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

SC INFORMATION LETTER #93-18

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DATE: August 19, 1993

SUBJECT: Legislative Changes Update

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1992)
S.C. 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 Department of Revenue which are not related to a specific set of facts.

The following is a brief summary of most of the significant changes in laws administered by the Department of Revenue that were enacted by the General Assembly during the past legislative session. Other legislation enacted this year that is solely under the jurisdiction of the Department of Public Safety, Department of Transportation, and South Carolina Law Enforcement Division is not discussed in this information letter.

This information letter is divided into four categories of legislation:

- (1) Alcoholic Beverage Control,
- (2) Catawba Indian Claims Settlement Act,
- (3) Motor Vehicle Division, and
- (4) Taxation.

If you would like a complete copy of the legislation discussed in this information letter, please call the Legislative Council in Columbia at 803-734-2145.

ALCOHOLIC BEVERAGE CONTROL

Act No. 11.

Signs Displayed in Alcoholic Liquor Stores

Code Section 61-3-1000 contains structural, sign, and other requirements for alcoholic retail stores and it has been amended to provide additional sign requirements. This amendment provides that a retail dealer may display signs which indicate the hours of operation of the business and signs which indicate whether the business is open or closed. Signs other than those authorized by this section that are visible from outside the retailer's place of business may not be displayed.

The amendment sets forth the following requirements for signs indicating hours of operation and whether the business is open or closed:

1. The retailer may have no more than 2 signs to indicate the hours of operation and no more than 2 signs to indicate whether the business is open or closed.
2. The signs must be on the licensed premises and may not exceed 12 inches in height and 16 inches in width.
3. The letters in the sign must be white with a red or black background, red with a white or black background, or black with a red or white background.

Effective Date: March 23, 1993

Act No. 78.

Ownership and Financial Interest in Beer Operations

Code Section 61-9-315(E), pertaining to the regulation of beer manufacturers, brewers, importers, wholesalers, and retailers, has been amended to define ownership and financial interest in beer operations as follows:

"Ownership or financial interest within the meaning of this subsection does not include the ownership of less than one percent of the stock in a corporation with a class of voting shares registered with the Securities and Exchange Commission or other federal agency under Section 12 of the Securities and Exchange Act of 1934, as amended, or a consulting agreement under which the consultant has no control over business decisions and whose compensation is unrelated to the profits of the business".

Effective Date: May 24, 1993

License and Permit Requirements

This amendment made the following changes:

1. Code Section 61-1-120 has been added to set forth certain information that must be provided by a person applying for an alcoholic beverage license or permit.
2. Code Section 61-3-510, relating to license applications, has been repealed.
3. Code Section 61-1-125 has been added to provide:
 - a. No license or permit will be issued to an organization, association, or corporation as such. If granted, the license must be issued to an officer of the organization, association, or corporation or a person specifically designated in writing by its Chief Executive Officer. The officer or designated person will be responsible under the license or permit as an individual and will be subject to the provisions and penalties applicable under Title 61.
 - b. A person may hold multiple permits and licenses. However, a person, his agent, or his attorney will not be issued a permit or license for more than one business entity.
 - c. A license or permit will not be issued to a person under 21 years.
4. Code Section 61-3-430, relating to licenses issued to corporations and associations, has been repealed.
5. Code Section 61-9-35 has been added to prohibit holders of a beer permit or a beer and wine permit from purchasing beer or wine, or both on credit by a dishonored check, an unpaid note or invoice, or other insufficient manner from a permitted beer and wine wholesaler. The Department of Revenue will not take action against the holder for the first violation. However, the retail dealer's permit may be suspended, canceled, or revoked upon the second or subsequent violation or a penalty of not more than \$25.00 may be imposed.

Effective Date: June 11, 1993

Act No. 112, Section 2.

Persons Ineligible for Liquor Licenses - Age and Residency Requirements

Code Section 61-3-420, pertaining to persons ineligible for licenses under the provisions of Title 61 - Chapter 3 (manufacturers', wholesalers' and, retail dealers' liquor licenses), Chapter 7 (Importation of Liquor), and Article 3 of Chapter 13 (Offenses, Prohibitions and Enforcement), has been amended to provide age and residency requirements as follows:

1. Persons less than 21 years are ineligible; and,
2. Persons who are not legal residents of the United States and have not been residents of South Carolina for at least 30 days before the date of the application and have not maintained their principal place of abode in South Carolina for at least 30 days before the date are ineligible.

Effective Date: June 11, 1993

Act No. 112, Section 3.

Granting of Minibottle License - Age and Residency Requirements

Code Section 61-5-50, pertaining to the granting of an alcoholic liquor minibottle license (two ounces or less) to a nonprofit organization or business engaged primarily in the preparation and serving of meals or furnishing of lodging, has been amended to revise the age and residency requirements as follows:

1. The applicant must be 21 years old or older; and,
2. The applicant must be a legal resident of the United States and must have been a resident of South Carolina for at least 30 days before the date of application and must have maintained his principal place of abode in South Carolina for at least 30 days before the date of application.

Effective Date: June 11, 1993

Act No. 112, Section 4.

Qualifications for Beer and Wine Permits - Residency Requirements

Code Section 61-9-320(2) and (3), pertaining to qualifications for beer and wine permits, have been amended to provide residency requirements for retail and wholesale applicants. In addition

to the other qualifications, the applicant must be a legal resident of the United States and must have been a legal resident of South Carolina for at least 30 days before the date of application and have maintained his principal place of abode in South Carolina for at least 30 days before the date of application, or for wholesale applicants, have been licensed previously under the laws of South Carolina.

Effective Date: June 11, 1993
Act No. 164, Section 55.

Sunday Sales Permit

Code Section 61-9-312 has been amended to provide for a special version of a retail beer and wine permit for off-premises consumption with no restrictions on the days or hours of sales. In order to purchase this special license, the county or municipality must have passed a referendum authorizing the issuance of temporary permits within the county or city limits allowing hotels, motels, and restaurants to sell beer, wine and liquor on premises on Sunday. Retail dealers, such as grocery stores and gasoline stations, in these counties may be issued the special off-premises beer and wine permit once the voters pass another referendum authorizing the off-premises beer and wine sales on Sunday.

The annual fee for the special permit will be \$1000.00 and will be prorated for the 1993-94 permit year according to the length of time the permit is valid.

Effective Date: June 21, 1993

Act No. 164, Section 68.

License Revocation

This amendment adds Code Section 61-3-425 which prohibits a license for alcoholic beverages, beer and wine from being issued, renewed, or transferred unless it is shown that the applicant does not owe State or federal delinquent taxes, penalties, or interest.

Effective Date: For license periods beginning after December 31, 1993

Act No. 164, Section 100.

Biennial License Refund

Code Section 61-1-105 has been added to provide for a refund of a portion of a biennial license or permit when the license or permit holder closes the business for loss of the business lease or due to fire or other natural disaster or dies within the first year of the biennial license or permit year.

Effective Date: June 21, 1993

CATAWBA INDIAN CLAIMS SETTLEMENT ACT

On June 14, 1993, the Governor signed the Catawba Indian Claims Settlement Act which added Chapter 16 to Title 27 in order to implement the settlement of Catawba Indian land and other claims in South Carolina.

Effective Date: This act will take effect when the Governor certifies that the counties of York and Lancaster have taken all actions required of them by the Settlement Agreement. This may be delayed until federal implementing legislation is passed consistent with the Settlement Agreement.

NOTE: A large portion of the Catawba Indian Claims Settlement Act is dependent on the passage of federal legislation. Changes may need to be made to this Act to conform to the federal legislation.

ADMINISTRATIVE

The act provides, in part, that the Tribe, its members, the Tribal Trust Funds, and other persons or entities affiliated with or owned by the Tribe, located or doing business on or off the Reservation are subject to all state and local taxes, sales taxes, real and personal property taxes, excise taxes, estate taxes, and all other taxes, licenses, levies, and fees except as expressly provided in this Act or the federal implementing legislation. Any other person or business entity which locates, operates or does business on the Reservation is subject without exception to all state and local taxes, licenses and fees, unless otherwise expressly provided in the Act.

ESTATE AND GIFT TAXATION

The Act provides that members of the Tribe are liable for payment of all estate and inheritance taxes.

INCOME

The Catawba Indian Claims Settlement Act provides that private payments to the Catawbas are treated as charitable contributions or settlement of litigation for state income tax purposes. The Act also states that the conveyance of property to the Tribe must be treated as provided in IRC .1033 for South Carolina income tax purposes if the federal implementing legislation provides for this treatment for federal purposes.

The Act also adopted Internal Revenue Code Section 7871 dealing with Indian tribes treated as states for certain purposes.

Income of the Tribe, entities owned by the Tribe, the Tribal Trust funds, and tax revenues collected by the Tribe by levy or assessment which are nontaxable for federal income tax purposes because of the Tribe's status as a recognized or restored Indian tribe also are nontaxable for purposes of state income taxes or local income taxes. Members of the Tribe are liable for state and local income taxes to the same extent as any other person in the State, with the exception of income earned by members performing governmental functions solely on the Reservation or selling Catawba Indian pottery and artifacts.

To the extent the Tribe is subject to tax, it must be taxed as if it were a corporation.

MISCELLANEOUS

Bingo

For purposes of conducting the game of bingo, the Tribe is deemed a nonprofit organization under Article 23, Chapter 21, of Title 12. The Tribe may obtain either a special license provided for under this Act or a regular license allowed nonprofit organizations. The Tribe shall pay, in lieu of an admission, a head, a license, or any other bingo tax, a special bingo tax equal to ten percent of the gross proceeds received during each session. The Tribe may have two locations, one in the claim area and one in another location, if approved by the county and any applicable municipality.

If the Tribe elects to conduct games of bingo under the special bingo licenses, the gross revenues generated by the bingo games must be subject to the ten percent tax levy specified in 27-16-110(C) exclusively.

Documentary Tax

The Act provides that all documentary tax stamps and other fees for conveyance of real estate are payable on transfers of real property to the Tribe.

Video Poker

The Tribe may permit video poker or similar electronic play devices on the Reservation to the same extent that the devices are authorized by state law.

Beer and Wine

If beer, wine, and alcoholic liquor are sold on the Reservation, licenses must be issued by the State in accordance with South Carolina law, and all beer, wine, and alcoholic liquor taxes must be paid to the State in accordance with South Carolina law.

Motor Vehicles and Motor Fuels Taxes

The Tribe and its members are subject to all license and registration fees and requirements, all periodic inspection fees and requirements, and all fuel taxes imposed by the State and local governments on motor vehicles, boats, airplanes, and other means of conveyance.

PROPERTY TAX AND FEE-IN-LIEU PAYMENTS

All lands held in trust by the United States for the Tribe as part of the Reservation, all nonresidential buildings, fixtures, and real property improvements owned by the Tribe or held in trust by the United States for the Tribe on the Reservation are exempt from all property taxes. If the Tribe owns a partial interest in property, the property is exempt to the extent of the Tribe's interest. Single and multi-family residences, including mobile homes, situated on the Reservation are exempt from all property taxes, if certain conditions are met.

The Tribe is authorized to levy taxes on buildings, fixtures, improvements, and personal property located on the Reservation, even though the properties may be exempt from property taxation by the State or its subdivisions, and may use the tax revenues for appropriate tribal purposes. It may also exempt or abate tribal taxes. Real property and improvements owned by the Tribe or by members of the Tribe, or both, and not located on the Reservation are subject to all property taxes.

If the Tribe purchases real estate outside of the reservation and such ownership of the properties removes the property from ad valorem taxation, payments must be made by the Tribe in lieu of taxation that are equivalent to the taxes that otherwise would be paid if the property were subject to levy.

The Act also provides that land which is purchased by or for the Tribe which was specially assessed as agricultural use property shall not result in a rollback of property taxes if the property is placed by the Tribe in Reservation status within one year of the purchase date. If such land is not made part of the Reservation within one year, deferred or rollback taxes are due and payable without interest to the county treasurer.

All personal property owned by the Tribe during ninety-nine years from the effective date of this chapter and used solely on the Reservation is exempt from personal property taxes, with the exception of motor vehicles, which are exempt for 99 years even if used off the Reservation. All personal property owned by members of the Tribe is subject to tax.

If a taxpayer (other than the Tribe) is subject to property taxes for property located on the reservation and fails to pay such taxes, the appropriate taxing authority has the power to levy against the personal property subject to tax, whether the property is located on or off the reservation. The State or any political subdivision may not seize real property located on the Reservation.

The Tribe shall pay a special fee in lieu of school taxes.

SALES AND USE TAXES

The Act provides, in part, that the Tribe, its members, and the Tribal Trust Funds are liable for the payment of all state and local sales and use taxes with certain exceptions; however, during 99 years from the effective date of this chapter, the sale of items on the Reservation are exempt from state and local sales and use taxes but are subject to a special tribal sales tax levied by the Tribe equal to the state and local sales tax that would be levied in the jurisdiction encompassing the Reservation but for this exemption. This sales tax does not apply to retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less; however, the state sales tax does apply. The Tribe shall impose a use tax when the vendor does not collect it.

Sales of Catawba pottery and artifacts made by members of the Tribe and sold on or off the Reservation by the Tribe or members of the Tribe are exempt from state and local sales and use tax.

MOTOR VEHICLE DIVISION

Act No. 26.

Issuance of Driver's License

Code Section 56-1-40 concerning the prohibition of the issuance of a driver's license to certain persons has been amended to prohibit the renewal of the license of certain persons, and to add to the list of persons who cannot obtain a State driver's license those who are not residents of the United States unless: 1) the nonresident is present in the United States on a "student visa," or 2) the nonresident is present in the United States on a "work visa" and is subject to other conditions.

Effective Date: April 22, 1993

Act No. 82.

Handicap License Tag Requirements and Free Parking for Certain Handicapped Persons

Code Section 56-3-1910 has been amended to add to the vehicle owners eligible for the special handicap license tag certain entities which transport handicapped or disabled persons, subject to verification of the vehicle's use in a prescribed manner. Such eligible entities are exempt from the licensed physician certification requirements.

The amendment to Code Section 56-3-1960 made the following changes:

1. Defines licensed physician.
2. Extends the free parking privileges for certain handicapped persons to vehicle owners issued the special handicap license tag and, to certain entities that transport disabled or handicapped persons.
3. Revises the design and size of the placard issued to eligible vehicle owners.
4. Exempts certain entities that transport disabled or handicapped persons from the licensed physician certification requirements.
5. Limits the term of placards issued for a temporary disability to the period of the disability.

Effective Date: June 14, 1993

Act No. 93.

South Carolina State Guard License Plates

This amendment added Article 47 to Chapter 3 of Title 56 to provide for the issuance of a special license plate to members of the South Carolina State Guard, and lists the conditions under which the plate may be issued.

Effective Date: June 15, 1993

Act No. 156.

Special License Plate to Commemorate Endangered Species

This amendment added Article 45 to Chapter 3 of Title 56 to provide for the issuance of a special commemorative license plate for the purpose of raising funds for the Nongame Wildlife and Natural Areas Fund, and lists the conditions under which the license plate may be issued.

Effective Date: June 15, 1993

Act No. 164, Section 22.

Biennial Vehicle Registration

This Act made many changes to motor vehicle registration, most of which were necessitated by adopting a biennial registration period. The legislation:

1. Added Code Section 56-3-195 that provides beginning July 1, 1994 each county shall mail motor vehicle registration and license renewal notices to the vehicle owners in that county no later than 45 days prior to the expiration date.
2. Added Code Section 56-3-251:
 - a. To allow for the issuance of biennial license plates or revalidation decals;
 - b. To specify how the county treasurer or tax collector notifies the Department of Revenue that personal property taxes have been paid by the vehicle owner for the second year of the biennial period; and,

- c. To allow the Department of Revenue to suspend the vehicle registration, license plate and owner's driver's license for the second year if the personal property taxes are not paid in the second year.
3. Added Code Section 56-3-253 to describe the schedule for conversion to the biennial registration. This Act provides:
 - a. Generally, after June 30, 1994 vehicles will be registered and licensed for 24 consecutive months.
 - b. A phase in for vehicles with registrations expiring between July 1, 1993 and June 30, 1994 as follows:
 - (1) A vehicle having a license plate ending with an even number and expiring between July 1 and December 31, 1993 shall receive a biennial registration.
 - (2) A vehicle having a license plate ending with an even number and expiring between January 1 and June 30, 1994 shall receive a one year registration and thereafter, a biennial registration.
 - (3) A vehicle having a license plate ending with an odd number and expiring between July 1 and December 31, 1993 shall receive a one year registration and thereafter, a biennial registration.
 - (4) A vehicle having a license plate ending with an odd number and expiring between January 1 and June 30, 1994 shall receive a biennial registration.
 - c. All vehicles having a special license plate, other than an official plate, must receive a biennial registration. Official plates must be renewed annually at one-half the biennial rate.
 - d. All registrations are valid until the last day of the month of expiration.

Effective Date: The Act section takes effect July 1, 1993, but the provisions pertaining to counties mailing motor vehicle registration and licensing renewal notices do not take effect until July 1, 1994.

Act No. 164, Section 39.

Statutes Affecting Farming

Code Section 56-3-670, concerning the license fee for special six-ton farm trucks, has been

amended to provide additional uses for a "farm truck" including farm trucks with an empty weight of less than 7500 pounds used for ordinary, domestic purposes and general transportation, but not to transport persons or property for hire. Also, the fee schedule for such trucks has been revised.

Effective Date: June 21, 1993

Act No. 164, Section 90.

Registration and Licensing of Corporate-Owned Fleet Motor Vehicles

Chapter 3 of Title 56 has been amended by adding Article 6 which allows the annual registration of vehicles in a "fleet." A "fleet" generally means 200 or more marked passenger vehicles or property carrying vehicles with an empty weight of not more than 5000 pounds and a gross vehicle weight of not more than 8000 pounds, owned or long-term leased by a corporation or other legal entity, and registered in this State pursuant to this article. This amendment also specifies the application procedures, fees, and renewal and refund procedures.

Effective Date: June 21, 1993

Act No. 164, Section 105.

Dealer, Wholesaler, and Transporter License Plates

This amendment:

1. Added Code Section 56-3-2325 which provides penalties for violation of the usage of dealer plates.
2. Amended Section 56-3-2320 to provide additional restrictions on the issuance of dealer license plates so as to limit the use of dealer license tags to motor vehicles owned or assigned to the dealer when operated on the highways of this State by the dealer, its corporate officers, its employees, or a prospective purchaser of the motor vehicle. The use by a prospective purchaser is limited to seven days. A dealer must furnish proof that he has a retail license and has made at least fifty sales of motor vehicles in the 12 months preceding his application. If a dealer sells less than fifty but more than ten vehicles in the twelve months preceding his application for a dealer plate, he is eligible to obtain one dealer license plate. The sales requirement may be waived if the dealer has been licensed for less than one year. This section also no longer allows the issuance of wholesaler license plates.

3. Amended Code Section 56-3-2350 to permit a motor vehicle dealer or wholesaler duly licensed under Code Section 56-15-310 to purchase transporter license plates for use solely in transporting motor vehicles and heavy duty trucks from one place of sale to another place of sale.

Effective Date: June 21, 1993

Act No. 176.

Medal of Honor License Plates

Code Section 56-3-1850 has been amended to permit the application for the special Medal of Honor license plate to recipients who lease a private motor vehicle. See the Property Taxation Section -for information concerning a property tax exemption for leased vehicles with this license plate.

Effective Date: June 16, 1993

TAXATION

ADMINISTRATIVE

Act No. 10.

Debt Setoff Collection Claims

Code Section 12-54-420(1) has been amended to define "political subdivision" to include the Municipal Association of South Carolina and the South Carolina Association of Counties when these organizations submit claims on behalf of their members. This Act also amended Code Section 12-54-460(B) by deleting a provision which excluded the Internal Revenue Service from payment of the administrative fee.

Effective Date: March 9, 1993

Act No. 17.

Representation of Taxpayer

Code Section 12-4-335(C) has been amended by adding a paragraph stating that a taxpayer may be represented by a registered, licensed, or certified real estate appraiser during the administrative tax process. This representation is limited to questions concerning the valuation of real property.

Effective Date: March 23, 1993

Act No. 157.

Funding to Counties

This Act added Code Section 4-9-55 which provides that no county may be bound by any law requiring it to spend funds unless the General Assembly has determined that the law fulfills a state interest and the law is approved by two-thirds of the members voting in each house of the General Assembly. Only a simple majority of the members voting in each house is required for approval of the law if one of the following applies:

1. Funds estimated to be sufficient to fund the expenditures have been appropriated;
2. The General Assembly authorizes a county to enact a funding source not available for the county on July 1, 1993, that can be used to generate the needed funds;
3. The expenditure is required to comply with a law that applies to all persons similarly situated.
4. The law is required to comply with a federal requirement or required for eligibility for a federal entitlement.

This section also states that except upon approval of two-thirds of the members voting in each house of the General Assembly, the General Assembly may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that the counties have to raise revenues in the aggregate, as the authority exists on July 1, 1993.

These provisions do not apply to laws enacted to require funding of pension benefits, laws relating to the Judicial Department, criminal laws, election laws, the general appropriations act, the Department of Education, special appropriations acts, law reauthorizing statutory authority, laws having a fiscal impact of less than ten cents per capita on a statewide basis, and laws creating, modifying, or repealing noncriminal infractions.

Effective Date: June 15, 1993

Act No. 164, Section 68.

License Revocation

This amendment adds Article 7 to Chapter 54 of Title 12 to provide for the revocation of professional licenses if a person has neglected or refused to file returns or pay a tax required under the provisions of law administered by the Department of Revenue.

This article requires every department, board, commission, division, authority, district, or other agency of the State or its subdivision to annually furnish to the Department of Revenue a list of all licenses or other authority issued or renewed by the agency during the preceding year and a list of all persons furnishing goods, services, or real estate space to the agency during the preceding fiscal year.

A license or other authority suspended or revoked under this section may not be reissued or renewed until the agency receives a certificate issued by the Department of Revenue that the licensee is in good standing with respect to returns due and taxes payable to the Department of Revenue as of the date of issuance of the certificate.

A person applying to an agency for a license or renewal of a license to conduct a profession, trade, or business must certify that he has complied with all laws of the State relating to taxes. In addition, no contract or other agreement for the purposes of providing goods, services or real estate space to an agency may be entered into, renewed, or extended with a person unless the person certifies he has complied with all law of the State relating to taxes.

Further, this amendment adds Code Section 61-3-425 which prohibits a license for alcoholic beverages, beer and wine from being issued, renewed, or transferred unless it is shown that the applicant does not owe State or federal delinquent taxes, penalties, or interest.

Effective Date: For tax years or license periods beginning after December 31, 1993

Act No. 164, Section 101.

Collection Agency Provisions

Code Section 12-4-340 has been amended to give the Department of Revenue authority to contract with a collection agency for the purpose of collecting delinquent taxes from any taxpayer.

Effective Date: June 21, 1993

INCOME TAX

Act No. 164, Proviso 14K.33.

Capital Gains Deduction Delayed

Code Section 12-7-437(A)(3) has been amended to delay the 44% net capital gains deduction to tax years beginning after 1993. For the 1993 tax year, the deduction is 29%, the same amount allowed for the 1992 tax year.

Any taxpayer subject to a penalty for underpayment of 1993 estimated taxes because of the capital gains deduction delay may request a penalty waiver. Taxpayers requesting a waiver should attach Form SC2210 to their 1993 income tax return and write "Waiver/Capital Gains" in the left margin of the form. They should also attach a statement explaining the reason for the waiver request. The Department will waive the underpayment penalty where appropriate, pursuant to Code Section 12-54-160 and SC Revenue Procedure #93-1.

Effective Date: Tax years beginning in 1993

Act No. 164, Section 7.

Income Tax Conformity

Code Section 12-7-20 has been amended to update South Carolina's income tax laws to conform to the Internal Revenue Code of 1986 as amended through December 31, 1992.

Effective Date: June 21, 1993

Act No. 164, Section 67.

Net Capital Gain Deduction - Definition

Code Section 12-7-437 has been amended to provide that the deduction from income is a percentage of "net capital gain" and not "net long term capital gain".

Any taxpayer subject to a penalty for underpayment of 1993 estimated taxes because of this change may request a penalty waiver. Taxpayers requesting a waiver should attach Form SC2210 to their 1993 income tax return and write "Waiver/Capital Gains" in the left margin of the form. They should also attach a statement explaining the reason for the waiver request. The Department will waive the underpayment penalty where appropriate, pursuant to Code Section 12-54-160 and SC Revenue Procedure #93-1.

Effective Date: For tax years beginning after 1992

Act No. 164, Section 95.

Corporate Headquarters Credit

This provision provides that the corporate headquarters credit (Code Section 12-7-1245) may be determined on a consolidated basis and claimed against the corporate license tax of any

corporate member of the group if the following requirements are met: (1) the group filed a consolidated 1990 South Carolina income tax return, and (2) the group had aggregate expenditures over \$15,000,000 in 1990 for qualifying real property costs under Code Section 12-7-1245 for facilities and property to be used substantially in connection with the supervision or management of restaurant and food service businesses.

Effective Date: June 21, 1993

Act No. 164, Section 97.

Jobs Tax Credit - Subchapter S Corporation

Code Section 12-7-1220 has been amended to provide that shareholders of an S corporation may claim the corporate jobs tax credit against their South Carolina individual income tax liability providing the S corporation would otherwise qualify for the jobs tax credit if it were not an S corporation and providing the S corporation qualifies for the fee in lieu of property taxes provided in Code Section 4-29-67.

Effective Date: For tax years beginning after 1992

Act No. 164, Section 102.

Withholding on Sales of Real Property by Nonresidents

Code Section 12-9-510 has been amended with respect to withholding on nonresident sales of real property and associated personal property when the seller finances all or part of the sale. The taxpayer may elect out of the installment method for South Carolina purposes and remit the entire amount of tax due by the 15th day of the month following the month of closing (as provided in Code Section 12-9-530) instead of paying the tax as each installment payment is made.

Effective Date: June 21, 1993

MISCELLANEOUS TAXES

Act No. 164, Section 19.

Video Game Machines

Chapter 21 of Title 12 has been amended by adding Article 20 to regulate video game machines and other Class III machines with free play features.

Some of the key elements of the legislation are:

1. Effective July 1, 1993, the number of Class III machines at a single business establishment is limited to eight.
2. Effective July 1, 1994, the number of Class III machines at a single business establishment, with some exceptions, is limited to five.
3. All business establishments with Class III machines must have a retail sales tax license.
4. No machine may be licensed or relicensed in a business establishment where the primary and substantial portion of the establishment's gross proceeds is from machines licensed as Class III machines. The term "gross proceeds" from the machines means the establishment's portion.
5. A business establishment with Class III machines may not advertise in any manner for the playing of these machines and may not offer any special inducement for the playing of these machines.
6. Effective September 1, 1993, business establishments with Class III machines, with some exceptions, may not be located within 500 feet in a county, or 300 feet within a municipality, of any kindergarten, school, college, university, public playground or park, or house of worship.
7. No owner, operator, or marketer may be issued a permit for Class III machines unless the owner, operator, or marketer has been a resident of the State for two years.
8. It is unlawful to operate Class III machines between the hours of midnight Saturday and six o'clock Monday morning.
9. The statute imposes various civil and criminal penalties for violations of the provisions of the Video Game Machines Act.

Effective Date: July 1, 1993, unless otherwise stated in the Video Game Machines Act

Act No. 164, Section 59.

Class III Machines - Municipal License Fees

A municipality may by ordinance impose a license fee on Class III machines in an amount not to exceed 10% of the license fee imposed by the State for the equivalent license period (Code Section 12-21-2720).

Effective Date: July 1, 1993

Act No. 164, Section 60.

Class III Machines - County License Fees

A county may by ordinance impose a license fee on Class III machines located in an unincorporated area of the county in an amount not to exceed 10% of the license fee imposed by the State for the equivalent license period (Code Section 12-21-2720).

Effective Date: July 1, 1993

Act No. 164, Section 70.

Marijuana and Controlled Substance Tax

This amendment adds Article 25 to Chapter 21 of Title 12 to enact "The Marijuana and Controlled Substance Tax Act". This act requires that "dealers" place a tax stamp purchased from the Department of Revenue on the marijuana or controlled substance. Dealer is defined to include a person who possesses more than specified amounts of marijuana or controlled substances.

Effective Date: July 1, 1993

Act No. 164, Section 94.

Fuel Markers

Code Section 12-31-20 has been amended to provide that the Department may enter into a registration and identification marker reciprocal agreement known as the International Fuel Tax Agreement (IFTA). Qualified vehicles that operate in accordance with this agreement are not required to purchase other fuel markers in member states.

Effective Date: July 1, 1994

PROPERTY TAX AND FEE-IN-LIEU PAYMENTS

Act No. 9.

Delinquent Property Taxes

Code Section 12-45-180 has been amended to allow county treasurers to waive penalties imposed for late payment of property taxes if it is determined that the penalties were imposed because of an error in the postmark date of the payment.

Effective Date: March 8, 1993, and applies with respect to taxes due in 1992 and thereafter.

Act No. 13.

Index of Taxpaying Ability

This Act added Code Section 59-20-23 which provides that in an appeal of an assessment of manufacturing property when the amount in dispute exceeds thirty percent of the assessed value of property in the school district and the appeal extends for more than two years, the index of taxpaying ability for the district must be calculated using the value asserted by the taxpayer in the appeal.

Effective Date: March 23, 1993

Act No. 87.

Property Tax Appeals

This Act amended:

1. Code Section 12-43-220(c) to allow refunds of overpayments resulting from the improper classification of a legal residence.
2. Code Section 12-43-220(d) in order to clarify the filing requirements for agricultural use classification.
3. Code Section 12-43-305 to allow auditors to adjust the assessment of property which is under appeal to a valuation greater than eighty percent if agreed to in writing by the taxpayer.
4. Code Section 12-43-305 to provide that if the valuation of greater than five percent of the parcels of real property in a county is under appeal as a result of reassessment, no interest is due on underpayments or overpayments while the valuation remains under appeal for any month beginning after June 30th of the year succeeding the reassessment year.

Effective Date: June 15, 1993

Act No. 97.

Property Tax Assessments

This Act adds Code Section 12-39-65 which allows an owner of personal property that is required to be licensed or registered with an agency or department of the State to appeal the valuation of the property on or before the last day the assessment can be timely paid.

Effective Date: June 14, 1993

Act No. 100.

Outdated Property Tax Provisions

This Act repealed several outdated property tax sections of the 1976 Code, including sections in Chapters 37, 39, 45, 47, and Chapter 55 of Title 12.

Effective Date: June 14, 1993

Act No. 123.

Fee in Lieu of Taxes

The fee in lieu legislation made a number of technical corrections, as well as a number of substantive changes. The legislation:

1. Added Section 4-29-69 which allows a payment in lieu of property taxes for qualified property of a qualified manufacturer completing a qualified consolidation between June 1, 1992, and December 31, 1993. Qualified property is defined to mean all real and tangible personal property owned, leased, licensed, or acquired by a qualified manufacturer during the consolidation period. A qualified manufacturer is a manufacturing facility in this State which employed at least 700 people at the beginning of the consolidation period and is located in a county which is designated as a less-developed county. A qualified consolidation is generally a transaction whereby the assets of a manufacturing facility located in another state are transferred to a manufacturing facility in this State. At least 100 new jobs and 10 million dollars of manufacturing and related property must be added to the facility in this State. The payment in lieu of property taxes is defined to mean payments made to the county at the time and in the amount as the county, and entity may agree, pursuant to a transfer of title to the property which is subject to such payments to the county and a lease of the property by the county to the entity.
2. Amended Code Section 4-29-67 which generally provides that if 85 million dollars is invested in a project (as defined within the statute) and other requirements are met, the entity may negotiate a fee in lieu of taxes with the county. The amendment:
 - a. Allows a project to be located on a contiguous tract of land which spans two counties. Previously the project had to be located in a single county or an industrial park.
 - b. Allows all members of a controlled group of corporations which invest at least \$10 million to qualify for the fee provided each member is specifically approved by the county and the Department of Revenue is notified. Previously only members who were a party to the inducement agreement could qualify for the fee.
 - c. Provides how personal property should be taxed once the fee period has ended. This was not covered previously.
 - d. Provides that when a corporation disposes of property which has been subject to the fee, the corporation must repay any benefit it may have received from using a present value method of calculation. This amount must be repaid with the next fee payment. Previously the law allowed this differential to be paid over an extended period of time.

- e. Requires that the fee for replacement property be calculated without using a present value method. Previously a present value method could be used if information concerning the method of calculation was provided to the Department of Revenue.
- f. Clarifies the lowest millage rate which may be used to calculate the fee.
- g. Allows for the replacement and amendment of the inducement agreement and the millage rate agreement provided the replacement or amendment cannot be used to reduce the millage rate or the discount rate. Previously these agreements could not be amended or replaced.
- h. Allows a company two years to enter into an inducement agreement after the project is identified. Any property purchased after the announcement of the project and prior to the inducement agreement will qualify for the fee. Previously, the time in which an inducement agreement was required to be executed was not specified and only expenditures incurred after the inducement agreement qualified for the fee.
- i. Allows a company seven years from the execution of an inducement agreement to enter into a initial lease agreement and begin paying the fee. Previously no time period was specified.
- j. Allows property which is already subject to property taxes to qualify for the fee only in limited situations. The most important provision allows a corporation to purchase an existing facility and obtain the fee on that existing facility if it invests an additional \$85 million of new investment in the facility. Previously the law allowed someone to buy an existing facility and be eligible for the fee.
- k. Repairs, alterations or modifications to an existing facility will not qualify for the fee unless the modification is an expansion of the existing facility.
- l. Allows, subject to county approval and certain limitations, a corporation which qualified for the fee to sell assets which are subject to the fee and allow the transferee to receive the fee for those assets provided that the transferee has at least an \$85 million investment in the assets. Previously assets subject to the fee which were sold no longer qualified for the fee.
- m. Allows, subject to certain limitations, the transfer of assets subject to the fee between members of a controlled group provided an investment of at least \$10 million is transferred. Previously assets subject to the fee which were sold no longer qualified for the fee.
- n. Allows corporations to enter into certain sale-leaseback transactions and maintain the

fee whether or not the sale-leaseback transfers ownership of the property for income tax purposes. Previously a financing arrangement of this type was not allowed.

Several administrative changes were made regarding the due date for payments and statute of limitations with regard to returns.

3. Amended Code Section 4-29-68 which allows a county or municipality that receives and retains revenues from a payment in lieu of taxes to issue special source revenue bonds. This section, as amended:
 - a. Also permits special purpose districts to issue special source revenue bonds.
 - b. Defines infrastructure to include improved and unimproved real property for purposes of Section 4-29-68 dealing with the issuance of special purpose bonds.
 - c. Permits special purpose bonds to be secured by a mortgage of the real or personal property the acquisition of which is financed by the issuance of such bonds.

Effective Date: June 14, 1993

Act No. 164, Section 22.

Motor Vehicle Property Tax Payment

Code Sections 12-37-2610, 12-37-2620, 12-37-2650, 12-37-2660, 12-37-2680, and 12-37-2725 relating to the assessment and collection of property taxes on vehicles have been amended to provide for this assessment and collection in conformity with the biennial registration and licensing of vehicles.

This amendment changes the way motor vehicles are registered. Beginning July 1, 1993, the Department of Revenue will begin to phase in the biennial registration of motor vehicles. During this phase in period, vehicles will be registered annually or biennially depending on the last number of the license plates. However, the property tax due on motor vehicles will continue to be determined and billed on a 12 month licensing period. If the actual licensing period is shorter than 12 months, the tax payable must be the proportion of the tax that is equal to the proportion of the number of months that the licensing period is to the twelve month period that is affected.

Effective Date: July 1, 1993 for the tax provisions

Act No. 164, Section 81.

Depreciation Allowance

This act amended Section 12-37-930 to allow the Department of Revenue to set forth a depreciation allowance instead of the allowance provided in this section, not to exceed 25%, where the taxpayer can provide relevant data concerning a useful life of the machinery and equipment which is different from the period shown in this section.

Effective Date: June 21, 1993

Act No. 164, Section 104.

Beneficiary Trust

This amendment modifies Code Section 12-43-220 to allow residential real property held in trust and occupied by the income beneficiary of the trust as a residence to qualify for the same assessment ratio as owner occupied residential property.

This act also amended Section 12-37-266 relating to the application of the homestead exemption to property held in trust for life, so as to provide that the exemption applies when the otherwise eligible beneficiary of a trust possesses use of the dwelling.

Effective Date: Property tax year 1993 for trusts qualifying as of December 31, 1992, for which appropriate applications have been filed.

Act No. 176.

Medal of Honor License Plates

Code Section 12-37-220B(26) has been amended to allow an exemption from ad valorem taxation for leased motor vehicles with a Medal of Honor license tag. See also the Motor Vehicle Division Section.

Effective Date: June 16, 1993

SALES AND USE TAXES

Act No. 164, Section 23.

Sales Tax Returns

This provision requires the Department of Revenue to add a line to the sales, use, and local option returns for the collection of information regarding the number of gallons of gasoline sold in each county (Code Section 12-27-400).

Effective Date: For returns due for months beginning after December 1993

Act No. 164, Section 98.

Discount for Out-of-State Retailers

Code Section 12-36-2610 was amended with respect to a person making sales into South Carolina who cannot be required to register for sales and use tax under applicable law but who nevertheless voluntarily registers to collect and remit use tax on sales to customers in South Carolina. Such a person is entitled to a percentage discount, not to exceed \$10,000 during any one State fiscal year, on returns filed as provided by law. All other persons are entitled to a percentage discount of up to \$3,000 during any one State fiscal year on returns filed as provided by law. In order for the discount to apply in either case, the return must be timely and the taxes due must be paid in full (with regard to extensions).

Effective Date: July 1, 1993

Act No. 164, Section 103.

Statistical Reporting

Code Section 12-36-2570 was amended to allow the Department of Revenue to enter into agreements with taxpayers to remit the tax based on statistical factors. This method of reporting only applies to purchases by the taxpayer for its use, storage, or consumption, and not to purchases for resale.

Effective Date: July 1, 1993

Act No. 164, Section 105.

Dealer Tags

Code Sections 12-36-90 and 12-36-110 were amended in order to exempt a motor vehicle with a dealer license plate from sales and use taxes.

Effective Date: June 21, 1993