gross wages that meet or exceed the county average wage. This minimum wage requirement will be adjusted every 5 years.

- Generally, the maximum job development credit provided for in the revitalization agreement is $3,250 per employee annually.

- The job development credit is available for the minimum number of jobs stated in the revitalization agreement provided those jobs are maintained. No credit may be claimed if the base employment and the minimum job requirement are not 100% maintained. The credit is not available for any jobs above the minimum job requirement set forth in the revitalization agreement.

- Existing revitalization agreements may only be amended at the discretion of the Council.

- Job development credits can be claimed beginning with the quarter after the business provides proof of meeting its minimum investment and job requirements to the Council and after the Council has certified the qualifying business to the Department. Generally, the business must begin claiming the benefits no later than the first quarter of the sixth year from the date of the preliminary revitalization agreement. **Helpful tips.** Important points to remember concerning the job development credit are listed below.

- Generally, the minimum job creation requirement to apply for job development credit benefits is at least 10 net new, full-time jobs over 5 years. However, the Council may, and usually does, require the creation of a larger number of jobs to be approved for job development credits.

- The job development credit amount is based on the ranking of the county in which the business is located on the date the application is received by the Council and the gross wages paid (*i.e.*, wages subject to withholding) and any other conditions provided in the revitalization agreement.

- A qualifying business may be eligible to claim both the job development credit and the job retraining credit, but may only claim one of these credits, not both, on the same employee.

- The "time period" (usually 10 years) to obtain job development credit benefits begins upon the earlier of the first request for a refund of withholding or the first quarter of the 6th year from the date of the preliminary revitalization agreement. The time period does not toll even if the business drops below the minimum job requirement and cannot claim the job development credit for a period of time.

- Both consideration and caution should be exercised when stating in the application and the revitalization agreement the number of jobs to be created. For example, if the business creates the 100 new jobs specified in the revitalization agreement but later reduces employment, then the credit is generally not allowed during the time the 100 jobs are not maintained and the time period approved for claiming benefits continues to run. Further, if the number of jobs created exceeds the 100 new jobs specified in the revitalization agreement within the 5-year time period, the credit is limited to the 100 jobs specified in the revitalization agreement, unless the business submits a new application to the Council for approval of job development credit benefits for the additional new jobs.

- Hourly gross wage figures are adjusted annually for inflation. See Appendix II for these figures.

- The credit cannot be claimed before the qualifying business has been certified by the Council to begin claiming job development credits.

- Generally, job development credit benefits begin no later than 5 years after approval of the application. The business must meet all minimum investment and job creation requirements by that date or the benefits will be lost.

- The business must be current with all South Carolina withholding taxes and all other taxes due and owing the state in order to claim a job development credit for the quarter. If a qualifying business is not current with all taxes due and owing the state as of the date of the return on which the job development credit would be claimed, without regard to extensions, the job development credit that would otherwise be allowed for that quarter is reduced by the amount of taxes due and owing South Carolina.

- The business must use pre-printed Forms WH-1605Z and WH-1606Z provided by the Department to claim the job development credit. These forms must be used even if no job development credit is claimed in a particular quarter. The Department will generally issue a refund within 90 days of receipt of the appropriate form.

11. JOB RETRAINING CREDIT

The job retraining credit, contained in S.C. Code Ann. § 12-10-95, is available to approved existing businesses retraining qualifying existing employees in order for the business to remain competitive, introduce new technologies, export products, or provide apprenticeship programs. The job retraining credit is administered by the South Carolina Technical Colleges and the State Board for Technical and Comprehensive Education (SBTCE).

a. Qualifying for a Job Retraining Credit

To qualify for the job retraining credit provided under S.C. Code Ann. § 12-10-95, a qualifying business must be an existing South Carolina business and must meet the following criteria:

1. The business generally must be engaged in manufacturing, processing, or technology at a manufacturing, processing, or technology intensive facility. (See S.C. Code Ann. § 12-6-3360(M) and S.C. Code Ann. Regs. 117-750.1 for definitions of these types of facilities.)

2. The business must demonstrate that the retraining of qualifying production or technology employees is necessary for the qualifying business to remain competitive or to introduce new technologies. Qualifying production or technology employees must be first line employees or immediate supervisors who have been employed by the business on a full-time basis for a continuous period of at least two years. S.C. Code Ann. § 12-10-30 defines "production employee" as an employee directly engaged in manufacturing or processing at a manufacturing or processing facility, and defines "technology employee" as an employee at a technology intensive facility who is directly engaged in technology intensive activities (*i.e.*, the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge at a technology intensive facility).

3. The business must provide a benefits package, including health care, to employees being retrained.

4. The business must spend at least one dollar and fifty cents on eligible employee retraining for each dollar claimed as a job retraining credit.

5. The business must develop a retraining plan with the assistance of a technical college within the appropriate service area. Once a retraining plan has been approved by the technical college, the business must submit an application to the SBTCE.[1]

6. The technical college must provide the retraining program directly, contract with other training entities to perform the training, or supervise an employer's internal training program.

7. Only the direct costs of the retraining qualify for the credit (e.g., instructor salaries, development of retraining programs, purchase or rental of materials and supplies, textbooks and manuals, instructional media, and reasonable travel costs). Further, a business may not receive the retraining credit for training costs that are reimbursed directly or indirectly by the employee.

[1] Pursuant to S.C. Code Ann. § 12-10-95(J), the SBTCE shall establish additional policies and procedures for the administration of the job retraining credit. Additional information on these policies and procedures can be found at www.sctechsystem.com.

Pursuant to S.C. Code Ann. § 12-10-95(A), eligible retraining programs include, but are not limited to:

- The retraining of current employees on newly installed equipment; and
- The retraining of current employees on newly implemented technology , such as computer platforms, software implementation and upgrades, Total Quality Management, ISO 9000, and self-directed work teams.

Examples of training not eligible for the job retraining credit include: career development, executive training, management development training, personal enrichment training, and cross-training of employees on equipment or technology. See S.C. Code Ann. § 12-10-95(A)(2).

The job retraining credit has rules similar to the job development credit for related parties. A "related person" includes any entity or person that bears a relationship to a business as provided in I.R.C. §§ 267 or 707(b). However, for the job retraining credit, the "related person" does not have to be engaged in manufacturing or processing operations or technology intensive activities at a manufacturing, processing, or technology intensive facility as defined in S.C. Code Ann. § 12-6-3360(M) to qualify for the job retraining credit. S.C. Code Ann. § 12-10-30(19).

b. Claiming and Using a Job Retraining Credit

The job retraining credit is claimed as a credit against employee withholding tax. A business remits all South Carolina employee withholding to the Department as required under the withholding laws in Chapter 8 of Title 12 and claims a credit for the amount of allowable job retraining credit when it files the quarterly South Carolina withholding tax return. Any withholding overpayment resulting from the retraining credit is refunded to the business and must be used for qualifying job retraining or apprenticeship programs.

To claim the job retraining credit, a qualifying business must submit an application (including a retraining plan approved by the appropriate technical college) to the SBTCE. A revitalization agreement is not required to apply for the job retraining credit. A qualifying business may claim a job retraining credit equal to $1,000 a year for each qualifying employee retrained for up to a 5-year period. A business may not; however, claim a job retraining credit in excess of $5,000 over a 5-year period for any single employee being retrained, and may not claim the job retraining credit and the job development credit on the same employee. A business may not claim a job retraining credit for a temporary or contract employee. Further, the job retraining credit claimed may not exceed the total employee withholding for the qualifying business.

The availability of the job retraining credit is restricted to the following:

- Retraining of an existing production employee or technology employee if the retraining is necessary for the business to remain competitive or to introduce new technologies;

- Retraining for all relevant existing employees that enable a business to export or increase its ability to export its products, including training for logistics, regulatory, and administrative areas connected to its export process and other export process training that allows a business to maintain or expand its business in South Carolina; and

- Apprenticeship programs.

Once a business' application for retraining credits has been approved, it must submit an annual renewal application to the SBTCE and remit an annual $250 fee to the Department to stay in the job retraining program. Additionally, S.C. Code Ann. § 12-10-105 provides that a business claiming more than $40,000 in job retraining credits for a project in one calendar year must remit an annual $1,000 fee to the Department. The fee is used to reimburse the Department for costs incurred in auditing a project's job retraining credit at least once every 3 years.

Questions about applying for the job retraining program may be directed to Michelle Fehr at fehrm@sctechsystem.edu or (803)896-2614.

c. Recordkeeping for Job Retraining Credit

Any business claiming a job retraining credit must satisfy the following recordkeeping requirements:

1. The business must provide the Department with the quarterly employee withholding return (WH-1605Z).

2. A business claiming a job retraining credit in any calendar year must furnish the SBTCE with a report that summarizes the credits claimed. The business must file its report no later than June 30 following the calendar year the job retraining credit is claimed.

d. Helpful Tips for the Job Retraining Credit

Helpful Tips. Important points to remember concerning the job retraining credit are listed below.

- Although a revitalization agreement is not required to receive a job retraining credit, a qualifying business must develop a training plan with the assistance of the appropriate technical college and submit an application to the SBTCE.

- The retraining credit is available for up to 5 years beginning from the date of approval of the business by a technical college under the jurisdiction of the SBTCE.

- A qualifying business may be eligible to claim both the job development credit and the job retraining credit, but may only claim one of these credits, not both, on the same employee.

- The retraining credit is not available for wages of retraining participants or retraining of temporary, contract, or new employees.

- The business must use pre-printed Forms WH-1605Z and WH-1606Z provided by the Department to claim the job retraining credit. These forms must be used even if no credit is claimed in a particular quarter. The Department will generally issue a refund within 90 days of the receipt of the appropriate form.

12. TAX MORATORIUM

a. General Provisions

S.C. Code Ann. § 12-6-3367 allows a 10-year, or in some cases a 15-year, moratorium on corporate income taxes or insurance premium taxes to a qualifying taxpayer. The taxpayer must make a substantial investment and create at least 100 new, full-time jobs in designated South Carolina counties (moratorium county). These jobs must be created within 5 years from the date the taxpayer creates the first qualifying job in order to qualify for the tax moratorium.

The moratorium begins the first taxable year after the taxpayer qualifies and ends at the earlier of (a) 10 years from that date or (b) the year when the taxpayer's number of full-time jobs falls below 100. The moratorium applies to that portion of the taxpayer's corporate income tax or insurance premium tax that represents the ratio of the company's new investment in the moratorium county to its total South Carolina investment.

Any facility that is a type of facility defined in S.C. Code Ann. § 12-6-3360(M) of the job tax credit statute may qualify for the tax moratorium. Types of facilities that may qualify for the tax moratorium include manufacturing, processing, warehousing, distribution, tourism, research and development, corporate office, banks, qualifying service-related facilities, technology intensive facilities, agribusiness operations, agricultural packaging, professional sports teams and extraordinary retail establishments. A general overview of the tax moratorium requirements is provided below.

b. Qualifying Taxpayers

- A Facility of the Type Listed in S.C. Code Ann. § 12-6-3360(M). To qualify for the moratorium in S.C. Code Ann. § 12-6-3367(B)(1)(a), a taxpayer must:

    1. Establish or expand a facility identified in S.C. Code Ann. § 12-6-3360(M).

    2. Locate that facility in either: (a) a county with an average annual unemployment rate of at least twice the state average during each of the last two completed years (based on the most recent unemployment rates available), or (b) a county which is one of the three lowest per capita income counties (based on the average of the three most recent years of available average per capita income data) (*i.e.,* a moratorium county);

3. Create at least 100 new full-time jobs as defined in S.C. Code Ann. § 12-6-3360(M) (the job tax credit provision) at the facility within 5 years from the date it creates the first new full-time job at the facility; and

4. Invest at least 90% of its total investment in South Carolina in the moratorium county.

If a taxpayer creates and maintains at least 200 new full-time jobs within 5 years from the date the taxpayer creates the first new full-time job at the facility, the moratorium is extended to 15 years.

To continue claiming the tax moratorium for any year of the 10-year period, the taxpayer must maintain the 100 jobs for that year. If the taxpayer qualifies for the 15-year tax moratorium, to continue claiming the tax moratorium for any year of the 15-year period the taxpayer must maintain the 200 new full-time jobs, however, if the taxpayer's number of full-time jobs falls below 200 during the first 10 years of the 15-year period, but the taxpayer maintains 100 or more jobs at the facility, then the tax moratorium may be continued for the balance of the 10-year period. The tax moratorium is claimed on Form TC-34, "Corporate Tax Moratorium Per Section 12-6-3367" for taxpayer's subject to the corporate income tax. (See special rules for businesses subject to the insurance premium tax).

- Requirements for a Manufacturing Facility Investing and Creating Jobs in Two Counties. To qualify for the tax moratorium in S.C. Code Ann. §12-6-3367(B)(1)(b), a taxpayer must:

  1. Create and maintain at least 100 new full-time jobs and invest at least $150 million at a manufacturing facility in a moratorium county described above;

  2. Create and maintain at least 100 new full-time jobs and invest at least $150 million at a manufacturing facility in a second county which is designated as "distressed," "least developed," or "underdeveloped" as provided in the job tax credit statute;[2] and

  3. Invest at least 90% of its total investment in South Carolina in one or both of the counties described above in items (1) and (2).

For purposes of the tax moratorium in S.C. Code Ann. § 12-6-3367(B)(1)(b), the 10 (or 15) year moratorium periods are determined separately for income from each facility. The tax moratorium is not affected if the taxpayer changes its form of business organization within the time period the tax moratorium is in effect. The term "taxpayer" means a single taxpayer or, collectively, a group of one or more affiliated taxpayers.

[2] Note: As of January 1, 2011, there are no longer any "distressed", "least developed" or "underdeveloped" counties in South Carolina, therefore, this provision may no longer be effective for companies that have not already been approved for the tax moratorium.

NOTE: S.C. Code Ann. § 12-6-3360(H), allowing a 15-year job tax credit carryforward, provides that a taxpayer eligible for the tax moratorium in S.C. Code Ann. § 12-6-3367 and the job tax credit may claim the job tax credit and carry forward the unused job tax credits after the tax moratorium period expires.

c. Approval Procedure

A taxpayer must petition, using the procedures in S.C. Code Ann. § 12-6-2320(B), (the criteria for applying for an alternative allocation/apportionment method), to obtain approval for the tax moratorium. Guidance regarding the application process is provided in SC Revenue Procedure #04-6 and includes the Coordinating Council for Economic Development's certifying that the facility will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed the costs. The petition for a corporate tax moratorium is made to, and approved by, the Department of Revenue; and the petition for an insurance premium tax moratorium is made to, and approved by, the Director of the Department of Insurance.

d. Moratorium Counties

The new moratorium counties are generally determined in December of each year and those counties are eligible counties as of January 1st of the following year**.** For 2023, the following counties are moratorium counties.

Chesterfield
Dillon
Jasper

13. CREDIT FOR HIRING FAMILY INDEPENDENCE RECIPIENT

S.C. Code Ann. § 12-6-3470 allows a tax credit to employers who employ persons who received family independence payments within this state for 3 months immediately before becoming employed. In order to qualify for the credit, the employer must make health insurance available to a 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. However, 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. An employer may claim the credit from the date of hire for each full month of employment even if there is an employer imposed waiting period for the health insurance, providing the waiting period does not exceed 12 months.

The employer must submit an employee release and must request in writing certification of family independence eligibility for each of the newly hired employees from the South Carolina Department of Social Services. The employer has until 15 days after the end of its tax year in

which the family independence payment recipient is hired to request verification. Department of Social Service Form 12108 is used to request eligibility. The Department of Social Services has 30 days to approve or deny this certification. The employer may not take the credit if another employee was terminated in order to hire the family independence payment recipient.

A qualifying employer receives a "basic" credit amount equal to:

- 20% of wages paid to such employee for each full month of employment during the first 12 months of employment
- 15% of wages paid to such employee for each full month of employment during the second 12 months of employment and
- 10% of wages paid to such employee for each full month of employment during the third 12 months of employment.

The total amount claimed per employee under both the job tax credit, S.C. Code Ann. § 12-6-3360 discussed above, and the "basic" part of the family independence credit, S.C. Code Ann. § 12-6-3470(A), is limited to $5,500 for all taxpayers not located in a Tier IV county. The $5,500 limitation is not applicable to a taxpayer qualifying for the job tax credit in a Tier IV county. A taxpayer may choose not to claim the family independence credit to maximize the job tax credit.

Notwithstanding the $5,500 limitation amount, employers located in a South Carolina county designated for job tax credit purposes as a (1) "distressed county" or (2) "least developed county" may be able to receive the "additional" part of the family independence credit in S.C. Code Ann. § 12-6-3470(B). An employer located in a "distressed county" or "least developed county" who employs a former family independence recipient to work full-time in that county is allowed an additional $175 credit per qualifying employee for each full month during the first 36 months of employment, up to an additional $2,100, for each qualifying year.

NOTE: Since as of January 1, 2011, there are no longer any "distressed" or "least developed" counties in South Carolina, this provision no longer applies.

Any unused credit may be carried forward for 15 years.

Form TC-12, "Credit for Employers Hiring Recipients of Family Independence Payments," is used to claim the credit.

14. APPRENTICESHIP CREDIT

S.C. Code Ann. § 12-6-3477 allows an employer a $1,000 tax credit for each apprentice employed pursuant to an apprentice agreement registered with the Office of Apprenticeship of the Employment and Training Administration of the United States Department of Labor. The

apprentice must be employed by the taxpayer for at least 7 full months of the tax year to qualify. A credit is not allowed for an individual for more than 4 tax years. The credit is claimed on Form TC-45, "Apprenticeship Credit."

15. REGISTERED APPRENTICESHIP CREDIT FOR HIRING VETERANS OF THE ARMED FORCES

A tax credit is available for employers that hire veterans of the Armed Forces of the United States as new employees in a registered apprenticeship program validated by the United States Department of Labor. A "veteran" is "a person who served on active duty in the Armed Forces of the United States and who, within three years of being hired in a qualifying apprenticeship program, was honorably discharged or released from such service due to a service-connected disability." The credit is available for veterans hired after 2021 and before 2027.

The tax credit is earned in the year in which the veteran first completes the twelfth consecutive month of employment with the taxpayer. The credit is earned in the same manner and on the same schedule in the second and third year of employment. In the first year in which the credit is earned, the amount of the credit is $3,000 for each eligible veteran. The credit is $2,500 in the second year and $1,000 in the third year, provided the veteran remains employed. The credit may not be claimed beyond the third year. Note, the tax credit may only be claimed for an eligible veteran once, regardless of the employer.

The credit may be taken against the income taxes imposed under Chapter 6, Title 12; the bank tax imposed under Chapter 11, Title 12; the savings and loan association tax imposed under Chapter 13, Title 12; the corporate license tax imposed under Chapter 20, Title 12; and insurance premium taxes imposed under Chapter 7, Title 38. The total amount of the tax credit for a taxable year may not exceed the taxpayer's tax liability and there is no credit carryover. S.C. Code Ann. § 12-6-3720.

16. REGISTERED APPRENTICESHIP CREDIT FOR HIRING FORMERLY INCARCERATED INDIVIDUALS

A tax credit is available for employers that hire formerly incarcerated individuals as new employees in a registered apprenticeship program validated by the United States Department of Labor. An "'incarcerated individual" is an individual that, within three years of being hired in a qualifying apprenticeship program, was held in a state or county prison, jail, or detention center for at least 90 consecutive days. However, an incarcerated individual does not include an individual incarcerated for a violent crime set forth in S.C. Code Ann. § 16-1-60, unless such individual received a pardon for the offense or unless the only disqualifying violent crime resulted in a sentence of ten years or less under S.C. Code Ann. §§ 44-53-370(E) or 44-53-375(C). The credit is available for qualifying individuals hired after 2021 and before 2027.

The tax credit is earned in the year in which the formerly incarcerated individual first completes the twelfth consecutive month of employment with the taxpayer. The credit is earned in the same manner and on the same schedule in the second and third year of employment. In the first year in which the credit is earned, the amount of the credit is $3,000 for each eligible individual. The credit is $2,500 in the second year and $1,000 in the third year, provided the qualifying individual remains employed. The credit may not be claimed beyond the third year. Note, the tax credit may only be claimed for an eligible individual once, regardless of the employer.

The credit may be taken against the income taxes imposed under Chapter 6, Title 12; the bank tax imposed under Chapter 11, Title 12; the savings and loan association tax imposed under Chapter 13, Title 12; the corporate license tax imposed under Chapter 20, Title 12; and insurance premium taxes imposed under Chapter 7, Title 38. The total amount of the tax credit for a taxable year may not exceed the taxpayer's tax liability and there is no credit carryover. S.C. Code Ann. § 12-6-3710.

PART C: GENERAL BUSINESS CREDIT

17. CREDIT FOR INVESTING IN PROPERTY IN SOUTH CAROLINA

S.C. Code Ann. § 12-14-60 allows a taxpayer a credit against income taxes for qualified manufacturing and productive equipment properties placed in service during the taxable year in South Carolina.

The amount of the credit for qualifying investments is:

- 1/2% of the total aggregate bases of 3-year property
- 1% of the total aggregate bases of 5-year property
- 1 1/2% of the total aggregate bases of 7-year property
- 2% of the total aggregate bases of 10-year property
- 2 1/2% of the total aggregate bases of 15-year or greater property.

Whether property is 3, 5, 7, 10, or 15 year or greater property is determined by the applicable recovery period for the property under I.R.C. § 168(e).

The credit claimed is limited to $5 million for a taxpayer subject to the license tax under S.C. Code Ann. § 12-20-100. This credit does not apply to any property to which other tax credits apply, such as the headquarters credit, infrastructure credit, the textile rehabilitation credit, or the abandoned building credit unless the qualifying business waives the application of such credits. Any unused credit may be carried forward for 10 years. An unlimited carryforward is allowed for certain manufacturing taxpayers having significant capital investments and employment in South Carolina; however, a carryforward beyond 10 years cannot reduce the tax liability in a subsequent year by more than 25%. The credit is claimed on Form TC-11, “Capital Investment Credit.” Any recapture is reported on Form TC-11R, “Recapture of Capital Investment Credit.”

Rules exist requiring:

1. Property basis reduction for the amount of the credit claimed.

2. Recapture of the credit if the property is disposed of or removed from the state before the end of the applicable recovery period. A pro rata portion of the credit previously claimed for that property must be recaptured. A taxpayer required to recapture the credit may increase the basis of the property by the amount of any basis reduction attributable to the credit claimed in prior years. The basis must be increased in the year of recapture.

For the purpose of this credit, “qualified manufacturing and productive equipment property” is any property that is:

- Constructed, reconstructed, or erected in South Carolina or acquired by the taxpayer if the original use of such property begins with the taxpayer inside this state, and which is:

  1. Used as an integral part of manufacturing, production, or extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone (state),

  2. Tangible property depreciable under I.R.C. § 168, and

  3. I.R.C. § 1245 property.

- Computer software that may be depreciated or amortized that is used to control or to monitor a manufacturing or production process inside South Carolina.

  In SC Private Letter Ruling #98-2, the Department reviewed whether a company providing residential and business telephone service to South Carolina economic impact zone counties qualified for the tax credit. Based upon the facts, the Department concluded that the providing of telephone service is the business of “furnishing communications” that is eligible for the economic impact zone credit. Also, the Department determined which of the company’s property constituted an integral part of furnishing communications.

  NOTE: Although there are no longer “economic impact zones” in South Carolina, this ruling still has relevance as to what qualifies as an integral part of “furnishing communications”.

18. CORPORATE HEADQUARTERS CREDIT

a. General Provisions

S.C. Code Ann. § 12-6-3410 allows a corporation a credit against corporate income tax imposed under S.C. Code Ann. § 12-6-530, corporate license fees imposed under S.C. Code Ann. §§ 12-10-50 or 12-20-100, or bank taxes imposed under S.C. Code Ann. § 12-11-20, equal to 20% of the qualifying costs of establishing a corporate headquarters in South Carolina, or expanding or adding to an existing corporate headquarters. The credit is made up of two parts: Part I – the real property costs and Part II – the personal property costs. A taxpayer may qualify for only Part I of the credit or may qualify for both Parts I and II of the credit.

Any unused credit may be carried forward for 10 years, or if the 75 new job and per capita income requirements set forth in S.C. Code Ann. § 12-6-3410(D) are met, the credit can be carried forward for 15 years. In addition, a taxpayer may assign its rights to the unused credit to

a succeeding taxpayer if the taxpayer transfers all, or substantially all, of the assets of: (1) the taxpayer, or (2) a trade, business, or operating division of a taxpayer, to the succeeding taxpayer, and the succeeding taxpayer maintains the corporate headquarters of the taxpayer.

No credit may be claimed for a tax year during which the corporation or succeeding corporation fails to maintain the qualifying employment requirements. The carryforward period is not extended for any year in which the credit may not be claimed for failure to maintain the employment requirements, but the remaining eligible carryforward may be claimed in the year that the corporation requalifies for the credit by re-meeting the employment requirements. The credit is claimed on Form TC-8, "Corporate Headquarters Credit." If a taxpayer claims the headquarters credit, for South Carolina income tax purposes, the basis of any property used to calculate the credit must be reduced by the amount of the credit claimed.

Each part of the corporate headquarters credit has specific minimum investment and job creation requirements. These are:

- Part I: Real Property Component of the Credit

In order to qualify for the real property component of the headquarters credit, the following requirements must be met:

1. The qualifying real property costs must be at least $50,000. For corporations constructing a headquarters, these costs are costs incurred in the design, preparation, and development of establishing or adding to a corporate headquarters, and direct construction costs. For corporations leasing a facility, these costs are direct lease costs during the first 5 years of corporate headquarters operations.

2. The headquarters establishment, addition, or expansion must create at least 40 new, full-time, permanent jobs in South Carolina performing headquarters related functions and services or research and development related functions and services. At least 20 of these jobs must be headquarters staff employees performing headquarters related functions and services. Each of these terms is defined in S.C. Code Ann. § 12-6-3410(J).

The real property portion of the headquarters credit is equal to 20% of:

1. Qualifying real property costs incurred in the design, preparation, and development of establishing, expanding, or adding to a corporate headquarters; and

2. Direct construction costs or, with respect to leased facilities, direct lease costs for the first 5 years of operations for the corporate headquarters. Direct lease costs are cash lease payments and do not include any accrued, but unpaid costs.

- Part II: Personal Property Component of the Credit

A headquarters that meets the real property costs and job requirements above may also qualify for an additional credit equal to 20% of the cost of tangible personal property if certain requirements are met. In order to qualify for the personal property component of the credit, the following requirements must be met:

1. The personal property must be purchased for the establishment, expansion, or addition of a corporate headquarters or research and development facility which is part of the same corporate project as the headquarters establishment or expansion.

2. The personal property must be used for corporate headquarters or research and development related functions and services in South Carolina. The credit may not be claimed; however, for personal property which is replacing personal property for which the credit can be claimed.

3. The personal property must be capitalized for income tax purposes under the Internal Revenue Code.

4. The headquarters or research and development establishment or addition must create at least 75 new, full-time jobs performing headquarters related or research and development related functions and services. At least 20 of these jobs must be headquarters staff employees.

5. The 75 headquarters jobs created must have an average cash compensation level of more than twice the South Carolina per capita income based on the most recent per capita income data available as of the end of the taxpayer's tax year in which the jobs are filled.

The state per capita income figures are received at least annually from Revenue and Fiscal Affairs. As of April 2023, the most recent data available indicates South Carolina per capita income is $ 53,320. SC Revenue Ruling #99-11 provides that if the taxpayer is a calendar year taxpayer, the state per capita income figure available as of December 31 of the tax year in which the 75th new, full-time employee is hired is used in determining if the pay requirements have been met.

b. Qualifying Headquarters

S.C. Code Ann. § 12-6-3410(J)(1) defines "corporate headquarters" as the facility or portion of a facility where corporate staff employees are physically employed, and where the majority of the company's or company's business unit's financial, personnel, legal, planning, information technology, or other headquarters related functions are handled either on a regional, national, or global basis. A "company business unit" is an organizational unit of a corporation or bank and is defined by the particular product or category of product it sells.

S.C. Code Ann. Regs. 117-750.1 defines the term "facility." A "facility" is generally a single physical location where a taxpayer's business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the number of employees, their wages and salaries, sales, or receipts and expenses; and (3) employment and output are significant as to the activity. For purposes of item (2), it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

A corporate headquarters must be a regional corporate headquarters, a national corporate headquarters, or a global corporate headquarters to qualify; however, a corporate headquarters of a taxpayer subject to bank taxes must be a regional corporate headquarters and must have two or more branches in each state within its region. (The term "branch" is defined in S.C. Code Ann. § 34-25-10(8).) A corporation doing business solely within South Carolina does not meet the definition of a corporate headquarters. These terms are defined in S.C. Code Ann. § 12-6-3410(J) as follows:

1. A "national" corporate headquarters must be the sole corporate headquarters in the nation and handle headquarters related functions at least on a national basis. The corporation must have a facility in South Carolina from which it engages in interstate business to qualify for the headquarters credit.

2. A "regional" corporate headquarters must be the sole corporate headquarters within the region and must handle headquarters related functions on a regional basis. "Region" or "regional" means a geographic area comprised of: (a) at least 5 states, including South Carolina, or either (b)(1) 2 or more states, including South Carolina, if the entire business operations of the corporation are performed within fewer than 5 states or (b)(2) for banks, 2 or more states, including South Carolina, if all branches of the taxpayer subject to bank taxes under Chapter 11 of Title 12 are physically located in fewer than 5 states, and the bank has at least 2 branches in each state within the region.

c. Examples

Examples best explain the timeline for meeting the requirements and claiming the credit.

◆ Example 1: Assume a corporate headquarters is placed in service in one year.

The claiming of the credit and the staffing requirements are as follows:

Year 1 – First property placed in service for federal income tax purposes. Credit is claimed.

Year 3 – Staffing requirements must be met or the credit claimed is recaptured.

- Example 2: Assume the corporate headquarters is placed in service over a 3-year period or that 5 years of direct lease costs are incurred. The claiming of the credit and the staffing requirements are as follows:

  Year 1 – First property placed in service for federal income tax purposes or first year direct lease costs are incurred. Credit may be claimed for these costs.

  Year 2 – Additional property placed in service or direct lease costs incurred. Credit may be claimed for these costs.

  Year 3 – Additional property placed in service or direct lease costs incurred. Credit may be claimed for these costs.

  Year 4 – Last year credit may be claimed for direct construction costs, design, preparation, and development costs. Credit may be claimed for direct lease costs.

  Year 5 – Last year credit may be claimed for direct lease costs.

  Year 6 – Staffing requirements must be met, if facility is constructed; otherwise, credits claimed must be recaptured.

  Year 7 – Staffing requirements must be met, if facility is leased; otherwise, credits claimed must be recaptured.

See Business Property Tax, Chapter 4, Section 6, for information on a 5-year exemption from certain property taxes for corporate headquarters facilities.

19. CREDIT FOR INFRASTRUCTURE CONSTRUCTION

S.C. Code Ann. § 12-6-3420 allows a corporation a credit against corporate income tax or bank tax equal to 50% of the contributions or expenses paid or accrued by the taxpayer for the construction or improvement of water lines, sewer lines, and road projects that are dedicated to public use or deeded to a qualifying private entity. A credit is available for each infrastructure project of the taxpayer, but is limited to $10,000 per project per year. Any unused credit, up to $30,000 for each project, may be carried forward for 3 years. The maximum infrastructure credit that may be claimed for each project is $40,000. The credit is claimed on Form TC-6, "Infrastructure Credit." An infrastructure project includes water and sewer lines, their related facilities, and roads that:

1. Do not exclusively benefit the taxpayer;

2. Are built to applicable standards; and

3. Are dedicated to public use or, in the case of water or sewer lines in areas served by a private water and sewer company, are deeded to a qualified private entity.

If the project benefits more than the taxpayer, the expenses must be allocated to the various beneficiaries, and only those expenses not allocated to the taxpayer's benefit qualify for the credit. A qualifying private entity is not allowed a tax credit for expenses it incurs in building or improving facilities it owns, manages, or operates.

In *Centex International, Inc. v. South Carolina Dept. of Revenue*, 406 S.C. 132, 750 S.E. 2d 65 (2013), the South Carolina Supreme Court held that under the infrastructure credit statute (S.C. Code Ann. § 12-6-3420) which provides that a corporation could claim a credit for construction or improvement of an infrastructure project against corporate income taxes for expenses paid or accrued by the taxpayer, the legislature intended that a corporation had to be the entity that incurred the expenses to generate the tax credit and thus, a partnership was precluded from earning the infrastructure credit.

20. CREDIT AGAINST LICENSE TAX FOR INFRASTRUCTURE

S.C. Code Ann. § 12-20-105 allows a taxpayer subject to the license fee imposed on South Carolina property and gross receipts under S.C. Code Ann. § 12-20-100, such as a power company, water company, gas company, or telephone company, a credit against its license tax liability for 100% of the amount paid in cash for infrastructure for an eligible project of another taxpayer. A taxpayer is not allowed a credit for actual expenses it incurs in the construction and operation of any building or infrastructure it owns, leases, manages, or operates.

The maximum credit that may be earned in any tax year by a taxpayer is $600,000. However, for a project located in Tier II County an additional $50,000 of credit is available. For a project located in a Tier III county or a Tier IV county, an additional $100,000 and $150,000 credit is available, respectively. To qualify for the additional credit amounts, the total amount of the taxpayer's credit claim must be in a single qualifying county, with one limited exception. In no instance, may the credit reduce the license tax liability of the taxpayer below zero. Any unused credit can be carried forward to the next succeeding year. A taxpayer that claims this credit may not claim the credit for infrastructure construction in S.C. Code Ann. § 12-6-3420 (discussed above in Section 17).

The statute defines the term "infrastructure" as improvements for water, wastewater, hydrogen fuel, sewer, gas, steam, electric energy, and communications services made to a building or land that are considered necessary, suitable, or useful to an eligible project. These improvements include, but are not limited to:

- Improvements to either public or private water and sewer systems.
- Improvements to either public or private electric, natural gas, and telecommunications systems including, but not limited to, ones owned or leased by an electric cooperative, electrical utility, or electric supplier as defined by Chapter 27, Title 58.
- Fixed transportation facilities including highway, road, rail, water, and air.

For projects located in a qualifying park as discussed below, the following additional expenditures qualify as eligible expenditures:

- Shell buildings and the purchase of land for an office, business, commercial, or industrial park constructed by a county, political subdivision, or agency of the state. The credit provisions do not prohibit the county or political subdivision from selling the shell building or all or a portion of the park after a company has paid cash to provide infrastructure to the eligible project.

- Incubator buildings owned by a county, political subdivision or agency of the state if the ownership of the building is retained by the county, political subdivision or agency of the state.

- Due diligence expenses, as defined in S.C. Code Ann. § 12-20-105(C)(5), relating to environmental conditions if the expenses are incurred by a county or political subdivision after it has acquired contractual rights to an industrial park.

- Site preparation costs including clearing, grubbing, grading and stormwater retention, and refurbishment of buildings that are owned or constructed by a county or municipality if the buildings are used exclusively for economic development.

- Land acquisition and preparation costs, new construction costs, improvements and upgrades to existing facilities, and any other capital costs associated with a qualifying multi-use sports and recreation complex.

- Cash payments for the purpose of defraying public debt used to build qualifying infrastructure.

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 (job development or retraining benefits), income tax credits under Chapter 14 of Title 12 (South Carolina investment tax credit), or fee in lieu of property taxes under Chapter 12 of Title 4 (“Little Fee”), Chapter 29 of Title 4 (“Big Fee”), or Chapter 44 of Title 12 (“Simplified Fee”).

Alternatively, if a project is located in an office, business, commercial, or industrial park, or combination of these, is used exclusively for economic development and is owned or constructed by a county, political subdivision or agency of this State when the qualifying improvements are paid for, the project does not have to meet the above requirements in order to be considered an eligible project.

For a county that collects at least $5 million in accommodations tax in a single fiscal year, a multi-use sports and recreation complex owned by a county or municipality qualifies as an eligible project. If a project qualifies under this provision, debt payments on any loans or bonds issued to pay for eligible infrastructure at the project are considered qualifying expenditures.

A taxpayer may enter into a multi-year commitment to provide cash for eligible infrastructure for a qualifying project. If the taxpayer enters into an agreement, and the qualifying project is not constructed by the end of the applicable tax year, the taxpayer may provide cash in that year or a future year to another qualifying project and retain the credit.

For more information about this credit and a question and answer document concerning this credit, see SC Revenue Ruling #18-8. A taxpayer may request an informal, nonbinding letter from the Department concerning eligibility for the credit. There is a $35 fee for the issuance of such letter.

21. RESEARCH AND DEVELOPMENT CREDIT

S.C. Code Ann. § 12-6-3415 allows a taxpayer a credit against any tax due under Chapter 6 of Title 12 (income tax) or under S.C. Code Ann. § 12-20-50 (corporate license fees based on capital stock and paid-in surplus) equal to 5% of its qualified research expenses made in South Carolina. The credit is limited to 50% of the taxpayer's tax liability remaining after all other credits have been applied. Any unused credit can be carried forward, but must be used before a taxable year beginning 10 years or after from the date of the qualified research expenses. The credit is claimed on Form TC-18, "Research Expenses Credit."

For a taxpayer to qualify for the credit, the taxpayer must claim a federal income tax credit pursuant to I.R.C. § 41 for increasing research activities for the taxable year. For purposes of this credit, qualified research expenses has the same meaning as provided in I.R.C. § 41.

22. PORT CREDITS

a. Port Volume Increase Credit

General Provision

S.C. Code Ann. § 12-6-3375(A) provides a tax credit to a taxpayer engaged in manufacturing, warehousing, freight forwarding, freight handling, goods processing, cross docking, transloading, wholesaling of goods or distribution that uses South Carolina port facilities and increases its port cargo volume at these facilities by at least 5% in a calendar year over its base year port cargo volume. The credit may be claimed against income taxes or employee withholding taxes.

The amount of credit and the type of taxes (income or withholding) the credit may offset is determined by the Coordinating Council for Economic Development ("Council") upon application by the taxpayer. Any unused income tax credit may be carried forward for 5 years and unused withholding tax credits may be carried forward for 20 quarters. Form TC-30, "Port Cargo Volume Increase Credit," is used to claim the income tax credit.

Base Year and Cargo Requirements

To qualify for the credit. The base year volume of cargo transported must be at least 75 net tons of non-containerized cargo, 385 cubic meters, or 10 "twenty-foot equivalent units" (*i.e.*, TEUs.)

Initial Base Year. The initial "base year port cargo volume" is the total amount of net tons of non-containerized cargo or TEUs of cargo actually transported by way of a waterborne ship through a port facility during January 1 – December 31st of the same year. If the taxpayer did not transport at least 75 net tons of non-containerized cargo, 385 cubic meters or 10 TEUs of cargo during the calendar year, or the taxpayer was not located in South Carolina during that year, then the initial base year is the first calendar year that the taxpayer meets the cargo requirements. The initial base year cannot be 0.

Base Year Recalculation. Base year port cargo volume must be recalculated every calendar year.

b. Port Transportation Credit

General Provisions

S.C. Code Ann. § 12-6-3375(I) provides a tax credit to a taxpayer engaged in manufacturing, warehousing, freight forwarding, freight handling, goods processing, cross docking, transloading, wholesaling of goods or distribution that uses South Carolina port facilities and incurs transportation costs to and from a South Carolina port. The credit may be claimed against income taxes or employee withholding.

The amount of credit and the type of taxes (income or withholding) the credit may offset is determined by the Council upon application by the taxpayer. Any unused income tax credit may be carried forward for 5 years and unused withholding tax credits may be carried forward for 20 quarters. Form TC-30, "Port Cargo Volume Increase Credit," is used to claim the income tax credit.

Maximum Credit Amounts and Expiration of the Credit

The maximum amount of port transportation credit allowed to all qualifying taxpayers for a calendar year is limited to $3 million dollars until the credit expires.

A taxpayer cannot claim the port transportation cost credit in any tax year after the tax year a port in Jasper County is opened and accepting shipments.

A taxpayer is eligible for the port transportation credit even if it does not qualify for the port volume increase credit under S.C. Code Ann. § 12-6-3375(A). **However, a taxpayer may not claim both the port volume increase credit and the port transportation credit in the same year.**

c. Definitions

S.C. Code Ann. § 12-6-3375(C) provides the following definitions for both credits:
"Port facility" is any publicly or privately owned facility located within South Carolina through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside South Carolina and which handles cargo owned by the port facility's owner and third parties.

"Port cargo volume" is the total amount of net tons of non-containerized cargo or containers measured in twenty-foot equivalent units transported by way of a waterborne ship or vehicle through a port facility or measured cubic meters of cargo.

"Twenty-foot equivalent unit" (TEU) is a volumetric measure based on the size of a container 20 feet long, by 8 feet wide, by 8 feet 6 inches high. A "weighted TEU" is equal to 7½ tons. A "measured TEU" is equal to 38½ cubic meters.

"Transportation costs" are the costs of transporting freight, goods, and materials to and from port facilities in South Carolina.

d. Application, Allocation, and Certification Process

Upon application by the taxpayer to the Council, the credits are determined and certified. The following briefly explains the process.

Step 1: Application Process – To receive the credit, an "Application for International Trade Incentive Program Tax Credit," must be submitted to the Council after the calendar year in which the qualifying increase occurs or transportation costs are incurred. The application, additional information requested to be submitted, and the certification procedures may be obtained from the Council staff at 803-737-2024. There is no application fee.

Step 2: Credit Allocation - The total port volume increase credit or port transportation credit that the taxpayer will receive is determined by the Council. The total credit available for all qualifying taxpayers may not exceed $15 million for each calendar year for both credits. Further, the amount of port transportation credit that may be awarded is limited as described above. The Council determines whether a taxpayer may claim an income tax credit, a withholding tax credit, or both, and how much credit the taxpayer will receive.

Step 3: Credit Certification - The Council will issue a credit certification form to the taxpayer once the credit allocation has been made. The Council has sole discretion in allocating the port credit.

In addition to the above credits, the Council may annually award up to $1 million dollars in withholding credit to a new warehouse or distribution facility which commits to spending at least $40 million at a single site and creating at least 100 new full-time jobs if the base year cargo is at least 5,000 TEUs or its non-containerized equivalent. Certain restrictions apply if the Council awards the credit to a qualifying facility.

Additionally, a taxpayer may be eligible for a credit if it is engaged in the movement of goods imported or exported through South Carolina port facilities if the cargo supports a presence in South Carolina but the taxpayer does not have a distribution facility in the State at the time of initial approval of the port credit if: (1) the taxpayer employs at least 250 full-time (or full-time equivalent) jobs in South Carolina; (2) the taxpayer constructs and operates a distribution facility in the State within 5 years of initial approval for the credit; and, (3) the base year cargo volume equals or exceeds 5,000 TEUs or its non-containerized equivalent.

A taxpayer may not claim both the port volume increase credit and the port transportation credit in the same year.

e. Example

An example best explains the timeline for meeting the requirements of, and claiming, the port volume increase credit.

Calendar Year	2022	2023	2024	2025	2026	2027
Net Tons of Non-containerized Cargo Transported	0	100	105	107	120	140
Less: Previous Base Year (must be recalculated every year)		N/A* (base year must be 75 or more)	100	105	107	120
Increase in Volume			5	2	13	20
Qualification – Increase by 5%		No	Yes	No	Yes	Yes
Submission of Application to Council			Submit application after December 31, 2024		Submit application after December 31, 2026	Submit application after December 31, 2027

23. CREDIT FOR INCREASING PURCHASES OF SOUTH CAROLINA AGRICULTURAL PRODUCTS

S.C. Code Ann. § 12-6-3378 provides a tax credit against either income tax or employee withholding for agribusiness operations and agricultural packaging operations (as defined in S.C. Code Ann. § 12-6-3360) who increase their purchases of agricultural products designated as Certified South Carolina Grown by the South Carolina Department of Agriculture by 15% over their base year. A taxpayer is not eligible for this credit unless its base year purchases exceeds

$100,000, and the base year must be recalculated each calendar year after the initial base year.[1]

The amount of the credit is determined by, and at the discretion of the Coordinating Council for Economic Development ("Council"), and is limited to $100,000 per taxpayer in any tax year. The maximum amount of credit for all taxpayers is $2 million dollars. A taxpayer may carry forward any excess credit against income tax for 15 years, while the excess credit against employee withholding may be carried forward for 20 quarters.

To claim the credit, a taxpayer must submit an application to the Council after the calendar year in which the increase in purchases of certified products occurs. The application and the certification procedures may be obtained from the Council staff at 803-737-2024. In addition to other information requested by the Council or the Department, the taxpayer must attach the following information to its application:

1. A description of how the base year and increase in purchases of certified products was determined;

2. The amount of base year purchases of certified products;

3. Amount of increase as a total and a percentage, including information showing the increase exceeds 15%;

4. Any tax credit utilized by the taxpayer in prior years; and

5. The amount of tax credit carried over from prior years.

Factors considered by the Council in determining allocation of this credit include (1) the amount of base year purchases of certified agricultural products; (2) the total and percentage increase in purchases; and (3) factors related to the economic benefit to the State or other factors. Furthermore, the Department of Commerce and the Department of Agriculture may establish guidelines necessary to ensure all applications, product certification record sheets, and checklists are accurately and effectively created and comply with the provisions of S.C. Code Ann. § 12-6-3378.

24. FIRE SPRINKLER SYSTEM CREDIT

S.C. Code Ann. § 12-6-3622 provides that a local taxing entity may allow a taxpayer who installs a new or existing fire sprinkler system (as defined in S.C. Code Ann. § 40-10-20) that is not required by law, regulation, or code in a new or existing commercial or residential structure, a

[1] See example under 20.e above for Port Volume Increase Credit for the mechanics on how to calculate the percentage or total increase over a base year. Please note, the base year and required minimum increase amounts for the 2 credits are different.

property tax credit equal to 25% of the direct expenses, not including any fee charged by the utility, against real property taxes levied by a local taxing entity.

The taxpayer may also claim an income tax credit equal to the amount of the property tax credit allowed by the local taxing entity. The income tax credit is claimed on Form TC-52, "Fire Sprinkler System Credit."

The credit earned by an S corporation owing corporate level tax must first be used at the entity level. Any remaining credit passes to each shareholder based on their percentage of stock ownership. The credit earned by a general partnership, limited partnership, limited liability company, or any other entity taxed as a partnership is allocated among any of its partners, including an allocation of the entire credit to one partner, in a manner agreed by the partners that is consistent with Subchapter K of the Internal Revenue Code. The owner of the structure may transfer, devise, or distribute any unused credit to the tenant of the eligible site. To be effective, the local taxing entity must receive written notification.

See Chapter 4, "Business Property Tax and Exemptions," for a discussion of the property tax credit allowed by a local taxing entity for the installation of a fire sprinkler system and for a discussion of the fire sprinkler system equipment exemption.

25. CREDIT FOR CHILD CARE PROGRAMS

S.C. Code Ann. § 12-6-3440 provides that an employer may claim as a credit against its income tax, bank tax, or insurance premium tax liability an amount equal to (a) 50% of its capital expenditures in South Carolina but no more than $100,000, for costs incurred in establishing a child care program for its employees' children and (b) 50% of the child care payments made not to exceed $3,000 for each participating employee per year.

The program and operation of the program must meet the licensing, registration, and certification standards prescribed by law. The credit taken in any one tax year cannot exceed 50% of the employer's tax liability for that year. Any unused credit can be carried forward for 10 years. The credit is claimed on Form TC-9, "Credit for Child Care Program."

For purposes of the capital expenditures portion of the credit, qualifying expenditures for establishing a child care program include, but are not limited to:

1. Mortgage or lease payments for child care facilities.

2. Purchases of playground and classroom equipment, kitchen appliances, and cooking equipment.

3. Purchases of real property and improvements.

4. Donations to a nonprofit organization that qualifies under I.R.C. § 501(c)(3) in order to help that organization establish a child care facility for the employees' children. The employer may not, however, also claim a charitable deduction for the contribution made to the §501(c)(3) organization.

5. Expenses incurred in the first year for organizing and administering a direct payment program (see discussions below) for paying employees' child care expenses.

For purposes of the child care portion of the credit, 50% of the following payments, not to exceed $3,000 for each participating employee per year, qualify for the credit:

1. Payments incurred by the taxpayer to operate a child care program for the taxpayer's employees in South Carolina.

2. Payments made directly to licensed or registered independent child care facilities in the name of, and for the benefit of, the employer's employees who are residents of, and employed in, South Carolina qualify if the children are kept at the facility during the employee's working hours. In addition, the employer may include any administrative costs, not to exceed 2%, that are associated with payments to a licensed or registered independent childcare facility.

The requirements of the child care payment portion of the credit include:

1. The payment may not exceed the amount charged to non-employee's children of like age and abilities.

2. The taxpayer must retain information concerning the child care facility's federal identification number, license or registration number, payment amount, and in whose name and for whose benefits the payments were made.

26. CREDIT FOR STATE CONTRACTORS SUBCONTRACTING WITH SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESSES (FORMERLY MINORITY BUSINESS CREDIT)

S.C. Code Ann. § 12-6-3350 provides a tax credit to taxpayers having a contract with the state who award a subcontract to a certified South Carolina based socially and economically disadvantaged small business. The credit is equal to 4% of the payments to that subcontractor for work pursuant to the contract. The credit is limited to a maximum of $50,000 annually. A taxpayer is eligible to claim the credit for 10 consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. There is no carryforward of unused credits.

The subcontractor must be certified as a socially and economically disadvantaged small business, as defined in S.C. Code Ann. § 11-35-5010 and SC Code Ann. Regs. 19-445.2160. A taxpayer claiming the credit must maintain evidence of work performed for the contract by the subcontractor. Any payment made to a the subcontractor prior to the date of certification by the South Carolina Division of Small and Minority Business Contracting and Certification does not qualify for the credit. The credit is claimed on Form TC-2, "Credit for State Contractors Subcontracting with Socially and Economically Disadvantaged Small Business", formerly the "Minority Business Credit."

27. QUALITY IMPROVEMENT PROGRAM CREDITS

S.C. Code Ann. § 12-6-3580 allows income tax credits for fees incurred for quality improvement programs. They are:

1. A credit equal to the annual fee paid to the South Carolina Quality Forum to participate in quality programs.

2. A credit equal to 50% of any fees charged to participate in the organizational performance excellence assessment process.

The credits are limited to the tax liability on the return. There is no carryforward of unused credits. The credits are claimed on Form TC-28, "South Carolina Quality Forum Credit."

PART D: INDUSTRY SPECIFIC CREDITS

28. MOTION PICTURE PROJECT CREDIT

S.C. Code Ann. § 12-6-3570(A) provides an income tax credit equal to 20% of a taxpayer's cash investment in a company that develops or produces a qualified South Carolina motion picture project. For a motion picture equity fund created for the sole purpose of facilitating a slate of qualified South Carolina motion pictures projects, the credit is allocated to the fund based upon 20% of the cash value of its investment in a qualified South Carolina motion picture project. The credit is distributed to equity fund members based on their ownership interest.

To qualify for the credit, a taxpayer and the project must meet the following criteria:

1. The taxpayer must invest cash in a company that develops or produces a qualified South Carolina motion picture project intended for commercial exploitation. Only cash investments qualify for the credit. The taxpayer is the person who invests in a qualified South Carolina motion picture project. For purposes of a motion picture equity fund created for the sole purpose of facilitating a slate of qualified motion picture projects, the taxpayer is the person (*e.g.,* investor, partner, member, or shareholder) who invests in the motion picture equity fund.

2. The motion picture project must submit all required documentation to the South Carolina Film Commission ("Film Commission") at the South Carolina Department of Parks, Recreation and Tourism. Upon recommendation of the Film Commission, the motion picture project will be certified as an eligible project. For credit application and certification procedures, contact the Film Commission at 803-737-1785.

3. The qualified South Carolina motion picture project must register with the Department of Revenue and submit a record of allocation of credits and documentation required to meet the credit requirements.

4. The project must incur at least $250,000 of costs directly in South Carolina to produce a master negative motion picture for theatrical or television exhibition in the United States. At least 20% of the filming days of principal photography, but not less than 10 filming days, must be in South Carolina.

5. The cash investment must be expended for: (a) services performed in South Carolina, (b) tangible personal property dedicated for first use in South Carolina, or (c) real property in South Carolina.

A taxpayer's total credit for a single project is limited to $100,000 for all years. This credit, when combined with all the taxpayer's other South Carolina income tax credits, cannot exceed 50% of the taxpayer's South Carolina income tax liability. Any unused credit can be carried forward for

15 years. The credit is earned when the cash is spent. If the motion picture project does not meet the statutory requirements within 3 years from the end of the taxpayer's tax year when the credit was first claimed, then the taxpayers who claimed the credit must increase their income tax liability in the fourth year by the amount of the credits previously claimed. The credit is claimed on Form TC-25, "Motion Picture Credits."

29. MOTION PICTURE PRODUCTION FACILITY CREDIT

S.C. Code Ann. § 12-6-3570(B) provides an income tax credit equal to 20% of the taxpayer's investment in a company that constructs, converts, or equips a motion picture production facility or post-production facility in South Carolina. The total credit claimed by all taxpayers for a single motion picture production facility or post-production facility is limited to $5 million for all years.

To qualify for the credit, a taxpayer and the project must meet the following criteria:

1. The taxpayer's investment is cash and/or the fair market value of real property, including any improvements. The taxpayer is the person who invests in the company that constructs, converts, or equips a qualified South Carolina motion picture production facility or post-production facility.

2. Investments in cash must be expended for: (a) services performed in South Carolina, (b) tangible personal property dedicated for first use in South Carolina, or (c) real property in South Carolina. Investments in the form of real property must be in South Carolina and the facilities must be located on such property. "Real property" can also include the fair market value of a 36-month or greater lease less the fair market value of any consideration paid for the lease.

3. The total investment in a motion picture production facility must be at least $2 million, excluding land costs. The total investment in a post-production facility must be at least $1 million, excluding land costs.

4. Application for the credit is made to the Film Commission. Documentation must be provided to the Film Commission to confirm the total amount invested. For credit application and certification procedures, contact the Film Commission at 803-737-1785.

5. A taxpayer may claim the credit only one time in connection with a single motion picture production facility and only one time for a single post-production facility.

The terms "motion picture production facility" and "post-production facility" are defined in S.C. Code Ann. § 12-6-3570(F). "Motion picture production facility" means a site in this State that contains soundstages designed for the express purpose of film and television production for both theatrical and video release. Production includes, but is not limited to, motion pictures, made for television movies, and episodic television to a national or regional audience. The

motion picture production facility site must include production offices, construction shops/mills, prop and costume shops, storage areas, and parking for production vehicles, all of which complement the production needs and orientation of the overall facility purpose. The term does not include television stations, recording studios, or facilities predominately used to produce videos, commercials, training films, or advertising films.

"Post-production facility" means a site in this State designated for the express purpose of accomplishing the post production stage of film and television production for both theatrical and video release including the creation of visual effects, editing, and sound mixing. A post-production facility site is not required to contain a soundstage or be physically located at or near soundstages.

This credit, when combined with all the taxpayer's other South Carolina income tax credits, cannot exceed 50% of the taxpayer's South Carolina income tax liability. Any unused credit can be carried forward for 15 years. The credit is earned when the cash is spent or when qualifying real property is dedicated for use as part of a motion picture production facility or post-production facility. If, however, the motion picture production facility or post-production facility does not meet the statutory requirements within 3 years from the end of the taxpayer's tax year when the credit was first claimed, then the taxpayer must increase its income tax liability in the fourth year by the amount of the credits previously claimed. The credit is claimed on Form TC-25, "Motion Picture Credits."

See Sales and Use Tax Specific Provisions, Chapter 8, Section 17 for information on sales and use tax incentives available to the motion picture industry.

30. MOTION PICTURE WAGE/PAYROLL AND EXPENDITURE/SUPPLIER REBATES

South Carolina allows certain payroll expenses and expenditures incurred in connection with filming a motion picture in South Carolina to be rebated to a motion picture production company. The terms "motion picture production company" and "motion picture" are defined in S.C. Code Ann. § 12-62-20. These definitions are:

1. "Motion picture production company" is a company engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing.

2. "Motion picture" is a feature length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. It does not include the production of television coverage of news and athletic events or a production produced by a motion picture production company if records, as required by 18 U.S.C. 2257, are to be maintained by that company with respect to any performer portrayed in that single media or multimedia program.

a. Wage/Payroll Rebate

S.C. Code Ann. § 12-62-50 provides that the Film Commission may rebate to a qualifying and certified motion picture production company a portion of the payroll associated with the motion picture production in South Carolina. The rebate cannot exceed 20% of the total aggregate South Carolina payroll of the persons employed in connection with the production of a motion picture in South Carolina and 25% for South Carolina residents employed in connection with the motion picture.

The motion picture production company must complete an application and obtain approval as a certified production from the Film Commission. The application and certification procedures can be obtained from the Film Commission at 803-737-1785. The Film Commission administers the approval of this rebate. They have developed written guidelines concerning the rebate qualifications. A copy of the current guidelines can be obtained from the Film Commission by calling 803-737-1785.

Some of the key provisions of the wage/payroll rebate include:

1. The motion picture production company must incur total production costs in South Carolina of $1 million or more during the taxable year.

2. S.C. Code Ann. § 12-62-20 defines “payroll” as salary, wages, or other compensation subject to South Carolina income tax withholding. It does not include the salary of an employee earning $1 million or more per motion picture.

3. The total rebate for all qualifying projects is $10 million for each state fiscal year.

Important points to remember concerning the wage/payroll rebate are listed below.

- An employee is an individual directly involved in the filming or post-production of a motion picture in South Carolina and who is an employee of one of the following companies that is directly involved in the filming or post-production of a motion picture in South Carolina: (1) the motion picture production company; (2) a personal services corporation retained by a motion picture production company; or (3) a payroll services or loan out company retained by a motion picture production company.

- The rebate applies to employees subject to South Carolina income tax withholding that have South Carolina income tax withheld and remitted.

- The rebate is available only to the motion picture production company and only after all filming in South Carolina is complete.

- If a motion picture production company uses a personal services corporation, a payroll services company, or a loan out company to provide persons for the production whose payroll will be subject to the rebate, then such company must make an irrevocable assignment of its rebate to the motion picture production company. The rebate assignment must be made before filming begins in South Carolina and must be approved and certified by the Film Commission. The assignment is made on Form WH-403, "Assignment of Rebate to Motion Picture Production Company."

- After filming in South Carolina is complete, the motion picture production company must request the rebate from the Film Commission by the last day of February following the year in which the certificate of completion was obtained.

b. Expenditures/Supplier Rebate

S.C. Code Ann. § 12-62-60 provides that the Film Commission may rebate to a qualifying motion picture production company up to 30% of its expenditures made in South Carolina on a motion picture production. To qualify, the company must spend at least $1 million in South Carolina.

The Film Commission administers the approval of this rebate. They have developed written guidelines concerning the rebate qualifications. A copy of the current guidelines can be obtained from the Film Commission by calling 803-737-1785.

Important points to remember concerning the expenditures/supplier rebate are listed below.

- Expenditures eligible for the wage/payroll rebate are not also eligible for this rebate.

- Only expenditures associated with a South Carolina supplier qualify.

31. COMMERCIAL PRODUCTION CREDIT

S.C. Code Ann. § 12-6-3560 allows a production company producing commercials for multi-market distribution via television networks, cable, satellite, or motion picture theaters, an income tax credit equal to 10% of its South Carolina investment in such commercials during the calendar year. Any unused credit may be carried forward for 10 years. The credit is claimed on Form TC-24, "Commercials Credit."

The following requirements apply to the credit:

1. The credit is available to a company producing an advertisement composed of moving images and words that are recorded on film, videotape, or digital medium in South Carolina. It is not available to a company producing industrial videos, television broadcasts, cable and satellite networks, or news or sporting events.

2. The production company's total base investment in state certified commercial productions must exceed $500,000 during the calendar year.

3. The production company must apply to, and obtain certification of, each production from the Film Commission. For credit application and certification procedures, contact the Film Commission at 803-737-1785.

4. South Carolina has $1 million in total tax credits to disburse annually to all eligible companies. The amount disbursed is based on the order of approval of the company's application by the Film Commission. Once a company is certified, the Film Commission will notify the production company and the Department of Revenue.

32. MILK PRODUCER CREDIT

S.C. Code Ann. § 12-6-3590 allows a resident taxpayer in the business of producing milk for sale a refundable income tax credit of (1) $10,000 based on the production and sale of the first 500,000 pounds of milk sold below the production price in a calendar year and (2) an additional $5,000 for each additional 500,000 pounds sold below the production price in a calendar year. The credit is prorated on a quarterly basis. The South Carolina Department of Agriculture determines when the USDA Class I price of fluid milk in South Carolina drops below the production price.

The Commissioner of Agriculture will certify to the Department that the producers claiming credits have met the eligibility requirements. See S.C. Code Ann. Regs. 5-610 through 5-613 for definitions, production price information, and the annual production certification process.

The credit is claimed on Form I-334, "Milk Credit."

33. AGRICULTURAL USE OF ANHYDROUS AMMONIA CREDIT

S.C. Code Ann. § 12-6-3582 allows a resident taxpayer in the business of farming a refundable income tax credit equal to the amount expended to obtain the additive required to comply with S.C. Code Ann. § 44-53-375(E)(2)(a)(ii) (*i.e.,* to prevent the conversion of the active ingredient into methamphetamine, its salts, or isomers) for the agricultural use of anhydrous ammonia.

The credit is claimed on Form I-333, "Anhydrous Ammonia Additive Credit."

34. WHOLE EFFLUENT TOXICITY TESTING CREDIT FOR MANUFACTURING FACILITY

S.C. Code Ann. § 12-6-3589 allows a manufacturing facility a credit against corporate income tax for 25% of the costs incurred in complying with whole effluent toxicity testing. Any unused credits may be carried forward for 10 years. The credit is claimed on Form TC-37, "Whole Effluent Toxicity Testing."

35. SPECIAL INVESTMENT TAX CREDIT FOR RUBBER AND PLASTICS MANUFACTURERS - EXPIRED

S.C. Code Ann. § 12-14-80 allows a qualifying taxpayer a special investment tax credit for "qualified manufacturing and productive equipment property" it places in service. To qualify for the special investment tax credit a taxpayer must be engaged in this State in an activity listed under North American Industry Classification System Section 326 (Plastics and Rubber Manufacturing) and must either:

1. Be employing 5,000 or more full-time workers in the State and have a total capital investment of at least $2 billion dollars in the State and commit to investing $500 million in capital investment in this State between January 1, 2006 and July 1, 2011; or

2. Commit to employing 1,200 full-time employees in this State by January 1, 2022 and commit to investing $400 million in this State between September 1, 2011 and January 1, 2022.

Under the statute, the following terms are defined.

(1) "Qualified manufacturing and productive equipment property" means property that satisfies the requirements of S.C. Code Ann. § 12-14-60(B)(1)(a),(b), and (c).

(2) "Taxpayer" includes the taxpayer and any person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the taxpayer. For this purpose, a person controls another person if that person holds 50% ownership interest in the other person.

(3) "Capital investment in this State" includes property that is: (1) capitalized by the taxpayer; (2) subject to a capital lease with the taxpayer; (3) subject to an operating lease with the taxpayer.

Leased qualified manufacturing and productive equipment property shall be treated as placed in service by the taxpayer on the date the lease begins. Certain certification requirements must be met if the property subject to the special investment tax credit is leased. S.C. Code Ann. § 12-14-80(B) and (C)(2).

The special investment tax credit is equal to the aggregate amount computed based on S.C. Code Ann. § 12-14-60(A) (the regular investment tax credit). S.C. Code Ann. § 12-14-60(C). A qualifying taxpayer must first apply the special investment tax credit along with the credit allowed under S.C. Code Ann. § 12-6-3360, the South Carolina jobs tax credit, against income tax liability. If the taxpayer has excess special investment tax credit, the taxpayer can apply the excess credit and excess jobs tax credits against withholding tax on its four quarterly withholding tax returns after the taxable year in which it applied the credit against income tax

liability, except that these credits cannot offset more than 50% of the withholding tax liability shown on the return before the application of all other credits, including job development credits under S.C. Code Ann. §§ 12-10-80 or 12-10-81. S.C. Code Ann. § 12-14-80(D).

Unused credit can be carried forward, and for the first 10 years of each special investment tax credit carryforward, the carryforward of the credit may not reduce the taxpayer's income tax liability by more than 50%, and for subsequent years it cannot reduce income tax liability by more than 25%. All special investment credit carryforwards must first be used against income tax liability for the applicable year, as must all South Carolina jobs tax credit carryforwards. Any excess may then be used against withholding tax liability subject to the limitations against use of the credits against withholding tax liability described above. S.C. Code Ann. § 12-14-80(E).

Just like with the investment tax credit under S.C. Code Ann. §12-14-60, special basis reduction and recapture rules apply for a taxpayer claiming the special investment tax credit. Special rules are provided if the "qualified manufacturing and productive equipment property" in question is subject to a lease. S.C. Code Ann. § 12-14-80(G) – (H).

All taxpayers must execute a waiver of the statute of limitations pertaining to the credits claimed under S.C. Code Ann. § 12-14-80 and credits cannot be taken under that section until a taxpayer has invested a statutorily prescribed amount of the required capital investment and has filed certain statements with the Department. The taxpayer must also agree to refund credits if the full capital and job creation requirements are not met. S.C. Code Ann. § 12-14-80(I). The taxpayer must notify the Department before taking any credits under S.C. Code Ann. §12-14-80 and must provide continuing statements to the Department as required by the statute. S.C. Code Ann. § 12-14-80(J).

Since the last date to make the investment and to hire employees to qualify for the special investment tax credit for rubber and plastic manufacturers was December 31, 2021, new businesses may no longer qualify for this credit. Businesses that have already qualified for the credit may continue to claim the credit until fully utilized so long as the business continues to meet the requirements of the statute.

PART E: PROPERTY REHABILITATION AND HOUSING CREDITS

36. TEXTILE REVITALIZATION CREDITS

a. General Provisions

The South Carolina Textile Communities Revitalization Act, contained in Title 12, Chapter 65, provides a credit for the renovation, rehabilitation, and redevelopment of abandoned textile mill sites in South Carolina. The credit is not available to a taxpayer who owned the textile mill site immediately prior to its abandonment if the site was operational at that time or if the site has previously received textile mill credits.

An overview of the credit is provided below; however, for additional guidance and examples see SC Revenue Ruling #15-8.[1]

S.C. Code Ann. § 12-65-30 allows a taxpayer who rehabilitates an abandoned textile mill site to choose one of the following tax credits:

1. A credit against income tax, license tax, or both or a credit against bank taxes ("income/bank/license tax credit") or insurance premium taxes equal to 25% of eligible rehabilitation expenses or

2. A credit against real property taxes ("property tax credit") equal to 25% of the eligible rehabilitation expenses made to the site multiplied by the local taxing entity ratio for each local taxing entity consenting to the credit.

For a credit under (1) above, a taxpayer must file a "Notice of Intent to Rehabilitate" (Notice) with the Department before receiving the building permits for rehabilitating the site, or the applicable phase of the site. Transfers between affiliated taxpayers of any of the developmental phases of the textile mill site are not considered an acquisition that would subject the taxpayer to filing a Notice. Failure to provide the Notice results in only those rehabilitation expenses incurred after the Notice is provided qualifying for the credit.

The Notice is a letter submitted by the taxpayer indicating:

- the taxpayer intends to rehabilitate the site
- the location of the site

[1] The South Carolina General Assembly amended certain provisions of the South Carolina Textiles Communities Revitalization Act in 2019, 2020 and 2021. As such, SC Revenue Ruling #15-8 must be reviewed in light of these legislative amendments as well as the amendments made to S.C. Code Ann. § 12-2-100 discussed herein.

- the amount of acreage involved with the site
- the estimated expenses to be incurred
- which buildings on the site are to be renovate or demolished, and
- whether new construction is to be involved at the site.

b. Income/Bank/License/Insurance Premium Tax Credit

This credit amount is based upon actual or estimated expenses as follows:

1. The credit is 25% of the actual rehabilitation expenses unless the expenses exceed 125% of the estimated rehabilitation expenses set forth in the Notice.

2. The credit is 25% of 125% of the estimated rehabilitation expenses set forth in the Notice if the actual rehabilitation expenses exceed 125% of the estimated expenses listed in the Notice.

This credit can be used against income taxes imposed under Chapter 6 of Title 12 or license taxes imposed by Chapter 20 of Title 12, or both, bank taxes imposed under Chapter 11 of Title 12 or insurance premium taxes imposed by Chapter 7, Title 38. The entire credit is earned in the taxable year in which the site (or applicable phase or portion) is placed in service and is claimed in equal installments over a 5-year period beginning with the tax year the site (or applicable phase or portion) is placed in service. The credit may offset 100% of the taxpayer's income tax liability or license tax liability. Any unused credit may be carried forward for 5 years. The credit is claimed on Form TC-23, "Credit for Textiles Rehabilitation."

Under S.C. Code Ann. § 12-2-100(B), to the extent a partnership or limited liability company taxed as a partnership earns the textile facility revitalization credit, the credit, including any unused credit amount carried forward, may be passed through to the partners or members and may be allocated among any of its partners or members on an annual basis. This includes, without limitation, an allocation of the entire credit or unused credit carryforward to any partner or member who was a partner or member at any time in the year in which the credit or unused credit was allocated. The allocation must be allowed without regard to any provision of the Internal Revenue Code, or regulation promulgated pursuant thereto, that may be interpreted as contrary to the allocation, including and without limitation, the treatment of the allocation as a disguised sale.

S.C. Code Ann. § 12-2-100(B) applies to a qualified project placed in service after January 1, 2020, but before December 31, 2030, provided the qualified project is issued an eligibility statement after May 14, 2020.

An S corporation may pass through the credit to its shareholders but must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. S.C. Code Ann. § 12-6-3310(B)(2).

NOTE: A taxpayer may claim the income/bank/license/insurance premium textile revitalization tax credit in addition to the credit for rehabilitation of a certified historic structure allowed under S.C. Code Ann. § 12-6-3535

c. Certification Procedures

S.C. Code Ann. § 12-65-60 provides a procedure which allows a taxpayer to apply to the governing body of the municipality or county in which the textile mill site is located for certification of the site. The certification can be done by either ordinance or binding resolution and must include certain findings. A taxpayer who receives this certification may conclusively rely on the certification in determining the credit allowed, however, the taxpayer must include a copy of the certification on his first return where the credit is claimed.

d. Property Tax Credit

See Chapter 4, "Business Property Tax and Exemptions", Section 7, for a summary of the textile revitalization property tax credit.

e. Definitions

S.C. Code Ann. § 12-65-20 contains a list of definitions of terms used in the Act. Some of the defined terms are:

1. "Textile mill" - a facility or facilities that was initially used for textile manufacturing, dying, or finishing operations and for ancillary uses to those operations.

2. "Textile mill site" - the textile mill together with the land and other improvements on it which were used directly for textile manufacturing operations or ancillary uses. However, the area of the site is limited to the land located within the boundaries where the textile manufacturing, dying, or finishing facility structure is located and does not include land located outside the boundaries of the structure or devoted to ancillary uses.

   Notwithstanding the above, with respect to (i) any site acquired by a taxpayer before January 1, 2008, (ii) a site located on the Catawba River near Interstate 77, or (iii) a site which, on the date the notice of intent to rehabilitate is filed, is located in a distressed area of a county in this State, as designated by the applicable council of government, "textile mill site" means the textile mill structure, together with all land and improvements which were used directly for textile manufacturing operations or ancillary uses, or were located on the same parcel or a contiguous parcel within one thousand feet of any textile mill structure or

ancillary uses. For purposes of this item, "contiguous parcel" means any separate tax parcel sharing a common boundary with an adjacent parcel or separated only by a private or public road or railroad rights of way.

3. “Ancillary uses” - uses related to the textile manufacturing, dying, or finishing operations on a textile mill site consisting of sales, distribution, storage, water runoff, wastewater treatment and detention, pollution control, landfill, personnel offices, security offices, employee parking, dining and recreation areas, and internal roadways or driveways directly associated with such uses.

4. “Abandoned” - at least 80% of the textile mill has been continuously closed to business or otherwise nonoperational as a textile mill for at least one year immediately preceding the date the taxpayer files a “Notice of Intent to Rehabilitate.” A textile mill that qualifies as abandoned may be subdivided into separate parcels, and those parcels may be owned by the same taxpayer or different taxpayers, and each parcel is deemed to be a textile mill site for purposes of determining whether each subdivided parcel has been abandoned.

5. “Rehabilitation expenses” - the expenses or capital expenditures incurred in the rehabilitation, renovation, or redevelopment of the textile mill site, including without limitations, the demolition of existing buildings, environmental remediation, site improvements and the construction of new buildings and other improvements on the textile mill site, but excluding the cost of acquiring the textile mill site or the cost of personal property located at the textile mill site. For expenses associated with a textile mill site to qualify for the credit, the textile mill and buildings on the textile mill site must be either renovated or demolished.

   Notwithstanding the above, for purposes of calculating the credit with regard to new or rehabilitated buildings on “contiguous parcels” as described above, “rehabilitation expenses” do not include expenses that increase the amount of square footage of the buildings that existed on that contiguous parcel immediately preceding the time at which the textile mill became abandoned by more than 200%.

6. “Placed in service” - the date the textile mill site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.

f. Transfer of Credit

A taxpayer who sells or leases all or part of the textile mill site may transfer all or part of any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the purchaser or lessee. The taxpayer must notify the Department of the credit transfer. Questions concerning a credit transfer and the method to request approval of the transfer from the Department should be directed to the Department at 803-898-5749 or by email at TaxCredits@dor.sc.gov.

NOTE: Other rules not discussed in this general summary may apply to sites purchased before January 1, 2008, a site located on the Catawba River near Interstate 77, or a site which on the date a notice of intent to rehabilitate is filed is located in a distressed area of a county, as designated by the applicable council of government. Also, transitional rules may apply to certain sites.

37. RETAIL FACILITY REVITALIZATION CREDITS

NOTE: The Retail Facilities Revitalization Act was repealed on July 1, 2016. However, for those sites which provide written notification of their election prior to July 1, 2016 and for which a building permit was issued prior to July 1, 2016, the repeal is suspended for fiscal year 2022-2023.

a. General Provisions

The South Carolina Retail Facilities Revitalization Act, contained in Title 6, Chapter 34, provides an income tax credit or property tax credit for the renovation, improvement, and redevelopment of abandoned retail facility sites in South Carolina.

An overview of the credit is provided below; however, for additional guidance and examples see SC Revenue Ruling #15-9.

S.C. Code Ann. § 6-34-40 allows a taxpayer who improves, renovates, or redevelops an eligible site to elect one of the following revitalization tax credits:

1. An "income tax credit" equal to 10% of the rehabilitation expenses or

2. A "property tax credit" equal to 25% of the rehabilitation expenses made to the eligible site multiplied by the local taxing entity ratio of each local taxing entity consenting to the credit, up to 75% of the real property taxes due on the eligible site each year.

The taxpayer elects whether to claim the income tax credit or the real property tax credit. There is no formal procedure to elect the income tax credit; it is simply claimed on the income tax return. To elect the property tax credit, the taxpayer must provide written notification to the Department prior to the date the eligible site is placed in service. If the taxpayer does not affirmatively make the property tax credit election timely in writing before the date the site is placed in service or does not obtain the required county approvals in S.C. Code Ann. § 6-34-40(B), then the taxpayer is deemed to have elected the income tax credit.

b. Income Tax Credit

The income tax credit provided in S.C. Code Ann. § 6-34-40(A)(2) is claimed in equal installments over an 8-year period beginning with the year the property is placed in service. Any unused credit may be carried forward for 5 years. The credit is claimed on Form TC-31, "Retail Facilities Revitalization Credit."

A partnership or limited liability company taxed as a partnership may pass the credit earned to each partner or member in any manner agreed to by the partners or members that is consistent with Subchapter K of the Internal Revenue Code, including an allocation of the entire credit to one partner or member. An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. S.C. Code Ann. § 12-6-3310(B)(2).

NOTE: A taxpayer may claim this credit against income tax in addition to the credit for rehabilitation of a certified historic structure allowed under S.C. Code Ann. § 12-6-3535.

c. Property Tax Credit

See Chapter 4, "Business Property Tax and Exemptions," Section 8, for a summary of the retail facility revitalization property tax credit.

d. Definitions

S.C. Code Ann. § 6-34-30 contains a list of definitions of terms used in the Act. Some of these defined terms are:

1. "Eligible site" – an abandoned shopping center, mall, or free standing site whose primary use was as a retail sales facility with at least one occupant in a 40,000 square foot or larger building or structure.

2. "Abandoned" - at least 80% of the facilities of the eligible site has been continuously closed to business or nonoperational for at least one year immediately prior to the time the determination is to be made. During the abandonment, the eligible site may serve as a wholesale facility for no more than one year.

3. "Rehabilitation expenses" - the expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site.

4. "Placed in service" - the date the eligible site is suitable for occupancy for the purposes intended.

e. Transfer of Credit

The owner of an eligible site may transfer, devise, or distribute any unused credit to the tenant of the eligible site, provided the Department receives written notification of and approves the transfer, devise or distribution. Questions concerning a credit transfer and information needed in connection with the Department's approval of a transfer should be directed to the Department at 803-898-5749 or TaxCredits@dor.sc.gov.

38. ABANDONED BUILDINGS REVITALIZATION CREDIT

a. General Provisions

The South Carolina Abandoned Buildings Revitalization Act, contained in Title 12, Chapter 67 provides an income tax credit or property tax credit for the renovation, redevelopment or improvement of abandoned building sites put into operation for income producing purposes.

An overview of the credit is provided below; however, for additional guidance and examples see SC Revenue Ruling #15-7.[2] Also, see SC Revenue Ruling #15-12 for additional rules relevant to state-owned abandoned buildings.

Under Title 12, Chapter 67 a qualifying taxpayer may elect one of the following tax credits:

1. A credit against income tax, license tax, bank tax, insurance premium tax (including retaliatory taxes), or a combination thereof equal to 25% of the eligible rehabilitation expenses made to the site or

2. A credit against real property taxes equal to 25% of the eligible rehabilitation expenses made to the site multiplied by the local taxing entity ratio of each local taxing entity consenting to the credit, which can offset up to 75% of the real property taxes due on the eligible site each year.

In order for expenses associated with the site to qualify for the credit, the abandoned buildings on the building site must be either renovated or redeveloped. For sites which have had no portion thereof placed in service before July 1, 2018, and upon which is located a redeveloped multi-floor structure that is listed on the National Register of Historic Places, the taxpayer may subdivide the structure into separate units, with the limitation that up to 7 separate floors may be considered 7 separate subdivided units if a floor is redeveloped for the exclusive use as a residential apartment or apartments. If a taxpayer intends to redevelop a multi-floor structure listed on the National Register of Historic Places referenced in the immediately preceding sentence, the taxpayer must, in lieu of filing a Notice of Intent to Rehabilitate but before claiming this tax credit, notify the Department in writing of the taxpayer's intent to claim the Abandoned Buildings Credit, and must provide any information required by the Department, including, but not limited to, the location of the building site, the actual expenses incurred in connection with the rehabilitation, the number of units for which a credit is being claimed, and the date the building site will be placed in service.

For the income/license/bank tax credit, a taxpayer must file a "Notice of Intent to Rehabilitate" (Notice) with the Department before incurring any rehabilitation expenses. Failure to provide

[2] Note, the statute has been amended since the publication of this ruling, so caution should be exercised when reviewing the ruling as it pertains to portions of the statute that have been amended.

the Notice results in only those rehabilitation expenses incurred after the Notice is provided qualifying for the credit.

The Notice is a letter submitted by the taxpayer indicating:

- the taxpayer intends to rehabilitate the building;
- the location of the building site;
- the amount of acreage involved with the site;
- the amount of square footage of existing buildings;
- the estimated expenses to be incurred;
- which buildings will be rehabilitated; and
- whether new construction is to be involved at the site.

b. Income/License/Bank/Insurance Premium Tax Credit

This credit amount is based upon actual or estimated expenses as follows:

1. The credit is 25% of the actual rehabilitation expenses if such expenses are between 80% to 125% of the estimated rehabilitation expenses listed in the Notice.

2. The credit is 25% of 125% of the estimated rehabilitation expenses set forth in the Notice if the actual rehabilitation expenses exceed 125% of the estimated expenses listed in the Notice.

3. No credit is allowed if the actual rehabilitation expenses are below 80% of the estimated expenses.

The entire credit is earned in the taxable year in which the site (or applicable phase or portion) is placed in service and is claimed in equal installments over a 3-year period beginning with the tax year the site (or applicable phase or portion) is placed in service. The credit cannot exceed $500,000 for any taxpayer in any tax year for each unit or parcel deemed to be an abandoned building site. Any unused credit may be carried forward for 5 years at the individual, partnership, or limited liability company level. The credit is claimed on Form SC SCH TC-55, “Abandoned Buildings Revitalization Credit.”

A partnership or limited liability company taxed as a partnership may pass through the credit earned, including any unused credit amount carried forward, to the partners or members and may be allocated among any of its partners or members on an annual basis including, without

limitation, an allocation of the entire credit or unused credit carryforward to any partner or member who was a partner or member at any time during the year in which the credit or unused carryforward is allocated. An S corporation must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. S.C. Code Ann. § 12-6-3310(B)(2).

If the taxpayer qualifies for the abandoned buildings credit and the textile revitalization credit or the retail revitalization credit, the taxpayer may only claim one of the three credits.

However, the taxpayer is not disqualified from claiming any other tax credit in conjunction with the abandoned buildings credit, including the certified historic structure tax credit.

c. Investment Requirements

The abandoned buildings credit only applies to abandoned building sites, or phases or portions thereof, put into operation where the taxpayer incurs:

- More than $250,000 of rehabilitation expenses for buildings located in the unincorporated areas of a county or in a municipality in the county with a population of more than 25,000 people.

- More than $150,000 of rehabilitation expenses for buildings located in the unincorporated areas of a county or in a municipality in the county with a population between 1,000 and 25,000 people.

- More than $75,000 of rehabilitation expenses for buildings located in a municipality with a population of less than 1,000 people.

d. Property Tax Credit

See Chapter 4, “Business Property Tax and Exemptions”, Section 9, for a summary of the abandoned buildings property tax credit.

e. Certification of Abandoned Building Site

The taxpayer may apply to the county or municipality in which the building is located for certification that the building is an abandoned building or state-owned abandoned building, as defined in S.C. Code Ann. § 12-67-120. The taxpayer may conclusively rely on this certification. A copy must be included with the first tax return for which the credit is claimed. See S.C. Code Ann. § 12-67-160.

f. Definitions

S.C. Code Ann. § 12-67-120 contains a list of definitions of terms used in the Act. Some of the defined terms are:

1. "Abandoned building" - a building or structure, other than a single family residence, which clearly may be delineated from other buildings or structures, at least 66% of the space which has been closed continuously to business or otherwise nonoperational for income producing purposes for a period of at least 5 years immediately preceding the date on which the taxpayer files the Notice of Intent to Rehabilitate. A building that otherwise qualifies may be divided into unit or parcels, which may be owned by the same taxpayer or different taxpayers. Each unit or parcel is deemed to be an abandoned building site for purposes of determining whether each subdivided parcel is considered to be abandoned. Special rules apply if the building is listed on the National Register for Historic Places.

2. "Building site" - the abandoned building together with the parcel of land upon which it is located and other improvements located on the parcel. However, the area of the building site is limited to the land upon which the abandoned building is located and the land immediately surrounding such building used for parking and other similar purposes directly related to the building's income producing use.

3. "Rehabilitation expenses" - expenses or capital expenditures incurred in the rehabilitation, demolition, renovation, or redevelopment of the building site, including without limitation, the renovation or redevelopment of existing buildings, environmental remediation, site improvements and the construction of new buildings and other improvements on the site, but excluding the cost of acquiring the site or the cost of personal property located at the site, and demolition expenses if the building is on the National Register of Historic Places.

   Rehabilitation expenses associated with a building site that increase the amount of square footage on the building site in excess of 200% of the amount of the square footage of the buildings that existed on the buildings site as of the filing of the Notice shall not be considered a rehabilitation expense for calculating the amount of the credit.

4. "Placed in service" - the date upon which the building site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.

5. "State-owned abandoned building" – an abandoned building and its ancillary service buildings or a project consisting of one or more abandoned buildings, the aggregate size of which is greater than 50,000 square feet, that has been abandoned for more than five years, and, prior to the taxpayer's acquisition of such building, was most recently owned by the State, or an agency, instrumentality, or political subdivision of the State. For purposes of this definition, the taxpayer shall include any entity under common control or common ownership with the taxpayer.

g. Transfer of Credit

A taxpayer who sells or leases all or part of the abandoned building site may transfer all or part of any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the purchaser or lessee. The taxpayer must notify the Department of the credit transfer. Questions concerning a credit transfer and the method to request approval of the transfer from the Department should be directed to the Department at 803-898-5749 or by email at TaxCredits@dor.sc.gov.

h. Extension of Placed in Service Date

If a taxpayer files a notice of intent to rehabilitate and has been rehabilitating an abandoned building continuously for the preceding year and the building is more than 60% complete, the taxpayer must be allowed to extend the placed in service date until 90 days after construction is completed, provided the construction continues diligently until the end of the 90 days. S.C. Code Ann. § 12-67-170. This provision is not to be construed to allow a taxpayer to earn a credit before the applicable phase or portion of the building site is placed in service.

i. Repeal of the Act

The South Carolina Abandoned Buildings Revitalization Act is repealed on December 31, 2025, however, taxpayers should consult their tax advisors as this date may be extended. Any credit carryforward will continue to be allowed until the 5-year time period in S.C. Code Ann. § 12-67-140 is completed.

39. CREDIT FOR REHABILITATION OF A CERTIFIED HISTORIC STRUCTURE

S.C. Code Ann. § 12-6-3535 has two similar income tax credits available to taxpayers making historic rehabilitation expenditures in South Carolina. The first credit, rehabilitation of a certified historic structure credit, is available to taxpayers that qualify for the federal rehabilitation credit. The second credit, rehabilitation of a certified historic residential structure credit, is available to individual taxpayers that do not qualify for the federal rehabilitation credit.

A general overview of the credit for rehabilitation of a certified historic structure is provided below. See Chapter 3, “Individual Income and Estate and Gift Taxes,” Section 18 for a general overview of the credit for rehabilitation of a certified historic residential structure.

S.C. Code Ann. § 12-6-3535(A) allows a taxpayer a credit against income taxes and license taxes imposed under Title 12 (equal to 10% of the qualified rehabilitation expenditures for a certified historic structure located in South Carolina that qualify for the federal rehabilitation credit provided in I.R.C. § 47. A taxpayer may elect a 25% tax credit in lieu of the 10% tax credit, not to exceed $1 million for each certified historic structure.

The credit is claimed in equal amounts over a 3-year period beginning with the year that the property is placed in service. Any unused credit may be carried forward for the succeeding 5 years at the individual, partnership, or limited liability company level. To claim this credit, the taxpayer must attach to the South Carolina income tax return a copy of the appropriate federal tax forms showing the amount of federal rehabilitation credit claimed. The credit is claimed on Form TC-21, "Credit for a Certified Historic Structure Placed in Service after June 9, 2015."

Under S.C. Code Ann. § 12-2-100(B), to the extent a partnership or limited liability company taxed as a partnership earns the certified historic structure credit, the credit, including any unused credit amount carried forward, may be passed through to the partners or members and may be allocated among any of its partners or members on an annual basis. This includes, without limitation, an allocation of the entire credit or unused credit carryforward to any partner or member who was a partner or member at any time in the year in which the credit or unused credit was allocated. The allocation must be allowed without regard to any provision of the Internal Revenue Code, or regulation promulgated pursuant thereto, that may be interpreted as contrary to the allocation, including and without limitation, the treatment of the allocation as a disguised sale. S.C. Code Ann. § 12-2-100(B) applies to a qualified project placed in service after January 1, 2020, but before December 31, 2030, provided the qualified project is issued an eligibility statement after May 14, 2020.

An S corporation may pass through the credit to its shareholders but must first use the credit against its own income tax liability, if any, before passing the credit through to its shareholders based on their percentage of stock ownership. S.C. Code Ann. § 12-6-3310(B)(2).

Additionally, a taxpayer who makes a passthrough election under I.R.C. § 50(d) may elect to pass the credit claimed to the tenant of the eligible structure or to retain the credit.

The terms "taxpayer," "qualified rehabilitation expenditures," and "certified historic structure" have the same meaning as provided in I.R.C. § 47 and the applicable Treasury Regulations.

Other credit provisions include:

1. Additional work done by the taxpayer while the credit is being claimed, for a period of up to 5 years, must be consistent with the Secretary of the Interior's Standards for Rehabilitation. During this period, the State Historic Preservation Officer may inspect and review additional work to the certified historic structure. If this work is not consistent with the Standards for Rehabilitation, the taxpayer and Department must be notified in writing and any unused portion of the credit, including any carryforward, is forfeited.

2. The South Carolina Department of Archives and History has developed an application and certification process. A taxpayer claiming the credit must pay a preliminary and/or a final fee to the South Carolina Department of Archives and History based on a prescribed fee schedule, however, the fee is suspended for the fiscal year beginning July 1, 2022 and ending June 30, 2023. A copy of the application and certification information can be

obtained from the South Carolina Department of Archives and History at 803-896-6174. A taxpayer may appeal a decision of the State Historic Preservation Officer to a committee of the State Review Board.

40. CREDIT FOR RESIDENTIAL LOW INCOME HOUSING

S.C. Code Ann. § 12-6-3795 provides a tax credit against income tax, license tax, bank tax or insurance premium and retaliatory tax to eligible owners of residential low-income rental buildings. A sole proprietor, partnership, corporation, limited liability company or association taxable as a business entity may be an eligible building/project owner ("owner").

To qualify for the credit, an owner must obtain an eligibility statement from the South Carolina Housing and Finance Development Authority ("Housing Authority") and otherwise meet the requirements of the statute. The eligibility statement certifies that the project qualifies for the credit and specifies the annual amount of credit allocated to the project for each year of the credit period and the total amount allocated for all years. The Housing Authority may not issue the eligibility statement until the owner provides a report detailing how the credit will benefit tenants at the project, including, reduced rent, or why the state credit is necessary to undertake the project, as well as other information required by the statute or the Housing Authority. The Housing Authority shall promulgate rules establishing criteria upon which the eligibility statements are issued which must include consideration of evidence of local support for the project.

The state credit amount for a qualified project can be up to the amount of the federal low-income housing credit allowed under I.R.C. § 42, "Low-Income Housing Credit". The Housing Authority determines the amount of credit allocated to the taxpayer. The total state credit used in any tax year cannot exceed the taxpayer's tax liability, but any unused credit may be carried forward five years, but may not be carried back. However, the total amount of credits available to all qualifying projects for each year may not exceed $20 million plus, the total of all unallocated tax credits, if any, for any preceding years, and the total amount of any previously allocated tax credits that have been recaptured, revoked, cancelled, or otherwise recovered but not otherwise reallocated. Additional requirements relating to how credits may be allocated have been enacted.

The Housing Authority is responsible for the allocation and administration of the housing tax credit and ensuring that all dollar limitations and restrictions are not exceeded.

Under S.C. Code Ann. § 12-2-100(B), to the extent a partnership or limited liability company taxed as a partnership earns the low income housing tax credit, the credit, including any unused credit amount carried forward, may be passed through to the partners or members and may be allocated among any of its partners or members on an annual basis. This includes, without limitation, an allocation of the entire credit or unused credit carryforward to any partner or member who was a partner or member at any time in the year in which the credit or unused credit was allocated. The allocation must be allowed without regard to any provision of the

Internal Revenue Code, or regulation promulgated pursuant thereto, that may be interpreted as contrary to the allocation, including and without limitation, the treatment of the allocation as a disguised sale. S.C. Code Ann. § 12-2-100(B) applies to a qualified project placed in service after January 1, 2020, but before December 31, 2030.

If a portion of any federal housing tax credit taken on a project is required to be recaptured, the taxpayer claiming any state credit for that project also is required to recapture a portion of the state credit in the same manner as the recapture of the federal tax credit.

S.C. Code Ann. § 12-6-3795 contains a list of definitions of terms. Some of the defined terms are:

Qualified Project - A qualified low-income building as defined in Internal Revenue Code Section 42 that is located in South Carolina and receives approval for tax credits from the Housing Authority.

Project - A housing project that has restricted rents that do not exceed 30% of income for at least 40% of its units occupied by persons or families having incomes of 60% or less of the median income, or at least 20% of the units occupied by persons or families having incomes of 50% or less of the median income.

Median Income - Those incomes that are determined by the federal Department of Housing and Urban Development guidelines and adjusted by family size.

Federal 9 percent tax credit means the federal housing tax credit described in Section 42(b)(1)(B)(i) of the Internal Revenue Code.

Federal 4 percent tax credit means the federal housing tax credit described in Section 42(b)(1)(B)(ii) of the Internal Revenue Code.

Credit period has the same meaning as provided in Section 42(f)(1) of the Internal Revenue Code.

The state credit only applies to projects placed in service after January 1, 2020 and before December 31, 2030 and the owner must have received an eligibility statement from the Housing Authority after May 14, 2020 to be eligible for the credit. For more information about this credit, see SC Revenue Ruling #21-5.[3] Additionally, the Housing Authority should be consulted as there have been recent legislative changes to the law that concern federal 4 percent projects that may impact their ability to receive tax exempt financing.

[3] S.C. Code Ann. § 12-6-3795 has been substantially amended since SC Revenue Ruling #21-5 was issued.

PART F: LAND CONSERVATION OR ENVIRONMENTAL CREDITS

41. CONSERVATION CREDIT

a. General Provisions

S.C. Code Ann. § 12-6-3515 allows a taxpayer who is entitled to and claims a federal charitable deduction for a gift of land for conservation or for a qualified conservation contribution on a qualified real property interest located in South Carolina, to claim a South Carolina income tax credit equal to 25% of the total amount of the deduction attributable to the a gift of land for conservation or to the qualified real property interest associated with the qualified conservation contribution. The credit cannot exceed $250 per acre of property to which the qualified conservation contribution or gift of land for conservation applies. The total credit claimed by a single taxpayer cannot exceed $52,500 per year. Any unused credit may be carried forward until used. The credit is claimed on Form TC-19, "Credit for a Gift of Land for Conservation or a Qualified Conservation Contribution of Real Property After May 31, 2001."

b. Definitions and Requirements

For purposes of this credit, "qualified conservation contribution" and "qualified real property interest" have the same meaning as defined in I.R.C. § 170(h). The term "gift of land for conservation" is a charitable contribution of fee simple title to real property conveyed for conservation purposes as defined in I.R.C. § 170(h)(4)(A) to a qualified conservation organization as defined in I.R.C. § 170(h)(3). The conservation credit is not allowed unless the contribution meets the requirements of I.R.C. § 170, S.C. Code Ann. § 12-6-3515, and S.C. Code Ann. § 12-6-5590 (*i.e.,* donative intent).

Notwithstanding I.R.C. § 170(h) and applicable regulations, a taxpayer is not disqualified from claiming this credit because of silvacultural and forestry practices permitted by or undertaken pursuant to a conservation contribution on a real property interest provided that: (1) the practices conform to Best Management Practices established by the South Carolina Forestry Commission existing at the time the conservation contribution is made, or at the time a particular forestry or silvacultural practice is undertaken; (2) the conservation contribution otherwise conforms to the requirements of I.R.C. § 170(h); and, (3) the taxpayer provides the Department with information to determine that the taxpayer would otherwise be eligible for the deduction under I.R.C. § 170(h). The credit is 25% of the deduction that would otherwise be allowable under I.R.C. § 170(h) but for the silvacultural and forestry activities performed on the real property interest and is subject to all the other conditions and limitations of S.C. Code Ann. § 12-6-3515.

For purposes of applying the per acre and per taxpayer limitations, the attribution rules of I.R.C. § 267 apply. The fair market value of all qualified donations must be substantiated by a

"qualified appraisal" prepared by a "qualified appraiser" as defined under applicable federal law and regulations relating to charitable contributions.

c. Transfer of Credit

The unused credit may be transferred, devised, or distributed, with or without consideration, to another taxpayer upon written notification to, and approval by, the Department of the transfer. The Department's approval is valid only if the transfer is completed consistent with the information contained in the request for transfer. If the Department has not approved the transfer within two weeks of submission of the request, the request will be deemed approved two weeks after the transferor has submitted all information requested in complete form and the transfer is carried out consistent with the information submitted in the request.

A taxpayer may transfer the unused credits to one or more taxpayers (transferees) for any tax year and each of these transferees will be eligible to claim up to $52,500 in total conservation credits for the current tax year and any subsequent tax years. The total conservation credits include any credits for the current year, whether transferred to a taxpayer or earned or retained by a taxpayer, and any carryover of previous year's credits transferred to a taxpayer or earned or retained by a taxpayer. If a taxpayer transfers the credit, the unused credit retains all its original attributes in the hands of the transferee. If there is a sale, exchange, or transfer of the credit, general income tax principles apply for purposes of the state income tax credit.

The procedure to request approval from the Department of the transfer, devise, or distribution of the conservation credit, and the information required to be submitted with the request, is provided in SC Revenue Procedure #08-1.

42. CREDIT FOR WATER IMPOUNDMENTS AND WATER CONTROLS

S.C. Code Ann. § 12-6-3370 allows a taxpayer a credit equal to 25% of all expenditures incurred for the construction, installation, or restoration of certain ponds, lakes, other water impoundments, and water control structures designed for the purposes of water storage for irrigation, water supply, sediment control, erosion control, or aquaculture and wildlife management, provided these items are not located in, or adjacent to, and filled primarily by coastal waters of the state. To qualify for the credit the taxpayer must obtain a construction permit issued by the Department of Health and Environmental Control or proof of exemption from permit requirements issued by the Department of Health and Environmental Control, the Natural Resources Conservation Service, or a local Soil and Water Conservation District.

The maximum credit that may be claimed is $2,500. In the case of pass-through entities, the credit is determined at the entity level and is limited to $2,500. Any unused credit can be carried forward for 5 years. The credit is claimed on Form TC-3, "Water Resources Credit."

43. HABITAT MANAGEMENT CREDIT

S.C. Code Ann. § 12-6-3520 provides an income tax credit equal to 50% of the costs incurred for habitat management or construction and maintenance of improvements on real property that are made to land described in S.C. Code Ann. § 50-15-50(A) as a certified management area for endangered species, or of species in need of management, and which meets the requirements of regulations promulgated by the Department of Natural Resources.

NOTE: Until the Department of Natural Resources promulgates regulations, this credit is not available.

To qualify for the credit, all costs must be incurred on land that has been designated as a certified management area for endangered species provided in S.C. Code Ann. § 50-15-30, or for nongame and wildlife species determined to be in need of management under S.C. Code Ann. § 50-15-20.

The credit must be claimed in the year that the costs are incurred and may not exceed 50% of the taxpayer's income tax liability. Any credit generated by an S corporation must be used first against any tax liability of the S corporation and any remaining credit passes through to the shareholders. Any unused credit can be carried forward 10 years.

Rules exists requiring recapture of the credit. If the landowner voluntarily chooses to leave the agreement made concerning the certified areas after taking the tax credit, then the taxpayer's tax liability must be increased by the full amount of the credit previously claimed.

44. BROWNFIELDS VOLUNTARY CLEANUP CREDIT

S.C. Code Ann. § 12-6-3550 allows a credit against taxes due for costs of voluntary cleanup activity by a non-responsible party pursuant to the Brownfields Voluntary Cleanup Program in S.C. Code Title 44, Chapter 56, Article 7.

The "basic" credit amount is equal to 50% of the cleanup expenses paid or accrued or cash contributions for site cleanup conducted during the tax year the tax credit application is submitted, not to exceed $50,000 in a tax year. Any unused credit, up to $100,000, may be carried forward 5 years. An "additional" credit equal to 10% of the total cleanup costs, not to exceed $50,000, is allowed in the final year of cleanup, as evidenced by the South Carolina Department of Environmental Control ("DHEC") issuing a certificate of completion for the site. Multiple taxpayers working jointly to clean up a single site are allowed the credit in the same proportion as their contribution to the payment of cleanup costs. The credit is claimed on Form TC-20, "Credit for Expenses Incurred Through Brownfields Voluntary Cleanup Program."
The following requirements apply to the credit:

1. The taxpayer must have entered into a nonresponsible party voluntary contract with DHEC as provided in S.C. Code Ann. § 44-56-750.

2. The taxpayer must file a tax credit certificate application annually with DHEC in order to obtain a tax credit certificate. The tax credit application and required documentation must be received by DHEC by December 31. Information included with the application form must include: (a) copies of contracts, invoices or payment records involving the actual costs incurred for the tax year related to the site rehabilitation and (b) a copy of an independent certified public accountant report attesting to the accuracy and validity of the cleanup costs.

DHEC will issue a tax credit certificate upon review of the application and documentation before April 1 if it determines that the applicant has met all requirements. It may revoke or modify any written decision granting eligibility for partial tax credits if it is discovered that the taxpayer submitted false information. The taxpayer must pay DHEC's administrative review costs pursuant to S.C. Code Ann. § 44-56-750(D).

45. RECYCLING FACILITY TAX CREDITS

S.C. Code Ann. § 12-6-3460 provides a taxpayer constructing or operating a qualified recycling facility a 30% credit each year for an investment in recycling property. Recycling property is property incorporated into or associated with a qualified recycling facility.

The credit may be used to reduce: (a) corporate income tax imposed under S.C. Code Ann. § 12-6-530, (b) sales and use tax imposed by the state or any political subdivision of the state, (c) corporate license fees imposed by S.C. Code Ann. § 12-20-50 or (d) any similar tax.

In order to qualify as a "qualified recycling facility" the facility must:

1. Manufacture products for sale composed of 50% or more post-consumer waste material by weight or volume, such as scrap metal and iron, used plastics, paper, glass, and rubber;

2. Invest at least $300 million in the acquisition, construction, erection, and installation of real and personal property by the end of the fifth year after the first year of construction or operation; and

3. Receive certification from the Department that the facility is a qualified recycling facility.

Any unused credit may be carried forward indefinitely. If the facility does not meet the required minimum investment, all credits must be recaptured. The credit is claimed on Form TC-17, "Recycling Property Tax Credit per S.C. Code Ann. § 12-6-3460."

S.C. Code Ann. § 12-6-3465 provides that a qualified recycling facility is also entitled to a credit equal to the amount of all of its job development benefits collected under S.C. Code Ann. § 12-10-80. This credit can be used to reduce the taxpayer's corporate income tax imposed by S.C. Code Ann. § 12-6-530, sales or use tax imposed by the state or any political subdivision of the state, corporate license fees imposed by S.C. Code Ann. § 12-20-50, or any tax similar to these taxes. Any unused credit may be carried forward to subsequent taxable years until such credit is exhausted.

There are also significant fee in lieu of property tax and sales tax incentives available to qualifying recycling facilities. These benefits are discussed in the Property Tax and Sales and Use Tax Sections.

PART G: ENERGY CONSERVATION AND ALTERNATIVE ENERGY CREDITS

46. SOLAR ENERGY CREDITS

a. Basic Solar Credit

S.C. Code Ann. § 12-6-3587 allows a taxpayer a credit against income taxes equal to 25% of the costs incurred in the purchase and installation of a solar energy system, including a small hydropower system or "geothermal machinery and equipment" for heating water, space heating, air cooling, energy efficient daylighting, heat reclamation, energy-efficient demand response or the generation of electricity in or on a facility (or home) in South Carolina owned by the taxpayer. The credit cannot be claimed before installation of the system is completed. The amount of the credit may not exceed $3,500 for each facility or 50% of the taxpayer's tax liability for the taxable year, whichever is less. The credit in excess of $3,500 for each facility can be carried forward for 10 years. The credit is claimed on Form TC-38, "Solar Energy Credit."

A "system" includes all controls, tanks, pumps, heat exchangers, and other equipment used directly and exclusively for the solar energy system. It does not include any land or structural elements of the building such as walls and roofs or other equipment ordinarily contained in the structure. To qualify for the credit, the system must be certified for performance by the nonprofit Solar Rating and Certification Corporation or a comparable entity endorsed by the State Energy Office. The statute also defines "geothermal machinery and equipment."

NOTE: The credit available for purchase and installation of "geothermal machinery and equipment" is effective until January 1, 2032.

b. Solar Energy Equipment Credit – Qualifying Sites

S.C. Code Ann. § 12-6-3775 provides an income tax credit equal to 25% of the cost, including installation, of solar energy property. "Solar energy property" is defined as any **nonresidential** solar energy equipment with a nameplate capacity of at least 1,900 kilowatts, that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. Certain related devices are also included in the term. S.C. Code Ann. § 12-6-3775(A) and (B).

In order to qualify for the credit, the taxpayer must construct, purchase or lease, and place in service in South Carolina, a solar energy property. In addition, the property must be located on a qualifying site as provided in the statute. If the taxpayer leases the property, certain additional requirements must be met. S.C. Code Ann. § 12-6-3775(B) and (E).

The credit is earned in the year in which the solar energy site is placed in service but must be taken in 5 equal annual installments, beginning within 3 years of the year in which the property is placed in service. Unused credits can be carried forward for 5 years from the year that the credit was able to be taken. A taxpayer who claims any other state credit allowed with respect to solar energy property may not take the credit under S.C. Code Ann. § 12-6-3775 for the same property. S.C. Code Ann. § 12-6-3775(E). If the solar energy property is disposed of, taken out of service, or moved out of South Carolina, during the 5-year period for claiming the credit, then the credit expires and the taxpayer may not take any remaining credit. S.C. Code Ann. § 12-6-3775(C).

A credit for each installation of solar energy property cannot exceed $5 million. Further, the total amount of credit available to be taken, pursuant to the 5 equal annual installments, for all taxpayers may not exceed $2.5 million. The credit is allowed on a first-come, first-serve basis. A taxpayer may apply for the credit on Form TC-58A "Application for Solar Energy Property Credit" while the credit is claimed on Form TC-38 "Solar Energy Property Credit."

NOTE: This credit is repealed on December 31, 2024. If a credit is earned before the repeal, the provisions of S.C. Code Ann. § 12-6-3775 continues to apply until all credits have been claimed.

47. ALTERNATIVE MOTOR VEHICLE CREDIT

S.C. Code Ann. § 12-6-3377 allows a resident taxpayer a credit against income taxes equal to 20% of the federal credit allowed under I.R.C. § 30B, without regard to the federal phase-out limits of I.R.C. § 30B(f). Any unused credit can be carried forward for 5 years. The credit is claimed on Form TC-35, "Alternative Motor Vehicle Credit."

For a taxpayer to qualify for the credit, the taxpayer must be eligible for the federal credit pursuant to I.R.C. § 30B. I.R.C. § 30B provides an alternative motor vehicle credit equaling the total of the: (1) qualified fuel cell motor vehicle credit, (2) advanced lean burn technology motor vehicle credit, (3) qualified hybrid motor vehicle credit, and (4) qualified alternate fuel motor vehicle credit. For purposes of this credit, the provisions of I.R.C. § 30B are deemed permanent.

48. ETHANOL OR BIODIESEL PRODUCTION CREDITS

a. General Provisions

S.C. Code Ann. § 12-6-3600 provided several income tax credits for facilities that produce ethanol or biodiesel at a plant in South Carolina at which all fermentation, distillation, and dehydration takes place. These credits are not allowed for ethanol or biodiesel produced or sold for use in the production of distilled spirits. Although most of the credits are no longer available for facilities that did not already qualify because the time period for meeting the "name plate design capacity requirement" has passed, there remains one credit potentially available to companies that increase their production of ethanol or biodiesel in the future.

1. Credit for Qualified New Production Beginning January 1, 2017. S.C. Code Ann. § 12-6-3600(C) provides a tax credit of 7.5¢ a gallon of ethanol or biodiesel for "new production" by an ethanol or biodiesel facility **beginning January 1, 2017**. The credit is allowed for a period not to exceed 36 consecutive months. Further, not more than 10 million gallons of ethanol or biodiesel produced during a 12-consecutive month period at an ethanol or biodiesel facility is eligible for the credit. An ethanol or biodiesel facility receiving a credit under S.C. Code Ann. § 12-6-3600(A) (the previous provision relating to such facilities) may not receive a credit under S.C. Code Ann. § 12-6-3600(C) until its eligibility to receive the credit in S.C. Code Ann. § 12-6-3600(A) has been completed. This credit has to be approved by the State Energy Office.

b. Definitions

S.C. Code Ann. § 12-6-3600(B) contains definitions for the following terms:

1. "Biodiesel facility" - a plant or facility primarily engaged in the production of plant or animal based fuels used as a substitute for diesel fuel.

2. "Ethanol facility" - a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from renewable and sustainable bioproducts used as a substitute for gasoline fuel.

3. "New production" means production which results from a new facility, a facility which has not received credits before 2017, or the expansion of the capacity of an existing facility by at least 2 million gallons if the expansion is first placed in service after 2016, as certified by the design engineer of the facility to the State Energy Office.

For expansion of the capacity of an existing facility, it means annual production in excess of 12 times the 3-month average amount of the highest 3 months of ethanol or biodiesel production at an ethanol or biodiesel facility during the 24-month period immediately preceding certification by the design engineer.

Credit is not allowed for an expansion of capacity at the existing facility until production is in excess of 12 times the 3-month average during a 12 month consecutive period beginning January 1, 2017 or thereafter.

c. Credit Application and Allocation

Each taxpayer must submit a request for credit to the State Energy Office by January 31st for all gallons of qualifying fuel produced in the previous calendar year. The State Energy Office will notify the taxpayer of the amount of credit it may claim by March 1st.

These credits are claimed on Form TC-40, "Ethanol or Biodiesel Production Credit."

49. CREDIT FOR RENEWABLE FUELS – ETHANOL AND BIODIESEL

S.C. Code Ann. § 12-6-3610 allows a taxpayer tax credits for: (a) placing in service property that is used for distributing or dispensing renewable fuels or (b) constructing a commercial facility that produces renewable fuels.

1. Credit for Property Placed in Service at a Distribution or Dispensing Facility. S.C. Code Ann. § 12-6-3610(A) allows an income tax credit to a taxpayer that purchases or constructs and installs property that is placed in service at a new or existing commercial fuel distribution or dispensing facility in South Carolina that is used for distributing or dispensing renewable fuel. The credit is equal to 25% of the cost of purchasing, constructing and installing the property. The credit must be taken in 3 equal annual installments beginning with the tax year the property is placed in service. If in one of the years the credit installment accrues the property used for distributing, dispensing, or storing renewable fuel is disposed of or taken out of service and is not replaced, the credit expires and the taxpayer may not take any remaining installment of the credit.

   Eligible property includes pumps, storage tanks, and related equipment, that is used directly and exclusively for distribution, dispensing, or storing renewable fuel. The equipment must be labeled for this purpose and clearly identified as associated with renewable fuel.

   For purposes of this credit, "renewable fuel" is E70 or greater ethanol fuel dispensed at the retail level for use in motor vehicles and pure ethanol or biodiesel fuel dispensed by a distributor or facility that blends these non-petroleum liquids with gasoline fuel or diesel fuel for use in motor vehicles.

2. Credit for a Production Facility. S.C. Code Ann. § 12-6-3610(B) allows an income tax credit to a taxpayer that constructs and places in service in South Carolina a commercial facility for the production of renewable fuels. The credit is equal to 25% of the cost of constructing or renovating the building and equipping the facility. The credit is taken in 7 equal annual installments beginning with the tax year the facility is placed in service.

   A taxpayer that claims any other credit in Article 25 of Chapter 6, Title 12 with respect to the costs of constructing and installing a facility may not take this credit with respect to the same costs. Further, if the processing facility is disposed of or taken out of service in one of the years the credit installment accrues, the credit expires and the taxpayer may not take any remaining installment of the credit.

   For purposes of this credit, "renewable fuel" is liquid nonpetroleum based fuels that can be placed in motor vehicle fuel tanks and used as a fuel in highway vehicles, and includes all forms of fuel known as biodiesel and ethanol. Production of renewable fuel includes intermediate steps such as milling, crushing, and handling of feedstock and the distillation and manufacture of the final product.

General Provisions. General provisions relating to the above credits are summarized below.

1. Any unused portion of the unexpired credit may be carried forward for 10 tax years.

2. These credits are claimed on Form TC-41, "Renewable Fuels Tax Credits."

3. Each taxpayer must submit a request for credit to the State Energy Office by January 31st for all qualifying property or qualifying facility, as appropriate, placed in service in the previous year. The State Energy Office will notify the taxpayer of the amount of credit it may claim by March 1st.

NOTE: S.C. Code Ann. § 12-6-3610 is repealed effective for facilities placed in service after December 31, 2022. Note, a temporary proviso contained in House Bill 411, Part IB, Section 9, Proviso 109.13 effective for state fiscal year July 1, 2022 to June 30, 2023 extended the placed in service date until January 1, 2023. Unless reenacted by the General Assembly, the placed in service date will expire as of January 1, 2023.

50. CREDIT FOR DISTRIBUTION, DISPENSING, AND STORING EQUIPMENT FOR ALTERNATIVE FUELS

S.C. Code Ann. § 12-6-3695 allows a taxpayer a tax credit for purchasing, constructing, installing and placing in service in this State eligible property that is used for distribution, dispensing, or storing alternative fuel at a new or existing commercial fuel distribution or dispensing facility in South Carolina. The credit is equal to 25% of the cost of purchasing, constructing and installing the eligible property. The credit must be taken in 3 equal annual installments beginning with the tax year the property is placed in service. If in one of the years the credit installment accrues the property used for distributing, dispensing, or storing renewable fuel is disposed of or taken out of service and is not replaced, the credit expires and the taxpayer may not take any remaining installment of the credit.

"Taxpayer" means any sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity. Also, the word taxpayer includes the State or any agency or instrumentality, authority, or political subdivision, including municipalities.

"Eligible property" includes pumps, compressors, storage tanks, and related equipment that is directly and exclusively used for distribution, dispensing, or storing alternative fuel. The equipment must be labeled for this purpose and clearly identified as associated with alternative fuel.

"Alternative fuel" means compressed natural gas, liquefied natural gas, or liquefied petroleum gas, dispensed for use in motor vehicles and compressed natural gas, liquefied natural gas, or liquefied petroleum gas, dispensed by a distributor or facility.

General Provisions. General provisions relating to the above credits are summarized below.

1. Any unused portion of the unexpired credit may be carried forward for 10 tax years.

2. These credits are claimed on Form TC-59, "Alternative Fuel Property Credit."

3. A taxpayer who claims any other credit for the cost of purchasing, constructing and installing property at the facility, may not claim the credit under S.C. Code Ann. § 12-6-3695 for the same costs.

4. The State or any agency or instrumentality, authority or political subdivision, including municipalities, may transfer the credit, but if the entity transfers the credit, it must notify the Department of the transfer.

NOTE: This credit is only available for property or facilities placed in service before January 1, 2026.

51. CREDIT FOR ENERGY CONSERVATION AND RENEWABLE ENERGY

S.C. Code Ann. § 12-6-3340 allows a taxpayer a credit equal to 25% of all expenditures incurred during the taxable year for the purchase and installation of the following energy conservation and renewable energy production measures:

- Conservation tillage equipment
- Drip/trickle irrigation systems including all necessary measures and equipment
- Dual purpose combination truck and crane equipment.

A taxpayer may claim the credit only one time for each of the three measures in a lifetime. The maximum credit that may be claimed for each measure is $2,500. In the case of pass-through entities, the credit is determined at the entity level and is limited to $2,500. Any unused credit can be carried forward for 5 years. The credit is claimed on Form TC-1, "Drip/Trickle Irrigation Systems Credit."

PART H: INVESTMENTS/CONTRIBUTIONS TO OTHER ENTITIES INCENTIVES

52. COMMUNITY DEVELOPMENT CREDIT

S.C. Code Ann. § 12-6-3530 provides a tax credit against South Carolina income tax, bank tax, or insurance premium tax for a taxpayer investing in a community development corporation or community development financial institution. The amount of the credit is 33% of any equity investment in any community development corporation or community development financial institution and 50% of any cash donation made to a community development corporation or community development financial institution. If the amount of credit exceeds the taxpayer's tax liability for the applicable tax year, the taxpayer may carryover the excess to the next 3 years. The credit is claimed on Form TC-14, "Community Development Tax Credit."

The total credit that may be claimed by all taxpayers is $1 million in one calendar year and $9 million for all calendar years. Six million in credit has already been allocated. Of the remaining, $3 million, $1 million was used for credits earned and certificates issued in tax year 2021 and the remaining $2 million may only be used for credits earned and certificates issued for tax years beginning after 2021. A taxpayer must apply to the Department of Commerce and Commerce authorizes the credits on a first-come, first-serve basis. Twenty-five percent of the annual tax credits must be held in a reserve account during the first 3 quarters of each taxable year and made available exclusively to small, rural-based community development corporations. During the first 3 quarters of each tax year an individual community development corporation or community development financial institution may not be allocated more than 15% of the statewide total annual credits. During the 4th quarter of each tax year, all remaining tax credits are available to any community development corporation or community development financial institution. However, no single community development corporation or community development financial institution may be allocated more that 25% of the total tax credits authorized in any one calendar year. No credits can be authorized after the annual credit limit has been reached. Currently, there is a very limited amount of funds left to allocate for 2023 unless the General Assembly increases the overall amount of credit available.

The South Carolina Community Economic Development Act, contained in S.C. Code Chapter 43, Title 34, defines "community development corporation" and "community development financial institution." "Community development corporation" is defined, in part, as a nonprofit corporation which is chartered pursuant to S.C. Code Chapter 31, Title 33, is tax exempt under I.R.C. § 501(c)(3), and has a primary mission of developing and improving low-income communities and neighborhoods through economic and related development.

"Community development financial institution" is defined, in part, as an organization that has a primary mission of promoting community development by providing credit, capital, or development services to small businesses or home mortgage assistance to individuals, and is not an agent or instrumentality of the United States, or of a state or political subdivision of a

state, and does not maintain an affiliate relationship with any of them. The following requirements apply to the credit:

1. The community development corporation or community development financial institution must be certified by the South Carolina Department of Commerce at the time the investment is made.

2. A taxpayer must obtain a certificate from Commerce certifying the amount and qualification of the investment and certifying that the credit taken or available to the taxpayer will not exceed the aggregate dollar limitation.

3. Banks and financial institutions may invest up to 10% of their total capital and surplus in a community development corporation or community development financial institution.

4. The taxpayer must file with the Department of Revenue the form issued by Commerce certifying the stock or other equity interest.

Exceptions to the amount of credit eligible to be claimed include:

1. The credit is not allowed if the taxpayer claims a charitable contribution deduction under I.R.C. § 170 for the investment in a community development financial institution.

2. If stock or another equity interest that is the basis for the tax credit is redeemed within 5 years of the date acquired, the credit must be repaid with the tax return for the period in which the redemption occurred.

3. Returns on investments in certified community development corporations or community development financial institutions, including the value of any tax credits authorized under S.C. Code Ann. § 12-6-3530, may not exceed the total amount of initial investment in the community development corporations or community development financial institutions.

NOTE: **This credit is repealed on June 30, 2023.**

53. VENTURE CAPITAL INVESTMENT

"The Venture Capital Investment Act of South Carolina" contained in Title 11, Chapter 45, is designed to increase the availability of funding to emerging, expanding, relocating, and restructuring enterprises within South Carolina. The South Carolina Venture Capital Authority ("Authority") will choose "designated investor groups" that will have the power and authority to borrow funds from lenders and invest those funds in South Carolina businesses.

At the time a loan is made to a designated investor group, the Authority will issue a tax credit certificate to each "Lender." S.C. Code Ann. § 11-45-30(10) defines a Lender as "a banking institution subject to the income tax on banks under Chapter 11 of Title 12, an insurance company subject to a state premium tax liability under Chapter 7 of Title 38, a captive insurance company regulated under Chapter 90 of Title 38, a utility regulated under Title 58, or a financial institution with proven experience in state based venture capital transactions, pursuant to guidelines established by the Authority."

The Authority is authorized to establish guidelines governing the procedures for the issuance, transfer and redemption of the tax credit certificates and related tax credits. The certificates shall state the amounts, year, and conditions for redemption and describe the procedures for redemption and transfer of the tax credit certificates. Once the loan is made by the Lender, the certificate is binding on the Authority and the State and may not be modified, terminated or rescinded. However, redemption of the tax credit represented by a certificate is subject to compliance with conditions and procedures set forth on the certificate.

Once redeemable, the tax credit may be used to offset the following taxes: (1) income taxes under Chapter 6, Title 12, (2) bank taxes under Chapter 11, Title 12, (3) savings and loan net income tax liability under Chapter 13, Title 12, (4) license fees and taxes under Chapters 20 or 23, Title 12; (5) insurance premium taxes under Chapter 7, Title 38, or (6) other tax liability under Title 38. There are special provisions for passthrough entities that hold a tax credit certificate. The amount of the tax credit issued to a Lender is limited to the Lender's principal loan amount together with required interest. The use of tax credits by an insurance company does not affect the application of retaliatory taxes or other fees pursuant to Chapter 7, Title 38 or any payments due under that Chapter.

The credits carry forward indefinitely. The tax credits may be transferred to others who are able to use the credit to offset one of the above listed taxes by following the procedures described on the tax credit certificate. No more than $20 million in tax credit certificates are redeemable for any one year; however, any certificates issued in one year, but carried forward and redeemed in a subsequent year, do not count against the total.

For returns filed with the Department of Revenue, the credit is claimed on Form TC-26, "Venture Capital Investment Credit."

NOTE: Questions should be addressed to the Authority at 803-737-0627.

54. PALMETTO SEED CAPITAL CREDIT

S.C. Code Ann. § 12-6-3430 provides a credit against income or bank taxes imposed under Title 12, or insurance premium taxes imposed under Chapter 7 of Title 38 for qualified investments in the Palmetto Seed Capital Corporation or the Palmetto Seed Capital Fund Limited Partnership, as defined in S.C. Code Ann. § 41-44-10. The credit is equal to the lesser of: (a) all qualified investments during the tax year multiplied by 30%, plus any credit carryover or (b) 50% of all qualified investments during all tax years multiplied by 30%.

NOTE: Chapter 44, Title 41, containing the Palmetto Seed Capital Fund Limited Partnership, is repealed once the President of the Palmetto Seed Capital Corporation certifies to the Secretary of State that remaining investments of the private sector limited partners of the Palmetto Seed Capital Fund Limited Partnership have been liquidated. Taxpayers should check with the Palmetto Seed Fund Capital Corporation and its representatives to see if qualifying investments are still being accepted.

55. INDUSTRY PARTNERSHIP FUND TAX CREDIT

S.C. Code Ann. § 12-6-3585 provides a taxpayer a credit against income taxes under Chapter 6 of Title 12, bank taxes under Chapter 11 of Title 12, license taxes under Chapter 20 of Title 12, or insurance premium taxes under Chapter 7 of Title 38, or any combination of them, for qualified contributions to the Industry Partnership Fund at the South Carolina Research Authority, or designated affiliates, or both, pursuant to S.C. Code Ann. § 13-17-88(E). Any unused credit may be carried forward for 10 years from the end of the tax year in which the qualifying contribution is made. The credit is claimed on Form TC-36, "Industry Partnership Fund Credit."

The credit is equal to 100% of the taxpayer's qualified contributions to the Industry Partnership Fund, subject to the following limitations:

1. The use of the credit is limited to the taxpayer's applicable income, bank, license, or premium tax for the tax year after the application of all other credits.

2. The maximum credit is $500,000 for a single taxpayer and $9 million for all taxpayers for 2023. However, if the $9 million dollar cap is not met within 60 days of the annual opening date for the application of the credit, the maximum amount allowed to a single taxpayer is automatically increased to $1 million for the remainder of the year until the cap is reached.

3. For purposes of determining a taxpayer's entitlement to the credit in years the maximum amount for all taxpayers is exceeded, those taxpayers that made contributions intended to be qualified contributions earlier in the applicable tax year than other taxpayers must be given priority entitlement to the credit. A taxpayer who has been certified by the South Carolina Research Authority as having priority entitlement to the credit must make a commitment satisfactory to the Authority , at such time as the Authority deems appropriate, but not later than April 1st of such year, to making the contribution during the year.

Other credit provisions include:

1. A taxpayer who claims the Industry Partnership Fund tax credit may not take a deduction for the qualified contribution which gives rise to the credit. A contribution is not a qualified contribution if it is subject to conditions or limitations regarding the use of the contribution.

2. A taxpayer is an individual, corporation, partnership, trust, bank, insurance company, or other entity having a state income or insurance premium tax or license fee liability who have made a qualified contribution.

3. The South Carolina Research Authority will furnish a form to the taxpayer identifying its qualified contributions.

4. The merger, consolidation, or reorganization of a corporation where tax attributes survive does not create new eligibility in a succeeding corporation, but unused credits may be transferred and continued by the succeeding corporation.

5. A corporation or partnership may assign its rights to its unused credit to another corporation or partnership if it transfers all, or substantially all, of the assets of the corporation or partnership, or the assets of a trade or business or operating division of the corporation or partnership to another corporation or partnership.

56. ANGEL INVESTOR CREDIT

a. Basics of the Credit

The High Growth Small Business Job Creation Act of 2013, Title 11, Chapter 44, provides an income tax credit to encourage certain investors ("angel investors") to invest in early stage, high growth, and job creating businesses. The credit is 35% of the investor's qualified investment in a qualified business, subject to certain limitations.

An "angel investor" is an accredited investor as defined by the United States Securities and Exchange Commission (see, www.sec.gov/answers/accred.htm) who is:

1. An individual subject to South Carolina income taxes imposed by Chapter 6, Title 12; or

2. A passthrough entity (*i.e*., a partnership, S corporation, or a limited liability company taxed as a partnership) formed for investment purposes which (a) has no business operations, (b) does not have committed capital under management over $5 million, and (c) is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund does not qualify as an angel investor. S.C. Code Ann. § 11-44-30(1) and (4).

To qualify for the credit, the investment must be made in a "qualified business." A "qualified business" is a business that:

1. Is primarily engaged in manufacturing, processing, warehousing, wholesaling, software development, information technology services, research and development, or is a business providing services listed in S.C. Code Ann. § 12-6-3360(M)(13)(*i.e.,* definition of a "qualified service-related facility" for purposes of the jobs tax credit)

2. Is not substantially engaged in: (a) retail sales, (b) real estate or construction, (c) professional services, (d) financial brokerage, investment activities, or insurance, (e) natural resource extraction, (f) gambling, or (g) entertainment, amusement, recreation, or athletic or fitness activity for which an admission fee is charged. The Act provides rules for establishing when a business is substantially engaged in one of these activities.

3. Is a corporation, limited liability company, or partnership that has its headquarters located in South Carolina at the time the investment was made and for the entire time the qualified business benefits from the angel investor tax credit. Headquarters is defined in S.C. Code Ann. § 11-44-30(2).

4. Has had in any completed fiscal year before registration, gross income as determined in accordance with the Internal Revenue Code of $2 million or less on a consolidated basis.

5. Was organized not more than 5 years before the qualified investment was made.

6. Is registered with, and certified by, the Secretary of State as a qualified business at the time application is made to the Secretary. Once the Secretary approves the registration, the business is certified for 12 months.

7. Employs 25 or fewer people in South Carolina at the time it is registered as a qualified business.

See, S.C. Code Ann. § 11-44-30(5).

b. Approval Process for the Credit

An accredited investor seeking to claim the credit must submit an application to the Department for tentative approval of the credit. The deadline for submitting applications to the Department is December 31 of the year the investment is made.[1] By January 31 of the year after the application is submitted, the Department will notify each investor of the credits tentatively approved and allocated to each investor. The total credit allowed is $5 million for all investors in any calendar year. If the credit amounts on timely filed applications exceed $5 million, then the credit is allocated to the investors on a pro rata basis. S.C. Code Ann. §§ 11-44-70 and 11-44-50(1).

The Application can be found at the Department's website www.dor.sc.org under Forms, Tax Credits, SC SCH TC-56A, "Angel Investor Credit Application."

[1] For additional information see SC Information Letter #15-22.

c. Credit Use and Limitations

The credit is 35% of the qualified investment in the qualified business. The investor may use 50% of the credit in the year the qualified investment is made and 50% in the tax year after the qualified investment is made. The aggregate amount of credit for an individual for all qualified investments in a tax year is $100,000, not including credits carried forward. Any unused credit can be carried forward for 10 years from the end of the year in which the qualified investment is made. S.C. Code Ann. §§ 11-44-40, 11-44-50(2) and 11-44-30(3). The credit is claimed on Form TC-56, "Angel Investor Credit."

d. Other Rules Pertaining to the Credit

1. *Allocation of Credit Allowed a Passthrough Entity.* For any pass-through entity making a qualified investment directly in a qualified business, each individual who is a shareholder, partner, or member of the passthrough entity must be allocated the credit in the same manner as the proportionate shares of income or loss of the passthrough entity. Allocation rules are provided in S.C. Code Ann. § 11-44-40(C).

2. *Transfer and Sale of the Credit*. The credit may be sold, exchanged or transferred one time to any taxpayer. The credit may be transferred by the angel investor to: (1) to his heir and legatees upon death of the angel investor; (2) to a spouse, or (3) incident to a divorce. A taxpayer to whom the credit has been transferred can use the credit for the tax year the transfer occurred and carry forward unused amounts. The transferred credit cannot be used more than 10 tax years after it was originally issued. S.C. Code Ann. § 11-44-50(4), (5), and (6).

3. *Gain or Loss on Sale of Qualified Investments.* If the angel investor has a net capital gain on the sale or exchange of the capital assets that were eligible for the credit, then the amount of net capital gain eligible for South Carolina's 44% net capital gain deduction in S.C. Code Ann. § 12-6-1150 must be reduced as provided in S.C. Code Ann. § 11-44-65(B). If an angel investor taxpayer recognizes a net capital loss on the sale or exchange of capital assets that were eligible for the credit, then the angel investor must increase his South Carolina income as provided in S.C. Code Ann. § 11-44-65.

4. The Department has issued SC Revenue Ruling #14-6 which provides an overview of the credit and also provides, in a question and answer format, answers to many of the issues that have arisen in connection with the qualification for, and claiming of, the credit.

e. Expiration of the Credit

The High Growth Small Business Job Creation Act of 2013 which contains the Angel Investor Credit is repealed on December 31, 2025. Any carryforward of credit will continue to be allowed until the 10-year period is completed.

PART I: APPENDICES

57. APPENDIX I

- Corporate Income Tax - Nexus Creating Activities

58. APPENDIX II

- Job Development Credit – Hourly Gross Wage Figures

Appendix I

Corporate Income Tax Nexus Creating Activities

Below is a summary of SC Revenue Ruling #16-11 and the Department's guidance concerning corporate income tax nexus creating activities. (A complete copy of SC Revenue Ruling #16-11 is available on the Department's website at www.dor.sc.gov.) Initially, this project began as an informal response to a Bureau of National Affairs, Inc., survey covering types of business activities or relationships that, by themselves, may or may not create corporate income tax nexus. The survey contained the following categories of questions:

A. General Activities

B. Registration with State Agencies/Departments

C. Ownership/Leasing of In-State Property

D. Ownership Interest of In-State Pass-Through Entities

E. Licensing Intangibles

F. Employee Activities – Sales Related

G. Employee Activities – Non-Sales Related

H. Activities of Unrelated Parties

I. Distribution and Delivery

J. Financial Activities/Transactions

K. Transactions with South Carolina Printers

L. Cloud Computing or Software as a Service (SaaS) Transactions

M. Internet-Based Activities

Each response is based upon the specific facts described in the survey and necessary assumptions were made to answer each question. For example, the Department assumed that each specific survey question by itself was the only possible nexus creating activity or relationship a business has in South Carolina. Also, the Department assumed that the activities described are not "de minimis" unless the question or answer specifically states otherwise.

Each response refers only to income tax nexus. Activities that create nexus for income tax purposes differ somewhat from those that create nexus for other tax purposes. Further, the Department did not address the imposition of any license fee, filing requirements, withholding responsibilities, or the consequences of unity and foreign commerce.

A "yes" or "no" response to the survey question indicates whether each of the following activities or relationships will, by themselves, create corporate income tax nexus. In some instances, if the survey question was ambiguous or there were insufficient facts to accurately answer the question, the Department either provided a qualified response or did not provide a response to the question. Such questions have a "note" appended to them. Since developments in this area are constantly taking place, any response is subject to change due to a future statute, court decision, or advisory opinion.

CAUTION: Since a thorough review of the facts and circumstances of each taxpayer's situation is required in order to make a nexus determination, additional facts not considered in answering the questions below may change the result.

A. General Activities

	YES	NO
1. The out-of-state corporation is doing business in South Carolina.	☑	☐
2. The out-of-state corporation makes sales to customers in South Carolina by means of an 800 telephone order number and advertises in South Carolina.	☐	☑
3. The out-of-state corporation is listed in the local telephone books of cities in South Carolina. The phone is not answered in South Carolina.	☐	☑
4. The out-of-state corporation uses local phone numbers in South Carolina, which are forwarded to the corporation's headquarters located in another state.	☐	☑
5. The out-of-state corporation maintains a bank account at a bank located in South Carolina.	☐	☑
6. The out-of-state corporation provides consulting services in South Carolina during the year. The services are not *de minimis*.	☑	☐
7. The out-of-state corporation, through a third party, provides warranty services on goods sold in South Carolina. Note: If not *de minimis* and if the services are conducted on behalf of the out-of-state corporation Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services.	☑	☐
8. The out-of-state corporation sends catalogs to residents in South Carolina.	☐	☑

	YES	NO
9. Does South Carolina have a *de minimis* standard? Note: South Carolina has a *de minimis* standard and follows the principles defined by case law. See *Wisconsin Department of Revenue v. William Wrigley, Jr., Co*., 505 U.S. 214 (1992), SC Revenue Ruling #97-15, SC Private Letter Ruling #94-8, and S.C. Code Ann. § 12-6-4920.	☑	☐
10. Does South Carolina conform to the Multistate Tax Commission's Nexus Bulletin 95-1 "Computer Company's Provision of In-State Repair Services Creates Nexus?" Note: South Carolina has not adopted MTC's Nexus Bulletin, but South Carolina generally considers services conducted by a third party to be on behalf of the out-of-state company if that company contracts for or controls the services.	☐	☐

B. Registration with State Agencies/Departments

	YES	NO
1. The out-of-state corporation is registered, authorized, certified or qualified by the Secretary of State, or other similar agency, to transact business in South Carolina as a foreign corporation.	☐	☑
2. The out-of-state corporation holds a general business license issued by South Carolina.	☐	☑
3. The out-of-state corporation holds a specialty license issued by South Carolina.	☐	☑
4. The out-of-state corporation is registered with South Carolina as a government vendor or contractor.	☐	☑

C. Ownership/Leasing of Property in South Carolina

	YES	NO
1. The out-of-state corporation owns raw land.	☑	☐
2. The out-of-state corporation stores inventory or other goods in a public warehouse for fewer than 30 days per year. Note: Except for independent contractors under Public Law 86-272 and persons storing material in connection with a printing contract under S.C. Code Ann. § 12-6-555.	☑	☐
3. The out-of-state corporation ships in-process inventory to an unrelated party in South Carolina solely for processing. Note: Except for processing in connection with a printing contract under S.C. Code Ann. § 12-6-555.	☑	☐

	YES	NO
4. The out-of-state corporation consigns goods to vendors, independent contractors, or other parties. Note: Except for independent contractors under Public Law 86-272.	☑	☐
5. The out-of-state corporation owns display racks. Note: Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration is a protected activity under SC Revenue Ruling #97-15. The answer assumes that the corporation does not sell or lease the racks and the racks do not operate to prepare the product for use or as vending machines.	☑	☐
6. The out-of-state corporation owns tooling, molds, dies, etc., located at a manufacturing facility in South Carolina.	☑	☐
7. The out-of-state corporation leases (as lessor) real estate in South Carolina to an unrelated third party.	☑	☐
8. The out-of-state corporation leases (as lessor) rented mobile property such as rail cars, planes, and trailers, which the lessee may use in South Carolina. The use is not *de minimis*. Note: See SC Private Letter Ruling #94-8 where it was concluded that the leasing of airplanes landing in SC three times per year was *de minimis*.	☑	☐
9. The out-of-state corporation owns or leases automobiles provided to salespersons.	☐	☑
10. The out-of-state corporation owns or leases trucks or automobiles used by non-salespersons.	☑	☐
11. The out-of-state corporation owns or leases other machinery or equipment.	☑	☐
12. The out-of-state corporation holds title to property located in South Carolina until the contract price has been paid. Note: Assuming ownership has not passed and that holding title does not serve merely as a security interest.	☑	☐
13. The out-of-state corporation files a security interest on inventory sold until the contract price has been paid.	☐	☑
14. The out-of-state corporation owns or leases a place for company employees, directors, and officers. Note: Assuming ownership or long term rental of real property in South Carolina.	☑	☐

D. Ownership Interest of In-State Pass-Through Entities

	YES	NO
1. The out-of-state corporation owns an interest in an investment partnership or LLC taxed as a partnership that has operations in South Carolina. Note: Although the income may not be taxed in SC. See SC Commission Decision #92-58 and SC Private Letter Ruling #95-2.	☑	☐

	YES	NO
2. The out-of-state corporation owns a general interest in a partnership that is doing business in South Carolina.	☑	☐
3. The out-of-state corporation owns a limited interest in a partnership that is doing business in South Carolina.	☑	☐
4. The out-of-state corporation owns an interest in an LLC that is doing business in South Carolina and is involved in managing the LLC. Note: Assuming the LLC is taxed as a partnership or S Corporation.	☑	☐
5. The out-of-state corporation owns an interest in an LLC that is doing business in South Carolina, but is not the managing member or otherwise involved in managing the LLC. Note: Assuming the LLC is taxed as a partnership or S Corporation.	☑	☐
6. The out-of-state corporation owns an interest in an entity located in South Carolina that is disregarded for federal income tax purposes. Note: Assuming the entity is doing business or owns property in South Carolina.	☑	☐
7. The out-of-state corporation has an ownership interest or a beneficial interest in a flow-through entity, directly or indirectly through one or more other flow-through entities, that has substantial nexus in South Carolina.	☑	☐

E. Licensing Intangibles[1]

	YES	NO
1. The out-of-state corporation licenses trademarks or trade names to related entities with locations in South Carolina.	☑	☐
2. The out-of-state corporation licenses trademarks or trade names to unrelated entities with locations in South Carolina.	☑	☐
3. The out-of-state corporation sells/licenses franchises (such as fast-food franchises) to residents of South Carolina. Note: Assuming this does not mean the sale of an entire business, e.g., not an outright sale of a restaurant and not a sale of all of franchisor's interest in the franchise.	☑	☐
4. The out-of-state corporation licenses canned software to consumers in South Carolina.	☑	☐
5. The out-of-state corporation sells/licenses the right to use a patent or copyright to related entities with locations in South Carolina.	☑	☐
6. The out-of-state corporation sells/licenses the right to use a patent or copyright to unrelated entities with locations in South Carolina.	☑	☐

[1] See *Geoffrey, Inc. v. South Carolina Tax Commission,* 437 S.E.2d 13 (S.C. 1993).

F. Employee Activities – Sales Related

	YES	NO
1. Employees, while in South Carolina, accept and approve customer orders.	☑	☐
2. Employees, while in South Carolina, negotiate prices, subject to approval outside South Carolina.	☐	☑
3. Employees, while in South Carolina, investigate credit-worthiness of customers.	☑	☐
4. Employees, while in South Carolina, secure or accept deposits on sales.	☑	☐
5. Employees, while in South Carolina, handle credit disputes.	☑	☐
6. Employees, while in South Carolina, attend trade shows or maintain sample/display rooms for one to 14 days per year.	☐	☑
7. Employees, while in South Carolina, maintain a two-month supply of free samples.	☐	☑
8. Employees, while in South Carolina, check customers' inventories for reorder.	☐	☑
9. An employee, while in South Carolina, makes a single sale on his own initiative and without the company's prior knowledge. The sale is not *de minimis*.	☑	☐
10. Employees, while in South Carolina, solicit sales of services in South Carolina. The solicitation activity is not *de minimis*.	☑	☐
11. Employees, while in South Carolina, perform a sales-related function associated with services and are reimbursed for the costs of maintaining a home office.	☑	☐
12. Employees, while in South Carolina, operate mobile stores.	☑	☐

G. Employee Activities – Non-Sales Related

	YES	NO
1. Employees, while in South Carolina, collect delinquent accounts.	☑	☐
2. Employees, while in South Carolina, repossess property.	☑	☐
3. Employees, while in South Carolina, regularly perform installation, repair, maintenance, or warranty services.	☑	☐
4. Employees, while in South Carolina, perform installation, repair, or warranty services one to four times per year. Note: Unless *de minimis*.	☑	☐
5. Employees, while in South Carolina, set up promotional display of products (e.g., end caps) and inspect inventory. Note: The setting up of promotional displays of products will not create nexus. The inspection of inventory for purposes other than reorder, such as quality control, will create nexus.	☐	☐
6. Employees, while in South Carolina, supervise or inspect installation.	☑	☐

	YES	NO
7. Employees, while in South Carolina, conduct training courses, seminars, or lectures two times per year. Note: Unless sales training.	☑	☐
8. Employees, while in South Carolina, provide engineering or design functions related to customized products.	☑	☐
9. Employees, while in South Carolina, handle customer complaints. Note: Facilitating communications between the company and the customer when the purpose of such mediation is to ingratiate the sales personnel with the customer is a protected activity. See SC Revenue Ruling #97-15.	☑	☐
10. Employees, while in South Carolina, pick up defective merchandise.	☑	☐
11. Employees, while in South Carolina, pick up or replace damaged or returned property.	☑	☐
12. Employees, while in South Carolina, provide shipping information and coordinate deliveries.	☐	☑
13. Employees, while in South Carolina, telecommute from their homes located in South Carolina and perform non-solicitation activities.	☑	☐
14. One employee telecommutes from his home located in South Carolina and performs back-office administrative business functions, such as payroll, as opposed to direct customer service or other activities directly related to the employer's commercial business activities.	☑	☐
15. One employee telecommutes from his home located in South Carolina and performs product development functions such as computer coding.	☑	☐
16. Employees, while in South Carolina, assist the out-of-state corporation in defending a lawsuit (e.g., legal staff and witnesses) while in South Carolina for one to 30 days. Note: See SC Revenue Ruling #08-1 where the Department concluded that the use of the South Carolina court system by an out-of-state company sending various employees to South Carolina to assist its independent legal counsel in defending a lawsuit does not give the out-of-state company nexus with South Carolina. The law firm providing counsel is taxable in South Carolina.	☐	☑
17. Employees fly into South Carolina on a commercial airline for business purposes.	☐	☑
18. Employees, while in South Carolina, purchase raw material and inventory while in South Carolina for 20 or fewer days.	☐	☑
19. Employees, while in South Carolina, attend seminars.	☐	☑
20. Employees, while in South Carolina, attend an annual training seminar, convention, trade show, retreat, or board of directors meeting for up to 14 consecutive days each year. During their stay, employees maintain contact with the out-of-state office, and conduct business over the telephone, computer, etc. in South Carolina.	☐	☑

	YES	NO
21. Employees fly into South Carolina on a company plane to attend a seminar.	☐	☑
22. Employees fly into South Carolina on a company plane to attend sports events as spectators.	☐	☑
23. Employees, while in South Carolina, attend seminars or social functions while staying on a company yacht docked in waters in South Carolina for up to 14 days.	☐	☑
24. Employees, while in South Carolina, hold job fairs, hiring events, or other recruiting activities for the out-of-state office. Note: Unless in the recruiting business.	☐	☑
25. Employees, while in South Carolina, hire, supervise, or train other employees. Note: Unless sales training.	☑	☐

H. Activities of Unrelated Parties

	YES	NO
1. Unrelated third parties located in South Carolina provide fulfillment services (*i.e.,* fill product orders from inventory owned by the out-of-state corporation).	☑	☐
2. Unrelated third parties located in South Carolina collect regular or delinquent accounts. Note: If the unrelated third party is performing the activity for more than one company, the answer will depend on additional facts.	☑	☐
3. Unrelated third parties located in South Carolina investigate credit-worthiness of new customers. Note: If the unrelated third party is performing the activity for more than one company, the answer will depend on additional facts.	☑	☐
4. Unrelated third parties located in South Carolina repossess property. The parties Activities are not *de minimis*.	☑	☐
5. Unrelated third parties located in South Carolina repair or provide maintenance, including warranty services that are not *de minimis* and are conducted on behalf of the out-of-state company. Note: Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services.	☑	☐
6. Unrelated third parties located in South Carolina assist with the "set-up" or installation of the company's products that are not *de minimis* and are conducted on behalf of the out-of-state company. Note: Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services.	☑	☐

	YES	NO
7. Unrelated third parties located in South Carolina perform repairs under standard or extended warranty that are not *de minimis* and are conducted on behalf of the out-of-state company. Note: Generally, services will be considered to be conducted on behalf of the out-of-state company if that company contracts for or controls the services.	☑	☐
8. Unrelated third parties located in South Carolina close mortgage loans for an out-of-state financial organization. Note: If the unrelated third party is performing the activity for more than one company, the answer will depend on additional facts.	☑	☐
9. Unrelated third parties located in South Carolina service mortgage and/or consumer loans for an out-of-state financial organization. Note: If the unrelated third party is performing the activity for more than one company, the answer will depend on additional facts.	☑	☐

I. Distribution and Delivery

	YES	NO
1. The out-of-state corporation ships products into South Carolina in returnable containers. Note: Assuming the corporation asks for their return.	☑	☐
2. The out-of-state corporation delivers goods into South Carolina (from a point outside South Carolina) to customers in the corporation's owned or leased vehicles.	☐	☑
3. The out-of-state corporation picks up defective products or scrap materials in South Carolina in taxpayer-owned vehicles.	☑	☐
4. The out-of-state corporation picks up raw materials in South Carolina in taxpayer-owned vehicles. Note: Assuming the pickup is not a back haul (*i.e.,* the out-of-state corporation picks up shipments at the destination or nearby location in South Carolina for delivery to another point).	☐	☑
5. The out-of-state corporation travels through South Carolina in taxpayer-owned trucks, but does not pick up or deliver goods in South Carolina. Note: S.C. Code Ann. § 12-6-4920 for the filing requirements for interstate motor carriers.	☐	☑
6. The out-of-state corporation "back hauls" shipments in corporate-owned trucks.	☑	☐
7. The out-of-state corporation holds title to electricity flowing through a transmission wire within South Carolina (the transmission neither originates nor terminates in South Carolina). Note: Assuming the corporation does not own or lease the transmission wire.	☐	☑
8. The out-of-state corporation holds title to natural gas flowing through a pipeline within South Carolina (the natural gas neither originates nor terminates in South Carolina). Note: Assuming the corporation does not own or lease the pipeline.	☐	☑

J. Financial Activities/Transactions

	YES	NO
1. The out-of-state corporation negotiates and obtains bank loans from a bank located in South Carolina. Officers of the corporation visit the bank at least twice a year to discuss business.	☐	☑
2. The out-of-state corporation makes loans secured by real estate located in South Carolina. Note: No response, depends on facts that are not provided.	☐	☐
3. The out-of-state corporation makes loans secured by tangible personal property in South Carolina. Note: No response, depends on facts that are not provided. SC Revenue Ruling #08-1 provides an example where a NC finance company does business in NC and TN. The company makes a personal loan to a NC resident who moves to SC the following year. The finance company does not have nexus with SC. The result would not change if the NC resident who moved to SC had his personal car secured by the NC loan. Further, the finance company does not have nexus with SC if the SC borrower contacts the NC finance company to renew the loan.	☐	☐
4. The out-of-state corporation issues credit cards to residents of South Carolina.	☑	☐
5. The out-of-state corporation purchases, via the secondary market, mortgage loans, secured by real estate located in South Carolina. Note: No response, depends on facts that are not provided. SC Revenue Ruling #08-1 provides an example where a NY finance company is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the US. A few of the debtors and some of the property securing the loans are located in SC. The passive investors do not have nexus with SC. Note, however, if the purchaser "services" the loans in SC, there may be nexus depending on the facts and circumstances.	☐	☐
6. The out-of-state corporation is a passive investor who purchases, via the secondary market, credit account balances of residents of South Carolina. Note: No response, depends on facts that are not provided. SC Revenue Ruling #08-1 provides an example where a NY finance company is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the US. A few of the debtors and some of the property securing the loans are located in SC. The passive investors do not have nexus with SC. Note, however, if the purchaser "services" the loans in SC, there may be nexus depending on the facts and circumstances.	☐	☐
7. The out-of-state corporation makes personal loans to residents of South Carolina who traveled across the state-border to obtain the loans. Note: No response, depends on facts that are not provided.	☐	☐
8. The out-of-state corporation makes personal loans to out-of-state residents who over a number of years subsequently move to South Carolina. Note: See SC Revenue Ruling #08-1 debt examples.	☐	☑
9. The out-of-state corporation makes automobile loans to out-of-state residents who over a number of years subsequently move to South Carolina. Note: See SC Revenue Ruling #08-1 debt examples.	☐	☑

	YES	NO
10. The out-of-state corporation is in the business of packaging and selling credit card and mortgage loans to passive investors throughout the United States. A few of the debtors and some of the property securing the loans are located in South Carolina. Note: See SC Revenue Ruling #08-1 debt examples.	☐	☑
11. The out-of-state corporation forecloses on one parcel of real estate located in South Carolina. Note: No response, depends on facts that are not provided.	☐	☐
12. The out-of-state corporation forecloses on several parcels of real estate located in South Carolina.	☑	☐

K. Transactions with South Carolina Printers[2]

	YES	NO
1. The out-of-state corporation leases tangible personal property located at a printer in South Carolina for use in connection with a printing contract. Once the work is complete, the printer ships the printed material out of South Carolina for addressing and mailing.	☐	☑
2. The out-of-state corporation owns raw materials at a South Carolina printer.	☐	☑
3. The out-of-state corporation visits South Carolina printers for quality control purposes one to six times per year.	☐	☑

L. Computer and Internet Based Transactions

	YES	NO
1. The out-of-state corporation provides access to its software to South Carolina customers and pays independent contractors to perform configuration/set-up services in South Carolina.	☑	☐
2. The out-of-state corporation provides access to its software to South Carolina customers and has employees solicit business in South Carolina.	☑	☐
3. The out-of-state corporation provides access to its software to South Carolina customers and lacks a physical presence in South Carolina, but has a substantial number of customers with billing addresses in South Carolina.	☑	☐
4. The out-of-state corporation provides access to its software to South Carolina customers and lacks a physical presence in South Carolina, but earns a substantial amount of revenue from customers in South Carolina.	☑	☐
5. The out-of-state corporation owns an internet server located in South Carolina.	☑	☐

[2]See S.C. Code Ann. § 12-6-555.

Appendix II

Job Development Credit
Hourly Gross Wage Figures
For Years 1995 – 2023

Percent to Claim	Gross Wage Per Hour of New Employee – 1995
2%	$6.00 to $7.99
3%	$8.00 to $9.99
4%	$10.00 to $14.99
5%	$15.00 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 1996
2%	$6.16 to $8.21
3%	$8.22 to $10.26
4%	$10.27 to $15.40
5%	$15.41 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 1997
2%	$6.34 to $8.44
3%	$8.45 to $10.55
4%	$10.56 to $15.84
5%	$15.85 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 1998
2%	$6.51 to $8.68
3%	$8.69 to $10.85
4%	$10.86 to $16.28
5%	$16.29 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 1999
2%	$6.62 to $8.82
3%	$8.83 to $11.03
4%	$11.04 to $16.55
5%	$16.56 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2000
2%	$6.74 to $8.98
3%	$8.99 to $11.23
4%	$11.24 to $16.85
5%	$16.86 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2001
2%	$6.95 to $9.26
3%	$9.27 to $11.57
4%	$11.58 to $17.37
5%	$17.38 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2002
2%	$7.18 to $9.57
3%	$9.58 to $11.96
4%	$11.97 to $17.95
5%	$17.96 and over

Percent to Claim	Gross Wage Per Hour of New Employee - 2003
2%	$7.30 to $9.72
3%	$9.73 to $12.15
4%	$12.16 to $18.23
5%	$18.24 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2004
2%	$7.46 to $9.94
3%	$9.95 to $12.43
4%	$12.44 to $18.65
5%	$18.66 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2005
2%	$7.64 to $10.17
3%	$10.18 to $12.72
4%	$12.73 to $19.08
5%	$19.09 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2006
2%	$7.87 to $10.49
3%	$10.50 to $13.11
4%	$13.12 to $19.68
5%	$19.69 and over

Percent To Claim	Gross Wage Per Hour of New Employee – 2007
2%	$8.18 to $10.89
3%	$10.90 to $13.63
4%	$13.64 to $20.44
5%	$20.45 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2008
2%	$8.37 to $11.14
3%	$11.15 to $13.94
4%	$13.95 to $20.91
5%	$20.92 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2009
2%	$8.72 to $11.62
3%	$11.63 to $14.53
4%	$14.54 to $21.80
5%	$21.81 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2010
2%	$8.74 to $11.64
3%	$11.65 to $14.55
4%	$14.56 to $21.84
5%	$21.85 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2011
2%	$8.87 to $11.81
3%	$11.82 to $14.77
4%	$14.78 to $22.16
5%	$22.17 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2012
2%	$9.08 to $12.10
3%	$12.11 to $15.12
4%	$15.13 to $22.69
5%	$22.70 and over

Percent To Claim	Gross Wage Per Hour of New Employee – 2013
2%	$9.32 to $12.41
3%	$12.42 to $15.51
4%	$15.52 to $23.28
5%	$23.29 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2014
2%	$9.48 to $12.62
3%	$12.63 to $15.78
4%	$15.79 to $23.67
5%	$23.68 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2015
2%	$9.63 to $12.82
3%	$12.83 to $16. 03
4%	$16.04 to $24.06
5%	$24.07 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2016
2%	$9.67 to $12.87
3%	$12.88 to $16.10
4%	$16.11 to $24.16
5%	$24.17 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2017
2%	$9.75 to $12.99
3%	$13.00 to $16.24
4%	$16.25 to $24.36
5%	$24.36 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2018
2%	$9.94 to $13.24
3%	$13.25 to $16.55
4%	$16.56 to $24.84
5%	$24.85 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2019
2%	$10.18 to $13.56
3%	$13.57 to $16.95
4%	$16.96 to $25.44
5%	$25.45 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2020
2%	$10.37 to $13.82
3%	$13.83 to $17.28
4%	$17.29 to $25.93
5%	$25.94 and over

Percent to Claim	Gross Wage Per Hour of New New Employee – 2021
2%	$10.53 to $14.02
3%	$14.03 to $17.53
4%	$17.54 to $26.30
5%	$26.31 and over

Percent to Claim	Gross Wage Per Hour of New Employee – 2022
2%	$10.84 to $14.44
3%	$14.45 to $18.05
4%	$18.06 to $27.09
5%	$27.10 and over

Percent to Claim	Gross Wage Per Hour of New Employee - 2023
2%	$11.67 to $15.55
3%	$15.56 to $19.44
4%	$19.45 to $29.18
5%	$29.19 and over

3. INDIVIDUAL INCOME TAXES

1. FEDERAL TAX CONFORMITY

South Carolina income tax laws substantially conform to the federal income tax laws. As of December 31, 2022, S.C. Code Ann. § 12-6-40 provides that South Carolina's income tax laws conform to the Internal Revenue Code of 1986 as amended through December 31, 2021. The effective date provisions contained in the Internal Revenue Code are also adopted. S.C. Code Ann. § 12-6-50 provides a list of Internal Revenue Code sections specifically not adopted by South Carolina.

This conformity simplifies the filing of returns by adopting federal taxable income as a starting point for South Carolina income tax purposes. With some exceptions, South Carolina income tax liability is determined in accordance with the same set of statutes and rules used in determining federal income tax liability. Subject to certain modifications, the South Carolina gross income and taxable income of an individual is the individual's gross income and taxable income as determined under the Internal Revenue Code. S.C. Code Ann. §§ 12-6-40 and 12-6-50 should be reviewed annually by taxpayers to determine if federal changes to IRC provisions or other uncodified federal tax provisions have been adopted or limited by South Carolina. See also, *South Carolina's Guide to IRC Conformity from 2018-2020*, available at www.dor.sc.gov/policy/index/policy-manuals.

2. INDIVIDUAL INCOME TAX RATES

S.C. Code Ann. § 12-6-510 imposes an income tax upon the South Carolina taxable income of individuals, estates, and trusts with the maximum rate currently at 6.5% for 2022[1]. There are three income brackets adjusted annually for inflation.

S.C. Code Ann. § 12-6-545 allows for a reduced income tax rate on active trade or business income of a pass-through business (*i.e.,* sole proprietor, partnership, S corporation, or limited liability company taxed as a sole proprietorship, partnership, or S corporation) in lieu of the income tax rate imposed under S.C. Code Ann. § 12-6-510. The tax rate applicable to active trade or business income is 3%. The statute contains a definition of "active trade or business income or loss." See SC Revenue Ruling #08-2 for more information on the reduced tax rate on active trade or business income from a pass-through business.

S.C. Code Ann. § 12-6-545(G) allows a "qualified entity" (partnership, limited liability company taxed as a partnership or an S corporation that meets certain requirements) to elect to directly pay income tax on its active trade or business income. If the election is made, a "qualified owner" of the qualified entity will exclude active trade or business income in computing South Carolina taxable income. Active trade or business losses of a qualified owner from other

[1] This rate will be reduced one-tenth of 1% each year until finally reaching a rate of 6% in 2027, but only if revenue requirements are met in any given year.

passthrough entities that are reported directly by the owner may not reduce the owner's tax rate at a rate higher than 3%. The election may be made on a yearly basis and an electing qualified entity is required to submit estimated tax payments pursuant to S.C. Code § 12-6-3910 for tax years beginning after 2021. For more information about the election to pay tax on active trade or business income at the qualified entity level, see SC Revenue Rulings #21-15 and #22-5.

3. ADDITIONAL DEDUCTION FOR CHILDREN UNDER 6

S.C. Code Ann. § 12-6-1160 provides that an individual taxpayer is allowed an additional deduction for each child eligible for the South Carolina dependent exemption pursuant to S.C. Code Ann. § 12-6-1140 who has not reached age 6 by December 31st of the tax year if claimed as a dependent on the taxpayer's federal return. The deduction is equal to the South Carolina dependent exemption allowed pursuant to S.C. Code Ann. § 12-6-1140.

4. CAPITAL GAINS DEDUCTION

S.C. Code Ann. § 12-6-1150 provides a deduction from the South Carolina taxable income of individuals, estates, and trusts equal to 44% of net capital gain recognized. South Carolina defines "net capital gain" in the same manner as I.R.C. § 1222 and related sections.

5. RETIREMENT INCOME DEDUCTION

S.C. Code Ann. § 12-6-1170(A) provides an annual deduction from South Carolina taxable income for retirement income to the original owner of a qualified retirement account. The qualifying taxpayer receiving retirement income may deduct up to $3,000 of such retirement income annually until reaching age 65, and deduct up to $10,000 of such retirement income annually at age 65 and thereafter. For this purpose, "retirement income" means the total of all otherwise taxable income not subject to a penalty for premature distribution from qualified retirement plans, and public employee retirement plans of federal, state, and local governments, including military retirement.

In addition, a surviving spouse is allowed a deduction for income received from his or her retirement plan, if any, and a second, separate deduction for retirement income that is attributable to the deceased spouse, if any.

S.C. Code Ann. § 12-6-1171 provides special rules for taxpayers who have military retirement income.

For more information about the annual deduction from South Carolina taxable income for retirement income and military retirement income, see SC Revenue Ruling #22-11.

6. DEDUCTION FOR TAXPAYERS 65 AND OLDER

S.C. Code Ann. § 12-6-1170(B) provides an income tax deduction of up to $15,000 against any South Carolina taxable income of a resident individual who is 65 or older by the end of the tax year. The following requirements apply to this deduction:

- Amounts deducted as retirement income under S.C. Code Ann. § 12-6-1170(A) reduce this $15,000 deduction.

- Amounts deducted as a surviving spouse under S.C. Code Ann. § 12-6-1170(A) do not reduce this $15,000 deduction.

- Taxpayers' filing a joint return are allowed a deduction of up to $15,000 when only one spouse is 65 or older, and up to $30,000 when both spouses are 65 or older, by the end of the tax year.

For more information about the annual deduction from South Carolina taxable income for residents 65 years or older, see SC Revenue Ruling #22-11.

7. DISABILITY RETIREMENT INCOME DEDUCTION

S.C. Code Ann. § 12-6-1140(4) provides that amounts included in South Carolina gross income received for disability retirement due to permanent and total disability by a person who could qualify for the homestead exemption under S.C. Code Ann. § 12-37-250 by reason of being classified as totally and permanently disabled is deductible from South Carolina income. (See Chapter 5, Individual Property Tax, Section 2, for information concerning the homestead exemption.)

8. COLLEGE INVESTMENT CONTRIBUTION DEDUCTION

S.C. Code Ann. § 12-6-1140(11) provides a deduction in computing South Carolina taxable income for contributions to the South Carolina College Investment Program in S.C. Code Ann. § 59-2-80. This program allows South Carolina residents to participate in an investment trust fund whereby contributions and investment earnings are used to pay for qualified higher education expenses of designated beneficiaries at eligible educational institutions, as defined in I.R.C. § 529. The program is under the direction of the Office of the State Treasurer.

S.C. Code Ann. § 59-2-80 provides for the income tax treatment of fund contributions and earnings as follows:

- Contributions to each investment trust account and funds transferred to an investment trust account from another qualified plan are deductible from South Carolina income subject to tax up to the limit of maximum contributions allowed under I.R.C. § 529 and to the extent that the transferred funds were not permitted a state income tax deduction previously under South Carolina law.

- State income tax deductions as provided for in S.C. Code Ann. §§ 59-2-80 and 12-6-1140(11) may be taken in any taxable year for contributions and rollovers made during that taxable year, and up to April 15th of the succeeding year, or the due date of the taxpayer's state income tax return, excluding extensions, whichever is longer.

- Any interest, dividends, gains, or income accruing are not included in South Carolina income of the account owner, contributor, or beneficiary if they remain in the fund or are withdrawn as a qualified withdrawal.

- Earnings withdrawn that are not qualified withdrawals are included in South Carolina income of the resident recipient in the year of withdrawal.

9. SOCIAL SECURITY BENEFITS EXCLUDED

S.C. Code Ann. § 12-6-1120(4) provides that social security benefits are not included in South Carolina gross income.

10. CREDIT FOR INCOME TAXES PAID TO ANOTHER STATE

S.C. Code Ann. § 12-6-3400 provides an income tax credit to residents for taxes paid to another state on income which also is subject to tax in South Carolina. The credit is allowed only for taxes paid to the other state on income derived from sources within the state, which is taxed under the laws of that state irrespective of the residence of the taxpayer. If a taxpayer is considered to be a resident of South Carolina and is also considered to be a resident of another state, the Department may, at its discretion, allow a credit against the taxes imposed by South Carolina for those taxes imposed by, and paid to, the other state on income taxed in South Carolina.

Note: If a qualifying entity makes an election under S.C. Code Ann. § 12-6-545(G) to pay the income tax on active trade or business income at the qualified entity level, the partner, member or shareholder of the qualifying entity is generally not entitled to the credit under S.C. Code Ann. § 12-6-3400. See SC Revenue Rulings #21-15 and #22-5.

11. TWO WAGE EARNER CREDIT

S.C. Code Ann. § 12-6-3330 provides married individuals filing a joint return a credit against South Carolina income tax equal to seven-tenths of 1% (.007) of the lesser of the following: (1) $5,000[2] or (2) the South Carolina qualified earned income of the spouse with the lower qualified earned income for the taxable year. For the 2023 tax year, the maximum credit is $350.

[2] This amount became effective for tax year 2023.

12. SOUTH CAROLINA EARNED INCOME CREDIT

S.C. Code Ann. § 12-6-3632 has been added to provide a full-year resident individual a nonrefundable South Carolina earned income tax credit. For tax year 2023, the credit is equal to 125% of the federal earned income tax credit allowed the taxpayer under I.R.C. § 32.

13. COLLEGE TUITION CREDIT

S.C. Code Ann. § 12-6-3385 provides for a refundable individual income tax credit for tuition paid during the tax year to an institution of higher learning. The credit for each taxable year is equal to 50% of the tuition paid, not to exceed $1,500 for a student attending a 4-year or 2-year institution.

The credit may be claimed by the student paying the tuition or by an individual paying the tuition who is eligible to claim the student on his federal income tax return. It may be claimed for no more than 4 consecutive years after the student enrolls in an eligible institution with limits and exceptions.

S.C. Code Ann. § 12-6-3385 contains a list of requirements that a student must meet in order to qualify for the credit. Requirements the student must meet include:

- Having completed at least 30 credit hours at the end of the tax year for which the credit is claimed.
- Within 12 months before enrolling in the institution of higher learning graduated from a South Carolina high school.
- Graduating from high school during or after May 1997.

See SC Revenue Ruling #09-3 for a detailed question and answer document on the college tuition tax credit.

14. CHILD AND DEPENDENT CARE EXPENSES CREDIT

S.C. Code Ann. § 12-6-3380 provides an individual an income tax credit for qualified child and dependent care expenses. Qualified expenses include amounts paid for household services and care of a child under age 13 claimed as a dependent, a disabled spouse incapable of self-care, or a disabled person incapable of self-care claimed as a dependent, if such expenses are incurred while the taxpayer works or looks for work during the tax year. The credit is computed as provided in I.R.C. § 21, except that the credit amount is 7%, and only expenses that are directly attributable to items of South Carolina gross income qualify.

Also, see Business Income Tax, Chapter 2, Section 23 for information on a credit that an employer may claim for costs incurred in establishing a child care program for its employees' children or for child care payments made directly to independent child care facilities.

15. DISASTER/INSURANCE RELATED DEDUCTION AND CREDITS

S.C. Code Title 12, Chapter 6 contains a variety of disaster or insurance related tax deductions or credits for individuals. Each is briefly explained below.

a. Catastrophe Savings Account

S.C. Code Ann. § 12-6-1620 allows a taxpayer to establish a "Catastrophe Savings Account" to cover the insurance deductible or self-insured losses on the taxpayer's South Carolina legal residence for hurricane, rising floodwaters, or other catastrophic windstorm event damage. The total amount that may be contributed to this regular savings or money market account varies from: (1) $2,000 for an individual whose qualified deductible is $1,000 or less; (2) the lesser of $15,000 or twice the taxpayer's qualified deductible for an individual whose qualified deductible is over $1,000; or (3) the lesser of $250,000 or the value of the taxpayer's legal residence for a self-insured individual.

In general, the income tax treatment of fund contributions, earnings and distribution are:

- Contributions are a deduction from South Carolina income subject to tax.
- Interest earned is not included in South Carolina income.
- Distributions for qualified catastrophe expenses are not included in South Carolina income.
- Distributions exceeding qualified catastrophe expenses are included in South Carolina income. Subject to limited exceptions, the tax rate for excess distributions is increased by 2.5% over the regular income tax rate.
- Distributions to a taxpayer age 70 or older closing an account set up to pay a deductible are not included in South Carolina income.

For a question and answer document that answers some common questions about Catastrophe Savings Accounts, see SC Revenue Ruling #21-11.

b. Legal Residence Retrofit Credits

Credit for Retrofitting Fortification Costs. S.C.C. Ann. § 12-6-3660 provides an income tax credit of up to $1,000 for 25% of the costs to retrofit a taxpayer's legal residence to make it more resistant to loss due to hurricane, rising floodwater, or other catastrophic windstorm event. Ordinary repair or replacement of an existing item does not qualify.

Credit for Sales or Use Tax Paid on Purchases to Retrofit. S.C. Code Ann. § 12-6-3665 provides an income tax credit for state sales or use taxes paid on purchases of tangible personal property used to retrofit an individual's legal residence. The credit is 6% of the purchase price of tangible personal property eligible for retrofitting fortification costs discussed above. The credit cannot exceed $1,500. The credit is claimed on SC SCH TC-43.

South Carolina Department of Insurance Regulation 69-75 sets forth the fortification measures that qualify for the credits in S.C. Code Ann. §§ 12-6-3660 and 12-6-3365. The standards which must be met by an individual taxpayer for costs to qualify for the credit are the same as those required under the South Carolina Safe Home Program and are contained in the *South Carolina Safe Home Resource Document for Mitigation Techniques* (Manual). A copy of the Manual is available at www.scsafehome.com or the SC Safe Home website will direct taxpayers to the location of the Manual on the Department of Insurance website**.**

c. Property and Casualty Insurance Premium Credit

S.C. Code Ann. § 12-6-3670 provides an income tax credit for an individual's property and casualty insurance premium for the taxpayer's legal residence paid during the tax year in excess of 5% of the taxpayer's adjusted gross income. The credit allowed for any tax year cannot exceed $1,250. Any unused credit may be carried forward for 5 tax years. The credit is claimed on Form TC-44, "Excess Insurance Premium Credit."

16. NURSING FACILITY/IN-HOME/COMMUNITY CARE CREDIT

S.C. Code Ann. § 12-6-3390 provides an individual taxpayer an income tax credit equal to 20% of the expenses paid by the taxpayer for his own support or the support of another to an institution providing nursing facility level of care or paid to a provider for in-home or community care for persons determined to meet nursing facility level of care criteria as certified by a licensed physician. The credit is limited to $300 each taxable year. No credit is allowed for expenses paid from public source funds.

17. CREDIT FOR NONRESIDENT RETIREMENT CONTRIBUTIONS

S.C. Code Ann. § 12-6-3500 provides a credit over the taxpayer's lifetime for taxes paid on qualified retirement income contributions while residing in a state other than South Carolina. The Department will prescribe the amount of the annual credit based on the taxpayer's life expectancy at the time the taxpayer is allowed the South Carolina retirement income deduction discussed above in Section 5. The total credit allowed may not exceed an amount determined by multiplying the contributions taxed in each year by the marginal South Carolina individual income tax rate for that year. The credit is claimed on Form TC-29, "Qualified Retirement Plan Contribution."

18. CREDIT FOR REHABILITATION OF A CERTIFIED HISTORIC RESIDENTIAL STRUCTURE

S.C. Code Ann. § 12-6-3535 has two similar income tax credits available to taxpayers making historic rehabilitation expenditures in South Carolina. The first credit, rehabilitation of a certified historic structure credit, is available to taxpayers that qualify for the federal rehabilitation credit. The second credit, rehabilitation of a certified historic residential structure credit, is available to individual taxpayers that do not qualify for the federal rehabilitation credit.

A general overview of the credit for rehabilitation of a certified historic residential structure is provided below. See Chapter 2, Business Income Tax, Section 39 for a general overview of the credit for rehabilitation of a certified historic structure.

S.C. Code Ann. § 12-6-3535(B) allows a taxpayer an income tax credit equal to 25% of the rehabilitation expenses for a certified historic residential structure located in South Carolina. The rehabilitation expenses must, within a 36-month period, exceed $15,000 to qualify for the credit. To claim this credit, the taxpayer must receive certification from the State Historic Preservation Officer (*i.e.,* the Director of the Department of Archives and History or the Director's Designee who administers the historic preservation programs within South Carolina).

The credit is claimed in equal amounts over a 3-year period beginning with the year that the certified rehabilitation is placed in service (*i.e.,* completed and allows for the intended use). Any unused credit may be carried forward for the 5 succeeding years. A taxpayer cannot take more than one credit on the same certified historic residential structure within 10 years. The credit is claimed on Form TC-22, "Credit for a Certified Historic Residential Structure Placed in Service After June 9, 2015."

The terms "certified historic residential structure," "certified rehabilitation," "rehabilitation expenses," and "owner-occupied residence" are defined in S.C. Code Ann. § 12-6-3535(B).

"Certified historic residential structure" is defined as an owner-occupied residence that is:

- listed individually in the National Register of Historic Places;
- considered by the State Historic Preservation Officer to contribute to the historic significance of a National Register Historic District;
- considered by the State Historic Preservation Officer to meet the criteria for individual listing in the National Register of Historic Places; or
- an outbuilding of an otherwise eligible property considered by the State Historic Preservation Officer to contribute to the historic significance of the property.

"Certified rehabilitation" is repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer before commencement of the work. The review by the State Historic Preservation Officer shall include all repairs, alterations, rehabilitation, and new construction on the certified historic residential structure and the property on which it is located.

"Rehabilitation expenses" are expenses incurred by the taxpayer in the certified rehabilitation of a certified historic residential structure that are paid before the credit is claimed including preservation and rehabilitation work done to the exterior of a certified historic residential structure, repair and stabilization of historic structural systems, restoration of historic plaster, energy efficiency measures except insulation in frame walls, repairs or rehabilitation of heating, air conditioning, or ventilating systems, repairs or rehabilitation of electrical or plumbing systems exclusive of new electrical appliances and electrical or plumbing fixtures, and architectural and engineering fees.

The term "rehabilitation expenses" does not include the cost of acquiring or marketing the property, the cost of new construction beyond the volume of the existing certified historic residential structure, the value of an owner's personal labor, or the cost of personal property.

"Owner-occupied residence" is a building or portion of a building in which the taxpayer has an ownership interest, in whole or in part, in fee, by life estate, or as the income beneficiary of a property trust, that is, after being placed in service, the residence of the taxpayer and is not (a) actively used in a trade or business, (b) held for the production of income, or (c) held for sales or disposition in the ordinary course of the taxpayer's trade or business.

Additional credit provisions include:

1. Additional work done by the taxpayer while the credit is being claimed, for a period of up to 5 years, must be consistent with the Secretary of the Interior's Standards for Rehabilitation. During this period, the State Historic Preservation Officer may inspect and review additional work to the certified historic residential structure. If this work is not consistent with the Standards for Rehabilitation, the taxpayer and Department must be notified in writing and any unused portion of the credit, including any carryforward, is forfeited.

2. The South Carolina Department of Archives and History has developed an application and certification process. A taxpayer claiming the credit must pay a preliminary and a final fee to the South Carolina Department of Archives and History based on a proscribed schedule. The Department of Archives and History has stated that the new fees will only apply to a taxpayer that submits an application after September 29, 2020. However, these fees are suspended for state fiscal year 2022-2023. A copy of the application and certification information can be obtained from the South Carolina Department of Archives and History at 803-896-6174. A taxpayer may appeal a decision of the State Historic Preservation Officer to a committee of the State Review Board.

19. ENERGY EFFICIENT MANUFACTURED HOME INCENTIVE CREDIT

S.C. Code Ann. § 48-52-870 provides a $750 income tax credit to any person who purchases a manufactured home from a retail dealership licensed by the South Carolina Manufactured Housing Board for use in South Carolina which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or requirements under each agency's ENERGY STAR program.

The South Carolina Energy Office must adopt rules to develop credit applications and administer the issuance of the credit. The forms are available at the State Energy Office's website at http://www.energy.sc.gov.

This credit may be claimed on SC SCH TC-53**.**

Note: This credit is only available for a manufactured home purchased through July 1, 2024.

20. MOTOR FUEL USER FEE CREDIT

S.C. Code Ann. § 12-6-3780 allows a resident taxpayer a refundable income tax credit for preventative maintenance costs associated with a private passenger motor vehicle or motorcycle registered in South Carolina during the year, subject to certain limitations. For more information concerning this credit, see SC Revenue Ruling #17-6.

21. SERVICE AS PRECEPTOR FOR CLINICAL ROTATIONS CREDIT AND DEDUCTION

S.C. Code Ann. § 12-6-3800 has been added to provide an income tax credit for eligible physicians, advanced practice registered nurses, and physician assistants who serve as a preceptor for qualifying clinical rotations required by a medical school, physician assistant program, or advanced practice nursing program. S.C. Code Ann. § 12-6-1140(14) provides a deduction for additional rotations after the taxpayer has met the credit maximum.

The amount of credit that may be claimed per rotation varies depending on whether the taxpayer is a physician, advanced practice registered nurse, or physician assistant and how much of the taxpayer's practice consists of Medicaid insured, Medicare insured, and self-pay patients. The credit is phased in over 5 years in equal and cumulative installments beginning in tax year 2020.

A taxpayer can earn credit for up to 4 rotations a year. Credits are considered earned in the tax year in which the rotation is served. Taxpayers may claim 50% of the credit in the tax year the credit is earned and 50% in the following tax year. The total credit claimed in a single year cannot exceed 50% of the taxpayer's remaining tax liability after all other credits have been applied. Any unused credit may be carried forward to the following year, except that a carryforward may not be used for a tax year that begins more than 10 years from the year the credit is earned.

If a taxpayer earns the maximum annual credit amount (4 rotations) and the taxpayer serves as a preceptor for additional rotations that would otherwise qualify for the credit, the taxpayer may claim a deduction in an amount equal to the amount that the credit would have been. The deduction may be earned up to 6 times a year but is also subject to a phase-in.

Definitions are provided for “preceptor,” “independent institution of higher learning,” “medical-school-required clinical rotation,” “physician assistant program-required clinical rotation,” and “advanced practice nursing program-required clinical rotation.”

For a question and answer document concerning this credit, see SC Revenue Ruling #20-2.

Note: The tax credit and the deduction are repealed as of January 1, 2026.

22. COMPOSITE RETURNS FOR NONRESIDENT PARTNERS AND SHAREHOLDERS

See Chapter 2, Business Income Tax, Section 8, for information on composite returns.

4. BUSINESS PROPERTY TAX AND EXEMPTIONS

1. TAXATION OF REAL AND PERSONAL PROPERTY

Real property is subject to property taxes. Personal property used in business and certain personal property used for personal purposes, such as motor vehicles, boats, and airplanes, are also subject to property taxes. Property taxes are generally assessed and collected by local governments. The Department assesses and collects some property taxes and assists in the administration of property taxes by overseeing all property tax assessments to ensure equitable and uniform assessment throughout South Carolina.

In general, the person who owns real property on the lien date (December 31st of the year preceding the current tax year) in fee simple, for life, or as trustee, as recorded in the public records for deeds, who has the care of the property as a guardian, executor, trustee, or committee on the lien date is liable for payment of the taxes on the real property. S.C. Code Ann. §§ 12-37-610 and 12-49-20. A leasehold will be subject to ad valorem tax if real property that is subject to a property tax exemption is leased for a definite term and the lessee does not qualify for an exemption. S.C. Code Ann. § 12-37-950; see *Clarendon County ex. rel. Clarendon County Assessor v. Tykat, Inc.*, 394 S.C. 21, 714 S.E. 2d 305 (2011). There are provisions for a county governing body to allow, by ordinance, early recognition of the improvements to real property. This provision allows the improvements to be taxed beginning with the first day of the next calendar quarter after a certificate of occupancy is issued for the improvement. See S.C. Code Ann. § 12-37-670(B).

Real property taxes are generally due and payable between September 30th and January 15th after their yearly assessment. S.C. Code Ann. § 12-45-70(A); see S.C. Code Ann. § 12-39-150. There are special rules fixing liability and due dates for taxpayers that make returns to the Department on a fiscal year basis. See S.C. Code Ann. § 12-37-970 and SC Revenue Ruling #16-12.

The amount of property tax due is based upon three elements: (1) the property value, (2) the assessment ratio applicable to the property used to determine assessed value, and (3) the millage rate imposed by the taxing jurisdictions. Each of these elements is briefly discussed below.

1. **Valuation**: Real property (other than agricultural use property and most property that is subject to a Fee in Lieu of Property Taxes) is appraised to determine fair market value. Real property is reappraised on a countywide basis every 5 years. S.C. Code Ann. § 12-43-217. For purposes of this reassessment, any increase in fair market value of any parcel of real property is limited to 15% unless an "assessable transfer of interest" ("ATI") occurs. An ATI will result in reassessment of the property and a valuation not limited by the 15% cap. A non-exclusive list of events that constitute an ATI is provided in S.C. Code Ann. § 12-37-3150. Certain properties, assessed at a 6% assessment ratio, that undergo an ATI may be

eligible for a partial exemption. The fair market value of improvements and additions will be added to the fair market value of a parcel after completion. The 15% cap does not apply to improvements or additions in the year they are first subject to property tax. See S.C. Code Ann. §§ 12-43-217 and 12-37-3120 through 12-37-3170.

Personal property of manufacturers is valued at cost from which a fixed statutory depreciation percentage is deducted each year until a residual value is reached. S.C. Code Ann. § 12-37-930. Personal property of merchants is valued at cost from which income tax depreciation is deducted each year until a residual value is reached. S.C. Code Ann. Regs. 117-1840.1. In general, motor vehicles, boats, and airplanes are valued in accordance with nationally recognized publications of value (except that the value may not exceed 95% of the prior year's value). Discounts are applicable for motor vehicles with high mileage. S.C. Code Ann. §§ 12-37-930 and 12-37-2680.

The property of utilities, airlines, railroads, private car lines and golf courses is valued using special methods of valuation.

2. **Assessment Ratio**: Assessment ratios are established in the State Constitution to ensure stability and differ according to property classification. In general, all manufacturing property (whether real or personal) and most commercial personal property is assessed at 10.5%. Commercial real property, as well as second homes, are assessed at 6%. Personal use motor vehicles are assessed at 6%; motor vehicles that do not qualify as personal use motor vehicles (*i.e.,* those that are used for business), and trucks classified as medium or heavy duty, are assessed at 10.5 %. S.C. Code Ann. § 12-43-330 provides that property exempt from taxation is also exempt from assessment.

   The valuation is multiplied by the applicable assessment ratio to produce the "assessed value" of a particular piece of property. Taxes are levied based upon this assessed value.

   New and expanding businesses that invest $2.5 million or more ($1 million or more in certain instances) can enter into a Fee in Lieu of Property Taxes arrangement, which can reduce a 10.5% assessment ratio to 6% for up to 40 years for qualifying property. Very large investments can qualify for a Fee in Lieu of Property Taxes with a 4% assessment ratio for up to 50 years for qualifying property. (See Chapter 6 for more details on Fee in Lieu of Property Taxes.)

3. **Millage**: On an annual basis, each taxing jurisdiction determines the number of mills required so that when that number is multiplied by the total assessed value of property subject to taxation within its jurisdiction, it will raise the money necessary for the taxing entity to operate for the next year. The most recently available average millage rate for South Carolina is 346.2 mills. A mill is a unit of monetary value equal to one one-thousandth of a dollar or $0.001.

Example: If a manufacturer owns a piece of property with a value of $10,000 and an assessment ratio of 10.5% (the ratio for manufacturing property in the absence of a Fee in Lieu of Property Tax agreement), the assessed value of that property is $1,050 ($10,000 x 10.5%). If the taxing jurisdiction's millage for that year is 297 mills, then the property tax liability of the owner is $312 ($1,050 x .297). Note, there is also a property tax exemption available for manufacturing property that will further reduce the tax due.

2. PROPERTY CLASSIFICATION

a. General Information

The property's assessment ratio is determined based on the ownership and use of the property (classification). Classification also determines whether the property will be valued by a county assessor (for real property), by a county auditor (for personal property), or by the Department (for specified real and personal property as provided in S.C. Code Ann. § 12-4-540).

S.C. Code Ann. Regs. 117-1760.1 provides that in classifying businesses for purposes of property tax assessments, if the company is involved in more than one operation, the major operation of the company determines the classification.

b. Business Classification

For purposes of assessing property of manufacturers, the Department follows the classifications set out in Sectors 21, 31, 32, and 33 of the most recent North American Industry Classification System (NAICS) Manual. However, establishments that publish newspapers, books, and periodicals that do not have facilities for printing or that do not actually print their publications are not classified as manufacturers. See S.C. Code Ann. § 12-43-335(B).

For purposes of assessing property of railroads, private carlines, airlines, water, power, telephone, cable television, sewer, and pipeline companies, the Department follows the classifications set out in Sectors 22, 51, 424, 481, 482, 483, 485, and 486 (with exceptions within certain sectors) of the most recent NAICS Manual. See S.C. Code Ann. § 12-43-335(C).

For purposes of assessing the property of merchants and related businesses, the Department follows the classifications set forth in the most recent NAICS Manual, Sectors 22, 23, 42, 44, 45, 48, 51, 56, 71, 81, 453, 481, 483, and 484 (with exceptions within certain sectors). See S.C. Code Ann. § 12-43-335(A).

For purposes of appraising and assessing personal property of businesses and other entities under the jurisdiction of the county auditor, the county auditor follows the following classifications as contained in the most recent NAICS Manual: Sector 11 – Subsectors 111 through 115, unless exempt; Sector 51 - Subsector 512; Sector 52 – Subsectors 522 through 525; Sector 53 – Subsectors 531 and 533; Sector 54 – Subsector 541; Sector 55, Subsector 551,

unless exempt; Sector 61, Subsector 611; Sector 62 – Subsectors 621 through 624; Sector 71 – Subsector 712; Sector 72 – Subsector 721; and Sector 81 – Subsectors 813 through- 814, unless exempt. See S.C. Code Ann. § 12-39-70. A number of South Carolina counties have chosen to have their business personal property accounts administered by the Department.

3. ASSESSMENT RATIOS AND VALUATION

a. Manufacturers' and Utilities' Real Property

S.C. Code Ann. § 12-43-220(a) provides that real property owned by, or leased to, manufacturers and utilities and used by the manufacturer or utility in the conduct of its business is taxed on an assessment of 10.5% of the fair market value of the property, unless otherwise provided. S.C. Code Ann. Regs. 117-1700.3 defines "utilities" to include water companies, power companies, electric cooperatives, and telephone companies. The Department also considers sewer companies and cable television companies to be utilities.

Assessment Ratio. Depending on use, the real property owned by a manufacturer may qualify for a 6% assessment ratio rather than a 10.5% assessment ratio. The qualifying uses are discussed below.

- Real property owned by, or leased to, a manufacturer and used primarily for research and development is not considered used by a manufacturer in the conduct of its manufacturing business for purposes of classification of property. The phrase "research and development" means basic and applied research in the sciences and engineering and the design and development of prototypes and processes. See S.C. Code Ann. § 12-43-220(a)(2).

- Real property owned by, or leased to, a manufacturer and used primarily as an office building is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property if the office building is not located on the premises of, or contiguous to, the plant site of the manufacturer. See S.C. Code Ann. § 12-43-220(a)(3). A public road and railway tracks which a manufacturer holds in fee simple does not defeat contiguity. When a manufacturer's manufacturing facility and its office building is separated by the road and tracks, the office building does not qualify for the special 6% assessment ratio. *Sonoco Products Co. v. South Carolina Department of Revenue*, 378 S.C. 385, 662 S.E.2d 599 (2008).

- Real property owned by, or leased to, a manufacturer and used primarily for warehousing and wholesale distribution is not considered used by a manufacturer in its manufacturing business for purposes of classification of property. Real property subject to this special provision must not be physically attached to the manufacturing plant unless the warehousing and wholesale area is separated from the manufacturing area by a permanent wall. S.C. Code Ann. § 12-43-220(a)(4).

Valuation. The fair market value of a manufacturer's real property, other than agricultural use real property and potentially property that is subject to a Fee in Lieu of Property Taxes, is determined by appraisal as discussed at the beginning of this chapter.

All real and personal property of a utility is valued using a unit valuation method to value the utility operations as a whole. See S.C. Code Ann. §§ 12-37-930 and 12-4-540(B).

b. Manufacturers' Machinery and Equipment

Assessment Ratio. S.C. Code Ann. § 12-43-220(a) provides that personal property owned by, or leased to, a manufacturer is taxed on an assessment of 10.5%.

Valuation. S.C. Code Ann. § 12-37-930 provides that the fair market value of manufacturers' machinery and equipment used in the conduct of the manufacturing business is determined by reducing the original cost by an annual depreciation allowance. The depreciation allowances range from 6% to 30% per year. S.C. Code Ann. § 12-37-935 provides that the maximum depreciation allowed for manufacturer's machinery and equipment is 90% of original cost. Special depreciation rates are applicable to Class 100 or better clean rooms and to machinery and equipment used directly in the manufacturing process by a "life sciences facility" or a "renewable energy manufacturing facility" as provided in S.C. Code Ann. § 12-37-930.

Special Reporting Rule for Idle Property Not Under a Fee Agreement. Personal property of a manufacturer located at the manufacturer's facility does not have to be returned for property tax purposes if the facility has not been operational for one fiscal year and the personal property has not been used in the operations for one fiscal year and is not subject to a Fee in Lieu of Property Taxes. A return is not required for the property until it becomes operational in a manufacturing process or until it has not been returned for 4 years, whichever occurs first. The manufacturer must continue to list the personal property annually with a designation that the personal property is not subject to tax. S.C. Code Ann. § 12-37-900.

c. Merchants' Business Personal Property

Assessment Ratio. In general, S.C. Code Ann. § 12-43-220(f) provides that the personal property of a merchant is assessed at 10.5%.

Valuation. S.C. Code Ann. Regs. 117-1840.1 provides that the fair market value of merchants' personal property is equal to its depreciated basis for income tax purposes (but not less than 10% of its original cost).

d. Motor Vehicles and Watercraft

Assessment Ratio. In general, S.C. Code Ann. § 12-43-220(f) provides that the assessment ratio of tangible personal property is 10.5%. Exceptions are: (1) the assessment ratio for personal use motor vehicles is 6%, (2) the assessment ratio for commercial fishing boats, commercial

tugboats, and pilot boats is 5%, and (3) motor homes, travel trailers, or boats assessed as living quarters are assessed at either 4% or 6%, depending on whether they are primary or secondary residences. See S.C. Code Ann. §§ 12-37-224 and 12-43-220(c)(2).

Valuation. S.C. Code Ann. § 12-37-930 requires motor vehicles and watercraft to be valued based on nationally recognized publications (but the value cannot exceed more than 95% of the prior year's value). Motor vehicle valuation guides must include information concerning high mileage for all motor vehicles in such guides or manuals. S.C. Code Ann. § 12-37-2680.

Watercraft and motors that have an assessed value of $50 or less are exempt from property taxes under S.C. Code Ann. § 12-37-220(B)(38). Watercraft trailers are exempt from property taxes under S.C. Code Ann. § 12-37-220(B)(40). The governing body of a county, by ordinance, may exempt from property tax 42.75% of the fair market value of a watercraft and it's motor. The motor need not be attached to the watercraft to qualify. S.C. Code Ann. § 12-37-220(B)(38).

Boats and boat motors that are not currently taxed in South Carolina and that are not used exclusively in interstate commerce become taxable if they are present in South Carolina for 60 consecutive days or 90 days in the aggregate in a property tax year. In lieu of the above rule, the local governing body may, by ordinance, replace the 60/90 day provision with one of the following:

1. The boat or boat motor will be considered taxable if the boat or motor is in South Carolina for an aggregate of 180 days in a property tax year. The number of consecutive days that the boat or motor is in South Carolina is disregarded if the county chooses this option; or,

2. The boat or boat motor will be considered taxable if the boat or boat motor is present in South Carolina for an aggregate of 90 days in a property tax year. The number of consecutive days that the boat or motor is in South Carolina is disregarded if the county chooses this option.

For boats used in interstate commerce that have a tax situs in South Carolina and in at least one other state, the value is computed by multiplying the fair market value by a fraction (*i.e.,* the number of days the boat was present in South Carolina divided by 365.) The boat must be physically present for an aggregate of 30 days in South Carolina to be subject to property taxes in this State. S.C. Code Ann. § 12-37-714.

e. General Aviation Aircraft

Assessment Ratio. Pursuant to S.C. Code Ann. § 12-43-220(f), aircraft are assessed at 10.5%. S.C. Code Ann. § 12-43-360 allows the governing body of a county, by ordinance, to reduce the assessment ratio of general aviation aircraft subject to property tax in the county to not less than 4% of the fair market value. The ordinance must be applied uniformly to all general aviation aircraft subject to property tax in the county. (See the SC Aeronautics Commission site for a diagram of the tax ratios in the State at http://www.scaeronautics.com/propertytaxrate.html.)

Valuation. S.C. Code Ann. § 12-37-930 requires aircraft to be valued based on nationally recognized publications (but the value cannot exceed more than 95% of the prior year's value).

f. Golf Courses

Assessment Ratio. Pursuant to S.C. Code Ann. § 12-43-220(e) golf courses are assessed at 6%.

Valuation. Golf courses are appraised to determine fair market value. S.C. Code Ann. § 12-43-365 provides that the valuation of golf course real property does not include the value of tangible and intangible personal property, or any income or expense derived from such property, whether directly or indirectly. Additional rules are provided if the capitalized income approach is used to determine fair market value. Real property is generally subject to the 15% cap as discussed at the beginning of this chapter.

g. Homeowner's Associations

Property owned by a Homeowner's Association (HOA) is subject to specific rules set forth in S.C. Code Ann. §§ 12-43-227 and 12-43-230.

h. All Other Property

Assessment Ratio. S.C. Code Ann. § 12-43-220(e) provides that all other real property not otherwise provided for is assessed at 6% of its fair market value. S.C. Code Ann. § 12-43-220(f) provides that all other tangible personal property is assessed at 10.5% of its fair market value.

Valuation. The fair market value of real property is generally determined by appraisal as discussed at the beginning of this chapter. South Carolina Regulation 117-1840.2 provides that all personal property that is under county jurisdiction and is not covered by assessment guides furnished by the Department for the assessment of vehicles shall be appraised by the county auditor in the same manner as business personal property under the jurisdiction of the Department as provided for in S.C. Code Ann. Regs. 117-1840.1.

i. Motor Carriers – Road Use Fee

The South Carolina Department of Motor Vehicles annually assesses, in lieu of property tax, a road use fee on large commercial motor vehicles and buses based on the value determined in S.C. Code Ann. § 12-37-2820 and an average millage for all purposes statewide for the preceding calendar year. Furthermore, 100% of the fair market value of semitrailers and trailers (as defined in S.C. Code Ann. § 12-37-2810), and commonly used in combination with a large commercial motor vehicle, is exempt from property tax.

Valuation. The Department of Motor Vehicle determines the fair market value of motor carriers' vehicles taxable in South Carolina by depreciating the gross capitalized cost of each motor vehicle by the percentage set forth in the statute. The vehicle may not be depreciated

below 10% of its gross capitalized cost. The resulting value is multiplied by the ratio of a carrier's total mileage operated within this state during the preceding calendar year to the carrier's total mileage within and without this state during the same preceding calendar year times the fair market value of all motor vehicles of the carrier. Special rules for determining "gross capitalized cost" are provided for motor carriers' vehicles that use alternative fuel as defined in S.C. Code Ann. § 12-28-110(1) if the vehicle was acquired after 2015 but before 2026.

Assessment Ratio. This amount (fair market value of vehicles taxable in South Carolina) is then multiplied by 9.5% to arrive at the value of motor vehicles for purposes of calculating the road use fee.

Millage. Once the value has been determined, it is multiplied by the average millage for all purposes statewide for the preceding year. The result is the amount of road use fee due.

Exceptions. Trailers and semitrailers used by motor carriers are subject to a one-time $87 fee in lieu of all property taxes and registration requirements after the initial registration. Trailers and semitrailers do not include pole trailers.

Note: Small commercial motor vehicles are not subject to the road use fee and must be licensed and registered, and are subject to ad valorem taxes as otherwise provided by law. See S.C. Code Ann. § 12-37-2815 for more information.

4. MANUFACTURING EXEMPTIONS

a. Five-Year Exemption from County Ad Valorem Property Taxes

The South Carolina Constitution in Article X, § 3, and S.C. Code Ann. § 12-37-220(A)(7) provide for a 5-year exemption from county property taxes (the exemption does not apply to school or municipal taxes) for all new manufacturing establishments and all additions costing $50,000 or more to existing manufacturing facilities located in South Carolina. The exemption applies to land, buildings, and additional machinery and equipment installed in the manufacturing facility. Further, Article X, § 3 of the South Carolina Constitution provides that a municipality may, by ordinance, also exempt this property from municipal property taxes for not more than 5 years. The timely filing of Form PT-300, "Property Return," and appropriate schedules with the Department is deemed to be the application for this exemption.

Additionally, S.C. Code Ann. § 12-37-220(C) provides that the exemption may be extended to an unrelated purchaser for the time remaining in the seller's exemption period. To qualify, the purchaser must (1) acquire the facility in an arms-length transaction, (2) preserve the existing facility and existing number of jobs, and (3) obtain the approval of the governing body of the county. If the qualifying unrelated purchaser meets the above three requirements and makes additions to the new or existing facility costing $50,000 or more, then the purchaser may qualify for a 5-year exemption from county property taxes. See SC Revenue Ruling #04-14. Since this exemption requires approval from the local county governing body, the purchaser must

timely submit an application for this exemption to the Department on Form PT-444, "Five Year Exemption Extended to Unrelated Purchaser."

Opinions concerning the exemption in S.C. Code Ann. § 12-37-220(A)(7) include the following:

1. South Carolina Attorney General Opinion #3712 (1974) determined that for purposes of the $50,000 addition requirement the cost of the addition must be $50,000 to one manufacturing plant rather than an aggregate expenditure for all manufacturing plants of a single taxpayer located in one county.

2. SC Private Letter Ruling #87-11 reviewed whether a new business purchasing an existing facility from a company that had ceased operations at the facility met the requirement to be a new manufacturing establishment or was a continuation of the previous business. The following elements were considered relevant: (1) change in ownership, (2) change in product, (3) substantial investment of new capital, (4) cessation of former business, and (5) change in product market. Based on the facts in the advisory opinion, the plant met these elements to a degree sufficient to allow the exemption as a new manufacturing establishment.

3. SC Revenue Ruling #89-3 concluded that the exemption for additions to real property improvements of existing manufacturers is allowed to the extent that the real property improvements increase the total real property improvements appraisal.

b. New Partial Value Exemption

A new exemption has been added to exempt 42.8571% of the property tax value of real and personal manufacturing property assessed for property tax purposes pursuant to S.C. Code Ann. § 12-43-220(a)(1). The revenue loss resulting from the exemption must be reimbursed and allocated to the political subdivisions of South Carolina in the same manner as the Trust Fund for Tax Relief, but cannot exceed $170,000,000 per year as phased in. For any year in which the exemption is expected to exceed that cap, the exemption amount will be proportionally reduced so as not to exceed the cap. The exemption does not apply to property owned or leased by a public utility as that term is defined by S.C. Code Ann. § 58-3-5(6) which is regulated by the Public Service Commission regardless of whether the property is used in manufacturing. See S.C. Code Ann. § 12-374-220(B)(52).

Information about the new manufacturing exemption may be found in SC Revenue Ruling #22-13.

5. RESEARCH AND DEVELOPMENT EXEMPTIONS

S.C. Code Ann. § 12-37-220(B)(34) provides a 5-year exemption from county property taxes (the exemption does not apply to school or municipal taxes) for the facilities of all new enterprises (and all additions valued at $50,000 or more to existing facilities of enterprises) engaged in

research and development activities. Further, S.C. Code Ann. § 12-37-220(B)(39) provides that the governing body of a municipality may, by ordinance, exempt from municipal property taxes for not more than 5 years property that is located in the municipality and that receives the exemption from county property taxes allowed under S.C. Code Ann. § 12-37-220(B)(34). The timely filing of Form PT-300, "Property Return," and appropriate schedules with the Department is deemed to be the application for this exemption. (See also Sales and Use Tax Specific Provisions, Chapter 8, Section 7, which addresses a sales or use tax exemption for machines used in research and development pursuant to S.C. Code Ann. § 12-36-2120(56).) Facilities of enterprises engaged in research and development activities are defined in S.C. Code Ann. § 12-37-220(B)(34) as facilities devoted directly and primarily to research and development in the experimental or laboratory sense for new products, new uses for existing products, or for improving existing products. The exemption does not include facilities used in connection with efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, or research in connection with literary, historical, or similar projects. Additions include machinery and equipment installed in an existing manufacturing or research and development facility. The facility or its addition must be devoted primarily to research and development.

Additionally, S.C. Code Ann. § 12-37-220(C) provides that the exemption may be extended to an unrelated purchaser for the time remaining in the seller's exemption period. To qualify, SC Revenue Ruling #04-14 provides that the purchaser must (1) acquire the facility in an arms-length transaction, (2) preserve the existing facility and existing number of jobs, and (3) obtain the approval of the governing body of the county. If the qualifying unrelated purchaser meets the above three requirements and makes additions to the new or existing facility costing $50,000 or more, then the purchaser may qualify for a 5-year exemption from county property taxes. Since this exemption requires approval from the local county governing body, the purchaser must timely submit an application for this exemption to the Department on Form PT-444, "Five Year Exemption Extended to Unrelated Purchaser."

6. CORPORATE HEADQUARTERS, CORPORATE OFFICE FACILITY, AND DISTRIBUTION FACILITY EXEMPTIONS

S.C. Code Ann. § 12-37-220(B)(32) provides a 5-year exemption from county property taxes (the exemption does not apply to school and municipal property taxes) for new corporate headquarters, corporate office facilities, distribution facilities, and all additions to existing corporate headquarters, corporate office facilities, or distribution facilities if:

1. The cost of the new construction or addition is $50,000 or more, and

2. 75 or more new full-time jobs, or 150 or more substantially equivalent jobs, are created in South Carolina.

Further, S.C. Code Ann. § 12-37-220(B)(39) provides that the governing body of a municipality may, by ordinance, exempt from municipal property taxes for not more than 5 years property

that is located in the municipality and that receives the exemption from county property taxes allowed under S.C. Code Ann. § 12-37-220(B)(32). The timely filing of Form PT-300, "Property Return," and appropriate schedules with the Department is deemed to be the application for this exemption. (See Chapter 2, Business Income Tax, Section 18, for a discussion of the income tax credit for corporate headquarters.)

Additionally, S.C. Code Ann. § 12-37-220(C) provides that the exemption may be extended to an unrelated purchaser for the time remaining in the seller's exemption period. To qualify, SC Revenue Ruling #04-14 provides that the purchaser must (1) acquire the facility in an arms-length transaction, (2) preserve the existing facility and existing number of jobs, and (3) obtain the approval of the governing body of the county. If the qualifying unrelated purchaser meets the above three requirements and (1) makes additions to the new or existing facility costing $50,000 or more and (2) creates an additional 75 new full-time jobs or 150 substantially equivalent jobs at the corporate headquarters, corporate office facility or distribution facility, then the purchaser may qualify for a 5-year exemption from county property taxes. Since this exemption requires approval from the local county governing body, the purchaser must timely submit an application for this exemption with the Department on Form PT-444, "Five Year Exemption Extended to Unrelated Purchaser."

A number of terms are defined in S.C. Code Ann. § 12-37-220(B)(32) for purposes of this exemption. Listed below are some of the defined terms:

- "Corporate headquarters" means the location where corporate staff members or employees are domiciled and employed and where the majority of the company's financial, personnel, legal, planning, or other business functions are handled either on a regional or national basis; it must be the sole such corporate headquarters within the region or nation.

- "Region" or "regional" means a geographic area comprised of either (a) at least 5 states, including South Carolina, or (b) 2 or more states, including South Carolina, if the entire business operations of the corporation are performed within fewer than 5 states.

- "New job" means any job created by an employer in South Carolina at the time a new facility or an expansion is initially staffed, but does not include a job created when an employee is shifted from an existing South Carolina location to work in a new or expanded facility.

    - "Full-time" means a job requiring a minimum of 35 hours of an employee's time a week for the entire normal year of company operations or a job requiring a minimum of 35 hours of an employee's time for a week for a year in which the employee was initially hired for or transferred to the South Carolina corporate headquarters, corporate office facility, or distribution facility and worked at a rented facility pending construction of a corporate headquarters, corporate office facility, or distribution facility.

- ❖ "Substantially equivalent" means a job requiring a minimum of 20 hours of an employee's time a week for the entire normal year of company operations or a job requiring a minimum of 20 hours of an employee's time for a week for a year in which the employee was initially hired for or transferred to the South Carolina corporate headquarters, corporate office facility, or distribution facility and worked at a rented facility pending construction of a corporate headquarters, corporate office facility, or distribution facility.

- ◆ "Corporate Office Facility" means the location where corporate managerial, professional, technical, and administrative personnel are domiciled and employed, and where corporate financial, personnel, legal, technical, support services, and other business functions are handled. Support services include, but are not limited to, claims processing, data entry, word processing, sales order processing, and telemarketing.

- ◆ "Distribution facility" means an establishment where shipments of tangible personal property are processed for delivery to customers. The term does not include an establishment where retail sales of tangible personal property are made to retail customers on more than 12 days a year except for a facility which processes customer sales orders by mail, telephone, or electronic means, if the facility also processes shipments of tangible personal property to customers and if at least 75% of the dollar amount of goods sold through the facility are sold to customers outside of South Carolina. Retail sales made inside the facility to employees working at the facility are not considered for purposes of the 12 day and 75% limitation.

SC Private Letter Ruling #89-19 dealt with several questions concerning the property tax exemption and the income tax credit for a corporate headquarters for a taxpayer under a unique set of facts. One question concerned what was an "addition to an existing corporate headquarters." In this instance, the taxpayer constructed two buildings at their South Carolina location. For purposes of the employment requirement, it was necessary to determine whether the additions should be viewed as one expansion or two. The Department concluded that since the phrase "addition to an existing corporate headquarters" may mean the building of one building or many buildings, a reasonable interpretation is to look to the plan of expansion. Since the plan of expansion in question included the current construction of both buildings, then the buildings should be construed as one addition; therefore, requiring the taxpayer to fulfill the employment provisions once.

Another question addressed in SC Private Letter Ruling #89-19 was whether the positions created had to be placed in the new buildings. The Department concluded that the positions need not be placed in the new buildings; however, they must be employed in the South Carolina headquarters complex. Early staffing for the purpose of training was acceptable if the employee would be placed in the corporate headquarters during the construction of the expansion or immediately after its completion.

7. TEXTILE REVITALIZATION CREDITS

a. General Provisions

The South Carolina Textile Communities Revitalization Act, contained in Title 12, Chapter 65, provides a credit for the renovation, rehabilitation, and redevelopment of abandoned textile mill sites in South Carolina.

An overview of the credit is provided below; however, for additional guidance and examples see SC Revenue Ruling #15-8.

S.C. Code Ann. § 12-65-30 allows a taxpayer who rehabilitates an abandoned textile mill site to choose one of the following tax credits:

1. A credit against real property taxes ("property tax credit") equal to 25% of the eligible rehabilitation expenses made to the site multiplied by the local taxing entity ratio for each local taxing entity consenting to the credit; or,

2. A credit against income tax, license tax, or both or a credit against bank or insurance premium taxes ("income/bank/license/insurance premium tax credit") equal to 25% of eligible rehabilitation expenses.

A "Notice of Intent to Rehabilitate" must be filed by the taxpayer before incurring its first rehabilitation expenses at the textile mill site. The Notice must be filed with the municipality (or county if the site is located in an unincorporated area) for a taxpayer choosing the property tax credit. A taxpayer choosing the income tax credit must file the Notice with the Department prior to receiving the building permits for the applicable rehabilitation. Rehabilitation expenses incurred before the Notice is provided generally will not qualify for the credit.

The Notice should be a letter submitted by the taxpayer indicating:

- the taxpayer intends to rehabilitate the site
- the location of the site
- the amount of acreage involved with the site
- the estimated expenses to be incurred
- which buildings on the site are to be renovate or demolished and
- whether new construction is to be involved at the site.

The Notice to claim the income tax credit is submitted on Form SC SCH TC 23 to the Department

b. Property Tax Credit

For the property tax credit, the municipality or county must, by resolution, determine the eligibility of the textile mill site and the proposed rehabilitation expenses. A positive majority vote of the local governing body must approve the rehabilitation and the expenses. Final approval must be by public hearing and ordinance.

At least 45 days before holding the public hearing, the governing body of the municipality or county must give notice to all affected local taxing entities where the textile mill site is located of its intention to grant the property tax credit and the amount of estimated credit based on the amount of estimated rehabilitation expenses. If the local taxing entity does not file an objection, it is deemed to have consented to the credit. A taxpayer is not allowed the property tax credit if it owned the textile mill site immediately prior to its abandonment and the site was operational at that time. Further, a taxpayer is not eligible to claim a credit if the facility previously received textile mill credits.

This credit amount is based upon actual or estimated expenses as follows:

1. The credit is 25% of the actual rehabilitation expenses if the actual expenses incurred in rehabilitating the site are 80% - 125% of the estimated rehabilitation expenses listed in the Notice.

2. The credit is 25% of 125% of the estimated rehabilitation expenses if the actual rehabilitation expenses exceed 125% of the estimated expenses listed in the Notice.

3. No credit is allowed if the actual rehabilitation expenses are below 80% of the estimated expenses.

The amount of allowable expenses is multiplied by the local taxing entity ratio of each local taxing entity that has consented to the credit to determine the amount that may offset property taxes. The ordinance shall allow the credit to be taken against up to 75% of the real property taxes due on the textile mill site each year for up to 8 years. The credit may be claimed for each applicable phase or portion of the site beginning for the property tax year the applicable phase or portion is first placed in service. An unused credit may be carried forward for 8 years.

c. Income or License Tax Credit

See Chapter 2, “Business Income Tax”, Part E, for a summary of the textile revitalization income/bank/license/insurance premium tax credit.

d. Definitions

S.C. Code Ann. § 12-65-20 contains a list of definitions of terms used in the Act. Some of the defined terms are:

1. “Textile mill” - a facility or facilities that were initially used for textile manufacturing, dying, or finishing operations and for ancillary uses to those operations.

2. “Textile mill site” - the textile mill together with the land and other improvements on it which were used directly for textile manufacturing operations or ancillary uses. However, the area of the site is limited to the land located within the boundaries where the textile manufacturing, dying, or finishing facility structure is located and does not include land located outside the boundaries of the structure or devoted to ancillary uses. Notwithstanding the above, with respect to (i) any site acquired by a taxpayer before January 1, 2008, (ii) a site located on the Catawba River near Interstate 77, or (iii) a site which, on the date the notice of intent to rehabilitate is filed, is located in a distressed area of a county in this State, as designated by the applicable council of government, “textile mill site” means the textile mill structure, together with all land and improvements which were used directly for textile manufacturing operations or ancillary uses, or were located on the same parcel or a contiguous parcel within one thousand feet of any textile mill structure or ancillary uses. For purposes of this item, "contiguous parcel" means any separate tax parcel sharing a common boundary with an adjacent parcel or separated only by a private or public road or railroad rights of way.

3. “Ancillary uses” - uses related to the textile manufacturing, dying, or finishing operations on a textile mill site consisting of sales, distribution, storage, water runoff, wastewater treatment and detention, pollution control, landfill, personnel offices, security offices, employee parking, dining and recreation areas, and internal roadways or driveways directly associated with such uses.

4. “Abandoned” - at least 80% of the textile mill has been continuously closed to business or otherwise nonoperational as a textile mill for at least one year immediately preceding the date the taxpayer files a “Notice of Intent to Rehabilitate.” A textile mill that qualifies as abandoned may be subdivided into separate parcels, and those parcels may be owned by the same taxpayer or different taxpayers, and each parcel is deemed to be a textile mill site for purposes of determining whether each subdivided parcel has been abandoned.

5. “Rehabilitation expenses” - expenses or capital expenditures incurred in the rehabilitation, renovation, or redevelopment of the textile mill site, including demolition of existing buildings, environmental remediation, site improvements and the construction of new buildings and other improvements on the site, but excluding the cost of acquiring the site or the cost of personal property located at the site. For expenses to qualify for the credit, the textile mill and buildings on the site must be either renovated or demolished.

Notwithstanding the above, for purposes of calculating the credit with regard to new or rehabilitated buildings on "contiguous parcels" as described above, "rehabilitation expenses" do not include expenses that increase the amount of square footage of the buildings that existed on that contiguous parcel immediately preceding the time at which the textile mill became abandoned by more than 200%.

6. "Placed in service" - the date the textile mill site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.

7. "Local taxing entities" - a county, municipality, school district, special purpose district, and any other entity or district with the power to levy ad valorem property taxes against the site.

8. "Local taxing entity ratio" - that percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the site.

CAUTION: Other rules not discussed in this general summary may apply to a site acquired by a taxpayer before January 1, 2008, a site located on the Catawba River near Interstate 77, or a site which, on the date the notice of intent to rehabilitate is filed, is located in a distressed area of a county in this State, as designated by the applicable council of government.

e. Certification Procedures

S.C. Code Ann. § 12-65-60 provides a procedure which allows a taxpayer to apply to the governing body of the municipality or county in which the textile mill site is located for certification of the site. The certification can be done by either ordinance or binding resolution. The certification must include certain findings. A taxpayer who receives this certification is allowed to conclusively rely on the certification in determining the credit allowed; however, the taxpayer must include a copy of the certification on his first return where the credit is claimed.

8. RETAIL FACILITIES REVITALIZATION CREDITS – EXPIRED

NOTE: The South Carolina Retail Facilities Revitalization Act was repealed on July 1, 2016. However, for those sites which provide written notification of their election of mode of credit prior to July 1, 2016 and for which a building permit was issued prior to July 1, 2016, the repeal is suspended for fiscal year 2022-2023.

a. General Provisions

The South Carolina Retail Facilities Revitalization Act, contained in Title 6, Chapter 34, provides a property tax credit or an income tax credit for the renovation, improvement, and redevelopment of abandoned retail facility sites in South Carolina.

An overview of the credit is provided below; however, for additional guidance and examples see SC Revenue Ruling #15-9.

S.C. Code Ann. § 6-34-40 allows a taxpayer who improves, renovates, or redevelops an eligible site to elect one of the following credits:

1. A "property tax credit" equal to 25% of the rehabilitation expenses made to the eligible site times the local taxing entity ratio for each local taxing entity consenting to the credit, up to 75% of the real property taxes due on the eligible site each year or

2. An "income tax credit" equal to 10% of the rehabilitation expenses.

Subject to county approvals, the taxpayer elects whether to claim the property tax credit or the income tax credit. To elect the property tax credit, the taxpayer must provide written notification to the Department prior to the date the eligible site is placed in service. If the taxpayer does not affirmatively make the property tax credit election timely in writing before the date the site is placed in service or does not obtain the required county approvals in S.C. Code Ann. § 6-34-40(B), then the taxpayer is deemed to have elected the income tax credit. There is no notification process for the income tax credit. There is no formal procedure to elect the income tax credit; it is simply claimed on the income tax return.

b. Property Tax Credit

If a taxpayer elects the property tax credit provided in S.C. Code Ann. § 6-34-40(B), the municipality (or county if the site is located in an unincorporated area) must determine the eligibility of the site and the proposed project. A majority vote of the local governing body must approve the project by resolution, and the determinations and the final approval must be made by public hearing and ordinance.

No later than 45 days before holding the public hearing, the governing body of the municipality or county must give notice to all local taxing entities where the eligible site is located of its intention to grant the property tax credit. If the local taxing entity does not file an objection, it is deemed to have consented to the credit if the actual tax credit does not exceed the credit stated in the public hearing notice.

The ordinance shall allow the credit to be taken against up to 75% of the real property taxes due on the eligible site each year for up to 8 years. The property tax credit vests in the taxpayer in the year in which the eligible site is placed in service. Any unused credit may be carried forward up to 8 years.

c. Income Tax Credit

See Chapter 2, "Business Income Tax," Part E, for a summary of the retail facility revitalization income tax credit.

d. Definitions

S.C. Code Ann. § 6-34-30 contains the definitions for the following terms used in the Act:

1. "Eligible site" - a shopping center, mall, or free standing site that has been abandoned whose primary use was as a retail facility with at least one tenant or occupant located in a 40,000 square foot or larger building or structure. However, for purposes of the property tax credit, the governing body of a county or municipality where the site is located may, by resolution, reduce the 40,000 square foot eligibility requirement by not more than 15,000 square feet.

2. "Abandoned" - at least 80% of the eligible site's facilities have been continuously closed to business or nonoperational for at least one year immediately prior to the time the determination is to be made. However, during the abandonment, the eligible site may serve as a wholesale facility for no more than one year. The eligible site's facilities only include the site's building or structure.

3. "Rehabilitation expenses" – "the expenses incurred in the rehabilitation of the eligible site, excluding the cost of acquiring the eligible site or the cost of personal property maintained at the eligible site."

4. "Placed in service" - the date the eligible site is suitable for occupancy for the purposes intended.

5. "Local taxing entity ratio" - the "percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the eligible site."

6. "Local taxing entity" – "a county, municipality, school district, special purpose district, and any other entity or district with the power to levy ad valorem property taxes against the eligible site."

e. Transfer of Credit

The owner of the eligible site may transfer, devise, or distribute any unused credit to the tenant of the eligible site, provided the Department receives written notification of, and approves the transfer, devise, or distribution.

9. ABANDONED BUILDINGS REVITALIZATION CREDIT

a. General Provisions

The South Carolina Abandoned Buildings Revitalization Act, contained in Title 12, Chapter 67, provides a credit for the rehabilitation, renovation, and redevelopment of abandoned buildings.

An overview of the credit is provided below; however, for additional guidance and examples see SC Revenue Ruling #15-7.

A qualifying taxpayer may elect one of the following tax credits:

1. A credit against income tax, license tax, bank tax, insurance premium tax (including retaliatory taxes), or a combination thereof equal to 25% of the eligible rehabilitation expenses made to the site or

2. A credit against real property taxes equal to 25% of the eligible rehabilitation expenses made to the site multiplied by the local taxing entity ratio of each local taxing entity consenting to the credit, which can offset up to 75% of the real property taxes due on the eligible site each year.

In order for expenses associated with the site to qualify for the credit, the abandoned buildings on the building site must be either renovated or redeveloped and the taxpayer could not have owned the site immediately prior to its abandonment if the site was operational at that time.

For sites which have had no portion thereof placed in service before July 1, 2018, and upon which is located a redeveloped multi-floor structure that is listed on the National Register of Historic Places, the taxpayer may subdivide the structure into separate units, with the limitation that up to 7 separate floors may be considered 7 separate subdivided units if a floor is redeveloped for the exclusive use as a residential apartment or apartments.[1]

For the property tax credit, a taxpayer must file a "Notice of Intent to Rehabilitate" (Notice) with the municipality, or if a building is located in an unincorporated area, the county, before incurring any rehabilitation expenses. Failure to provide the Notice results in only those rehabilitation expenses incurred after the Notice is provided qualifying for the credit.

The Notice is a letter submitted by the taxpayer indicating:

- the taxpayer intends to rehabilitate the building;

- the location of the building site;

- the amount of acreage involved with the site;

[1] If a taxpayer intends to redevelop a multi-floor structure listed on the National Register of Historic Places referenced in the immediately preceding sentence, the taxpayer must, in lieu of filing a Notice of Intent to Rehabilitate but before claiming this tax credit, notify the Department in writing of the taxpayer's intent to claim the Abandoned Buildings Credit, and must provide any information required by the Department, including, but not limited to, the location of the building site, the actual expenses incurred in connection with the rehabilitation, the number of units for which a credit is being claimed, and the date the building site will be placed in service.

- the amount of square footage of existing buildings;
- the estimated expenses to be incurred;
- which buildings will be rehabilitated; and
- whether new construction is to be involved at the site.

b. Property Tax Credit

In order for a taxpayer to obtain the credit, the municipality or county must, by resolution, determine the eligibility of the abandoned building site and the proposed rehabilitation expenses. Both must be approved by a positive majority vote of the local governing body. Final approval must be made by public hearing and ordinance.

At least 45 days before holding the public hearing, the governing body of the municipality or the county must give notice to all affected local taxing entities of its intent to grant the property tax credit and the amount of the estimated credit based on the amount of estimated rehabilitation expenses. If a local taxing entity does not file an objection, it is deemed to have consented to the credit. The local taxing entity ratio is set at the time the Notice is filed and remains set for the entire period that the credit is claimed by the taxpayer.

Finally, the ordinance must provide for the credit to be taken as a credit against up to 75% of the real property taxes due on the building site each year for up to 8 years. The property tax credit for each phase or portion of the building site may be claimed beginning with the property tax year in which the applicable portion or phase of the building site is placed in service.

The credit is based upon actual or estimated expenses as follows:

1. The credit is 25% of the actual rehabilitation expenses if the actual expenses incurred in rehabilitating the site are between 80% and 125% of the estimated rehabilitation expenses listed in the Notice.

2. The credit is 25% of 125% of the estimated rehabilitation expenses if the actual rehabilitation expenses exceed 125% of the estimated expenses listed in the Notice.

3. No credit is allowed if the actual rehabilitation expenses are below 80% of the estimated expenses.

c. Investment Requirements

The abandoned buildings credit only applies to abandoned building sites, or phases or portions thereof, put into operation where the taxpayer incurs:

- More than $250,000 of rehabilitation expenses for buildings located in the unincorporated areas of a county or in a municipality in the county with a population of more than 25,000 people.

- More than $150,000 of rehabilitation expenses for buildings located in the unincorporated areas of a county or in a municipality in the county with a population between 1,000 and 25,000 people.

- More than $75,000 of rehabilitation expenses for buildings located in a municipality with a population of less than 1,000 people.

d. Income/License/Bank/Insurance Premium Tax Credit

See Chapter 2, "Business Income Tax," Part E, "Property Rehabilitation Credits" for a summary of the abandoned buildings income/license/bank/insurance tax credit.

e. Certification of Abandoned Building Site

The taxpayer may apply to the county or municipality in which the building is located for certification that the building is an abandoned building or state-owned abandoned building, as defined in S.C. Code Ann. § 12-67-120. The taxpayer may conclusively rely on this certification.

f. Definitions

S.C. Code Ann. § 12-67-120 contains a list of definitions of terms used in the Act. Some of the defined terms are:

1. "Abandoned building" - a building or structure, other than a single family residence, which clearly may be delineated from other buildings or structures, at least 66% of the space which has been closed continuously to business or otherwise nonoperational for income producing purposes for a period of at least 5 years immediately preceding the date on which the taxpayer files the Notice of Intent to Rehabilitate. A building that otherwise qualifies may be divided into unit or parcels, which may be owned by the same taxpayer or different taxpayers. Each unit or parcel is deemed to be an abandoned building site for purposes of determining whether each subdivided parcel is considered to be abandoned. Special rules apply if the building is listed on the National Register for Historic Places.

2. "Building site" - the abandoned building together with the parcel of land upon which it is located and other improvements located on the parcel. However, the area of the building site is limited to the land upon which the abandoned building is located and the land immediately surrounding such building used for parking and other similar purposes directly related to the building's income producing use.

3 “Rehabilitation expenses” - expenses or capital expenditures incurred in the rehabilitation, demolition, renovation, or redevelopment of the building site, including without limitation, the renovation or redevelopment of existing buildings, environmental remediation, site improvements and the construction of new buildings and other improvements on the site, but excluding the cost of acquiring the site or the cost of personal property located at the site, and demolition expenses if the building is on the National Register of Historic Places.

Rehabilitation expenses associated with a building site that increase the amount of square footage on the building site in excess of 200% of the amount of the square footage of the buildings that existed on the buildings site as of the filing of the Notice shall not be considered a rehabilitation expense for calculating the amount of the credit.

4. “Placed in service” - the date upon which the building site is completed and ready for its intended use. If the site is completed and ready for use in phases or portions, each phase or portion is considered placed in service when it is completed and ready for its intended use.

5. “Local taxing entities” - a county, municipality, school district, special purpose district, and any other entity or district with the power to levy ad valorem property taxes against the site.

6. “Local taxing entity ratio” - that percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the site.

7. “State-owned abandoned building” means an abandoned building and its ancillary service buildings or a project consisting of one or more abandoned buildings, the aggregate size of which is greater than fifty thousand square feet, that has been abandoned for more than five years, and, prior to the taxpayer’s acquisition of such building, was most recently owned by the State, or an agency, instrumentality, or political subdivision of the State. For purposes of this definition, the taxpayer shall include any entity under common control or common ownership with the taxpayer.

g. Extension of Placed in Service Date

If a taxpayer files a notice of intent to rehabilitate and has been rehabilitating an abandoned building continuously for the preceding year and the building is more than 60% complete, the taxpayer must be allowed to extend the placed in service date until 90 days after construction is completed, provided the construction continues diligently until the end of the 90 days. S.C. Code Ann. § 12-67-170. This provision is not to be construed to allow a taxpayer to earn a credit before the applicable phase or portion of the building site is placed in service.

h. Repeal of the Act

The South Carolina Abandoned Buildings Revitalization Act is expected to be repealed on December 31, 2025, however, taxpayers should consult their tax advisors as this date may be

extended. Any credit under S.C. Code Ann. § 12-67-140(C) will continue to be allowed until the 8-year time period is completed.

10. FIRE SPRINKLER SYSTEM CREDIT

S.C. Code Ann. § 12-6-3622 provides that a local taxing entity may allow a property tax credit to a taxpayer who installs a new or existing fire sprinkler system in a new or existing commercial or residential structure if the system is not required by law, regulation, or code. The property tax credit is equal to 25% of the direct expenses incurred in connection with the system, but does not include any fee charged by a utility. The credit is claimed against real property taxes levied by a local taxing entity. The taxpayer may also claim an income tax credit equal to the amount of the property tax credit allowed by the local taxing entity. The term "fire sprinkler system" has the same meaning as provided in S.C. Code Ann. § 40-10-20.

The owner of the structure may transfer, devise, or distribute any unused credit to the tenant of the eligible site. To be effectual, the local taxing entity must receive written notification. The property tax credit is claimed on Form TC-52C, "Sprinkler System Credit Claim and Certification Form," submitted with the payment of real property taxes to the local taxing entity.

See below in subpart 16 for a discussion of the fire sprinkler system equipment exemption and see Chapter 2, "Business Income Tax," for a discussion of the income tax credit allowed for the installation of a fire sprinkler system.

11. REHABILITATED HISTORIC PROPERTY OR LOW AND MODERATE INCOME RENTAL PROPERTY - PREFERENTIAL VALUATION

S.C. Code Ann. §§ 4-9-195 and 5-21-140 (commonly referred to as the "Bailey Bill" provisions) provide that the governing body of a county or municipality may grant by ordinance special property tax assessments to real property qualifying as "rehabilitated historic property" or as "low and moderate income rental property" as described below. It is completely up to the discretion of the applicable governing body of the county or municipality as to whether this incentive is available for property within that county or municipality. The procedures outlined below apply only for those counties and municipalities whose respective governing body has implemented these provisions by ordinance.

a. Rehabilitated Historic Property

Preliminary Certification

Upon preliminary certification by the governing body, the rehabilitated historic property is assessed for 2 years based on a special valuation equal to the fair market value of the property at the time of preliminary certification. If the project is not completed within 2 years, the property continues receiving the special valuation until completion if the "minimum expenditures for rehabilitation" have been incurred.

Rehabilitated historic property is eligible for preliminary certification[2] if:

1. the owner of the property applies for and is granted historic designation[3] by the governing body; and

2. the proposed rehabilitation receives approval of rehabilitation work from the reviewing authority.

The reviewing authority is either:

- the county board of architectural review for political subdivisions having such a board operating pursuant to S.C. Code Ann. § 6-29-870;

- another qualified entity with historic preservation expertise designated by the applicable political subdivision that does not have a board of architectural review; or

- the South Carolina Department of Archives and History for political subdivisions not having a board of architectural review, or another designated entity.

Final Certification

Upon completion of the project, the property must receive final certification from the governing body to continue receiving its special valuation. To receive final certification, the property must meet the following conditions:

1. the owner of the property applies for and is granted a "historic designation" by the governing body;

2. the completed rehabilitation receives approval of rehabilitation work from the reviewing authority; and

3. the "minimum expenditures for rehabilitation" have been incurred and paid.

Once property receives final certification, it must be assessed for the remainder of the special assessment period on the fair market value at the time of preliminary certification or final certification, whichever occurs first. The special assessment period is set by ordinance of the governing body, and cannot exceed 20 years. However, the special assessment period may be cut short by the occurrence of a disqualifying event as set forth in S.C. Code Ann. § 4-9-195(E).

[2] A governing body may require that an owner apply for preliminary certification before any project work begins.
[3] In order to be granted a historic designation, the property must meet certain conditions related to its age and/or location. See S.C. Code Ann. § 4-9-195(B)(1).

b. Low and Moderate Income Rental Property

Upon preliminary certification by the governing body, low and moderate income rental property is assessed for 2 years based on a special valuation equal to the fair market value of the property at the time of certification. The requirements for qualifying as low and moderate income rental property are set forth in the S.C. Code Ann. § 4-9-195(C).

Once the property receives final certification, it must be assessed for the remainder of the special assessment period on the fair market value at the time of preliminary certification or final certification, whichever occurs first. The special assessment period is set by ordinance of the governing body, and cannot exceed 20 years. However, the special assessment period may be cut short by the occurrence of a disqualifying event as set forth in S.C. Code Ann. § 4-9-195(E).

c. General Information

If an application for preliminary or final certification is filed by May 1st or approved by August 1st, the special assessment is effective for that year. Otherwise, it is effective beginning the following year. Once the governing body has granted this special property tax assessment, the owner of the property must apply to the county auditor for the special assessment.

12. EXEMPTIONS FOR INVENTORY AND INTANGIBLES

S.C. Code Ann. §§ 12-37-220(A)(6) and (B)(30) exempt all inventories from property taxes. Further, there is no local tax on inventories. S.C. Code Ann. § 12-4-720(A)(3) provides that no application is required to exempt inventories.

SC Revenue Ruling #91-7 addressed the definition of "inventory" and concluded (1) merchandise purchased for resale is inventory for purposes of S.C. Code Ann. § 12-37-450 (the reimbursement to counties and municipalities for revenues lost as a result of the inventory exemption), (2) the purpose for which merchandise was bought and held governs in determining whether it is inventory, not the fact that it may subsequently be resold, and (3) equipment which is rented out by rental businesses and materials and supplies used in a business are examples of property which are not inventory and; therefore, are not exempt from property taxation under S.C. Code Ann. § 12-37-220(B)(30). Generally, items are classified as inventory if they are inventory for South Carolina income tax purposes, which is based upon federal income taxes.

S.C. Code Ann. § 12-37-220(A)(10) exempts "intangible personal property" from property taxes. Further, there is no local tax on intangible personal property. S.C. Code Ann. § 12-4-720(A)(3) provides that no application is required to exempt intangible personal property.

13. EXEMPTION FOR PERSONAL PROPERTY IN TRANSIT

S.C. Code Ann. § 12-37-220(B)(17) exempts from property taxation personal property in transit with "no situs" status as defined in S.C. Code Ann. § 12-37-1110. Personal property in transit is personal property, goods, wares, and merchandise that: (1) is moving in interstate commerce, or (2) was consigned to a warehouse (public or private) within this State from without this state for storage in transit to a final destination outside of this State, whether specified when transportation began or afterward. This property is subject to certain record keeping requirements. No application for this exemption is necessary.

14. POLLUTION CONTROL EXEMPTION

S.C. Code Ann. § 12-37-220(A)(8) exempts from property taxation all facilities or equipment of industrial plants used in the conduct of their business which are designed for the elimination, mitigation, prevention, treatment, abatement, or control of internal or external water, air, or noise pollution required by the state or federal government.

For equipment that serves a dual purpose of production and pollution control, the value eligible for the property exemption is the difference in cost between this equipment and equipment of similar production capacity or capability without the ability to control pollution.

For purposes of this exemption, 20% of the cost of any piece of machinery and equipment placed in service in a greige mill qualifies as internal air and noise pollution control property and is exempt from property taxes. "Greige mill" means all textile processes from opening through fabric formation before dyeing and finishing.

At the request of the Department, the Department of Health and Environmental Control ("DHEC") investigates the property of any manufacturer or company eligible for the exemption to determine the portion of the property that qualifies as pollution control property. Upon investigation of the property, DHEC furnishes the Department with a detailed listing of the property that qualifies as pollution control property.

S.C. Code Ann. § 12-4-720(A)(2) provides that application for this exemption must be filed with the Department before the first penalty date for the payment of property taxes. However, if a taxpayer files a property tax return listing the property as exempt, that listing is considered an application for exemption. A taxpayer must claim any exemption on the return each year the property is requested to be exempt.

15. ENVIRONMENTAL CLEANUP EXEMPTION

Subject to approval by the governing body by resolution, S.C. Code Ann. § 12-37-220(B)(44) provides a 5-year exemption from county property taxes (the exemption does not apply to school and municipal property taxes) for property and improvements subject to a nonresponsible party voluntary cleanup contract for which a certificate of completion has been

issued by the South Carolina Department of Health and Environmental Control pursuant to Article 7, Chapter 56, Title 44 (The Brownfields Voluntary Cleanup Program). The exemption applies beginning with the taxable year in which a certificate of completion is issued.

16. FIRE SPRINKLER SYSTEM EXEMPTION

S.C. Code Ann. § 12-37-220(B)(50) provides an exemption for all fire sprinkler system equipment that is installed on a commercial or residential structure when the installation is not required by law, regulation, or code. The value of such equipment is exempt until there is an "assessable transfer of interest."

See Section 1 above for a brief discussion of assessable transfer of interest. Also, see above for a discussion of the fire sprinkler system credit and Chapter 2, "Business Income Tax," for a discussion of the income tax credit allowed for the installation of a fire sprinkler system.

17. OTHER PARTICULAR BUSINESS EXEMPTIONS

Some or all of the property of the following businesses is exempt from property taxes:

- S.C. Code Ann. § 12-37-220(B)(23) provides that the personal property of banks and savings and loan associations, including motor vehicles, is exempt from property taxes. No application for this exemption is necessary. See S.C. Code Ann. § 12-4-720(A)(3).

- S.C. Code Ann. § 12-37-220(B)(23) provides that beer and wine are exempt from property taxes. No application for this exemption is necessary.[4] See S.C. Code Ann. § 12-4-720(A)(3).

- S.C. Code Ann. § 12-37-220(B)(10) provides that the property of telephone companies and rural telephone cooperatives used in providing rural telephone service that was exempt from property taxation as of December 31, 1973, is exempt from property taxes, provided that the amount of property subject to property taxes in any tax district is not less than the net amount to which the tax millage was applied for the year ending December 31, 1973. Property in any tax district added after December 31, 1973, is also exempt in the same proportion that the exempt property of the company or cooperative as of December 31, 1973, in that tax district bears to the total property of the company or cooperative as of December 31, 1973, in the tax district. "Telephone service" for purposes of the exemption is defined in S.C. Code Ann. § 33-46-20 and includes multi-use property which is used in providing telephone service as well as other communication services including, but not limited to, broadband over a high-speed internet connection that allows the customer to access basic voice grade local service from the voice provider of the customer's choice.

[4] S.C. Code Ann. § 12-37-220(B)(23) references S.C. Code Ann. § 12-21-1080. That code section has been changed to S.C. Code Ann. § 12-21-1085.

Application for this exemption must be filed with the Department within the period provided in South Carolina Code §12-54-85(F) for claims for refund. See S.C. Code Ann. § 12-4-720(A)(1).

- S.C. Code Ann. § 12-37-220(A)(11) exempts from property taxes all property of public benefit corporations established by a county or municipality and used exclusively for economic development which serves a governmental purpose as defined in I.R.C. § 115.

- S.C. Code Ann. § 12-37-220(B)(33) provides that all personal property, including aircraft of an air carrier which operates an air carrier hub terminal facility in South Carolina for 10 consecutive years from the date of qualification, are exempt from property taxes. An air carrier hub terminal facility is defined in S.C. Code Ann. § 55-11-500. Further, all aircraft and associated personal property owned by a company owning aircraft meeting the requirements of S.C. Code Ann. § 55-11-500(a)(3)(i) (i.e., two or more specially equipped planes that are used for the transportation of specialized cargo, irrespective of the number of flights) is exempt from property taxes. S.C. Code Ann. § 12-4-720(A)(1) provides that application for this exemption must be filed with the Department within the period provided in S.C. Code Ann. § 12-54-85(F) for claims for refund.

- S.C. Code Ann. § 12-37-220(B)(51) exempts 100% of the value of a newly constructed detached single family home offered by a residential builder or developer through the earlier of (a) the property tax year in which the home is sold or otherwise occupied, or (b) the property tax year ending the sixth December 31 after the home is completed and any required certificate of occupancy is issued, provided required notice is given for each year of eligibility and the county approves.

  To obtain this exemption, the owner of the property must notify the county assessor and auditor by written affidavit that the property is eligible for the exemption and is unoccupied. In the first year of eligibility, this notification must be made no later than 30 days after the certificate of occupancy is issued. In subsequent years of eligibility, notification must be made by January 31st of the applicable tax year.

- S.C. Code Ann. § 12-37-220(B)(53) exempts from property taxes renewable energy resource property having a nameplate capacity of and operating at no greater than 20 kilowatts as measured in alternating current.

  S.C. Code Ann. § 58-40-10 provides that renewable energy resource property means solar, photovoltaic and solar thermal resources, wind resources, hydroelectric resources, geothermal resources, tidal and wave energy resources, recycling resources, hydrogen fuel derived from renewable resources, combined heat and power derived from renewable resources, and biomass resources. It also includes, but is not limited to, all components that enhance the operational characteristics of the generating equipment, such as an advanced inverter or battery storage device, and equipment required to meet certain applicable safety, performance, interconnection, and reliability standards.

18. AD VALOREM TAXATION OF LEASEHOLD INTERESTS IN CERTAIN PROPERTY

If real property subject to an exemption from ad valorem property taxes is leased for a definite term to a lessee who does not qualify for an exemption, the leasehold interest of such person is subject to tax and the liability for property taxes shifts to the lessee. See, S.C. Code Ann. § 12-37-950 and *Clarendon County ex rel Clarendon County Assessor v. TYKAT, Inc.*, 394 S.C. 21, 714 S.E.2d 305 (2011).

19. MULTICOUNTY PARKS

S.C. Code Ann. § 4-1-170 provides that a joint industrial or business park (referred to as a multicounty park) can be established by two or more counties pursuant to a written agreement between those counties, as provided in Section 13 of Article VIII of the South Carolina Constitution.

Property in the multicounty park is exempt from property tax. The owners of any property in the multicounty park will pay a fee in the amount equal to the property taxes that would have been due and payable if the property was not in a multicounty park, unless the parties agree to a negotiated fee in lieu of property tax. The fee is treated like a property tax for purposes of collection and enforcement and the owners must file returns as if the fee were a property tax. A straight multicounty park fee differs from a negotiated fee. For information about negotiated fees, including those that might be located inside of a multicounty park, see Negotiated Fees in Lieu of Property Taxes, Chapter 6.

A county may issue special source revenue bonds to help fund the project or to allow an entity paying a multicounty park fee in lieu of taxes a credit against the fee. However, the special source revenue bonds or the credit amount must be used solely for the purpose of paying the cost of acquiring, constructing, or improving (1) infrastructure serving the county, municipality or project, (2) improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise or (3) aircraft which qualifies as a project under the Simplified Fee (S.C. Code Ann. § 12-44-30(16)) which enhances the economic development of the county or municipality.

If the bonds or monies from a credit against the fee are used to pay for the costs of personal property and the personal property is later removed from the project and is not replaced with qualifying property, the amount of any fee due on the property must be paid for the year the property is removed from the project and for the 2 years following its removal from the project. If any bond funds or credit funds are used to pay for both real property and personal property or infrastructure and personal property, all the funds will be presumed to be used first to pay for the personal property. See S.C. Code Ann. § 4-1-175. See Negotiated Fees in Lieu of Property Taxes, Chapter 6, for a detailed discussion of special source revenue bonds.

Additionally, a taxpayer located in a multicounty park creating qualifying new, full-time jobs is eligible for an additional $1,000 job tax credit. See Business Income Tax, Chapter 2, Section 9, for a discussion of the job tax credit benefits.

20. ATI FAIR MARKET VALUE EXEMPTION

S.C. Code Ann. § 12-37-3135 allows real property that undergoes an assessable transfer of interest (ATI) to be subject to a partial exemption if eligibility requirements are met. To obtain the partial exemption, the following requirements must be met:

- the property must be subject to property tax before the ATI;
- the property must be subject to the 6% assessment ratio before the ATI and remain so thereafter; and
- the owner must notify the assessor that the property will be subject to the 6% assessment ratio before January 31st of the property tax year for which the owner first claims eligibility for the partial exemption/alternate valuation.

The partial exemption will generally be applied to the fair market value of the property as follows:

If the "ATI fair market value" exceeds the "current fair market value" (see meaning of terms below), the partial exemption is allowed reducing the ATI fair market value by an amount equal to 25% of the ATI fair market value. The resulting amount, referred to as the "exemption value," becomes the taxable value for the property. However, the exemption value cannot be less than the current fair market value of the property. If the exemption value is less than the current fair market value of the property, then the current fair market value becomes the taxable value for the property.

If the ATI fair market value is less than the current fair market value of the property, the partial exemption is not allowed and the ATI fair market value becomes the taxable value for the property.

In determining if the partial exemption is allowed, the following terms are relevant.

"Fair market value" is the fair market value of the real property as determined by the assessor by an initial appraisal, or as reappraised either after an ATI or periodically under S.C. Code Ann. § 12-43-217 ("Full value without cap").

"Current fair market value" is the fair market value as reflected on the assessor's records for the current year.

"Property Tax Value" is fair market value as limited by the 15% cap per S.C. Code Ann. § 12-37-3140 ("Capped Value").

"ATI fair market value" is the fair market value of the property determined by appraisal after the latest ATI.

"Exemption value" is the ATI fair market value reduced by the 25% exemption. S.C. Code Ann. § 12-37-3135.

In *Fairfield Waverly and GS Windsor Club v. Dorchester County Assessor*, the South Carolina Court of Appeals held that a taxpayer was not required to claim the ATI exemption under S.C. Code Ann. § 12-37-3135 in the first year it was eligible to do so but could claim it in any subsequent year up until the year the property was reappraised pursuant to the 5-year reassessment cycle provided for in S.C. Code Ann. § 12-43-217(A). *Fairfield Waverly and GS Windsor Club v. Dorchester County Assessor*, 432 S.C. 287, 852 S.E. 2d 739 (S.C. Ct. App. 2020), cert. denied October 7, 2022.

5. INDIVIDUAL PROPERTY TAX

1. TAXATION OF REAL AND PERSONAL PROPERTY

a. General Information

S.C. Code Ann. § 12-37-210 provides that all real and personal property in South Carolina, and personal property of residents which may be kept or used temporarily out of state, with the intention of being brought into the state, or which has been sent outside of the state for sale and not yet sold, is subject to property taxes.

S.C. Code Ann. § 12-37-10 defines the terms "real property" and "personal property." Real property means not only land, but also all structures and other things therein contained or annexed or attached to the land which pass by conveyance of the land. It includes fixed wharves and docks on rivers, lakes, or tidewaters. Personal property is all things, other than real estate, which have any pecuniary value.

S.C. Code Ann. Regs. 117-1700.1 provides a list of miscellaneous items classified as real property or personal property for officials to use when assessing property. The regulation provides, in part, that aircraft, automobiles, boats, inboard and outboard boat motors, and recreational vehicles are personal property and docks, greenhouses, mobile homes, and sprinkler systems are real property.

b. Exemptions

S.C. Code Ann. § 12-37-220 contains numerous property tax exemptions for individuals. The following is a partial list of property exempt from South Carolina property taxes:

- Intangible personal property
- Household goods and furniture used in the owner's home, including built-in equipment such as ranges, dishwashers, and disposals, but this exemption does not apply to household goods used in hotels, rooming houses, apartments, or other places of business, including household goods in second homes which may be periodically rented during the year.
- Wearing apparel
- Watercraft and motors assessed at less than $50
- Watercraft trailers

No application for these exemptions is necessary. See S.C. Code Ann. § 12-4-720(A)(3). Other exemptions are determined by the Department upon application.

c. Administration of Property Taxes

Property taxes are generally assessed and collected by local governments. A county levies property taxes on property located in the county. Municipalities, school districts and special purpose districts may also levy property taxes on property located within their boundaries. The Department assists in the administration of property taxes by overseeing all property tax assessments to ensure equitable and uniform assessment throughout South Carolina.

The amount of property tax due is based upon three elements: (1) the property value, (2) the assessment ratio applicable to the property, and (3) the millage rate imposed by the taxing jurisdiction. Each of these elements is briefly discussed below.

1. **Valuation**. Real property, other than agricultural use real property or property subject to a fee in lieu of taxes, is appraised at fair market value for property tax purposes. Real property is reappraised countywide on a 5-year cycle and is usually subject to reassessment *(i.e.,* assessment based on the reappraised value) in the next year. An increase in fair market value of any parcel of real property as a result of a countywide reassessment program is limited to 15% within a 5-year period. Reappraisals are triggered by 2 other events: (1) completion of most types of "improvements" or "additions," including new construction and remodeling (see S.C. Code Ann. § 12-37-3130(1) for a complete definition) or (2) an "assessable transfer of interest," which encompasses a broad range of changes as to ownership or use or the passage of time as set forth in S.C. Code Ann. § 12-37-3150.

   After completion, the fair market value of improvements and additions will be added to the fair market value of a parcel. After an assessable transfer of interest occurs, the fair market value of the parcel will be adjusted by appraisal. The 15% cap does not apply to the property in the year the assessable transfer is first subject to property tax or to the fair market value of the improvements or additions in the year they are first subject to property tax. See S.C. Code Ann. §§ 12-43-217 and 12-37-3120 through 12-37-3170. However, after an assessable transfer of interest, real property subject to a 6% assessment ratio may be subject to a partial exemption of the appraised value if certain eligibility requirements are met. S.C. Code Ann. § 12-37-3135. See, Chapter 4, Section 20, for a further discussion of the partial exemption.

   Motor vehicles, boats, and airplanes are valued in accordance with nationally recognized publications of value (except that the value may not exceed 95% of the prior year's value). Motor vehicle valuation guides must include appropriate adjustments to reflect high mileage for all motor vehicles in such guides or manuals which would be applicable as part of an appeal of the value of the vehicle. S.C. Code Ann. §§ 12-37-2680 and 12-60-2910.

2. **Assessment Ratio**. The assessment ratios are established in the State Constitution to ensure stability and range from 4% to 10.5%. A person's primary residence is assessed at 4%; a second residence or other real property used or held for an individual's personal use, commercial property, and vacant land is assessed at 6%. Personal motor vehicles are

assessed at 6%; generally, motor homes and boats that are not a primary or secondary residence are assessed at 10.5%. The value is multiplied by the applicable ratio to produce the "assessed value" of the property.

3. **Millage**. Annually, every taxing entity, including each county, municipality and school district, determines the number of mills required so that when that number is applied to the total assessed value of property subject to tax within its jurisdiction it will raise the money necessary to operate the following tax year. A mill is a unit of monetary value equal to one-thousandth of a dollar or .001.

The property tax imposed on, and some of the exemptions available to, individuals who own, rent, or lease homes, cars, boats, planes, and other types of property in South Carolina are described below in more detail.

2. RESIDENTIAL PROPERTY

A person's primary residence and not more than 5 contiguous acres, when owned totally, or in part, in fee or by life estate and occupied by the owner, is taxed on an assessment equal to 4% of the fair market value, upon approval of the taxpayer's application by the county assessor. A person's second home or vacation home is taxed at an assessment ratio equal to 6%. A purchaser who purchases residential property with the intent that it will become his primary residence, but the property is subject to vacation rentals as provided in S.C. Code Title 27, Chapter 50, Article 2, for no more than 90 days, may apply for the 4% assessment ratio once the purchaser occupies the property. If the owner actually occupies the property within 90 days of acquiring ownership and otherwise qualifies, the 4% ratio will apply retroactively to the date of ownership. Otherwise, a residence rented for more than 72 days during the tax years is disqualified. S.C. Code Ann. § 12-43-220(c)(2)(iv) and (6) and; see also, *Ford v. Beaufort County Assessor*, 398 S.C. 508, 730 S.E.2d 335 (SC Ct. App. 2012). However, also see *Mead v. Beaufort County Assessor*, 419 S.C. 125 (SC Ct. App. 2016) which held that a taxpayer who qualifies for the homestead exemption under S.C. Code Ann. § 12-37-250 for taxpayers 65 or over, blind or permanently and totally disabled, may qualify for the 4% assessment ratio pursuant to S.C. Code Ann. § 12-37-252, despite his property being rented in excess of 72 days. The property, will not, however, qualify for the exemption from school operating millage in S.C. Code Ann. § 12-37-220(D)(47) since that statute specifically references S.C. Code Ann. § 12-43-220(c).

A motor home or trailer used for camping and recreational travel that is pulled by a motor vehicle may qualify as a primary or secondary residence for property tax purposes if the interest portion of indebtedness is deductible under the Internal Revenue Code as an interest expense on a qualified primary or secondary residence. A boat or watercraft that meets certain statutory requirements (including having a toilet with exterior evacuation, sleeping quarters, and a cooking area with an onboard power source) may qualify as a primary or secondary residence. A motor home, boat, or trailer that is a primary residence qualifies for the 4% assessment ratio, and one that is a secondary residence qualifies for the 6% assessment ratio.

Property that qualifies for this treatment is valued in the same manner as motor vehicles are valued. S.C. Code Ann. § 12-37-224.

Generally, the residential classification is not available unless the owner of the property applies to the county assessor before the first penalty date for taxes due (January 16). This date may be extended by the local taxing authority if the taxpayer can show reasonable cause for not filing timely. No further applications are necessary from the current owner while the property for which the initial application was made continues to meet the eligibility requirements. See S.C. Code Ann. § 12-43-220(c).

A residence that is qualified as a legal residence for any part of a year is entitled to the 4% assessment ratio for the entire year. An owner who is moved to a nursing home or community residential care facility (as defined in S.C. Code Ann. § 44-7-130) may continue the 4% assessment ratio and any applicable exemptions if the owner (1) otherwise continues to qualify for the 4% assessment ratio, (2) has the intention of returning to the property, and (3) doesn't rent the property in excess of 72 days.

There are special provisions for a member of the armed forces of the United States who is on active duty with orders for a permanent duty station in South Carolina to qualify for legal residence in South Carolina, even though the service member may be a resident of and domiciled in another state. These provisions provided for the service member to qualify for legal residence and to retain that legal residence status even after transfer out of South Carolina, in certain circumstances. See S.C. Code Ann. § 12-43-220(C)(2)(v) and following for the specific provisions and requirements applicable to active duty service members.

As part of the application, the owner-occupant must certify:

1. the residence which is the subject of the application is the owner's legal residence and where the owner is domiciled at the time of the application;

2. neither the owner nor any member of the household claims to be a legal resident of a jurisdiction other than South Carolina for any purpose; and

3. neither the owner nor any member of the household claims the 4% assessment ratio on another residence.

For this purpose, a member of the household consists of the owner occupant's spouse, unless legally separated, and children under the age of 18 eligible to be claimed as a dependent on the owner-occupant's federal income tax return. Special rules are provided for spouses who are legally separated. See S.C. Code Ann. § 12-43-220(c)(2)(iii).

In the case of certain shared interests in real property other than between spouses, application of the 4% assessment ratio will be limited to the percentage of value equal to the percentage of the occupant's ownership interest. S.C. Code Ann. § 12-43-220(C)(8). These rules may not apply in the case of certain family limited partnerships, trusts and limited liability companies.

Real property owned by a single member LLC may qualify for the 4% assessment ratio under the following circumstances. The single member LLC must not be taxed as a corporation. Further, the real property owned by such single member LLC must serve as the residence of its single member and otherwise satisfy the requirements for the 4% assessment ratio under S.C. Code Ann. § 12-43-220(c). See, *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011).

S.C. Code Ann. §§ 12-37-220(B)(47) and 12-37-250 provide for 2 exemptions that reduce the property tax levied on an individual's primary residence. These exemptions are not available on a person's second home or vacation home. These exemptions are:

- An exemption providing, to the extent not exempt under the homestead exemption below, 100% of the fair market value of owner-occupied residential property is exempt from all property taxes imposed for school operating purposes, but excluding millage imposed for the repayment of debt.

- A homestead exemption applicable to the first $50,000 of the fair market value of an elderly, disabled, or blind individual's dwelling place. A taxpayer eligible for the homestead exemption also qualifies for a 4% assessment ratio on his or her dwelling place – *i.e.,* permanent home and legal residence – regardless of whether that taxpayer qualifies for the 4% ratio under S.C. Code Ann. § 12-43-220(c). See *Mead v. Beaufort County Assessor*, 419 S.C. 125 (SC Ct. App. 2016).

Each of these exemptions is discussed below in more detail.

a. Exemption for School Operating Costs

To the extent not exempt under the homestead exemption discussed below for the elderly, blind or disabled, 100% of the fair market value of owner-occupied residential property is exempt from all property taxes imposed for school operating purposes. The exemption does not apply to millage imposed for the repayment of general obligation debt or to county or municipal taxes. See S.C. Code Ann. § 12-37-220(B)(47).

To come within the exemption for school operating costs under S.C. Code Ann. § 12-37-220(B)(47), a residence must be qualified as a legal residence for any part of the year under S.C. Code Ann. § 12-43-220(c). See S.C. Code Ann. § 12-43-220(c)(2)(i). A residence that has qualified as a legal residence for any part of a year, and is not otherwise disqualified, is entitled to the 4% assessment ratio and to this exemption for the entire year. Additionally, if only a portion of the residential property is eligible for the 4% assessment ratio, only that portion will be subject to the exemption for school operating costs. No application for the exemption for school operating costs is necessary, but the 4% assessment ratio for legal residence must be applied for.

b. Homestead Exemption for Elderly, Blind, or Disabled

Article X, § 3, of the South Carolina Constitution and S.C. Code Ann. § 12-37-250 provide a homestead exemption from property taxes of $50,000 of the fair market value of the dwelling place of certain individuals. The term "dwelling place" means the permanent home and legal residence of the applicant. The exemption is from county, municipal, school, and special assessment real estate property taxes. The homestead exemption does not exempt the dwelling place from any fees charged by the taxing entity, such as a solid waste fee or a road user fee. It exempts the dwelling place when jointly owned by husband and wife, if either spouse meets the criteria for the exemption.

To be eligible for the exemption a person must meet the following criteria:

- Be (a) age 65, (b) totally and permanently disabled, or (c) legally blind and such must occur on or before December 31, preceding the tax year for which the exemption is claimed.

- Be a legal resident of South Carolina for at least one year on or before December 31, preceding the tax year for which the exemption is claimed.

- Hold fee simple title or a life estate in the legal residence on December 31 of the tax year. A partial fee or life estate will result in a partial exemption.

The application for this exemption must be made to the auditor of the county and if applicable, to the governing body of the municipality in which the home is located on forms provided by the county and municipality. S.C. Code Ann. § 12-37-250. The taxpayer must provide proof of eligibility when applying for the homestead exemption. If applying because of age, the taxpayer should provide a birth certificate, South Carolina driver's license, or other identification card to prove age. If applying because of disability or blindness, the taxpayer should provide a certification from the state or federal agency with authority to make that declaration for disability, and a licensed ophthalmologist in the case of application due to blindness.

Failure to apply constitutes a waiver of the exemption for that year. A person who applies for the homestead exemption and could have qualified in the prior tax year, in addition to the current year, may be allowed the homestead exemption for the immediate preceding tax year.

The personal representative of a deceased taxpayer's estate may apply, within certain limits, for the homestead exemption under S.C. Code Ann. § 12-37-250 and the 4% assessment ratio for legal residences provided by S.C. Code Ann. § 12-43-220(c). See S.C. Code Ann. § 12-37-252(C).

S.C. Code Ann. § 12-37-255 provides that when the homestead exemption is granted, it continues to be effective for successive years in which the ownership of the homestead or the other qualifications for the exemption remain unchanged. Notification of any change affecting eligibility must be given immediately to the county auditor. S.C. Code Ann. § 12-37-266 provides

that the homestead exemption includes situations where a trustee holds legal title to a dwelling that is the legal residence of a beneficiary otherwise meeting the qualifications. A copy of the trust agreement must be provided to certify this exemption. The trustee may apply for the exemption in person or by mail to the county auditor. No further application is necessary while the property continues to meet the eligibility requirements. The trustee must notify the county auditor of any change in classification within 6 months.

c. Local Option Sales Tax Credit

Pursuant to S.C. Code Ann. § 4-10-20, counties have the option of increasing the sales, use, and accommodations tax rate by 1% to provide additional revenue for local governments and a credit against a taxpayer's real and personal property taxes owed (typically referred to as the "local option sales tax"). The increase must be approved by voter referendum. Persons who pay property tax in a local option county may be allowed a credit against property taxes based upon the amount of the local option sales tax collected in the county.

See Sales and Use Tax General Provisions, Chapter 7, Section 2, and applicable SC Information Letter for a list of counties that impose the local option sales tax.

3. MOTOR VEHICLES, AIRPLANES, AND BOATS

Personal motor vehicles, including pick-up trucks and motorcycles, are assessed at 6%, although certain "heavy" pickups may be assessed at 10.5%. Generally, boats and airplanes are assessed at 10.5%. By ordinance, the governing body of a county may reduce the assessment ratio of general aviation aircraft subject to property tax in the county to not less than 4% of the fair market value. The ordinance must be applied uniformly to all general aviation aircraft subject to property tax in the county. S.C. Code Ann. § 12-43-360.

Watercraft and motors that have an assessed value of not more than $50 are exempt from property taxes under S.C. Code Ann. § 12-37-220(B)(38). Watercraft trailers are exempt from property taxes under S.C. Code Ann. § 12-37-220(B)(40). The governing body of a county, by ordinance, may exempt from property tax 42.75% of the fair market value of a watercraft and its motor. S.C. Code Ann. § 12-37-220(B)(38).

Boats and boat motors that are not currently taxed in South Carolina and that are not used exclusively in interstate commerce become taxable if they are present in South Carolina for 60 consecutive days or 90 days in the aggregate in a property tax year. In lieu of the above rule, the local governing body may, by ordinance, replace the 60/90 day provision with one of the following:

1. The boat or boat motor will be considered taxable if the boat or motor is in South Carolina for an aggregate of 180 days in a property tax year. The number of consecutive days that the boat or motor is in South Carolina is disregarded if the county chooses this option; or

2. The boat or boat motor will be considered taxable if the boat or boat motor is present in South Carolina for an aggregate of 90 days in the property tax year. The number of consecutive days that the boat or motor is in South Carolina is disregarded if the county chooses this option.

For boats used in interstate commerce and that have a tax situs in South Carolina and in at least one other state, the value is computed by multiplying the fair market value by a fraction (*i.e.,* the number of days the boat was present in South Carolina divided by 365.) The boat must be physically present for an aggregate of 30 days in South Carolina to be subject to property taxes. S.C. Code Ann. § 12-37-714.

Personal property tax is collected annually. The following example shows a simplified calculation of the property tax due on a person's personal motor vehicle.

Value	$20,000
x Assessment Ratio	6%
Total Assessment	$1,200
x County Millage Rate	0.289
Tax	$346.80

New residents must register their vehicles and secure license plates within 45 days of establishing residence. Property taxes must be paid prior to car registration and license plates being issued.

Motor vehicles, boats and boat motors are taxed in advance. The county property taxes must be paid prior to registering the vehicle with the South Carolina Department of Motor Vehicles or the boat or boat motor with the South Carolina Department of Natural Resources. Likewise, the county property taxes must be paid prior to renewing the tag or sticker for the motor vehicle, boat or boat motor.

4. AGRICULTURAL USE REAL PROPERTY

"Agricultural real property" is defined in S.C. Code Ann. § 12-43-230(a) as any tract of real property which is used to raise, harvest, or store crops, feed, breed, or manage livestock, or to produce plants, trees, fowl, or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. Special property tax rules applicable to agricultural use real property are discussed below.

Assessment Ratio. Qualifying agricultural use real property is taxed on an assessment equal to:

- 4% of its value for agricultural use purposes for owners or lessees who are individuals or partnerships, and for corporations which do not have one or more of the following: (1) more than 10 shareholders, (2) a shareholder (other than an estate) who is not an individual, (3) a nonresident alien as a shareholder, and (4) more than one class of stock.

- 6% of its value for agricultural use purposes for corporate owners or lessees, except for certain closely held corporations specified above which are allowed the 4% ratio. S.C. Code Ann. § 12-43-220(d)(1) and S.C. Code Ann. Regs. 117-1780.2.

Valuation. Unlike other real property, land qualifying as agricultural use real property is not taxed based on its fair market value. A special method for determining the value of land actually used for agricultural purposes is provided in S.C. Code Ann. § 12-43-220(d), and is based on the use value of the soil. The fair market value of the property is determined, however, in case the use of the property changes and the property becomes subject to rollback taxes. See below under "Special Rule of Change of Use."

NOTE: Current use (not intended or future use) is determinative. See S.C. Commission Decision #92-77. The value for agricultural use purposes is determined in S.C. Code Ann. Regs. 117-1840.2 for the 1991 tax year and years thereafter.

In *Montgomery v. Spartanburg County Assessor*, 419 S.C. 77, 795 S.E.2d 866 (SC Ct. App. 2017), the South Carolina Court of Appeals held that valuation of the land using the soil capability method does not apply to structures on the property and the structure must be valued using the valuation method applicable to structures located on all real property. S.C. Code Ann. § 12-37-220(B)(14) has since been amended to provide that farm buildings and agricultural structures owned by a producer and used to house livestock, poultry, crops or farm equipment or supplies are also exempt.

Application. S.C. Code Ann. § 12-43-220(d)(3) provides that each new owner must make application for the 4% or 6% assessment ratio and the special valuation method to the county assessor on or before the first date taxes are due without penalty for the first tax year in which the special assessment is claimed.

Special Rule for Change of Use. When the use of the property is changed to a use other than agricultural, the property is subject to rollback taxes equal to the difference between the taxes based on agricultural use and the taxes that would have been payable if the property had been taxed as other real property (except the value of standing timber is excluded), for the year of change in use and the preceding 3 tax years. Change in use of the property to a non-agricultural purpose is evidenced by actions taken by the owner of the real property which is inconsistent with agricultural use. S.C. Code Ann. § 12-43-220(d) and S.C. Code Ann. Regs. 117-1780.3. The owner must notify the assessor of change in use within 6 months. Property subject to a negotiated fee-in-lieu of taxes agreement, or property exempt under S.C. Code Ann. § 12-37-220(A)(1) (generally government-owned property) are not subject to rollback taxes. See S.C. Code Ann. § 12-43-220(d)(6).

5. HOMEOWNERS ASSOCIATIONS

S.C. Code Ann. § 12-43-227 provides a special method for valuing homeowners association property pursuant to a capitalized earnings formula. Homeowners associations that make timely application may have their property valued at the greater of $500 an acre, or an amount determined by dividing the association's nonqualified gross receipts by 20%. Generally, this valuation method will produce favorable property tax valuations for a homeowners association since only nonmember revenue is capitalized.

S.C. Code Ann. § 12-43-230 defines homeowners association property as real and personal property owned by the association that meets the following tests: (1) the property is held for the use, benefit, and enjoyment of members of the homeowners association, (2) the members have an irrevocable right to use and enjoy the property on an equal basis, and (3) each irrevocable right to use such property is appurtenant to taxable property owned by a member of the homeowners association.

6. NEGOTIATED FEES IN LIEU OF PROPERTY TAXES AND COMPARISON CHART

1. INTRODUCTION

General Information. Under Article X of the South Carolina Constitution, manufacturers' 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 S.C. Code Ann. § 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 is contained in Chapter 44 of Title 12 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/or machinery and equipment (excluding some mobile property) located at a project. See SC Revenue Rulings #93-7 and #97-21. 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 a set 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 the depreciation allowable for property tax purposes subject to a floor on the value. Unless otherwise agreed to by the county and the company, the value of real property remains constant, and is not subject to appraisal. The Fee can be applicable to a single piece of property for up to 50 years (including the Super and Enhanced Investment Fee), with an overall limit for the project of 60 years (or 63 years for the Super and Enhanced Investment Fee), with exceptions.

Calculations of the Fee must be made by incorporating any property tax exemptions for which the property may be eligible, except for the 5-year exemptions from county property taxes allowed for manufacturing property, corporate headquarters or corporate office or distribution facilities property, and research and development facilities property (These exemptions may be found in Section 3(g) of Article X of the South Carolina Constitution and S.C. Code Ann. § 12-37-220(A)(7); S.C. Code Ann. § 12-37-220(B)(32); and S.C. Code Ann. § 12-37-220(B)(34), respectively.) S.C. Code Ann. §§ 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%
Assessment Value	$ 9,345,000	$ 5,340,000
Millage	x .250	x .250
Tax Due	$ 2,336,250	$ 1,335,000
Savings		**$ 1,001,250**

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 Fees, and special source revenue bonds. Since this summary is necessarily a simplification, interested taxpayers and their representatives should review the statutes. For example, many transitional rules applicable to some projects that are already paying the Fee in Lieu of property taxes under a prior statute are not included.

Please note, due to statutory changes and transitional rules, pre-existing Fee agreements may not be subject to some, or all, of the provisions discussed below and may be affected by other provisions.

2. LITTLE FEE

Steps in the Little Fee Process. In connection with the Little Fee, certain requirements must be satisfied.

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. 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. The company entering into the Fee is known as the "sponsor."

3. Millage rate agreement – The sponsor 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 5

years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually agreed to in the inducement agreement or the lease agreement.

4. Transfer of the property to the county – Title to the property must be transferred to the county.

5. Lease or lease purchase agreement – The sponsor and the county may enter into one or more lease agreements. This agreement leases the property from the county back to the sponsor and usually provides for the sale of the property to the sponsor at the end of the Fee period for a nominal sum. If there is a series of these agreements, the first is called the initial lease agreement. A definition of "lease agreement" is provided in S.C. Code Ann. § 4-12-10(5).

6. Financing agreement – There may be one or more financing agreements, which may include special source revenue bonds issued pursuant to S.C. Code Ann. § 4-29-68 or special source credits. (See the discussion of special source revenue bonds in Section 6 below.)

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

Definition and Location of Project. A "project" consists of land, buildings and other improvements on the land, including water, sewage treatment and disposal facilities, air pollution control facilities, and any other machinery, apparatus, equipment, office facilities and furnishings that are considered necessary, suitable or useful to the project. A project may also consist of, or include, an aircraft hangered or used at an airport in South Carolina. S.C. Code Ann. § 4-12-10(2).

The project must be located in a single county, in a multicounty park, or if certain agreements are made with the counties, the property may straddle contiguous counties. S.C. Code Ann. § 4-12-30(B).

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 purposes to be accomplished by the project are proper governmental and public purposes.

4. The benefits of the project are greater than the cost.

The county may seek the assistance and advice of the Revenue and Fiscal Affairs Office or the Department in making its findings. S.C. Code Ann. § 4-12-30(B)(5).

Every lease agreement must contain a provision obligating a sponsor to maintain the project and carry insurance on the project. S.C. Code Ann. § 4-12-30(B)(6).

Required Investment and Timing of Investment. Generally, the required investment must be made by a sponsor. In many instances, a sponsor affiliate may also qualify for the Fee.

A "sponsor" is defined as "one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise." S.C. Code Ann. § 4-12-10(3).

A "sponsor affiliate" is defined as "an entity that joins with or is an affiliate of a sponsor and that participates in the investment in, or financing of, a project." S.C. Code Ann. § 4-12-10(4).

There is a minimum investment amount required to qualify for a Fee in Lieu. For the Little Fee, the minimum investment amount is $2.5 million. This amount is reduced to $1 million for a sponsor investing in a county with an average annual unemployment rate of at least twice the state average during the last 24 months based on data available on November first. The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56 of Title 44, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least $1 million and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. S.C. Code Ann. § 4-12-30(B)(3).

Each sponsor and sponsor affiliate seeking to qualify for the Fee must invest the minimum investment amount. S.C. Code Ann. § 4-12-30(B)(4)(a). However, in the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in S.C. Code Ann. § 12-6-3360(M), each sponsor or sponsor affiliate does not have to invest the $2.5 million if the total investment at the project exceeds $5 million. S.C. Code Ann. § 4-12-30(B)(4)(b).

A sponsor must complete its required minimum investment in the project within 5 years of the end of the property tax year in which the sponsor and the county execute the initial lease agreement. If the sponsor 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 5 years to complete the project. If the period is extended less than the full 5 years allowed, a second extension may be approved, provided that the second extension is requested before the end of the first extension period and the aggregate extension period does not exceed 5 years. Unless approved as part of the original lease documentation, any extension may be approved by resolution of the county council with a copy of the resolution provided to the Department within 30 days. S.C. Code Ann. § 4-12-30(C).

Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the initial 5-year period. If the sponsor does not make the required 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. Any applicable time limitations for assessment are suspended during the 5-year period a sponsor has to make the required minimum investment. S.C. Code Ann. § 4-12-30(C).

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if (1) the county approves the addition of the sponsor affiliate for the Fee, and (2) the sponsor affiliate invests the minimum investment and agrees to be bound by those portions of the agreement that affect the county. S.C. Code Ann. § 4-12-30(B)(4). An agreement may provide for a process of approval of sponsor affiliates. However, all qualifying investments must be made at the same project.

If the property is otherwise eligible for the Little Fee, investment expenditures incurred during the investment period by an entity whose investments are not being counted towards the minimum investment can qualify for the Fee if:

1. The expenditures are part of the original cost of the property;

2. The property is transferred to one or more entities which are sponsors or sponsor affiliates whose investments are being considered for minimum investment purposes; and

3. The property would have qualified for the Fee if it had been acquired by the sponsor or sponsor affiliate receiving the property.

The income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer, except that if after the transfer, the income tax basis of the property unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax which would be due without the Fee. S.C. Code Ann. § 4-12-30(J).

Period in Which Property May be Subject to Fee. Generally, each piece of Fee property may be subject to the Fee for up to 30 years. Before the end of that period, an extension of up to 10 years may be approved by resolution of the county council upon a finding of substantial public benefit, with a copy of the resolution provided to the Department within 30 days. For projects that are completed and placed in service over more than 1 year, each year's investment may be subject to the Fee for up to 30 years, or if extended up to 40 years, for an aggregate fee period of up to 50 years for the project as a whole. S.C. Code Ann. § 4-12-30(C)(4).

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

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

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

3. Aircraft; or,

4. Property which has been placed in service pursuant to an inducement agreement or other preliminary county approval, if the property is placed in service before the execution of a lease agreement.

S.C. Code Ann. §§ 4-12-30(J)(1) and 4-12-10(2).

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. S.C. Code Ann. § 4-12-30(J)(2).

Disposal of Property and Replacement Property. The inducement agreement may provide that when property is scrapped, sold or removed from the project, the Fee will be reduced by the amount of the Fee applicable to that property. If property is removed from the project, but remains within South Carolina, the property becomes subject to property taxes.

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 replacement property can replace a single piece of original Fee property.

5. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, which is disposed of in the same property tax year that the replacement property is placed in service.

6. Replacement property is entitled to the Fee payment for the period of time remaining on the Fee 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 property taxes under S.C. Code Ann. § 4-12-20 or to property taxes if title to the property is held by the sponsor. S.C. Code Ann. § 4-12-30(F).

Rollback Taxes. Any property subject to the Fee is not subject to agricultural rollback taxes. S.C. Code Ann. § 12-43-220(d)(6).

Timing of Investment Expenditures and Purchases. Investment expenditures incurred by a sponsor qualify as expenditures subject to the Fee if the inducement agreement is executed within the time period described below and the property is qualifying property. Unless the sponsor's agreement covers replacement property, to qualify for the Fee all expenditures must be incurred either: (a) prior to the end of the applicable investment period; or, (b) if an extension is granted, before the expiration of the additional time allowed to complete the project (usually 5 additional years after the investment period has ended). S.C. Code Ann. §4-12-30(I).

Note: The minimum investment must be completed within 5 years.

Inducement Agreement – Timing. Once the project has been identified, the county and sponsor should enter into an inducement agreement. The sponsor and the county have 2 years after the date the county adopts an inducement or similar resolution identifying the project to enter into an inducement agreement. If an agreement is not reached within this 2-year period, any of the property purchased before the inducement agreement is entered into will not be subject to the Fee. S.C. Code Ann. § 4-12-30(I).

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 executed. The sponsor and county may negotiate to use different yearly assessment ratios or different assessment ratios for different levels of investment. Thus, a sponsor may be subject to a 7% assessment ratio in its first year, but may be subject to a 6% assessment ratio in later years. However, the parties may not reduce the assessment ratio below the lowest assessment ratio for which the sponsor qualifies under S.C. Code Ann. § 4-12-30(D)(5).

Millage Rate Agreement. The millage rate agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 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 used must be no lower than the cumulative property tax millage legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30th of the year preceding the calendar year in which the millage rate agreement is executed or if a millage rate agreement is not executed, when the lease agreement is executed; or, (b) June 30th of the calendar year in

which the millage rate agreement is executed or, if a millage rate agreement is not executed, when the lease agreement is executed. The millage rate agreement may be executed at any time up to the date the initial lease agreement is executed. S.C. Code Ann. § 4-12-30(D)(2)(b).

Timing of the Initial Lease Agreement. Title to the property must be transferred to the county and made subject to a lease agreement before the end of the property tax year in which the property is placed in service. The sponsor and county 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. S.C. Code Ann. § 4-12-30(C).

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation; however, in certain instances, the fair market value of such real property will be determined by appraisal.

A county and a sponsor and sponsor affiliate may agree (either initially or by amendment to an existing agreement) that the value of real property subject to a Fee will be determined by appraisal, in which case the property will be subject to reappraisal by the Department no more than once every 5 years. S.C. Code Ann. § 4-12-30(D)(2)(a)(i).

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. S.C. Code Ann. § 4-12-30(D)(2)(a)(ii).

Utility property subject to a Fee is valued similarly to the method that the Public Service Commission uses to value utility property. See SC Revenue Procedure #04-5.

Financing Agreements. A sponsor, sponsor affiliate, or a county may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the project (including any lease) regardless of the identity of the income tax owner of the property which is subject to the Fee. S.C. Code Ann. § 4-12-30(M). See also, S. C. Code Ann. § 4-12-45 (content of agreements).

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 sponsors or sponsor affiliates. However, the millage rate and assessment ratio cannot be changed once a millage rate agreement, an inducement agreement that sets the millage rate, or a lease agreement has been executed. Nor can the length of an agreement be increased except as provided in S.C. Code Ann. § 4-12-30(C). S.C. Code Ann. § 4-12-30(H).

Transfers of Fee Agreements or Property Subject to the Fee. A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement, if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. Prior approval or subsequent ratification can occur by

a letter or other writing executed by an authorized county representative as provided in an appropriate agreement, a resolution passed by the county council, or by county council following three readings and a public hearing. The county has the sole discretion as to which method to use. However, county approval is not required in connection with a transfer to a sponsor affiliate since the sponsor affiliate would have already received county approval to join in the Fee transaction. County approval is also not required for financing transactions. To the extent an agreement is transferred, the transferee assumes the current basis that the transferor sponsor had in the real and personal property subject to the Fee for purposes of calculating the Fee. S.C. Code Ann. § 4-12-30(M)(1) and (4).

Payment Procedures and Recordkeeping Requirements. Any sponsor that engages in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the inducement agreement and the lease agreement must be filed with the Department and appropriate county auditors and assessors within 30 days of execution. A bill for each installment of the Fee is prepared by the county auditor. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property was subject to property tax. The Department may, for good cause, allow up to a 60-day extension of time for filing Fee returns. The written request for an extension must be filed on or before the due date of the return. Penalties and interest may apply if a sponsor is late in making a Fee payment or in filing a required return. A county official, upon approval of the county's governing body, may request books and records of the company that support the calculation of the Fee and any special source revenue credits granted. S.C. Code Ann. § 4-12-30(O). To the extent that any Fee form or return is filed with the Department, a copy must also be filed with the county auditor, assessor, and treasurer for the county where the project is located. All agreements entered into under the Fee in lieu provisions must include a written recapitulation of the terms of the Fee to assist in administration of the Fee. However, the parties can agree to waive any or all of the items that must be set forth in the recapitulation. S.C. Code Ann. §§ 4-12-30(O) and 4-12-45.

Termination of Fee and Lease Agreement. If a sponsor fails to make its fee or its lease payments, then upon 90 days' notice the county may terminate the Fee and lease agreement and sell the property to which the county has title free from any claims of the sponsor. S.C. Code Ann. § 4-12-30(O)(6).

Expiration of Fee Period and Maintaining the Minimum Investment. 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 the property as of the latest reassessment date for similar taxable property. Personal property will be subject to property taxes based on the then depreciated value applicable to the property under the Fee, and thereafter continuing with the appropriate property tax depreciation schedule. S.C. Code Ann. § 4-12-30(D)(3). If the sponsor's investment in the property ever falls below the minimum investment (based on income tax basis without regard to depreciation) the Fee is no longer available and the sponsor must pay a fee equivalent to property tax on the property. S.C. Code Ann. § 4-12-30(B)(4)(f).

Credit Against the Fee. A county, municipality, or special purpose district that receives proceeds from a Fee may allow a sponsor a credit against the Fee or a payment derived from the Fee. However, any credit or payment must be used for eligible infrastructure that qualifies under S.C. Code Ann. § 4-29-68, (*i.e.,* infrastructure and improved and unimproved real estate, and in some instances, personal property.) S.C. Code Ann. § 4-12-30(K)(3).

3. BIG FEE

Steps in the Big Fee Process. In connection with the Big Fee, these are the steps and 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. Inducement agreement – The company and the county must enter into an inducement agreement. In the Big Fee, the company or companies that enter into the inducement agreement are referred to as the "sponsor." This agreement establishes that a sponsor will receive the Fee as an inducement for locating in the county.

3. Millage rate agreement – The sponsor 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 5 years and provides that it will be revised every 5 years. If the sponsor and the county do not execute a millage rate agreement, the millage rate is usually agreed to in the inducement agreement or the lease agreement.

4. Transfer of the property to the county – Title to the property must be transferred to the county.

5. Lease or lease purchase agreement – The sponsor and the county may enter into one or more lease agreements. This agreement leases the property from the county back to the sponsor and usually provides for the sale of the property to the sponsor at the end of the Fee period for a nominal sum. A definition of "lease agreement" is in S.C. Code Ann. § 4-29-67(A)(1)(b).

6. Financing agreement – There may be one or more financing agreements, which may include the issuance of industrial revenue bonds pursuant to S.C. Code Ann. § 4-29-68 (which are often purchased by the sponsor leasing the project) or the allowance of a credit against the Fee. (See the discussion of special source revenue bonds in Section 6 below.)

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

Definition and Location of Project. A "project" is any land, building, and other improvements on the land, including water, sewage, and pollution control improvements and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, and useful by a sponsor. A project may also consist of, or include, an aircraft hangared or used at an airport in South Carolina. S.C. Code Ann. § 4-29-67(A)(1)(c). The project must be located in a single county, in a multicounty park, or if certain agreements are made with the counties, the project may straddle contiguous counties. S.C. Code Ann. § 4-29-67(B).

Required Investment and Timing of Investment. Generally, the required investment must be made by a "sponsor." A "sponsor affiliate" may also qualify for the Fee. A "sponsor" is defined as "one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise." S.C. Code Ann. § 4-29-67(A)(1)(e). A "sponsor affiliate" means "an entity that joins with, or is an affiliate of, a sponsor and that participates in the investment in, or financing of, a project." S.C. Code Ann. § 4-29-67(A)(1)(f).

A minimum investment amount of $45 million is required for each sponsor or sponsor affiliate to qualify for the Big Fee. S.C. Code Ann. § 4-29-67(B)(3). However, the following exceptions are provided:

1. The minimum investment amount is reduced to $1 million for a sponsor investing in a county with an average unemployment rate of at least twice the state average during the last 24 months based on data available on November 1st. (See §8, of this chapter, "Fee in Lieu-Reduced Investment Counties" for a list of qualifying counties.)

2 The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56 of Title 44, the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least $1 million and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. S.C. Code Ann. § 4-29-67(B)(3).

3. In the case of a manufacturing, research and development, corporate office, or distribution facility as defined in S.C. Code Ann. § 12-6-3360(M), or a qualified nuclear plant facility, as defined in S.C. Code Ann. § 4-29-67(A)(1)(d), the $45 million minimum investment is not required of each sponsor and sponsor affiliate if the total investment at the project exceeds $45 million. S.C. Code Ann. § 4-29-67(B)(4).

From the end of the property tax year in which the initial lease agreement is executed, a sponsor has 5 years to complete its investment and the project. Any applicable statute of limitations is suspended during the 5-year period to make the minimum investment. If the sponsor 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 5 years to complete the project. A second extension may be approved, provided the second extension is requested

before the end of the first extension period and the aggregate extension period does not exceed 5 years. Unless approved as part of the original lease documentation, any extension must be approved by resolution of the county council with a copy provided to the Department within 30 days. If the minimum investment is not made within the required 5 years, all property covered by the Fee will be retroactively subject to a Fee equal to the property tax. The sponsor must provide to the county the total amount invested in the project for each year during the 5-year investment period. S.C. Code Ann. § 4-29-67(C).

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if: (1) the county approves the sponsor affiliate; and (2) the sponsor affiliate agrees to be bound by the agreements, or the relevant portions of the agreements, that affect the county. The county may agree that the sponsor affiliates will not be bound by any agreement, or portion thereof, even if the county is affected by the agreement. S.C. Code Ann. § 4-29-67(B)(4). An agreement may provide for a process of approval of sponsor affiliates; however, all investments must be at the sponsor's project. The Department must be notified in writing of all sponsors and sponsor affiliates that have investments subject to the Fee within 30 days of execution of a lease agreement. The time period may be extended upon written request. Failure to comply with this requirement will not adversely affect the Fee, but may result in a penalty being imposed. S.C. Code Ann. § 4-29-67(B)(4).

Period Property May be Subject to Fee. Generally, each piece of Fee property may be subject to the Fee for up to 30 years. Upon application by a sponsor, the county council by resolution can extend the Fee period for up to an additional 10 years if they find a substantial public benefit. This allows for a total Fee period of up to 40 years for a single piece of property. The maximum time period that all property at the project may be subject to the Fee is 50 years for a project that has been granted an extension. S.C. Code Ann. § 4-29-67(C)(3).

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

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

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

3. Aircraft; or,

4. Property which has been placed in service pursuant to an inducement agreement or other preliminary county approval, if the property is placed in service before the execution of a lease agreement.

5. Property that is purchased in a transaction other than a transaction between related taxpayers as determined under I.R.C. § 267 if the sponsor invests at least an additional $45 million in the project. S.C. Code Ann. § 4-29-67(K).

In the case of property that is not subject to the Fee, repairs, alterations, or modifications to real or personal property are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements that constitute an expansion of the improvements. S.C. Code Ann. § 4-29-67(K).

Disposal of Property and Replacement Property. Under the Big Fee, replacement property can replace original property subject to the Fee, provided the inducement agreement includes a provision allowing for replacement property. The inducement agreement may provide that when property is scrapped, sold, or removed from the project, 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. If property is removed from the project but remains in South Carolina it becomes subject to property taxes. S.C. Code Ann. § 4-29-67(F)(1).

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 that 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 replacement property can replace a single piece of original Fee property.

5. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, that is disposed of in the same property tax year that the replacement property is placed in service.

6. Replacement property is subject to the Fee payment for the period of time remaining on the Fee 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 property taxes or to property taxes if title to the property is held by the sponsor. S.C. Code Ann. § 4-29-67(F)(2).

If a sponsor using the net present value method for determining its Fee disposes of property, the Fee on the property being disposed of must be recomputed using the standard Fee method

contained in S.C. Code Ann. § 4-29-67(D)(2)(a). To the extent that the amount that would have been paid by the sponsor with respect to the disposed property exceeds the amount it paid under the net present value method, the sponsor must pay the county the difference with the next Fee payment. If the sponsor used the 5-year adjustable millage provision as part of its Fee, that millage rate must be used in determining the amount that the sponsor would have paid under the standard Fee method. S.C. Code Ann. § 4-29-67(F)(1).

Rollback Taxes. Any property subject to the Fee is not subject to agricultural rollback taxes. S.C. Code Ann. § 12-43-220(d)(6).

Timing of Investment Expenditures and Purchases. Investment expenditures incurred by a sponsor qualify as expenditures subject to the Fee if the inducement agreement is executed within 2 years of the date the county adopts an inducement resolution; otherwise, only expenditures made after the inducement agreement is executed qualify. Unless the sponsor's agreement covers replacement property, all expenditures must be incurred either: (a) prior to the end of the applicable investment period; or, (b) if an extension is granted, before the expiration of the additional time allowed to complete the project (usually 5 additional years after the investment period has ended).

Note: The minimum investment must be completed within 5 years. S.C. Code Ann. § 4-29-67(I).

Also, if the property is otherwise eligible for the Big Fee, investment expenditures incurred during the investment period by an entity whose investments are not being counted towards the minimum investment can qualify for the Fee if:

1. The expenditures are part of the original cost of the property;

2. The property is transferred to one or more sponsors or sponsor affiliates whose investments are being counted towards the minimum investment; and,

3. The property would have qualified for the Fee if it had been acquired by the transferee entity (a sponsor or sponsor affiliate) receiving the property.

4. The county approves of the transfer.

The income tax basis of the property immediately after the transfer must equal the income tax basis immediately before the transfer, except that if after the transfer, the income tax basis of the property unintentionally exceeds the income tax basis before the transfer, the excess will be subject to a Fee equal to the property tax that would be due without the Fee. S.C. Code Ann. § 4-29-67(J).

Inducement Agreement. 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 executed. The sponsor and county

may negotiate to use different yearly assessment ratios or different assessment ratios for different levels of investment. Thus, a sponsor may be subject to a 7% assessment ratio in its first year, but may be subject to a 6% assessment ratio in later years. However, the lowest assessment ratio allowed is the lowest assessment ratio for which the investor may qualify under the statute. S.C. Code Ann. § 4-29-67(D)(5).

Millage Rate Agreement. The millage rate agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 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 used must be no lower than the cumulative property tax millage legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30th of the year preceding the year in which the millage rate agreement is executed or if a millage rate agreement is not executed, when the lease agreement is executed; or, (b) June 30th of the year in which the millage rate agreement is executed or if a millage rate agreement is not executed, when the lease agreement is executed. The millage rate agreement may be executed at any time up to the date the initial lease agreement is executed. S.C. Code Ann. § 4-29-67(D)(2) and (G).

Timing of the Initial Lease Agreement. Title to the property must be transferred to the county and made subject to a lease agreement before the end of the property tax year in which the property is placed in service. The sponsor and the county have 5 years from the end of the property tax year in which they enter into an inducement agreement to enter into an initial lease agreement. S.C. Code Ann. § 4-29-67(C). There are special provisions in the case of a qualified nuclear facility.

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation; however, in certain instances, the fair market value of such real property will be determined by appraisal. S.C. Code Ann. § 4-29-67(D)(2).

A county and a sponsor and sponsor affiliate may agree (either initially or by amendment to an existing agreement) that the value of real property subject to a Fee will be determined by appraisal. If the county and sponsor and if applicable, the sponsor affiliate, agree to appraisal, the property will be subject to reappraisal by the Department no more than once every 5 years. S.C. Code Ann. § 4-29-67(D)(2).

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. S.C. Code Ann. § 4-29-67(D)(2).

Utility property subject to a Fee is valued similarly to the method that the Public Service Commission uses to value utility property. See SC Revenue Procedure #04-5.

Additional Method of Calculating Fee. Unlike the Little Fee, the Big Fee allows the use of a net present value method of calculating the Fee. The county and the sponsor 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 Fee agreement that is not less than the present value of the Fee schedule calculated using the equivalent of a 6% (or 4% if applicable) 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 is available for that month or bonds of appropriate maturity are not available. S.C. Code Ann. § 4-29-67(D)(2)(b).

Financing Agreements. A sponsor, sponsor affiliate, or a county may enter into any lending, leasing, 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 that is subject to the Fee. S.C. Code Ann. § 4-29-67(O).

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 sponsors or sponsor affiliates. However, the millage rate, assessment ratio, or discount rate cannot be changed once a millage rate agreement, an inducement agreement that sets the millage rate, or a lease agreement has been executed. Nor can the length of an agreement be increased except as provided in S.C. Code Ann. § 4-29-67(C). S.C. Code Ann. § 4-29-67(H).

Transfers of Fee Agreements or Property Subject to the Fee. A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. Prior approval or subsequent ratification can occur by a letter or other writing executed by an authorized county representative as provided in an appropriate agreement, a resolution passed by the county council, or by county council following three readings and a public hearing. The county has the sole discretion as to which method to use. County approval is not required in connection with financing related transactions or for transfers to sponsor affiliates. If a Fee agreement is transferred, the transferee assumes the basis that the transferor sponsor had in the real and personal property subject to the Fee for purposes of calculating the Fee. S.C. Code Ann. § 4-29-67(O).

Payment and Recordkeeping Requirements. Any sponsor or sponsor affiliate in a Fee transaction must file all returns, contracts, or other information the Department may require. Also, a copy of the inducement agreement and the lease agreement must be filed with the Department and appropriate county auditors and assessors within 30 days of execution. A bill for each installment of the Fee is prepared by the county auditor. 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. The Department may, for good cause, allow up to a 60-day extension of

time for filing Fee returns. The written request for an extension must be filed on or before the due date of the return. Penalties and interest may apply if a sponsor or sponsor affiliate is late in making a Fee payment or in filing a required return. To the extent that any Fee form or return is filed with the Department, a copy must also be filed with the auditor, assessor, and treasurer for the county where the project is located. A county official, upon approval of the county's governing body, may request books and records of the company that support the calculation of the Fee and any special source revenue credits granted. S.C. Code Ann. § 4-29-67(S). All agreements entered into under the Fee in lieu provisions must include a written recapitulation of the terms of the Fee to assist in administration of the Fee. However, the parties can agree to waive any or all of the items that must be set forth in the recapitulation. S.C. Code Ann. § 4-29-67(S).

Termination of the Fee and Lease Agreement. If a sponsor fails to make the minimum investment or any other investment or job requirements set forth in the agreements, within the applicable time period, the Fee will terminate. Once terminated, all property that was subject to the Fee will be retroactively subject to property taxes. The sponsor and the county may agree in the agreement that if the sponsor fails to make the required minimum investment, the sponsor may elect to use the provisions of the Little Fee, including the reduced investment requirement. S.C. Code Ann. § 4-29-67(Q).

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. S.C. Code Ann. § 4-29-67(T).

Expiration of Fee Period and Maintaining the Minimum Investment Requirement. After the Fee period has expired, the real property that was originally subject to the Fee will be subject to property taxes 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 taxes based on the then depreciated value applicable to such property under the Fee, and thereafter continuing with the appropriate South Carolina property tax depreciation schedule. S.C. Code Ann. § 4-29-67(D)(3).

If a sponsor's investment at the project ever falls below the required minimum investment, or such greater amount as specified in the inducement agreement or lease agreement, the Fee is no longer available and the sponsor must pay a fee equivalent to the property taxes on the property. If the agreement is terminated by agreement or law and the sponsor is using the net present value, the sponsor must pay the county at the time of termination the difference between the Fee that would have been paid on the property if the Fee had been calculated using the standard fee method and the amount that was actually paid to the county under the net present value method. S.C. Code Ann. § 4-29-67(B)(4)(b)(iii).

Infrastructure Improvement Credit. A county, municipality, or special purpose district that receives proceeds from a Fee may allow a sponsor a credit against the Fee or payment derived from the Fee. However, any credit or payment must be used for the purposes outlined in S.C.

Code Ann. § 4-29-68, including the purchase of eligible infrastructure or real estate, and in some instances, personal property. Special rules apply in the event affected personal property is removed from the project during the Fee period. S.C. Code Ann. § 4-29-67(L)(3).

Special Rules for Qualified Recycling Facilities. "Qualified recycling facilities," as defined in S.C. Code Ann. § 12-6-3460(A)(3) (previously S.C. Code Ann. § 12-7-1275(A)), 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 40 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 or in which the inducement agreement is executed. S.C. Code Ann. § 4-29-67(V).

4. SIMPLIFIED FEE

Steps in the Simplified Fee Process. In connection with the Simplified Fee, there are fewer steps and agreements that must be completed than those described above for the Little and Big Fee. These steps 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. 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. Fee agreement – The County and the company must enter into a Fee agreement setting forth the terms of the Fee. The company that enters into the Simplified Fee agreement is the "sponsor."

4. Financing agreement – There may be one or more financing agreements executed in connection with the transaction or a credit against the Fee may be allowed.

Definition and Location of the Project. A "project" consists of land, buildings, and other improvements on the land, including water, sewage treatment and disposal services, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by a sponsor. A project may also consist of, or include, an aircraft hangared or used at an airport in South Carolina. S.C. Code Ann. § 12-44-30(16).

The project must be located in a single county, in a multicounty park, or if certain agreements are made with the counties, the property may straddle contiguous counties. S.C. Code Ann. § 12-44-40(H).

County Must Make Findings of Public Purpose and Evaluate Project. Before a project may qualify for the Simplified 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 their general credit or taxing power.

3. The purposes to be accomplished by the project are proper governmental and public purposes, and the benefits of the project are greater than the costs.

These findings may be determined with the assistance and advice from the Revenue and Fiscal Affairs Office or the Department, and the findings must be set forth in an ordinance. S.C. Code Ann. § 12-44-40(I).

Required Investment and Timing of the Investment. Generally, the required investment must be made by a sponsor. A sponsor affiliate may also qualify for the Fee. A "sponsor" means one or more entities which sign the Fee agreement with the county and makes the minimum investment. The term includes a sponsor affiliate unless the context clearly indicates otherwise. A "sponsor affiliate" is defined as an entity that joins with, or is an affiliate of, a sponsor, and that participates in the investment in, or financing of, a project. S.C. Code Ann. § 12-44-30(19) and (20).

A minimum investment amount of $2.5 million is required for each sponsor or sponsor affiliate to qualify for the Fee. S.C. Code Ann. §§ 12-44-30(14) and 12-44-130(A); see also S.C. Code Ann. § 12-44-30(19). However, the following exceptions are provided:

1. The minimum investment amount is reduced to $1 million for a sponsor investing in a county with an average annual unemployment rate of at least twice the state average during the last 24 months based on the data available on November 1st. S.C. Code Ann. § 12-44-30(14). (See Section 8, of this Chapter, "Fee in Lieu-Reduced Investment Counties" for a list of qualifying counties.)

2. The minimum investment amount is deemed met if a sponsor is a nonresponsible party in a voluntary cleanup on the property pursuant to Article 7, Chapter 56 of Title 44, and the Brownfields Voluntary Cleanup Program, where the cleanup costs are at least $1 million and the South Carolina Department of Health and Environmental Control has issued a certificate of completion of the cleanup. S.C. Code Ann. § 12-44-30(14).

3. In the case of a manufacturing, research and development, corporate office, or distribution facility, as defined in S.C. Code Ann. § 12-6-3360(M), or a qualified nuclear facility, as defined in S.C. Code Ann. § 12-44-30(17), the $2.5 minimum investment amount does not apply if the total investment at the project exceeds $5 million. S.C. Code Ann. § 12-44-30(19).

For the Simplified Fee, the required minimum investment must be made by the end of the investment period. The investment period begins with the first day that economic development property is purchased or acquired 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. There are special provisions in the case of a qualified nuclear facility. S.C. Code Ann. § 12-44-30(2) and (13).

The minimum investment must be completed within the investment period. Any relevant statute of limitations is suspended during the time period for making the minimum investment. If the sponsor does not expect to complete the project within the investment period, it may apply to the county before the end of the period for an extension of up to 5 years to complete the project. If a project received an extension of less than 5 years originally, the sponsor can apply to the county before the end of the existing extension period for additional time to complete the project provided that the aggregate extension cannot exceed 5 years. The county council can approve the extension by resolution and a copy of the resolution must be delivered to the Department within 30 days of the resolution being adopted. Even if an extension to complete the project is granted, the required minimum investment must be made before the end of the investment period, and the first piece of fee property must be placed in service no later than the last day of the property tax year that is 3 years from the year in which the county and the sponsor enter into the fee agreement. S.C. Code Ann. §§ 12-44-30, 12-44-40, and 12-44-140. There are special provisions in the case of a qualified nuclear facility. S.C. Code Ann. § 12-44-30(2) and (13).

A sponsor affiliate that does not originally join in the Fee may later qualify for the Fee if: (1) the county approves the addition of the sponsor affiliate for the Fee, (2) the sponsor affiliate invests the minimum investment amount, and (3) the sponsor affiliate agrees to be bound by those parts of the Fee agreement that affect the county. An agreement may provide for a process for approval of sponsor affiliates. S.C. Code Ann. § 12-44-130.

All investments by the sponsor affiliate must be made at the sponsor's project. The Department must be notified in writing of all sponsors and sponsor affiliates that have investments subject to the Fee within 90 days after the end of the calendar year during which the project, or pertinent phase of the project, was placed in service. The time period may be extended upon written request. Failure to comply with this requirement will not adversely affect the Fee, but may result in a penalty being imposed. S.C. Code Ann. § 12-44-130.

Period Property May be Subject to Fee. To be subject to the Fee, all property must be placed in service during the period in which a sponsor must complete the project. Any single piece of property may be subject to the Fee for up to 30 years. Before the end of that period, the county council by resolution can extend the Fee period for up to an additional 10 years if they find a substantial public benefit. This allows for a total Fee period for a single piece of property of up to 40 years and a total Fee period for the project of up to 50 years. A copy of the resolution extending the Fee period must be provided to the Department within 30 days of adoption. S.C. Code Ann. § 12-44-30(2), (8), (13), and (21).

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

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

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

3. Aircraft;

4. Property which has been placed in service pursuant to an inducement agreement or other preliminary county approval, if the property is placed in service before the execution of a Fee agreement; or

5. Property that is purchased in a transaction other than a transaction between related taxpayers as determined under Section 267(b) of the Internal Revenue Code if the sponsor invests at least an additional $45 million in the project. See S.C. Code Ann. §§ 12-44-110 and 12-44-30(16).

In the case of property that is not subject to the Fee, repairs, alterations, or modifications to real or personal property are not eligible for the Fee, even if they are capitalized expenditures. An exception is made for modifications to existing real property improvements that constitute an expansion of the improvements. S.C. Code Ann. § 12-44-110.

Disposal of Property and Replacement Property. The Fee must be reduced by the amount of the Fee applicable to property scrapped, sold, or removed from the project. If property is removed from the project but remains within South Carolina, the property becomes subject to property taxes. S.C. Code Ann. § 12-44-50.

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

2. The replacement property qualifies for the Fee only up to the original income tax basis of the Fee property 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 that it is replacing, the excess is subject to payments as if the Fee was not allowed.

3. More than one piece of replacement property can replace a single piece of original Fee property.

4. Replacement property is deemed to replace the oldest property subject to the Fee, whether real or personal, which is disposed of in the same tax year that the replacement property is placed in service.

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

If there is no provision in the Fee agreement dealing with replacement property, any property placed in service after the period allowed for investment is subject to property taxes. S.C. Code Ann. § 12-44-60.

If the sponsor disposes of property and the sponsor is using the net present value method as described in S.C. Code Ann. § 12-44-50(3) for determining its Fee, the Fee on the property that is disposed of must be recomputed using the standard Fee method contained in S.C. Code Ann. 12-44-50(A)(1). To the extent that the amount that would have been paid by the sponsor with respect to the disposed property exceeds the amount it paid under the net present value method, the sponsor must pay the county the difference with its next Fee payment. S.C. Code Ann. §§ 12-44-50(B) and 12-44-60.

Rollback Taxes. Any property subject to the Fee is not subject to agricultural rollback taxes. S.C. Code Ann. § 12-43-220(d)(6).

Timing of Investment Expenditures and Purchases. If a 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 for the Fee 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. S.C. Code Ann. § 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.

The 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 responsibilities of each party and contains the negotiated assessment ratio and the millage rate. It must be approved by the county through an ordinance.

The Fee agreement must be executed within 5 years of an inducement resolution or other action by the county identifying or reflecting the project; otherwise, any property previously purchased for the project will not qualify for the Fee. Special rules apply in the case of a qualified nuclear facility. Once the Fee agreement is executed, the exemption period for each piece of property covered by the Fee begins on the first day of the next property tax year after the property tax year the property is placed in service. S.C. Code Ann. §§ 12-44-30(8) and (10) and 12-44-40.

The Fee agreement may either fix the millage rate for the entire term of the Fee or increase or decrease the millage rate every 5 years in step with the average actual millage rate applicable in the taxing district where the project is located based on the previous 5-year period. The initial millage rate must be no lower than the cumulative property tax millage legally levied by, or on behalf of, all millage levying entities within which the project is to be located that is applicable either on: (a) June 30th of the year preceding the year in which the Fee agreement is executed; or, (b) June 30th of the year in which the Fee agreement is executed. S.C. Code Ann. § 12-44-50.

Valuation for Fee Purposes. Generally, for real property, value is the original income tax basis for South Carolina income tax purposes without regard to depreciation; however, the parties may agree that the value will be determined by appraisal by the Department, in which case the real property will be subject to reappraisal no more than once every 5 years.

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. S.C. Code Ann. § 12-44-50(A)(1). Utility property subject to a Fee is valued similarly to the method that the Public Service Commission uses to value utility property. See SC Revenue Procedure #04-5.

Additional Method of Calculating Fee. The Simplified Fee may allow the use of a net present value calculation in determining the Fee if the proper investment level is met. A sponsor investing more than $45 million at the project and the county may agree that the Fee will be based on an "alternative payment method," that 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 methods described in the Big Fee; however, the sponsor must agree to use a fixed millage rate. S.C. Code Ann. § 12-44-50.

Financing Agreements. A sponsor may enter into any lending, leasing, or financing arrangement with any financing entity concerning all or part of the project, including any lease concerning all or part of the project, regardless of the income tax owner of the property that is the subject of the Fee. S.C. Code Ann. § 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 sponsors and sponsor affiliates. However, the millage rate, discount rate, and assessment ratio cannot be changed once the Fee agreement is executed. S.C. Code Ann. § 12-44-40.

Transfers of Fee Agreements or Property Subject to the Fee. A sponsor may transfer a Fee agreement or the assets subject to the Fee agreement if it obtains the approval of the county before the transfer or the subsequent ratification of the transfer by the county. Prior approval or subsequent ratification can occur by a letter or other writing executed by an authorized county representative as provided in the Fee agreement, a resolution passed by the county council, or by county council following three readings and a public hearing. The county has the sole discretion as to which method to use. County approval is not required in connection with

financing related transactions or transfers to sponsor affiliates. If a Fee agreement is transferred, the transferee assumes the basis that the sponsor transferor had in the real and personal property subject to the Fee for purposes of calculating the Fee. S.C. Code Ann. § 12-44-120.

Payment Procedure and Recordkeeping Requirements. Any sponsor or sponsor affiliate that 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. A bill for each installment of the fee is prepared by the county auditor. Fee payments and returns are due at the same time as property tax payments and returns would be due if the property was subject to property tax. Penalties and interest may apply if a sponsor is late in making a Fee payment or in filing a required return. The Department may, for good cause, allow up to a 60-day extension for filing Fee returns. The written request must be filed on or before the due date of the return. To the extent that any form or return is filed with the Department, a copy must be filed with the county auditor, assessor, and treasurer for the county in which the project is located. A county official, upon approval of the county's governing body, may request books and records of the sponsor that support the calculation of the Fee and any special source revenue credits granted. For collection purposes, the Fee is considered a property tax. S.C. Code Ann. § 12-44-90.

Termination of the Fee and Fee Agreement. The county and the sponsor may agree to terminate the Fee agreement at any time. If a sponsor fails to make the minimum 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 property tax, as of the commencement date. The sponsor must pay the county a fee equal to the difference between the Fees actually paid and the tax that would have been paid if the property had been subject to property tax. The statute allows a "safety net" to a sponsor that commits to an investment above the minimum investment. Even if the sponsor fails to make or maintain the level of investment agreed to in the Fee agreement, the Fee agreement may allow property at the project to continue under the Fee provided that the minimum investment requirement is met. However, the assessment ratio and exemption period for property must be consistent with those available to a sponsor making the minimum investment. The Fee agreement may also allow for different yearly assessment ratios or different ratios for different levels of investment with limitations on the lowest assessment ratio allowable. S.C. Code Ann. § 12-44-90.

If the Fee agreement is terminated by mutual consent or by law and the sponsor was using the net present value method to compute the Fee, the sponsor must pay to the county the difference between the Fee that would have been paid on the property if the Fee had been calculated using the standard Fee method and the amount of Fees that were actually paid to the county under the net present value method. S.C. Code Ann. § 12-44-10.

Expiration of Exemption Period and Maintaining the Minimum Investment. After the exemption 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 the property as of the latest reassessment date for similar taxable property. Personal property will be subject to property taxes based on the then depreciated value applicable to such property under the Fee, and thereafter continuing with the appropriate property tax depreciation schedule.

If the sponsor's investment ever falls below the minimum investment required by the Fee agreement (based on income tax basis without regard to depreciation), the Fee is no longer available and the sponsor must pay a fee equivalent to property taxes on the property. S.C. Code Ann. § 12-44-140(C).

Infrastructure Fee Credit. A county, municipality, or special purpose district that receives proceeds from a Fee may provide to a sponsor a payment derived from the Fee or a credit against the Fee. However, any credit or payment must be used for the purposes outlined in S.C. Code Ann. § 4-29-68, including eligible infrastructure, improved and unimproved real estate, and in certain instances personal property. S.C. Code Ann. §§ 12-44-30(12) and 12-44-70. Special rules apply in the event affected personal property is removed from the project.

Transitional Rules for Projects under Existing Fee. Transitional rules are provided for projects that may be covered by pre-existing Little Fee or Big Fee arrangements. If the county approves, an entity may transfer property from the existing Fee 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. S.C. Code Ann. § 12-44-170.

If all or part of the Simplified Fee were declared illegal or unconstitutional, a sponsor has 180 days to transfer title to all Fee property to the county and have it qualify for the Little Fee. S.C. Code Ann. § 12-44-160.

5. SUPER AND ENHANCED INVESTMENT FEES

The Little and Big Fee schemes both 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, 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 required investment and may obtain up to an additional 5 years to complete the project. For the Big Fee Super Fee, if the project qualifies as a "qualified nuclear plant facility" as that term is defined in S.C. Code Ann. § 4-29-67(A)(1)(d), the sponsor and any sponsor affiliate are given additional time to make the required investment and complete the project.

Under the Enhanced Investment Fee, a sponsor must make the required level of investment within a period beginning on the date it purchases economic development property for the project and ending 8 years from the last day of the property tax year in which the first piece of

Fee property is placed in service. 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 sponsor and the county enter into a Fee agreement. The sponsor may obtain an extension of up to 5 additional years to complete the project. For the Enhanced Fee, if the project qualifies as a "qualified nuclear plant facility" the sponsor and any sponsor affiliate are given additional time to make the required investment and complete the project.

If a project subject to either the Super Fee or the Enhanced Investment Fee received an extension of less than 5 years originally, the sponsor can apply to the county before the end of the existing extension period for additional time to complete the project provided that the aggregate extension cannot exceed 5 years. The county council may approve the extension by resolution, and copy of the resolution must be delivered to the Department within 30 days of the resolution being adopted.

Sponsors that qualify for the Super Fee or the Enhanced Fee with more than $500 million in capital investment that employs more than 1,000 people in South Carolina have 10 years to meet the minimum investment requirements of the Super Fee or the Enhanced Fee and 15 years to complete their project.

If the property is subject to the Super or Enhanced Investment Fee, qualifying property may be subject to the Fee for up to 50 years. For those projects placed in service in more than one year, the Fee is generally available for the project for a maximum of 63 years. S.C. Code Ann. §§ 4-12-30(C)(4); 4-29-67(C)(2), (3), and (D)(4); and 12-44-30(8), (13), and (21).

If a business qualifying under the Super Fee has more than $500 million invested in capital in South Carolina and employs more than 1,000 employees in this state, that business will be eligible to have its property at a project subject to the Fee for a total of 65 years.

The following may qualify for the Little Fee Super Fee:

1. A single sponsor investing at least $150 million and creating at least 125 new full-time jobs in South Carolina. S.C. Code Ann. § 4-12-30(D)(4)(a)(i).

2. A single sponsor investing at least $400 million at a project. S.C. Code Ann. § 4-12-30(D)(4)(a)(ii).

3. A project that satisfies the requirements of S.C. Code Ann. § 11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to S.C. Code Ann. § 11-41-70(2)(a). S.C. Code Ann. § 4-12-30(D)(4)(a)(iii).

The new full-time job requirements described above do not apply to any sponsor that, 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. S.C. Code Ann. § 4-12-30(D)(4)(b).

The following may qualify for the Big Fee Super Fee:

1. A single sponsor investing at least $150 million and creating at least 125 new full-time jobs at the project. S.C. Code Ann. § 4-29-67(D)(4)(a)(i).

2. A single sponsor investing at least $400 million in this State. S.C. Code Ann. § 4-29-67(D)(4)(a)(ii).

3. A project that satisfies the requirements of S.C. Code Ann. § 11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to S.C. Code Ann. § 11-41-70(2)(a). S.C. Code Ann. § 4-29-67(D)(4)(a)(iii).

The new full-time job requirements described above do not apply to any business that, for more than 25 years ending on the date of the lease agreement, paid more than 50% of all property taxes actually collected in the county. S.C. Code Ann. § 4-29-67(D)(4)(b).

The following may qualify for the Enhanced Investment Fee:

1. A single sponsor investing at least $150 million and creating at least 125 new full-time jobs at the project. S.C. Code Ann. § 12-44-30(7)(a). The new full-time job requirement does not apply to any taxpayer that, for more than 25 years ending on the date of the Fee agreement, paid more than 50% of all property taxes actually collected in the county where it is seeking the Fee. S.C. Code Ann. § 12-44-30(7).

2. A single sponsor investing at least $400 million. S.C. Code Ann. § 12-44-30(7)(b).

3. A project that satisfies the requirements of S.C. Code Ann. § 11-41-30(2)(a) and for which the Secretary of Commerce has delivered a certification pursuant to S.C. Code Ann. § 11-41-70(2)(a). S.C. Code Ann. § 12-44-30(7)(c).

For both the Super Fee and the Enhanced Investment Fee, if a single sponsor enters into a financing arrangement, the investment or financing by a developer, lessor, financing entity, or another third person in accordance with this arrangement is considered an investment by the sponsor for purposes of meeting the investment requirements.

Also, investments by a related person are considered to be investments by the sponsor. A "related person" includes any entity or person that bears a relationship to a significant business (those businesses that meet the requirements of the Enhanced Investment Fee) as provided in I.R.C. § 267, and includes, but is not limited to, a limited liability company where more than 50% of the capital interest or profits is owned directly by the significant business or by a person or entity, or group of persons or entities, which owns, more than 50% of the capital or profits in the significant business. S.C. Code Ann. §§ 12-44-30(7), 4-29-67(D)(4)(a), 4-12-30(D)(4)(a), and 12-10-80(D)(2).

6. 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 finance infrastructure projects usually at or surrounding the project that enhance its economic development. The political subdivision repays the bonds with money received from the Fee payments from the project. The rules regarding special source revenue bonds are contained in S.C. Code Ann. § 4-29-68. Special source revenue bonds cannot be used with the Simplified Fee, but the Simplified Fee does provide for an infrastructure credit that may be applied against the Fee. Infrastructure credit amounts must be used for the same purposes as special source revenue bonds. See S.C. Code Ann. § 12-44-70.

To issue special source revenue bonds, the governing body of the issuer 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 or the project's economic development. Bonds may be issued for improved and unimproved real property on which the project will be located, or to pay for the cost of personal property, including machinery and equipment used in the operation of a project.

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.

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 subject to the Fee must make up any shortfall.

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, unimproved or improved real estate, or to pay for eligible personal property associated with the project, without the requirement of issuing special source revenue bonds by allowing a credit against the Fee.

If bond money or money from a credit against the Fee is used to pay for personal property associated with a project, and the personal property is removed from the project during the time the Fee is in effect and the removed property is not replaced with qualifying replacement property, the amount of the Fee due on such property must be paid for the year it is removed and for 2 years following the year of removal. If bond or credit money is used to pay for both real and personal property, or infrastructure and personal property, all of the funds will be presumed to have first been used to pay for personal property.

7. COMPARISON CHART OF FEES

The following chart compares the basic provisions of the following negotiated Fees:

- Little Fee
- Big Fee
- Simplified Fee
- Super and Enhanced Investment Fee

COMPARISON OF NEGOTIATED FEES IN LIEU OF PROPERTY TAXES

	LITTLE FEE	BIG FEE	SIMPLIFIED FEE	SUPER AND ENHANCED INVESTMENT FEE
Minimum Required Investment	$2.5 million or $1 million in certain qualifying counties and sites.	$45 million or $1 million in certain qualifying counties and sites.	$2.5 million or $1 million in certain qualifying counties and sites.	Generally $150 million with 125 jobs or $400 million with certain other requirements
Assessment Ratio	No lower than 6%	No lower than 6%	No lower than 6%	No lower than 4%
Millage Rate	The millage rate used must be no lower than the cumulative property tax millage rate legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30th of the calendar year preceding the year the millage rate agreement is executed or (b) June 30th of the calendar year in which the millage rate agreement is executed	The millage rate used must be no lower than the cumulative property tax millage rate legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30th of the year preceding the year the millage rate agreement is executed or (b) June 30th of the year in which the millage rate agreement is executed	The millage rate used must be no lower than the cumulative property tax millage rate legally levied by, or on behalf of, all taxing entities within which the subject property is to be located that is applicable either on: (a) June 30th of the calendar year preceding the year the fee agreement is executed or (b) June 30th of the calendar year in which the fee agreement is executed	Follows rules of whichever statute is applicable
Project and Investment Completion	5 years to complete required investment 10 years to complete project if approved	5 years to complete required investment 10 years to complete project if approved Special rules for a "qualified nuclear plant facility"	5 years to complete required investment 10 years to complete project if approved Special rules for a "qualified nuclear plant facility"	8 years to complete required investment 13 years to complete project if approved For certain special projects, 10 years to complete the required investment and 15 years to complete the project
Length of Agreement	Up to 30 years for a single piece of property or no more than 40 years total for the project. Up to 10 year additional extension allowed for total of 40 years for a single piece of property or 50 years total for the project.	Up to 30 years for a single piece of property or no more than 40 years total for the project. Up to 10 year additional extension allowed for total of 40 years for a single piece of property or 50 years total for the project.	Available until the last day of the property tax year which is up to 29 years following the property tax year in which the economic development property is placed in service for a single piece of property Up to 10 year additional extension allowed for a total of 40 years for a single piece of property to be subject to the fee or 50 years total for project.	Up to 40 years for a single piece of property or no more than 53 years total for the project or for certain special projects, 55 years. Up to 10 year additional extension allowed for total of 50 years for a single piece of property or 63 years total for the project, or for certain projects, 65 years.
Property Title	Must be held by county	Must be held by county	Title usually held by the sponsor	Follows rules of whatever statute is applicable
Structure of Payment	Net present value method not available	May use net present value to structure payments	May use net present value if investment of $45 million or more	Net present value method may or may not be available depending on which Fee statute is used
Replacement Property	If agreement provides, allowed up to the amount of property disposed of in the same tax year as replacement property is placed in service	If agreement provides, allowed up to the amount of property disposed of in the same tax year as replacement property is placed in service	If agreement provides, allowed up to the amount of property disposed of in the same tax year as replacement property is placed in service	Follows rules of whichever statute is applicable
Valuation of Real Property	Generally original SC income tax basis without regard to depreciation By agreement of county, real property may be appraised every 5 years	Generally original SC income tax basis without regard to depreciation By agreement of county, real property may be appraised every 5 years	Generally original SC income tax basis without regard to depreciation By agreement of county, real property may be appraised every 5 years	Generally original SC income tax basis without regard to depreciation By agreement of county, real property may be appraised every 5 years
Valuation of Personal Property	Original SC income tax basis less depreciation allowable for property tax purposes	Original SC income tax basis less depreciation allowable for property tax purposes	Original SC income tax basis less depreciation allowable for property tax purposes.	Original SC income tax basis less depreciation allowable for property tax purposes.
Inducement Agreement	Must be executed within 2 years of inducement resolution or other action identifying project	Must be executed within 2 years of inducement resolution or other action identifying the project	No inducement agreement required	Follows rules of whichever statute is applicable
Lease Agreement	Must be executed within 5 years of execution of inducement agreement	Must be executed within 5 years of execution of inducement agreement	No lease agreement. Fee agreement must be executed within five years of when county identifies the project	Follows rules of whichever statute is applicable

8. FEE IN LIEU – REDUCED INVESTMENT COUNTIES

The minimum required investment necessary to qualify for the fee in lieu of property taxes is $2.5 million for the “Little Fee” and “Simplified Fee, and $45 million for the “Big Fee.” See S.C. Code Ann. §§ 4-12-30(B)(3), 12-44-30(14), and 4-29-67, respectively. This investment amount; however, is reduced to $1 million for a company investing in a county with an average annual unemployment rate of at least twice the state average during each of the last 24 months, based on data available on November 1.

For 2023, there are no counties that qualify for the reduced investment fee in lieu.

7. SALES AND USE TAX GENERAL PROVISIONS

1. STATE SALES AND USE TAXES

S.C. Code Ann. §§ 12-36-910(A) and 12-36-1110 impose a 6% sales tax on the gross proceeds of sales of every person engaged in the business of selling tangible personal property at retail. The retailer is liable for the tax. The sales tax is also imposed on the fair market value of items originally purchased at wholesale that are withdrawn for use by the business or by any person withdrawing the property. See S.C. Code Ann. § 12-36-110(1)(c)(i) and SC Revenue Ruling #08-11.

S.C. Code Ann. §§ 12-36-1310(A) and 12-36-1110 impose a 6% use tax on the sales price of tangible personal property purchased at retail for storage, use, or other consumption in South Carolina, regardless of whether the retailer is engaged in business in South Carolina. The use tax is the liability of the purchaser under S.C. Code Ann. § 12-36-1330. If the purchaser; however, has a receipt from a seller required or authorized to collect the state use tax showing the seller has collected the tax from the purchaser, the purchaser is relieved of the liability for the tax. South Carolina allows a credit against the use tax due in South Carolina for the state and local sales or use tax due and paid in another state on purchases of tangible personal property. See SC Revenue Ruling #18-9.

In addition to applying to tangible personal property (*e.g.,* furniture, clothing, computers, etc.), the sales and use taxes also apply to specific services and intangibles, such as laundry and dry cleaning services, electricity, and certain communication services. It also applies to the fair market value of tangible personal property manufactured within South Carolina or brought into South Carolina by its manufacturer for storage, use, or consumption in South Carolina by the manufacturer.

S.C. Code Ann. § 12-36-920(A) imposes a 7% sales tax on charges for any rooms, lodgings, or sleeping accommodations for less than 90 days to the same person. S.C. Code Ann. §§ 12-36-920(B) and 12-36-1110 impose a 6% sales tax on "additional guest charges" added to the guest's room charge for (1) room service, (2) laundering and dry cleaning services, (3) in-room movies, (4) telephone service, and (5) rentals of meeting rooms. For more information, see SC Revenue Ruling #14-5, SC Revenue Ruling #14-7, SC Revenue Ruling #19-7, SC Revenue Ruling #16-10, and SC Revenue Ruling #18-10.

2. LOCAL SALES AND USE TAXES

Local governments have limited authority to levy local taxes and fees. A local governing body may not impose a new tax unless specifically authorized by the General Assembly. As explained below, local sales and use taxes may be imposed for various purposes. The majority of these

taxes are administered and collected by the Department in the same manner as the state sales and use tax.[1] Below is a brief description of the local taxes.

a. Local Taxes Administered by the Department

- General Property Tax Relief. Counties have the option of increasing the sales, use, and accommodations tax rate by 1% to provide additional revenue for local governments and a property tax rollback.[2] The tax must be approved by voter referendum and is typically referred to as the "local option sales tax."

- Local Sales and Use Tax for Transportation Facilities. A governing body of a county may raise revenue for transportation projects by either imposing a sales and use tax up to 1% or by imposing tolls.[3] The increase is imposed by enacting an ordinance, subject to approval by voter referendum, and must be for a specific period of time to collect a limited amount of money.

- Capital Project Sales Tax. A governing body of a county may impose up to a 1% sales and use tax to defray the debt service on bonds issued to pay for authorized capital projects.[4] The increase is imposed by enacting an ordinance, subject to approval by voter referendum. The capital project sales tax may not be imposed for more than 8 years for newly imposed taxes or 7 years for re-imposed taxes.

- Personal Property Tax Relief. The county council may impose, by referendum, a local sales and use tax in lieu of the personal property tax imposed on private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors.[5] The tax may not exceed the lesser of 2% or the amount necessary to replace the property tax on these items in the most recently completed fiscal year. Currently, this tax is not being imposed.

- School District Taxes. The General Assembly has authorized certain school districts to impose a sales and use tax within the county. These taxes are generally imposed to pay debt service on general obligation bonds and/or the cost of capital improvements for school districts. Most of these taxes are imposed at a rate of 1%.

- Catawba Tribal Sales and Use Tax. The Catawba Indian Reservation is located in York County. S.C. Code Ann. § 27-16-130(H) contains the specific sales and use tax provisions

[1] Note: Sales of unprepared food are only exempt from a local sales and use tax if the local sales and use tax law specifically exempts such sales. For information on the exemption for sales of unprepared food from local sales and use taxes, see the discussion below entitled "Exemption for Certain Food Sales" and the most recent SC information letter on the "Local Sales and Use Tax Charts, Catawba Tribal Sales and Use Tax Chart and Exemption Information."
[2] S.C. Code Ann. § 4-10-20.
[3] S.C. Code Ann. § 4-37-30.
[4] S.C. Code Ann. § 4-10-300.
[5] S.C. Code Ann. § 4-10-540.

relating to the Catawba Tribal Sales and Use Tax. The tribal sales tax is administered and collected by the Department and the tribal use tax is administered and collected by the tribe.[6] For more information concerning the Catawba Tribal Sales and Use Tax, see Chapter 18 of the Sales and Use Tax Manual.

- Local Option Sales and Use Tax for Local Property Tax Credit. The governing body of the county, upon meeting the requirements of the statute, may impose a sales and use tax in increments of one-tenth of 1%, not to exceed 1%, subject to referendum approval.[7] The tax provides a credit against property tax imposed by a political subdivision for all classes of property subject to the property tax and is administered and collected by the Department on behalf of the county. Currently, this tax is not being imposed.

- Education Capital Improvements Sales and Use Tax. The school district or school districts within a county may impose a 1% sales and use tax within the county for specific education capital improvements for the school district for not more than 15 years.[8] The tax must be approved by a referendum open to all qualified electors residing in the county. Pursuant to a memorandum of agreement, a portion of the revenue may be shared with the area commission (governing body of a technical college) or higher education board of trustees (governing body of a public institution of higher learning) or both, for specific education capital improvements on the campus of the recipient located in the county listed in the referendum. The General Assembly has established several criteria that, if met, will allow a county or school district to impose this tax. The county or school district must meet only one of these criteria in order in to impose the tax.[9] This tax may not be imposed in a county that is imposing or is scheduled to impose a local sales and use tax for public school capital improvements.

- Tourism Development Tax: The governing body of a municipality, by an ordinance adopted by a two-thirds majority of the municipal council or by approval by a majority of qualified electors voting in a referendum authorized by a majority of the municipal council, may impose a general sales and use tax within the municipality.[10] The tax is imposed specifically for tourism advertisement and promotion directed at non-South Carolina residents; however, in the second and subsequent years of this tax a portion of the tax may be used for certain property tax rollbacks and other purposes. It may only be imposed by a municipality located in a county where revenue from the state accommodations tax is at least fourteen million dollars in a fiscal year.

- County Green Space Tax. The governing body of a county by ordinance, subject to referendum open to all qualified electors residing in the applicable county, may impose a

[6] See SC Revenue Ruling #98-18 and the most recent SC information letter on the "Local Sales and Use Tax Charts, Catawba Tribal Sales and Use Tax Chart and Exemption Information."
[7] S.C. Code Ann. §§ 4-10-720 through 4-10-810.
[8] S.C. Code Ann. §§ 4-10-410 through 4-10-470.
[9] S.C. Code Ann. § 4-10-470.
[10] S.C. Code Ann. §§ 4-10-910 through 4-10-970.

local sales and use tax at a rate not to exceed 1% for procuring, or servicing bonds used to procure, open lands and green space for preservation by and through the acquisition of interests in real property. This tax is administered and collected by the Department on behalf of the applicable county.[11]

For a complete list of local taxes administered by the Department, see the most recent SC information letter on "Local Sales and Use Tax Charts, Catawba Tribal Sales and Use Tax Chart and Exemption Information." This information is available on the Department's website at www.dor.sc.gov.

b. Local Taxes Administered by Local Governments

- Local Accommodations Tax. The governing body of a county or municipality may 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 S.C. Code Ann. § 12-36-920(A), not to exceed 3%.[12] The revenue generated by this additional tax must be used exclusively for certain tourism purposes.

- Local Hospitality Tax. The governing body of a county or municipality may 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.[13] The tax may not exceed 2% of the charges for food and beverages.

3. NEXUS

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution and other federal statutes provide limitations on a state's powers to tax out-of-state businesses. Retailers that have nexus with South Carolina must remit the sales tax or use tax with respect to all sales at retail (not otherwise exempt) of tangible personal property in South Carolina.

Over the years, the courts have provided limitations and guidelines in determining whether certain activities create nexus in a taxing state. For example, see *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 201 L. Ed. 2d 403 (2018); *Quill v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91 (1992); *National Bellas Hess v. Illinois*, 386 U.S. 753, 87 S. Ct. 1389, 18 L. Ed. 505 (1967); *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 326 (1977); *Miller Brothers v. Maryland*, 347 U.S. 340, 347, 74 S. Ct. 535, 98 L. Ed. 744 (1954); *Scripto, Inc. v.*

[11] S.C. Code Ann. §§ 4-10-1010 through 4-10-1060.
[12] S.C. Code Ann. § 6-1-500.
[13] S.C. Code Ann. § 6-1-700.

Carson, 362 U.S. 207, 80 S. Ct. 52, 4 L. Ed. 2d 54 (1960); *Helicopteros Nacionales de Columbia, S.A. v. Hall,* 104 S. Ct.1868 (1984); and *National Geographic Society v. California Bd. of Equal*, 430 U.S. 551, 97 S. Ct. 1386, 51 L. Ed. 2d 631 (1977). Until recently, sales and use tax nexus has been limited to those businesses with a physical presence in the taxing state. However, as discussed below, the *Wayfair* decision now allows a state to impose its sales and use tax laws on businesses without a physical presence in that state.

On June 21, 2018, the United States Supreme Court in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 201 L. Ed. 2d 403 (2018), ruled that retailers (including online retailers) without physical presence in a state may be subject to sales and use tax in that state. This decision overturned the Court's longstanding position in *Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91 (1992), and *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U.S. 753, 87 S. Ct. 1389, 18 L. Ed. 505 (1967), which allowed states to collect sales and use tax only from retailers with a physical presence in that state.

Following *Wayfair*, a retailer may have a requirement to obtain a retail license and to collect and remit sales and use tax in South Carolina if it has either an economic presence or a physical presence in South Carolina.

Note: A "marketplace facilitator" is a retailer or seller for purposes of South Carolina's sales and use tax. S.C. Code Ann. § 12-36-71 defines "marketplace facilitator." For further information about "marketplace facilitators," see SC Information Letter #19-14 and SC Revenue Ruling #19-6.

SC Revenue Rulings #18-14 and #14-4 provide guidance concerning sales and use tax nexus standards in South Carolina.

These advisory opinions reflect the Department's official position at the time of this publication. Since developments in this area are taking place, any guidance is subject to change due to a future statute, regulation, court decision, or advisory opinion.

4. EXCLUSIONS

For additional information, see the most recent South Carolina Sales and Use Tax Manual. If a transaction is excluded from the tax, it is not subject to sales and use tax in South Carolina. The exclusions are found in several sections of the sales and use tax statute and apply to a variety of transactions. The following briefly describes South Carolina's sales and use tax exclusions.

Caution: The exclusions below are briefly described. See the statute cited for the specific exclusion details. If a transaction does not squarely fall within the requirements of an exclusions statute and applicable regulations, the exclusion does not apply.

Code Section	Description
12-36-60	Transmission of computer database information by a cooperative service when assembled by and for the exclusive use of the members of the cooperative service
12-36-90(1)(c)(iii)	The withdrawal from inventory of tangible personal property for use in replacing a defective part under a written warranty contract if the warranty contract is given without charge at the time of original purchase of the defective property; the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component; and the warrantee is not charged for any labor or materials
12-36-90(2)(h)	Sales of property that are actually charged off as bad debts or uncollectible accounts for state income tax purposes
12-36-90(2)(i)	Interest, fees, or charges imposed on a customer for late payment of a bill for electricity or natural gas[14]
12-36-90(2)(l)	Amounts received from a "buydown" as that term is defined in the statute
12-36-110(2)	Sales of tangible personal property to a manufacturer or construction contractor when the property is partially or completely fabricated or manufactured in South Carolina by the manufacturer or construction contractor and transported out of state and assembled, installed or erected at the out-of-state job site
12-36-120(1)	Sales of property to a licensed retailer or another wholesaler for resale. This does not include sales to users or consumers not for resale
12-36-120(2)	Sales of property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or product manufactured or compounded for sale
12-36-120(3)	Sales of property "used directly" in manufacturing, compounding, or processing tangible personal property into products for sale. S.C. Code Ann. Regs. 117-302.1 provides property is "used directly" if it comes into direct contact with the product being manufactured and contributes to bring about a chemical or physical change in the product.

[14] This exclusion does not apply to charges imposed for a late payment of a bill for other items, such as cable television or telephone service.

Code Section	Description
12-36-120(4)	Sales of materials, containers, cores, labels, sacks or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers, processors and compounders in shipping tangible personal property
12-36-120(5)	Sales of food or drink products to licensed retail merchants for use as ingredients in preparing ready to eat food or drink sold at retail
12-36-140(C)(1)	Purchases of tangible personal property from outside the state and transported to South Carolina for storage and for the exclusive purpose of subsequently transporting it outside of South Carolina for first use outside of South Carolina (applies to use tax)
12-36-140(C)(2)	Purchases of tangible personal property from outside the state and transported to South Carolina for the purpose of first being manufactured, processed, or compounded into other tangible personal property that will be transported and used solely outside of South Carolina (applies to use tax)
12-36-140(C)(3)	Purchases of tangible personal property for the purpose of being distributed as cooperative direct mail promotional advertising materials by means of interstate carrier, a mailing house, or a United State Post Office to residents of this State from locations both inside and outside the state (applies to use tax)
12-36-910(C)	Charges for or use of certain data processing. See, S.C. Code Ann. § 12-36-910(C) for a definition of "data processing"

5. PARTIAL EXEMPTIONS

There are two types of exemptions provided under South Carolina's sales and use tax law: (1) partial exemptions, and (2) full exemptions.

Partial exemptions limit or "cap" the amount of tax.[15] The local sales and use taxes collected by the Department do not apply to sales that are subject to a cap.

[15] S.C. Code Ann. § 12-36-2110.

A maximum sales or use tax of $500 is imposed on sales of the following:[16]

- Aircraft – including unassembled aircraft assembled by the purchaser
- Motor vehicles – including equipment supplied or installed on a firefighting vehicle at the time of purchase[17]
- Motorcycles
- Boats, including personal watercrafts such as jet skis
- Watercraft motors
- Trailers and semi-trailers that can be pulled only by a truck tractor. This does not include house trailers and campers as defined in S.C. Code Ann. § 56-3-710[18]
- Horse trailers, but does not include house trailers and campers as defined in S.C. Code Ann. § 56-3-710
- Recreational vehicles, including tent campers, travel trailers, park models, park trailers, motor homes and fifth wheels
- Self-propelled light construction equipment with compatible attachments. The equipment's net engine horse power must not exceed 160
- Fire safety education trailers

The sale of a manufactured home is subject to a maximum tax of $300 if the home meets or exceeds certain energy efficiency requirements specifically outlined in the law.[19] If the home does not meet these energy efficiency requirements, the sale of the home is subject to a maximum tax of $300 plus 2% of the taxable basis or measure that exceeds $6,000.[20] Finally, the sale of manufactured homes from July 1, 2009 through July 1, 2024, will be exempt from the entire tax if the manufactured home has been designated by the United States

[16] S.C. Code Ann. § 12-36-2110(A). Note: As of July 1, 2017, an infrastructure maintenance fee (IMF) applies to sales of items which are required to be registered with SCDMV under Chapter 3 of Title 56. (*e.g.,* motor vehicles and motorcycles). Items which are subject to the IMF are exempt from sales and use tax under S.C. Code Ann. § 12-36-2120(83). See SC Information Letter #17-10 for more information.
[17] S.C. Code Ann. § 12-36-2110(E).
[18] Sales of utility trailers that are capable of being pulled by an automobile, minivan, or pick-up truck, and that are not recreational vehicles, fire safety education trailers or horse trailers, are not eligible for the $500 maximum tax. See SC Revenue Ruling #14-2.
[19] S.C. Code Ann. §§ 12-36-2110(B) and 12-36-2120(34).
[20] S.C. Code Ann. §§ 12-36-2110(B) and 12-36-2120(34).

Environmental Protection Agency and the United Stated Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or has been designated as meeting or exceeding such requirements under each agency's ENERGY STAR program.[21]

In addition, S.C. Code Ann. § 12-36-2120(62) provides an exemption for 70% of the gross proceeds of the rental or lease of portable toilets; and S.C. Code Ann. § 12-36-2120(34) exempts 50% of the gross proceeds of a modular home regulated under Chapter 43 of Title 23.

6. FULL EXEMPTIONS

Although it may be determined that a transaction is subject to sales and use tax, a particular exemption in the statute may exempt it from sales and use tax in South Carolina. S.C. Code Ann. §§ 12-36-2120 and 12-36-2130 as well as certain other code provisions contain numerous full exemptions, including several designed specifically for certain industries or facilities. The local sales and use taxes collected by the Department do not apply to sales which are exempt from the state sales and use tax.[22]

The following briefly describes South Carolina's full sales and use tax exemptions. For purposes of this discussion, South Carolina's full exemptions are divided into the following categories:

- Government Related Exemptions
- Business Related Exemptions
- Agricultural Exemptions
- Educational Exemptions
- General Public Good Exemptions
- Alternative Energy Exemptions

Caution: The exemptions below are briefly described. See the statute cited for the specific exemption details. If a transaction does not squarely fall within the requirements of an exemption statute and applicable regulations, the exemption does not apply.

[21] S.C. Code Ann. §§ 12-36-2110(B) and 12-36-2120(34). See Act No. 354 of 2008 and Act No. 138 of 2020, § 2.
[22] All sales and purchases exempt from the state sales and use tax under S.C. Code Ann. §§ 12-36-2120 and 12-36-2130 are exempt from local sales and use tax administered and collected by the Department on behalf of local jurisdictions, except for sales of unprepared food under S.C. Code Ann. § 12-36-2120(75). S.C. Code Ann. § 12-36-2120(75) specifically states that the exemption for unprepared food only applies to the state sales and use tax. Therefore, such sales are subject to local sales and use taxes unless the local sales and use tax specifically exempt's sales of unprepared food. See S.C. Code Ann. Regs. 117-337 and the most recent SC information letter on the "Local Sales and Use Tax Charts, Catawba Tribal Sales and Use Tax Chart and Exemption Information."

Government Related Exemptions

Code Section	Description
12-36-2120(1)	Transactions that are prohibited from being taxed by United States or state constitutional provisions or federal or state law
12-36-2120(2)	Sales to the federal government
12-36-2120(22)	Material necessary to assemble missiles
12-36-2120(25)	Sales of cars and motorcycles to nonresident military personnel
12-36-2120(29)	Federal government contracts – property that passes to the government
12-36-2120(30)	Supplies purchased by the State General Services Division for resale to state agencies
12-36-2120(46)	War memorials and monuments
12-36-2120(48)	Solid waste disposal collection bags required under a solid waste disposal plan of a county or other political subdivision
12-36-2120(60)	Lottery tickets sold pursuant to Chapter 150 of Title 59 (South Carolina Education Lottery Act)
12-36-2120(61)	Copies of, or access to, legislation or other informational documents provided to the general public or any other person by a legislative agency when a charge for these copies is made reflecting the agency's cost of the copies
12-36-2120(68)	Any property sold to the public through a sheriff's sale as provided by law

Business Related Exemptions

Code Section	Description
12-36-2120(9)	Coal, coke, or other fuel for manufacturers, transportation companies, electric power companies, and processors
12-36-2120(11)	Toll charges between telephone exchanges, certain access charges, charges for telegraph messages and automatic teller machine transactions

Code Section	Description
12-36-2120(13)	Fuel and other supplies for consumption on ships on the high seas
12-36-2120(14)	Wrapping paper, containers, etc., used incident to the sale and delivery of tangible personal property
12-36-2120(15)	Motor fuel taxed under the motor fuel user fee law; natural gas to be compressed or cooled for use as a motor fuel; and liquefied petroleum gas for use as a motor fuel
12-36-2120(17)	Machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining or quarrying tangible personal property for sale. This includes certain machines used to prevent or abate air, water or noise pollution caused by machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining or quarrying tangible personal property for sale.
12-36-2120(19)	Electricity used to manufacture, process, mine, or quarry tangible personal property for sale or used by cotton gins to manufacture tangible personal property for sale
12-36-2120(20)	Railcars and locomotives
12-36-2120(21)	Certain vessels and barges (more than 50 tons burden)
12-36-2120(24)	Laundry supplies and machinery. This exemption does not apply to coin operated laundromats.
12-36-2120(31)	Vacation time sharing plans and exchange of accommodations in which the accommodation to be exchanged is the primary consideration
12-36-2120(35)	Movies sold or rented to movie theatres
12-36-2120(36)	Tangible personal property delivered out of state by South Carolina retailers
12-36-2120(37)	Petroleum asphalt products transported and used outside South Carolina
12-36-2120(40)	Shipping containers used by international shipping lines under contract with the State Ports Authority
12-36-2120(42)	Depreciable assets sold as part of the sale of an entire business

Code Section	Description
12-36-2120(43)	Supplies, equipment, machinery and electricity for use in filming/producing motion pictures
12-36-2120(49)	Postage purchased by a person engaged in the business of selling advertising services for clients consisting of mailing advertising material through the United States mail
12-36-2120(50)	The following items when used by a qualified recycling facility: recycling property, electricity, natural gas, fuels, gasses, fluids and lubricants, ingredients or component parts of manufactured products, property used for the handling or transfer of postconsumer waste or manufactured products or in or for the manufacturing process, and machinery and equipment foundations[23]
12-36-2120(51)	Material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility of a taxpayer that invests at least $35 million in S.C. Code Ann. § 12-36-2140 provides that for purposes of the exemptions in Article 21, Chapter 36, the term "distribution facility" includes, but is not limited to, a "port facility" as defined in S.C. Code Ann. § 12-6-3375.[24] **Note:** Under Temporary Proviso 50.20, the Navy Base Intermodal Facility is considered a distribution facility for the purpose of this exemption for State Fiscal Year 2022-2023. Further, under Temporary Proviso 117.146, material handling equipment for an agribusiness facility that invests at least $100 million in South Carolina is exempt under this exemption for State Fiscal Year 2022-2023.
12-36-2120(52)	Parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft. This exemption does not extend to tools and other equipment not attached to or that do not become a part of the aircraft.
12-36-2120(53)	Motor vehicle extended service and warranty contracts

[23] See S.C. Code Ann. § 12-6-3460 for the definitions of "qualified recycling facility," "recycling property," and "post-consumer waste material."

[24] A "port facility" is defined as any publicly or privately owned facility located within South Carolina through which cargo is transported by way of waterborne ship or vehicle to or from destinations outside South Carolina and which handles cargo owned by third parties in addition to cargo owned by the port facility's owner.

Code Section	Description
12-36-2120(54)	Clothing and other attire required for working in a class 100 or better clean room environment (as defined in Federal Standard 209E)
12-36-2120(55)	Audiovisual masters made or used by a production company
12-36-2120(56)	Machines used in research and development
12-36-2120(58)	Cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or nonprofit convention and visitor bureaus
12-36-2120(59)	Facilities transmitting electricity that are transferred, sold or exchanged by an electrical utility, municipality, electric cooperative, or political subdivision to a limited liability company subject to regulation under the Federal Power Act and formed to operate or to take functional control of electric transmission assets
12-36-2120(64)	Sweetgrass baskets made by artists of South Carolina using locally grown sweetgrass
12-36-2120(65)(a) and 12-36-2120(66)	Computer equipment used in connection with, and electricity and certain fuel used by, a technology intensive facility[25] that invests $300 million over 5 years, creates at least 100 new jobs during the 5 years with an average cash compensation of 150% of the per capita income of the State, and spends at least 60% of the $300 million investment on computer equipment
12-36-2120(67)	Construction material used in the construction of a new or expanded single manufacturing or distribution facility, or one that is both, that invests at least $100 million at a single site in South Carolina over an 18-month period S.C. Code Ann. § 12-36-2140 provides that for purposes of the exemptions in Article 21, Chapter 36, the term "distribution facility" includes, but is not limited to, a port facility as defined in S.C. Code Ann. § 12-6-3375.[26]

[25] S.C. Code Ann. § 12-6-3360(M)(14)(b) defines a "technology intensive facility" for purposes of this exemption as "a facility primarily used for one or more activities listed under the 2002 version of the NAICS Codes 51811 (Internet Service Providers, and Web Search Portals)."

[26] A "port facility" is defined as any publicly or privately owned facility located within South Carolina through which cargo is transported by way of waterborne ship or vehicle to or from destinations outside South Carolina and which handles cargo owned by third parties in addition to cargo owned by the port facility's owner.

Code Section	Description
	Note: Under Temporary Proviso 50.20, the Navy Base Intermodal Facility is considered a distribution facility for the purpose of this exemption for State Fiscal Year 2022-2023. Further, under Temporary Proviso 117.146 construction materials for an agribusiness facility that invests at least $100 million in South Carolina is exempt under this exemption for State Fiscal Year 2022-2023.
12-36-2120(70)	Gold, silver or platinum bullion or any combination; coins that are or have been legal tender; and currency
12-36-2120(73)	Amusement park rides; parts, machinery and equipment used to assemble, operate and make up amusement park rides; and performance venue facilities and any related or required machinery, equipment and fixtures if $250 million is invested and 250 full-time jobs and 500 part-time or seasonal jobs are created over a 5-year period
12-36-2120(78)	Machinery and equipment, building and other raw materials, and electricity used in the operation of a facility owned by an organization which qualifies as a tax exempt organization pursuant to the I.R.C. § 501(c)(3) when the facility is principally used for researching and testing the impact of such natural hazards as wind, fire, water, earthquake, and hail on building materials used in residential, commercial, and agricultural buildings if $20 million is invested in real or personal property at a single site in this State over a 3-year period
12-36-2120(79)	Computers, computer equipment, and computer software used within a datacenter, and electricity used by a datacenter or used by eligible business property located and used at a datacenter where the taxpayer: (1) invests at least $50 million in real or personal property or both over a 5-year period; or, if more than one taxpayer, invests a minimum aggregate capital investment of at least $75 million in real or personal property or both over a 5-year period; (2) creates and maintains at least 25 full-time jobs at the facility with an average cash compensation level of 150% of the per capita income of South Carolina or of the county in which the facility is located; and (3) maintains the jobs requirement for 3 consecutive years after certification by the Department of Commerce This exemption only applies to a datacenter that is certified by the Department of Commerce prior to January 1, 2032. However, for datacenters certified by December 31, 2031, this exemption will remain in effect for an additional ten-year period.

Code Section	Description
12-62-30	Tangible personal property purchased by a certified motion picture production company for use in connection with the filming or production of motion pictures in South Carolina for a company planning to spend at least $250,000 in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12-month period. This provision does not apply to: (a) local sales tax levied and collected directly by a local governmental subdivision or (b) the production of television coverage of news and athletic events.
12-69-30	Building materials, supplies, fixtures, and equipment for the construction, repair, or improvement of or that become a part of a motorsports entertainment complex. To be eligible for this sales and use tax exemption, a company must submit an application to be approved by the Department, receive written certification from the Department, and meet the requirements of Chapter 69, Title 12.
Temporary Proviso 109.12, (Act No. 239 of 2022)	Certain clothing required by Current Good Manufacturing Practices as set forth in 21 C.F.R. § 111.10, as it may be amended, used at perishable prepared food manufacturing facilities, as defined by the North American Industry Classification System 311991 to prevent health hazards. Clothing eligible for this exemption includes outer garments, gloves of an impermeable material, hairnets, headbands, beard covers, caps, hair covers or other effective hair restraints, and other attire required pursuant to 21 C.F.R. § 110.10 for persons working in direct contact with food, food contact surfaces, and food packaging materials to protect against contamination of food in perishable prepared food manufacturing facilities. This temporary proviso is effective for State Fiscal Year July 1, 2022 through June 30, 2023 and will expire unless reenacted by the General Assembly.

Agricultural Exemptions

Code Section	Description
12-36-2120(4)	Livestock
12-36-2120(5)	Feed used to produce and maintain livestock
12-36-2120(6)	Insecticides, chemicals, fertilizers, soil conditioners, seeds, seedlings or nursery stock used in the production of farm products

Code Section	Description
12-36-2120(7)	Containers and labels used in preparing agriculture products for sale or preparing turpentine gum, gum resin and gum spirits of turpentine for sale
12-36-2120(15)	Fuels used in farm machinery and farm tractors; and fuel used in commercial fishing vessels
12-36-2120(16)	Farm machinery and replacement parts and attachments
12-36-2120(18)	Fuel used to cure agriculture products
12-36-2120(23)	Farm products sold in their original state of production when sold by the producer
12-36-2120(32)	Electricity and gas used in the production of livestock and milk
12-36-2120(44)	Electricity used to irrigate crops
12-36-2120(45)	Building materials, supplies, fixtures and equipment used to construct commercial housing for poultry or livestock

Educational Exemptions

Code Section	Description
12-36-2120(3)	Textbooks, books, magazines, periodicals, newspapers and access to online information used in a course of study or for use in a school or public library. These items may be in printed form or in alternative forms such as microfilm or CD ROM. Certain communication services and equipment subject to tax under S.C. Code Ann. §§ 12-36-910(B)(3) and 12-36-1310(B)(3) are not exempt.
12-36-2120(8)	Newspapers, newsprint paper and South Carolina Department of Agriculture Market Bulletin[27]
12-36-2120(10)(a)	Meals or food used in furnishing meals to K-12 students in schools (not for profit)

[27] This exemption also states that sales of religious publications (e.g., the Bible, hymnals) are exempt; however, the South Carolina Supreme Court held in *Thayer v. South Carolina Tax Commission*, 307 S.C. 6, 413 S.E.2d 810 (1992), that the exemption for religious publications was unconstitutional. Therefore, sales of religious publications are subject to the sales and use tax, unless otherwise exempt under the law. For more information, see SC Information Letter #92-8.

Code Section	Description
12-36-2120(26)	Television, radio and cable TV supplies, equipment, machinery, and electricity
12-36-2120(27)	Zoo plants and animals
12-36-2130(2)	Exhibition rentals for museums (charitable, eleemosynary or governmental museums) (use tax only)[28]
Temporary Proviso 117.36, (Act No. 239 of 2022)	Purchases of tangible personal property during the state fiscal year 2022-2023 for use in private primary and secondary schools, including kindergarten and early childhood education programs, are exempt from the use tax if the school is exempt from income taxes under I.R.C. § 501(c)(3).[29]

General Public Good Exemptions

Code Section	Description
12-36-2120(10)(b)	Meals provided to elderly or disabled persons at home by nonprofit organizations
12-36-2120(10)(c)	Food sold to nonprofit organizations or food sold or donated by the nonprofit organization to another nonprofit organization
12-36-2120(10)(d)	Meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in-home service to the homeless or needy or disabled adults over 18 or individuals over 60. This exemption only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program.
12-36-2120(12)	Water sold by public utilities and certain non-profit corporations
12-36-2120(28)	Medicine and prosthetic devices sold by prescription; certain diabetic supplies sold to diabetics under the written authorization and direction of a physician; certain free samples of medicine and certain medicine donated to hospitals; prescription medicine and radiopharmaceuticals used in treating cancer or rheumatoid arthritis, including prescription

[28] This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply. See S.C. Code Ann. Regs. 117-334 for information on when a transaction is a sales tax transaction and when it is a use tax transaction.

[29] This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply. See S.C. Code Ann. Regs. 117-334 for information on when a transaction is a sales tax transaction and when it is a use tax transaction.

Code Section	Description
	medicines to relieve the effects of treatment; prescription medicines used to prevent respiratory syncytial virus; disposable medical supplies, such as bags, tubing, needles, and syringes, dispensed by a pharmacist by prescription of a licensed health care provider for the intravenous administration of a prescription drug (only for treatment outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center); and prescription medicine dispensed to Medicare Part A patients in a nursing home
12-36-2120(33)	Residential electricity and fuel. See SC Revenue Ruling #19-5 for a discussion of this exemption as it applies to primary residences, vacation homes, and second homes
12-36-2120(38)	Hearing aids
12-36-2120(39)	Concession sales by nonprofit organizations at festivals
12-36-2120(41)	Sales by certain nonprofit organizations
12-36-2120(47)	Goods sold to nonprofit hospitals that primarily treat children at no cost to the patient
12-36-2120(57)	Annual sales tax holiday on the first Friday, Saturday, and Sunday in August for certain clothing, clothing accessories, footwear, computers, printers, printer supplies, computer software, bath wash cloths, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs, pillows, pillow cases, and school supplies For a question and answer document on the annual sales tax holiday, see SC Revenue Ruling #19-4.
12-36-2120(63)	Medicine and medical supplies, including diabetic supplies and diabetic diagnostic and testing equipment, sold to a health care clinic providing free medical and dental care to all patients
12-36-2120(74)	Durable medical equipment and related supplies as defined under federal and state Medicare and Medicaid laws if (a) paid directly by funds of South Carolina or the United States under the Medicare and Medicaid programs, (b) state and federal law prohibits the payment of the sales and use tax, and (c) the sale is by a provider with a South Carolina retail license whose principal place of business is in South Carolina.

Code Section	Description
12-36-2120(75)	Unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food.
12-36-2120(80)	Injectable medications and injectable biologics, so long as the medication or biologic is administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility. See SC Revenue Ruling #22-9 for additional information concerning this exemption.
12-36-2120(81)	Construction material used by an entity organized under I.R.C. § 501(c)(3) as a nonprofit corporation to build, rehabilitate, or repair a home for the benefit of an individual or family in need. An "individual or family in need" means an individual or family, as applicable, whose income is less than or equal to 80% of the county median income.
12-36-2120(82)	Children's clothing sold to a private charitable organization exempt from federal and state income tax, except for private schools, for the purpose of distribution by that organization to needy children. "Clothing" means those items exempt from sales and use tax pursuant to S.C. Code § 12-36-2120(57)(a)(i)and (ii). "Needy children" means children eligible for free meals under the National School Lunch Program of the US Department of Agriculture.
12-36-2120(83)	Any item which is subject to the infrastructure maintenance fee set forth in S.C. Code Ann. § 56-3-627
Temporary Proviso 117.58 (Act No. 239 of 2022)	Viscosupplementation therapies (for State Fiscal Year 2022–2023)

Alternative Energy Exemptions

Code Section	Description
12-36-2120(71)	Any device, equipment or machinery that is (a) operated by hydrogen or fuel cells, (b) used to generate, produce or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications and (c) used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies

Code Section	Description
12-36-2120(72)	Building material used to construct a new or renovated building in a research district and machinery or equipment located in a research district. The sales tax that would have been assessed must be invested by the taxpayer in hydrogen or fuel cell machinery or equipment located in the same research district within 24 months of the exempt purchase.

8. SALES AND USE TAX SPECIFIC PROVISIONS

INTRODUCTION

This chapter discusses in more detail some of the most common sales and use tax exemptions available to manufacturers, processors, contractors, retailers, motion picture production companies, and other businesses considering locating, doing business, or expanding in South Carolina. In addition, this chapter also discusses other important sales and use tax issues for businesses considering doing business in South Carolina, such as the use of an exemption certificate to make purchases tax free, sales for resale, construction contracts, computer services and software, and the South Carolina annual sales tax holiday weekend.

1. MANUFACTURERS, PROCESSORS, AND COMPOUNDERS

a. General Information

Manufacturers, processors, and compounders enjoy numerous exclusions and exemptions from sales and use tax under S.C. Code Ann. §§ 12-36-2120 and 12-36-120. This section provides a more detailed discussion of the most common exemptions available to manufacturers, processors, and compounders, such as the sales tax exemption for machinery used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale; ingredient parts; electricity; fuel; packaging; and sales for resale.

NOTE: Other exemptions discussed in this chapter and those listed in Chapter 7 above may also apply to your business. See also S.C. Code Ann. Regs. 117-302, "Manufacturers, Processors, Compounders, Miners, and Quarries" for more information on available exclusions and exemptions.

b. Machines, Parts, and Attachments

General Information. Whether a machine is exempt from sales and use tax depends on the circumstances and use of the machine. For example, is a machine exempt from sales and use taxes if it is a fixture to realty (but not a building), is owned by someone other than a manufacturer, has more than one use, or is used to abate pollution caused by a machine used in manufacturing? These questions are addressed below and examples are provided to assist in understanding South Carolina's machine exemption.

S.C. Code Ann. § 12-36-2120(17), commonly referred to as the machine exemption, exempts from sales and use tax purchases of machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale. The term "machines" includes the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which are necessary to the operation of the machines and are customarily so used or are necessary to comply with the

order of an agency of the United States or of South Carolina for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by a machine used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale. This exemption does not include automobiles or trucks.

For South Carolina purposes, the applicability of this machine exemption depends on whether the machine or combination of mechanical powers, parts, attachments, and devices are integral and necessary to the manufacturing process. (**NOTE**: References to "manufacturing" include "processing," "compounding," "mining," and "quarrying.") In other words, a machine is exempt from the sales and use tax if it is an essential and indispensable component part of the manufacturing process and is used on an ongoing and continuous basis during the manufacturing process. The court in *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 313 S.E. 2d 300 (1984) set forth a test for making this determination; two South Carolina court decisions in 2003 have followed and clarified this test. Each is briefly discussed below.

- The *Hercules* case involved whether a facility that treated waste that was produced in connection with the manufacturing of textile products for sale was a machine. The Court held that the wastewater treatment facility was a machine and that its various parts and attachments (such as vats, basins, tanks, pumps, other mechanical devices, troughs, and pipes) are integral and necessary to the operation of the system as a whole.

  The following test was used by the Court in determining what is an exempt "machine." Are improvements, either fastened or loose:

  1. Used directly in manufacturing the products that the establishment intended to produce;

  2. A necessary and integral part of the manufacturing process;

  3. Used for the purpose of manufacturing the product it was intended to produce; and

  4. Not benefiting the land generally, and will not serve various users of the land.

  The Court further defined the term "machine" to include "the concept of combination" (*i.e.,* combination of mechanical powers, parts, attachments and devices to perform some function and produce a certain effect or result integral and necessary to the manufacturing process) and held that the statute "does not require a machine to have moving parts if it is an integral part of the manufacturing process" and that the statute makes no distinction "as to whether a machine is a fixture or personal property."

- *Springs Industries, Inc. v. South Carolina Department of Revenue,* South Carolina Court of Appeals, No. 2003-UP-029, January 8, 2003 (unpublished), cert. denied, October 8, 2003. *Springs* involved the applicability of the machine exemption to "machines used in

manufacturing" at a textile plant, and to chemicals used at the plant's wastewater treatment facilities to purify manufacturing waste. The court held that machinery is exempt if it is integral and necessary to the manufacturing process and used on an ongoing and continuous basis during the manufacturing process.

- *Anonymous Corporation v. South Carolina Department of Revenue* (02-ALJ-17-0350-CC). This case involved whether buildings or parts of buildings could be exempt under the machine exemption. The Administrative Law Court held that building materials, such as: (a) paint and sealants, (b) foundations, (c) structural steel, (d) steel decking and checkers plates for buildings, (e) hangers and supports for process piping, and (f) architectural roofing and siding, were not exempt as a machine.

Based on the above, the machine exemption does not apply to everything that can be useful to a manufacturer. The applicability of the machine exemption depends on whether the machine is integral and necessary to the manufacturing process. To aid in determining the application of the machine exemption in accordance with the above court decisions, the Department issued SC Revenue Ruling #04-7 and the General Assembly approved an amendment of S.C. Code Ann. Regs. 117-302.5. The following issues were addressed in the ruling and the regulation:

1. Chemicals, Greases, Oils, Lubricants and Coolants

2. Classification of Machines Used in Manufacturing, Maintenance, or Storage

3. Conveyances

4. Manufacturing Buildings

5. Administrative Machines, Furniture, Equipment and Supplies

6. Protective Clothing

Below is a brief summary of the machine exemption principles in S.C. Code Ann. § 12-36-2120(17), S.C. Code Ann. Regs. 117-302.5 and 117-302.6, and SC Revenue Ruling #04-7.

Machine Exemption – General Rule. A machine qualifies for the machine exemption under S.C. Code Ann. § 12-36-2120(17) if the machine meets the following three requirements:

1. The machine is used at a manufacturing facility whose purpose is manufacturing a product "for sale." It does not apply to machines used at a facility whose purpose may be retailing, wholesaling, or distributing. For example, machines used by an industrial baker manufacturing breads for sale may be purchased tax free; however, similar machines used by a local retail bakery may not be purchased tax free.

2. The machine is used in, and serves as an essential and indispensable component part of, the manufacturing process and is used on an ongoing and continuous basis during the manufacturing process. **NOTE**: A machine "integral and necessary" to the manufacturer, such as a machine used solely for warehouse, distribution, or administrative purposes, is not tax exempt under the machine exemption since it is not "integral and necessary" to the manufacturing process.

3. The machine must be substantially used (not necessarily exclusively used) in manufacturing tangible personal property for sale (i.e., more than one-third of a machine's use is for manufacturing).

A machine meeting the above requirements may be exempt even if it does not have moving parts or is a fixture upon the real estate where it stands. However, buildings and parts of buildings, as well as other improvements which benefit the land generally and may serve other users of the land, are not exempt.

Machine - Replacement Parts and Attachments. Parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of exempt machines are also exempt under the machine exemption in S.C. Code Ann. § 12-36-2120(17) if they are: (1) used on or in the operation of exempt machines, (2) manufactured for use on or in the operation of exempt machines, (3) integral and necessary to the operation of exempt machines, and (4) customarily so used.

This means the part or attachment must be: (a) purchased in the form in which it will be used by the manufacturer without any fabrication or alteration by him, except the usual and customary minor adjustments (except as otherwise provided), (b) a standard part or attachment that is customarily used in connection with the machine, and (c) the machine or machinery on which it is used would not do the work for which it was designed if the part or attachment were not used. This exempts all parts and attachments without which the machine would do no work, and exempts parts and attachments designed to increase the efficiency of the machine. See S.C. Code Ann. Regs. 117-302.5 for guidance in determining what qualifies as a part or attachment to a machine.

Examples of Exempt Machines or Machine Parts. Examples of exempt machines or parts of machines include the following:

- material handling or mechanical conveyor machines feeding the first processing machine; the machine that discharges the finished product from the last machine used in the process; material handling machinery used for transporting in process material from one process stage to another.

- chemicals, including greases, oils, lubricants, and coolants, used in an exempt manufacturing machine that are essential to the functioning of the exempt machine during the manufacturing process.

- tanks which are a part of the chain of processing operations (the exemption does not include storage tanks.)

- transformers, capacitors, and voltage regulators used by manufacturers, processors, or compounders as a part of their manufacturing, processing, or compounding machinery.

- machines used to condition air (including humidification systems) for quality control during the manufacturing process of tangible personal property made from natural fibers and synthetic materials.

- recording instruments attached to manufacturing machines.

- belting purchased for use on a particular machine used in manufacturing tangible personal property for sale.

- materials used by manufacturers or contactors in building machines that will manufacture tangible personal property for sale.

Examples of Non-Exempt Machines or Parts. Examples of taxable machines or parts include the following:

- material handling machinery and/or mechanical conveyors up to the point where the materials go into process.

- chemicals used to clean either the manufacturing facility or non-exempt machines, such as storage tanks.

- paint used on exempt manufacturing machines to prevent machine corrosion.

- greases, oils (*e.g.,* motor oils, gear oils, or chain oils), lubricants, and coolants used in an exempt manufacturing machine when such items are not integral and necessary to the manufacturing process, such as those that are not essential in ensuring the functioning of the machine during the manufacturing process.

- machines used for maintenance purposes (i.e*.,* machines used to maintain nonexempt machines that are not integral and necessary to the manufacturing process, or are not used on an ongoing, continuous basis to maintain exempt manufacturing machines that are integral and necessary to the manufacturing process), such as pressure washing machines and ultrasonic cleaning machines used to clean non-exempt machines or parts, such as storage tanks.

- storage racks used to store raw materials or finished goods, or storage tanks used to store raw materials, gasses, or water.

- warehouse machines used for warehouse purposes, such as loading and unloading, storing, or transporting raw materials or finished products.

- storage tanks and piping leading to and from storage tanks and piping bringing gas or water into the plant.

- power lines bringing electricity into the plant.

- administrative machines, furniture, equipment and supplies such as office computers, paper, or items used for the personal comfort, convenience, or use of employees.

Machine – A Structure versus a Building. S.C. Code Ann. § 12-36-2120(17) can apply to machines that are "structures". A structure that is a building is not a "machine," and the materials used to construct the building are not exempt from sales and use tax as a machine, part, or attachment used in manufacturing. See S.C. Code Ann. Regs. 117-302.5 and SC Revenue Ruling #04-7 for more details.

For additional information on when a structure qualifies as a machine, see (1) SC Revenue Ruling #89-7 where the Department held that a settling basin for a wastewater treatment facility was one part of a single facility and that the facility was a "machine" and (2) SC Private Letter Ruling #90-3 where the Department held that a gamma irradiator constitutes a machine.

Pollution Abatement Machines. S.C. Code Ann. § 12-36-2120(17) and S.C. Code Ann. Regs. 117-302.6 classify pollution control machines as machines used in mining, quarrying, compounding, processing, agricultural packaging, or manufacturing of tangible personal property when installed and operated for compliance with an order of an agency of the United States or of this state to prevent or abate air, water, or noise pollution caused or threatened by the operation of other exempt machines used in the mining, quarrying, compounding, processing, agricultural packaging, and manufacturing of tangible personal property for purposes of S.C. Code Ann. § 12-36-2120(17).

The application of this regulation was addressed in Commission Decision #92-19 where it was held that stack liners and ash pond pipes and pumps located at a taxpayer's electrical generating facility were exempt from sales and use tax on the grounds that these items were "operated exclusively in the abatement of pollution caused by the production of electricity."

Additionally, the Department determined in SC Private Letter Ruling #92-9 that certain parts, attachments, and components of a chimney stack used in the manufacture of electricity were "machines" required by state and federal law and were necessary and integral to the manufacture of electricity, and, therefore, were exempt from sales and use tax as provided under S.C. Code Ann. § 12-36-2120(17) and S.C. Code Ann. Regs. 117-173 (recodified as 117-302.6). See also *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission,* 313 S.E.2d 300 (1984).

Machine Owned by Someone Other Than a Manufacturer. S.C. Code Ann. § 12-36-2120(17) does not require ownership of the machine by the manufacturer to qualify for the sales and use tax exemption. The use of a machine determines whether it is exempt from sales and use tax.

This issue was considered in *Hercules*. The Court reviewed whether the machine exemption applied to materials purchased to build a waste treatment facility that was owned by a South Carolina town and used substantially by a manufacturer in the manufacture of tangible personal property for sale. The Court determined that the machine exemption applied to the materials used to construct that facility, without regard to the machine's ownership, since the facility satisfied a pollution control requirement and thereby allowed the manufacturer to remain in operation. See also *Southeastern-Kusan v. South Carolina Tax Commission,* 280 S.E.2d 57 (1981).

Machine Used Substantially in Manufacturing (Dual Usage Machine). S.C. Code Ann. § 12-36-2120(17) requires "substantial," but not "exclusive," use of the machine in the manufacture of tangible personal property for sale in order for the machine exemption to apply.

For example, the purchase of a forklift that is used substantially to move materials from one stage of the production process to another (an exempt purpose) and also used to load trucks (a non-exempt purpose) is allowed the machine exemption from sales and use tax. In addition, purchases of parts for the forklift are also exempt from tax.

Further, this principle was reviewed in *Hercules* where the Court determined that a municipally owned waste treatment facility was a machine used substantially in the manufacture of tangible personal property for sale. At this facility, approximately 35% of the waste treated was from a manufacturing plant and the rest was from ordinary municipal sources. The Court concluded that the machine exemption does not provide that the manufacturing use has to be exclusive nor does it require that the manufacturing use be the primary use to which the facility is devoted. In accordance with S.C. Code Ann. Regs. 117-302.5, more than one-third of a machine's use in manufacturing is substantial.

Machine Used in Research and Development. See Section 7 below in this Chapter.

Machine Used in Recycling. See Section 3 below in this Chapter.

c. Tangible Personal Property that is an "Ingredient or Component Part" or "Used Directly" in the Process

S.C. Code Ann. § 12-36-120(2) does not tax the sale of tangible personal property to a manufacturer or compounder that is an ingredient or component part of the tangible personal property or products manufactured or compounded for sale.

Further, S.C. Code Ann. § 12-36-120(3) does not tax the sale of tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale. S.C. Code Ann. Regs. 117-302.1 provides, in part, that something is "used directly" if the materials or products so used come in direct contact with and contribute to bring about some chemical or physical change in the ingredient or component properties during the period in which the fabricating, converting, or processing takes place.

S.C. Code Ann. Regs. 117-302.1 also provides that the sales tax does not apply to the sale of (1) acetylene, oxygen, and other gases sold to manufacturers or compounders that enter into and become an ingredient or component part of the tangible personal property or products which it manufactures or compounds for sale, or which are used directly in fabricating, converting, or processing the materials or products being manufactured or compounded for sale, or (2) plates attached by the manufacturer to its product for identification purposes and which become a part of the product.

d. Electricity

S.C. Code Ann. § 12-36-2120(19) exempts from sales and use tax the sale of electricity used by manufacturers, processors, miners, quarriers, or cotton gins to manufacture, mine, or quarry tangible personal property for sale.

S.C. Code Ann. Regs. 117-302.4 further provides that this exemption applies to electricity to provide lighting necessary for the operation of such machines and to electricity used to control plant atmosphere as to temperature and/or moisture content in the quality control of tangible personal property being manufactured or processed for sale.

This exemption does not apply to sales of electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators used in carrying personnel, housekeeping equipment and machinery, machines used in manufacturing tangible personal property not for sale, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes, unit heaters, and waste house lights.

e. Coal, Coke, and Other Fuel

S.C. Code Ann. § 12-36-2120(9) exempts from sales and use tax the sale of coal, coke, or other fuel sold to manufacturers and electric power companies for the generation of heat or power used in manufacturing tangible personal property for sale or the generating of electric power or energy for use. The statute further exempts coal, coke or other fuel sold to manufacturers for the production of by-products or for the generation of electric power or energy for use in manufacturing tangible personal property for sale. For purposes of this exemption, mining and quarrying are considered to be manufacturing.

This exemption applies to fuel used to control plant atmosphere as to temperature and/or moisture content in the quality control of tangible personal property being manufactured or processed for sale.

f. Packaging

S.C. Code Ann. § 12-36-120(4) does not tax purchases of materials, containers, cores, labels, sacks, or bags that are used incident to the sale and delivery of tangible personal property. S.C. Code Ann. Regs. 117-302.2 provides definitions of the terms "materials," "containers," and "cores."

"Materials" include wrapping paper, twine, strapping, nails, staples, wire, lumber, cardboard, adhesives, tape, waxed paper, plastic materials, aluminum foils, and pallets used in packaging tangible personal property incident to its sales and delivery and used by manufacturers, processors, or compounders in shipping tangible personal property.

"Containers" include paper, plastic or cloth sacks, bags, boxes, bottles, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

"Cores" include spools, spindles, cylindrical tubes and the like on which tangible personal property is wound.

This sales and use tax exclusion applies to labels affixed to manufactured articles to identify such products only when such labels are passed on to the ultimate consumer of such products, and to excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit. This exclusion does not apply to address stickers and shipping tags, and materials used to preserve property during shipment, such as dry ice and rust preventives. In addition, S.C. Code Ann. § 12-36-2120(14) exempts from sales and use tax the sale of wrapping paper, wrapping twine, paper bags, and containers used incident to the sale and delivery of tangible personal property.

g. Sale for Resale or Wholesale Sales

Sales by manufacturers and compounders of tangible personal property are not taxable if the property is sold for resale (e.g., a wholesale sale) under S.C. Code Ann. § 12-36-120(1). Further, a manufacturer is considered to be making a wholesale sale and not liable for South Carolina sales and use tax when the manufacturer, at the request of a retailer, drop ships its product in South Carolina to a retailer's customer and bills the retailer for the product. See SC Revenue Ruling #98-8 for further information on drop shipments.

A resale certificate, Form ST-8A, can be used by retailers to purchase tangible personal property for resale. It is not necessary that a resale certificate be obtained for each purchase; the seller must maintain only one resale certificate per customer. By accepting the resale certificate and having it on file, the seller is relieved of the tax liability provided (1) the resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed, (2) the seller did not fraudulently fail to collect or remit the tax, or both, and (3) the seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale. It is not required that Form ST-8A be used. A letter

from the purchaser to the seller or a resale certificate from another state is acceptable provided it contains the same information requested on Form ST-8A. In addition, the "Uniform Sales and Use Tax Certificate" published by the Multistate Tax Commission ("MTC") may be used by a purchaser for the purpose of purchasing tangible personal property that will be resold, leased, or rented in the normal course of the purchaser's retail business. See SC Revenue Procedure #08-2 for further information on the acceptance of a resale certificate, Form ST-8A, and the liability for the tax.

2. DIRECT PAY AND EXEMPTION CERTIFICATES

Manufacturers and other taxpayers may operate a business of the nature that makes it impractical to account for sales and use taxes at the time of purchase. In such cases, S.C. Code Ann. § 12-36-2510 provides that the Department may issue a certificate to authorize taxpayers to make some or all purchases at wholesale or tax free. The holder of a certificate, not the retailer, is liable for any sales and use taxes which may be due on the items purchased with the certificate.

The Department issues two types of certificates: (1) the "direct pay" certificate and (2) the "limited exemption" certificate. Each is briefly discussed below:

- **Direct Pay Certificate**. This certificate enables the taxpayer issued the certificate to purchase all items free of the sales and use tax and to remit the tax due on items subject to sales and use tax. This is available only for large projects and the use of the method is at the sole discretion of the Department. The direct pay certificate is also referred to as a "Special 19 Agreement."

  Further, S.C. Code Ann. § 12-36-2570(E) allows the Department to enter into a written agreement with a taxpayer having a direct pay certificate to allow the taxpayer to remit the sales and use tax on statistical factors set forth in a memorandum of understanding. This method only applies to purchases of routine expense items by the taxpayer for its use, storage, or consumption, and not to purchases by the taxpayer for resale (which are exempt).

- **Limited Exemption Certificate**. This certificate enables the taxpayer issued the exemption certificate to purchase only those items specifically indicated on the certificate free of sales and use tax. For example, the certificate may show that only machinery and electricity may be purchased tax free. The sales and use tax must be paid on all other purchases at the time of sale. The limited exemption certificate is also referred to as a "special" exemption certificate.

To request a certificate, the taxpayer must submit an application on Form ST-10, "Application for Certificate." Usually, a visit will be made to the taxpayer's business to determine if a certificate should be issued. Once approved, the Department will issue the taxpayer an

exemption certificate on Form ST-9. The taxpayer should provide a copy of the certificate to the retailer; however, it is not necessary to provide a copy each time a purchase is made.

3. MACHINES USED IN RECYCLING

S.C. Code Ann. § 12-36-2120(17) exempts machines used in recycling tangible personal property for sale. "Recycling" is defined to mean any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused, or returned to use in the form of raw materials or products, including composting, for sale.

4. MATERIAL HANDLING SYSTEMS AND EQUIPMENT

S.C. Code Ann. § 12-36-2120(51) exempts from sales and use tax material handling systems and material handling equipment used in the operation of a distribution[1] or manufacturing facility including, but not limited to, racks, regardless of whether the racks are used to support all or part of the facility. A port facility as defined in S.C. Code Ann. § 12-6-3375 is considered a distribution facility for purposes of this exemption. S.C. Code Ann. § 12-36-2140. An investment of $35 million in real or personal property in South Carolina over a 5-year period is required to qualify for this exemption.

Note: If an agribusiness invests at least $100 million in South Carolina, it will be eligible for the material handlings exemption for State Fiscal Year 2022-2023. See Temporary Proviso 117.146 (2022 Act No. 239, Part 1B). This proviso will expire on June 30, 2023 unless renewed by the General Assembly.

To qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption. This notification must provide the date the taxpayer intends for the 5-year investment time period to begin.

In addition, the taxpayer must notify the Department in writing when the $35 million investment requirement has been met. If the investment requirement has not been met at the end of the 5-year investment period, the taxpayer must notify the Department in writing. The running of the period of limitations for assessment of taxes is suspended beginning with the notice to the Department that the exemption will be used and ending with the notice that the investment requirement has or has not been met.

See SC Revenue Ruling #13-3 for answers to commonly asked questions on the material handling systems exemption. This advisory opinion concluded, in part:

- Only material handling systems and material handling equipment used in distribution or manufacturing facilities qualify for the exemption.

[1] Under Temporary Proviso 50.20 (2022 Act No.239, Part 1B the Navy Base Intermodal Facility is considered a distribution facility for the purpose of this exemption for State Fiscal Year 2022-2023.

- Purchases of replacement and repair parts qualify for the exemption.

- The investment may be made anywhere in South Carolina and the investment does not have to be made at the same location where the exemption is taken.

- The investment is limited to real or personal property in South Carolina. Expenditures for wages, employee benefits, taxes, raw materials, and inventory do not meet the investment requirement.

5. CONSTRUCTION CONTRACTOR

a. General Information

S.C. Code Ann. § 12-36-110 provides that a construction contractor is the user or consumer of everything he buys. A "construction contractor" is a person or business making repairs, alterations, or additions to real property. See S.C. Code Ann. Regs. 117-314.2.

In general, purchases by construction contractors are retail purchases and are subject to South Carolina sales or use tax. S.C. Code Ann. § 12-36-1310(A) provides that if a contractor buys building materials in another state and brings them into South Carolina for use on a construction contract in South Carolina, then the contractor is liable for South Carolina use tax. A credit is allowed against South Carolina use tax for the total taxes (state and local) due and paid in another state pursuant to S.C. Code Ann. § 12-36-1310(C).

The following are examples of transactions where the contractor is not subject to South Carolina sales and use tax:

1. The contractor buys property from a South Carolina supplier and the supplier delivers the property to the contractor (or to an agent or donee of the contractor) outside South Carolina. See S.C. Code Ann. § 12-36-2120(36).

2. The contractor purchases tangible personal property in South Carolina for use on contracts outside South Carolina. To come within this exclusion, the contractor must perform some work on the property in South Carolina and the property must not be brought back into South Carolina. See S.C. Code Ann. § 12-36-110(2).

b. Construction Contracts with Manufacturers

Unlike most purchases by construction contractors, the purchase of materials that are components of machines which are used in manufacturing tangible personal property for sale may be purchased tax free. See S.C. Code Ann. Regs. 117-302.5. Often, a construction contractor will have a contract with a manufacturer, processor, or compounder who has an exemption certificate and is entitled to the exemption for machines, parts, and attachments.

Since construction contractors usually cannot make tax free purchases, the Department has developed several methods by which a contractor may purchase tax free all items to be used in building machines, parts, and attachments for manufacturers who are exempt from tax. These methods are:

- Manufacturer Letter to Contractor's Suppliers – The manufacturer furnishes documentation, in the form of a letter, to the contractor's suppliers establishing that the item is not subject to the tax. The contractor does not use the manufacturer's exemption certificate.

- Agency Agreement – The contractor enters into a limited agency agreement with the manufacturer and the contractor is allowed to use the manufacturer's exemption certificate. As an agent, the contractor is legally acting for the manufacturer. The manufacturer is liable for any taxes due, so it is important for the agreement to be in writing and clearly state what the contractor can and cannot buy with the certificate. This is usually used for large projects.

- Department Special Agreement – The Department executes a special agreement with the manufacturer whereby the manufacturer will accept liability and responsibility for payment of all the sales and use tax due on the project. This is only available for large projects and the use of this method is at the sole discretion of the Department. This is referred to as a "Special 19 Agreement."

- Single Sale Exemption Certificate – The contractor completes Form ST-8 and extends it to the supplier indicating the purchase is exempt under S.C. Code Ann. § 12-36-2120(17). A certificate must be extended for each purchase. The contractor assumes full liability for the tax if it is determined that the purchase was used for a non-exempt purpose.

c. Light Construction Equipment

S.C. Code Ann. § 12-36-2110(A)(1)(g) provides a maximum sales or use tax of $500 on purchases of light construction equipment. The equipment must be self-propelled with a maximum of 160 net engine horsepower. Form ST-405 may be completed by the purchaser and given to the retailer in order to limit the tax to $500. The local option sales and use taxes collected by the Department do not apply to sales subject to the $500 maximum tax.

If light construction equipment is leased, it is subject to the $500 maximum tax if the lease is in writing, has a stated term, and remains in force for a period in excess of 90 continuous days. The taxpayer may pay the total tax due at the time the lease is executed or with each lease payment until the $500 is paid.[2]

[2] If the property is required to be registered with SC Department of Motor Vehicles (SCDMV) under Chapter 3 of Title 56, an Infrastructure Maintenance Fee applies upon first registration with SCDMV, and sales and use taxes do not apply.

In SC Technical Advice Memorandum #89-13, the Department concluded that the maximum tax[3] does not apply to equipment used to maintain or repair property, such as tractors, loaders, and other self-propelled equipment used to maintain golf courses, parks, and campgrounds.

d. Construction Material Used to Construct a Single Manufacturing or Distribution Facility

S.C. Code Ann. § 12-36-2120(67) exempts from sales and use tax construction materials used in the construction of a single manufacturing or distribution[4] facility, or one that serves both purposes, with a capital investment of at least $100 million in real and personal property at a single site in the state over an 18-month period. A port facility as defined in S.C. Code Ann. § 12-6-3375 is considered a distribution facility for purposes of this exemption. S.C. Code Ann. § 12-36-2140.

Note: If an agribusiness invests at least $100 million in South Carolina, it will be eligible for the exemption for State Fiscal Year 2022-2023. See Temporary Proviso 117.146 (2022 Act No. 239, Part 1B). This proviso will expire on June 30, 2023 unless renewed by the General Assembly.

To qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption. This notification must provide the date the taxpayer intends for the 18-month investment time period to begin.

In addition, the taxpayer must notify the Department in writing when the $100 million investment requirement has been met. If the investment requirement has not been met at the end of the 18-month investment period, the taxpayer must notify the Department in writing. The running of the period of limitations for assessment of taxes is suspended for the time period beginning with notice to the Department before the exemption is used and ending with notice that the investment requirement has or has not been met. See SC Revenue Ruling #15-2.

6. CONTRACTS WITH THE FEDERAL GOVERNMENT

S.C. Code Ann. § 12-36-2120(29) exempts from sales and use tax tangible personal property purchased by a person under written contract with the federal government that

- Becomes part of real or personal property owned by the federal government or
- Transfers to the federal government, pursuant to a written contract.

The exemption does not apply to purchases of items which do not transfer to the federal government, such as tools. Purchases made by contractors under contracts with state, county, and municipal governments are not exempt from sales and use tax.

[3] The maximum tax was increased to $500 as of July 1, 2017.
[4] Under Temporary Proviso 50.20, (2022 Act No.239, Part 1B) the Navy Base Intermodal Facility qualifies for the construction materials exemption for State Fiscal Year 2022-2023.

Further, S.C. Code Ann. Regs. 117-314.11 (see also SC Revenue Ruling #04-9) provides that purchases by a construction subcontractor for use in a federal government construction project in South Carolina are exempt if: (a) the subcontractor has a written contract with the general construction contractor that in turn has a written contract for the project with the federal government, and (b) the subcontractor is an agent for the general contractor. In addition, purchases by a subcontractor of the subcontractor for use in a federal government construction project in South Carolina are not subject to the sales and use tax if the general contractor that has the written contract with the federal government has specifically granted his agent the authority to appoint a subagent that can bind the general contractor. The agency agreements with the subcontractors (as agents or subagents) must be in writing to meet the exemption requirement. See S.C. Code Ann. Regs. 117-314.11 (see also SC Revenue Ruling #04-9) for the conditions that must be met for a subcontractor to be an agent for a general contractor.

7. RESEARCH AND DEVELOPMENT MACHINERY

S.C. Code Ann. § 12-36-2120(56) provides an exemption from sales or use tax for machines used in research and development (i.e., machines used directly and primarily in research and development, in the experimental or laboratory sense, of new products, new uses for existing products, or improvement of existing products). SC Revenue Ruling #08-3 provides that for a machine to qualify for this exemption more than 50% of its total use must be for direct use in research and development, as defined in the exemption.

“Machines” includes machines and 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. (See Business Property Tax, Chapter 4, Section 5, which addresses a property tax exemption for facilities engaged in research and development.)

8. TECHNOLOGY INTENSIVE FACILITY

S.C. Code Ann. § 12-36-2120(65)(a) exempts computer equipment used in connection with a technology intensive facility from the sales and use tax. S.C. Code Ann. § 12-36-2120(66) exempts electricity used by a technology intensive facility that qualifies for the exemption in S.C. Code Ann. § 12-36-2120(65), and the equipment and raw materials including, without limitation, fuel used by such facility to generate, transform, transmit, distribute, or manage electricity for use in the facility.

In order to qualify for these exemptions, the taxpayer must:

1. Invest at least $300 million in real or personal property, or both, at the facility over a 5-year period;

2. Create at least 100 new jobs at the facility during that 5-year period, and the average cash compensation of at least 100 of the new jobs is 150% of the per capita income of the State according to the most recently published data available at the time the facility's construction starts; and

3. Spend at least 60% of the $300 million on computer equipment.

The terms "technology facility" and "computer equipment" are defined as:

1. "Technology intensive facility" - a facility at which a firm engages in the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge. It includes North American Industrial Classification Systems ("NAICS") Manual codes 5114 (database and directory publishers), 5112 (software publishers), 54151 (computer systems design and related services), 541511 (custom computer programming services), 541512 (computer design services), 541711 (research and development in biotechnology), 541712 (research and development in physical, engineering, and life sciences (except biotechnology)), 518210 (data processing hosting and related services), 9271 (space research and technology), or a facility primarily used for one or more activities listed under the 2002 version of the NAICS codes 51811 (internet service providers and web search portals). See S.C. Code Ann. § 12-6-3360(M)(14)(b).

2. "Computer equipment" - original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.

These exemptions have certain notification requirements to be followed by the taxpayer. The exemptions apply from the start of the investment in, or construction of, the facility. Once the Department certifies that the taxpayer has met the investment and job requirements, all subsequent purchases of, or investments in, computer equipment, including to replace originally deployed computer equipment or to implement future expansions, qualify for the exemption, regardless of when the taxpayer makes the investments.

9. QUALIFIED RECYCLING FACILITY

S.C. Code Ann. § 12-36-2120(50) provides an exemption from sales and use tax for

- Recycling property used at the facility.

- Electricity, natural gas, propane or fuels of any type, oxygen, hydrogen, nitrogen or gases of any type, and fluids and lubricants used by the facility.

- Tangible personal property which becomes, or will become, an ingredient or component part of products manufactured for sale by the facility.

- Tangible personal property of, or for, the facility which is, or will be used: (1) for the handling or transfer of post-consumer waste material, (2) in, or for, the manufacturing process, or (3) in, or for, the handling or transfer of manufactured products.

- Machinery and equipment foundations used, or to be used, by the facility.

The requirements to qualify for this exemption include a minimum level of investment for the recycling facility of at least $300 million by the end of the fifth calendar year after the year in which the taxpayer begins construction or operation of the facility.

Further, the facility must manufacture products for sale composed of at least 50% post-consumer waste material by weight or volume. The definitions of the terms "recycling property," "qualified recycling facility," and "post-consumer waste material" are defined in S.C. Code Ann. § 12-6-3460.

10. CLEAN ROOM ENVIRONMENT

S.C. Code Ann. § 12-36-2120(54) exempts from sales and use tax the sale of clothing and other attire required for working in a Class 100 or better clean room environment, as defined in Federal Standard 209E.

11. SALE OF BUSINESS

S.C. Code Ann. § 12-36-2120(42) exempts from sales and use tax the sale of depreciable assets used in the operation of a business pursuant to the sale of the business. This exemption only applies where the entire business is sold by the owner pursuant to a written contract and the purchaser continues its operation. Purchases of real property, inventory for resale, and intangibles are always exempt.

Under SC Revenue Advisory Bulletin #01-1, the sale of a business will qualify as the sale of the entire business when:

1. The taxpayer sells all the assets of the legal entity (other than a single member limited liability company or a grantor trust which is ignored for tax purposes), or

2. The taxpayer sells all of the assets of a "discrete business enterprise" that is contained within the legal entity.

The Department further determined that whether a taxpayer has sold a discrete business enterprise is determined under the principles relating to a unitary business as set forth in the

case law of the South Carolina courts and the United States Supreme Court. If the business being sold is not unitary with other businesses of the taxpayer, the taxpayer will be considered to have sold a discrete business enterprise and will qualify for the exemption.

12. COMPUTER SERVICES AND SOFTWARE

S.C. Code Ann. § 12-36-910(C) provides that sales and use tax does not apply to data processing. As used in the statute, "data processing" means the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers.

The term also means the electronic transfer of, or access to, that information. Examples of data processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers.

The applicability of sales and use tax to the sale or purchase of computer software depends upon the form of the software sold. Computer software sold and delivered to a purchaser in a tangible form, such as magnetic tape, diskette, or flash drive is subject to sales and use tax. See *Citizens and Southern Systems, Inc. v. South Carolina Tax Commission,* 280 S.C. 138, 311 S.E.2d 717 (1984). In SC Revenue Rulings #96-3 and #12-1, the Department concluded that computer software sold and delivered by electronic means is not subject to sales and use tax since it does not meet the definition of tangible personal property. See SC Revenue Rulings #12-1 and #11-2 for more information on the taxation of computer software, hardware, and maintenance contracts.

13. REPAIRING AND RECONDITIONING AIRCRAFT

S.C. Code Ann. § 12-36-2120(52) exempts from sales and use tax parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft. This exemption does not extend to tools and other equipment not attached to the aircraft or that do not become a part of the aircraft.

14. GOODS SHIPPED FROM SOUTH CAROLINA

S.C. Code Ann. § 12-36-2120(36) provides that when the seller is obligated by contract to deliver tangible personal property to the buyer or to an agent or donee of the buyer at a point outside of South Carolina or to deliver it to a carrier or to the mails for transportation to the buyer or to an agent of the buyer at a point outside this state, the sales and use tax does not apply provided the property is not returned to a point within South Carolina. The most acceptable proof of transportation outside South Carolina is: (1) a way-bill or bill of lading made to the seller's order and calling for delivery, (2) an insurance receipt or registry issued by the U.S. Postal Department, or a Postal Department Form 3817, or (3) a trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside this state

who received the goods delivered. The tax applies when tangible personal property pursuant to a sale is delivered in South Carolina to the buyer or to an agent other than a carrier even though the buyer may subsequently transport the property out of South Carolina.

15. INTERSTATE AND INTERNATIONAL COMMERCE

S.C. Code Ann. § 12-36-2120(13), (20), (21), and (40) exempt from sales and use tax railroad cars, locomotives and their parts; vessels and barges of more than 50 tons burden; containers and chassis, including all parts and components sold to international shipping lines which have a contractual relationship with the South Carolina State Ports Authority and are used for the import or export of goods to or from this state; and fuel, lubricants, and supplies for use or consumption aboard ships in intercostal trade or foreign commerce.

S.C. Code Ann. Regs. 117-321.1 provides that the exemption in S.C. Code Ann. § 12-36-2120(13) for supplies used or consumed aboard ships in intercostal trade or foreign commerce does not apply to: (1) sales of materials used in fulfilling a contract for the painting, repair, or reconditioning of vessels, barges, ships, or other watercraft, and (2) sales of fishing craft, tugs, vessels, or other watercraft not used in trade or commerce between South Carolina ports and ports of other states or foreign countries.

Ship chandlers sell marine supplies to operators of all kinds of watercraft and to others. S.C. Code Ann. Regs. 117-309.7 provides that sales by ship chandlers of fuel, lubricants, and supplies for use aboard ships plying on the high seas engaged in trade or commerce between South Carolina ports and ports of other states and foreign countries are not subject to the tax. All other sales made by ship chandlers, not for resale, are taxable except for tangible personal property delivered to a ship from a bonded warehouse in the custody and under the supervision of United States Customs officials, who deliver such properties aboard ships to a locked compartment on which a custom seal is placed, which seal by federal rule cannot be broken until the vessel has passed the 12-mile limit.

16. BROADCAST EQUIPMENT

S.C. Code Ann. § 12-36-2120(26) exempts from sales and use tax the sale of all supplies, technical equipment, machinery, and electricity to radio, television, and cable television systems for use in producing, broadcasting, or distributing programs. For the purpose of this exemption, radio stations, television stations, and cable television systems are deemed to be manufacturers. See S.C. Code Ann. Regs. 117-328.

For a discussion concerning the taxation of software used by television and radio stations for broadcasting, see SC Private Letter Ruling #12-1.

17. MOTION PICTURE INDUSTRY

South Carolina Code Title 12, Chapters 36 and 62 contain two film industry sales and use tax incentives designed to promote South Carolina as a filming location. The incentive available in Chapter 62 is a sales and use tax exemption for all qualifying tangible personal property used in connection with the South Carolina filming by a "motion picture production company" that is approved by the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism ("Film Commission"). The other incentive is a sales and use tax exemption for certain supplies, machinery, and electricity used by a "motion picture company" for use in filming or producing motion pictures in South Carolina. Since the qualifying requirements and approval process of each incentive differs, the applicable South Carolina law should be carefully reviewed.

A general overview of each incentive is provided below.

a. "Motion Picture Production Company" Comprehensive Exemption

To qualify for the sales and use tax exemption provided in S.C. Code Ann. § 12-62-30 on funds expended in South Carolina in connection with the filming or production of motion pictures in South Carolina, a motion picture production company must meet the following criteria:

1. The company must be a "motion picture production company" (herein referred to as "Company") as defined in S.C. Code Ann. § 12-62-20(4). The Company must be engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. It cannot be a Company owned, affiliated, or controlled, in whole or in part, by a Company or person that is in default on a loan made by the State or a loan guaranteed by the State.

   A "motion picture" is defined in S.C. Code Ann. § 12-62-20(3) as a feature-length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a Company. It does not include the production of television coverage of news and athletic events or a production produced by a Company if records, as required by 18 U.S.C. 2257, are to be maintained by that Company with respect to any performer portrayed in that single media or multimedia program.

2. The Company must intend to spend $250,000 or more in the aggregate in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12-month period.

3. The Company must complete an application and obtain approval as a certified motion picture production company from the Film Commission. An estimate of the total expenditures expected to be made in South Carolina in connection with the filming or production must be filed with the Film Commission before South Carolina filming begins.

The application and certification procedures can be obtained from the Film Commission at 803-737-1785. There is no application fee.

Important points to remember concerning this exemption are listed below.

- Once the Film Commission notifies the Department of Revenue that the Company is approved and meets the qualifying requirements, the Department will issue Company a Form ST-433, "Motion Picture Production Company Sales and Use Tax Exemption Certificate." The Company should provide a copy of the exemption certificate to the retailer to purchase items used in connection with the South Carolina filming free of sales and use tax.

- This exemption applies to the 6% state sales and use taxes, the 7% state sales tax on accommodations, the 6% sales tax on additional guest charges, any vehicle license fee that may be imposed, the 11% sales and use tax on 900/976 telephone numbers, and any local sales and use taxes collected by the Department on behalf of a local jurisdiction.

- The exemption expires on the date filming or production ends.

- An approved Company that fails to spend $250,000 within a consecutive 12-month period is liable for the sales and use taxes that would have been paid had the approval not been granted. **NOTE**: Such a Company may be eligible for the more restrictive sales and use tax exemption applicable to supplies and equipment discussed in item (b) below.

- Expenditures that qualify toward the $250,000 requirement include purchases of services or intangibles in South Carolina, purchases or rentals of tangible personal property in South Carolina, and purchases or rentals of real property located in South Carolina.

- The exemption certificate may only be used by the Company in whose name the certificate has been issued since the exemption only applies to sales to, or purchases by, the Company.

- This incentive does not apply to the production of television coverage of news and athletic events.

For more information on this incentive, see SC Revenue Ruling #08-12.

b. "Motion Picture Production Company" Limited Exemption for Supplies and Equipment

S.C. Code Ann. § 12-36-2120(43) exempts from sales and use tax supplies, technical equipment, machinery, and electricity sold to motion picture companies for use in filming or producing motion pictures in South Carolina.

The terms “motion picture company” and “motion picture” defined in Chapter 36 of Title 12 differ from the terms “motion picture production company” and “motion picture” defined in Chapter 62 of Title 12, as discussed above in item (a). The definitions applicable to this exemption are:

1. “Motion picture company” is a company generally engaged in the business of filming or producing motion pictures.

2. “Motion picture” is any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media.

Important points to remember concerning this exemption are listed below.

- To receive an exemption certificate for this limited exemption, the motion picture company must apply to the Department of Revenue on Form ST-10, “Application for Certificate.” There is no application fee. Usually, a visit will be made to the motion picture company’s site to determine if a certificate should be issued.

- Once approved, the Department will issue the motion picture company an exemption certificate on Form ST-9. A copy of this certificate should be given to the retailer upon purchase of the exempt item.

- The exemption applies to all state sales and use taxes and all local sales and use taxes collected by the Department on behalf of a local jurisdiction.

- An application to, or approval from, the Film Commission is not needed for this exemption.

c. Other Incentives

See Business Income Tax, Chapter 2, Sections 28 – 31, for more information on income tax credits for investments in a motion picture project or motion picture production facility, an income tax credit for commercial productions, and rebates for a motion picture production company.

18. AUDIOVISUAL MASTER

S.C. Code Ann. § 12-36-2120(55) exempts from sales and use tax audiovisual masters made or used by a production company in making visual and audio images for a first generation reproduction. The term “audiovisual master” is defined as an audio or video film, tape, or disk, or another audio or video storage device from which all other copies are made. The term

"production company" is defined as a person or entity engaged in the business of making motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes.

19. CONTRACTING WITH COMMERCIAL PRINTERS

S.C. Code Ann. § 12-36-75 provides that certain activities of a person contracting with a commercial printer for printing generally 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. Activities performed pursuant or incident to a printing contract by, or on behalf of, a person at the South Carolina premises of the commercial printer.

4. Activities performed pursuant or incident to a printing contract by the commercial printer in South Carolina for or on behalf of a person.

Further, 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.

20. DIRECT MAIL ADVERTISING

S.C. Code Ann. § 12-36-2120(58) exempts from sales and use tax cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or nonprofit convention and visitor bureaus, delivered by means of interstate carrier, a mailing house, or a United States Post Office to South Carolina residents free of charge, from locations inside and outside South Carolina.

For purposes of this exemption, "cooperative direct mail promotional advertising materials" means discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material. See also, S.C. Code Ann. § 12-36-140(C)(3).

21. SALES TAX HOLIDAY

a. Back to School Holiday

S.C. Code Ann. § 12-36-2120(57) provides for an annual three-day "sales tax holiday" beginning 12:01 a.m. on the first Friday in August and ending at midnight the following Sunday.

This sales tax exemption applies to sales of (1) clothing, clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags; (2) footwear; (3) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, book bags, lunchboxes, and calculators; (4) computers, printers and printer supplies, and computer software; and (5) bath wash cloths, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs, pillows, and pillow cases.

This sales tax exemption does not apply to (1) a sale or lease of an item for use in a trade or business; (2) sales of jewelry, cosmetics, eyewear, wallets, watches, and furniture; (3) a sale of an item placed on layaway or similar deferred payment and delivery plan however described; or (4) rental of clothing or footwear.

Before July tenth of each year, the Department is required to publish a list of items qualifying for the exemption. See SC Revenue Ruling #19-4 for a list of examples of items that are exempt from sales and use tax during the sales tax holiday and answers to commonly asked questions about the sales tax holiday.

22. DATACENTER EXEMPTION

S.C. Code Ann. § 12-36-2120(79) exempts from sales and use tax (a) computers, computer equipment and computer hardware and software used within a qualifying datacenter, and (b) electricity used by a qualifying datacenter and "eligible business property" located and used at the qualifying datacenter. Electricity used for purposes unrelated to the datacenter, such as electricity used in administrative offices, parking lots, storage warehouses, cafeterias, maintenance shops and similar activities is not exempt.

For purposes of the exemption:

"Computer" is defined as an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

"Computer equipment" is defined as computer hardware and components (including servers, routers, power units, network devices, hard drives, processors, motherboards, cooling systems, etc.) the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.

“Computer software” is defined as a set of coded of instructions designed to cause a computer or automatic data processing equipment to perform a task.

“Datacenter” is defined as a new or existing facility at a single location in South Carolina that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility.

“Eligible business property” is defined as property used for the generation, transformation, transmission, distribution, or management of electricity, including exterior substations, and other business personal property used for these purposes.

In order to qualify for the exemption, the datacenter facility must be certified by the South Carolina Department of Commerce and the following requirements must be met:

1. The taxpayer must invest at least $50 million in real and/or personal property over a 5-year period. If two or more taxpayers are investing, the requirement is $75 million.

2. The taxpayer must create and maintain at least 25 full-time jobs at the facility with an average cash compensation level of 150% of the per capita income of the State or the county in which the facility is located, whichever is lower. The per capita income levels used to determine eligibility are the most recently published levels available at the time the facility is certified by Commerce. The jobs must be created within the 5-year period.

The taxpayer must maintain the jobs for 3 consecutive years after the datacenter has been certified as having met the investment and job requirements.

The exemption is available to the taxpayer once it has notified both the Department and the Department of Commerce in writing of its intent to claim the exemption and commitment to make the required investment and create and maintain the required number of jobs, and the datacenter has been certified by the Department of Commerce. The taxpayer is required to send a notice to the Department once it has met the minimum job and capital requirements, or at the end of the 5-year investment period if it has not met the requirements. If the taxpayer fails to make the minimum investment or minimum job requirement, the Department may collect the applicable foregone taxes. If the taxpayer meets the capital and job requirements but fails to maintain the jobs for the 3-year period, the taxpayer is not allowed the exemption for computers, computer equipment, and hardware and software purchases until it meets the qualifying jobs requirements. The taxpayer is allowed the exemption for electricity, but the exemption only applies to the percentage of the sales price calculated by dividing the number of qualifying jobs by 25. See SC Revenue Ruling #13-5 for answers to commonly asked questions on the datacenter exemption.

23. MOTORSPORTS ENTERTAINMENT COMPLEX EXEMPTION

S.C. Code Ann. § 12-69-30 exempts from sales and use tax building materials, supplies, fixtures, and equipment for the construction, repair, or improvement of or that become a part of a motorsports entertainment complex (as defined in S.C. Code Ann. § 12-21-2425). To be eligible for this sales and use tax exemption, a company must submit an application to be approved by the Department, receive written certification from the Department, and meet the other requirements of Chapter 69, Title 12.

The company submitting the application to the Department must attach to the application a practical plan to make a capital investment of at least $10,000,000 in any motorsports entertainment complex in South Carolina within the 5-year period immediately following approval of the application; the company must designate a member or representative of the company to work with the Department on reporting the investment. The company may begin using the exemption upon receiving written certification from the Department, and the exemption remains effective until December 31st of the 5th full calendar year after its issuance.

If the company fails to meet the investment requirements, it is liable for, and has 60 days to pay without incurring penalties, the sales and use taxes that would have been paid had the exemption not been granted in the same proportion as the actual investment failed to meet the required investment.

9. INFRASTRUCTURE INCENTIVE FOR TOURISM AND RECREATION FACILITIES

The Tourism Infrastructure Admissions Tax Act in Article 27, Chapter 21 of Title 12 allows a portion of the admissions tax collected at a qualifying tourism and recreation facility ("facility") to be remitted to the county or municipality where the facility is located and to the Infrastructure Fund administered by the South Carolina Coordinating Council for Economic Development ("Council") for making infrastructure improvements.

If a facility meets the requirements of an establishment, the admissions tax will be subject to the provisions of this law for a 15-year benefit period. The amount to be remitted to the county or municipality is 25% of the admissions tax collected at the establishment. An additional 25% of the admissions tax collected at any establishment must be remitted to the Infrastructure Fund. Counties and municipalities located within 5 miles of the establishment may request grants from the Infrastructure Fund, but preference is given to infrastructure that benefits the facility.

To be an establishment, the facility must be:

1. A major tourism or recreation facility. This is a single tourism or recreational facility in which an investment exceeding $20 million is made; or

2. A tourism or recreation facility located in a major tourism or recreation area. This is an area designated by a county or municipality as a designated development area that has one or more tourism or recreation facilities that collect admissions tax where there is a combined investment of at least $20 million.

A tourism or recreation facility can consist of a theme park; an amusement park; a historical, educational or trade museum; a botanical or zoological garden; an aquarium; a cultural center; a theater; a motion picture production studio; a convention center; an arena; a coliseum; an auditorium; a golf course; a spectator or participatory sports facility or any similar establishment that collects admissions tax. Additionally, a "tourism or recreational facility" can be an aquarium or natural history exhibit or museum located within, or contiguous to, an extraordinary retail establishment as described below.

A designated development area must be designated as such by county or municipal ordinance and must include at least one tourism and recreation facility. Such area includes, but is not limited to, a downtown district, a historic district, a waterfront redevelopment area, or redevelopment of a closed military facility. The development area may not exceed 5% of the total acreage of the municipality or county. A municipality or county may create more than one designated development area, but the combined acreage of all development areas may not exceed 10% of the total acreage of the municipality or county.

To have admissions tax collected at an establishment subject to these provisions, the county or municipality in which an establishment is located must submit a certification application on behalf of the establishment to the Department of Parks, Recreation, and Tourism for approval. The application must be filed within 1 year of the end of the investment period. The investment period is a consecutive 60-month period in which the $20 million investment is made. Once certified, the benefits continue for 15 years.

Additionally, the establishment must request that the Council determine whether the $20 million investment creates a new facility or whether it results in the 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 establishment for the 24 months immediately preceding the date the certification application is filed is subject to this statute.

S.C. Code Ann. § 12-21-6590 allows the Department of Parks, Recreation, and Tourism to designate up to 4 qualifying facilities as "extraordinary retail establishments." Instead of the admissions tax being subject to the Tourism Infrastructure Admissions Tax Act, a qualifying establishment's sales tax collected is subject to the Act. The extraordinary retail establishment is not required to collect admissions tax. An extraordinary retail establishment is a single store located in South Carolina that is located in a county with at least 3.5 million visitors a year or which is located within 2 miles of an interstate highway. It must attract at least 2 million visitors a year with at least 35% of those visitors traveling at least 50 miles to the extraordinary retail establishment and it must remit at least $2 million in sales tax each year. Additionally, it must have a capital investment of at least $25 million, including land, building, and site preparation costs, and one or more hotels must be built to service the extraordinary retail establishment within 3 years of occupancy.

Prior to completion of the extraordinary retail establishment, the entity operating the extraordinary retail establishment and the county in which it is located may request the Department of Parks, Recreation, and Tourism to conditionally certify the extraordinary retail establishment. The Department of Parks, Recreation, and Tourism may grant this conditional certification based on reasonable projections that the extraordinary retail establishment will meet all requirements within 3 years of issuance of a certificate of occupancy. Conditional certification provides limited benefits to an extraordinary retail establishment; however, it cannot receive monetary benefits prior to satisfying the requirements of the conditional certification and the provisions contained in the definition of a "tourism and recreational facility."

If the extraordinary retail establishment obtains conditional certification and complies with both the conditional certification and the requirements contained in the definition of a "tourism or recreational facility" then 50% of the sales tax collected by the extraordinary retail establishment will be remitted to the county in which it is located and no amounts will be remitted to the Infrastructure Fund administered by the Council.

NOTE: Effective July 1, 2022 through June 30, 2023, up to $114,000 in admissions tax revenue collected annually from all events held at a NASCAR sanctioned motor speedway or racetrack that hosts at least one race each year featuring the preeminent NASCAR cup series must be rebated to the motorsports entertainment complex facility in the current fiscal year to keep a NASCAR race at the facility. In addition, any sports facility that hosts at least one preeminent Women's Tennis Association sanctioned tournament or any sports facility that operates as the home venue for a professional soccer team that participates in the United Soccer Leagues, second division or higher, must be rebated half of its admissions tax revenue for the fiscal year and used by that facility for marketing the events held at the facility. See, 2022 House Bill 5150, Part IB, Section 118, Proviso 118.7 (Act No.239).

10. PHONE AND FAX NUMBERS

NOTE: Additional phone numbers are available on the Department's website at **www.dor.sc.gov**.

PHONE NUMBERS:

Contact Center – General Information 1-844-898-8542

Income Tax:

Corporate Income Tax.....CorpTax@dor.sc.gov .....1-844-898-8542 (Option 2 then 6)
Individual Income Tax.....IITax@dor.sc.gov .....1-844-898-8542 (Option1, then 2)
Withholding .....WithholdingTax@dor.sc.gov ..1-844-898-8542 (Option 2 then 5)

Property Tax:

Property Tax Exemptions.....Property.Exemptions@dor.sc.gov .....(803) 898-5158
Fee in Lieu of Property Taxes....Manufacturing.PropertyTax@dor.sc.gov .....(803) 898-5311
Manufacturing Property .....Manufacturing.PropertyTax@dor.sc.gov .....(803) 898-5311
Business Personal Property .....BPProperty@dor.sc.gov .....(803) 898-5207

Sales and Use Taxes .....SalesTax@dor.sc.gov .....1-844-898-8542 (Option 2 then 4)

Infrastructure Incentive for Tourism and Recreation Facilities.....(803) 920-2388

SERVICES

Compliance and Recovery Section.....COCRequests@dor.sc.gov.....(803) 898-5485
Forms Request .....forms@dor.sc.gov ..... 1- (844)898-8542
Taxpayer Advocate.....TaxpayerAdvocate@dor.sc.gov.....(803) 898-5444
Registration .....RegistrationforTaxes@dor.sc.gov..... 1-(844)898-8542(option 2 then 2)
Telecommunications Device for the Deaf .....711 in South Carolina
..... 1-(800) 735-8583 outside of South Carolina

NOTE: Tax forms, advisory opinions, publications, and other tax information are available on the Department's website at www.dor.sc.gov.

TAXPAYER SERVICE CENTERS

North Charleston.....2070 Northbrook Blvd., Suite B7 .....(843) 953-6174
Columbia (Main Office).....300A Outlet Pointe Blvd.....(803)898-5601
Florence .....181 East Evans Street, Suite 5.....(843) 552-4957
Greenville.....33 Villa Road, Suite 401 .....(864) 720-2227
Myrtle Beach.....1350 Farrow Parkway, Suite 200 .....(843) 492-2056
Rock Hill.....775 Addison Avenue, Suite 201 .....(803) 909-8771

OTHER STATE AGENCIES/OFFICES

Coordinating Council for Economic Development .....(803) 737-0400
Department of Archives & History (Historic Rehabilitation) .....(803) 896-6174
Department of Commerce .....(803) 737-0400
Department of Health and Environmental Control .....(803) 898-3432
Department of Insurance .....(803) 737-4910
Department of Labor, Licensing and Regulation .....(803) 896-4300
Department of Parks, Recreation and Tourism .....(803) 734-1700
Department of Social Services .....(803) 898-7601
Department of Employment and Workforce..... 1-(866) 831-1724
Film Commission .....(803) 737-1785
Secretary of State.....(803) 734-2158
State Treasurer (College Investment Program) ..... 1-(888) 244-5674
Workers Compensation Commission .....(803) 737-5700

OTHER FEDERAL AGENCIES

Internal Revenue Service .....(803) 545-5640
Social Security Administration ..... 1-(800) 772-1213
Department of Labor .....(803) 765-5981