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SC INFORMATION LETTER #91-19

TO: Vicki Ringer  
Public Information Director

FROM: John P. McCormack, Tax Manager  
Tax Policy and Appeals Department

DATE: July 2, 1991

SUBJECT: New Tax Laws

REFERENCE: See Discussions Below

AUTHORITY: S.C. Code Ann. Section 12-3-140 (1976)  
SC Revenue Procedure #87-3

SCOPE: An Information Letter is a temporary document issued for the purpose of disseminating general tax information and to respond to technical questions from within the Commission which are not related to a specific set of facts.

The following is a brief summary of the significant tax laws enacted by the General Assembly during this past legislative session:

INCOME TAX

Senate Bill #393

In order to assist military personnel that are or were stationed in the Persian Gulf as a result of Operation Desert Storm, or who were called to active duty as a result of Operation Desert Storm, the Legislature has:

1) extended the time to file 1990 individual income tax returns and pay 1990 individual income taxes until at least 180 days after the military personnel departs the Persian Gulf or departs the military station to which he or she was called to active duty as a result of Operation Desert Storm. If such returns are filed and taxes paid within this time period, all penalties and interest will be waived.

2) extended the time for filing property tax returns and paying property taxes until June 15, 1991.

The Tax Commission has also been granted the authority, if deemed necessary, to extend the filing of returns and the paying of taxes beyond the dates provided.

For additional information regarding Operation Desert Storm and State taxes, see SC Information Letter #91-18.

Effective Date: May 21, 1991

House Bill #3650 - Section #6 (Appropriations Bill)

Code Section 12-7-460 has been amended to eliminate the 1991 refund installment for Long Term Capital Gains in 1987 (which would have been refunded in 1992). Also, the entire refund has been retroactively eliminated for anyone convicted of a felony with respect to the enactment, amendment, or both of the Long Term Capital Gains Refund provisions.

For additional information, see SC Information Letter #91-14.

Effective Date: June 12, 1991

Senate Bill #165

Code Section 33-14-220(a) has been amended to provide that a corporation that is administratively dissolved for failure to file an income tax return or other reasons can now be reinstated at any time after dissolution providing it brings itself into compliance with respect to filing all delinquent returns and paying all delinquent taxes, penalties and interest. This amendment is applicable to all corporations in a state of dissolution at the time the act becomes effective, regardless of the effective dates of their dissolution. Under prior law a corporation could be reinstated within two or five years of administrative dissolution depending on its date of dissolution.

Effective Date: March 12, 1991.

### House Bill #3270

Code Section 33-14-220(a) has been amended as follows:

- 1) For purposes of reinstatement, a corporation, in order to bring itself into compliance, must now pay all taxes, penalties, and interest whether assessed or not. Prior law required all taxes owed be paid prior to reinstatement.
- 2) As a part of the amendments to the Corporation Act, similar provisions have been extended to foreign corporations that have had their authority to do business in South Carolina revoked.

Other House Bill #3270 provisions are as follows:

- 1) Code Section 12-7-20(5) has been amended to provide a new definition of income tax year which allows the taxpayer to establish its tax year based solely on the basis of which net income is computed. Prior law mandated a calendar year if a fiscal year was not established.
- 2) Code Section 12-19-165 has been amended to allow proration of the corporation license fee when its tax year is changed and a return of less than twelve months is required. The prorated fee cannot be less than the minimum fee of \$25.00.

Effective Date: May 30, 1991.

### House Bill #3043

Code Section 12-7-1710 has been added to require any person who prepares income tax returns for compensation (or who employs persons to prepare income tax returns for compensation) to include his/her signature and taxpayer identification number when filing a return or claim for refund. A penalty in an amount not to exceed \$200 may be applied for failure to provide this information.

Effective Date: For returns filed for taxable years beginning after 1990.

### House Bill #3185

This provision amends Code Section 12-13-30 to exempt Savings and Loan Associations from paying income tax on interest earned on deposits at the Federal Home Loan Bank of Atlanta.

Effective Date: June 4, 1991.

House Bill #3650 - Part II, Section #3 (Appropriations Bill)

Effective for the 1991 and 1992 taxable years only, this bill amends 12-7-435 to limit a taxpayer or his surviving spouse to one three thousand dollar retirement income exclusion annually. Prior law permitted more than one three thousand dollar exclusion if the retiree had more than one source of retirement income.

Effective for taxable years beginning after 1992, this bill amends 12-7-435 to provide that, beginning in the first taxable year the taxpayer receives retirement income, the taxpayer may: 1) deduct up to three thousand dollars of retirement income annually or 2) make an irrevocable election to defer the deduction until age sixty-five, at which time the taxpayer may deduct up to ten thousand dollars annually.

House Bill #3650 - Part II, Section #5 (Appropriations Bill)

Code Section 12-54-80 has been amended to provide that for income taxes, the Tax Commission may determine and assess taxes after thirty six months if the determination and assessment is made within one hundred eighty days of the Tax Commission receiving notice from the Internal Revenue Service of a final determination of an income adjustment made by the Internal Revenue Service.

Effective Date: June 12, 1991.

House Bill #3650 - Part II, Section #8 (Appropriations Bill)

The state income tax statutes have been amended to conform to the Internal Revenue Code of 1986 as amended through December 31, 1990, subject to allowable modification.

Effective for taxable periods beginning after 1990.

House Bill #3650 - Part II, Section #25 (Appropriations Bill)

This provision amends 12-9-310 to exempt nonresident motion picture companies (and nonresident companies performing services for them) from the two percent withholding tax on nonresident contractors provided they obtain a certificate of authority to conduct business in this state.

Effective Date: July 1, 1991.

Senate Bill #534

Code Section 12-9-390(A)(3) was amended to exclude counties of this State and electric cooperatives from the 2% withholding requirements for persons hiring or contracting with a nonresident taxpayer conducting a business, or performing personal services, of a temporary nature within this State. This exclusion only applies with respect to persons hired to perform services relating to damage caused by natural forces.

Effective for payments made by a county to another person on or after December 31, 1988.

House Bill #3650 - Part II, Section #47 (Appropriations Bill)

This section restores for state purposes the amount by which the mortgage interest deduction for federal income tax purposes was reduced due to the mortgage interest credit provided by Section 163(g) of the Internal Revenue Code of 1986.

Effective for taxable years beginning after 1990.

House Bill #3650 - Part II, Section #48 (Appropriations Bill)

Code Section 12-7-1220 has been amended to extend the corporate jobs credit to include certain tourism facilities and to include certain processing facilities engaged in processing farm products and aquaculture products.

Effective for tax years beginning after 1990.

MISCELLANEOUS TAXES

House Bill #3167

Various provisions of the Bingo Act of 1989 (Code Section 12-21-3310 et. seq.) have been amended. These amendments are outlined in SC Information Letter #91-15.

Effective Date: June 4, 1991

House Bill #3650 - Section #32 (Appropriations Bill)

The bingo taxes imposed with respect to Class "AA" and "B" games have been temporarily increased to fund the "Commission on Aging Senior Citizen Centers Permanent Improvement Fund". The Class "AA" tax will be \$9.00 per player per session and the Class "B" tax will be \$2.50 per player per session. For additional information, see SC Information Letter #91-15.

Effective Date: July 1, 1991

Senate Bill #474

Code Section 12-23-810, which imposes an excise tax upon licensed hospitals, has been amended. The new legislation revises the method for calculating the tax, increases the revenue to be generated from the tax to twenty-one and one-half million dollars per year, and imposes the tax, effective July 1, 1992, upon hospitals licensed in another state and doing business in South Carolina. In addition, the grace period for paying the tax, and the penalties for late payment, have been repealed. It should be noted that the penalties imposed under Chapter 54 of Title 12 still apply with respect to this tax.

Effective Date: May 31, 1991, except as otherwise provided.

House Bill #3650 - Section #57 (Appropriations Bill)

Code Section 6-23-250 has been amended to exempt "Joint Agencies" from the Electric Power Tax imposed under Code Section 12-23-10. This provision effectively rescinds SC Revenue Ruling #91-4 which was to take effect July 1, 1991.

Code Section 12-23-10 was also amended to provide an exception to the imposition of the tax on electric power purchased from vendors, however remote, previously taxed under the statute.

Effective Date: June 12, 1991

House Bill #3650 - Section #9 (Appropriations Bill)

Code Section 12-21-2420 has been amended to increase the admissions tax on paid admissions to places of amusement in South Carolina from 4% to 5%. It further provides that the admissions tax may be listed separately from the cost of admission on the ticket.

Effective Date: February 1, 1992

House Bill #3650 - Section #14 (Appropriations Bill)

Code Section 12-21-2720(1) has been amended to exempt batting machines on which an admissions tax is imposed from the \$25 license tax for mechanical amusement devices.

Effective Date: Licenses issued after August 31, 1991

Senate Bill #388 -

This bill amends Title 44 by adding Chapter 96. This chapter is known as the "South Carolina Solid Waste Policy and Management Act of 1991" and imposes a tax (effective November 1, 1991), on certain wholesale and/or retail sales and imports, on the following items at the following rates:

<u>Items</u>	<u>Tax Rate</u>
Motor Oil and Similar Lubricants*	\$0.08/Gallon**
Tires	\$2.00/Tire
Batteries	\$2.00/Battery
White Goods***	\$2.00/Item

\* For hire motor carriers purchasing oils not for resale and used in their fleets are exempt from the tax if certain qualifications are met.

\*\* This amount is subject to change.

\*\*\* White goods include refrigerators, ranges, water heaters, freezers, dishwashers, trash compactors, washers, dryers, air conditioners, and large commercial appliances.

The Tax Commission is presently reviewing this new tax and will be distributing additional information concerning this tax in the near future.

Effective Date: November 1, 1991.

## PROPERTY TAX

### House Bill #3667

Code Section 12-37-220(B)(2) has been amended to extend the exemption from property taxation for the residence plus one acre of a paraplegic person to a hemiplegic person. The bill also defines a hemiplegic person as one who has paralysis of one lateral half of the body resulting from injury to the motor centers of the brain.

Effective Date: May 27, 1991

### Senate Bill #317

The last paragraph of Code Section 12-37-250 has been amended and now reads:

The homestead tax exemption must be granted in the amount in this paragraph to those persons who own a dwelling in part in fee or in part for life when the persons satisfy the other conditions of the exemption. The amount of the exemption must be determined by multiplying the percentage of the fee or life estate owned by the person by the full exemption. For purposes of the calculation required by this paragraph, a percentage of ownership less than five percent is considered to be five percent. The exemption may not exceed the value of the interest owned by the person.

Effective Date: Tax years after December 31, 1991

House Bill #3412

This act amends Code Sections 12-31-15 and 12-45-15 and changes the time for county auditors and county treasurers to meet continuing education requirements to 1991.

Effective Date: June 4, 1991

Senate Bill #393

See discussion of this bill under "INCOME TAX" on page 1 of this document.

House Bill #3773

Code Section 12-37-220(B)(34) was enacted to exempt from property tax in the same manner and to the same extent as the exemption allowed pursuant to item (7) of subsection A of Section 12-37-220 (Exemption for new manufacturing facilities) the facilities of all new enterprises engaged in research and development activities located in any of the counties of this State, and all additions valued at fifty thousand dollars or more to existing facilities of enterprises engaged in research and development.

Facilities of enterprises engaged in research and development activities are facilities devoted directly and exclusively to research and development in the experimental or laboratory sense for new products, new uses for existing products, or for improving existing products. The facility is required to be a separate facility devoted exclusively to research and development and the exemption does not apply to 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.

Effective Date: May 30, 1991

ADMINISTRATIVE

Senate Bill #558

This provision repeals Chapters 1 and 3 of Title 12, which establish the general powers and duties of the South Carolina Tax Commission, and adds Chapters 2 and 4 so as to simplify and reorganize these provisions. An Information Letter will be issued in the near future to provide an outline of the recodified law containing a cross reference of Chapters 1 and 3 to Chapters 2 and 4.

Effective Date: July 1, 1991



House Bill #3274

Section 12-54-260 was enacted to provide that the South Carolina Tax Commission will furnish the Comptroller General with information concerning taxpayers who owe delinquent taxes. Delinquent taxes are state taxes, penalties, interests and costs for which a warrant of distraint has been issued and filed by the Commission.

If, based on the information submitted by the Commission, the Comptroller General determines a payment is due to a taxpayer who owes delinquent taxes, the Comptroller General shall remit the payment to the Commission.

The Commission will notify the taxpayer in writing of:

- (1) the amount paid to the Commission;
- (2) the total amount that the Commission determines to be due from the taxpayer; and
- (3) the name, address, and telephone number of an employee within the Commission that the taxpayer can contact to discuss the tax liability.

Effective Date: May 23, 1991

House Bill #3650, Section #43(B) (Appropriations Bill)

Section 12-54-240(B) is amended to provide that the Tax Commission can release information from individual tax returns to the Retirement Systems Division of the State Budget and Control Board to assist the retirement system in determining if an individual receiving disability benefits is receiving compensation from gainful employment.

Effective Date: July 1, 1991

House Bill #3650, Section #61 (Appropriations Bill)

Section 12-47-445 is amended to add the following:

This section does not apply to a claim for refund for a taxpayer who makes his claim by stating on his payment or on his timely filed return that he is paying under protest because he believes some or all of the tax is unconstitutional or unlawful. His protest constitutes a claim for refund for the payment made under protest under Section 12-47-440.

Prior to this amendment, Section 12-47-445 provided that the refund provisions of Section 12-47-440 do not apply to claims for abatement or refund resulting from a final decision of a court of competent jurisdiction declaring a tax law of South Carolina unconstitutional or unlawful. This amendment provides that if a taxpayer makes a claim for refund by paying the tax under protest, the provisions of Section 12-47-445 do not apply.

Section 12-47-447 was added to the code to provide that when a taxpayer prevails in a lawsuit, after the exhaustion of, or the expiration of time for filing all relevant appeals, which would allow a refund or abatement of a license fee or tax based on the allegation that the license fee or tax was wrongfully imposed as a matter of law, the commission must issue a refund to all similarly situated taxpayers who have properly applied for a refund.

Effective Date: June 12, 1991

## SALES AND USE TAX

### House Bill #3650 - Section #29 (Appropriations Bill)

Code Section 12-36-2120 has been amended to include an additional exemption from sales and use tax for the gross proceeds of sales or sales price of "[w]ar memorials or monuments honoring units or contingents of the armed forces of the United States or of the National Guard, including United States military vessels, provided the memorials or monuments are affixed to public property".

Effective Date: June 12, 1991

### House Bill #3773

This bill amends Joint Resolution 550 of 1986 by making permanent, rather than temporary, the maximum sales or use tax of three hundred dollars on the sale or use of each item of machinery for research and development.

"Machinery for research and development" means machinery used directly and exclusively in research and development in the experimental or laboratory sense for new products, new uses for existing products, or for improving existing products. The machinery is required to be located in a separate facility devoted exclusively to research and development and the limitation does not extend to machinery used in connection with efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, or research in conjunction with literary, historical, or similar projects.

Effective Date: May 30, 1991

### House Bill #3270

This bill amends Code Section 12-36-950, which deals with resale certificates.

This change shifts the liability for the tax from the retailer to the purchaser, if the purchaser has given a valid resale certificate to the retailer. The burden of proof that a sale was for resale, however, remains with the retailer if the retailer fails to take a certificate from the purchaser.

Prior to this law change, the taking of a resale certificate by a retailer merely transferred the burden of proof that a particular sale was not for resale to the Tax Commission. The liability for the tax, however, remained with the retailer.

Effective Date: May 30, 1991

### House Bill #3609

Code Section 56-3-2320 has been amended to provide that dealer or wholesaler license plates will not be issued unless the dealer or wholesaler furnishes evidence of a retail license or wholesaler's exemption certificate, and evidence that at least ten motor vehicles have been sold in the twelve months preceding application for the plates. The sales requirement may be waived if the dealer or wholesaler has been licensed for less than one year.

Effective Date: July 1, 1991.

### House Bill #3650 - Part II, Section #25 (Appropriations Bill)

A) Code Section 12-36-2120 has been amended by adding exemptions for:

- (1) supplies, technical equipment, machinery and electricity sold to motion picture companies for use in filming or producing motion pictures. Definitions are provided for "motion picture" and "motion picture company".
- (2) electricity used to irrigate crops.
- (3) building materials, supplies, fixtures, and equipment used for construction, repair/improvement of structures to house poultry or livestock.

- B) Code Section 12-36-2120(32) has been amended by adding an exemption for natural and liquefied petroleum gas and electricity used in the production of livestock, swine and milk; and electricity used in the production of poultry.

Effective Date: July 1, 1991

House Bill #3272

This bill amended:

(1) various administrative provisions of the law, including provisions with respect to: an increase to \$15.00 in the penalty for checks returned due to insufficient funds; corrections by the State Treasurer of any misallocation of the local option sales and use tax and the 2% accommodations tax; the disposition of unexpended funds received from collections of warrants for distraint; and the "Setoff Debt Collection Act";

(2) Code Section 12-21-2420 to add an exemption for membership fees to certain health clubs, spas and gyms. For additional information regarding this exemption, see SC Information Letter #91-17;

(3) various provisions of the gasoline tax and motor fuel tax were amended to require the bonding of oil companies and motor fuel suppliers; and,

(4) Code Section 12-13-30 was amended to exempt from the income tax on savings and loan associations "... interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successors, for those savings and loan associations which meet the qualified thrift lender test set forth in the Financial Institution Reform, Recovery and Enforcement Act of 1989 (P.L. 101-73), as amended. The tax is six percent of the income."

This bill also provided a property tax abatement pursuant to Code Section 12-37-220A(7) for a corporation which acquires eight or more existing textile manufacturing facilities in this State and meets certain other requirements. This abatement is effective for acquisitions after April 30, 1990 and only applies to certain tax years.

Effective Date: June 28, 1991, unless otherwise provided.