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

SC INFORMATION LETTER #95-16

SUBJECT: Legislative Changes Update for 1995

DATE: August 15, 1995

AUTHORITY: S.C. Code Ann. 12-4-320 (Supp. 1994)

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.

Attached is a brief summary of most of the significant changes in laws administered by the Department of Revenue, ("Department"), that were enacted by the General Assembly during the past legislative session.

This information letter is divided into three categories of legislation:

- (1) Alcoholic Beverage Control,
- (2) Motor Vehicles, and
- (3) Taxation.

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.

ALCOHOLIC BEVERAGE CONTROL

House Bill 3362, Section 75, (Act No. 145)

Use of Revenue From Special Retail Beer and Wine Permits

Code Section 61-9-312 has been amended to provide that revenue generated by fees charged for special retail beer and wine permits which allow sales for off-premises consumption without regard to the restrictions of Code Sections 61-9-90, 61-9-100, 61-9-110, and 61-9-130 (dealing with Sunday and Monday morning sales) must be credited to a special account when such revenue is generated within a county where a federal military base or installation has been closed, or is designated to be closed and where the facility has reduced its permanent civilian employment by 3,000 or more jobs after December 31, 1990. These fees are to be transferred into this separate account until June 30, 2004, and are to be used for the support of a redevelopment authority created pursuant to Chapter 12 of Title 31.

Effective Date: July 1, 1995

House Bill 3567, (Act No. 143)

Prohibition on Issuance of Alcoholic Beverage Permits to Certain Persons

Code Section 61-1-95 has been amended to provide that a beer, wine or alcoholic beverage license or permit which has been suspended or revoked for a particular premises may not be reissued to a person within the second degree of kinship to the person who held the license or permit for one year after the date of the suspension or revocation. Prior to this amendment no person within the third degree of kinship from the license or permit holder could be issued a license or permit for the premises.

Effective Date: June 13, 1995

House Bill 3630, (Act No. 103)

Alcoholic Beverages on Aircraft

Code Section 61-3-990 has been amended to allow for the sale of alcoholic beverages in sealed containers of two ounces or less to persons for commercial aircraft engaged in interstate commerce.

Effective Date: June 13, 1995

House Bill 3787, (Act No. 144)

Refunds of Beer, Wine or Alcoholic Liquor License and Permit Fees and Issuance of Biennial Licenses

Code Section 12-33-210, dealing with taxes on licenses granted under the Alcohol Beverage Control Act, has been amended to provide that any person who applies for a license after the first day of a license period shall pay license fees in accordance with the schedule provided in Code Section 61-5-80(B).

Code Section 61-1-105 has been amended to allow for a partial refund of any license or permit fee paid for a beer, wine, or alcoholic liquor license or permit, if a licensee or permittee's location is closed for any reason during the first year of the biennial license or permit period. The refund is equal to the amount of the fee that is attributable to the second year of the biennial period. However, no refund is allowed if the license or permit has been cancelled, relinquished or revoked as a result of an enforcement action or a failure to adhere to the conditions of the license or permit.

Code Sections 61-3-710, 61-5-70 and 61-9-310, which deal with the issuance or expiration of beer, wine or alcoholic beverage licenses and/or permits, have been amended to eliminate certain references to the first year in which the licensees in the various South Carolina counties will begin receiving biennial licenses or permits. Code Section 61-9-310 was also amended to provide that a person who initially applies for a permit after the first day of a permit period shall pay permit fees in accordance with the schedule provided in Code Section 61-5-80(B). Code Section 12-33-220 was repealed.

Effective Date: July 20, 1995, except the provision that amends Code Section 61-1-105 of the Code applies to biennial licenses or permits issued after June 30, 1992.

MOTOR VEHICLES

Senate Bill 547, (Act No. 70)

Wholesale Motor Vehicle Auctions

Article 5 has been added to Chapter 15, Title 56, of the 1976 Code. This article requires wholesale motor vehicle auctions to apply for a twelve month license with the Department (Section 56-15-560). Also, the Article contains provisions concerning wholesale motor vehicle auction license plates (Section 56-15-600).

Effective Date: June 12, 1995

Senate Bill 646, (Act No. 36)

"Motor Carrier" Substituted for "Common Carrier"

Code Section 56-5-90, relating to driving limitations for intrastate motor carrier drivers, has been amended to substitute the words "motor carrier" for "common carrier" in certain references contained in that section.

Effective Date: April 26, 1995

Senate Bill 686, (Act No. 42)

Violations Concerning Certificates of Title, and Transfers of Titles on Vehicles Held for Resale

Code Section 16-21-20, relating to misdemeanor violations involving motor vehicle titles, has been amended to allow persons 45 days, instead of 10 days, to (1) mail or deliver a certificate of title or application thereof to the Department's Division of Motor Vehicles as required by Chapter 19 of Title 56; and (2) deliver to a transferee a certificate of title as required by Chapter 19 of Title 56.

In addition, Code Section 56-19-370, relating to dealers purchasing vehicles for resale, has been amended to provide that dealers are not required to send a certificate of title to the Department's Division of Motor Vehicles on a vehicle held for resale if the title is procured from the owner within 45 days after delivery of the vehicle to the dealer. Under prior law, this time period was 10 days.

Effective Date: May 17, 1995

House Bill 3362, Section 51, (Act No. 145)

Motor Carrier Changes

Code Section 58-23-350 has been added to provide that no for-hire motor vehicle carrier of property (except carriers of household goods or hazardous waste for disposal) may operate in this State without having a Class E Certificate of Compliance issued by the Department. A one time fee of \$25 may be charged for each certificate issued. An applicant for a license must provide evidence of meeting the financial responsibilities or insurance requirements, satisfy compliance requirements of the United States Department of Transportation motor carrier safety and hazardous materials regulations before issuance, and continually satisfy these requirements or certification may be suspended, revoked, or placed in a probationary status. The Department may cooperate with the Department of Public Safety in determining if compliance has been met.

Code Section 58-23-620, relating to situations in which local fees may be imposed, has been amended to provide that no city, town, or county in this State can impose a license fee or license tax upon a holder of a Certificate of Compliance, or a common or contract motor carrier of property, except the city or town of such carrier's residence or the location of his principal business.

Code Section 58-23-640, relating to assessment of identifier fees, has been amended to require that the Department, not the Public Service Commission, charge a \$5 identifier fee. This fee is for an identifier card, known as a "bingo card", to be placed in trucks traveling in South Carolina that indicates insurance coverage.

Code Section 58-23-650 has been amended to allow the Department to enter into reciprocal agreements with the regulatory agencies of other states having jurisdiction and authority over motor carriers to provide for base state agreements in which the registration of interstate carriers operating in participating states may be accomplished by registration in one base state. Additional rules are provided when the carrier's base state is South Carolina.

Effective Date: June 29, 1995

House Bill 3362, Section 56, (Act No. 145)

Inspection of Motor Vehicles - Repealed

Code Sections 56-5-5230 through 56-5-5440, relating to the inspection of motor vehicles, have been repealed.

Effective Date: July 1, 1995

House Bill 3362, Section 68, (Act No. 145)

Expenses of the Transportation Department of the Public Service Commission

Code Section 58-3-100, pertaining to the assessment of expenses for the operation of the Transportation Department of the Public Service Commission, has been amended to provide that the Department will assess household goods carriers and hazardous waste disposal carriers their proportion of the expenses on or before the first day of July each year. In the past, the Department assessed utility companies and railway companies. Also, this amendment changed the assessment date to July 15.

Effective Date: May 1, 1996

House Bill 3552, (Act No. 51)

Motor Vehicle Damage Disclosure Act

This amendment adds Chapter 32, the Motor Vehicle Damage Disclosure Act, to Title 56.

Code Section 56-32-20(A) requires a motor vehicle manufacturer to disclose, in writing to a motor vehicle dealer at the time of delivery of a new motor vehicle, damage and repair to the new motor vehicle that occurred while the vehicle was in the possession or under the control of the manufacturer if the damage exceeds 3% of the manufacturer's suggested retail price. This disclosure requirement does not apply to glass, tires, bumpers, or in-dash equipment if the damaged item has been replaced with original or comparable new equipment.

Code Section 56-32-20(B) requires a motor vehicle dealer to disclose, in writing to a purchaser of a new motor vehicle before entering into a sales contract, any damage and repair to the new motor vehicle if the cost of the damage exceeds 3% of the manufacturer's suggested retail price. This disclosure requirement does not apply to glass, tires, bumpers, or in-dash equipment in a new vehicle if the equipment has been replaced with original or comparable new equipment.

Further, Code Section 56-32-20(C) provides that if disclosure is not required under Code Section 56-32-20, a purchaser may not revoke a sales contract, rescind a contract, nor bring civil action against a dealer based solely upon the fact that the new motor vehicle was damaged and repaired before completion of the sale.

Code Section 56-32-29(D) defines "manufacturer's suggested retail price" as "the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the motor vehicle dealer."

Effective Date: May 17, 1995

House Bill 3608, (Act No. 101)

"Wreckage" or "Salvage" Motor Vehicles

Code Section 56-19-485 has been added to the law. Code Section 56-19-480, already part of the law, requires an owner who scraps, dismantles or destroys a motor vehicle required to be titled in South Carolina to immediately mail or deliver to the Department the vehicle's certificate of title for cancellation notifying the Department to whom the vehicle is delivered. Code Section 56-19-485 requires all such vehicles to be designated as either "wreckage" or "salvage", to inform the transferee of "the exact condition of the vehicle". Subsequent sales of such vehicles shall not occur without this designation. The owner of such vehicles whose total cost of repair, including all labor and parts, is estimated as 75% or more of the fair market value of the vehicle must provide the Department an affidavit from the rebuilder indicating the cost of repair along with other data the Department may prescribe to obtain a certificate of title. The certificate of title must be annotated with either "wreckage" or "salvage".

Effective Date: January 1, 1996

House Bill 3613, Part VI, Section 2, (Act No. 102)

Revocation of Driver's License for Failure to Make Support Payments

See summary under "Taxation" category.

House Bill 3824, (Act No. 175)

Special License Plates for Nongame Wildlife and Natural Areas Fund

Code Section 56-3-4510 has been added to the law. This section requires the Department to issue a new annual license plate for the purpose of funding the "Nongame Wildlife and Natural Areas Fund". The annual fee for this license will be \$12 for the first two years and \$5 for each year thereafter. This annual fee is in addition to the fee required under Article 5, Chapter 7 of Title 56.

Effective Date: June 12, 1995

TAXATION

ADMINISTRATIVE

Senate Bill 285, (Act No. 60)

Definition of Person - General Provisions

Code Section 12-2-20 has been amended to include a limited liability company within the meaning of the term "person".

Effective Date: June 12, 1995

Senate Bill 285, (Act No. 60)

Definition of Person - Collection and Enforcement Provisions

Code Section 12-54-10, relating to the collection and enforcement provisions, has been amended to include a limited liability company within the meaning of the term "person".

Effective Date: June 12, 1995

Senate Bill 285, (Act No. 60)

Delinquent Tax Collections

Code Section 12-54-227 has been amended to allow the Department to contract with a collection agency in order to collect delinquent taxes from South Carolina residents as well as nonresidents.

Effective Date: June 12, 1995

Senate Bill 285, (Act No. 60)

Disclosure of Information

Code Section 12-54-240 has been amended to allow the disclosure of certain information with respect to bankruptcy proceedings and insurance fraud.

Effective Date: June 12, 1995

Revenue Procedures Act

The South Carolina legislature has enacted Act Number 60, which adds Chapter 60 to Title 12 of the South Carolina Code of Laws ("Code"). This new chapter is referred to as "The South Carolina Revenue Procedures Act." ("Act")

The intent of the Act is to provide a straightforward method of determining any disputed revenue liability. All references are to the South Carolina Code of Laws unless otherwise specified.

GENERAL PROVISIONS

Definitions - Code Section 12-60-30

Among the most important words defined in the Act are:

1. "Tax or Taxes" means all taxes, licenses, permits, fees, or other amounts, including interest and penalties, imposed by Title 12, or subject to assessment or collection by the Department. This includes fees for Department of Motor Vehicle (DMV) matters.
2. "Proposed Assessment" means the first written notice sent or given to a taxpayer stating that a division within the Department has concluded that a tax is due. However, the term does not include the auditor's work papers, draft audit reports, or any document specifically stating that it is not a proposed assessment.
3. "Assessment" means the Department's final determination of any tax due.
4. "Contested Case Hearing" means hearings conducted by the Administrative Law Judge Division and hearings conducted by the DMV hearing officers to review Department Determinations concerning DMV matters.

Anti-Injunction Act and Exclusive Remedy - Code Sections 12-60-70 and 12-60-80

No action of a court, an administrative law judge or a hearing officer can prevent or stay the Department or any officer of the State charged with a duty in the collection of taxes, from acting to collect a tax, whether or not the tax is legally due. Furthermore, there is no remedy, other than those provided in the Act, in any case involving the illegal or wrongful collection of taxes or attempts to collect taxes.

Representation of Taxpayers - Code Section 12-60-90

The Act also provides information as to who may represent a taxpayer during the administrative tax process. It does not address the representation of taxpayers in hearings held by the Administrative Law Judge Division, DMV hearing officers, or the courts.

GENERAL APPEAL PROCEDURES

Appealing Assessments Issued by the Department (Except Property Taxes) - Code Sections 12-60-410 through 12-60-460

Article 5 is the first article to deal specifically with the procedures to be followed in assessing and protesting an assessment of tax made by the Department. The process begins when a Proposed Assessment is issued by a division of the Department. Section 12-60-410. The Proposed Assessment must be mailed or delivered to the taxpayer and must contain information as to the Department's reasons for issuing the Proposed Assessment as well as information as to how the taxpayer may contest the Proposed Assessment.

After sending the Proposed Assessment, the Department must wait thirty days to issue a final assessment. If a taxpayer protests the Proposed Assessment as described below, the Department may not issue a final assessment until the taxpayer's appeal is resolved. Certain exceptions apply to the restrictions on the time for assessments. Section 12-60-440.

A taxpayer may appeal a Proposed Assessment by filing a protest with the Department within thirty days of the date of the Proposed Assessment. The written protest must contain information which identifies the taxpayer(s) as well as information as to why the taxpayer believes the Proposed Assessment is incorrect. For a complete listing of what must be provided in the protest a taxpayer may consult Section 12-60-450(B). If the taxpayer fails to file a timely written protest, the Department will assess and collect the tax. Note, that the filing of a protest extends the time the Department has for issuing a final assessment. Section 12-60-450.

After the protest has been filed and the taxpayer has completed or refused any other internal administrative appeal processes which are offered, the Department will choose someone to handle the appeal. This person (known as the "Department Representative") and the taxpayer will attempt to settle the appeal, and if they cannot settle the matter, they will attempt to stipulate to the facts and issues involved in the appeal.

If the Department issues a determination adverse to the taxpayer, it must be in writing and it must be mailed or delivered to the taxpayer. This determination is referred to as the "Department Determination". The Department Determination must explain the basis for the Department's decision and inform the taxpayer that he has the right to request a Contested Case Hearing before the Administrative Law Judge Division or the DMV hearing officer, as appropriate. The Department Determination must also state that the tax will be assessed in thirty days and payment demanded unless the taxpayer requests a Contested Case Hearing. Section 12-60-450.

Requests for a Contested Case Hearing before the Administrative Law Judge Division must be made in accordance with the rules of that division. Requests for a Contested Case Hearing before the DMV hearing officers must be made to the Department Representative. Section 12-60-460. The rules of the Administrative Law Judge Division may be obtained from the Clerk of the Court, 1205 Pendleton Street, Edgar A. Brown Bldg., Suite 207, Columbia, S.C., 29201.

In certain instances, the Department is not bound to follow the procedures described above. For example, if a taxpayer fails or refuses to make any report or to file a return as required, the Department is allowed to make an estimate of tax liability and issue a Proposed Assessment using the best information available. Section 12-60-430. Additionally, if the taxpayer fails to respond or participate in the settlement and stipulation process, the Department Representative may view the appeal as abandoned and make a Department Determination using any information available.

Procedures for Refunds - Code Sections 12-60-470 through 12-60-500

In addition to providing a procedure to follow for contesting an assessment of tax made by the Department, the Act also provides information on how a taxpayer may seek a refund of taxes previously paid. A taxpayer may seek a refund of any state tax by filing a written claim for refund with the Department. A refund claim will be considered timely filed if it is filed within the period specified in Section 12-54-85. A claim for refund must include information which identifies the taxpayer(s) and explains why the refund should be granted. For a complete listing of what information must be provided in a claim for refund, a taxpayer should consult Section 12-60-470(B).

If the person claiming the refund is a collector and remitter of the tax rather than the taxpayer (for example, an out-of-state seller required to collect and pay a use tax), he or she must establish that they have paid the tax in question to the State. Additionally, such collector must establish that he or she repaid the tax to the person from whom he or she collected the tax originally or has obtained the written consent of the person from whom he or she collected the tax to the allowance of the credit or refund. Section 12-60-470.

The appropriate division of the Department shall decide what refund is due and give the taxpayer a written decision of their conclusion as soon as practicable after the claim is filed. If the decision is adverse to the taxpayer, the taxpayer may appeal the division's decision by filing a written protest within thirty days of denial of the refund and following the procedures for

protesting an assessment of tax. After the final denial of the taxpayer's request for refund through a Department Determination, a taxpayer may seek a Contested Case Hearing. The taxpayer has thirty days from the date of the Department Determination to request a Contested Case Hearing. Requests for a Contested Case Hearing before the Administrative Law Judge Division must be made according to their rules. Requests for a Contested Case Hearing before a DMV Hearing Officer must be made to the Department Representative.

A claim for refund can be amended prior to, but not after, the expiration of time for filing the claim for refund under Section 12-54-85(F). The claim as amended must be treated as if it were first filed when the amendment was filed, and the procedures and time periods involved must begin again. Section 12-60-470.

If a taxpayer exhausts his administrative remedy, as that term is defined in the Act, and ultimately prevails on the merits in a lawsuit seeking a refund or abatement of a license fee or any tax based upon the allegation that the tax or fee has been imposed wrongfully as a matter of law, the Department will issue a refund to all similarly situated taxpayers who timely and properly applied for a refund. Section 12-60-480.

If a taxpayer is due a refund, it must first be applied against any amount of that same tax that is currently assessed and due and outstanding from the taxpayer. The remaining refund, if any, must then be applied against any other state taxes that have been assessed against the taxpayer and that are currently due. If any excess remains, the taxpayer will be refunded that amount plus interest or such amount may be credited to the taxpayer's future tax liabilities. Section 12-60-490.

Exhaustion of Prehearing Remedies - Code Section 12-60-510

For both a proposed assessed tax and a claim for refund, before a taxpayer may request a Contested Case Hearing before the Administrative Law Judge Division or the DMV Hearing Officers, he or she must have exhausted the prehearing remedy. Exhaustion of the Taxpayer's Prehearing Remedy as defined by the Act, requires that the taxpayer file a written protest as required by the Act and provide the facts, the law, and any other authority supporting the taxpayer's position to the appropriate administrative party handling the appeal. Section 12-60-30(16). (See the property tax sections below for special requirements for property tax).

If a taxpayer requests a Contested Case Hearing prior to exhausting the prehearing remedy by failing to file a protest, the Administrative Law Judge or DMV Hearing Officer will dismiss the matter without prejudice. If a taxpayer has failed to provide the Department with all the facts or law necessary for the Department to reach its conclusion, the Administrative Law Judge or DMV Hearing Officer will remand the case to the Department for reconsideration unless the Department chooses to forego the remand. Procedures are provided for the Department to follow in the event of a remand. The statute of limitations for time for assessment remains suspended by Section 12-54-85(G) during the remand process. Section 12-60-510 of the Code.

Small Claims Cases - Code Section 12-60-520

A taxpayer who requests a Contested Case Hearing may elect to designate the action as a small claims case if no more than \$10,000 of tax and penalties (but not including interest) are in controversy at the time of filing the request for a Contested Case Hearing. The request that a matter be designated a small claims case must be made at the time of the request for a Contested Case Hearing. The decision of the Administrative Law Judge or DMV Hearing Officer in an action designated as a small claims case is final and conclusive and may not be reviewed by any court and has no precedential value for the purpose of other taxpayers' appeals. An appeal that raises a constitutional issue may not be designated a small claims case.

JEOPARDY ASSESSMENTS

Code Sections 12-60-910 through 12-60-920

If the Department finds that an assessment or collection of a tax or deficiency for any period is jeopardized in whole or part by a delay in assessing or collecting the tax due, the Department may terminate the taxpayer's current tax period and immediately assess the tax for the current period and any prior period not barred by the statute of limitations without going through the procedures described above. Section 12-60-910. Any action pursued using this method is referred to as a "Jeopardy Assessment". If a Jeopardy Assessment is made, notice of the Jeopardy Assessment must be provided to the taxpayer by personal delivery, or by mailing a copy of the assessment to taxpayer's last known address or by any other means reasonably designed to provide notice to the taxpayer. A Jeopardy Assessment is considered immediately due and payable and collection thereof can begin immediately after the Jeopardy Assessment has been made. Section 12-60-910.

A taxpayer can obtain a stay of collection of the Jeopardy Assessment by doing either of two things:

1. posting a bond with the Department equal to the amount of the Jeopardy Assessment that will be stayed (including interest to the date of payment); or,
2. providing security in any amount the Department considers necessary to secure the Jeopardy Assessment, however, the security requested cannot exceed twice the assessed amount.

Additionally, the Department may stay collection at anytime if it determines that an assessment is no longer in jeopardy. Section 12-60-910.

Within five days of the date of the Jeopardy Assessment, the Department must provide the taxpayer with a written statement of the information the Department relied on in making the Jeopardy Assessment. The taxpayer may request a Contested Case Hearing before the Administrative Law Judge Division within thirty days of the date the statement was provided or was required to be provided. The only issue that is to be determined in the Contested Case Hearing is whether the Jeopardy Assessment is reasonable and appropriate.

Requests for a Contested Case Hearing must be made in accordance with the rules of the Administrative Law Judge Division. Within ten days after the taxpayer's filing for a Contested Case Hearing, the Department will file a response with the Administrative Law Judge Division. Within twenty days of the filing of the Department's response, the Administrative Law Judge will render his decision. The running of the ten and twenty day periods begins on the date on which service is made on the Department. Section 12-60-920.

If the Administrative Law Judge determines that the Jeopardy Assessment is unreasonable or that the amount assessed or demanded is inappropriate, he or she may order the Department to abate the assessment, to redetermine the amount in whole or part, or to take other action that the judge deems appropriate. The decision made by the judge is final and conclusive and may not be reviewed by any court. Section 12-60-920.

At the Contested Case Hearing, as to the issue of whether the making of the Jeopardy Assessment was reasonable, the burden of proof shall be on the Department, however, as to the issue of whether the amount of the Jeopardy Assessment was appropriate, the burden of proof is on the taxpayer. Section 12-60-920.

APPEALING LICENSING MATTERS

Appealing License Decisions Issued by the Department - Code Sections 12-60-1310 through 12-60-1350

If a division of the Department denies a person any license that the Department administers, or if the Department mails or delivers a notice to a license holder that a division of the Department is suspending, cancelling, or revoking a license administered by the Department, then the

person/license holder can appeal the decision by filing a written protest with the Department within thirty days of the denial or proposed suspension, cancellation, or revocation. Section 12-60-1310.

The written protest must contain information that identifies the taxpayer(s) involved and facts and information that support the taxpayer(s) position. For a complete listing of what is required to be included in the protest, see Section 12-60-1310(B).

After a protest has been filed and the person/license holder has completed any other Department procedures provided with respect to his or her appeal, the person/license holder and the Department Representative will attempt to settle the case. If they are unable to settle the case they will attempt to stipulate to the relevant facts and issue involved in the appeal. If the person/license holder fails to respond or participate in the process with the Department Representative, the Department may view the appeal as abandoned and make a Department Determination using any information provided. Section 12-60-1310.

A Department Determination must be in writing and must be mailed or delivered to the person/license holder. The Department Determination must also explain the basis for the Department's Determination and inform the person/license holder of his right to request a Contested Case Hearing. Further, the Department Determination must explain that the license will not be issued, or the license will be suspended or revoked in thirty days unless the person/license holder requests a Contested Case Hearing. Section 12-60-1310. Requests for a Contested Case Hearing before the Administrative Law Judge Division must be made in accordance with its rules. Requests for a Contested Case Hearing before the DMV Hearing Officers must be made to the Department Representative. Section 12-60-1320.

Before requesting a Contested Case Hearing before the Administrative Law Judge Division or the DMV Hearing Officer, a person/license holder must exhaust his prehearing remedy, as that term is defined in the Act. Failure to exhaust prehearing Department remedies may result in dismissal of the case without prejudice or a remand to the Department for further proceedings. Procedures are provided for the Department to follow if there is a remand to the Department because a person/license holder failed to exhaust his prehearing remedy. Section 12-60-1330.

Note, that if the Department determines that public health, safety, or welfare requires emergency action, it will seek an emergency revocation order from the Administrative Law Judge Division or the DMV Hearing Officers, as appropriate, pursuant to Section 1-23-370(c). Section 12-60-1340. Furthermore, Chapter 60, Title 12 of the Code does not apply to, or have any effect on, any license suspended or revoked (1) by the Department of Public Safety (2) by judicial decision or order (3) where a statute requires the Department or the Department of Public Safety to suspend or revoke a license or (4) by other operation of law. Section 12-60-1350.

GENERAL PROPERTY TAX PROVISIONS

Provisions Applicable to All Property Taxes - Code Sections 12-60-1710 through 12-60-1770

Generally, these code provisions provide that a taxpayer may appeal any property tax assessment or denial of refund by filing a written protest. No refund will be given 1) if an exemption application was not timely filed, or 2) if there is an error in valuation unless the assessment is appealed in accordance with the appropriate procedures.

A taxpayer who requests a Contested Case Hearing before the Administrative Law Judge Division may take advantage of the small claims case provisions of Section 12-60-520 if the case meets the requirements of that section. In an action commenced by a county assessor or county auditor, the taxpayer may designate the case as a small claims case in his response to the assessor or auditor if the amount in controversy is less than \$10,000 of taxes and penalties (interest is not included). Section 12-60-1770.

PROTESTS, APPEALS AND REFUNDS FOR PROPERTY VALUED BY THE DEPARTMENT - EXEMPTION DETERMINATIONS

Appeal of Proposed Assessment and Exemption Denials - Code Sections 12-60-2110 through 12-60-2140

Sections 12-60-2110 and 12-60-2120 provide that in the case of property tax assessments made by a division of the Department, a written protest must be filed within 30 days of the date of the property tax assessment tax notice or of the denial of an exemption. The protest must be mailed or delivered to the director or his designee and include the information required in Section 12-60-450(B) as well as the fair market value, special use value, if applicable, and the property classification of the property the taxpayer believes is correct. If the protest claims the property is exempt, the protest must state the basis on which the exemption is claimed. The appeal will be conducted as discussed under the general appeals procedure in Section 12-60-450(C)-(E).

If the taxpayer or assessor disagrees with the Department Determination, either may request a Contested Case Hearing before the Administrative Law Judge Division within 30 days of the Department's Determination. If a taxpayer fails to exhaust his prehearing remedies because he failed to file a protest, the action will be dismissed without prejudice. If the taxpayer fails to provide facts, law and other authority to the Department, the case will be remanded to the Department which will have 30 days to consider the taxpayer's new information. The Department will then issue its amended determination and the taxpayer will have 30 days to again request a Contested Case Hearing. If the Department fails to issue its amended determination within 30 days, the taxpayer may again request a Contested Case Hearing.

If the appeal is not reasonably expected to be resolved by December 31st, the Department will notify the county auditor who will adjust the tax assessment of the property under protest to 80% of the protested assessment, or some higher amount if agreed to in writing by the taxpayer. The tax must then be paid. When the final assessment is made any underpayment, plus interest, must

be collected or any overpayment, plus interest must be refunded.

Refunds - Code Section 12-60-2150

Section 12-60-2150 states that a property taxpayer may seek a refund of property taxes paid by mailing or delivering a claim for refund to the Department within the time provided in Section 12-54-85. Even if the taxpayer does not file a claim, if there is no question of fact or law and money has been erroneously or illegally collected, the Department may order a refund.

The appropriate division of the Department will determine what refund is due and give the taxpayer written notice of its determination. The taxpayer may appeal this determination by filing a written protest with the Department following the procedures provided in Section 12-60-2110.

If the taxpayer or the county assessor disagrees with the Department's Determination, either may request a Contested Case Hearing before the Administrative Law Judge Division within 30 days of the Department's Determination.

If the taxpayer fails to exhaust his prehearing remedies because he failed to file a protest, the action will be dismissed without prejudice. If the taxpayer fails to exhaust his prehearing remedy because he failed to provide facts, law and other authority to the Department, the case will be remanded to the Department which will have 30 days to consider the taxpayer's new information. The Department will then issue its amended determination and the taxpayer will have 30 days to again request a Contested Case Hearing. If the Department fails to issue its amended determination within 30 days, the taxpayer may again request a Contested Case Hearing.

PROTESTS, APPEALS, AND REFUNDS FOR PROPERTY VALUED BY COUNTY ASSESSORS

Protests and Administrative Appeals of Assessments - Code Sections 12-60-2510 through 12-60-2550

Section 12-60-2510 states that the county assessor must personally serve or mail property tax assessment notices by July 1st to property taxpayers in years in which a) the assessor increases the fair market or special use value of property by \$1,000 or more, or b) the first property tax assessment is made on the property by the county assessor.

If the taxpayer disagrees with the assessment, he must object in writing within 30 days of the property tax notice. If no notice of tax assessment was sent in a given year, the taxpayer must file a written objection by March 1st. The taxpayer may object by requesting in writing to meet with the assessor. If the matter is not resolved, the taxpayer has 30 days from the date of the conference to file a written protest with the assessor. The protest must contain 1) the name, address, and telephone number of the property taxpayer; 2) a description of the property in issue; 3) a statement of facts supporting the taxpayer's position; 4) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies; and 5) the value and classification which the property taxpayer considers the fair market value, special use value,

if applicable, and the proper classification.

Within 30 days of the assessor's response, the taxpayer may appeal to the county board of assessment appeals. At least 15 days before the conference, the taxpayer and assessor must file certain information with the board and with each other. At least 7 days before, the taxpayer and assessor may file responses to each other's information.

After the conference, the board shall issue a written decision based on the evidence. Within 30 days of the decision, the taxpayer or the county assessor may request a Contested Case Hearing before the Administrative Law Judge Division.

If the taxpayer fails to exhaust his prehearing remedies because he failed to attend the conference with the county board of assessment appeals the action will be dismissed without prejudice. If a taxpayer fails to exhaust his prehearing remedy because he failed to provide facts, law or other authority to the county board, the case will be remanded to the county board which will have 30 days to consider the information. The county board will then issue its amended determination and the taxpayer will have 30 days to again request a Contested Case Hearing. If the county board fails to issue its amended determination within 30 days, the taxpayer may again request a Contested Case Hearing.

If the appeal is not reasonably expected to be resolved by December 31st, the county assessor will notify the county auditor who will adjust the tax assessment of the property under protest to 80% of the protested assessment, or some higher amount if agreed to in writing by the taxpayer. The tax must then be paid. When the final assessment is made, any underpayment, plus interest, must be collected, or any overpayment, plus interest must be refunded.

Refunds - Code Section 12-60-2560

Section 12-60-2560 states that a taxpayer may seek a refund of real property taxes assessed and paid by filing a claim for refund with the county assessor. The assessor, county treasurer and county auditor will determine the taxpayer's refund, if any, and notify the taxpayer.

Within 30 days of the county officials' determination, the taxpayer may appeal the determination to the county board of assessment appeals. At least 15 days before the conference, the taxpayer and assessor must file certain information with the board and with each other. At least 7 days before, the taxpayer and assessor may file responses to each other's information.

After the conference, the board shall issue a written decision based on the evidence. Within 30 days of the decision, the taxpayer or the county assessor may request a Contested Case Hearing before the Administrative Law Judge Division.

If a taxpayer failed to exhaust his prehearing remedies because he failed to attend the conference with the county board of assessment appeals, the action will be dismissed without prejudice. If the taxpayer fails to exhaust his prehearing remedy because he did not provide facts, law and other authority to the county board, the case will be remanded to the county board which will have 30 days to consider the information. The county board will then issue its amended

determination and the taxpayer will have 30 days to again request a Contested Case Hearing. If the county board fails to issue its amended determination within 30 days, the taxpayer may again request a Contested Case Hearing.

PROTESTS, APPEALS AND REFUNDS FOR PERSONAL PROPERTY VALUED BY COUNTY AUDITOR

Protests and Administrative Appeals - Code Sections 12-60-2910 through 12-60-2930

Section 12-60-2910 states that a property taxpayer may object to a personal property tax assessment or a denial of a homestead exemption by requesting, in writing, a conference with the auditor within 30 days after the tax notice is mailed.

If the matter is not resolved at the conference, the taxpayer must file a written protest with the auditor within 30 days of the conference. The protest must contain 1) the name, address, and phone number of the taxpayer; 2) a copy of the tax notice or a description of the property including the receipt number of the tax notice; 3) a statement of facts supporting the taxpayer's position; 4) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies; and 5) the value which the taxpayer considers the fair market value of the property.

Section 12-60-2920 provides that within 30 days of the date of the auditor's response the taxpayer may appeal a personal property tax assessment, or a denial of a homestead exemption by requesting a Contested Case Hearing before the Administrative Law Judge Division.

If a taxpayer fails to exhaust his prehearing remedies because he failed to file a protest or failed to meet with the county auditor, the action will be dismissed without prejudice. If a taxpayer fails to exhaust his prehearing remedy because he failed to provide facts, law and other authority to the county auditor, the case will be remanded to the auditor who will have 30 days to consider the information. The auditor will then issue his amended determination and the taxpayer will have 30 days to again request a Contested Case Hearing. If the auditor fails to issue his amended determination within 30 days, the taxpayer may again request a Contested Case Hearing.

If the assessment as finally determined is greater than the adjusted property tax assessment, a corrected assessment must be made. Interest must be determined and collected in the same manner as the tax. If the assessment as finally determined is less than the adjusted amount, a corrected assessment must be made and any overpayment plus interest must be refunded.

Refunds - Code Section 12-60-2940

Section 12-60-2940 states that a taxpayer may request a refund of property taxes assessed by the county auditor by filing a claim for refund with the county auditor who made the personal property tax assessment. The auditor, county assessor and county treasurer shall determine the amount of the refund, if any, and notify the taxpayer. Within 30 days of the decision, the taxpayer may request a Contested Case Hearing before the Administrative Law Judge Division.

If a taxpayer fails to exhaust his prehearing remedies because he failed to file a claim for refund, the action will be dismissed without prejudice. If the taxpayer fails to exhaust his prehearing remedy because he failed to provide facts, law and other authority to the county auditor, the case will be remanded to the county auditor, assessor and treasurer who will have 30 days to consider the information. These three county officials will then issue their amended determination, and the taxpayer will have 30 days to again request a Contested Case Hearing. If the county officials fail to issue their amended determination within 30 days, the taxpayer may again request a Contested Case Hearing.

GENERAL PROCEDURES IN REVENUE CASES HELD BEFORE THE ADMINISTRATIVE LAW JUDGE DIVISION, DMV HEARING OFFICERS OR THE COURT

Requests for Contested Case Hearings and Stipulations - Code Sections 12-60-3310 through 12-60-3320

Requests for Contested Case Hearings must be made in accordance with the rules of the Administrative Law Judge Division. Requests for hearings before the DMV hearing officers must be made to the Department Representative within the time limits provided above. Section 12-60-3310. All parties to a Contested Case Hearing must do their best to stipulate facts and issues involved in the hearing. Section 12-60-3320.

Department Intervention in Property Tax Matters - Code Section 12-60-3330

In order to insure consistent property tax treatment throughout the State, the Administrative Law Judge Division can request that the Department be made a party to any property tax matter before the division. The Department may also intervene at the administrative law judge level in any case which arises from a property tax assessed by the county assessor or county auditor.

Miscellaneous Matters Contested Case Hearings - Code Sections 12-60-3340 through 12-36-3360

Contested Case Hearings are to be held without a jury and in accordance with the procedures set forth in the Administrative Procedures Act, Chapter 23, Title 1. Additionally, Contested Case Hearings held by the Administrative Law Judge Division must be held in accordance with their rules. Section 12-60-3340. Additionally, no costs may be charged or allowed to either party, with limited exceptions. Section 12-60-3350. Both the DMV officers and the Administrative Law Judge Division are required to make copies of their decisions (subject to rules of confidentiality) available to the public. Section 12-60-3360.

Procedures for Appealing to Court - Code Sections 12-60-3370 through 12-60-3390

Except as otherwise provided, a party may appeal a decision of the Administrative Law Judge Division or the DMV hearing officers to the circuit court of Richland county except that a resident of this State may elect to bring the action in the circuit court for the county of his residence. Section 12-60-3380. If the taxpayer or Department prematurely brings an action in circuit court, the judge shall dismiss the case without prejudice. Section 12-60-3390. Before appealing a matter to the circuit court, the taxpayer must post a bond. Section 12-60-3370.

ADDITIONAL LEGISLATION AFFECTING REVENUE PROCEDURE

In addition to adding the "South Carolina Revenue Procedures Act" as Chapter 60 of Title 12 of the Code, the legislature also added two provisions to Chapter 54, Title 12 of the Code: one dealing with interest and the other with the statute of limitation for assessment.

Interest and Tax Assessments and Refunds - Code Section 12-54-25

Section 12-54-25 of the Code is a new section designed to address interest on tax deficiencies and refunds. This provision provides that if any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until the time the tax is paid in its entirety. A tax is due on the last day for its payment, without regard to any extension of time to pay or any assessment under Section 12-60-910. Any tax for which no payment date is provided is due on the date the liability arises.

Any tax refunded or credited must include interest on the amount of the credit or refund from the later of the date the tax was paid or the original due date of the return to the date the refund was sent or delivered to the taxpayer or the credit made. If any overpayment of tax imposed is refunded within seventy-five days after the last day for filing the tax return, determined without regard to any extension of time for filing the tax return, or in the case of a return filed after the last date, is refunded within seventy-five days of the date the return was filed, no interest will be paid on the overpayment. If the taxpayer files a claim for credit or refund of tax, and the overpayment is paid within seventy-five days after the claim is filed, no interest is allowed on the overpayment from the date the claim is filed until the overpayment is made.

As a general rule, the rate of interest on underpayments and overpayments is established by the Department in the same manner and at the same time as the underpayment rate provided in Internal Revenue Code Sections 6621 and 6622.

Statute of Limitations for Assessment of Tax - Code Section 12-54-85

New Section 12-54-85 specifically addresses the statute of limitations for assessing a tax deficiency. As a general rule, the amount of taxes or fees due under laws administered by the Department must be determined and assessed within thirty-six months from the date the return or document was filed or due to be filed, whichever is later. If the tax or fee is not required to be remitted with a return or document, for instance in the case of the documentary stamp tax, the

amount of taxes or fees due must be determined and assessed within thirty-six months after the date on which any part of the tax or fee was paid.

In certain instances, the Department may determine and assess taxes and fees after the thirty-six month limitation. For example, if a person signs a waiver allowing extension of the thirty-six month period for issuing an assessment, the Department will be allowed additional time to assess the tax. Additionally, if the taxpayer failed to file a return or document as required by law or there was a fraudulent intent to evade taxes or fees when filing the return or other document, the Department does not have to abide by the thirty-six month limitation on assessments. The situations in which the Department may determine and assess taxes and fees after the thirty-six month period are described in Section 12-54-85(C) of the statute.

Additionally, in certain situations, the running of the period of limitations may be suspended. The assessment limitation period will be suspended: (1) for ninety days after the date the taxpayer gives notice of termination of a waiver or extension of the assessment period, (2) for ninety days after the date of a proposed assessment, property tax assessment notice, or tax notice, (3) from the date of a proposed assessment, property tax assessment notice, or tax notice, until ninety days after a decision becomes final, if a taxpayer protests the proposed assessment, property tax assessment notice, or tax notice, (4) from the date when an action is stayed by injunction, order of a court, or statutory prohibition, until ninety days after the induction or prohibition is lifted, and, (5) during the pendency of a stay ordered by the Taxpayer's Rights Advocate. A decision does not become final until the decision cannot be considered, heard, or reheard by request, appeal, or petition by the Administrative Law Judge Division, DMV hearing officers, or any court.

Generally, claims for refunds must be filed within three years of the time the return was filed or two years from the date of payment, whichever is later. If no return was filed, a claim for refund must be filed within two years from the date of payment. Rules are also proscribed for the amount of refund that will be allowed.

Further, the statute provides that no tax may be collected by levy, warrant for distraint, or proceedings in court unless such actions were begun within ten years of assessment of the tax, the taxpayer has agreed to extend this period, or the running of the period has been suspended in accordance with the statute.

These new provisions replace the current laws relating to interest and the statute of limitations that are currently contained in the Code.

Effective Date: August 1, 1995

Senate Bill 753, Section 4, (Act No. 76)

Collection and Enforcement of Taxes Provisions in Chapter 7 and Chapter 9 - Moved to Chapter 54

As part of recodification of South Carolina's tax laws, statutes pertaining to penalties, actions to recover taxes, assessment of taxes and other collection and enforcement provisions located in the income tax and withholding tax statutes (formally Chapter 7 and Chapter 9) have been moved to Chapter 54 of Title 12.

This amendment added sections 12-54-15, 12-54-17, 12-54-42, 12-54-46, 12-54-47, 12-54-85, 12-54-127, and 12-54-135. In the near future, the Department will issue cross-reference charts of old Chapter 7 and Chapter 9 enforcement and collection provisions to the recodified provisions in Chapter 54.

Effective Date: Taxable years beginning after 1995.

Senate Bill 753, Section 5, (Act No. 76)

The Setoff Debt Collection Act - Moved to Chapter 56

The Setoff Debt Collection Act has been moved to Chapter 56 of Title 12. It was previously located in Article 3 of Chapter 54.

Effective Date: Taxable years beginning after 1995.

Senate Bill 753, Section 6, (Act No. 76)

Taxpayers' Bill of Rights - Moved to Chapter 58

The Taxpayers' Bill of Rights has been moved to Chapter 58 of Title 12. It was previously located in Article 5 of Chapter 54.

Effective Date: Taxable years beginning after 1995.

House Bill 3103, (Act No. 18)

Debt Setoff for Child Support Payments

This Act amends Section 43-5-220 by adding paragraph (j) which provides that the Department of Social Services may submit to the Department of Revenue for state tax refund offset the name of any obligor who is delinquent in paying court-ordered child support who qualifies for submittal under federal or state law. An offset will be allowed even if the obligor is in

compliance with a court order requiring periodic payments toward satisfaction of the delinquency or even if the delinquent amount has been placed in abeyance by a court order.

Effective Date: April 4, 1995

House Bill 3426, (Act No. 92)

Record Kept by Administrative Law Judges

Code Section 1-23-600(A) which deals with the record of proceedings held before the Administrative Law Judge Division, has been amended to require that a full and complete record be kept of all contested cases and regulation hearings held before an Administrative Law Judge. Furthermore, all testimony is required to be reported, but need not be transcribed unless a transcript is requested by a party. The party requesting the transcript bears the burden of the cost. Proceedings of the Administrative Law Judges are open to the public unless confidentiality requires otherwise. The opinions of the Administrative Law Judges are also open to public inspection, unless confidentiality is allowed or required by law.

Effective Date: June 7, 1995

House Bill 3573, (Act No. 98)

Information Available to a Public Housing Authority

Code Section 31-3-50 has been added to provide that a public housing authority may obtain information from the Department for the purpose of verifying the eligibility of a person for any public housing program. Further, Code Section 12-54-240(B), pertaining to the disclosure of reports and returns filed with the Department, has been amended to allow for the disclosure of information under Code Section 31-3-50 and to provide for the reimbursement to the Department for actual costs incurred in supplying such information.

Effective Date: June 12, 1995

House Bill 3613, Part VI, Section 2, (Act No. 102)

Revocations of License for Failure to Make Support Payments

Code Sections 20-7-940 through 20-7-948 have been added to allow the Division of Child Support Enforcement of the Department of Social Services to seek a revocation of any license held by a person who is in arrears on support payments. Among the licenses that may be revoked are most professional or technical licenses that are required in order to engage in business, recreational hunting, fishing and trapping licenses and drivers licenses.

The different licensing agencies affected are required to report to the Child Support Enforcement

Division information concerning licenses and licensees. The licensees' license may be revoked if the licensee is out of compliance with an Order of Support, as that term is defined in Code Section 20-7-941. The statutes provide a method whereby a license holder may negotiate with the Child Support Enforcement Division for payment plans and also provides license holders with a means to appeal any decision of the Child Support Enforcement Division prior to revocation of the license.

Effective Date: June 12, 1995

House Bill 3613, Part VI, Section 3, (Act No. 102)

Enforcement of Child Support Obligations

New Code Sections 20-7-9505 through 20-7-9565, give the Division of Child Support Enforcement the jurisdiction to establish paternity in certain matters and to establish and enforce child support in cases brought pursuant Title IV-D of the Social Security Act in accordance with this article.

Code Section 20-7-9515 specifically provides that no court order for judgment nor verified entry of judgment may be required in order for the clerk of court and division to certify past due amounts of child support to the Internal Revenue Service or the State Department of Revenue and Taxation for purposes of intercepting a federal or state tax refund.

Effective Date: June 12, 1995

House Bill 3613, Part VI, Section 9, (Act No. 102)

Debt Collection and Setoff

Code Section 12-54-470 has been amended to change the order of priority of claims when there is a set off of income tax refund where there are multiple claims. The order of priority for multiple claims filed is 1) claims of the Department of Revenue and Taxation; 2) claims of the Division of Child Support Enforcement of the State Department of Social Services; 3) other claims of the State Department of Social Services; 4) claims of the Internal Revenue Service and claims filed by institutions of higher learning; and 5) claims of other agencies not given specific priority. Priority within a class is determined by who filed the claim first.

Effective Date: The amendments made to Section 12-54-470 apply to refunds for tax years beginning after 1995.

INCOME TAX

Senate Bill 285, (Act No. 60)

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, 1994, including the provisions of Section 162(l) as amended by P.L. 104-7. The Self-Employed Health Insurance Act of 1995 (P.L. 104-7), Section 162(l), permanently extends the deduction for the health insurance costs of self-employed individuals. For tax years beginning after December 30, 1994, the health insurance deduction for self-employed is increased to 30%.

Effective Date: June 12, 1995

Senate Bill 285, (Act No. 60)

Nonresident Individuals - Two Wage Earner Credit Allowed

Code Section 12-7-1210 has been amended to delete the prohibition of the two wage earner credit on a nonresident return.

Effective Date: June 12, 1995

Senate Bill 285, (Act No. 60)

Foreign Limited Liability Company and Foreign Limited Liability Partnership - Application for Certificate of Authority

Code Sections 33-41-1160 and 33-43-1002 have been amended to provide that upon applying for a certificate of authority to transact business in South Carolina, a foreign limited liability company or a foreign limited liability partnership agree to be subject to the jurisdiction of the Department and the South Carolina courts to determine South Carolina tax liability, withholding, estimated payments, and interest and penalties, if any. Registering with the Secretary of State, however, is not an admission of tax liability.

Effective Date: June 12, 1995

Senate Bill 285, (Act No. 60)

Apportionment Formula Changes - Double Weighted Sales Factor

Code Section 12-7-1140 has been amended to replace the three factor apportionment factor - sales, property, and payroll - used by manufacturers, processors, and others dealing in tangible personal property with a four factor apportionment factor - double weighted sales, property and payroll.

Further, this amendment provided that the denominator of the apportionment factor is the number of existing ratios. For example, if the sales factor (double-weighted) and the property factor exist, but the payroll factor does not, the denominator of the apportionment formula is three.

See SC Information Letter #95-17 for further details.

Effective Date: June 12, 1995

Senate Bill 548, (Act No. 40)

Employer Child Care Credit

Code Section 12-7-1260(B), 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 provide that "expenditure for costs incurred in establishing a child care program" include donations to a nonprofit corporation as defined in Internal Revenue Code 501(c)(3) for purposes of establishing a child care program. In computing net income, a taxpayer claiming the employer child care credit for donations to a nonprofit corporation may not also take a charitable contribution deduction.

Effective Date: May 17, 1995

Senate Bill 753, Section 1, (Act No. 76)

Income Tax Recodification

South Carolina's income tax law has been rewritten and moved from Chapter 7 to Chapter 6 of Title 12. The law has been simplified by updating language, reorganizing and combining sections in a logical manner, and reducing the number of words.

At present, the Code Commissioner is adding amendments made to Chapter 7 during the 1995 legislative session to Chapter 6. Once complete, the Department will issue cross-reference charts of old Chapter 7 to new Chapter 6.

Effective Date: Taxable years beginning after 1995.

House Bill 3104, (Act No. 84)

Definition of Income for Support Orders

This Act amends Section 20-7-1318 to revise the definition of income for purposes of securing payment of support obligations by withholding to include any payment made by an agency or department of federal and state government. This definition would include tax refunds in the definition of income subject to the withholding.

Effective Date: June 12, 1995

House Bill 3362, Section 57, (Act No. 145)

Subsistence Allowance Deduction - Extended

Code Section 12-7-435(j) has been amended to extend the \$5.00 a day subsistence allowance deduction to full-time firefighters and emergency medical service personnel. This deduction had previously been available only to federal and state law enforcement officers.

Effective Date: Tax years beginning after 1994.

House Bill 3362, Section 62, (Act No. 145)

Job Tax Credit - Extended

Code Section 12-7-1220, relating to the job tax credit, has been amended to extend the credit to a sole proprietor, partnership, corporation of any classification, limited liability company or association subject to tax under Code Sections 12-7-210 or 12-7-230.

This amendment provides the following time and manner for each shareholder of a S corporation, partner of a partnership, or member of a LLC to claim the credit:

1. Each shareholder, partner, or member is allowed a nonrefundable credit against income taxes imposed under Code Section 12-7-210;
2. The amount of the credit is equal to the percentage of ownership interest for the taxable year times the amount of the credit the taxpayer would have been entitled to if taxed as a corporation;
3. A credit claimed but not used may be carried forward for 10 years from the close of the tax year in which earned; and,

4. A credit taken in one tax year may not exceed 50% of the taxpayer's tax liability under Code Section 12-7-210.

Effective Date: July 1, 1995

House Bill 3364, (Act No. 90)

Veterans' Trust Fund Check Off on Individual Tax Return

Code Section 12-7-2417 has been added to provide for a designation on South Carolina's individual income tax form enabling a taxpayer to make a contribution to the Veteran's Trust Fund.

Effective Date: June 7, 1995

House Bill 3534, (Act No. 25). The Enterprise Zone Act provisions in House Bill 3534 have been amended by House Bill 3775 (Act No. 32) and House Bill 3362 (Act No. 145). These amendments are reflected in this summary.

This Act (1) enacted the Enterprise Zone Act of 1995, (2) enacted the Economic Impact Zone Community Development Act of 1995, and (3) amended Code Section 12-7-1200 pertaining to the allocation and apportionment provisions of multistate taxpayers.

Enterprise Zone Act of 1995

This legislation added Chapter 10 of Title 12 to enact the Enterprise Zone Act of 1995. This Act provides for the establishment of enterprise zones (in which various tax incentives may apply for businesses), provides criteria for areas to qualify for enterprise zones, and provides that businesses qualify for enterprise zone incentives by means of entering into a revitalization agreement with the Advisory Coordinating Council for Economic Development.

QUALIFICATION FOR BENEFITS

In order to qualify for enterprise zone benefits the business must:

- (1) reside in an enterprise zone as designated by the State Budget and Control Board;
- (2) be primarily engaged in one of the following activities:
 - (a) manufacturing,
 - (b) tourism,
 - (c) processing,
 - (d) warehousing,
 - (e) distribution,

(f) research and development,
(g) corporate office facility, or
(h) providing medical, surgical, and other health services to persons. Establishments of associations or groups, such as HMO's, primarily engaged in providing medical or other health services to members are included, but those which limit their services to the provision of insurance against hospitalization or medical costs are not included. (See Standard Industrial Classification Manual, 1987 Edition);

(3) provide a benefits package to full-time employees that includes health care;

(4) enter into a revitalization agreement with the Advisory Coordinating Council for Economic Development, (Note: No revitalization agreement is required for a business: (a) to retain a job development fee from the withholding of production employees being retrained, (b) to obtain fee-in lieu benefits, or (c) to use special source revenue bonds); and,

(5) receive certification from the Coordinating Council that the available incentives are appropriate for the project, and the total benefits of the project exceed the costs to the public.

BENEFITS

There are significant income tax, fee-in-lieu of property taxes, and financial incentives available to qualifying businesses locating or expanding in an enterprise zone. Briefly, these incentives are:

1. An additional \$1000 job tax credit;
2. An additional \$500 job tax credit in years three, four and five for recipients of Aid to Families with Dependent Children (AFDC) that continue to be employed by the business;
3. A job development fee collected by retaining employee withholding and used for approved expenditures, such as training costs or real estate improvements; and,
4. The ability to qualify for fee-in-lieu of property tax advantages by meeting one-half of the requirements of the current fee-in-lieu requirements of Code Section 4-29-67, and, the use of special revenue bonds authorized under Code Sections 4-29-68 and 4-1-75.

Each incentive is discussed below in more detail.

JOB TAX CREDIT INCENTIVES

Additional \$1000 job tax credit per job

A qualifying business located in an enterprise zone is entitled to an increased job tax credit, in addition to the job tax credit allowed under Code Section 12-7-1220, if the business creates 10 or more new full-time jobs in the enterprise zone and at least 51% of the full-time employees hired for the project:

- (a) reside in an enterprise zone at the time of employment;
- (b) have a household income that is 80% or less of the median household income for the county prior to employment; or
- (c) have been a recipient of Aid to Families with Dependent Children payments within the past 12 months.

This additional job tax credit is \$1000 a year for 5 years, which is for the same period and same amount as the job tax credit provided in Code Section 12-7-1220(B).

Additional \$500 job tax credit per job

A qualifying business is also entitled to an additional \$500 a year job tax credit in the third, fourth, and fifth year of any AFDC recipient's continued employment with the qualifying business, based upon the status of the employee at the time of being employed. In order to qualify for the \$500 additional job tax credit, the qualifying business must: (1) continue to employ the recipient of AFDC payments in years 3, 4, and 5 of the job tax credit, and (2) determine that the employee was receiving AFDC payments when hired.

For purposes of the job tax credit incentives provided by the Enterprise Zone Act, a new job is not considered a new job if it replaces the same job that was part of a reduction in force in the previous 12 months.

JOB DEVELOPMENT FEE

A qualifying business located in an enterprise zone is entitled to collect a job development fee by retaining an amount of employee withholding. Employers have the option of selecting one of two, but not both, statutorily provided withholding amounts designated for certain expenditures. Funds withheld under either option must be held in an escrow account with a FDIC insured bank.

Withholding Option 1 - For New Projects

Amount. A qualifying business may retain from withholding a percentage of the gross wages of each new employee. The percentage allowed to be retained ranges from 2% to 5% and is

computed on the hourly wage of an employee, not on the average pay of all employees. A new employee does not include an employee whose job was created in South Carolina before the entry of the qualifying business into a revitalization agreement. The fee may be collected for 15 years.

Requirements. Prior to retaining any employee withholding the business must: (1) enter into a revitalization agreement, (2) create at least 10 new, full-time jobs at the South Carolina facility described in the revitalization agreement, and (3) meet the other qualifications for enterprise zone benefits discussed on page 31. Withholding is computed as a percentage of each new employee's hourly wages as set forth in Code Section 12-10-80(C).

Use of Funds. The funds retained from withholding may be used for any of the following purposes: (a) training costs and facilities; (b) acquiring and improving real estate; (c) improvements to public and private utility systems, including water, sewer, electricity, natural gas, and telecommunications; (d) fixed transportation facilities, including highway, rail, water, and air; and (e) construction or improvements of real property and fixtures for the purpose of complying with environmental laws and regulations.

Withholding Option 2 - For Existing Businesses

Amount. A qualifying business in an enterprise zone may retain from employee withholding \$500 per year, not to exceed \$2000 over five years, for each production employee being retrained. This retraining must be performed by the technical college serving the enterprise zone.

Requirements. A qualifying business may negotiate with the Advisory Coordinating Council for Economic Development to retain withholding for retraining production employees when necessary for the business to remain competitive or to introduce new technologies. Unlike option 1 above, the qualifying business does not have to enter into a revitalization agreement, or create 10 or more new, full-time jobs. The business is required to match any withholding retained dollar-for-dollar.

Use of Funds. The funds retained from withholding must be used to retrain production employees. The total retained and the matching funds must be paid to the technical college that provides the training to defray training costs.

General Record Keeping Requirements

A business retaining employee withholding under either option must make its payroll books and records available for inspection, and, also file documentation regarding the retention and use of the withholding with the Advisory Coordinating Council for Economic Development and the Department of Revenue.

Any business retaining over \$10,000 in a calendar year must furnish the Council and the Department an audited report prepared by an independent certified public accountant which itemizes the sources and uses of the funds. This report must be filed **no later than April 15** following the calendar year of the retention. An extension of time is not available.

Credit for Withholding and Deposit of Unused Funds

For South Carolina withholding tax purposes, the employer receives credit for the employee withholding retained. Likewise, for state income tax purposes, the employee receives a credit for the amounts withheld by the employer.

Upon expiration or termination of the revitalization agreement the business must: (a) stop retaining employee withholding, (b) stop spending funds in escrow, and (c) pay all remaining funds to the Department of Revenue within 30 days.

Application Fees

Code Section 12-10-100 provides for the establishment of an application fee schedule. Currently, the Council has established a \$2000 fee to be paid by each business upon application.

FEE-IN-LIEU INCENTIVES

Code Section 4-29-67, the fee-in-lieu of property tax statute, provides a mechanism by which a business which makes a requisite investment within a 5 year period may enter into an agreement with a county under which the business pays a reduced fee instead of the usual county property taxes.

The benefits provided in the Enterprise Zone Act can save a business substantial property taxes by allowing the business to negotiate an assessment ratio as low as 6%, instead of 10.5%, as well as "freeze" the applicable millage rate and the value of the real property for up to 20 years.

A qualifying business located in an enterprise zone may negotiate with the respective county government for a fee-in-lieu of property tax arrangement pursuant to Code Section 4-29-67 if the business meets certain reduced investment and employment requirements. See Code Sections 4-29-67 and 4-12-40 for further information. Also, the business may be able to use special source revenue bonds authorized in Code Sections 4-29-68 and 4-1-175.

ENTERPRISE ZONE DESIGNATION

The Budget and Control Board will designate enterprise zones each year. (See Exhibit 1 for a map designating 1995 Enterprise Zones.) A South Carolina enterprise zone must be one of the following:

- (1) a census tract in which either the median household income is 80% or less of the state average (\$25,771 in 1995) or at least 20% of the households are below poverty level;
- (2) a county classified as "less developed" for purposes of the job tax credit under Code Section 12-7-1220;

- (3) a federal military base or installation which was closed or designated to be closed or a federal facility in which employment was reduced by 3000 or more jobs after December 31, 1990;
- (4) a census tract with 100 or more manufacturing jobs in which at least 50% of the employment is in textile or apparel jobs;
- (5) a census tract in which a manufacturing facility has closed resulting in job losses of at least 25% of the workforce;
- (6) a census tract any part of which is within 20 miles of a federal facility which has reduced its civilian workforce by 3000 or more jobs after December 31, 1990;
- (7) a census tract in which a penal institution operated by the South Carolina Department of Corrections has closed; or,
- (8) a research park established pursuant to Section 13-17-30 while the park is operated or controlled by the South Carolina Research Authority.

ECONOMIC IMPACT ZONE COMMUNITY DEVELOPMENT ACT OF 1995

This legislation added Chapter 14 of Title 12 to enact the Economic Impact Zone Community Development Act of 1995. This Act provides for the establishment of economic impact zones on or in the vicinity of closed or realigned military installations in which various tax incentives may apply to businesses and individuals located in the economic impact zone in order to economically revitalize the area.

Definitions

Economic Impact Zone means:

1. a county or municipality located within 50 miles of the boundaries of an applicable federal military installation. An applicable federal military installation is one which is closed or realigned under: (a) the Defense Base Closure and Realignment Act of 1990; (b) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act; or (c) Section 2687 of Title 10, United States Code; or
2. an area determined by the State Budget and Control Board to be adversely impacted by the closing or realignment of a federal military installation.

Designation

The State Budget and Control Board must designate an area as an economic impact zone. This designation remains in effect for 15 years unless the General Assembly provides for an earlier termination date.

In June 1995, the Budget and Control Board determined that the Myrtle Beach Air Force Base and the Charleston Naval Base qualify as applicable federal military installations. In addition, the Budget and Control Board designated the following counties as Economic Impact Zone Counties: (1) Beaufort, (2) Berkeley, (3) Charleston, (4) Clarendon, (5) Colleton, (6) Dillon, (7) Dorchester, (8) Florence, (9) Georgetown, (10) Horry, (11) Marion, (12) Orangeburg, and (13) Williamsburg.

Individual Deduction

An individual may receive a South Carolina income tax deduction for 20% of the purchase price of economic impact zone stock. In general, "economic impact zone stock" is original issue stock of a small C corporation (less than \$5 million) which conducts an active trade or business in the economic impact zone and at least one-third of the business's employees reside in the economic impact zone. The corporation must use the stock proceeds during the following 12 month period to purchase qualified impact zone property.

The maximum amount that may be allowed as a deduction per taxpayer is \$10,000 per year and \$100,000 for all tax years. A taxpayer's family (i.e. spouse and minor children) is treated as one person. For partnerships and S corporations, the dollar limitations apply at the partner or shareholder level, and not at the entity level. Estates and trusts are not treated as individuals.

A taxpayer must reduce the basis of the economic impact zone stock by the amount of the deduction taken.

Definitions Applicable to the Individual Deduction

Technical rules exist regarding the qualification of stock as "economic impact zone stock" eligible for this deduction. Refer to the definitions in the Act for the terms "economic impact zone stock", "qualified economic impact zone property", "economic impact zone business", "qualified business", and "nonqualified financial property".

Economic Impact Zone Investment Tax Credit

An economic impact zone investment tax credit of 5% of the total basis of qualified manufacturing and productive equipment properties and qualified computer software which is constructed or acquired for original use in the economic impact zone is available. This credit does not apply to any property to which other tax credits apply, unless the use of such credits is waived.

"Economic impact zone qualified manufacturing and productive equipment property" is any property which is: (a) used as an integral part of manufacturing, production or extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services; (b) tangible personal property depreciable under Internal Revenue Code Section 168; and (c) Internal Revenue Code Section 1245 property. Computer software used to control or monitor a manufacturing or production process may also be qualified manufacturing and productive equipment property.

ACCOUNTING METHOD FOR TAX RETURNS

Code Section 12-7-1200 has been amended to provide for alternative methods to fairly determine a multistate taxpayer's South Carolina business activity. In so doing, a taxpayer may request, or the Department of Revenue may require, one of the following alternatives of reporting:

1. separate accounting;
2. the exclusion of one or more factors;
3. the inclusion of one or more factors; or,
4. the use of another allocation and apportionment method.

Further, Code Section 12-7-1200 has been amended to provide that the Department of Revenue may enter into an agreement for 5 years¹ to establish a taxpayer's allocation and apportionment method providing:

- (1) the taxpayer is planning a new facility or an expansion of an existing facility in South Carolina; and,
- (2) the Advisory Coordinating Council for Economic Development certifies that the new facility or expansion will have a significant beneficial economic effect on the region for which it is planned and that its benefits to the public exceed its costs.

Effective Date: House Bill 3534 is effective April 4, 1995.

House Bill 3613, Part III, Section 6, (Act No. 102)

Tax Credit for Hiring Recipients of AFDC Payments

Code Section 12-7-1280 is a new tax credit provided to employers who hire recipients (or former recipients) of Aid to Families with Dependent Children ("AFDC"). An employer who hires a person who within the prior twelve months received AFDC assistance, is entitled to a credit against income taxes if the person remains in the employment of the employer for twelve months or more. The amount of the credit will vary depending on the amount of time that the employee has been employed. The tax credit is not allowed unless the employer also makes available health care to the employee for whom the credit is claimed.

The Security Employment Commission must make information available to employees interested

¹ The number of years may be longer for a "qualified recycling facility". See discussion on separate accounting on page 40.

in hiring AFDC recipients and must provide documentation verifying a person's status as an AFDC recipient. Additionally, no credit is allowed if the position filled by the former AFDC recipient was due to the termination or forced resignation of another employee in order to obtain the tax credit. Nothing in this section creates a private cause of action which does not otherwise exist at law.

Effective Date: Tax years beginning after 1994.

House Bill 3775, (Act No. 32)

Qualified Recycling Facility Tax Benefits

QUALIFICATION FOR BENEFITS

In order to qualify as a "qualified recycling facility" the facility must:

- (1) manufacture products composed of 50% or more postconsumer waste material, such as scrap metal and iron, used plastics, paper, glass, and rubber;
- (2) invest at least \$300 million in the acquisition, construction, erection, and installation of real and personal property by the end of the fifth year after the first year of construction or operation; and,
- (3) receive certification from the Department of Revenue that the facility is a qualified recycling facility.

BENEFITS

There are significant income tax, fee-in lieu of property tax, property tax, and sales tax incentives available to qualifying recycling facilities. These benefits are discussed below.

A 30% TAX CREDIT FOR INVESTMENT

A business constructing or operating a qualified recycling facility is entitled to a 30% credit each year for an investment in recycling property. Recycling property is property incorporated into or associated with a qualified recycling facility. The credit may be used against: (1) corporate income tax imposed under Section 12-7-230; (2) corporate license fees imposed by Section 12-19-70; (3) South Carolina sales or use tax; or, (4) any similar tax.

Any unused credit may be carried forward indefinitely. If the facility does not meet the minimum investment as required by the statute, all credits used must be recaptured.

FEE-IN-LIEU INCENTIVES

Code Section 4-29-67, the fee-in-lieu of property tax statute, provides a mechanism by which a business which makes at least a \$300 million investment within a 5 year period may enter into an agreement with a county under which the business pays a reduced fee instead of the usual county property taxes.

The benefits provided in this amendment can save a business substantial property taxes by allowing the business to: (1) negotiate an assessment ratio as low as 3%, (2) "freeze" the applicable millage rate and value of the property for up to 30 years, and, (3) negotiate a special calculation of net present value.

SEPARATE ACCOUNTING

Code Section 12-7-1200 provides that a business, upon approval by the Department, may be allowed to use separate accounting to determine South Carolina net income.

This section has been amended to allow a qualified recycling facility to petition the Department to use a separate accounting for all or any of its divisions' or subsidiaries' taxable income. The Department of Revenue will review the petition and may approve the petition upon certification of the Advisory Coordinating Council for Economic Development that the benefits exceed the costs.

SALES TAX EXEMPTION

Code Section 12-36-2120 has been amended to provide an exemption from South Carolina sales and use tax for the following tangible personal property used by a qualified recycling facility:

1. recycling property;
2. electricity, natural gas, fuels, gasses, and fluids and lubricants;
3. ingredients or component parts of manufactured products;
4. property used for the handling or transfer of postconsumer waste or manufactured products or, in or for the manufacturing process; and,
5. machinery and equipment foundations.

TAX CREDIT EQUAL TO JOB DEVELOPMENT FEE COLLECTED UNDER THE ENTERPRISE ZONE ACT OF 1995

Under the Enterprise Zone Act of 1995, a qualifying business located in an enterprise zone is entitled to collect a job development fee by retaining an amount of employee withholding. This amendment provides that a qualified recycling facility is entitled to a credit in the amount of all job development fees collected under Code Section 12-10-80 of the Enterprise Zone Act.

This credit may be used by the qualified recycling facility to reduce: (1) corporate income tax imposed under Code Section 12-7-230; (2) South Carolina sales and use tax; (3) corporate license fee imposed under Code Section 12-19-70; and (4) any similar tax.

Any unused credit can be carried forward indefinitely.

Effective Date: April 6, 1995

House Bill 3775, Section 7 (Act No. 32)

Job Tax Credit - Half Time Jobs Qualify

Code Section 12-7-1220(H)(2) has been amended to provide that two "half time" jobs are considered one "full-time" job for purposes of the job tax credit. A half time job requires at least 20 hours of an employee's time per week for: (1) the entire normal year of the company's operations or (2) a year in which the employee was hired initially for or transferred to the South Carolina facility.

Effective Date: April 6, 1995.

House Bill 3613, Part IV, Section 4, (Act No. 102)

Individual Development Account

The Family Independence Act of 1995 has provided for the ownership of an Individual Development Account ("IDA") for families on AFDC and those not receiving welfare but whose household income falls below 185% of the federal poverty level.

A qualifying family can contribute up to \$10,000 in the IDA. The following events are tax free to the family with respect to the IDA: (1) contributions; (2) interest; (3) withdrawals, if used for education, job training, starting a business, or purchasing a home. Withdrawals for other purposes are not tax free.

The State will seek a waiver from the federal government providing that no lump sum payment of \$10,000 or less deposited in an IDA within 30 days of receipt will make the family ineligible for receipt of AFDC.

Effective Date: Ninety day after receipt of approval of a federal waiver authorizing the department to implement these provisions or 90 days after federal law permits implementation.

REMINDERS

House Bill 4820 of 1994, (Act 497, Section 3)

Capital Gains Deduction - Increases to 44%

In order to fund the additional deduction for children under 6 for the 1994 taxable year, Code Section 12-7-435(1) provided that the increase in the net capital gains deduction from 29% to 44% was delayed one year. Effective for tax years beginning after 1994, the capital gains deduction increases to 44%.

House Bill 4820 of 1994, (Act 497, Section 3)

Additional Deduction for Children Under 6 Years of Age

In 1994, Code Section 12-7-435 was amended to provide a resident taxpayer an additional deduction in arriving at South Carolina taxable income for each dependent claimed on the taxpayer's federal income tax return who is under 6 years of age. The additional deduction allowed is an amount equal to a percentage of the federal income tax personal exemption. For the taxable year 1995, the applicable percentage is 50% or \$ 1,250.

House Bill 4820 of 1994, (Act No. 497, Section 129)

Credit for Hiring Persons Terminated by Federal Base Closing

In 1994, Code Section 12-7-1273 was amended to provide an employer a nonrefundable income tax credit equal to 10% of the first \$7,000 of "qualified wages" paid during the taxable year for hiring an individual who was terminated from a prior employment as a result of the closing or realignment of a federal military installation. The credit may not reduce the tax liability below zero. Any unused credit may be carried forward 10 years. This credit was available for taxable years beginning after 1994.

LICENSE FEES AND TAXES

Senate Bill 753, Section 3, (Act No. 76)

Corporate License Fee Recodification

South Carolina's corporate license fee law has been rewritten and moved from Chapter 19 to Chapter 20 of Title 12. The law has been simplified by updating language, reorganizing and combining sections in a logical manner, and reducing the number of words.

At present, the Code Commissioner is adding amendments made to Chapter 19 during the 1995 legislative session to Chapter 20. Once complete, the Department will issue cross-reference charts of old Chapter 19 to new Chapter 20.

Effective Date: Taxable years beginning after 1995.

MISCELLANEOUS TAXES

CIGARETTE TAXES

House Bill 3808, (Act No. 114)

Cigarette Tax - Reporting Method

Effective January 1, 1996, every person first receiving untaxed cigarettes for sale or distribution in South Carolina must file a monthly report and remit the cigarette tax. Cigarette packages will no longer require tax stamps after December 31, 1995.

In addition, the legislation requires the Department to establish a license which will allow persons making shipments of cigarettes to retail locations in and out of South Carolina to purchase cigarettes free of the tax and report and pay the tax only on sales of cigarettes to retail locations in South Carolina.

The legislation also repealed Code Sections 12-21-720, 12-21-730 and 12-21-820, which concerned the affixing of tax stamps, separate compartments for unstamped cigarettes for shipment out of state, and the sale of tax stamps to nonresidents.

Effective Date: January 1, 1996

DRYCLEANING FACILITY RESTORATION TRUST FUND

House Bill 3907, (Act No. 119)

Drycleaning Facility Registration, Fees, and Surcharges

This bill amends Chapter 56 of Title 44 by adding Article 4 - the "Drycleaning Facility Restoration Trust Fund." Its purpose is to generate resources to provide funds to rehabilitate sites contaminated by the release of drycleaning solvents related to the operation of drycleaning facilities or wholesale supply facilities and to provide an insurance pool for the purpose of defraying the cost of the remediation or cleanup for eligible members of the drycleaning industry and related industries.

The Department of Revenue ("Department") is responsible for collecting the revenue for the fund. The Department of Health and Environmental Control is responsible for the administration of the fund. In general, the provisions of the fund require drycleaning facilities to register with the Department and pay

registration fees, and require persons producing or importing certain solvents into South Carolina to register with the Department and pay environmental surcharges.

Definitions

Code Section 44-56-410 provides definitions for terms used in Article 4, such as discharge, drycleaning solvents, dry drop-off facility, employee, person, and insolvent.

For purposes of this Act, the terms "drycleaning facility" and "wholesale supply facility" are defined as follows:

"Drycleaning facility means a commercial establishment located in this State that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics utilizing a process which involves the use of drycleaning solvents. 'Drycleaning facility' includes laundry facilities that are using or have used drycleaning solvents as part of their cleaning process, but does not include, textile mills or uniform rental and linen supply facilities."

"Wholesale supply facility means a commercial establishment that supplies drycleaning solvents to drycleaning facilities."

Registration Fees

Code Section 44-56-470 provides for payment of an initial registration fee, and quarterly or annual registration fees by the owner, operator, or person who owns the real property of each dry cleaning facility. The initial registration is due **October 1, 1995**. An annual or quarterly renewal fee is due within 30 days after receipt of the billing. The initial and annual registration fees are based upon the number of employees at the facility the previous year and is computed as follows:

Number of Employees*	Registration Fee
1 - 4	\$ 750
5 - 10	\$ 1500
11- more	\$ 2250

* The term employee is defined in Code Section 44-56-410.

Surcharge for Producing or Importing Solvents

Code Section 44-56-480 provides that an environmental surcharge is due on the privilege of producing in South Carolina or importing into South Carolina perchloroethylene (tetrachloroethylene) and Stoddard solvent. A person importing or producing one of these solvents must register with the Department for purposes of remitting the surcharge and pay a \$30 registration fee. A person operating more than one location must pay only one registration fee.

The surcharge imposed is \$10/gallon on perchloroethylene and \$2/gallon on Stoddard solvent. The surcharge is due on the first day of the month after the month of production, importation, or removal from a storage facility. It must be paid on or before the 20th of the month. The Department may authorize the filing of a quarterly, semiannual or annual return and payment when the surcharge remitted in the previous 12 months does not exceed \$400.

Exemptions from the Surcharge

Perchloroethylene and Stoddard solvent used for drycleaning exported from the first storage facility at which it is held in South Carolina is exempt from the surcharge. Anyone exporting either solvent on which the surcharge has been paid may apply for a refund or credit.

Code Section 44-56-485 provides that a drycleaning facility in existence on July 1, 1995 that drycleans with Stoddard solvents or its breakdown products only is **not** subject to the provisions of the "Drycleaning Facility Restoration Trust Fund." A facility may elect to be under the provisions by paying the required annual fee before October 1, 1995. An owner or operator not placing a facility under this article is prohibited from receiving any funds or assistance under this article for any site the owner, operator, or person currently or previously operated. Further, if the facility does not pay the fee before October 1, 1995, the current or a future owner or operator of the site is prohibited from receiving any funds or assistance under this article.

A drycleaning facility in existence on July 1, 1995 that uses perchloroethylene and Stoddard solvent or their breakdown products may elect to remove the facility from the requirements of this article for both solvents if the election is made before October 1, 1995. Failure to pay the annual fee by October 1, 1995 constitutes an election.

Environmental Surcharge if Fund is Insolvent

Code Section 44-56-430 provides that an environmental surcharge will be imposed on every owner, operator, or person participating in the fund if the State Treasurer determines the fund is insolvent. A 1/2% surcharge will be imposed on gross sales for a minimum of 1 year and until the State Treasurer determines the fund solvent. The surcharge is due on the first day of the month following the month of imposition. It must be paid before the 21st of each month.

Additional Information

The Department is presently reviewing this new tax and will be distributing additional information and forms in the near future.

Effective Date: July 1, 1995. This Act will be repealed July 1, 2005, unless reauthorized by the General Assembly.

GASOLINE, MOTOR FUELS, AND HIGHWAY USE TAXES

Senate Bill 414, (Act No. 11)

Biennial Fees and Identification Markers for Motor Carriers

Pursuant to the federal Intermodal Surface Transportation Efficiency Act of 1991, South Carolina will enter into a reciprocal reporting agreement with other states that will no longer require the issuance of motor carrier registration cards and identification. Although Code Section 12-31-260 provides for expiration of these items on March 31, 1995, these items must remain in use until this State officially enters the agreement on January 1, 1996. Accordingly, by joint resolution of the legislature, the Department is required to register and collect the biennial fee required by Code Section 12-31-250. Furthermore, the joint resolution provides that the Department and the Department of Public Safety will not penalize a motor carrier or vehicle which has a faded, expired or missing marker while operating in this State during the period from April 1, 1995 through September 3, 1996.

Effective Date: March 7, 1995

House Bill 3362, Section 71, (Act No. 145)

Road Tax on Motor Carriers - Exemptions and Penalties

South Carolina imposes under Chapter 31 of Title 12 a road tax on persons operating certain large trucks and large passenger vehicles in this State. The road tax is for the privilege of using the streets and highways of this State.

This tax is sixteen cents a gallon and is calculated on the amount of gasoline or motor fuel used in the truck or vehicle in South Carolina. Taxpayers are allowed a credit for gasoline and motor fuel taxes paid on purchases upon which the South Carolina gasoline or motor fuel taxes have been paid pursuant to Chapters 27 and 29 of Title 12.

As part of the effort to implement the International Fuel Tax Agreement, the General Assembly enacted the following:

1. Code Section 12-31-415 has been added to exempt from the road tax any motor carrier which operated 100% of its miles within South Carolina. This amendment further provided that all penalties due from any motor carrier exempt from the road tax pursuant to Code Section 12-31-415 will be removed from the taxpayer's record effective January 1, 1996; and,

2. Code Section 12-31-60 has been added to provide that in lieu of all other penalties and interest provided by law, penalties and interest provided under the International Fuel Tax Agreement apply to all reports filed with the State.

Effective Date: January 1, 1996

House Bill 4146, (Act No. 136)

Gasoline and Motor Fuel Taxes

The methods of collecting and remitting the State's gasoline and motor fuel taxes will change dramatically in the near future.

Section 1 of House Bill 4146 best explains the purpose of the legislation, and reads:

It is the intent of the General Assembly in enacting Chapter 28 of Title 12 of the 1976 Code to establish an efficient and effective motor fuel tax collection and enforcement system adequate to substantially deter motor fuel tax evasion emanating from sources within and outside this State. The legislature has determined that two key elements necessary to achieve this objective are increased conformity with federal law concerning the imposition of tax on motor fuels and increased reliance on highway enforcement systems. This act is intended to conform this state's method of imposing an excise tax on motor fuel to the Internal Revenue Code and regulations issued pursuant to it, as well as create a framework for immediate highway enforcement of anti-smuggling provisions, without materially altering existing petroleum marketing practices, economics, or relationships.

While this legislation contains many provisions with respect to who is required to collect and remit the tax, the following provides the basics. The legislation:

1. Imposes the state tax on gasoline and motor fuels at the terminal or upon the importation of the gasoline or motor fuels into South Carolina.
2. Requires licenses of "suppliers", "terminal operators", "exporters" and "tank wagon operators" to improve the paper trail of sales and purchases of gasoline and motor fuels.
3. Adopts the federal provisions concerning the dyeing of diesel fuel.
4. Adopts stricter penalties to enhance compliance and reduce evasion.

The Department, in the near future, will be contacting various persons affected by this new law and will be providing more detailed information concerning the collection and remittance of the tax on gasoline and motor fuels.

Effective Date: The provisions concerning the collection and remittance of taxes is effective for

sales of gasoline and motor fuel after April 30, 1996. Certain other enforcement provisions are effective July 1, 1995.

LOW LEVEL RADIOACTIVE WASTE

House Bill 3362, Section 79, (Act No. 145)

Code Section 48-48-140 has been added to provide that a tax of \$235 per cubic foot is imposed on each cubic foot of low-level radioactive waste disposal in South Carolina. The tax is due to the Department no later than 30 days after the end of each quarter.

Effective Date: June 29, 1995

SOFT DRINK TAX

House Bill 3362, Section 48, (Act No. 145)

Soft Drinks Tax - Phase Out and Repeal

This amendment incrementally reduces the soft drinks license tax imposed under Article 13, Chapter 21 of Title 12 in fiscal years beginning in 1996 through 2000. Effective July 1, 2001, the soft drinks license tax (Article 13, Chapter 21) is repealed.

The license tax due is reduced as follows for returns due during the applicable fiscal year:

Fiscal Year	Liability Reduction
1996-1997	one-sixth
1997-1998	one-third
1998-1999	one-half
1999-2000	two-thirds
2000-2001	five-sixths

Effective Date: June 29, 1995

SOLID WASTE EXCISE TAX

House Bill 3362, Section 50, (Act No. 145)

Solid Waste Excise Tax Imposed on Motor Oil

Code Section 44-96-160, relating to the solid waste excise tax imposed upon motor oil and similar lubricants, has been amended to provide that "motor carriers", rather than "for hire motor carriers", purchasing lubricating oils not for resale for use in their fleet are exempt from the solid waste fee if they meet certain conditions.

To qualify for the exemption the motor carrier must:

1. have a maintenance facility to service its own fleet and properly store waste oil for recycling collections;
2. have on file with the EPA the existence of storage tanks for waste oil storage;
3. maintain records of the dispensing and servicing of lubrication oil in the fleet vehicles; and,
4. have a written contractual agreement with an approved waste oil hauler.

Effective Date: June 29, 1995

TOBACCO TAX

Senate Bill 357, Section 2, (Act No. 61)

Tobacco Products Return - New Filing Date

Code Section 12-21-780 has been amended to change the due date of the Tobacco Distributors Monthly Return (Form L922) from the tenth to the twentieth of each month.

Effective Date: June 12, 1995

VIDEO GAME MACHINES

Senate Bill 687, (Act No. 207)

Video Game Machine Regulations

The General Assembly approved four regulations recommended by the Department of Revenue concerning video game machines.

A joint resolution approving the video game machine regulations was signed by the Governor. The regulations became effective **on June 23, 1995**, the date they were published in the State Register. The regulations concern what constitutes a "single place or premises", "inducements", and "advertising", and explain the distance requirements between locations with video game machines and houses of worship, schools, playgrounds, etc.

Copies of these regulations are in SC Information Letter #95-11.

Effective Date: June 23, 1995

House Bill 3362, Section 67, (Act No. 145)

Video Game Machines

The following provisions were enacted concerning video game machines:

1. The Department may no longer issue Type III coin operated device licenses for locations in a county that votes or has voted to eliminate cash payouts on video game machines. In addition, it is unlawful for a person to possess a Type III coin operated device in such a county other than for purposes of storage, maintenance or transportation.

A person who operates such devices in violation of this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned for not more than thirty days. These violations must be tried in magistrate's court.

2. The owner or operator of a Type III coin operated device which has multi-player stations must purchase a separate Type III license for each player station.

In addition, each player station counts as a machine when determining the number of machines allowed in a single place or premises under Code Section 12-21-2804(A) of the Video Game Machines Act.

3. The requirement that all video game machines must be equipped with a Department approved metering device has been delayed. Such devices must be in place by July 1, 1998. However, beginning January 1, 1996, each machine owner, operator, or licensed establishment must file a quarterly report with the Department concerning each video game machine. The legislation establishes the information that must be contained in each report.
4. The Department must promulgate rules and regulations concerning the types of video game machines that may be operated in South Carolina. These rules and regulations must provide minimum technical standards for video game machines. The legislation sets forth some of these standards. The regulations may establish costs for inspecting machines and investigating manufacturers and distributors.

The Department may also contract for the purchase, lease, or operation of a computer system that will monitor all video game machines in the State.

Effective Date: July 1, 1995

PROPERTY TAXES

Senate Bill 533, (Act No. 69)

Property Tax Amendments

This Act amends Section 12-37-220 by allowing the governing body of a municipality by ordinance to exempt from ad valorem taxes for not more than five years property located in the municipality receiving the exemptions from county ad valorem taxes allowed in Sections 12-37-220(B)(32) and (34). These sections provide for the exemption from ad valorem taxes for corporate headquarters and new research and development facilities, respectively.

Section 12-37-220 is also amended by adding subparagraph (C) to state that upon approval by the governing body of the county, the five year partial exemption allowed by subsections (A)(7) (dealing with new manufacturing establishments and additions to existing manufacturing establishments) and (B)(32) (dealing with corporate headquarters, corporate office facilities, distribution facilities, and additions to them) is extended to an unrelated purchaser who acquires the facilities in an arms-length transaction and preserves the existing facilities and number of jobs. This partial exemption applies for five years if the purchaser otherwise meets the exemption requirements.

This Act also amends Section 12-37-930 to provide that for valuation purposes, the fair market value of vehicles must be based on values derived from a nationally recognized publication of vehicle valuations. However, the value may not exceed ninety-five percent of the prior year's value.

Effective Dates: The amendments to Code Section 12-37-220 are effective upon the ratification of a constitutional amendment authorizing the exemption. The remainder of this Act is effective June 12, 1995.

Senate Bill 534, (Act No. 47)

Constitutional Amendment

This Act ratifies an amendment to item (g), Section 3, of Article X of the Constitution of South Carolina which states that the governing body of a municipality may exempt from municipal ad valorem taxation for not more than 5 years (1) all new corporate headquarters, corporate office facilities, distribution facilities located in the municipality, and additions to such facilities, and (2) all facilities of new enterprises engaged in research and development activities located in the municipality, and additions to such facilities.

Effective Date: May 18, 1995

Property Tax Relief

This Act added several sections dealing with property tax relief including:

1. Section 11-11-330 which establishes the State Property Tax Relief Fund. This section also states that the General Assembly shall appropriate sufficient funds to reimburse local governments for the amount of taxes that were not collected because of the exemption provided in Section 12-37-251.
2. Section 12-37-251 which provides for a homestead exemption from property taxes imposed for school operations. It does not apply to taxes levied for bonded indebtedness, payments pursuant to lease-purchase agreements for capital construction, or other county or municipal taxes. The amount of the fair market value of the homestead that is exempt must be set by the Director of the Department of Revenue and is based on the amount available in the State Property Tax Relief Fund.

This section also states that in a reassessment year, the millage rate for all real and personal property cannot exceed the rollback millage plus the percentage increase in the consumer price index for the year preceding the reassessment year. However, rollback millage is not defined. Therefore this provision will probably be clarified legislatively next year.

This exemption is conditional on full funding of the Education Finance Act and on appropriation by the General Assembly of funds reimbursing school districts for the amount equal to the Department's estimate of total school revenue loss as a result of this exemption.

3. Section 12-43-217 which provides for property tax reassessment to take place every 4 years and for the county or State, whichever has jurisdiction over the property, to notify the taxpayer if the change in value is \$1,000 or more.
4. Section 12-43-350 which lists the information which must be contained within a tax bill.
5. Section 12-47-75 which states that if a taxpayer pays property taxes in error, the treasurer shall credit the amount paid against the actual liability of the taxpayer for the tax year in question.

This Act also amended two additional sections:

1. Section 12-45-75(A) is amended to provide that a county by ordinance may allow taxpayers to pay ad valorem taxes on real property in quarterly installments. The ordinance must state the due dates of the payments; however, the due date of the final installment may be no later than January 15th. The ordinance may also provide for a service charge of not more than \$2 but may not provide for penalties for late installments.

2. The first paragraph of Section 12-43-220(c) is amended to provide that in order to qualify for the 4% owner occupied assessment ratio for real property, the owner-occupant must have actually occupied the residence prior to the date of application for some period during the tax year and still be an owner-occupant at the time of application.

This Act also extends the deadline for filing for agricultural use value for property owned as of December 31, 1993, until January 15, 1996.

Effective Date: June 29, 1995, except the amendment to Code Section 12-43-220(c) applies with respect to property tax years beginning after 1994.

House Bill 3364, Section 3, (Act No. 90)

Delinquent Property Taxes - Bid Required on Sale of Property

Code Section 12-51-55 has been added to provide that the official selling real property and mobile or manufactured housing for nonpayment of ad valorem property taxes is required to submit a bid on behalf of the forfeited land commission equal to all unpaid property taxes, penalties, costs, and current taxes.

Effective Date: June 7, 1995

House Bill 3606, (Act No. 44)

Vacation Time Sharing Plan

This Act amends Code Section 27-32-10(7) to revise the definition of "vacation time sharing ownership plan" to state that such a plan is an interest in real property and to allow such a plan to be created in a condominium established on a term for years or leasehold interest having an original duration of 30 years or more. The definition of "vacation time sharing lease plan" found in Code Section 27-32-10(8) is also revised to state that such a plan does not constitute an ownership interest in real property.

Effective Date: May 17, 1995

House Bill 3736, (Act No. 45)

Annexation of Real Property in a Multi-County Park

This Act amends Section 5-3-150(5) to provide that real property which is owned by a political subdivision of the State and included in a multi-county park may only be annexed with prior written consent of the governing body of the political subdivision holding title.

Effective Date: May 17, 1995

House Bill 3775, (Act No. 32)

Depreciation for Property Tax Purposes

Code Section 12-37-930 has been amended to provide that electronic interconnection component assembly devices for computers and computer peripherals are allowed a 30% depreciation allowance annually.

Also, this code section has been amended to provide that the original cost of custom molds and dies used in manufacturing electronic interconnection component assembly devices for computers and peripherals may be reduced to 90% of cost, instead of 80%.

Effective Date: April 6, 1995

House Bill 4158, (Act No. 125)

Property Tax Exemptions

Section 1 of this Act amends Section 12-4-710 to provide that except for the homestead exemption, the Department will determine if property qualifies for exemption under Section 12-37-220. Previously, this section did not specifically state the exception for the homestead exemption.

Section 2 of this Act amends Section 12-4-720 dealing with applications for property tax exemptions to provide that, except for the homestead exemption and unless otherwise provided, these applications must be filed within 3 years of the time the return was filed or two years from the date of payment, whichever is later. If no return is required, the exemption application must be filed within 2 years from the date of payment. Exemption applications for property exempt under Section 12-37-220(A)(8) (pollution control facilities or equipment) must be filed before the first penalty date for payment of property taxes (January 15th). The filing of a property tax return listing property as exempt is considered an application for exemption from property taxes.

Section 3 of this Act makes various amendments to Section 12-37-220. First, it amends this section to state that the exemptions from ad valorem taxation listed in this section are subject to the provisions of Section 12-4-720, thus, establishing the time period in which the exemption applications must be filed.

Secondly, Section 3 amends Section 12-37-220(B)(27) to provide that the exemption from ad valorem taxation for two motor vehicles owned or leased by a person required to use a wheelchair is extended to those persons who qualify for special license tags under Section 56-3-1910 instead of limiting the exemption to those who have actually been issued these plates.

Finally, Section 3 of this Act adds an exemption to Section 12-37-220(B) for one personal motor vehicle owned or leased by a legal guardian of a minor who is blind or is required to use a wheelchair when the vehicle is used to transport the minor.

Effective Date: June 7, 1995

House Bill 4158, (Act No. 125)

Minimum Tax Bill for Boats and Motors

This Act adds a paragraph to Section 12-37-220(B) dealing with property tax exemptions to add an exemption for boats and motors assessed at a value below that which is needed to produce a tax bill of \$15.

Effective Date: June 7, 1995

House Bill 4158, (Act No. 125)

Fee in Lieu of Property Taxes

Section 4 of this Act adds Chapter 12 to Title 4 of the South Carolina Code of Laws which deals with fee in lieu of property taxes. Section 4-12-20 provides that if a county and an investor enter into an agreement in the form of a lease, the agreement must contain a provision requiring the investor to make payments in lieu of taxes in the same amount as if the project were owned by the investor. Section 4-12-30 states that if the project which is the subject of the lease agreement meets certain requirements, the county and the investor may enter into an inducement agreement providing for a lesser payment in lieu of taxes. To qualify for the fee:

1. Title to the property must be held by the county or if the property is located in an industrial park, title may be held by more than one county.
2. The investment must be a project which is located in a single county or an industrial development park. A project located on a contiguous tract of land in more than one county but not in an industrial development park may qualify for the fee under certain conditions.
3. The minimum level of investment must be at least \$5,000,000 and invested within 5 years of the initial lease agreement.
4. The investment must be made by a single entity; however, the members of the same controlled group of corporations can qualify for the fee if the combined investment in the county by the members meets the minimum investment requirements.

5. Before undertaking a project, the county council must find that the project is anticipated to benefit the general public welfare, that it gives rise to no pecuniary liability of the county, and what is the estimated cost of maintaining the project in good repair and keeping it properly insured, unless the terms of the agreement states that the industry shall maintain the project and carry all proper insurance. The Board of Economic Advisors must determine that the project accomplishes proper governmental purposes and that the benefits of the project are greater than the costs.
6. Every financing agreement with respect to a project must contain an agreement obligating the industry to effect the completion of the project and to pay an amount under the terms of the lease agreement to build up and maintain any reserve considered to be advisable by the county.

The investor has five years from the end of the property tax year in which it and the county execute the inducement agreement to enter into an initial lease agreement with the county. The investor has five years from the end of the property tax year in which it and the county execute the initial lease agreement to complete its investment for purposes of qualifying for the fee in lieu of property taxes. If the investor does not anticipate completing the project within this time period, it may apply to the county for an extension to complete the project. The extension may not exceed two years. No extension is allowed for the five-year period to meet the minimum level of investment. The fee in lieu of property taxes is available for no more than 20 years.

The inducement agreement must provide for fee payments as follows:

1. Any property or undeveloped land, title to which is transferred to the county before being placed in service, is subject to annual fee payments as provided in Section 4-12-20.
2. After the property is placed in service, an annual fee payment determined in one of two ways is due:
 - a. An amount not less than the property taxes that would be due on the project if it were taxable but using an assessment ratio of not less than six percent and a fixed millage rate as stated in the millage rate agreement (discussed below) and a fair market value estimate determined by the Department.
 - b. An amount as determined in a. except that every fifth year the millage rate is allowed to increase or decrease in step with the average actual millage rate applicable where the project is located.
3. At the conclusion of the payments determined in 2., annual payments equal to the taxes due on the project as if it were taxable are payable.

When computing the fee, all applicable property tax exemptions are allowed except for those allowed pursuant to Section 3(g) of Article X of the Constitution of South Carolina (dealing with manufacturing), Section 12-37-220(B)(32) and (34) (dealing with corporate headquarters, corporate office facilities, distribution facilities, and all additions to such facilities when certain

conditions are met, and research and development facilities, respectively). Also, when property subject to the fee is disposed of, the fee must be reduced by the amount of the fee applicable to that property.

Section 4-12-30(G) states that the county and the investor may enter into a millage rate agreement for purposes of determining the amount of the payments. This agreement must be executed on the date of the inducement agreement or any time up to and including the date of the initial lease agreement. The millage rate cannot be lower than the cumulative property tax millage rate legally levied by or on behalf of all taxing entities within which the property is located on June 30th preceding the calendar year in which the initial lease is executed.

An inducement agreement and/or a millage rate agreement may be amended, terminated or replaced before the initial lease agreement date; however, the millage rate under the agreement may not be changed.

Investment expenditures made or incurred by an investor in connection with a project but placed in service in more than one year are eligible for the fee as long as they are placed in service within the five year period (or seven year if an extension is granted) discussed above. Property which has been previously subject to property taxes in South Carolina does not qualify for the fee except for land on which the project is to be located and property which has not been placed in service in South Carolina.

An entity subject to the fee may enter into any lending, financing, security or similar arrangement provided that income tax ownership of the property subject to the fee is held by the entity subject to the fee.

An entire fee interest may be transferred to another entity which is qualified to enter into a fee agreement.

Fee payments and returns are due at the same time as property tax payments and property tax returns would be if the property were owned by the party obligated to make the fee payments and file returns.

Section 4-12-40 states that projects with respect to which a lease agreement has been entered into before the effective date of this legislation are required to use the fee in lieu provisions of Section 4-29-67. Projects with respect to which a lease agreement is entered into after December 31, 1995, are required to use the provisions of Chapter 12 of Title 4. However, projects in which the total investment exceeds \$45,000,000 have the option of using the provisions of Section 4-29-67 or 4-12-30.

This Act also amended subsections (A), (B), and (C) of Section 4-29-68 dealing with special source revenue bonds to update the references for the new fee in lieu provisions.

Effective Date: Taxable years beginning after 1995.

SALES AND USE TAXES

Senate Bill 357, Section 1, (Act No. 61)

Exemption for Electricity Used by Cotton Gins

Code Section 12-36-2120(19) has been amended to exempt from the sales and use tax electricity used by cotton gins to manufacture tangible personal property for sale.

Effective Date: June 12, 1995

Senate Bill 357, Section 3, (Act No. 61)

Limited Liability Company - A Person

Code Section 12-36-30 has been amended to include a limited liability company within the meaning of the term "person".

Effective Date: June 12, 1995

Senate Bill 357, Section 4, (Act No. 61)

School and Library Books - Exemption Expanded to Access On-Line Information

Code Section 12-36-2120(3) has been amended to clarify that the following sales are exempt from sales and use taxes whether in printed form or in alternative forms, such as audio tape, video tape, CD ROM, microfilm and microfiche:

1. textbooks, books, magazines, periodicals and newspapers to primary schools, secondary schools, and institutions of higher learning for students' use in its library or in a course of study; and,
2. books, magazines, periodicals and newspapers to publicly supported state, county, or regional libraries.

The amendment, also, expanded the exemption from sales and use taxes to include charges for access to on-line information systems.

Effective Date: June 12, 1995

Senate Bill 375, (Act No. 134)

Exemption From Sunday Business Operation Laws - Accommodations Tax

Code Section 53-1-150 has been amended to permanently exempt counties from the provisions of Chapter 1, Title 53, of the 1976 Code (restrictions on Sunday operations) if they collect more than \$900,000 in the (2%) accommodations tax in one fiscal year. Prior to this change, the law did not state over what period of time a county had to collect the \$900,000 nor did it address what happened if collections fell below this amount. It is now clear that counties do not lose the exemption if collections fall below \$900,000 in a subsequent year.

Effective Date: June 13, 1995

House Bill 3362, Section 104, (Act No. 145)

Transmissions of Database Information - Excluded from Definition of Tangible Personal Property

Section 12-36-60, which defines the term "tangible personal property" for sales and use tax purposes, has been amended. Excluded from the definition is "the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service."

Effective Date: July 1, 1995

House Bill 3362, Section 105, (Act No. 145)

Data Processing - Excluded From Tax

Section 12-36-910 has been amended so as to exclude from the measure of the sales and use taxes charges for "data processing". "Data processing" is defined in this section as "the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers. It also means the electronic transfer of or access to that information. Examples of the processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers."

Effective Date: July 1, 1995

House Bill 3362, Section 107, (Act No. 145)

Exemption Certificate - Purchaser's Signature Not Required

Effective January 1, 1995, Code Section 12-36-2680 has been amended to eliminate the requirement that the purchaser sign the invoice.

Effective Date: Applies with respect to a certificate maintained on file by a retailer for sales on or after January 1, 1995.

House Bill 3666, (Act No. 52)

Creation of Special Transportation Authorities by the Counties and Alternative Funding Options Available to Counties to Finance Transportation Projects

This Act amends Title 4 by adding a new chapter, Chapter 37, which allows the counties to establish optional methods for the financing of transportation facilities. These provisions are designed to give the counties an alternate means of financing the cost of acquiring, designing, constructing and equipping and operating highways, roads, bridges and other transportation related facilities.

The governing body of a county may, by ordinance, establish a Transportation Authority with all the rights and powers of a public body. Any Transportation Authority established pursuant to these provisions must use the same procurement methods and apply the same procurement requirements used by, and applied to, the South Carolina Department of Transportation.

Two means of alternative financing of transportation projects are provided by the new provisions. First, counties are empowered to impose a sales or use tax to fund these projects. The governing body of a county may, by ordinance, impose a one percent sales and use tax within its jurisdiction for a single project and for a specific period of time to collect a limited amount of money to fund the project. The governing body may vote to impose the tax, subject to a referendum, by enacting an ordinance. New Code Section 4-37-30 states explicitly what items must be addressed in the ordinance.

Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of imposing the special sales and use tax in the jurisdiction. If a majority of the votes cast are in favor of imposing the tax for one or more specified purposes, then the tax is imposed effective the first day of the month occurring one hundred and eighty days after the date of the referendum. The tax terminates on the earlier of the final day of the maximum time period specified for the imposition or at the end of the calendar month during which the Department determines that the tax has raised revenue sufficient to provide the greater of either the cost of the project or the cost to amortize all debt relating to the approved projects.

Section 4-37-30 addresses how this new local tax will be collected. The tax will apply to the same transactions that are subject to the State sales and use tax. However, the following transactions are exempt from the local tax:

1. sales and purchases of items subject to a maximum tax under the State sales and use tax; and,
2. transactions exempted or excluded from the imposition of the State sales and use tax, including sales and purchases of food lawfully purchased with United States Department of Agriculture food stamps.

This tax will be collected in the same manner as the local option sales and use tax presently imposed in some counties; however, sales and purchases subject to the casual excise tax are not exempt from the new local tax unless otherwise exempt or excluded.

Any tax levied under the provisions described above are required to be administered and collected by the Department in the same manner as other sales and use taxes. The Department is required to furnish information concerning the collection of the taxes back to the counties and the Department may promulgate regulations necessary to implement the new law. The sales and use tax allowed by the new law applies to all the gross proceeds of sales in the applicable jurisdiction and are in addition to all other sales and use taxes imposed by law. However, in a county in which an ordinance is received by the county election commission, if the county has previously imposed a local option sales and use tax, the county election commission shall conduct a referendum (at the same time the special referendum is to be conducted) as to whether the county voters wish to continue the local option sales and use tax. If the vote is to terminate the local option sales and use tax, the termination is effective on the first day of the fiscal year following the referendum.

The second new funding method by which counties may raise funding for transportation projects is through the use of toll charges. The governing body of a county, may by ordinance, allow a Transportation Authority to use tolls to finance a project authorized by the new provision. Section 12-37-30(B) provides information as to what must be contained in the ordinance.

Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of authorizing a Transportation Authority to use tolls in the jurisdiction. If a majority of the votes cast are in favor of imposing the tolls, the tolls will be imposed, otherwise, an authority is not authorized to impose the tolls. The tolls will terminate on the earlier of the final day of the maximum time period specified for imposition or the end of the calendar month during which the authority determines that the tolls have raised sufficient revenues to fund the greater of either the cost of the project(s) or the costs to amortize all debts related to the approved project. Once, again provisions are provided as to how excess funds will be handled.

Note, that a governing body must choose between the two alternatives provided and may not choose both.

Effective Date: May 18, 1995

REMINDER

Senate Bill 967 of 1994, (Act 506 of 1994, Section 16A)

Supplies and Machinery Used by Garment Rental Establishments

This amendment to the sales and use tax occurred in 1994, however, it did not become effective until June 30, 1995. This Act amended Code Section 12-36-2120(24) 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 ..."

WITHHOLDING

Senate Bill 753, Section 2, (Act No. 76)

Withholding Tax Recodification

South Carolina's withholding tax law has been rewritten and moved from Chapter 9 to Chapter 8 of Title 12. The law has been simplified by updating language, reorganizing and combining sections in a logical manner, and reducing the number of words.

At present, the Code Commissioner is adding amendments made to Chapter 9 during the 1995 legislative session to Chapter 8. Once complete, the Department will issue cross-reference charts of old Chapter 9 to new Chapter 8.

Effective Date: Taxable years beginning after 1995.