

SC INFORMATION LETTER #09-20

SUBJECT: Tax Legislative Update for 2009 – Subsequent Legislation

DATE: November 24, 2009

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (Supp. 2008)
SC Revenue Procedure #09-3

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

South Carolina Information Letter #09-14 was issued on July 16, 2009, and briefly summarized most of the significant changes in tax and regulatory laws and regulations enacted during the past legislative session. Since this time, the General Assembly reconvened and passed House Bill 3130 (Act No. 124) on October 28, 2009. The Act was signed by the Governor on October 30, 2009.

This information letter is intended to be a summary of the main points of this legislation; it is not an interpretation by the Department. Please refer to the full text of the legislation for specific details and requirements. A complete copy of this Act can be obtained from the South Carolina Legislative Council's website at <http://www.scstatehouse.net/html-pages/legpage.html>.

House Bill 3130, Section 1 (Act No. 124)

Alternative Method of Income Apportionment - Expanded for Major Projects

Code Section 12-6-2320 provides for alternative methods to fairly apportion income for companies who do business in more than one state. Code Section 12-6-2320(B)(3) has been amended to provide that a taxpayer planning a new facility in South Carolina who (1) invests at least \$750 million in real or personal property, or both, in a single county in South Carolina and (2) creates at least 3,800 full-time new jobs in the county may apply for an alternative apportionment method for up to 10 years. The required investment and job creation must be made within 7 years of the date the taxpayer asks the Department to enter into a contract to use an alternative apportionment method.

A taxpayer may begin operating under the contract beginning with the tax year it is executed. If the taxpayer fails to meet the required job or investment requirements, the Department may assess any tax due. For any subsequent year that the taxpayer fails to maintain 3,800 full-time new jobs, the Department may assess any taxes that are due for that year.

Effective Date: November 1, 2009 and applies to a taxpayer entering into a contract with the Department prior to October 31, 2015.

House Bill 3130, Sections 2 - 4 (Act No. 124)

Sales and Use Tax Exemptions – Expanded for Major Manufacturing Facility

The following amendments to the sales and use tax exemptions in Chapter 36 of Title 12 for fuel, computer equipment and construction material apply to a taxpayer who:

1. Invests at least \$750 million in real or personal property or both comprising or located at a single manufacturing facility over a 7 year period; and
2. Creates at least 3,800 full-time new jobs at the single manufacturing facility during that 7 year period.

Fuel Used for Test Flights and Certain Transportation of Aircraft

Code Section 12-36-2120(9), concerning an exemption for coal, coke or other fuel sold to manufacturers, electric power companies and transportation companies for certain purposes, has been amended to also exempt fuel for a taxpayer meeting the above investment and job requirements for:

1. The generation of motive power for test flights of aircraft by the manufacturer of the aircraft; and
2. The transportation of an aircraft prior to its completion from one facility of the manufacturer of the aircraft to another facility of the manufacturer of the aircraft, not including the transportation of major component parts for construction or assembly, or the transportation of personnel.

Computer Equipment

Code Section 12-36-2120(65), concerning an exemption for computer equipment for qualifying technology intensive facilities, has been expanded to exempt computer equipment used in connection with a manufacturing facility meeting the above investment and job requirements.

The statute continues to define “computer equipment” to mean 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.

Construction Material

Code Section 12-36-2120(67) provides a phased-in exemption for construction materials used in the construction of a single manufacturing or distribution 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. The sale of qualifying construction material will not be fully exempt until July 1, 2011. This exemption has been amended to fully exempt, effective November 1, 2009, the sale of construction material used in the construction of a new or expanded single manufacturing facility meeting the above investment and job requirements.

General Exemption Requirements

1. For purposes of these exemptions, “taxpayer” includes a person who bears a relationship to the taxpayer as described in Internal Revenue Code Section 267(b).
2. The taxpayer must notify the Department in writing before the first month it uses each exemption and must notify the Department in writing that it has met each exemption’s requirements or, after the expiration of the 7 year period, that it has not met the each exemption’s requirements.
3. The Department may assess any tax due on fuel, computer equipment and construction materials purchased tax-free pursuant to this exemption but due the State as a result of the taxpayer’s failure to meet the exemption requirements. The running of the periods of limitations for assessment of taxes provided in Code Section 12-54-85 is suspended for the time period beginning with taxpayer’s notice to the Department that it will use the exemption and ending with taxpayer’s notice to the Department that the exemption’s requirements have or have not been met.

Effective Date: November 1, 2009. These new exemptions for fuel, computer equipment and construction material used in connection with manufacturing facilities meeting the investment and job requirements only apply to taxpayers that notify the Department prior to October 31, 2015 of their intent to utilize these exemptions.