
State of South Carolina
Department of Revenue
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Website Address: <http://www.sctax.org>

SC INFORMATION LETTER #05-6

SUBJECT: Legislative Summary Update for 2004

DATE: January 21, 2005

MODIFIES: SC Information Letter #04-20

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2000)
SC Revenue Procedure #03-1

SCOPE: An Information Letter is a written statement issued to the public by the Department to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value, and is not binding on the public or the Department.

South Carolina Information Letter #04-20 was issued on September 10, 2004, and briefly summarized most of the significant changes in tax and regulatory laws and regulations that were enacted by the General Assembly during the last legislative session. This information letter indicated that Senate Bill 767, Senate Bill 1043, House Bill 3065, House Bill 3530, House Bill 4537, House Bill 4709, and House Bill 4735 had not been signed or vetoed by the Governor, and that House Bill 5085 had been vetoed by the Governor, but the veto could be overridden by the Legislature in the 2005 legislative session. The Governor has now signed these bills, let them become law without his signature, or vetoed the bills and the Legislature sustained the veto.

Attached is a brief summary, by tax type, of Senate Bill 767, Senate Bill 1043, and House Bill 4709 that were signed by the Governor, and House Bill 3530, House Bill 4537, and House Bill 4735 that become law without the Governor's signature.

House Bill 3065 and House Bill 5085 were vetoed by the Governor, and his vetoes were not overridden by the Legislature. Interested persons can find a brief summary of these bills in SC Information Letter #04-20.

A complete copy of the 2004 legislation discussed in this information letter can be obtained from the following website: <http://www.scstatehouse.net/html-pages/research.html> and clicking on "Archives" and "Legislation Since 1975."

INCOME TAXES AND WITHHOLDING

Senate Bill 767, Section 2 (Act No. 308)

SC Military Family Relief Fund Check Off

Code Section 12-6-5060(A), providing for various income tax check offs, has been amended to provide for a designation on South Carolina's individual income tax form enabling a taxpayer to make a contribution to the South Carolina Military Family Relief Fund established pursuant to Article 3, Chapter 11 of Title 25. The funds are used to provide grants to families of SC National Guard members or other Reserve component members, to include the Army Reserve, Marine Corps Reserve, Naval Reserve, Air Force Reserve, and Coast Guard Reserve, and including National Guard members of other states, who are South Carolina residents and were called to active military service as a result of the September 11, 2001, terrorist attacks.

Effective Date: For individual income tax returns due to be filed April 15, 2005 and thereafter.

Senate Bill 1043 (Act No. 316)

Military Facilities Redevelopment Law Amended

Chapter 12, Title 31 providing rules for redevelopment authorities that are revitalizing and taking over the property of closed or abandoned military facilities, has been amended. Many of the amendments deal with Tax Increment Financing in connection with the redevelopment authority and are summarized below.

1. Code Section 31-12-100(E) has been added to provide that if tax increment financing ("TIF") obligations have been issued by a municipality at the request of a redevelopment authority, the TIF district continues in existence even if the redevelopment authority is dissolved. The TIF district will terminate once the municipality adopts an ordinance dissolving the tax allocation fund and terminating the designation of the redevelopment project area. Until the adoption of the ordinance described above, the municipality holds all the powers for redevelopment plans, the TIF district and TIF obligations that might have been held and exercised by the dissolved redevelopment authority.
2. Code Section 31-12-210(F) has been amended to provide that any obligations for redevelopment projects must be issued no later than 15 years after the adoption of an appropriate ordinance by the municipality concurring in the redevelopment authority's redevelopment plan.

3. Code Section 31-12-270(C) has been amended to provide that upon expiration of the 15 year period for issuance of the obligations and once all redevelopment project costs have been paid, excess funds have been distributed, and the obligations have been retired, the municipality shall adopt an ordinance dissolving the tax allocation and terminating the designation of the redevelopment project area.
4. Code Section 31-12-290 has been amended to provide that during the existence of the special allocation fund created by Chapter 12, Title 31, funds that are not used generally will not be subject to distribution, but may be carried forward and used for future year's obligations and redevelopment costs.
5. Code Section 31-12-300(A)(2) has been amended to provide that for purposes of determining the value of property in the TIF district, the auditor of the county must certify the total equalized assessed value of all taxable real property within the redevelopment project area as of the date of the creation of the redevelopment authority or the date properties were scheduled for disposal by final action of the federal government in the case of properties added after the date of creation of the authority, and certify this amount as the "total initial equalized assessed value" of the taxable property within the redevelopment area. Any other public official that is required to determine this assessed value has to cooperate and assist the county auditor in making this determination.

Effective Date: October 12, 2004

SALES AND USE TAXES

House Bill 4735, Sections 2 and 3 (Act No. Unassigned)

Modular Homes – Partial Exemption and Inapplicability of the Maximum Tax

Code Section 12-36-2120(34) has been amended to increase the exemption for modular homes regulated pursuant to Chapter 43 of Title 23 from 35% to 50% of the gross proceeds of sale of the modular home, whether on-frame or off-frame. The manufacturer must collect the tax and remit it to the Department. For purposes of this exemption, "gross proceeds of sale" equals the manufacturer's net invoice price of the modular home sold, including all accessories built in to the modular home at the time of delivery to the purchaser and not including freight or deposit on returnable materials.

Code Section 12-36-2110(B), concerning the maximum tax on manufactured homes, has been amended to state that the maximum tax for manufactured homes does not apply to single-family modular homes regulated pursuant to Chapter 43, Title 23.

Effective Date: January 13, 2005

House Bill 4537, Section 1.D (Act No. Unassigned)

Aviation Gasoline Defined

Code Section 55-5-20(12), which defines the term “aviation gasoline,” has been amended to include aviation jet fuel within the definition of aviation gasoline. Aviation gasoline now means “gasoline and aviation jet fuel manufactured exclusively for use in airplanes and sold for such purposes.”

As a result of this change, all sales and use tax revenue received from the sale of gasoline, or aviation jet fuel, manufactured exclusively for use in airplanes and sold for such purposes must be credited to the “State Aviation Fund.”

Sales of aviation gasoline, for purposes of the sales and use tax, are reported to the Department on Form ST-403.

Effective Date: January 13, 2005

MISCELLANEOUS

Other Items (Including Local Taxes)

House Bill 3530 (Act No. Unassigned)

Municipal Charges to Telecommunications Providers

Article 20, Chapter 9 of Title 58, which pertains to municipal charges to telecommunication providers for use of public rights-of-way, has been amended. An overview of the major changes includes:

1. Code Section 58-9-2200, relating to various definitions, has been amended to further define “service address” to include the origination point of the telecommunications signal for postpaid calling services and to define the term “postpaid calling service.”
2. Code Section 58-9-2220, relating to maximum rates for business license taxes for retail telecommunications services, has been amended to provide that the maximum business license tax a municipality may levy on the sale of retail communications services is 1% of the gross income derived from the sale.
3. Code Section 58-9-2230, relating to public rights of way and telecommunications services, has been amended to provide that the administrative fee charged in connection with the use of a public right of way under this section is in lieu of any permit fee, encroachment fee, degradation fee, or other fee assessed on a

telecommunications provider for its occupation of or work within the public right of way.

Effective Date: January 13, 2005

Regulatory Matters

House Bill 4709 (Act No. Unassigned)

Bingo - License Requirements for Nonprofit Organizations - Amended

Code Section 12-21-4070 has been amended to reduce from three years to two years the length of time a nonprofit organization must have been active in South Carolina before it may receive a license to conduct bingo. The requirement that the nonprofit be domiciled in this State for three years before it may receive a license to conduct bingo did not change.

Effective Date: November 4, 2004