



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC INFORMATION LETTER #94-22

SUBJECT: Legislative Changes Update - Revision
DATE: September 12, 1994
AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure #94-1

SCOPE: An Information Letter is a document issued for the purpose of disseminating general information or information concerning an administrative pronouncement.

Information Letters issued to disseminate general information have no precedential value and do not represent the official position of the Department. Information Letters designated as administrative pronouncements represent the official advisory opinion of the Department.

South Carolina Information Letter #94-20 was issued on August 19, 1994, and briefly summarized 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. This information letter indicated that three bills, House Bill 3907, Senate Bill 967, and Senate Bill 1284, had not been signed or vetoed by the Governor. On August 31, 1994, the Governor signed House Bill 3907 and on September 1, 1994, the Governor signed Senate Bill 967. As of today, the Governor has not signed or vetoed Senate Bill 1284 which provides that all multicounty parks consist of contiguous counties.

Attached is a brief summary of House Bill 3907 and Senate Bill 967 by tax type. These laws have not been assigned act numbers as of the date of this information letter and this is indicated in the summary.

At such time when Senate Bill 1284 is signed or vetoed by the Governor, the Department of Revenue will issue an information letter explaining the action taken by the Governor.

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

TAXATION

ADMINISTRATIVE

House Bill 3907, Section 7, (Act No. Unassigned).

Duplicate Refund

Code Section 12-54-138 has been added to provide that when a duplicate refund check is issued to a taxpayer, the Department of Revenue may assess and collect the amount of one of the refund checks in the same manner as a tax. If the taxpayer returns one of the refund checks uncashed, the Department of Revenue will not charge interest on the duplicate refund amount.

Effective Date: August 31, 1994

House Bill 3907, Section 18, (Act No. Unassigned).

Penalty

Code Section 12-54-40(c)(1) has been amended to provide that if any part of an underpayment or claim for refund is due to negligence or disregard of regulations, 5% of the underpayment or negligently claimed refund and 50% of the interest payable under Section 12-54-20 must be added to the tax.

Effective Date: August 31, 1994

House Bill 3907, Section 20, (Act No. Unassigned).

Debt Setoff Definitions

Code Section 12-54-420(1) has been amended to define "claimant agency" to include the Municipal Association of South Carolina and the South Carolina Association of Counties when they submit claims on behalf of other political subdivisions as well as their members.

Code Section 12-54-420(4) has been amended to include in the definition of "delinquent debt" collection costs.

Effective Date: August 31, 1994

House Bill 3907, Section 21, (Act No. Unassigned).

Investigations Conducted by the Department

Code Section 12-54-810(A) of the South Carolina Taxpayer's Bill of Rights has been amended to allow the department to conduct investigations for any purpose within its responsibilities. Prior to this change, the department could only conduct tax related investigations. This change was necessary since the department is now responsible for the administration and enforcement of several nontax laws, such as alcoholic beverage licensing, motor vehicle licensing and registration, and video game machines.

Effective Date: August 31, 1994

House Bill 3907, Section 26, (Act No. Unassigned).

Temporary Rules

Code Section 12-4-320 has been amended to allow the Department to prescribe temporary rules including the filing of returns, payment of taxes and extensions of due dates, if damage by natural forces occurs.

Effective Date: August 31, 1994

INCOME TAX

House Bill 3907, Section 1, (Act No. Unassigned).

Deduction for Retirement Income - Surviving Spouse

Code Section 12-7-435(k)(5) has been amended to clarify that a surviving spouse, with respect to the retirement income received, is allowed an income tax deduction for income received from his or her retirement plan or plans (if any) and a second separate income tax deduction for retirement income that is attributable to the deceased spouse (if any).

For each deduction allowed, the surviving spouse must deduct the lesser of the retirement income received or \$3,000.00, or the lesser of the retirement income received or \$10,000.00, depending on the election made.

This amendment sets forth the position taken by the Department of Revenue in one of its official advisory opinions - SC Revenue Ruling #93-12.

Effective Date: August 31, 1994

House Bill 3907, Section 2, (Act No. Unassigned).

Employer Child Care Credit

Code Section 12-7-1260, relating to an income tax credit for expenditures an employer makes in establishing a child care program for the benefit of employees, has been amended to limit the credit to costs incurred in establishing a child care program to employers who employ residents of South Carolina and to capital expenditures made in South Carolina. The credit allowed is 50% of the capital expenditures for establishing a child care program but no more than \$100,000.

Effective Date: August 31, 1994

House Bill 3907, Section 3, (Act No. Unassigned).

Time for Payment of Tax

Code Section 12-7-1640 has been amended to provide that any tax due must be paid at the time a return is due to be filed, without regard to any extension of time granted for filing the return.

Effective Date: August 31, 1994

House Bill 3907, Section 4, (Act No. Unassigned).

Eldercare Trust Fund Checkoff

Code Section 12-7-2419 has been amended to clarify that the check-off on state tax returns for contributions to the Eldercare Trust Fund applies only to individual income tax returns.

Effective Date: August 31, 1994

House Bill 3907, Section 5, (Act No. Unassigned).

Apportionment of Income by a Business Incorporated in a Foreign Country

Code Section 12-7-1145 has been added to provide that a business incorporated in a foreign country is required to apportion only United States source income as determined for federal purposes on Form 1120F if elected. Income must be apportioned using the apportionment rules in Chapter 7 of Title 12.

Effective Date: August 31, 1994

House Bill 3907, Section 8, (Act No. Unassigned).

Foreign Corporation Dividend

Code Section 12-7-430(d)(9) has been added to provide that a dividend from a foreign corporation is treated as a dividend from a domestic corporation for the purpose of the dividends received deduction under Internal Revenue Code Section 243.

Effective Date: August 31, 1994

House Bill 3907, Section 9, (Act No. Unassigned).

Two Wage Earner Credit When Both Spouses Work

Code Section 12-7-1210(B)(2)(a)(v) has been amended to clarify that for purposes of computing the two wage earner credit the term "earned income" does not include any amount received for services performed by an individual in the employ of his spouse within the meaning of Internal Revenue Code Section 3123(b)(3)(A) as amended through December 31, 1987.

Effective Date: August 31, 1994

MISCELLANEOUS TAXES

CIGARETTE TAX

House Bill 3907, Section 12, (Act No. Unassigned).

Separate Compartments Allowed for Out of State Cigarette Shipments

Code Section 12-21-720 has been amended to allow the Department to promulgate rules and regulations that would allow wholesale dealers to store cigarettes without affixing the revenue stamps if the cigarettes are to be sold and shipped out of this State and if such cigarettes are stored in a compartment separate from cigarettes with South Carolina tax stamps affixed to them.

Wholesale dealers violating the rules and regulations promulgated by the department will be subject to the penalties contained in Chapter 21 of Title 12.

Effective Date: August 31, 1994

ELECTRIC POWER TAX

House Bill 3907, Section 35, (Act No. Unassigned).

New Filing Date for Electric Power Tax Returns

Code Section 12-23-60 has been amended to move the filing date for the monthly electric power tax return to the twentieth day of the month following the month in which the tax accrues. The filing date had been the tenth of the month.

Effective Date: August 31, 1994

GASOLINE AND MOTOR FUEL TAXES

House Bill 3907, Section 13, (Act No. Unassigned).

Gasoline and Motor Fuel Tax Refunds - Trucking Equipment

Code Section 12-27-1510 has been amended to clarify the refund provisions that authorize a refund of gasoline and motor fuel taxes for gasoline and motor fuel used in trucking equipment for nonhighway purposes. Specifically, the amendment makes it clear that a refund cannot be issued if the gasoline or motor fuel has not been used or consumed before the filing of the refund application. This amendment continues the policy established by the department in Technical Advice Memorandum #89-4.

Effective Date: August 31, 1994

MOTOR FUEL TAX

House Bill 3907, Section 6, (Act No. Unassigned).

Imposition of Motor Fuel Taxes

Code Section 12-27-335 has been added to amend the imposition of the motor fuel tax under Code Section 12-29-310. Specifically, the tax is imposed on all fuel sold or delivered by a supplier:

1. to a service station not licensed as a supplier unless certain requirements are met;
2. to a bulk highway user;
3. which is sold or delivered into the fuel supply tank of a motor vehicle; or,
4. which is consumed by a supplier on the highways in the propulsion of a motor vehicle operated by the supplier.

Sales to a service station are exempt when the purchases are for nonhighway use or for sale for nonhighway use and are stored separate and apart from facilities servicing motor vehicles, if the separate storage facilities and pumps are prominently and permanently labeled not for highway use. The label must be in plain view of the public to indicate that nontax paid products are contained in the area.

Effective Date: August 31, 1994

HIGHWAY USE

House Bill 3907, Section 14, (Act No. Unassigned).

New Filing Date for Highway Use Tax Returns

Code Section 12-31-430 has been amended to move the filing date for the quarterly highway use tax report to the last day of the month following the end of the calendar quarter.

Effective Date: August 31, 1994

SOFT DRINK TAX

House Bill 3907, Section 22, (Act No. Unassigned).

Repeal of Unnecessary Soft Drink Tax Code Section

Code Section 12-21-2040, which concerned the disposition of revenue from the tax on soft drink crowns and lids, has been repealed. The State collects the soft drink tax via monthly reports and no longer uses crowns and lids as the method of soft drink tax collection.

Effective Date: August 31, 1994

PROPERTY TAXES

House Bill 3907, Section 23, (Act No. Unassigned).

Appeals

Code Sections 12-4-755 and 12-4-770 have been added to Article 7, Chapter 4 of Title 12. Section 12-4-755 provides the procedure by which a taxpayer or his representative may appeal an exemption denial on property owned by the taxpayer. This procedure involves the taxpayer or his representative giving written notice of the appeal within 30 days, setting forth all grounds for appeal. The department shall schedule a hearing for the appeal upon receipt of the written notice of appeal.

After hearing the appeal, the Department shall issue a written finding and send copies of the finding to the taxpayer or his representative and the county auditor. The finding to the county auditor is the order for entry upon the assessment rolls of the county as exempt or taxable.

Code Section 12-4-770 provides the procedure by which the taxpayer or his representative may appeal a proposed assessment made by the Property Tax Division of the Department with which he disagrees. The taxpayer must give written notice of the appeal within 30 days of the date of the proposed assessment. The notice must contain all issues and grounds for the appeal as well as what the owner considers to be the fair market value and assessment of the property. The department may extend the time for filing the written notice of appeal.

Effective Date: August 31, 1994

House Bill 3907, Section 24, (Act No. Unassigned).

Rounding of Assessed Value

Code Section 12-37-120 has been added to provide that in the calculation of the assessed value of property subject to property tax, the result must be rounded to the nearest \$10. This rounded amount is deemed to be the assessed value of the property.

Effective Date: August 31, 1994

House Bill 3907, Section 25, (Act No. Unassigned).

Assessment of Property by County Auditor

Code Section 12-39-70 has been added to provide that for the purpose of appraising and assessing personal property of businesses and other entities under his jurisdiction, the county auditor shall follow the classification of the most recent Standard Industrial Classification Manual.

Effective Date: August 31, 1994

House Bill 3907, Section 27, (Act No. Unassigned).

Out-of-State Appraisers

Code Section 12-4-330 has been amended to provide that out-of-state appraisers serving as witnesses are not required to be licensed or certified in this State. Out-of-state appraisers are defined as appraisers with a business address outside of this State.

Effective Date: August 31, 1994

House Bill 3907, Section 28, (Act No. Unassigned).

Applications for Property Tax Exemptions

Code Section 12-4-720(A) has been amended to require owners of property exempt under Section 12-37-220A(7) and (8) (dealing with new manufacturing establishments and pollution control equipment, respectively), and B(32), (33), and (34) (dealing with corporate headquarters, personal property of an air carrier operating an air carrier hub terminal facility, and research and development facilities, respectively) to file an annual application for exemption before the last day of the fourth month after the close of the taxpayer's accounting period for income tax purposes. The reference to personal property in transit with "no situs" was deleted from this section. Therefore, in order to receive an exemption for this property, an application for exemption must be filed with the Department between January first and April fifteenth of the year for which the exemption is claimed, as provided in Section 12-4-720(A)(1).

Effective Date: August 31, 1994

House Bill 3907, Section 29, (Act No. Unassigned).

Exemptions for Certain Motor Vehicles and Property in Time-share Units

Code Section 12-37-220(B) has been amended to exempt from ad valorem taxation two personal motor vehicles for which special license tags have been issued owned or leased by:

1. any disabled veteran;
2. any Medal of Honor recipient;
3. persons required to use wheelchairs (the vehicle may be owned or leased either solely or jointly); and
4. any member or former member of the armed forces who was a prisoner of war in World War I, World War II, the Korean Conflict, or the Vietnam Conflict. This exemption also extends to the surviving spouse of the POW for life or until remarriage.

This act also provides that property exempt under Section 12-37-220(A), dealing with household goods and furniture used in the home of the owner, includes property located in a time-share unit.

Effective Date: August 31, 1994

House Bill 3907, Section 30, (Act No. Unassigned).

Penalties

Code Section 12-37-800 has been amended to provide that a person who intentionally makes a false return, wilfully attempts to understate tax liability, or recklessly or intentionally disregards applicable rules or regulations must be assessed a penalty of 25% of the taxes due. This penalty is in addition to any other penalty.

Effective Date: August 31, 1994

House Bill 3907, Section 31, (Act No. Unassigned).

Depreciation

Code Section 12-37-930 concerning the valuation of a manufacturer's machinery and equipment has been amended to include in the definition of "original cost" property on which the taxpayer has made the election allowed pursuant to Internal Revenue Code Section 179.

Effective Date: August 31, 1994

House Bill 3907, Section 32, (Act No. Unassigned).

Cancellation of License Plate and Registration Certificate

Code Section 12-37-2725 has been amended to allow an owner of a vehicle to return the license plate and registration certificate to the county auditor for cancellation and a refund on a prorated basis of property taxes paid if the owner becomes a legal resident of another state and registers the vehicle in the new state of residence. (See the Motor Vehicle Division Section, House Bill 4377 regarding possible refund of a portion of the registration fee.)

Effective Date: August 31, 1994

House Bill 3907, Section 33, (Act No. Unassigned).

Classification of Property

Code Section 12-43-335 has been amended to provide for the use of additional Standard Industrial Classification ("SIC") codes for assessing property of merchants and related businesses.

This Act also codifies SC Regulation 117-107 which states that, for the purpose of assessing property of manufacturers, the Department will follow the classifications set forth in Division B and Division D of the most recent SIC Manual, with the exception of certain newspaper, book and periodical publishers.

This Act also provides for using the most recent SIC Manual for the classification and assessment of railroads, private carlines, airlines, water, power, telephone, cable television, sewer and pipeline companies.

Effective Date: August 31, 1994

House Bill 3907, Section 34, (Act No. Unassigned).

Abatement of Property Tax for Textile Plants of Affiliated Groups

Section 17(A) of Act 168 of 1991 has been amended to provide that a corporation which acquires eight or more existing textile manufacturing facilities in South Carolina which employed at the time of acquisition a total of 3,500 or more employees located in this State may receive the five-year abatement pursuant to Section 12-37-220A(7) from the time of acquisition. For purposes of this section 'corporation' means a single corporation or an 'affiliated group' of corporations as defined in Section 1504 of the Internal Revenue Code which may acquire such facilities pursuant to a single transaction. This section also applies to wholly-owned subsidiaries of the corporation which may have acquired any of the eight textile manufacturing facilities from the corporation in a tax-free transaction pursuant to Section 351 of the Internal Revenue Code.

Effective Date: August 31, 1994

House Bill 3907, Section 36, (Act No. Unassigned).

Audit Standards

Code Section 4-9-155 which sets forth that the offices of the county assessor, auditor, treasurer and tax collector must be audited in accordance with standards set forth in the Government Auditing Standards and a manual and guide prescribed by the Department of Revenue has been repealed.

Effective Date: August 31, 1994

Senate Bill 967, (Act No. Unassigned).

Mobile and Manufactured Homes

Code Sections 12-49-310 and 12-49-315 have been added to provide that before a delinquent tax collector may advertise a mobile or manufactured home for sale, he must give 20 days' notice of the levy to the holder of each lien identified on the forms provided to the auditor of the county for liens created after December 31, 1994 and to the lienholders contained on the certificate of title held by the Department for liens created before January 1, 1995.

Code Section 12-49-325 has been added to require the delinquent tax collector to keep a copy of each notice given pursuant to Section 12-49-310 on which he shall enter the date the notice was

delivered, the method of delivery, and the name and address of the recipient of the notice. Code Section 12-49-330 has been added to provide that, for liens created after December 31, 1994, the rights of any lienholder, who has filed his security interest with the Division of Motor Vehicles and such security interest is shown on the certificate of title, is in no way affected by a tax sale made pursuant to this chapter unless there has been compliance with the provisions of Section 12-49-310.

Code Section 31-17-410 has been added to provide that when an application for title on a mobile or manufactured home has been submitted to the Department, a copy of the application must be provided to the auditor of the county in which the mobile or manufactured home is to be located. Failure to provide the application is a misdemeanor, punishable by a fine of at least \$100 but not more than \$500 or imprisonment for not more than 30 days.

Code Sections 31-17-320 and 31-17-350 have been amended to provide that if a mobile home is purchased or moved to a new county or the title to a mobile home is transferred, a license must be obtained from the licensing agent of the county in which the mobile home is located or to be located.

Code Section 31-17-360 has been amended to provide that before a permit to move a mobile home may be issued, the owner, rental agent, or person in possession must provide to the licensing agent a certificate from the county treasurer that there are no unpaid taxes due on the mobile home and either a copy of the certificate of title to the mobile home, or a copy of the completed application submitted to the Division of Motor Vehicles of the Department of Revenue. If the mobile home is to be moved outside of the county, any taxes must be paid in full. The county treasurer shall collect the taxes before issuing the requisite certificate to the licensing agent, and upon payment of any taxes, give the permit applicant a receipt showing that all taxes have been paid.

Code Section 31-17-380 has been amended to state that when a mobile home is being relocated to another county, the licensing agent issuing the moving permit shall furnish the licensing agent of the county to which the mobile home is being transported a copy of the paid tax receipt from the county from which the home is being moved, and either a copy of the certificate of title or a copy of the completed application submitted to the Division of Motor Vehicles along with a copy of the certified license application or permit.

Section 31-17-390 has been amended to provide that a copy of all license applications and moving permits must be furnished within 10 days to the county auditor as well as the county assessor.

Section 12-49-210 has been amended to state that 'mobile and manufactured home' are defined as provided in Sections 12-43-230(b) and 40-29-20(9). The definition of 'tax collector' as the person in the county charged by law with the collection of delinquent ad valorem taxes has been added to this section. Section 12-49-225 has been amended to provide that the procedure provided by this section for notifying lienholders before advertising the sale of a mobile or manufactured home applies only to liens created before January 1, 1995.

Section 12-49-271 has been amended to provide that when the delinquent tax collector receives a

list of delinquent taxpayers from the county treasurer, and the list includes mobile or manufactured homes, he shall forward to the Department of Revenue a form requesting the name and address of all lienholders shown on the certificate of title.

Section 12-49-290 has been amended to provide that the right, interest, and security of a lienholder who has filed his security interest with the Department of Revenue, and the security interest is shown on the certificate of title, must not be affected by a tax sale unless the provisions of Section 12-49-225 are complied with but only for liens created before January 1, 1995.

Section 12-51-96 has been amended to provide that when an owner of a mobile or manufactured home redeems his property after a delinquent tax sale, the defaulting taxpayer or lienholder must pay rent to the purchaser at the time of redemption of an amount not to exceed 1/12th of the taxes for the last completed property tax year, exclusive of penalties, costs, and interest, for each month between the sale and redemption. The monthly rental must not be less than \$10. For the purposes of this rent calculation, more than 1/2 of the days in any month counts as a whole month.

Section 56-19-240 has been amended by adding a requirement that, in addition to the other information required in an application, the application for title for a mobile or manufactured home must include the address of the site on which the home is to be placed if different from the owner's address.

Effective Date: This Act takes effect January 1, 1995, and applies to property taxes going into execution after December 31, 1994.

Senate Bill 967, Section 12, (Act No. Unassigned).

Minimum Assessment for Legal Residence

Section 12-43-220(c) has been amended to provide that a legal residence qualifying for the 4% assessment ratio must have an assessed value of not less than \$100.

Effective Date: This Act takes effect January 1, 1995, and applies to property taxes going into execution after December 31, 1994.

SALES AND USE TAXES

House Bill 3907, Section 16, (Act No. Unassigned).

Exemption for Gasoline and Motor Fuels

Code Section 12-36-2120(15) exempts gasoline and certain motor fuel from the sales and use tax. This section has been amended to allow the Department to reduce fuel tax refunds issued

under Code Section 12-29-380 by the sales tax due, provided the fuel was not used in farm machinery, farm tractors, or commercial fishing vessels.

This code section continues to:

1. exempt all gasoline, with the exception of gasoline used in aircraft;
2. exempt fuels used in farm machinery and farm tractors; and,
3. exempt fuel used in commercial fishing vessels.

The provisions of this section, read in conjunction with other sections, continue to:

1. exempt clean alternative transportation fuels since such are "subject to the tax" under either Chapters 27 or 29 (regardless of the rate of taxation);
2. exempt fuel used in trucking equipment since it is "subject to the tax" under Chapter 29 and not refunded under Code Section 12-29-380 but refunded under Code Section 12-27-1510; and,
3. exempt fuel used in State owned school buses and other student transportation vehicles since this fuel is "subject to the tax" under Chapters 27 and 29, even though the law provides an exemption.

Effective Date: August 31, 1994

House Bill 3907, Section 17, (Act No. Unassigned).

Sales of Motor Vehicles to Military Personnel

Code Section 12-36-2120(25) has been amended to exempt from South Carolina sales and use tax sales of vehicles to military personnel stationed in this State by reason of orders of the U.S. Armed Forces who are not residents of South Carolina if the buyer furnishes the vendor within 10 days of the sale a leave and earnings statement from the appropriate department of the armed services which designates the state of residence of the buyer.

Sales to these military personnel will continue to be exempt if the dealer is furnished a properly completed exemption statement by a commissioned officer of higher rank than the purchaser, within 10 days of the sale.

Effective Date: August 31, 1994

Senate Bill 967, Section 16, (Act No. Unassigned).

Exemption for Supplies and Machinery Used by Garment or Other Textile Rental

Establishments

Code Section 12-36-2120(24) has been amended to exempt from the sales and use tax "supplies and machinery used by ... garment or other textile rental establishments in the direct performance of their primary function ..."

Effective Date: June 30, 1995

WITHHOLDING TAXES

House Bill 3907, Section 10, (Act No. Unassigned).

Withholding on South Carolina Income of Nonresident Shareholders and Partners

Code Section 12-9-40 has been amended to provide that a partnership or S-corporation is not required to withhold income taxes with respect to any nonresident partner or shareholder who is exempt from income taxes under Internal Revenue Code Section 501(a) and, also, provides the partnership or S-corporation with a statement indicating its tax exempt status.

The statement provided to the partnership or S-corporation must contain the partner's or shareholder's name, federal identification number, Internal Revenue Code section exemption number, and a copy of the IRS exemption letter.

Effective Date: August 31, 1994